

## Senate, No. 2053

[Senate, May 19, 2009 – Text of amendment (1) offered by Mr. Rosenberg to the pending Senate Ways and Means amendment (Senate, No. 3) to the House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND NINE

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SECTION \_\_\_\_\_. The first paragraph of section 2 of said chapter 64G, as so appearing, is hereby amended by striking out clause (b) and inserting in place thereof the following clause:-

(b) lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions; provided, however, that this exemption shall not apply to accommodations provided by any such institution at a hotel, motel, and other transient accommodations operated by the institution;

SECTION \_\_\_\_\_. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out, in line 5, the words "four per cent" and inserting in place thereof the following words:- 6 per cent.

SECTION \_\_\_\_\_. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out, in line 10, the words, "4.5 per cent" and inserting in place thereof the following words;- 6.5 percent.

SECTION \_\_\_\_\_. Section 1 of chapter 64G of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the definition of "Occupant" the following definition:- "Other transient accommodation", a vacation or leisure accommodation including, but not limited to, an apartment, single or multiple family housing, a cottage, a condominium or a timeshare unit which is rented to an occupant for a period of 90 consecutive days or less regardless of whether such use is as a lessee, tenant, guest or licensee

SECTION \_\_. Section 3A of said chapter 64G, as so appearing, is hereby amended by inserting at after the first paragraph the following new paragraph:-

Additionally, any city or town may choose to include other transient accommodations, as defined in section 1, as part of the room occupancy excise established pursuant to this section; provided, however, that said excise may only be applied to accommodations on parcels with two or more units.

SECTION \_\_. Within 1 year after the effective date of this act, the commissioner of revenue shall promulgate regulations that provide for the implementation and collection of taxes due from operators of other transient accommodations, as defined in section 1 of chapter 64G of the General Laws, and shall prescribe forms for the payment of such taxes which may include entering into agreements with municipal governments to carry out the provisions of this section.

SECTION \_\_\_\_. Chapter 64L, as inserted by section \_\_ of this act, is hereby amended by inserted after section 2 the following section:-

Section 2A. (a) Any city or town which accepts this section may impose a local sales tax upon the sale of restaurant meals originating within the city or town by any vendor at a rate of 2 per cent of the gross receipts of the vendor from the sale of restaurant meals. No excise shall be imposed if the sale is exempt under section 6 or section 6 of chapter 64H. The vendor shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth. The commissioner may adopt, by rule or regulation, destination sourcing rules for caterers or other vendors with a high volume of delivered meals, as the commissioner may determine, in order to mitigate any anti-competitive impact of the local option meals tax.

(b) All sums received by the commissioner under paragraph (a) shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted paragraph (a) in proportion to the amount of the sums received from the sales of restaurant meals in that city or town. Any city or town seeking to dispute the commissioner's calculation of its distribution under this paragraph must so notify the commissioner, in writing, no later than one year from the date the tax was distributed by the commissioner to the city or town.

(c) Paragraph (a) shall take effect only in a city or town that accepts it as provided in section 4 of chapter 4. The paragraph shall take effect on the first day of the calendar quarter following 30 days after this acceptance, or on the first day of a later calendar quarter that the city or town may designate.

(d) The commissioner may make available to cities and towns any information necessary for administration of the excise imposed by this section, including but not

limited to a report of the amount of local option sales tax on restaurant meals collected in the preceding fiscal year in each city or town accepting paragraph (a) of this section, with identification of each individual vendor, notwithstanding any provisions in section 21 of chapter 62C to the contrary.

SECTION \_\_\_\_. Section 2A of chapter 64L of the General Laws shall take effect in a city or town 30 days after its acceptance and shall be implemented in that city or town on the first day of the calendar quarter next following its effective date or on the first day of a later calendar quarter if the city or town so designates; provided, however, that the tax under said section 2 of said chapter 64L shall not apply to any sales before September 1, 2009.

SECTION \_\_\_\_. Subsection (b) of section 21 of said chapter 62C, as amended by section 8 of chapter 205 of the acts of 2007, is hereby further amended by adding the following clause:-

(24) the disclosure of information necessary for administration of the local option tax imposed pursuant to section 3A of chapter 64G and chapter 64L.

SECTION \_\_\_\_. Notwithstanding any general or special law to the contrary, the division of local services in the department of revenue shall conduct a study on the ability of existing or former military facilities to levy local options taxes and their distribution to host cities and towns. Said study shall examine methods of equitably distributing revenues to host cities and towns, and shall provide recommendations on the manner of expeditiously and efficiently providing the opportunity for communities or facilities to adopt local option taxes.

SECTION \_\_\_\_. Section 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word “than”, in line 220, the following words:- a telephone or telegraph corporation subject to tax under section 52A of chapter 63 or.

SECTION \_\_\_\_. Said section 5 of said chapter 59, as so appearing, is hereby further amended by inserting after the words “two A”, in line 223, the following words:- , other than a telephone or telegraph corporation,.

SECTION \_\_\_\_. Clause fifth of section 18 of said chapter 59, as so appearing, is hereby amended by adding after the last sentence the following 2 sentences:-

Poles, underground conduits, wires and pipes of all telecommunications providers, laid in or erected upon public or private ways and property shall be assessed to their owners in the cities or towns where they are laid or erected. For purposes of this clause, telecommunications providers shall include all entities which provide any

television service, internet service, telephone service, voice service, broadband service, video service, data service or any other form of telecommunication service.

SECTION \_\_\_\_\_. Section 2 of chapter 32B is hereby amended by inserting after subsection (j) the following new subsection:-

(k) “Health Reimbursement Account”, a federally-recognized tax-exempt health benefit program that allows an employer to reimburse qualified medical expenses paid by employees.

SECTION \_\_\_\_\_. Section 19 of chapter 32B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after subsection 19(i) the following subsections:-

(j) Within 15 days of the effective date of this legislation, the secretary of administration and finance shall determine what percentage over the commission’s average total health plan cost per member of health insurance is acceptable for political subdivisions and their subscribers to be paying for health insurance. Said determination shall be subject to the approval of the general court; provided, that if the general court takes no final action within 15 days of said determination such percentage shall be deemed approved.

Every political subdivision that has undertaken to provide health insurance coverage to its subscribers and has not transferred its subscribers to the commission must conduct an analysis of whether the health insurance coverage it provides to subscribers is equivalent in total plan cost or less than the health insurance coverage offered by the commission to subscribers and utilizing as the benchmark the total health plan cost paid by the Commonwealth and its employees.

A report containing the results of this analysis must be provided to the secretary of administration and finance within 60 days of the effective date of this legislation, and by August 1 each third year thereafter.

To assist in the analysis, the commission shall submit to the secretary of administration and finance a determination of the average cost per subscriber of the insurance provided by the commission within 30 days of the effective date of this legislation, and by July 1 each third year thereafter. This figure shall be calculated based on the total health plan cost paid by the Commonwealth and its subscribers. This information shall be made available to every political subdivision.

A political subdivision not in compliance with the reporting requirements of this section will be penalized by the Commonwealth. The penalty will be in the form of reduced local aid payment for the subsequent fiscal year and each additional year until

the political subdivision produces a report showing that the health insurance the political subdivision provides for its subscribers is not more than the percentage determined above over the cost per subscriber of the commission's health insurance coverage. The amount of the penalty will be equal to the amount of cost savings that could be realized had the political subdivision transferred its subscribers to the commission, as determined by the Commonwealth.

(k) Any political subdivision that reports to the secretary of administration and finance that the health insurance coverage it provides to its subscribers is greater in cost than the health insurance coverage offered by the commission to its subscribers plus the percentage determined above must convene its appropriate authority and the public employee committee as established under the provisions of subsection (a) of section 19 of chapter 32B for the purpose of either accepting that section and transferring the political subdivision's subscribers to the commission under subsection (e) of section 19, or to enter into contracts with health insurance carriers that would cost the same or less than the health insurance coverage offered by the commission.

Ninety days after the date of the report required by subsection 19(j) was due, if the appropriate authority of the political subdivision and the public employee committee have not reached an agreement that will provide for health insurance coverage to its subscribers that is within the cost determined by A&F and the appropriate authority of the political subdivision has not reached an agreement with the public employee committee to transfer its subscribers to the commission, then the health insurance coverage agreement between the political subdivision and the public employee committee will be subject to binding arbitration; unresolved issues shall be submitted to an arbiter selected by the parties under the rules of the American Arbitration Association.

The form of arbitration shall be last best offer, issue by issue. The arbiter shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, production of books, records, and other evidence relative to or pertinent to the issues. The cost of arbitration shall be shared equally by the appropriate public authority and the public employee committee, provided, however, if the decision is rejected by the legislative body, all arbitration costs shall be paid by the appropriate public authority. Any person acting as an arbiter pursuant to this section will not be required by an administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes or other papers or be required to testify with regard to any information obtained while functioning as an arbiter pursuant to this section.

The arbiter shall reach his decision within 60 days. In reaching said decision, the arbiter shall consider the potential for cost savings, the impact of any changes in premiums and/or out-of-pocket expenses on subscribers, other health care coverage options, and the historical negotiations on benefits and salary including total

compensation and all other evidence. The arbiter shall issue a decision on any issues not resolved by the parties, including, but not limited to; what health care coverage the political subdivision must provide to its subscribers, whether to transfer subscribers to the commission, what the premium contribution ratio will be, the political subdivision's Medicare part B contributions; and whether health reimbursements must be provided to supplement health insurance coverage. If the arbiter does not require the political subdivision to transfer its subscribers to the commission, the arbiter must choose another health care coverage option so that the average cost of health care coverage the political subdivision provides to its subscribers would be equal to or less than the average plan cost of health care coverage offered by the commission to its subscriber plus the percentage determined above.

The judgment will be binding on both parties unless the judgment of the arbiter is rejected by the legislative branch of the municipality by a two-thirds vote. If the political subdivision rejects the judgment of the arbiter, the political subdivision must continue to offer the same health insurance coverage to its subscribers as it was providing at the time the public employee committee was convened.

In addition, if the political subdivision does not conform to the judgment of the arbiter, the political subdivision will be penalized by the Commonwealth. The penalty will be in the form of reduced local aid payment for the subsequent fiscal year and every additional year until the subdivision conforms. The amount of the penalty will be equal to the amount of cost savings that could be realized had the political subdivision transferred its subscribers to the commission, as determined by the Commonwealth.

SECTION \_\_\_\_\_. Chapter 32B is hereby amended by inserting after section 19 the following section: -

Section 20: Notwithstanding any other provisions of this chapter, a political subdivision which transfers its subscribers to the commission under subsection (e) of section 19 may provide health reimbursement accounts to reimburse subscribers who incur more than \$1,000 in qualified medical expenses per calendar year. The health reimbursement accounts shall be subject to coalition bargaining.

SECTION \_\_\_\_\_. Employees of a governmental unit which accepts chapter 32B shall be eligible for benefits including health care spending accounts and dependent care assistance accounts as offered by the group insurance commission; provided that there shall be withheld from each payment of salary or wages of such employee the premium for such coverage and the commonwealth shall make no contribution to said premium. Regulations shall be promulgated providing for the implementation of this additional coverage.

SECTION \_\_\_\_ . Section 16 of chapter 62C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after subsection (k) the following subsection:–

(l) Every direct broadcast satellite service provider subject to taxation under section two of chapter sixty-four L shall on or before the twentieth day of each calendar month, file a return with the commissioner stating the gross revenues derived by the direct broadcast satellite service provider during such month from the provision of direct broadcast satellite service and such other information as the commissioner may deem necessary.

SECTION \_\_\_\_ . Section 25 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:–

Every distributor, unclassified importer, unclassified exporter or purchaser referred to in section one of chapter sixty-four A, every stamper appointed under section thirty of chapter sixty-four C, every user-seller or supplier of special fuels, as defined in section one of chapter sixty-four E, every motor carrier required to be licensed under chapter sixty-four F, every operator required to register under chapter sixty-four G, every vendor required to register under chapter sixty-four H or sixty-four I, every user-seller or supplier of aircraft fuel, as defined in section one of chapter sixty-four J, every licensee referred to in section twenty-one of chapter one hundred and thirty-eight and every direct broadcast satellite service provider as defined in section one of chapter sixty-four L shall keep and preserve suitable records of taxable charges and such other books, papers, records, and data as the commissioner may require to determine the amount of the tax due under the provisions of those respective chapters.

SECTION \_\_\_\_ Section 37 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:–

If such person is an operator as defined in section one of chapter sixty-four G, a vendor as defined in section one of chapter sixty-four H or section one of chapter sixty-four I, or a direct broadcast satellite service provider as defined in section 1 of chapter sixty-four L who has collected such tax, no actual refund of money shall be made to such person until he establishes to the satisfaction of the commissioner, under such regulations as he may prescribe, that he has repaid to the purchaser the amount for which the application for refund is made.

SECTION \_\_\_\_ . Section 66 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:–

The commissioner may require any person required to be licensed or registered by any provision of chapters sixty-four A to sixty-four C, inclusive, chapters sixty-four E to sixty-four J, inclusive, chapter sixty-four L, or subject to taxation under section twenty-one of chapter one hundred and thirty-eight, to file with him a bond, satisfactory to the commissioner, in such amount as the commissioner may determine, with a surety company authorized to transact business in the commonwealth as surety, to secure the payment of any tax, including any interest or penalty thereon, due or which may become due from such person under said chapters; provided, however, that the amount of such bond required from a vendor under chapter sixty-four H or sixty-four I shall not exceed the amount which the commissioner shall determine to be such vendor's average tax liability for a six month period.

SECTION \_\_\_\_\_. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

Each vendor, as defined in chapter sixty-four H or sixty-four I, and each operator as defined in chapter sixty-four G who desires to obtain a certificate of registration as required by those chapters, and each person who desires to obtain a license as a distributor, unclassified importer, or unclassified exporter, as defined in chapter sixty-four A, as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company, or retailer, as defined in chapter sixty-four C, as a user-seller, supplier, or user of special fuels, as defined in chapter sixty-four E, or as a motor carrier, as defined in chapter sixty-four F, as a user-seller or supplier of aircraft fuel as defined in chapter sixty-four J or as a direct broadcast satellite service provider as defined in chapter sixty-four L shall file with the commissioner an application in such form as the commissioner prescribes, giving such information as the commissioner requires; provided, however, that in the instance of an application for a wholesaler's license, as defined in chapter sixty-four C, the commissioner shall require, in addition to such other information as may be deemed necessary, the filing of affidavits from three licensed manufacturers, as defined in said chapter sixty-four C, stating that the manufacturer will supply the wholesaler if the applicant is granted a license.

SECTION \_\_\_\_\_. The General Laws are hereby amended by inserting after chapter 64K the following chapter:—

## CHAPTER 64L

### TAXATION OF DIRECT BROADCAST SATELLITE SERVICE

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

“Commissioner”, the commissioner of revenue.

“Direct broadcast satellite service”, means the distribution or broadcasting of video programming or services by satellite directly to receiving equipment located at an end user subscriber’s or an end user customer’s premises, including but not limited to the provision of premium channels; the provision of music or other audio services or channels, and any other service received in connection with the provision of direct broadcast satellite service.

“Direct broadcast satellite service provider”, means any person that is transmitting, broadcasting, or otherwise providing direct broadcast satellite service to subscribers or customers in this commonwealth.

“Gross revenues”, means all consideration of any kind or nature received by any direct broadcast satellite service provider, or an affiliate of such person, in connection with the provision of direct broadcast satellite service to subscribers or customers, including recurring monthly charges for direct broadcast satellite service and pay-per-view, video-on-demand, and other event-based charges for direct broadcast satellite service. Gross revenues do not, however, include the following:

(1) Charges for the rental of equipment related to the provision of direct broadcast satellite service;

(2) Activation, installation, repair, and maintenance charges or similar service charges related to the provision of direct broadcast satellite service;

(3) Service order charges, service termination charges, or other administrative charges related to the provision of direct broadcast satellite service;

(4) Revenue not actually received, regardless of whether it is billed, including but not limited to, bad debts;

(5) Revenue received by an affiliate or any other person in exchange for supplying goods and services used by a direct broadcast satellite service provider;

(6) Refunds, rebates, or discounts made to subscribers or customers, to advertisers, or to other persons;

(7) Revenue from service other than direct broadcast satellite service, including:

(A) telecommunications service as defined in 47 U.S.C. section 153(46);

(B) information service as defined in 47 U.S.C. section 153(20); or

(C) any other service that is not a direct broadcast satellite service.

(8) Revenue from any service that is subject to tax under chapter 64H or 64I;

(9) The tax imposed by this chapter or any other tax of general applicability imposed on a direct broadcast satellite service provider, or a purchaser of direct broadcast

satellite service, by a federal, state, or local governmental entity and required to be collected by a person and remitted to the taxing entity;

(10) Any foregone revenue from providing free or reduced cost direct broadcast satellite service to any person, including employees of the direct broadcast satellite service provider or any governmental entity as required or permitted by federal, state, or local law, except revenue foregone in exchange for the goods or services through a trade or barter arrangement;

(11) Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive direct broadcast satellite service from the direct broadcast satellite service provider;

(12) Reimbursements made by programmers to the direct broadcast satellite service provider for marketing costs incurred by the direct broadcast satellite service provider for the introduction of new programming that exceed the actual costs incurred by the direct broadcast satellite service provider;

(13) Late payment fees collected from customers, or

(14) Charges, other than those charges specifically described in the definition of “gross revenues”, that are aggregated or bundled with such specifically described charges on a subscriber or customer’s bill, if the direct broadcast satellite service provider can reasonably identify the charges in its books and records kept in the regular course of business.

“Person”, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

“Subscriber or customer”, a member of the general public who receives direct broadcast satellite service from a direct broadcast satellite service provider and does not further distribute such service in the ordinary course of business.

“Video programming”, programming provided by, or comparable to programming provided by, a television broadcast station including but not limited to video programming provided by local networks, national broadcast networks and all forms of pay per view video entertainment.

Section 2. An excise is hereby imposed upon the provision of direct broadcast satellite service to a subscriber or customer in this commonwealth by any direct broadcast satellite service provider in an amount equal to five percent of the direct broadcast satellite service provider’s gross revenues. A direct broadcast satellite service provider

shall pay the excise to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.

Section 3. Reimbursement for the excise hereby imposed shall be paid by the subscriber or customer to the direct broadcast satellite service provider, and each direct broadcast satellite service provider providing direct broadcast satellite service to subscribers or customers in this commonwealth shall collect from such subscriber or customer the full amount of the excise imposed by this chapter with respect to gross revenues derived from or attributable to such customer or subscriber and such excise shall be a debt from the subscriber or customer to the direct broadcast satellite service provider, when so added to the subscriber or customer's invoice for video programming service, and shall be recoverable at law in the same manner as other debts.

Section 4. No person shall do business in this commonwealth as a direct broadcast satellite service provider unless a registration shall have been issued to him in accordance with section sixty-seven of chapter sixty-two C.

Section 5. Every direct broadcast satellite service provider who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable there for to the commonwealth. The term "direct broadcast satellite service provider", as used in this section, includes an officer or employee of a corporation or other business entity, or a member or employee of a partnership, who as such officer, employee or member is under duty to pay over the taxes imposed by this chapter.

Section 6. Any person not a resident of the commonwealth who engages in the business of providing direct broadcast satellite service to subscribers or customers in this commonwealth shall, as a condition precedent to engaging in such business and by so engaging in such business, be deemed thereby to appoint the secretary of the commonwealth his agent for the service of process in any judicial proceeding under this chapter. Such process shall be served by leaving a copy of the process in the hands of the secretary of the commonwealth or a deputy or in the office of said secretary. Such service shall be sufficient service upon the person; provided, that notice of such service and a copy of the process is, at least fifteen days before the return day of such process, sent by registered mail to such person's last known address, and that the sender's registered mail receipt and the commissioner's affidavit of compliance with this section are appended to the process and filed in the action or proceeding on or before the return day of the process or within such further time as the court may allow. The court in which the action or proceeding is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. Service of process in the foregoing manner shall be of the same force and validity as if served upon the taxpayer personally within the commonwealth.

SECTION \_\_\_\_\_. Notwithstanding the provisions of section twenty-two of chapter five hundred and forty-six of the acts of nineteen hundred and sixty-nine, the additional

tax imposed by such section shall not apply to any tax imposed by section 2 of chapter sixty-four L of the General Laws.

SECTION \_\_\_\_\_. This chapter shall take effect on July 1, 2009, and shall apply to gross revenues derived by a direct broadcast satellite service provider that are billed to subscribers or customers on or after that date.

SECTION \_\_\_. For the purposes of section 145 of this act, the following definitions shall apply:-

"governmental body" shall be defined as any city, town, county, water district, wastewater district, authority or state agency located within the commonwealth; provided further that the term "governmental body" shall not mean the Massachusetts Water Resources Authority (MWRA).

"water storage facility" shall be defined as any above or below ground facility or tank, standpipe, water tower or any other building or structure used to store water for public drinking water supply, fire-protection or any other purpose.

SECTION \_\_\_. Chapter 40 of the General Laws is hereby amended by adding the following eleven sections:

Section 60. Notwithstanding any general or special law to the contrary, a governmental body may in accordance with the provisions of this chapter, enter into a contract for the inspection, maintenance, repair, modification or any combination thereof, necessary for water storage facilities to ensure adequate services and to ensure the ability of water storage facilities to operate in full compliance with all applicable requirements of federal, state and local law. Said contract shall be awarded pursuant to the provisions of chapter thirty B except for paragraph (3) of subsection (b), paragraph (3) of subsection (e), subsection (g) of section six and sections thirteen and sixteen.

The request for proposals for such contract shall specify the method for comparing proposals to determine the proposal offering the most advantageous proposal to a governmental body including, but not limited to, all capital financing, operating and maintenance costs, warranty requirements, indemnity and security, experience, and technical competence. If a contract is awarded to an offeror who submitted the most advantageous proposal, but who did not offer the lowest overall cost, the governmental body shall explain the reason for the award in writing.

Section 61. (a) Notwithstanding the provisions of any general or special law to the contrary, a contract or contracts awarded pursuant to section sixty may provide for a term, not exceeding twenty years, and an option for renewal or extension of inspection, , maintenance repair or modification services for one additional term not exceeding ten years in accordance with the terms of the original contract. A contract entered into

pursuant to section sixty to seventy-one, inclusive, may provide that the governmental body shall not be exempt from liability for payment of the costs to inspect, maintain, repair or, modify or install new equipment and systems at any water storage facilities necessary to ensure the ability of said facilities, to operate in full compliance with all applicable requirements of federal, state and local law, provided that such costs shall be amortized over a period that is no longer than the useful life of said modifications, equipment and systems. A governmental body's payment obligation for all inspection, maintenance repair or modification services shall be conditioned on the contractor's performance of said services in accordance with all contractual terms.

(b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive, may provide for such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to, financing, equipment installation and replacement, studies, permitting, design and engineering work, construction work, ordinary repairs and maintenance, and the furnishing of all related material, supplies and services required for the water storage facilities and the management, construction, maintenance and repair of and improvements to said facilities.

Section 62. The chief procurement officer of a governmental body shall solicit proposals through a request for proposals which shall include those items in paragraphs (1) and (2) of subsection (b) of section six of chapter thirty B and proposed key contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the request for proposals may request proposals or offer options for fulfillment of other contractual terms, and such other matters as may be determined by the governmental body.

Section 63. The chief procurement officer of a governmental body shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, allocation of risks and responsibilities and other evaluation criteria set forth in the request for proposal. The chief procurement officer may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror, the chief procurement officer determines that it is in the governmental body's best interests to terminate negotiations with said offeror, the chief procurement officer shall notify said offeror in writing that negotiations are terminated and shall enter into negotiations with the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life cycle costs, allocation of risks and responsibilities and other evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life cycle costs, allocations of risks and responsibilities and

other evaluation criteria set forth in the request for proposal and the terms of the negotiated contract. Subject to the approval of the governmental body, the chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. Such award shall be subject to this section and sections sixty to sixty-two and sections sixty-four to seventy-one, inclusive. The parties may extend the time for acceptance by mutual agreement.

Section 64. Reserved.

Section 65. Subject to the provisions of this section and section sixty to sixty-four and sections sixty-six to seventy-one inclusive, any contract awarded pursuant thereto shall be subject to such terms and conditions as the governmental city or town shall determine to be in the best interests of said governmental body.

Section 66. Notwithstanding the provisions of any general or special law or regulation to the contrary, the Department of Environmental Protection may issue project approval certificates with respect to the contract procured by a governmental body for water storage facilities. Any design and construction services included in such contract and any design and construction services procured in accordance with the provisions of this act shall not be precluded from eligibility for assistance under the Massachusetts Water Pollution Abatement Trust established by section two of the General Laws chapter twenty-nine C.

Section 67. The provisions of any general or special law or special act or regulation relating to the advertising, bidding or award of contracts, the procurement of services or to the construction and design of improvements, shall not be applicable to any selected offeror which is awarded a contract pursuant to sections sixty to seventy-one, inclusive, except as provided in this section, provided further, however, that the provisions of sections twenty-six to twenty-seven F, inclusive, and section twenty-nine of chapter one hundred forty-nine shall apply.

Section 68. An action, suit or proceeding contesting the validity or enforceability of a contract or contracts awarded pursuant to this act, or the compliance by a governmental body with the procedures relating to such award, shall be commenced within thirty days after publication of notice of such award by the chief procurement officer in a newspaper of general circulation according to the location of the government body.

Section 69. Reserved.

Section 70. It shall be a mandatory requirement that no less than ninety days prior to the commencement of any procurement process undertaken pursuant to the provisions of sections sixty-one to seventy-one for the design, construction, inspection,

maintenance, , or modification for work on the water storage facilities, that the governmental body shall make public notification of said process by the following means:

1. Publish an appropriate notice in the Central Register, published by the Secretary of State.

SECTION \_\_\_\_\_. Section 2 is hereby amended by inserting after item 1599-3856 the following two items:-

1599-6425 For a reserve to support municipal regionalization efforts in the commonwealth; provided, that this item shall be used to provide grants and technical assistance to districts and municipalities, including councils on government, counties, and regional planning authorities that are applying on behalf of two or more municipal entities, in the areas of planning, feasibility, transitional costs, and related subject areas to promote cost effective and efficient delivery of local services by regionalization of services including, but not limited to, equipment, hardware, facilities, staff, and operations; provided further, that the secretary of administration and finance shall promulgate regulations to implement this item not later than September 1, 2009; and provided further, that grants and technical assistance may only be provided to support regionalization of services that results in cost savings..... \$2,000,000

1599-7286 For a reserve to provide grants to municipalities with limited capacity to benefit from section 2A of chapter 64L of the General Laws; provided, that only cities and towns that have fewer than 3 restaurants shall be eligible for grants from this item; provided further, that grants to cities and towns under this item shall be distributed under a formula to be promulgated by regulation by the division of local services in the department of revenue; provided further, that the formula shall limit the size of grants to be distributed to cities or towns with one or two restaurants to the amount that city or town could generate if it adopted section 2A of chapter 64L; provided further, that the formula shall ensure that grant amounts will not exceed the revenue derived by a similarly situated city or town that takes a vote under section 2A of chapter 64L; provided further, that the division shall promulgate regulations not later than September 1, 2009 to implement this item; and provided further, that such regulations shall include a determination as to whether or not to all communities with populations over 5,000 will be eligible to participate in this program..... \$500,000