

**Senate . . . . . No. 2019**

Message from His Excellency the Governor recommending legislation to mobilize economic recovery in Massachusetts.

**The Commonwealth of Massachusetts**



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GOVERNOR

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LIEUTENANT GOVERNOR

3/20/2009

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled “An Act Mobilizing Economic Recovery In Massachusetts.”

This legislation builds on the work and ideas of the more than 275 people who participated in task forces that this administration established to plan for and maximize the Commonwealth’s receipt of federal funds available through the American Reinvestment and Recovery Act of 2009 (“ARRA”). Among other components, the historic federal recovery bill provides states with funding for infrastructure projects to create jobs in the near term and to lay the foundation for long term economic growth.

Many of ARRA’s provisions include “use it or lose it” deadlines that require states to use federal funds quickly or the funding will be reallocated to other states. To facilitate compliance with these deadlines and with other ARRA requirements, task forces comprised of leaders from industry, labor and government developed a set of legislative recommendations for changes to the General Laws that are either mandated to be eligible for certain ARRA funds or strongly recommended to reap the maximum benefits of the federal act, including compliance with its deadlines. This bill incorporates those recommendations.

The bill includes two provisions that are required to satisfy eligibility requirements for two pools of ARRA funding. These provisions: (1) authorize the Massachusetts Water Pollution Abatement Trust to charge less than the current statutory 2% interest rate for loans or other

financial assistance that it provides from the state's revolving fund. This change is required to make the state eligible for \$186 million in ARRA-funded clean water and drinking water grants; and (2) extend from 18 weeks to 26 weeks the permissible time period to receive unemployment benefits while participating in a training program. This change is required to make the state eligible for approximately \$108 million in ARRA unemployment insurance funds.

The bill also includes several additional provisions intended to facilitate compliance with ARRA's deadlines and the accomplishment of its objectives. These provisions, which will apply only to ARRA-funded projects and programs:

- Update and expedite certain state procurement procedures to maximize the state's ability to comply with ARRA's deadlines and capture all available funding.
- Establish a "last resort" safety valve mechanism for waiving procurement procedures if, and only if, necessary to avoid the loss of federal funds;
- Establish accounting and reporting processes for ARRA funds and projects to clarify procedures, promote administrative efficiencies and ensure transparency;
- Clarify that any state positions created in connection with ARRA-funded programs or projects shall be paid only out of ARRA funds and shall be eliminated once federal funding ends;
- Create technical assistance and bond guarantee programs to ensure that all businesses can participate in and benefit from ARRA-funded opportunities, including small businesses and minority and women-owned businesses; and
- Promote the training and employment of workers, including the long-term unemployed and otherwise disadvantaged populations, into stable, good paying jobs through apprenticeship training programs.

In sum, this legislation will enable the Commonwealth to maximize its eligibility for ARRA funding, thereby facilitating our ongoing efforts to create jobs, improve our infrastructure and strengthen our long-term economy. I urge your early and favorable consideration of this bill.

Sincerely,

DEVAL L. PATRICK,

*Governor.*

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT MOBILIZING ECONOMIC RECOVERY IN MASSACHUSETTS.

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to infuse the state economy with available federal funds, create jobs and provide economic relief to the people of the Commonwealth of Massachusetts in the present fiscal emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1           SECTION 1. Notwithstanding section 38C of chapter 7 of the General Laws, contracts  
2 for design services which are funded in whole or in part by the American Recovery and  
3 Reinvestment Act of 2009 shall be exempt from the jurisdiction of the designer selection board if  
4 the design fee under the contract is less than \$25,000, or if the estimated construction cost of the  
5 project for which the design services are required is less than \$250,000 or if the contract is  
6 otherwise exempt under section 38C.

7           SECTION 2. Notwithstanding section 38D of chapter 7 of the General Laws, each  
8 contract for designer services for a project which is funded in whole or in part by the American  
9 Recovery and Reinvestment Act of 2009 and is subject to the jurisdiction of the board shall be  
10 publicly advertised by the board either (i) within the COMPASS system, not less than 2 weeks  
11 before the deadline for filing applications, and in the central register established under section  
12 20A of chapter 9, not less than 1 week before the deadline for filing applications, or (ii) if the

13 contract is not advertised within the COMPASS system, the contract shall be publicly advertised  
14 in the central register at least 2 weeks before this deadline. Every contract for design services for  
15 a project which is funded in whole or in part by the American Recovery and Reinvestment Act of  
16 2009 and subject to section 38K of chapter 7 shall be publicly advertised under this section.

17 SECTION 3. Notwithstanding section 38H of chapter 7 of the General Laws, for  
18 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
19 of 2009, the certification required by paragraph (iv) of subsection (e) shall only apply to  
20 contracts which exceed \$25,000 or which are for the design of a building for which the budgeted  
21 or estimated construction costs exceed \$250,000.

22 SECTION 4. Notwithstanding section 38K of chapter 7, a contract for design services  
23 which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009  
24 and which would otherwise be subject to the requirements of section 38K shall not be subject to  
25 those requirements unless the project at issue is estimated to exceed \$250,000.

## 26 **STREAMLINE DSB PROCESS**

27 SECTION 5. Subsection (d) of section 38F of chapter 7 of the General Laws shall not  
28 apply to contracts which are funded in whole or in part by the American Recovery and  
29 Reinvestment Act of 2009. For those projects, the designer selection board may delegate its  
30 powers and duties under paragraph (b) of section 38D, paragraphs (c) and (d) of section 38E, and  
31 paragraphs (a) and (b) of sections 38G, 38H and 38I to panels of less than all the board members.  
32 A panel of no less than 6 members shall be required for selection of designers under this section,  
33 4 of whom shall be architects or engineers provided there must be at least 1 architect and 1  
34 engineer on that panel.

## 35 **INCREASE THE THRESHOLDS FOR DCAM TO DELEGATE TO PUBLIC** 36 **AGENCIES THE AUTHORITY TO CONTROL PROJECTS**

37 SECTION 6. Notwithstanding section 40B of chapter 7 of the General Laws, for  
38 projects which are funded in whole or in part by the American Recovery and Reinvestment Act  
39 of 2009, the commissioner of capital asset management and maintenance may, upon request of a  
40 state agency or building authority, delegate project control and supervision to that state agency or

41 building authority over projects involving structural or mechanical work whose estimated cost is  
42 less than \$2,000,000 if the commissioner determines that the agency or authority has the ability  
43 to control and supervise such project. Except as otherwise provided in section 40B, any state  
44 agency or building authority shall control and supervise its own building projects when the  
45 estimated cost of such project is less than \$250,000, or if the project does not involve structural  
46 or mechanical work.

47 **MODIFY STUDY REQUIREMENTS FOR LARGER PROJECTS AND ELIMINATE**  
48 **STUDY AND ENCUMBRANCE REQUIREMENTS FOR SMALL DESIGN PROJECTS**

49 SECTION 7. The second and third paragraphs of section 7K of chapter 29 of the General  
50 Laws shall not apply to projects which are funded in whole or in part by the American Recovery  
51 and Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

52 No provider of design services for any building project for which a state agency is the using  
53 agency shall be selected by the designer selection board or by the administering agency in  
54 accordance with sections 30B through 30P, inclusive, of chapter 7, and no design services shall  
55 be performed for or by such administering agency for any building project for which the  
56 satisfactory completion of a study program is required before the design or construction of that  
57 project, unless and until: (a) the study, program or where appropriate, both, have been  
58 satisfactorily completed to such extent that a contract for final design may be awarded in the  
59 discretion of the commissioner of capital asset management and maintenance; (b) the using  
60 agency certifies in writing to the commissioner of capital asset management and maintenance  
61 that the study, program, or where appropriate both, correspond to the current needs of that  
62 agency, including its current long term capital facilities development plan; and (c) the  
63 commissioner requests that one or more of the directors of the office of programming, office of  
64 project management, or office of facilities management review the study or program, or where  
65 appropriate, both, and the director or directors certify in writing to the commissioner that the  
66 study, program, or where appropriate both, reflect the using agency's needs as stated, that they  
67 provide an accurate estimate of the project requirements, cost and schedule, that the project can  
68 be accomplished within the appropriation or authorization for that project, and recommends  
69 proceeding with design, construction, or where appropriate, both.

70 This section shall not apply to maintenance or repair projects, as defined by section 39A of  
71 chapter 7, estimated to cost less than \$250,000, if the executive head of the agency administering  
72 the project certifies in writing that the design work is or shall be such as to specify a project that  
73 can be accomplished and that there are funds available to pay for the design services.

74 SECTION 8. Section 26A of chapter 29 of the General Laws shall not apply to  
75 maintenance or repair projects, as defined by section 39A of chapter 7, which are funded in  
76 whole or in part by the American Recovery and Reinvestment Act of 2009, and are estimated to  
77 cost less than \$250,000, if the executive head of the agency administering the project certifies in  
78 writing that the design work is or shall be such as to specify a project that can be  
79 accomplished, and that there are funds available to pay for the design services.

80 **INCREASE THE THRESHOLD FOR SMALL BUILDING PROJECT**  
81 **PROCUREMENTS**

82 SECTION 9. For contracts which are funded in whole or in part by the American  
83 Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Laws shall  
84 only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

85 **INCREASE THE THRESHOLD FOR PROJECTS REQUIRING PAYMENT BONDS TO**  
86 **\$25,000**

87 SECTION 10. Notwithstanding section 29 of chapter 149 of the General Laws, contracts  
88 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009  
89 shall only be subject to the requirements of section 29 if the amount of the contract is more than  
90 \$25,000.

91 **REVISE ADVERTISING AND BIDDING THRESHOLDS FOR SMALL PROJECTS**

92

93 SECTION 11. Subsection (2) of section 44A of chapter 149 of the General Laws shall  
94 not apply to contracts which are funded in whole or in part by the American Recovery and  
95 Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

96 (2)(a) Every contract for the construction, reconstruction, installation, demolition, maintenance  
97 or repair of any building by a public agency estimated to cost less than \$10,000, and where the

98 overall project is also estimated to cost less than \$10,000, shall be obtained through the exercise  
99 of sound business practices. The public agency shall make and keep a record of each such  
100 contract solicitation. The record shall at a minimum include a written description of how the  
101 services were procured, and the name and address of the person from whom the services were  
102 procured. Written price quotations submitted in accordance with this subsection shall not require  
103 certificates of eligibility, update statements or bid deposits. In no event shall public agencies  
104 solicit price quotations from persons if to do so would violate chapter 268A of the General Laws.

105 (b) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
106 repair of any building by a public agency estimated to cost not less than \$10,000, but not more  
107 than \$50,000, and where the overall project is also estimated to cost not more than \$50,000, shall  
108 be awarded to the responsible person offering to perform the contract at the lowest price  
109 quotation; provided however, that the public agency shall seek written price quotations from no  
110 fewer than 3 persons customarily providing the work for which the contract is being made  
111 available. When seeking written quotations the public agency shall make and keep a record of  
112 the names and addresses of all persons from whom price quotations were sought, the names of  
113 the persons submitting price quotations, and the date and amount of each price quotation. Written  
114 price quotations submitted in accordance with this subsection shall not require certificates of  
115 eligibility, update statements or bid deposits. In no event shall public agencies solicit price  
116 quotations from persons if to do so would violate chapter 268A of the General Laws.

117 (c) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
118 repair of any building by a public agency estimated to cost more than \$50,000 but not more than  
119 \$100,000, except for a pumping station to be constructed as an integral part of a sewer  
120 construction or water construction project bid under section 39M of chapter 30, shall be awarded  
121 to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and  
122 read in accordance with the procedure set forth in section 39M of chapter 30. The term "pumping  
123 station" as used in this section shall mean a building or other structure which houses solely  
124 pumps and appurtenant electrical and plumbing fixtures.

125 (d) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
126 repair of any building by a public agency estimated to cost more than \$100,000, except for a  
127 pumping station to be constructed as an integral part of a sewer construction or water

128 construction project bid under section 39M of chapter 30, shall be awarded to the lowest  
129 responsible and eligible general bidder on the basis of competitive bids in accordance with the  
130 procedure set forth in sections 44A to 44H, inclusive.

131 (e) When the general court has approved the use of an alternative mode of procurement of  
132 construction for a project under section 7E of chapter 29, the awarding authority responsible for  
133 procuring construction services for the project shall follow the policies and procedures of this  
134 section and of sections 44B to 44H, inclusive, to the extent compatible with the mode of  
135 construction procurement selected.

136 (f) Notwithstanding paragraph (d), a public agency may undertake the procurement of modular  
137 buildings, in accordance with section 44E. A public agency may procure site work for modular  
138 buildings, including but not limited to, construction of foundations, installations, and attachment  
139 to external utilities, or any portion of site work, either in combination with the procurement of  
140 modular buildings pursuant to section 44E or on the basis of competitive bids pursuant to  
141 paragraph (d). Notwithstanding paragraph (d), a public agency may procure energy management  
142 services in accordance with sections 11C or 11I of chapter 25A and regulations promulgated  
143 under those sections.

144 **ELIMINATE NEWSPAPER AD REQUIREMENT AND ABBREVIATE CENTRAL**  
145 **REGISTER ADVERTISING**

146 SECTION 12. Subsection (f) of section 44D1/2 of chapter 149 shall not apply to  
147 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
148 of 2009, but in place thereof the following subsection shall apply:-

149 (f) The public notice and solicitation required in subsection (d) shall be advertised in the central  
150 register under section 20A of chapter 9 and within the COMPASS system. The public notice and  
151 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
152 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
153 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

154 SECTION 13. Subsection (f) of section 44D3/4 of chapter 149 of the General Laws shall  
155 not apply to contracts which are funded in whole or in part by the American Recovery and  
156 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

157 (f) The public notice and solicitation required in subsection (d) shall be advertised in the central  
158 register under section 20A of chapter 9 and within the COMPASS system. The public notice and  
159 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
160 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
161 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

162 SECTION 14. Subsection (1) of section 44J of chapter 149 of the General Laws shall not  
163 apply to contracts which are funded in whole or in part by the American Recovery and  
164 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

165 (1) No public agency or authority of the commonwealth or any political subdivision thereof shall  
166 award any contract for which competitive bids are required under section 44A of this chapter or  
167 section 39M of chapter 30, or for which competitive proposals are required under subsection (4)  
168 of section 44E of this chapter or section 11C of chapter 25A, unless a notice inviting bids or  
169 proposals therefor shall have been posted not less than 1 week before the time specified in the  
170 notice for the receipt of the bids or proposals in a conspicuous place in or near the offices of the  
171 awarding authority, and shall have remained posted until the time so specified, and unless the  
172 notice shall also have been advertised either within the COMPASS system, not less than 2 weeks  
173 prior to the time specified and in the central register published by the secretary of state under  
174 section 20A of chapter 9 not less than 1 week before the time specified for the receipt of the bids  
175 or proposals, or, if the notice is not advertised within the COMPASS system, the notice shall be  
176 advertised in the central register at least 2 weeks before the time specified. The notice shall also  
177 be published at such other times and in such other newspapers or trade periodicals as the  
178 commissioner of capital asset management and maintenance may require, having regard to the  
179 locality of the work involved.

180 SECTION 15. Subsection (e) of section 5 of chapter 149A of the General Laws shall not  
181 apply to contracts which are funded in whole or in part by the American Recovery and  
182 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

183 (e) The public notice and solicitation required in subsection (c) shall be advertised in the central  
184 register under section 20A of chapter 9, and within the COMPASS system. The public notice and  
185 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
186 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
187 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

188 SECTION 16. Subsection (d) of section 8 of chapter 149A of the General Laws shall not  
189 apply to contracts which are funded in whole or in part by the American Recovery and  
190 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

191 (d) The public notice and solicitation required in subsection (c) shall be advertised in the central  
192 register under section 20A of chapter 9, and within the COMPASS system. The public notice and  
193 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
194 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
195 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

196 SECTION 17. Subsection (b) of section 17 of chapter 149A of the General Laws shall  
197 not apply to contracts which are funded in whole or in part by the American Recovery and  
198 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

199 (b) The public notice and solicitation required in subsection (a) shall be advertised either within  
200 the COMPASS system not less than 2 weeks before the deadline for submitting the letters of  
201 interest and in the central register established under section 20A of chapter 9 not less than 1  
202 week before the deadline, or if the public notice and solicitation are not given within the  
203 COMPASS system, the public notice and solicitation shall be advertised in the central register  
204 published by the secretary of state under section 20A of chapter 9 not less than 2 weeks before  
205 the deadline for submitting the letters of interest.

206 **STREAMLINE SELECTION PROCESS WHEN UNREASONABLY HIGH SUB-BIDS**  
207 **ARE RECEIVED WITHOUT COMPETITION**

208 SECTION 18. Subdivision (a) of subsection 4 of section 44F of chapter 149 of the  
209 General Laws shall not apply to contracts which are funded in whole or in part by the American  
210 Recovery and Reinvestment Act of 2009, but in place thereof the following subdivision shall  
211 apply:-

212 (a)(1) In inviting general bids and sub-bids the awarding authority shall reserve the right to reject  
213 any or all bids if it is in the public interest to do so. In inviting sub-bids in connection with a  
214 contract, the awarding authority shall reserve the right to reject any sub-bid on any sub-trade if it  
215 determines that the sub-bidder is not a person competent to perform the work as specified, or if  
216 less than 3 sub-bids were received, which are not restricted to the use of 1 or more general  
217 bidders, and the prices are not reasonable for acceptance without further competition.

218 (2) If no sub-bid is filed for a sub-trade designated in the general bid form, or if the only sub-bids  
219 which are filed are restricted to the use of 1 or more general bidders, the awarding authority may  
220 state, in an addendum issued with the list of sub-bidders required by clause (3), that the general  
221 bidder shall include in the cost of his own work an amount to cover all the work required for any  
222 such sub-trade. The general contractor shall cause the work covered by the sub-trade to be done  
223 by a qualified and responsible sub-contractor, subject to the written approval of the awarding  
224 authority. If the awarding authority determines that any sub-contractor chosen by the general  
225 contractor under this section is not qualified or responsible, the general contractor shall obtain  
226 another sub-contractor who is satisfactory to the awarding authority with no adjustment in the  
227 general contractor's price.

228 (3) If a rejection of all sub-bids for such a sub-trade occurs under this section, the awarding  
229 authority shall state, in an addendum issued with the list of sub-bidders, the amount to be  
230 included by a general bidder on the general bid form for such sub-trade; and without in any way  
231 affecting other sub-bidders in other sub-trades who have conformed to the prescribed bidding  
232 procedure, new sub-bids for such sub-trade shall be requested by written invitation to 3 or more  
233 qualified sub-bidders, including any that had previously submitted bids, and the sub-bids shall be  
234 publicly opened and read by the awarding authority at a time and place to be specified in the

235 invitation. The general contractor shall cause the work covered by the sub-trade to be done by  
236 the lowest responsible and eligible sub-bidder against whose standing and ability the general  
237 contractor makes no objection or, if there is no sub-bidder, by the sub-contractor against whose  
238 standing and ability the general contractor and awarding authority make no objection, and for a  
239 sum upon which the general contractor and the awarding authority may agree. The contract price  
240 shall be adjusted by the difference between the sub-contract sum and the amount stated in the  
241 addendum. The general bidder shall include in the cost of his own work on the general bid form  
242 all expenses and profits on account of such adjustments.

243 (4) If after new sub-bids for a sub-trade are requested by written invitation under the preceding  
244 paragraph, the awarding authority still does not receive any sub-bids that are unrestricted to the  
245 use of 1 or more general bidders and are reasonable for acceptance based upon the estimated cost  
246 for the work of that sub-trade, the awarding authority may assign the work to the general  
247 contractor if the awarding authority first confirms that its estimate for the cost of the work of that  
248 sub-trade is accurate. The general contractor shall cause the work covered by the sub-trade to be  
249 done by the sub-contractor against whose standing and ability the general contractor and  
250 awarding authority make no objection and for a sum upon which the general contractor and the  
251 awarding authority agree. The contract price shall be adjusted by the difference between the sub-  
252 contract sum and the amount stated in the addendum. The general bidder shall include in the cost  
253 of his own work on the general bid form all expenses and profits on account of such adjustments.

254

255 **ESTABLISH A STANDING LIST OF PREQUALIFIED CONSTRUCTION MANAGER**  
256 **AT RISK FIRMS**

257

258 SECTION 19. Notwithstanding section 5 of chapter 149A of the General Laws, for  
259 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
260 of 2009, the following procedure shall apply:-

261 A. (1) The division of capital asset management shall annually undertake a prequalification  
262 process set forth in this section to provide a standing list of prequalified construction  
263 management at risk firms to be used by the division in requesting proposals pursuant to

264 Subsection B for construction management at risk services for specific projects to be determined  
265 at a later date. Public awarding authorities other than the division have the option to use the  
266 standing list and related procedures upon application to and approval by the inspector general.  
267 Each contract between a construction management at risk firm and the division or other public  
268 awarding authority shall be secured by a performance and payment bond in the full sum of the  
269 guaranteed maximum price by a surety company licensed to do business in the commonwealth  
270 and whose name appears on the United States Treasury Department Circular 570.

271 (2) Firms included on the division's standing list of prequalified construction management at risk  
272 firms shall be prequalified for a period of 1 year from the date of issuance of the standing list by  
273 the division. Upon issuance of the standing list, the division shall publish the standing list of  
274 prequalified construction manager at risk firms in the central register, the COMPASS system,  
275 and the division's website. The division shall re-advertise and solicit applications quarterly  
276 through the request for qualifications process or RFQ process provided for herein to keep the  
277 statewide standing list current.

278 (3) Before issuing a RFQ, the division shall establish a prequalification committee for the  
279 purpose of reviewing and evaluating responses submitted to the RFQ issued pursuant to  
280 paragraph (4). The prequalification committee shall be comprised of at least 1 registered  
281 architect or 1 registered professional engineer on the division's staff who has at least 5 years  
282 experience in the construction and supervision of construction of buildings or, if not registered as  
283 an architect or professional engineer, who has at least 7 years experience in the construction and  
284 supervision of construction of buildings, and at least 2 other representatives from the division as  
285 designated by the commissioner.

286 (4) The selection process for the annual prequalification of the division's standing list of  
287 construction manager at risk firms shall begin once the division gives public notice of the  
288 solicitation and requests responses to an RFQ from construction management at risk firms. The  
289 public notice and RFQ shall include: (a) a statement indicating that the RFQ is not for a specific  
290 project, but will be used to prequalify construction management at risk firms for inclusion on the  
291 division's annual standing list and that only those construction manager at risk firms included on  
292 the standing list shall be invited to submit proposals in response to requests for proposals issued

293 pursuant to subsection B; (b) the time and date for receipt of responses to the RFQ, the address  
294 of the office to which the responses are to be delivered, and the timeframe in which the public  
295 agency will respond to the responses; (c) a description of the experience that will be required for  
296 construction manager at risk firms to be included on the division's standing list, which shall  
297 include a minimum of 3 public or private construction manager at risk projects during the past 10  
298 years; (d) the evaluation procedure and criteria under paragraph (7), including any rating system;  
299 (e) a general description of the scope of services that would be expected of a prequalified  
300 construction manager firm during the pre-design, pre-construction and construction phases of a  
301 construction manager at risk project; (f) the anticipated schedule for the selection process of  
302 construction manager at risk firms to be included on the division's standing list; and (g) a  
303 prohibition against any unauthorized communication or contact with the public agency outside of  
304 official pre-proposal meetings.

305 (5) The division shall require interested construction management at risk firms to submit a  
306 statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The  
307 statement of qualifications shall include, at a minimum, the following: (a) a cover letter or  
308 executive summary detailing the key elements and factors that differentiate the firm from other  
309 responders; (b) completion of a qualifications application similar in form to AIA Document  
310 A305, 1986 edition, listing general business information and financial capacity; (c) a list of  
311 lawsuits and arbitrations to which the firm is a party in regard to construction contracts within  
312 the last 3 years, including a list of all convictions or fines for violations of state or federal law;  
313 (d) submission of an organization chart with specific information on key project personnel or  
314 consultants; (e) submission of an audited financial statement for the most recent fiscal year and a  
315 letter from the surety company of the firm confirming the ability to provide performance and  
316 payment bonds for the building project under consideration, but, the financial information  
317 submitted shall remain confidential and shall not be a public record to the fullest extent  
318 permissible under the law; (f) submission of information on the firm's safety record including its  
319 workers' compensation experience modifier for the prior 3 years; (g) submission of information  
320 on and evidence of the firm's compliance record with respect to minority business enterprise and  
321 women business enterprise inclusion goals and workforce inclusion goals, if applicable; (h)  
322 submission of information regarding the firm's experience on construction manager at risk

323 projects including references from the owners and architects of the building projects; (i)  
324 submission of information on any projects where the firm was terminated, failed to complete the  
325 work, or paid liquidated damages; (j) a certificate of eligibility issued by the division under  
326 section 44D of chapter 149, showing the construction manager at risk firm's capacity rating, and  
327 an update statement; and (k) any other relevant information that the division determines  
328 desirable. The statement of qualifications shall be signed under pains and penalties of perjury.

329 (6) The public notice and solicitation required in paragraph (4) shall be advertised in the central  
330 register under section 20A of chapter 9, and within the COMPASS system. The public notice  
331 and solicitation shall be given within the COMPASS system not less than 2 weeks before the  
332 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
333 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

334 (7) Upon receipt of the statement of qualifications submitted by construction management at risk  
335 firms, the prequalification committee established under subsection (c) shall evaluate each  
336 statement of qualifications using the criteria provided in the RFQ. Only construction  
337 management at risk firms achieving an acceptable rating as defined under clause (c) of paragraph  
338 (4) will be selected for inclusion on the standing list.

339 B. (1) Before issuing a request for proposals, in this section referred to as RFP, the division or  
340 any other public awarding authority authorized under subsection A shall establish a selection  
341 committee for the purpose of reviewing and evaluating responses submitted to the RFP issued  
342 under subsection (2). The selection committee shall be comprised of 1 representative of the  
343 designer, the owner's project manager, and at least 2 representatives of the division or other  
344 public awarding authority authorized under subsection A.

345 (2) The division or any other public awarding authority authorized by subsection A shall issue an  
346 RFP to all construction management at risk firms that have been prequalified by the division in  
347 accordance with subsection A and who have a division certificate of eligibility indicating  
348 sufficient single project and aggregate limits for the project. RFPs issued under this section shall  
349 follow the procedure set forth in paragraphs (b) through (e) of section 6 of chapter 149A of the  
350 General Laws.

351 **CONDENSED PREQUALIFICATION PROCESS**

352 SECTION 20. (a) For contracts subject to the prequalification requirements set forth in  
353 section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the  
354 American Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall  
355 have the option to use the condensed prequalification process for general contractors described in  
356 this section in lieu of the full prequalification process set forth in section 44D½. The purpose of  
357 the condensed prequalification process is to allow awarding authorities an opportunity to  
358 expedite the prequalification process provided in section 44D½ in order to most efficiently meet  
359 the specified goals and time parameters set forth in the federal act. All of the requirements of the  
360 full prequalification process set forth in section 44D½ shall be required under the condensed  
361 prequalification process unless specifically modified in this section.

362 (b) Where an awarding authority opts to use the condensed prequalification process, the  
363 requirements for public notice of the building project and solicitation of responses to the RFQ  
364 from interested general contractors shall include all items set forth in clauses (1) through (8) of  
365 subsection (d) of section 44D½ but shall also include the following additional statements:

366 (1) a statement that the project is funded in whole or in part under the federal act and shall use  
367 the condensed prequalification process.

368 (2) a statement that the evaluation procedure and the criteria for the prequalification of interested  
369 general contractors shall include evaluation of all the criteria set forth in subsection (e) of section  
370 44D½ but, in order to avoid duplication and promote the expeditious commencement of projects  
371 under the federal act and without sacrificing the importance of the prequalification process, for  
372 certain of the evaluation categories and subcategories specifically identified in subsection (e), the  
373 prequalification committee shall evaluate interested general contractors based on a review of the  
374 information contained in the division of capital asset management and maintenance certification  
375 files, including but not limited to the project evaluations required by subsection (7) of section  
376 44D of the General Laws and the update statements required by clause (ii) of subdivision (4) of  
377 subsection (e) of section 44D½ to be submitted by interested general contractors. The  
378 prequalification committee shall exercise due diligence in checking appropriate references.

379 (c) The RFQ and evaluation criteria for the condensed prequalification process shall include all  
380 criteria set forth in subsection (e) of section 44D½ but shall not include the total or minimum  
381 point allocations for the evaluation categories and subcategories designated therein. In addition,  
382 in the interest of expediting the prequalification of general contractors for contracts funded in  
383 whole or in part under the federal act but not sacrificing the prequalification process, where  
384 certain of the evaluation subcategories specifically identified in this section require similar  
385 reporting by contractors in connection with the certification process set forth in section 44D and  
386 the information contained in the required update statements submitted by interested general  
387 contractors, an awarding authority issuing an RFQ under this condensed prequalification process  
388 shall maintain as part of the project record the written certification by the prequalification  
389 committee that it has evaluated interested general contractors based on a review of both the  
390 information contained in the certification files, including but not limited to the project  
391 evaluations required by subsection (7) of section 44D, and the current update statements  
392 submitted by interested general contractors and that it has exercised due diligence in checking  
393 appropriate references.

394 (d) Where an awarding authority opts to use the condensed prequalification process, the review  
395 of the terminations, legal proceedings, safety record and compliance record provided in clauses  
396 (iv) through (vii) of subdivision (1) of subsection (e) of section 44D½, and the review of credit  
397 references and public project record under clauses (ii) and (iii) of subdivision (2) of subsection  
398 (e) of section 44D1/2, and the review of audited financial statements under clause (i) of  
399 subdivision (3) of subsection (e) of section 44D1/2 shall be satisfied by a requirement that the  
400 prequalification committee evaluate both the information contained in the division of capital  
401 asset management and maintenance certification files, including but not limited to the project  
402 evaluations required by subsection (7) of section 44D, and the current update statements  
403 submitted by interested general contractors and by a requirement that the prequalification  
404 committee exercise due diligence in checking appropriate references. The prequalification  
405 committee shall further be required to certify in writing that it has met these requirements, and  
406 the certification shall be maintained by the awarding authority in the project record.

407 (e) Notwithstanding subsection (f) of section 44D½, the public notice requirements for the  
408 condensed prequalification process shall be for the RFQ to be advertised in the central register

409 for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition,  
410 these projects shall be advertised in the central website to be established for all projects in the  
411 commonwealth funded in whole or in part under the federal act and in accordance with any  
412 requirements contained in the federal act.

413 (f) Where an awarding authority opts to use the condensed prequalification process in lieu of the  
414 evaluation requirements set forth in subsection (h) of section 44D<sup>1</sup>/<sub>2</sub>, the prequalification  
415 committee shall evaluate each statement of qualifications based on the criteria provided in the  
416 RFQ, the information contained in the division of capital asset management and maintenance  
417 certification files, including but not limited to the project evaluations required by subsection (7)  
418 of section 44D and the current update statements submitted by interested general contractors.  
419 The prequalification committee shall exercise due diligence in checking appropriate references.  
420 As provided in subsection (c) the total and minimum point allocations designated in subsection  
421 (e) of 44D<sup>1</sup>/<sub>2</sub> shall not be included in the RFQ and shall not be used in the evaluation of interested  
422 general contractors where the condensed prequalification process is utilized. The evaluation of  
423 interested general contractors shall be based on the evaluation criteria set forth in this subsection  
424 and conducted within the discretion of the prequalification committee, providing that the  
425 prequalification committee evaluates each interested general contractor on the same fair and  
426 equitable basis. A general contractor's score shall be made available to the general contractor  
427 upon request. The decision of the prequalification committee shall be final and shall not be  
428 subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

429 (g) Where an awarding authority opts to use the condensed prequalification process, in lieu of  
430 the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D<sup>1</sup>/<sub>2</sub>, if the  
431 awarding authority prequalifies fewer than 3 general contractors to submit bids, the awarding  
432 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding  
433 authority prequalifies at least 2 general contractors, then the awarding authority may invite bids  
434 from the 2 prequalified general contractors.

435 (h) Procedures shall be adopted by the commissioner of capital asset management and  
436 maintenance to implement this section and to ensure that the condensed prequalification process  
437 is sufficient, fair and consistent.

438 SECTION 21. (a) For contracts subject to the prequalification requirements set forth in  
439 section 44D<sup>3</sup>/<sub>4</sub> of chapter 149 of the General Laws which are funded in whole or in part by the  
440 American Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall  
441 have the option to use the condensed prequalification process for subcontractors described in this  
442 section in lieu of the full prequalification process set forth in section 44D<sup>3</sup>/<sub>4</sub>. The purpose of the  
443 condensed prequalification process is to allow awarding authorities an opportunity to expedite  
444 the prequalification process provided in section 44D<sup>3</sup>/<sub>4</sub> in order to most efficiently meet the  
445 specified goals and time parameters set forth in the federal act. All of the requirements of the  
446 full prequalification process set forth in section 44D<sup>3</sup>/<sub>4</sub> shall be required under the condensed  
447 prequalification process unless specifically modified in this section.

448 (b) Where an awarding authority opts to use the condensed prequalification process, the  
449 requirements for public notice of the building project and solicitation of responses to the RFQ  
450 from interested subcontractors shall include all items set forth in clauses (1) through (8) of  
451 subsection (d) of section 44D<sup>3</sup>/<sub>4</sub> but shall also require the following additional statements:

452 (1) a statement that the project is funded in whole or in part under the federal act and shall use  
453 the condensed prequalification process.

454 (2) a statement that the evaluation procedure and the criteria for the prequalification of interested  
455 subcontractors shall include evaluation of all the criteria set forth in subsection (e) of section  
456 44D<sup>1</sup>/<sub>2</sub> but, in order to avoid duplication and promote the expeditious commencement of projects  
457 under the federal act and without sacrificing the importance of the prequalification process, for  
458 certain of the evaluation categories and subcategories specifically identified in subsection (e) of  
459 section 44D<sup>3</sup>/<sub>4</sub>, the prequalification committee shall evaluate interested subcontractors based on a  
460 review of the information contained both in the division of capital asset management and  
461 maintenance certification files, including but not limited to the project evaluations required by  
462 subsection (7) of section 44D and the update statements required by clause (ii) of subdivision (4)  
463 of subsection (e) of section 44D<sup>3</sup>/<sub>4</sub> to be submitted by interested subcontractors. The  
464 prequalification committee shall exercise due diligence in checking appropriate references.

465 (c) The RFQ and evaluation criteria for the condensed prequalification process shall include all  
466 criteria set forth in subsection (e) of section 44D<sup>3</sup>/<sub>4</sub> but shall not include the total or minimum

467 point allocations for the evaluation categories and subcategories designated therein. In addition,  
468 in the interest of expediting the prequalification of subcontractors for contracts funded in whole  
469 or in part under the federal act but not sacrificing the prequalification process, where certain of  
470 the evaluation subcategories specifically identified in this section require similar reporting by  
471 contractors in connection with the certification process set forth in section 44D and the  
472 information contained in the required update statements submitted by interested subcontractors,  
473 an awarding authority issuing an RFQ under this condensed prequalification process shall  
474 maintain as part of the project record the written certification by the prequalification committee  
475 that it has evaluated interested subcontractors based on a review of both the information  
476 contained in the certification files, including but not limited to the project evaluations required  
477 by subsection (16) of section 44D, and the current update statements submitted by interested  
478 subcontractors and that it has exercised due diligence in checking appropriate references.

479 (d) Where an awarding authority opts to use the condensed prequalification process, the review  
480 of the terminations, legal proceedings and safety record provided in clauses (iv) through (vi) of  
481 subdivision (1) of subsection (e) of section 44D<sup>3/4</sup>, and the review of credit references and public  
482 project record under clauses (ii) and (iii) of subdivision (2) of subsection (e) of section 44D<sup>3/4</sup>,  
483 and the review of annual revenue under clause (i) of subdivision (3) of subsection (e) of section  
484 44D<sup>3/4</sup> shall be satisfied by a requirement that the prequalification committee evaluate both the  
485 information contained in the division of capital asset management and maintenance certification  
486 files, including but not limited to the project evaluations required by subsection (16) of section  
487 44D, and the current update statements submitted by interested subcontractors and by a  
488 requirement that the prequalification committee exercise due diligence in checking appropriate  
489 references. The prequalification committee shall further be required to certify in writing that it  
490 has met these requirements, and the certification shall be maintained by the awarding authority in  
491 the project record.

492 (e) Where an awarding authority opts to use the condensed prequalification process, the  
493 “mandatory” requirements for the solicitation of and submission of a commitment letter for  
494 payment and performance bonds at 100 per cent of the estimated contract value from a surety  
495 company licensed to do business in the commonwealth and whose name appears on United  
496 States Treasury Department Circular 570 shall be as set forth in subdivision (4) of subsection (e)

497 of section 44D<sup>3</sup>/<sub>4</sub>. In addition, it shall be mandatory for the awarding authority to solicit in the  
498 RFQ and an interested subcontractor to submit with its statement of qualifications a certificate of  
499 eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the  
500 division of capital asset management and maintenance under section 44D.

501 (f) Notwithstanding subsection (f) of section 44D<sup>3</sup>/<sub>4</sub>, the public notice requirements for the  
502 condensed prequalification process shall be for the RFQ to be advertised in the central register  
503 for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition,  
504 these projects shall be advertised in the central website to be established for all projects in the  
505 commonwealth funded in whole or in part under the federal act and in accordance with any  
506 requirements contained in the federal act.

507 (g) Where an awarding authority opts to use the condensed prequalification process in lieu of the  
508 evaluation requirements set forth in subdivision (h) of section 44D<sup>3</sup>/<sub>4</sub>, the prequalification  
509 committee shall evaluate each statement of qualifications based on the criteria provided in the  
510 RFQ, the information contained in the division of capital asset management and maintenance  
511 certification files, including but not limited to the project evaluations required by subsection (16)  
512 of section 44D and the current update statement submitted by interested subcontractors. The  
513 prequalification committee shall exercise due diligence in checking appropriate references. As  
514 provided in subsection (c) the total and minimum point allocations designated in subsection (e)  
515 of 44D<sup>3</sup>/<sub>4</sub> shall not be included in the RFQ and shall not be used in the evaluation of interested  
516 subcontractors where the condensed prequalification process is utilized. The evaluations of  
517 interested subcontractors shall be based on the evaluation criteria set forth in this subsection and  
518 conducted within the discretion of the prequalification committee, provided that the  
519 prequalification committee evaluates each interested subcontractor on the same fair and equitable  
520 basis. A subcontractor's score shall be made available to the subcontractor upon request. The  
521 decision of the prequalification committee shall be final and shall not be subject to appeal except  
522 on grounds of arbitrariness, capriciousness, fraud or collusion.

523 (h) Where an awarding authority opts to use the condensed prequalification process in lieu of  
524 the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D<sup>3</sup>/<sub>4</sub>, if the  
525 awarding authority prequalifies fewer than 3 subcontractors to submit bids, the awarding

526 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding  
527 authority prequalifies at least 2 subcontractors, then the awarding authority may invite bids from  
528 the 2 prequalified subcontractors.

529 (i) Procedures shall be adopted by the commissioner of capital asset management and  
530 maintenance to implement this section and to ensure that the condensed prequalification process  
531 set forth in this section is sufficient, fair and consistent.

532

533 **INCREASE INCENTIVE PAYMENTS TO CONSTRUCTION MANAGEMENT AT**  
534 **RISK FIRMS IN SPECIAL CIRCUMSTANCES**

535 SECTION 22. Notwithstanding section 7 of chapter 149A of the General Laws, as  
536 appearing in the 2006 Official Edition, under special circumstances, when unique project  
537 requirements and circumstances warrant, public agencies may include an additional incentive  
538 clause with the contract providing for payment of an increased incentive of up to an additional  
539 1/2 of 1 per cent; provided however, that even under special circumstances the total incentive  
540 payments to the construction management at risk firm can not exceed 1 and 1/2 per cent of the  
541 estimated construction cost; provided further that the only contracts eligible for such additional  
542 incentive payments shall be contracts that are funded in whole or in part through the American  
543 Recovery and Reinvestment Act of 2009.

544 **A+B BIDDING**

545 SECTION 26 Notwithstanding the first sentence of section 39M(a) of chapter 30, any  
546 transportation or public works projects subject to award under section 39M of chapter 30 by any  
547 department, agency or authority of the commonwealth of Massachusetts that are funded in whole  
548 or in part through the American Recovery and Reinvestment Act and are expected to interfere  
549 with the movement of traffic and/or the travelling public may, in the discretion of the awarding  
550 authority, be procured through a bidding method that awards the project to the responsible and  
551 eligible bidder with the lowest bid value after taking into account the amount of time that the  
552 bidder has identified in the bid for completion of the project, hereinafter identified as cost-plus-

553 time bidding; provided, however, that such awarding authority may reject any and all bids if it is  
554 in the public interest to do so.

555 In utilizing a cost-plus-time bidding procurement method, the awarding authority shall use a cost  
556 parameter (A) and a time parameter (B) to determine a bid value. The cost component (A) shall  
557 be the traditional bid for the contract items and is the dollar amount for the work to be performed  
558 under the contract. The time component (B) shall be the total number of calendar days required  
559 to complete the project, as estimated by the bidder, multiplied by an agency-determined daily  
560 road user cost (RUC) to translate time into dollars. The total bid value, which shall be clearly  
561 detailed in the bid documents, shall equal the A + B (RUC). The total bid value shall be used  
562 only to evaluate bids. The winning bid, which shall be calculated at a public bid opening at a  
563 time and location designated in the bid documents, shall be the lowest bid value submitted by a  
564 responsible and eligible bidder. The contract amount for payment purposes shall be based on the  
565 bid price (A), not the total bid value. The number of days bid (B) shall become the contract time.  
566 For purposes of this section, the term “responsible and eligible bidder” shall be defined pursuant  
567 to the criteria contained in paragraph (c) of section 39M of chapter 30 of the General Laws, as  
568 amended by section 11 of chapter 303 of the Acts of 2008; provided, however, that the concept  
569 of “lowest” has been replaced by “lowest bid value,” as defined in this section.

570 The provisions of the general laws generally applicable to public works projects, including, but  
571 not limited to, sections 26, 27, 27A, 27B, 27C, 27D and 34A of chapter 149 and 39F, 39G, 39H,  
572 39J, 39K, 39M (except the first sentence of 39M(a)), 39N, 39O, 39P and 39R of chapter 30, shall  
573 apply to all public works projects using the cost-plus-time bidding procurement method provided  
574 in this section.

575

## 576 **ECONOMIC STIMULUS ALTERNATIVE PROCUREMENT (ESAP) BOARD**

577

578 SECTION 24. There shall be an economic stimulus alternative procurement board. The  
579 board shall be within, but not subject to, the control of the executive office for administration and  
580 finance. The board shall consist of the secretary of administration and finance or her designee,  
581 ex officio, who shall serve as chair; the inspector general or his designee, ex officio; the state

582 purchasing agent or her designee; and 2 additional members appointed by the governor. The  
583 members shall be comprised of individuals with the requisite experience, a reputation for  
584 integrity and an absence of any actual or perceived conflict of interest, and shall serve for the  
585 primary purpose of protecting the public interest in assuring fair, effective, and accountable  
586 procurement and contracting in connection with any project requiring a waiver or modification  
587 of procurement requirements. 1 member shall possess substantial expertise in the field of  
588 architecture or engineering, and 1 member shall possess substantial experience in the field of  
589 construction.

590 Members of the board shall serve without compensation. Members of the board shall be  
591 reimbursed for all necessary expenses incurred in the discharge of their official duties. The  
592 board's activities shall be supported by staff of the secretary of administration and finance.

593 No members of the board shall participate in the approval of projects if the members or any  
594 members of their immediate family have a direct or indirect present or future financial interest in  
595 the approval of the project or in any way will benefit financially from the project.

596 The economic stimulus alternative procurement board shall have the following powers and  
597 duties:

598 (a) The board may promulgate rules and regulations to accomplish its duties. The regulations  
599 may include, but shall not be limited to: (i) establishing standards relating to the promotion of a  
600 competitive and sound procurement process, the review of a public agency's capacity and  
601 procedures to effectively manage the modified process as proposed, the protection against  
602 projects with conflicts of interest, and the prevention of unfair or windfall profits accruing to an  
603 individual or group of individuals; (ii) establishing procedures for waiving or modifying  
604 procurement processes and establishing modified alternative procurement procedures consistent  
605 with the authority and requirements set forth in subsection (b); provided that such procedures  
606 shall include but not be limited to, public notice, public review and comment for each proposed  
607 economic stimulus alternative procurement board project; (iii) establishing standards and  
608 procedures for the monitoring and termination of approved projects consistent with the authority  
609 and requirements set forth in subsection (b); and, (iv) ensuring that the public agency proposing  
610 the project has the capacity to execute the project.

611 (b) Notwithstanding any general or special law to the contrary, the board shall be authorized to  
612 determine that certain provisions of procurement laws and procurement regulations otherwise  
613 applicable to public projects shall not apply to a proposed project. The board may waive or  
614 modify such provisions only if it is demonstrated by the public agency that the waiver and/or  
615 modification is necessary to ensure that the public agency does not lose funding for a project  
616 under the American Recovery and Reinvestment Act of 2009. This section authorizes the waiver  
617 only of laws and regulations relating to procurement and shall not be construed to authorize the  
618 board to waive any accessibility requirements provided by state or federal law; nor shall this  
619 section be construed to authorize the waiver of requirements provided in sections 53, 54 and 55  
620 of chapter 7 of the General Laws.

621 (c) The board shall allow waivers or modifications of procurement requirements only after  
622 making a written finding that the procurement procedures to be applied are justified for the  
623 project, are sufficient to result in a transparent, fair and competitive process likely to result in the  
624 best value for the awarding authority and are in the best interest of the commonwealth. Written  
625 findings of the board shall be available to the public.

626 (d) The board shall establish for each applying project the applicable procurement requirements,  
627 provided, however, that the procurement procedure authorized shall not be fundamentally  
628 different from any available to the awarding authority for the project under law, and that the  
629 requirements be consistent with standards set forth in its regulations; provided that the board  
630 shall not have the authority to limit or modify in any way the application of any procurement  
631 procedure that by its terms applies equally to both public and private agencies and entities.

632 (e) The board shall monitor approved projects in accordance with standards and procedures set  
633 forth in its regulations. The standards and procedures shall include, but not be limited to:  
634 provisions for periodic site visits, provisions for termination if the project procurement was not  
635 conducted in accordance with the modifications approved by the board, submission of an annual  
636 independent audit, if applicable; and review of the effectiveness of the procurement process used  
637 for the project.

638 (f) The board shall only consider projects submitted by the awarding authority and the director of  
639 infrastructure investments for projects funded under the federal act approved by the governor.

640 Project requests shall be presented to the board in writing and state the need for board  
641 consideration, the specific relief sought and the proposed modified procurement method, if any.

642 (g) The board shall seek public comment on the waiver or modification of procurement  
643 provisions for a 14-day period. Following the 14-day public comment period, the board shall  
644 disapprove or approve the requested waiver or modification or approve a modified version of the  
645 proposed action within 7 days. The board's decision shall be final.

646 (h) The board shall be dissolved when it is determined by the secretary of administration and  
647 finance that there are no additional projects to be funded under the American Recovery and  
648 Reinvestment Act of 2009 by a public agency in the commonwealth.

649

650 **ALLOW THE MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST**  
651 **BOARD TO SET LOAN TERMS TO COMPLY WITH FEDERAL LAW**

652

653 SECTION 25. Notwithstanding any general or special law to the contrary, the  
654 Massachusetts water pollution abatement trust may establish such terms and conditions for any  
655 loan or other form of financial assistance made under the provisions of chapter 29C of the  
656 General Laws that is funded in whole or in part by amounts provided under the American  
657 Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall determine to be  
658 in the best interests of the commonwealth and required to comply with federal law, including  
659 without limitation the interest rate, repayment period, number of payments to be made and  
660 amount of principal to be repaid on such loan or other form of financial assistance.

661

662 **ALLOW TRANSFERABILITY BETWEEN THE CLEAN WATER AND DRINKING**  
663 **WATER PROGRAMS TO TAP ADDITIONAL RESOURCES FOR DRINKING WATER**

664

665 SECTION 26. Notwithstanding any general or special law to the contrary, the  
666 Massachusetts water pollution abatement trust may transfer amounts held in the drinking water  
667 revolving fund to the water pollution abatement revolving fund for application by the trust to the

668 purposes specified in section 5 of chapter 29C of the General Laws, and may transfer amounts  
669 held in the water pollution abatement revolving fund to the drinking water revolving fund for  
670 application by the trust to the purposes specified in section 18 of chapter 29C, in each case to the  
671 extent authorized by the federal clean water act and the federal safe drinking water act.

672

673 **COMPTROLLER MAY AUTHORIZE EXPENDITURES WHEN THERE IS A TIMING**  
674 **DISCREPANCY**

675

676 SECTION 27. Notwithstanding any general or special law to the contrary, for the  
677 purpose of accommodating timing discrepancies between the receipt of revenues and related  
678 expenditures, a department may receive funds from the federal government related to the  
679 American Recovery and Reinvestment Act of 2009. The Comptroller may authorize  
680 encumbrances and expenditures by a department in anticipation of the department's receipt of  
681 the funds; provided that the department head certifies that accounts will not be in deficit at the  
682 end of a fiscal year. The Comptroller may establish accounts based on the provisions of section  
683 6B of chapter 29 of the General Laws, including but not limited to a federal award notification  
684 and notification to the joint committee on veterans and federal affairs.

685

686 **MATCHING FUNDS**

687

688 SECTION 28. Notwithstanding any general or special law to the contrary, should a  
689 matching funds requirement exist with respect to the receipt of any funds from the federal  
690 government related to the American Recovery and Reinvestment Act of 2009, the department  
691 that is applying for such funds shall notify the secretary of administration and finance of the  
692 matching fund requirement. The secretary of administration and finance shall direct the  
693 comptroller to establish matching accounts and to allow expenditure of funds in the accounts  
694 without further appropriation. The secretary of administration and finance shall also notify the  
695 joint committee on veterans and federal affairs and the ways and means committees of such  
696 action. The accounts shall be established in the federal grants fund as established by Chapter 29,  
697 section 2C, the federal highway construction program fund as established by Chapter 29, Section

698 2E or any other fund as the comptroller deems necessary to fulfill the terms and conditions of the  
699 American Recovery and Reinvestment Act of 2009.

700

701 **POOL ADMINISTRATIVE COSTS**

702

703 SECTION 29. Notwithstanding any general or special law to the contrary, the secretary  
704 of administration and finance may authorize accounts to receive federal funds from the American  
705 Recovery and Reinvestment Act of 2009. To the extent allowed by federal law, the secretary of  
706 administration and finance may transfer said funds to other “central service” agencies charged  
707 with implementation of the act and incur expenditures for charges related to the administrative  
708 costs of the act and to ensure that the commonwealth meets the efficient administration and  
709 statewide accountability requirements in the act. Notwithstanding any general or special law to  
710 the contrary, for the purpose of accommodating timing discrepancies between the receipt of  
711 revenues and related expenditures, the secretary of administration and finance may incur  
712 expenses and the comptroller shall certify for payments amounts not to exceed the lesser of one  
713 half of the authorization or the most recent revenue estimate therefore, or as otherwise authorized  
714 by the secretary of administration and finance. The accounts may receive federal funds  
715 recovered from the American Recovery and Reinvestment Act of 2009 in accordance with  
716 section 6B of chapter 29 of the General Laws or other state law. The recoveries shall be based  
717 on rates approved in accordance with the federal office of management and budget circular A-87  
718 or any other guidance issued by the office of management and budget applicable to federal funds  
719 provided under the American Recovery and Reinvestment Act of 2009.

720 **SPECIAL TRANSFER FOR UNEMPLOYMENT INSURANCE**

721 SECTION 30. Section 53A of chapter 151A of the General Laws, as appearing in the  
722 2006 Official Edition, is hereby amended by adding after the second paragraph the following  
723 new paragraph:- Notwithstanding any of the foregoing provisions of this section, moneys  
724 credited with respect to the special transfer made under section 903(g) of the Social Security Act  
725 shall be used solely for the purposes specified in such section and shall not be subject to  
726 appropriation.

727 **REQUIREMENT TO USE APPRENTICES FOR 20% OF THE WORK PERFORMED**  
728 **ON CONSTRUCTION PROJECTS OVER \$1 MILLION**

729 SECTION 31. a) Notwithstanding the provisions of any general or special law to the  
730 contrary, the following requirements shall apply to any public works project funded by the  
731 American Recovery and Reinvestment Act of 2009 where the amount of construction costs under  
732 any contract awarded is likely to exceed \$1 million. For the purposes of this section, the term  
733 “public works” shall have the following meaning: building or work the construction, as defined  
734 in G.L. c. 149, § 27D, of which is carried on by authority of the commonwealth, or by a county,  
735 town, authority or district, or with funds of a federal agency or the commonwealth, or a county,  
736 town, authority or district, to serve the interest of the general public, regardless of whether title  
737 thereof is in the commonwealth, or a county, town, authority or district.

738 (b) For any public works project subject to subsection (a), the specifications set forth in any  
739 request for responses shall include a requirement that, on a per project basis, no less than 20 per  
740 cent of the total hours of employees receiving an hourly wage who are directly employed on the  
741 site of the project, employed by the contractor or any subcontractor, and subject to the prevailing  
742 wage, shall be performed by apprentices in bona fide apprentice training programs as defined by  
743 sections 11H & 11I of chapter 23 of the General Laws which are approved by the division of  
744 apprentice training of the executive office of labor and workforce development.

745 (c) During the performance of any public works project subject to subsections (a) and (b), the  
746 contractor shall submit periodic reports to the awarding authority with records indicating the  
747 total hours worked by all journeymen and apprentices in positions subject to the apprentice  
748 requirement. In any instance in which the apprentice hours do not constitute 20 per cent of the  
749 total hours of employees subject to the apprentice requirement, the contractor shall submit a plan  
750 to the awarding authority describing how the contractor shall comply with the apprentice  
751 requirement.

752 (d) An awarding authority or a contractor may adjust the requirements set forth in subsections  
753 (a), (b), and (c) if and to the extent that the economic stimulus alternative procurement board  
754 determines that, despite a good faith effort, and due to unavoidable circumstances, such as a  
755 demonstrated lack of apprentices in a specific geographic area, compliance with these

756 requirements is not feasible or if application of the requirement would be preempted by federal  
757 law.

758 (e) An awarding authority serving a low-income population may require additional  
759 specifications that address the needs of its clients, such as preferential hiring for residents of  
760 public housing authorities for available apprenticeship positions.

761 (f) Subject to appropriation, the division of apprentice training shall enhance its outreach efforts  
762 to underserved populations in order to increase and diversify the number of apprentices in the  
763 commonwealth.

764

765 **TRAINING FOR INDIVIDUALS RECEIVING UNEMPLOYMENT COMPENSATION**  
766 **BENEFITS**

767

768 SECTION 32. Subsection (c) of section 30 of chapter 151A, as appearing in the 2006  
769 Official Edition, is hereby amended by striking out, in line 29, the word “commissioner” and  
770 inserting in place thereof the following words: director of the department of workforce  
771 development.

772 SECTION 33. Said subsection (c) is hereby further amended by striking out in line 32  
773 the number “eighteen” and inserting in place thereof the following number:- 26.

774 SECTION 34. Said subsection (c) is hereby further amended by striking out, in lines 34,  
775 41, 42, 47, and 48, the word “commissioner” and inserting in place thereof the following word:-  
776 director.

777 SECTION 35. Said subsection (c) is hereby further amended by inserting after the word  
778 “violence”, in line 45, the following words:- , or if the director makes a finding that economic  
779 circumstances require the tolling of the 15 week application period for all claimants.

780 SECTION 36. Said subsection (c) is hereby further amended by inserting after the word  
781 “claim”, in line 64, the following words:- unless the period is tolled by regulation or finding of  
782 the director.

783 **EMPLOYEES HIRED TO WORK ON ARRA PROJECTS WILL BE FUNDED BY**  
784 **ARRA**

785

786 SECTION 37. Notwithstanding any general or special law to the contrary, employees  
787 who are hired to perform work related to the American Recovery and Reinvestment Act of 2009  
788 funded by the federal government shall be scheduled in accounts set up solely for the purpose of  
789 the American Recovery and Reinvestment Act of 2009. No expenditures of any employee  
790 scheduled in any item of appropriation established by the act shall be charged to any other item  
791 of appropriation and no expenditures of employees in any other item of appropriation shall be  
792 charged to any account under the act and the comptroller shall not permit the transfers or charges  
793 unless otherwise approved by the secretary for administration and finance. Positions funded by  
794 the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding  
795 ends.

796

797 **EMPLOYEES HIRED AND PAID FROM ARRA FUNDS ARE NOT SUBJECT TO**  
798 **CIVIL SERVICE**

799

800 SECTION 38. Notwithstanding any general or special law to the contrary, any employee  
801 hired by the commonwealth and paid from federal funds provided pursuant to the American  
802 Recovery and Reinvestment Act of 2009, shall not be subject to the provisions of chapters 30  
803 and 31 of the General Laws.

804 **PROVIDING TECHNICAL ASSISTANCE AND CAPACITY BUILDING PILOT**  
805 **PROGRAM**

806 SECTION 39. (a) As used in this section, the following terms shall, unless the context  
807 indicates otherwise, have the following meaning: -

808 “Disadvantaged business enterprise” shall have the same meaning as the term is defined in 49  
809 CFR part 26.

810 “Minority business enterprise” shall have the same meaning as the term is defined in section 40  
811 of chapter 23A of the General Laws.

812 “Women business enterprise” shall have the same meaning as the term is defined in section 40 of  
813 chapter 23A of the General Laws.

814 (b) Notwithstanding any general or special law to the contrary, the secretary of administration  
815 and finance is hereby authorized to implement a technical assistance and capacity building pilot  
816 program, applicable solely to projects funded in whole or in part by the American Recovery and  
817 Reinvestment Act of 2009. The purpose of the technical assistance and capacity building  
818 program shall be to promote, encourage and otherwise facilitate full participation of minority  
819 business enterprises and women business enterprises, disadvantaged business enterprises, and  
820 other small businesses in public construction and public works projects undertaken as part of the  
821 federal economic recovery effort and funded in whole or in part by the American Recovery and  
822 Reinvestment Act of 2009.

823 (c) The secretary shall promulgate rules, regulations or guidelines relative to the implementation  
824 and administration of the technical assistance and capacity building pilot program.

825 (d) Not later than 6 months upon the conclusion of the provision of technical assistance and  
826 capacity building services provided pursuant to subsection (b), the secretary or her designee shall  
827 provide a written report to the governor on the provision of the services and performance  
828 outcomes relative thereto. The report shall also include a recommendation or recommendations  
829 as to how the commonwealth may best facilitate the continued inclusion of minority business  
830 enterprises and women business enterprises, disadvantaged business enterprises and small  
831 businesses in future public construction and public works projects.

## 832 **ESTABLISHING A SURETY BOND GUARANTEE PROGRAM**

833 SECTION 40. (a) Notwithstanding any general or special law to the contrary and solely  
834 for purposes of implementing public building and public works projects funded in whole or in  
835 part by the American Recovery and Reinvestment Act of 2009 while facilitating the involvement  
836 of small contractors, including minority contractors and women contractors, the Massachusetts  
837 community development finance corporation, hereinafter the “corporation,” is hereby authorized  
838 to establish a contractor surety bond guarantee program pursuant to this section.

839 (b) As used in this section the following words shall, unless the context requires otherwise, have  
840 the following meanings:-

841 “Bid bond”, a bond conditioned upon the bidder on a contract entering into the contract, if he  
842 receives the award thereof, and furnishing the prescribed payment bond and performance bond.

843 “Eligible contractor”, (a) a small contractor, (b) a minority contractor, or (c) a women contractor.

844 “Minority contractor”, a person who performs as a prime contractor or general contractor or as a  
845 subcontractor on a contract funded in whole or in part by the American Recovery and  
846 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section  
847 40 of chapter 23A of the General Laws.

848 “Obligee”, (a) in the case of a bid bond, the public agency requesting bids for the performance of  
849 a contract, or (b) in the case of a payment bond or performance bond, the public agency who has  
850 contracted with a principal for the completion of the contract and to whom the obligation of the  
851 surety runs in the event of a breach by the principal of the conditions of a payment bond or  
852 performance bond.

853 “Payment bond”, a bond conditioned upon the payment by the principal of money to persons  
854 under contract with him.

855 “Performance bond”, a bond conditioned upon the completion by the principal of a contract in  
856 accordance with its terms.

857 “Person”, any natural person, business, partnership, corporation or other legal form.

858 “Prime contractor” or “general contractor”, the person with whom the obligee has contracted to  
859 perform a contract funded in whole or in part by the American Recovery and Reinvestment Act  
860 of 2009.

861 “Principal”, (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) the  
862 person primarily liable to complete a contract for the obligee, or to make payments to other  
863 persons in respect of such contract, and for whose performance of his obligation the surety is  
864 bound under the terms of a payment or performance bond. A principal may be a prime contractor  
865 or a general contractor or a subcontractor.

866 “Small contractor”, a person who performs as a prime contractor or general contractor or as a  
867 subcontractor on a contract funded in whole or in part by the American Recovery and  
868 Reinvestment Act of 2009 and whose average annual gross revenue is five million dollars or less  
869 per year for the most recent two fiscal years.

870  
871 “Surety”, a surety company licensed to do business in the commonwealth and whose name  
872 appears on United States Treasury Department Circular 570 and who (a) under the terms of a bid  
873 bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the  
874 conditions of the bond, (b) under the terms of a performance bond, undertakes to incur the cost  
875 of fulfilling the terms of a contract in the event the principal breaches the conditions of the  
876 contract, (c) under the terms of a payment bond, undertakes to make payment to all persons  
877 supplying labor and material in the prosecution of the work provided for in the contract if the  
878 principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or  
879 any other company or individual empowered to act on behalf of such company.

880 “Subcontractor”, a person who has contracted with a prime contractor or general contractor or  
881 with another subcontractor to perform a contract funded in whole or in part by the American  
882 Recovery and Reinvestment Act of 2009.

883  
884 “Women contractor”, a person who performs as a prime contractor or general contractor or as a  
885 subcontractor on a contract funded in whole or in part by the American Recovery and  
886 Reinvestment Act of 2009 and is a women business enterprise as such term is defined in section  
887 40 of chapter 23A of the General Laws.

888 (c) Pursuant to this section, the corporation is hereby authorized to establish a contractor surety  
889 bond guarantee program and may, upon such terms and conditions as it may prescribe, guarantee  
890 and enter into commitments to guarantee any surety against loss resulting from a breach of the  
891 terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal  
892 on any total work order or contract amount at the time of bond execution that does not exceed  
893 \$250,000. No such guarantee may be issued, unless:

894 (1) the person who would be principal under the bond is an eligible contractor;

- 895 (2) the bond is required in order for such person to bid on a contract, or to serve as a  
896 prime contractor or general contractor or as subcontractor on a contract;
- 897 (3) such person is not able to obtain such bond on reasonable terms and conditions  
898 without a guarantee under this section; and
- 899 (4) there is a reasonable expectation that such principal will perform the covenants and  
900 conditions of the contract with respect to which such bond is required, and the terms  
901 and conditions of such bond are reasonable in the light of the risks involved and the  
902 extent of the surety's participation.

903 The corporation shall administer the contractor surety bond guarantee program on a prudent and  
904 economically justifiable basis and establish such fee or fees for eligible contractors and premium  
905 or premiums for sureties as it deems reasonable and necessary, to be payable at such time and  
906 under such conditions as may be determined by the corporation.

907 The corporation, as guarantor, may exercise all the rights and powers of a company authorized  
908 by the division of insurance to guarantee bonds pursuant to chapter 175 of the General Laws, but  
909 is otherwise not subject to any laws related to a guaranty company under said chapter 175 nor to  
910 any rules of the division of insurance.

911 (d) For purposes of this section, the corporation shall establish and maintain an account or  
912 accounts, identified individually or collectively as the contractor surety bond guarantee fund,  
913 kept separate from other corporate funds. The contractor surety bond guarantee fund shall  
914 consist of all monies deposited credited or otherwise obtained pursuant to any appropriation or  
915 other allocation or assignment or grant of funds from the commonwealth; any grants, gifts, and  
916 contributions received pursuant to section 3 of chapter 40F of the General Laws; all monies  
917 recovered following defaults; and any interest earned on monies within the account or accounts.

918 (e) The corporation is hereby authorized to guarantee up to 90 per cent of the loss incurred and  
919 paid by a surety on bonds guaranteed under this section. Additionally, subject to the provisions  
920 of this section, in connection with the issuance by the corporation of a guarantee to a surety as  
921 provided by subsection (c), the corporation may agree to indemnify such surety against a loss  
922 sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond  
923 guaranteed by the corporation pursuant to subsection (c); provided, however that prior to making  
924 any payment under this subsection, the corporation shall first determine that a breach of the

925 terms of such bond was imminent and the surety must obtain written approval from the  
926 corporation prior to making any payments pursuant to this subsection.

927 (f) Pursuant to any such guarantee, the corporation shall reimburse the surety, as provided in  
928 subsection (e), except that the corporation shall be relieved of all liability if:

929 (1) the surety obtained such guarantee or agreement, or applied for such reimbursement,  
930 by fraud or material misrepresentation,

931 (2) the total contract amount at the time of execution of the bond or bonds exceeds  
932 \$250,000, or

933 (3) the surety has breached a material term or condition of such guarantee in the  
934 agreement.

935

## 936 **REPORTING REQUIREMENT**

937 SECTION 41. Any entity located in Massachusetts that receives federal funds through  
938 the American Recovery and Reinvestment Act of 2009 shall provide information as directed by  
939 the secretary of administration and finance regarding the use of the funds. The required  
940 information shall include but not be limited to the reporting information required by the federal  
941 government, and shall include any other information deemed necessary by the secretary to  
942 administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently and  
943 transparently. To the extent possible, the secretary shall work to streamline the reporting of this  
944 information, minimize duplication of data entry by recipients and ensure data consistency. The  
945 secretary of administration and finance may issue regulations to effectuate this reporting  
946 requirement.