HOUSE . . . . . No. 3814

Text of an amendment recommended by the committee on Bonding, Capital Expenditure and State Assets to the Senate Bill to improve the administration of state government and finance (Senate, No. 1940). November 16, 2011.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

By striking out all after the enacting clause and inserting in place thereof the following:-

"SECTION 1. Chapter 3 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out section 8 and inserting in place thereof the following section:-

Section 8. When evaluating a petition by a city or town to borrow money in excess of the statutory limit of indebtedness under section 10 of chapter 44, the legislative committee to which that petition may be referred shall solicit a report on the financial condition of the city or town from the division of local services, which shall deliver the report as soon as possible.

SECTION 1A. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by inserting after section 12A the following section:-

Section 12B. The clerks of the 2 branches shall in every odd-numbered year prepare a manual for the general court. Such number of copies of the manual as the committees on rules shall determine shall be printed under the direction of the clerks of the 2 branches.

SECTION 1B. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out sections 14 to 16, inclusive, and inserting in place thereof the following 2 sections:-

Section 15. The general court shall choose a sergeant-at-arms who shall hold office until removed or until another is chosen. The sergeant-at-arms may be removed by the general court. The sergeant-at-arms shall receive such salary as may be established by the committees on rules of the 2 branches of the general court acting concurrently.

The house of representatives may choose a sergeant-at-arms of the house of representatives who shall perform such duties as may be prescribed by the committee on rules of the house, and in case of the disability or necessary absence of the sergeant-at-arms of the general court, the sergeant-at-arms of the house of representatives shall perform the duties of the sergeant-at-arms during such disability or absence. The sergeant-at-arms of the house of representatives shall receive such salary as may be established by the committee on rules of the house.

Section 16. In case of the disability or necessary absence of the sergeant-at-arms of the general court and of the sergeant-at-arms of the house of representatives, the sergeant-at-arms may appoint, with the approval of the presiding officers of the 2 branches of the general court, an assistant sergeant-at-arms to perform the duties of the sergeant-at-arms during such disability or absence. The compensation of the assistant sergeant-at-arms shall be paid by the sergeant-at-arms, who shall be responsible for the assistant’s fidelity and good conduct in office; but for misconduct or other sufficient cause the assistant may be removed by the general court.

SECTION 1C. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out sections 18 to 20A, inclusive, and inserting in place thereof the following 3 sections:-

Section 18. There shall be 2 chief general court officers for each branch, each with the title of assistant sergeant-at-arms, and such assistant chief general court officers, general court officers and pages as shall be established by the committees on rules of the 2 branches of the general court acting concurrently. Such employees shall receive such compensation as may be established by said committees acting concurrently.

Section 19. The number of chief general court officers, assistant chief general court officers, general court officers and pages of the senate and of the house shall not exceed 92 in all.

Section 20A. Subject to appropriation, the sergeant-at-arms may purchase uniforms for the sergeant-at-arms, general court officers and pages as the sergeant-at-arms may determine.

SECTION 1D. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out sections 22 and 23, and inserting in place thereof the following 3 sections:-

Section 22. The journals, files and papers of the senate and of the house of representatives shall be in the custody of their respective clerks during the session to which they relate and after that session they shall be in the custody of the state secretary. The clerk of each branch shall at all

times have access to the journals, files and papers. Copies of such journals, files and papers, certified by the clerk of the branch to which they originally appertained or by the state secretary, shall be evidence in like manner as the originals.

Section 22A. Such number of copies of the journals of the senate and of the house of representatives as the committees on rules shall determine shall be printed annually under the direction of the clerks of the 2 branches.

Section 23. Bills and resolves passed to be engrossed by the general court, and bills for which initiative petitions are completed under the constitution of the commonwealth, shall, under the direction of the committees on rules of the two branches, acting concurrently, be fairly engrossed in such manner and by utilizing such equipment as said committees shall determine. The enacting clause of bills for which initiative petitions are completed shall be in the form prescribed by section 3 of chapter 4. The state secretary shall cause the acts and resolves of each session to be neatly and strongly bound in separate volumes of convenient size and lettered on the back with a designation of the contents and the legislative year. If acts or resolves are becoming illegible, the state secretary shall cause copies of the acts or resolves, similar to the originals, to be prepared and shall attest them. Such attested copies shall have the same force and effect as the originals.

If the clerk of the senate, with the approval of the president of the senate and the speaker of the house, determines that it would expedite the business of the general court, the legislative engrossing division shall prepare for final passage by the general court an exact copy of any bill

specified by said clerk, as passed to be engrossed by both branches, so far as possible by pasting a printed copy of said bill, as so passed, on the kind and size of paper designated by said committees on rules and the copy so prepared shall be deemed to have been fairly engrossed.

SECTION 1E. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out sections 32A to 38B, inclusive, and inserting in place thereof the following 5 sections:-

Section 32A. No special commission, no special or standing committee of the general court or of either branch of the general court and no sub-committee of any such commission or committee shall travel either within or without the commonwealth except by a vote of a majority of the total membership of such commission or committee, nor until the written approval of the presiding officers of both branches of the general court or of the presiding officer of the appropriate branch has been received. Such written approval shall specify the purpose of the trip, the places to be visited, the time within which such travel is to be completed and the names of all members or other persons authorized to travel.

Section 33. The committees on rules of the two branches, acting concurrently, shall publish electronically during each regular session of the general court bulletins of committee hearings.

Section 35. Advertisements of hearings of legislative committees shall be published on the official website of the general court and may be published in additional publications if the chairs of the committee determine that additional publication is necessary to reach those with a

substantial interest in a matter pending at the hearing.

Section 38A. Joint committees of the general court, the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets when reporting favorably on bills referred to them shall include with that report a fiscal note prepared under section 3A of chapter 29 showing the estimated cost or fiscal effect of the proposed legislation, if the cost of the legislation exceeds $100,000. Such fiscal notes shall be printed in the daily calendars of each branch whenever said bills appear on the calendar and shall be made available on the official website of the general court.

Section 38B. The committee on ways and means of each branch of the general court shall conduct public hearings on all requests and recommendations for appropriations for the executive, judicial and legislative branches of the state government submitted under section 2 of Article LXIII of the Amendments to the Constitution. The house and senate committees on bonding, capital expenditures and state assets, or a committee of the general court having primary jurisdiction over requests and recommendations for capital outlay programs and projects which the governor submits to the general court, shall hold a hearing on such requests and recommendations. Any committee referred to in this section shall give 5 days public notice prior to holding such public hearings.

SECTION 1F. Sections 56 to 61, inclusive of chapter 3 of the General Laws are hereby repealed.

SECTION 1G. Section 65 of chapter 3 of the General Laws, as appearing in the 2008 Official

Edition, is hereby amended by striking out in lines 4 and 5 the words, “three shall be members of The Doric Dames,” and inserting in place thereof the following words:- 1 may be a member of The Doric Docents.

SECTION 1H. Said section 65 of said chapter 3, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The committee may consider and advise the senate relative to any matter germane to the upgrading and restoration of the quarters in the state house used by the members of the senate and its employees, with particular attention to the historical and artistic qualities of said quarters. The committee may file recommendations from time to time with the clerk of the senate.

SECTION 1I. The General Laws are hereby amended by inserting after chapter 3 the following chapter:-

CHAPTER 3

THE SUNSET ACT

Section 1. There is hereby established a procedure for the identification and elimination of waste, duplication and inefficiency in state government agencies and authorities established by statute, regulation or executive order to be known as the Sunset Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Advisory committee”, a committee, council, commission or other entity established under state law whose primary function is to advise a state agency.

“Agency”, a state agency as defined in section 1 of chapter 29.

"Authority", a state authority as defined in section 1 of chapter 29.

“Commission”, the sunset advisory commission established in section 3.

Section 3. (a) There shall be a sunset advisory commission consisting of 3 members of the senate, 1 of whom shall be appointed by the minority leader, 3 members of house of representatives, 1 of whom shall be appointed by the minority leader. The president of the senate and the speaker of the house of representatives may serve as legislative appointees.

(b) Legislative members shall serve 2-year terms, conterminous with their service as elected members of the legislature. If the president of the senate or the speaker of the house of representatives serves on the commission, the president or speaker’s service shall continue until resignation from the commission or until the individual ceases to hold the office.

(c) Any member, other than the president of the senate and the speaker of the house of

representatives, who serves a full term may not be appointed to an immediately succeeding term.

(d) The president of the senate and the speaker of the house of representatives shall make their appointments before February 1 of each odd-numbered year.

(e) If a legislative member ceases to be a member of the house from which the member was appointed, the seat held by that member shall be considered vacant.

(f) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(g) The commission shall have a chair and a vice-chair as presiding officers. The chair and vice-chair positions shall alternate every 2 years between the 2 membership groups appointed by the president of the senate and the speaker of the house of representatives. The chair and vice-chair shall not be from the same membership group. The president of the senate shall designate a presiding officer from the president's appointed membership group and the speaker shall designate the other presiding officer from the speaker's appointed membership group.

(h) Four members of the commission shall constitute a quorum. A final action or recommendation shall not be made unless approved by a recorded roll call vote of a majority of members appointed by the president of the senate and the speaker of the house of representatives. All other actions by the commission shall be decided by a majority of the members present and voting, so long as a quorum is present.

Section 4. The commission shall adopt rules necessary to carry out this chapter.

Section 5. Before July 1 of the odd-numbered year before the year in which an agency, advisory committee or authority subject to this chapter is audited, the agency, advisory committee or authority shall report to the commission:

(1) information regarding the application to the agency, advisory committee or authority of the criteria in section 9; and

(2) any other information that the agency, advisory committee or authority considers appropriate or that the commission requests.

Section 6. (a) Within 1 year of the appointment and qualification of the members of the commission and the organization of the commission staff, the commission shall assign performance audit dates for any agency, authority and advisory committee of the commonwealth it deems appropriate and shall notify the head of such agency, authority and advisory committee of the date selected. The commission shall then file legislation with the general court to implement the audit schedule.

(b) Before January 1 of the year in which an agency, advisory committee or authority subject to this chapter is scheduled to be audited, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency, advisory committee or authority under this chapter;

(2) consult the house and senate committees on post audit and oversight, the state auditor, the inspector general and the state comptroller on the application to the agency, advisory committee or authority of the criteria in section 9;

(3) conduct a review of the agency, advisory committee or authority based on the criteria in section 9 and prepare a written report; and

(4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session and the resulting legislation.

(c) The written report prepared by the commission under clause (3) of subsection (b) shall be a public record.

Section 7. (a) Before February 1 of the year in which an agency, advisory committee or authority subject to this chapter and is to beaudited, the commission shall conduct public hearings concerning, but not limited to, the application to the agency, advisory committee or authority of the criteria in section 9.

(b) The commission may hold the public hearings after the review of the agency, advisory committee or authority is complete and available to the public.

Section 8. (a) At each regular legislative session, the commission shall present to the legislature and the governor a report on the agencies, authorities and advisory committees reviewed.

(b) In the report the commission shall include:

(1) its findings under section 9;

(2) its recommendations under this chapter; and

(3) other information the commission considers necessary for a complete review of the agency, advisory committee or authority.

Section 9. The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency, authority or advisory committee or for the performance of the functions of the agency, authority or advisory committee:

(1) the efficiency and effectiveness with which the agency, authority or advisory committee operates;

(2) (a) an identification of the mission, goals and objectives intended for the agency, authority or advisory committee and of the problem or need that the agency, authority or advisory committee

was intended to address; and

(b) the extent to which the mission, goals and objectives have been achieved and the problem or need has been addressed;

(3) (a) an identification of any activities of the agency, authority or advisory committee in addition to those granted by statute and of the authority, of the agency, authority or advisory to conduct those activities; and

(b) the extent to which those activities are needed;

(4) an assessment of authority of the agency, authority or advisory committee relating to fees, inspections, enforcement and penalties;

(5) whether less restrictive or alternative methods of performing a function that the agency, authority or advisory committee performs could adequately protect or provide service to the public;

(6) the extent to which the jurisdiction of the agency, authority or advisory committee and the programs administered by the agency, authority or advisory committee overlap or duplicate those of other agencies, authorities or advisory committees, the extent to which the agency, authority or advisory committee coordinates with those agencies, authorities or advisory committees and the extent to which the programs administered by the agency, authority or advisory committee

can be consolidated with the programs of other authorities, agencies or advisory committees;

(7) the promptness and effectiveness with which the agency, authority or advisory committee addresses complaints concerning entities or other persons affected by the agency, authority or advisory committee, including an assessment of the agency's, authority's or advisory committee's administrative hearings process;

(8) an assessment of the agency's, authority's or advisory committee's rulemaking process and the extent to which the agency, authority or advisory committee has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules that benefit the public;

(9) the extent to which the agency, authority or advisory committee has complied with:

(a) federal and state laws and applicable rules regarding equality of employment opportunity and the rights and privacy of individuals;

(b) state law and applicable rules of any state agency, authority or advisory committee regarding purchasing guidelines and programs for historically underutilized businesses; and

(c) state law regarding open meetings and public records

(10) the extent to which the agency, authority or advisory committee issues and enforces rules relating to potential conflicts of interest of its employees and chapter 268A;

(11) the extent to which the agency or authority complies with chapters 66 and 66A and follows records management practices that enable the agency to respond efficiently to requests for public information;

(12) the effect of federal intervention or loss of federal funds if the agency, authority or advisory committee is abolished;

(13) the extent to which the authority has issued bonds or otherwise incurred similar long-term obligations, the amount of outstanding bonded indebtedness for which the authority is responsible and the sustainability of another authority assuming responsibility for such long-term obligations;

(14) whether the authority is responsible for a retirement system for its employees and the extent of the authority's obligations and available funding under such retirement system and for other post-employment benefits for retired employees; and

(15) whether the agency, authority or advisory committee utilizes an open and competitive bid process for third party contracts related to legal representation, bonds and fiscal management.

Section 10. (a) In its report on an agency, authority or advisory committee, the commission shall make recommendations:

(1) on the abolition, continuation or reorganization of each affected agency, authority or advisory committee and on the need for performance of the functions of the agency, authority or advisory committee;

(2) on the consolidation, transfer or reorganization of programs within agencies or authorities not under review when the programs duplicate functions performed in agencies or authorities under review;

(3) to improve the operations of the agency, authority or advisory committee, including management recommendations that do not require a change in the agency's, authority's or advisory committee's enabling statute; and

(4) to improve the efficiency and transparency in third party contract awards related to legal representation, bonds and fiscal management, including, but not limited to, recommending utilization of an open and competitive bid process.

(b) The commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the agency, authority or advisory committee, to be forwarded to the house and senate committees on ways and means and the executive office for administration and finance.

(c) The commission shall prepare drafts of legislation necessary to carry out the commission's recommendations under this section.

(d) After the legislature acts on the report, the commission shall present to the secretary of administration and finance, the commission's recommendations that do not require a statutory change to be put into effect.

Section 11. In the 2-year period preceding the date scheduled for the audit of a state agency, authority or advisory committee under this chapter, the commission may exempt certain agencies, authorities or advisory committees from the requirements of this chapter relating to staff reports, hearings and reviews.

(a) The commission may only exempt an agency, authority or advisory committee that has been (i) inactive for a period of 2 years preceding the date the agency, authority or advisory committee is scheduled for audit or (ii) rendered inactive by an action of the legislature.

(b) The commission's action in exempting an agency, authority or advisory committee under this section shall be done by an affirmative record vote and shall be decided by a majority of all members present and voting.

Section 12. During each legislative session, the staff of the commission shall monitor legislation affecting agencies, authorities and advisory committees that have undergone sunset review and shall periodically report to the members of the commission on proposed changes which would modify prior recommendations of the commission.

Section 13. An advisory committee, the primary function of which is to advise a particular agency or authority, shall be audited on the date set for audit of the agency or authority.

Section 14. (a) During the annual session immediately before the abolition of an agency, authority or an advisory committee that is subject to this chapter, the legislature may continue the agency, authority or advisory committee for a period not to exceed 12 years.

(b) This chapter shall not prohibit the legislature from:

(1) terminating a state agency, authority or advisory committee subject to this chapter; or

(2) considering other legislation relative to a state agency, authority or advisory committee subject to this chapter.

Section 15. (a) The commission may issue a subpoena to compel the attendance of witnesses and the production of books, records, papers and other objects necessary or proper for the purposes of the commission proceedings. The subpoena may be served on a witness at any place in the commonwealth.

(b) If a majority of the commission directs the issuance of a subpoena, the chairman shall issue the subpoena in the name of the commission.

(c) If the chairman is absent, the chairman’s designee may issue a subpoena or other process in

the same manner as the chairman.

(d) If necessary to obtain compliance with a subpoena or other process, the commission may issue attachments. The attachments may be addressed to and served by a constable, sheriff or deputy sheriff in the commonwealth.

(e) Testimony taken under subpoena shall be reduced to writing and given under oath subject to the penalties of perjury.

(f) A witness who attends a commission proceeding under process shall be paid the same fees and mileage paid witnesses in courts of the commonwealth.

Section 16. (a) The commission may request the assistance of agencies. When assistance is requested, an agency or an agency officer shall reasonably assist the commission.

(b) In carrying out its functions under this chapter, the commission or its designated staff member may inspect the records, documents and files of any agency or authority.

Section 17. (a) A working paper, including all documentary or other information, prepared and maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report shall be exempt from the public disclosure requirements of chapter 66.

429 (b) A record held by another entity that is considered to be confidential by law and that the
430 commission receives in connection with the performance of the commission's functions under
431 this chapter or another law remains confidential and shall be exempt from the public disclosure
432 requirements of chapter 66.
433
434 Section 18. If an employee is displaced because an agency, authority or advisory committee is
435 abolished, reorganized or continued, the head of the agency, authority or advisory committee and
436 the personnel administrator of the commonwealth shall make a reasonable effort to relocate the
437 displaced employee. Except as otherwise expressly provided, abolition of an agency, authority or
438 advisory committee shall not affect the rights and duties that matured, penalties that were
439 incurred, civil or criminal liabilities that arose or proceedings that were begun before the
440 effective date of abolition.
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442 Section 19. (a) Each bill filed in the legislature that would create a new agency, authority or
443 advisory committee to an agency shall be reviewed by the commission.
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445 (b) The commission shall review the bill to determine whether:
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447 (1) the proposed functions of the agency, authority or committee could be administered by 1 or
448 more existing agencies, authorities or advisory committees;
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450 (2) the form of regulation, if any, proposed by the bill is the least restrictive form of regulation
451 that will adequately protect the public;

(3) the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) the bill provides for adequate protection against conflicts of interest within the agency, authority or advisory committee.

(c) On request, the commission shall forward a written comment on the legislation to the legislator who filed the bill and to the presiding officer of the legislative committee to which the bill has been referred.

Section 20. (a) The commission may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other item of value made to the commonwealth or the commission for carrying out the purpose of this chapter.

SECTION 2. Chapter 4 of the General Laws is hereby amended by inserting after the work “characteristics” in clause twenty-sixth of section 7, as appearing in the 2008 Official Edition, the following words:--

including public record information which may be separately retrieved from an electronic record,SECTION 3. Chapter 5 of the General Laws is hereby repealed.

SECTION 4. Chapter 6 of the General Laws is hereby amended by striking out section 5, as appearing in the 2008 Official Edition, and inserting in place thereof the following section: -

Section 5. The governor may appoint such employees as may be necessary, who shall hold office during the pleasure of the governor, and shall receive such salaries as may be approved by the governor.

SECTION 5. Sections 6 to 7, inclusive, of said chapter 6 are hereby repealed.

SECTION 6. Section 10 of said chapter 6, as appearing in the 2008 Official Edition, is hereby amended by striking out the last sentence.

SECTION 7. Section 11 of said chapter 6 is hereby repealed.

SECTION 8. Section 12 of said chapter 6, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 3 and 4, the words “and council, who shall approve such claims before they are sent to the comptroller”.

SECTION 9. Section 97 of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words “, with the advice and consent of the council”.

SECTION 10. Said section 97 of said chapter 6, as so appearing, is hereby further amended by striking out, in line 13, the words “commission on” and inserting in place thereof the following words:- secretary of.

SECTION 11. Section 1 of chapter 6A of the General Laws, as so appearing, is hereby amended

by striking out the definition of “State agency” and inserting in place thereof the following definition:-

“State agency”, as defined in section 1 of chapter 29.

SECTION 12. Section 4 of said chapter 6A, as so appearing, is hereby amended by striking out, in lines 13 and 14, the words “in accordance with sections two C, three, three A, four, nine B and twenty-nine of chapter twenty-nine” and inserting in place thereof the following words:- under chapter 29.”

SECTION 13. Said chapter 6A is hereby further amended by inserting after section 4 the following section:-

Section 4A. Each secretary shall establish a performance measurement system for the agencies within the executive office, which shall establish program goals, measure program performance against those goals and report publicly on progress to improve the effectiveness of the programs offered by the agencies within the executive office, service delivery and policy decision-making. The performance measurement system shall (i) require each agency to develop a strategic plan for program activities and performance goals and (ii) capture data necessary for analysis of the costs and benefits of each program. Each executive office shall report results from its performance measurement system to the office for performance management and innovation in the executive office for administration and finance, established under section 4R of chapter 7; provided, however, that the data shall be presented in a format from which a cost-benefit analysis

may be performed.

SECTION 14. Section 6 of said chapter 6A, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words “commissioner of administration” and inserting in place thereof the following words:- secretary of administration and finance.

SECTION 15. Said section 6 of said chapter 6A, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- All such funds may be expended by the secretary under chapter 29 and any rules or regulations promulgated under that chapter.

SECTION 16. Section 16 of said chapter 6A, as so appearing, is hereby amended by striking out the seventh paragraph.

SECTION 17. Section 1 of chapter 7 of the General Laws, as so appearing, is hereby amended by striking out the definitions of “Commissioner” and “Finance committee”.

SECTION 18. Said section 1 of said chapter 7, as so appearing, is hereby further amended by adding the following definition:-

“Secretary”, the secretary of administration and finance.

SECTION 19. Said chapter 7 is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. There shall be an executive office for administration and finance, which shall serve directly under the governor.

SECTION 20. Section 3B of said chapter 7, as so appearing, is hereby amended by striking out the first 3 paragraphs.

SECTION 21. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking out in lines 26 to 28, inclusive, the words “Notwithstanding any other general or special law to the contrary, for the period beginning March first, nineteen hundred and ninety-one, the secretary of administration” and inserting in place thereof the following words:- Each fiscal year, under a schedule promulgated by the secretary, the secretary:.

SECTION 22. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking out, in line 45, the words “of administration and finance”.

SECTION 23. The fourth paragraph of said section 3B of said chapter 7, as so appearing, is hereby amended by striking out the last sentence.

SECTION 24. Said chapter 7 is hereby further amended by inserting after section 3B the following 3 sections:-

Section 3D. The state purchasing agent shall supervise the state printing and all publications by

the commonwealth shall be printed under the agent's direction; provided, that the this section shall not apply to topographic maps issued by state departments, to legislative printing or to publications required to be issued by the state secretary under sections 2 to 4, inclusive, or under chapter 90 of the resolves of 1920 or any other special law. All publications by the commonwealth shall be distributed under the direction of the state secretary unless otherwise provided.

Section 3E. All reports required to be made by permanent state departments, officers and commissions may, subject to the approval of the secretary of administration and finance and except as otherwise provided, be printed annually or otherwise published in electronic form.

Section 3F. Each state agency shall also provide 2 copies of its publication, as defined in section 39 of chapter 6 to the state secretary, 1 of which shall be retained for 2 years as a reference copy. The state secretary shall determine which publications are of sufficient public interest and may then either provide for electronic availability of such publications, reproduce the publications in appropriate quantities or acquire the publications in appropriate quantities directly from the issuing agency, at the cost of printing, for distribution by said secretary.

SECTION 25. Section 4 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The governor shall appoint the secretary of administration and finance.

SECTION 26. Said chapter 7 is hereby further amended by striking out section 4A, as most

recently amended by chapter 56 of the acts of 2010, and inserting in place thereof the following section:-

Section 4A. The executive office for administration and finance shall include a division of capital asset management and maintenance, which shall be headed by a commissioner as provided in chapter 7B, and a department of revenue as provided in chapter 14. In addition, the executive office for administration and finance shall include the following divisions: human resources, information technology, fiscal affairs and operational services, which divisions shall develop policy and standards to govern the conduct of commonwealth secretariats, departments, agencies, boards and commissions in each of these areas, and shall provide expertise and centralized processing to said secretariats, departments, agencies, boards, commissions and other entities of state government.

(a) The operational services division shall be headed by a state purchasing agent who shall also serve as assistant secretary for operational services. The state purchasing agent shall be appointed by the secretary with the approval of the governor. The state purchasing agent shall give bond to the state treasurer in a sum fixed by the governor for the faithful performance of the purchasing agent’s duties and for the rendering of a proper account of all money entrusted to the purchasing agent for the use of the commonwealth. The purchasing agent may establish within the division such bureaus and other units as are deemed necessary by the commissioner of administration to carry out the functions of the division. Such functions shall include, but not be limited to, the management of the acquisition of all goods, supplies, equipment and services, excepting the acquisition of such goods, supplies, equipment and services as otherwise provided

for in any general or special law or in any administrative rule or regulation promulgated by the secretary, the provision of assistance and advice for such acquisitions, the administration of the state and federal surplus property programs, the administration of the collective purchasing program for the political subdivisions of the commonwealth, the administration and management of reproduction facilities, the management of state acquired vehicles including the use and maintenance of such vehicles and such other functions as the purchasing agent, with the approval of the secretary, may from time to time deem necessary for the efficient and economical administration of the work of said division. The operational services division may charge and collect from statewide contractors a statewide contract administrative fee, to be established by the executive office for administration and finance; provided, however, that such fee shall not exceed 1 per cent of the total value of a contract awarded to a statewide contractor.

(b) The human resources division shall he headed by a personnel administrator who shall also serve as assistant secretary for human resources. The personnel administrator shall be appointed by the secretary with the approval of the governor. Such personnel administrator shall be a person familiar with the principles and experienced in the methods and practices of personnel administration. The personnel administrator shall serve for a term of 4 years, which term shall end on June 30 of the first year of the term of the governor, except that the personnel administrator may be removed by the secretary, with the prior approval of the governor. A person so appointed shall serve until the qualification of the administrator’s successor; provided, however, that in the case of a person appointed to fill a vacancy occurring during the prescribed term by reason of death, resignation or otherwise, the term of the successor in said office shall end on the next succeeding June 30 of the first year of the term of the governor. Within the

human resources division shall also be the state office of affirmative action, the office of employee relations, the office of dispute resolution and the office of workers' compensation administration.

(c) The information technology division shall be headed by the chief information officer who shall also serve as assistant secretary for information technology. The chief information officer shall be appointed by the secretary. The chief information officer shall carry out such functions as the commissioner may deem necessary for the efficient and economical administration of information technology systems within the executive departments including, but not limited to, setting information technology standards, reviewing and approving secretariat and department information technology strategic plans, reviewing and approving the planning, design, acquisition and operation of information technology systems, assessing the performance of information technology systems and operations, managing central information technology systems, and managing the commonwealth's mailing operations. The chief information officer may establish such bureaus, offices and other functional units within the division as the chief information officer deems appropriate.

The division shall include an office of geographic information through which the chief information officer shall develop, maintain, update and distribute geographic information, technology, data and services for use by state agencies, municipalities and the public. The office shall coordinate all geographic information activities in state and local government and shall collect, manage and distribute geographic information maintained by state agencies and local government agencies. It shall also provide technical services related to geographic information to

state agencies and municipalities. The chief information officer shall set standards for the acquisition, management and reporting of geographical information and the acquisition, creation or use of applications employing such information, by any executive department agency, and the reporting of such information by municipalities.

(d) Except in the case of agencies named in section 4G, the secretary may also establish within the executive office for administration and finance such other bureaus, sections and other administrative units not otherwise established by law as may be necessary for the efficient and economical administration of the work of said office and when necessary for such purpose, the secretary may abolish any bureau, section or other unit or merge any 2 or more of them. The secretary shall prepare and keep current a general statement of the organization of said office and of the assignment of functions to its various administrative units, officials and employees. The general statement shall be known as the Description of Organization of said office and shall be kept on file in said office. A copy shall be kept on file in the office of the governor.

(e) If a new governmental mandate effective on or after July 1, 2004 is imposed upon a contractor providing a social service program, as defined in section 274 of chapter 110 of the acts of 1993, to a governmental unit, as defined in said section 274 of said chapter 110, and compliance with such governmental mandate has or will have a material adverse financial impact on the contractor, except a contractor for goods or services related to special education as defined in section 1 of chapter 71B, the governmental unit shall negotiate a contract amendment with the contractor to increase the maximum obligation amount or unit price to offset the material adverse financial impact of the new governmental mandate; provided, that the contractor furnishes

682 substantial evidence to the governmental unit of such material adverse financial impact along
683 with a request to renegotiate based on a new governmental mandate.
684
685 For the purposes of this subsection, a “new governmental mandate" shall mean a statutory
686 requirement, administrative rule, regulation, assessment, executive order, judicial order or other
687 governmental requirement that was not in effect when the contract was originally entered into
688 and directly or indirectly imposes an obligation upon the contractor to take any action or to
689 refrain from taking any action in order to fulfill its contractual duties.
690
691 For the purposes of this subsection, a “material adverse financial impact" shall mean: (1) an
692 increase in the reasonable costs to the contractor in performing the contract of the lesser of: (i) 3
693 per cent of the maximum obligation amount or unit price of the contract; or (ii) $5,000, in the
694 aggregate as a result of all such mandates in effect during the contract year; or (2) an action that
695 affects the core purpose and primary intent of the contract.
696
697 Any contractor aggrieved by a decision of a governmental unit denying or failing to negotiate a
698 contract amendment to remedy a material adverse impact of a new governmental mandate under
699 this section may appeal such adverse decision to the division of administrative law appeals under
700 section 4H for a hearing and decision de novo on all issues. A contractor's request for contract
701 amendment shall, for purposes of appeal, be deemed to have been denied if a determination is
702 not received within 30 days of the governmental unit's receipt of the request. A contractor or
703 governmental unit may appeal an adverse decision of the division of administrative law appeals
704 to the superior court, Suffolk division, under chapter 30A.

SECTION 27. Section 4D of said chapter 7 is hereby amended by striking out the first 2 paragraphs, as amended by section 9 of chapter 56 of the acts of 2010, and inserting in place thereof the following 2 paragraphs:-

Except as otherwise provided by law, the secretary shall appoint all employees of the executive office for administration and finance. Unless otherwise provided by law, all such appointments shall be made in accordance with chapter 31; provided, however, that in staffing at any time said office, the secretary may, without regard to chapter 31 but subject to the approval of the governor, appoint such experts and other assistants in said office as the secretary shall deem necessary; provided, that no person while holding any such appointment shall be subject to section 9A of chapter 30. The secretary may, without regard to section 45 of chapter 30 or chapter 31, but subject to approval of the governor, appoint no more than 4 assistant secretaries. Each such assistant secretary shall be a person of ability and experience, shall devote the assistant secretary's entire time to the duties of the assistant secretary's office, and shall receive such salary as the commissioner shall determine, with the approval of the governor.

Subject to appropriation, the secretary may appoint and remove such additional assistants, technical consultants and other persons and may engage such technical and other assistance, as the work of said office may require. The secretary may expend such sums of money for expenses, including travelling expenses of officers and employees serving in said office, as may be appropriated for such expenses.

SECTION 28. Said chapter 7 is hereby further amended by striking out sections 4E and 4F, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 4E. In addition to any powers provided in chapter 6A, in making any examination or investigation authorized under this chapter, the secretary may require the production of books, papers, contracts and documents in the custody of any agency other than those within the executive office of administration and finance, which relate to any matter within the scope of such examination or investigation.

SECTION 29. Section 4G of said chapter 7, as so appearing, is hereby amended by striking out, in line 6, the words “the board of economic advisors”.

SECTION 30. Said chapter 7 is hereby amended by inserting after section 4Q the following section:-

Section 4R. There shall be within the executive office for administration and finance an office of performance management and innovation charged with overseeing and coordinating the output of the performance measurement systems developed by each executive office under section 4A of chapter 6A. The office shall report quarterly to the chairs of the house and senate committees on ways and means, the chairs of the house and senate committees on post audit and oversight and the chairs of the joint committee on state administration and regulatory oversight the results reported by the performance measurement systems and progress on implementing the systems by each executive office.

SECTION 31. Said chapter 7 is hereby further amended by striking out section 5, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 5. The secretary may, with the consent of the governor, appoint a first deputy commissioner of administration who shall also serve as undersecretary. The first deputy commissioner shall be a person of ability and experience; shall serve at the pleasure of the secretary; shall receive such salary as the secretary, with the approval of the governor, shall determine, and, shall devote the first deputy commissioner's entire time to the duties of the first deputy commissioner's office. The first deputy commissioner shall exercise such authority and discharge such duties of the secretary as the secretary may delegate to the first deputy commissioner; and in the absence or incapacity of the secretary or in the event of a vacancy in the position of the secretary, the said first deputy commissioner shall act as the secretary until the absence or incapacity shall have terminated or the vacancy shall have been filled.

SECTION 32. Sections 6B and 6E of said chapter 7 are hereby repealed.

SECTION 33. Section 7 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 1, the words "commissioner of administration" and inserting in place thereof the following word:- secretary.

SECTION 34. Said section 7 of said chapter 7, as so appearing, is hereby further amended by striking out, in line 13, the word "commissioner" and inserting in place thereof the following

word:- secretary.

SECTION 35. Section 7A of said chapter 7, as so appearing, is hereby amended by striking out, in line 1, the words “commissioner of administration is hereby authorized on behalf of the commonwealth to” and inserting in place thereof the following words:- secretary may on behalf of the commonwealth.

SECTION 36. Said section 7A of said chapter 7, as so appearing, is hereby further amended by striking out, in line 5, the words “said commissioner” and inserting in place thereof the following words:- the secretary.

SECTION 37. Section 8 of said chapter 7, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words “or of the council, or of the finance committee, the commissioner” and inserting in place thereof the following words:- the secretary.

SECTION 38. Said chapter 7 is hereby further amended by striking out section 9, as so appearing, and inserting in place thereof the following section:-

Section 9. On request of either branch of the general court or of the ways and means committee of either branch or of the governor, the secretary shall make a special examination of, and give to them any information in the secretary’s possession relative to, any matter affecting the management or finances of any department, officer, commission or undertaking which receives an annual appropriation of money from the commonwealth, including annual appropriations to

be met by assessments.

SECTION39. Section 9A of said chapter 7, as so appearing, is hereby amended by striking out in lines 1, 16 and 48, each time they appear, the words “of administration and finance”.

SECTION 40. Said section 9A of said chapter 7, as so appearing, is hereby further amended by striking out, in lines 26 and 27, the words “provided in administrative bulletin 896 issued by the executive office for administration and finance” and inserting in place thereof the following words:- established by the executive office for administration and finance through administrative action.

SECTION 41. Said section 9A of said chapter 7, as so appearing, is hereby further amended by striking out, in line 69, the words “division of capital asset management and maintenance” and inserting in place thereof the following words:- operational services division.

SECTION 42. Said chapter 7 is hereby further amended by striking out sections 10 and 11, as so appearing, and inserting in place thereof the following 2 sections:-

Section 10. The secretary may make a special examination of the management or finances of any department, officer, commission or undertaking which receives annual appropriations of money from the commonwealth, including annual appropriations to be met by assessments, and may report on the management or finances to the governor and to the general court.

Section 11. (a) Whenever requested to make a special examination under section 9, or after first obtaining the approval of the governor in making a special examination under the preceding section, the secretary may require the attendance and testimony of witnesses and the production of all books, papers, contracts and documents relating to the special examination.

(b) Witnesses shall be summoned in the same manner and shall be paid the same fees as witnesses before the superior court.

(c) The secretary may prescribe rules and regulations for the conduct of hearings, and the secretary may administer oaths to witnesses or take their affirmation. If any person summoned and paid as a witness refuses to:

(1) attend;

(2) be sworn or to affirm;

(3) answer any question; or

(4) produce any book, contract, document or paper pertinent to the matter before the secretary, a justice of the supreme judicial or the superior court, upon application by the secretary, may issue an order requiring such person to appear before the secretary, and to produce the books, contracts, documents and papers and to give evidence touching the matter in question.

Failure to obey such an order of the court may be punished by the court as contempt of that court.

(d) A person summoned and paid who refuses to attend, or to be sworn or to affirm, or to answer any proper question, or to produce any book, contract, document or paper, pertinent to the matter before the secretary, and any person who willfully interrupts or disturbs any hearing, or who is disorderly at a hearing, shall be punished by a fine of not more than $50 dollars or by imprisonment for not more than 1 month, or both.

(e) Upon application by the secretary, commissions to take depositions of persons outside the commonwealth may be issued by a justice of the supreme judicial or the superior court, to be used in hearings before the secretary and all laws and rules relating to such commissions in civil actions shall apply to commissions issued under this section. This section shall not be construed to compel any person to give any testimony or to produce any evidence, documentary or otherwise, which may tend to incriminate that person.

SECTION 43. Section 14C of said chapter 7, as appearing in section 8 of chapter 131 of the acts of 2010, is hereby amended by striking out the definition of “Secretary”.

SECTION 44. Section 22 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 1, 77, 89 and 90, and 111, the words “commissioner of administration” and inserting in place thereof, in each instance, the following word:- secretary.

SECTION 45. Said section 22 of said chapter 7, as so appearing, is hereby further amended by striking out, in lines 14 and 116, the word “commissioner” and inserting in place thereof, in each instance, the following word:- secretary.

SECTION 46. Section 22B½ of said chapter 7 is hereby amended by striking out the definition of “State authority”, as most recently amended by section 10 of chapter 25 of the acts of 2009, and inserting in place thereof the following definition:-

“State authority”, as defined in section 1 of chapter 29.

SECTION 47. Section 22G of said chapter 7 is hereby amended by striking out the definition of “State authority”, as amended by section 11 of said chapter 25, and inserting in place thereof the following definition:-

“State authority”, as defined in section 1 of chapter 29.

SECTION 48. Section 28 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 6, 57 and 58, 65 and 66, and 72, the words “commissioner of administration” and inserting in place thereof, in each instance, the following word:- secretary.

SECTION 49. Said section 28 of said chapter 7, as so appearing, is hereby further amended by striking out, in line 68, the word “industries” and inserting in place thereof the following words:- workforce development.

SECTION 50. Section 28A of said chapter 7, as so appearing, is hereby amended by striking out, in lines 8 and 9, the words “commissioner of administration” and inserting in place thereof the following word:- secretary.

SECTION 51. Section 29 of said chapter 7, as so appearing, is hereby amended by striking out in lines 1 and 2, the words “, including the board of education and the department of education,”.

SECTION 52. Said section 29 of said chapter 7, as so appearing, is hereby further amended by striking out, in line 18, the words “commissioner of administration” and inserting in place thereof the following word:- secretary.

SECTION 53. Section 31A of said chapter 7, as so appearing, is hereby further amended by striking out, in lines 2 and 3, the words “commissioner of administration” and inserting in place thereof the following word:- secretary.

SECTION 54. Sections 38A½ to 43I, inclusive, of said chapter 7 are hereby repealed.

SECTION 55. Section 50 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 2, the figure “4A” and inserting in place thereof the following figure:- 49.

SECTION 56. Section 61 of said chapter 7, as appearing in section 2 of chapter 56 of the acts of

2010, is hereby amended by striking out the words “section 40N of chapter 7”, each time they appear, and inserting in place thereof the following words:- section 6 of chapter 7C.

SECTION 57. Section 1 of chapter 7A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There shall be an office of the comptroller which shall be an independent state agency.

SECTION 58. Section 2 of said chapter 7A, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words “commissioner of administration” and inserting in place thereof the following words:- secretary of administration and finance.

SECTION 59. Said chapter 7A is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section:-

Section 3. The comptroller shall examine all accounts and demands against the commonwealth excepting those for the salaries of the governor and the justices of the supreme judicial court, for the payrolls of the executive council and members of the general court, and those due on account of the principal or interest of a public debt. The comptroller may require paper or electronic affidavits that articles have been furnished, services rendered and obligations incurred, as claimed. Such paper or electronic affidavit for any office, department, commission and institution shall be made by the person authorized to incur such obligation. The comptroller shall make a certificate estimating the amount due and allowed on each account or demand and shall

subsequently make available a report of the amounts and accounts so examined, the name of the person to whom such amount is payable and the account to which it is chargeable. The comptroller shall keep copies of and transmit all such certificates to the governor, who, with the advice and consent of the council, may issue his warrant to the state treasurer for the amount therein specified as due.

This authority shall pertain to all accounts and funds of the commonwealth unless specifically exempted by general or special law.

The comptroller may exclude from such certificate any amount otherwise due to any person owing an overdue debt to the commonwealth or any agency of the commonwealth; provided, however, that the head of such agency has filed with the comptroller a paper or electronic affidavit specifying that such debt exists, the amount due and the name of the debtor. Any such debt may be charged by the comptroller against any amount otherwise due from the commonwealth to such debtor, subject to regulations promulgated by the comptroller. Such regulations shall include, but not be limited to, the following requirements:

(1) that said agency issue 4 written notices to the debtor over a 120 day period prior to requesting exclusion of such overdue amounts from such certificate;

(2) that such notices advise the debtor of the debtor’s right to a hearing before said agency, and;

(3) that, unless otherwise provided by law, said agency shall hold a hearing under chapter 30A

upon timely written application of the debtor.

Said regulations may authorize the comptroller to waive requirements at the request of an agency head provided that all waivers shall be in writing and state the reasons for such waivers.

The comptroller shall not include on such certificate any amount for any account for which an appropriation is required under section 6 of chapter 29 if no such appropriation or no allotment has been made or if the amount of such appropriation and allotment for the current fiscal year is insufficient to meet the amount of the demand. The comptroller is prohibited from making or authorizing any spending authority to make a journal entry, so-called, between accounts if the account ultimately to be charged had insufficient monies to support the entry at the time the amount being entered was expended, unless prior notification of the intent to make such a journal entry, indentifying the accounts involved and the amount of the entry, is sent to the house and senate committees on ways and means. The comptroller is further prohibited from certifying any amounts for payment in the event that there is an interim period at the beginning of a fiscal year prior to the final passage of the fiscal year appropriation act or any interim appropriation act, subject to the condition that any amounts otherwise authorized by law to be paid during such interim period may be so certified by the comptroller.

SECTION 60. Section 4 of said chapter 7A is hereby repealed.

SECTION 61. Section 5 of said chapter 7A, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

All bills and vouchers on which money has been or may be paid from the treasury upon the certificate of the comptroller or the warrant of the governor shall be kept as prescribed by the office of the comptroller; and all departments, offices, commissions and institutions authorized to make contracts under which money may be payable from the treasury shall submit as directed by the comptroller, before payment, certified copies of the contracts.

SECTION 62. The last sentence of said section 5 of said chapter 7A, as so appearing, is hereby amended by adding the following words:- and for the smallest possible issuance of revenue anticipation notes necessary under section 47 of chapter 29.

SECTION 63. Section 6 of said chapter 7A is hereby repealed.

SECTION 64. Section 8 of said chapter 7A, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “accounts”, in line 5, the following words:- , including adjustments for current or prior periods.

SECTION 65. Said chapter 7A is hereby further amended by striking out section 10, as so appearing, and inserting in place thereof the following section:-

Section 10. The comptroller shall establish policies and procedures that require all accounting statements included in reports of departments, offices and commissions to reconcile to the official books and records of the commonwealth before the publication of such reports. No such report shall be published by any such department, office or commission until such statements are

so confirmed.

SECTION 66. Section 11 of said chapter 7A, as so appearing, is hereby amended by inserting after the word “equipped”, in line 1, the following words:- , subject to appropriation,.

SECTION 67. Section 13 of said chapter 7A, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “and commissioner of capital asset management and maintenance”.

SECTION 68. Said chapter 7A, is hereby further amended by striking out section 16, as so appearing, and inserting in place thereof the following section:-

Section 16. The comptroller, in consultation with the secretary of administration and finance and the attorney general, shall administer the Liability Management and Reduction Fund established in section 2TT of chapter 29. The comptroller may appoint a liability manager of said fund whose compensation shall be paid out of said fund. The comptroller shall have the following powers and duties with respect to the fund:

(a) to use amounts in the fund to make payments or to purchase insurance coverage to make payments for the purposes set forth in said section 2TT of said chapter 29; provided, however, that any insurance coverage so purchased shall recognize and preserve the commonwealth’s constitutional, statutory and common law rights, defenses, immunities and control including, without limitation, chapters 12 and 258;

(b) to determine a deductible amount, which an agency shall be directly responsible for making payment relative to a claim arising under said chapter 258 and which deductible shall be excluded from the computation of the premiums subsequently charged to such agency;

(c) to determine and assess not later than October 1 annually the premium amounts to be charged to each state agency; provided, however, that:

(1) premiums shall be set and adjusted based on factors including, but not limited to:

(A) a 5-year experience rating reflecting, without limitation, liability incurred by reasons of judgments, settlements and litigation costs for tort claims under said chapter 258;

(B) minimum-estimated-liability amounts for pending claims as to which presentment has been made under said chapter 258;

(C) the record of the agency regarding safety or other training programs designed to reduce litigation or to detect and defend against frivolous or insubstantial claims; and

(D) any extraordinary factors warranting an adjustment in the discretion of the comptroller;

(2) any disputes between agencies relative to their respective proportions of responsibility for any resolved or pending claim or disputes relative to the valuation or the appropriate nature of such claims shall be determined by the comptroller, in consultation with the attorney general;

and

(3) the comptroller may pay rebates to agencies that reduce their resolved and pending claims totals below expected levels in a fiscal year and may assess surcharges on agencies experiencing unexpectedly high resolved and pending claims totals in a fiscal year;

(d) to make such other expenditures from the fund as are necessary, appropriate and reasonable for management and administration of the fund, including personnel costs; provided, however, that all direct and indirect costs for such employees shall be paid from the fund; and provided further, that the fund shall not be used directly or indirectly for the compensation of attorneys representing the commonwealth or its officers or employees.

The comptroller shall promulgate rules and regulations to effectuate the purposes of the fund including, but not limited to, the manner in which each agency shall be assessed a premium.

Documents indicating the estimated value of a particular pending claim shall not be public records and shall not be discoverable or admissible in evidence in any action.

SECTION 69. The General Laws are hereby amended by inserting after chapter 7B the following chapter:-

CHAPTER 7C

CAPITAL ASSET MANAGEMENT AND MAINTENANCE

Section 1. As used in this chapter and chapter 29, the following words and terms shall, unless the context clearly requires otherwise, have the following meanings:

“Acquisition”, obtaining by gift, purchase, devise, grant, eminent domain, rental, rental-purchase, or otherwise.

“Addition”, work which will result in an increase in the overall external dimension of a facility.

“Administering agency”, the public agency acting on behalf of a using agency,

“Alteration”, work required to modify or adjust the interior space arrangement or other physical characteristics of an existing facility so that it may be more effectively utilized for its presently designated functional purpose.

“Building authority”, the University of Massachusetts Building Authority, the Massachusetts State College Building Authority or any other building authority which may be established for similar purposes.

“Building project”, a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided,

however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water and highway systems shall not be subject to section 46.

"Capital facility", a public improvement such as a building or other structure; a utility, fire protection, and other major system and facility; a power plant facility and appurtenances; a heating, ventilating, air conditioning or other system; initial equipment and furnishings for a new building or building added to or remodeled for some other use; a public parking facility; an airport or port facility; a recreational improvement such as a facility or development in a park or other recreational facility; or any other facility which, by statute or under standards as they may be prescribed from time to time by the commissioner of capital asset management and maintenance, according to the provisions of this section, may be defined as such, provided however that a highway improvement such as a highway, bridge or tunnel or other structure or building integral to the operation of the Central Artery/Ted Williams Tunnel Project in the city of Boston and the city of Cambridge; a transportation improvement such as a mass transportation or other public transit facility, but not including a department of transportation building in the Park Square area of the city of Boston, shall not be considered a capital facility as defined herein; provided further that an improvement in information technology shall not be a capital facility to the extent it does not result in the creation or expansion of tangible property.

"Capital facility project", an undertaking by a public agency for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility.

"Commissioner", the commissioner of capital asset management and maintenance.

“Construction”, new construction, alteration, renovation, rehabilitation or other activity that is intended to result in a significant increase in internal usable space.

“Control and supervision”, authority to perform or contract for performance.

“Conversion”, work required to modify or adjust the interior space arrangement or other physical characteristics of an existing facility so that it may be effectively utilized for a new functional purpose.

“Energy audit”, in-depth engineering analysis of factors causing energy waste in building that investigates the amount and cost of energy waste and compares the energy waste with the expense of remedying the energy waste on a cost-effective basis.

“Energy conservation projects”, projects to promote energy conservation, including but not limited to energy conserving modification to windows and doors; caulking and weatherstripping; insulation, automatic energy control systems; hot water systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and, cogeneration systems.

“Maintenance”, day-to-day, routine, normally recurring repairs and upkeep.

“Master plan”, a study or description of a complex or group of buildings or any large or multi-faceted project which is intended to ensure that the various components of the complex shall be compatible with each other, and that the project as a whole shall be compatible with its surroundings.

“Oversight”, control and supervision, except for final approval of any contract, pre-design or design document or any alteration or modification thereof, payment, certificate of substantial completion, use and occupancy, or final acceptance.

“Planning”, in reference to a particular capital facility project, the preparation of a master plan, study, program or similar report or analysis the purpose of which is to define the content, cost, and schedule of the project so as to establish a frame of reference prior to design, acquisition, construction, demolition, installation, or maintenance.

“Program”, a document which defines a capital facility project in terms of its content, time, and cost so that it provides a clear and detailed frame of reference for the design and implementation process, the preparation of such document involving the gathering of data and the analysis of cost necessary to (i) the production of content, time and cost plans based on criteria deriving from those originally defined by any study or similar report and as finally stated within the body of the program itself and (ii) the evaluation of those plans in terms of such criteria.

“Public agency”, a department, agency, board, commission, authority, or other instrumentality of

the commonwealth or political subdivision of the commonwealth or 2 or more subdivisions thereof.

“Real property”, land, buildings, appurtenant structures and fixtures attached to buildings or land, including where applicable, all interests in real property, whether created by title, lease, easement or any other legal interest.

“Renovation”, work required to restore and modernize most or all of a facility in order that the facility may be effectively utilized for its designated functional purpose or to comply with current code requirements.

“Repair”, work required to restore a facility or system to such condition that it may continue to be approximately and effectively utilized for its designated purpose by overhaul, reprocessing or replacement of constituent parts or materials which have deteriorated by action of the elements or wear and tear in use.

“State agency” or “state department”, a legal entity of state government establish by the General Court as an agency, board, bureau, department, office or division, of the commonwealth with a specific mission and may report to cabinet-level units of government known as executive offices or secretariats or may be independent divisions or departments. In sections 32 to 40, inclusive, state agency shall not include counties.

“Study”, a feasibility or other study to identify and evaluate alternative solutions to and

recommend a solution to the needs and requirements defined by the public agency proposing a capital facility project which may involve a further definition of that agency's needs and requirements, gather additional information on the nature of the project, develop and review potential solutions to those needs and requirements, evaluate the financial, environmental, and other aspects of such solutions, estimate the degree to which solutions do not fulfill proposed objectives and criteria, and recommend a means of project implementation and site acquisition.

"Using agency", the public agency which will be the major user of a capital facility project or the occupant of a building project.

"Utility systems projects", installation, extension or replacement of systems for the provision of sewer, water and electrical service, power plant facilities and appurtenances, heating, ventilating and air conditioning, elevators, fire escapes, sprinklers and automatic fire alarms and telephone communications.

The commissioner of capital asset management and maintenance, after review by interested public agencies who may seek to initiate capital facility projects, shall establish standards as to what shall constitute a capital facility and what shall be a capital expenditure for the purpose of defining what shall constitute a capital facility project.

Section 2. The commissioner of capital asset management and maintenance shall be appointed by the secretary of administration and finance, with the prior written approval of the governor, and may be removed in like manner. He shall be a person of ability and experience, shall be familiar

with the principles of the systematic and coordinated planning of capital facilities and shall carry out such functions and duties as the commissioner may from time to time deem necessary for the efficient and economical administration of the capital assets of the commonwealth including, but not limited to, the systematic review of capital assets, the scheduling of routine and schedule maintenance repairs, tracking the deferred maintenance needs of capital assets and the coordinated planning of capital facilities in relation to the programmatic needs of state agencies. The commissioner shall devote his entire time to the duties of his office. No person holding such position shall be subject to chapter 31 or section 9A of chapter 30.

Except as otherwise provided in this chapter or any other statute or appropriation act, the commissioner of capital asset management and maintenance shall be responsible for:

(a) integrated and coordinated planning and budgeting of capital facilities on an annual and long-term basis;

(b) acquisition, allocation and disposition of real property;

(c) direction, control, supervision and oversight as to the planning, design, construction, demolition, installation, repair and maintenance of specific capital facilities and capital facility projects;

(d) efficient management of the operation of the division of capital asset management and maintenance as a whole and the proper coordination of the work of and effective operation of

individual offices, bureaus, and other sections which might be located therein. The commissioner may, subject to appropriation, appoint deputy commissioners and associate deputy commissioners and legal counsel as appropriate and may authorize such deputy commissioners or associate deputy commissioners or legal counsel to act in his stead in particular matters or classes of matters.

(e) direction, control, supervision, planning and oversight of the scheduled maintenance and repair needs of capital assets owned by the commonwealth.

The commissioner shall promulgate rules and regulations under chapter 30A.

The commissioner shall administer programs placed under his direction, undertake any special studies and investigations and submit reports and render advice thereon as may be requested by the secretary of administration and finance and as required by the general court.

The commissioner and his staff shall provide information to and cooperate with the general court or any of its committees in connection with the development and analysis of any long term capital facilities development plan or capital budget proposal.

The commissioner of capital asset management and maintenance may, in furtherance of the function of his office, accept and receive funds, grants and services from the federal government or its agencies, and from departments, agencies and instrumentalities of state and local government or from private individuals, trusts and estates.

The commissioner may from time to time contract for professional services in connection with the work of the division.

Section 3. The commissioner of capital asset management and maintenance shall advise the governor and the secretary of administration and finance on the means and methods available to coordinate capital facility project plans and programs of all public agencies and the federal government in order to establish relative priorities and to avoid duplication and conflicts. He shall create a central depository for planning documents as they relate to that end, and amendments thereto and revisions thereof prepared by or for public agencies. Effective on the effective date of this act, every public agency shall submit a list and description of such documents as currently exist and as they are promulgated and upon the commissioner's request, submit to him a copy thereof. The commissioner may by rule and regulation identify the documents required to be submitted.

The division of capital asset management and maintenance, if it is not designated as the state clearinghouse as provided for by the federal Intergovernmental Cooperation Act of 1968, as amended, and regulations promulgated pursuant thereto, shall be notified in a timely manner by the agency designated as the state clearinghouse as to any capital facility projects being reviewed by said agency. The commissioner of capital asset management and maintenance shall review such projects in light of current long range capital facility plans and other programs and policies of the commonwealth and submit his comments and recommendations to the agency designated as the state clearinghouse.

Section 4. Except as otherwise provided in this section or by any other statute or appropriation, the division of capital asset management and maintenance shall exercise jurisdiction over capital facility projects to the extent provided below:

(1) Control and supervision of all building projects undertaken by any state agency, except to the extent provided for by sections 5 and 26 and that the division shall exercise oversight jurisdiction over building projects undertaken by a state agency that are financed or funded from sources other than an appropriation or the issuance of bonds, notes or other evidences of indebtedness of the commonwealth. Using agencies shall cooperate in any inquiries or inspections conducted by the division of capital asset management and maintenance.

(2) Oversight as to building projects undertaken by any building authority, except to the extent provided for by sections 5 and 26 of this chapter. Building authorities shall cooperate in any inquiries or inspections conducted by the division of capital asset management and maintenance to ensure conformity with all applicable standards and guidelines.

(3) For housing projects within the jurisdiction of the department of housing and community development as defined by section 1 of chapter 121B, the division of capital asset management and maintenance shall provide only for the establishment of minimum requirements for record keeping and reporting by the department and operating agencies, as each is defined by section 1 of chapter 121B, and review of and recommendation as to the standards and guidelines for, direction, control, and supervision of their building projects. The department and operating

agencies shall cooperate with the division of capital asset management and maintenance, regarding inquiries and inspections conducted as to housing projects within their respective jurisdictions.

(4) For all capital facility projects of cities and towns for which specific approval or authorization by the general court or a state agency is otherwise required and for all capital facility projects of all other public agencies not included within the scope of paragraphs (1), (2), and (3), establishment of requirements for record keeping and reporting by the administering agency as to control and supervision of capital facility projects, so that the division of capital asset management and maintenance may assess the nature, scope and programs of all planned or current capital facility projects and fulfill its responsibilities as defined by this chapter and other relevant statutes. For the purposes of identifying agricultural lands, the commissioner shall utilize criteria established by the secretary of environmental affairs. Such criteria shall determine agricultural land according to past and present agricultural use, and according to the agricultural production suitability of land as defined by the standards of the United States Department of Agriculture Soil Conservation Service. For all capital facility projects or programs funded in whole or in part by federal funds, the record keeping and reporting requirements established pursuant to this paragraph and other relevant statutes may be satisfied by the federal requirements, but only to the extent that the state requirements duplicate the federal requirements or materially conflict with them. State and federal requirements shall be deemed to be materially conflicting only when it would be impossible or unduly burdensome to comply with both sets of requirements. Neither this provision nor any other provision of sections 1 through 32, inclusive, and sections 32 through 40, inclusive, of this chapter is intended or shall be construed to limit the

authority of any public agency — other than those specified in paragraphs (1) and (2) of this section — to control and supervise any capital facility project undertaken by that agency.

Section 5. The commissioner shall, in a manner and to the extent provided by this chapter, control and supervise any building project to be undertaken by a state agency or building authority when the estimated cost of the project exceeds $250,000 and involves structural or mechanical work. The commissioner may, upon request of a state agency or building authority, delegate project control and supervision to that state agency or building authority over projects involving structural or mechanical work whose estimated cost is less than $2,000,000 if the commissioner determines that the agency or authority has the ability to control and supervise such project. Except as otherwise provided in this section, any state agency or building authority shall control and supervise its own building projects when the estimated cost of such project is less than $250,000, or if the project does not involve structural or mechanical work.

Section 6. (a) The general court finds that (1) the Massachusetts commission against discrimination conducted hearings and investigations which documented a history of discrimination against minorities and women in the commonwealth; (2) and in 1994, the executive office of transportation and construction produced a disparity study which documented a history of discrimination against minority and women owned businesses, in which the commonwealth’s agencies were participants; (3) this discrimination against minorities and women currently affects the use of minority and women owned businesses in state contracting; (4) the commonwealth has a compelling interest in promoting the use of minority owned business and women owned businesses through the use of the available and qualified pool of

minority and women owned businesses; (5) it is the policy of the commonwealth to promote equality in the market and, to that end, to encourage full participation of minority and women owned businesses in all areas of state contracting, including contracts for construction and design services.

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

“Affirmative marketing program”, a program of race and gender conscious goals to promote equality in, and to encourage the participation of, minority-owned businesses and women-owned businesses in contracts for capital facility projects and state assisted building projects;

“Capital facility project”, shall have the same meaning as found in section 1 when the project is under the control of the division of capital asset management and maintenance;

“Design services”, any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

(i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

(ii) preparation of drawings, plans, or specifications, including, but not limited to, schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;

(iii) supervision or administration of a construction contract;

(iv) construction management or scheduling.

“Minority”, a person with a permanent residence in the United States who is American Indian, Black, Cape Verdean, Western Hemisphere Hispanic, Aleut, Eskimo, or Asian.

“Minority-owned business”, any contracting or subcontracting business, or businesses that supply the contractors and subcontractors which is beneficially owned by one or more minority persons as follows:

(i) the business must be at least 51 per cent owned by minority persons; in the case of a corporation having more than one class of stockholders, the ownership requirement must be met as to each class of stock;

(ii) the minority owners shall demonstrate that they have dominant control over management;

(iii) the business has not been established solely for the purpose of taking advantage of a special program which has been developed to assist minority businesses;

(iv) in the case of a joint venture between a minority business meeting the requirements of clauses (i) to (iii), inclusive, and a non-minority business, the joint venture shall be found to be a

minority business if the minority business meeting the requirements of said clauses (i) to (iii), inclusive, shall have more than one-half control over management of the project bid upon and shall have the right to receive more than one-half of the profits deriving from that project.

“State assisted building project”, a construction project undertaken by a political subdivision of the commonwealth or 2 or more subdivisions thereof for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility and whose costs are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth;

“State office of minority and women business assistance” or “SOMWBA”, shall have the same meaning as found in section 40 of chapter 23A.

“Women-owned business”, any contracting or subcontracting business which is beneficially owned by 1 or more women meeting the requirements in clauses (i) to (iv), inclusive, of the definition of minority business, except that the terms “women”, “women owners”, and “women-owned business”, shall be substituted for the terms “minority” and “minority persons”, “minority owners”, and “minority business” appearing in the definition.

(c) The commissioner, in consultation with the director of the state office of minority and women business assistance, may establish an affirmative marketing program to ensure the fair participation of minority-owned and women-owned businesses on capital facility projects and state assisted building projects. The affirmative marketing program shall establish participation

goals for minority-owned and women-owned business in the capital facility projects and state assisted building projects. The participation goals for minority-owned business and women-owned business shall be based upon the broadest and most inclusive pool of available minority-owned businesses and women-owned businesses interested in and capable of performing construction work and design services on the capital facility projects, state funded building projects, and state assisted building projects; but, the commissioner may establish both statewide and regional participation goals based upon the availability of minority-owned businesses and women-owned businesses. The state office of minority and women business assistance, or its successor agency, shall create and maintain a current directory of certified minority-owned businesses and women-owned businesses which will serve as one source of information in determining the pool of available minority-owned businesses and women-owned businesses. The commissioner and the director of SOMWBA shall meet on a quarterly basis to determine the status of the implementation of the affirmative marketing program and what further steps both agencies consider necessary to achieve the purpose of this section.

(d) Not later than January 15 of each year, the commissioner, in consultation with the director of state office of minority and women business assistance, shall establish participation goals for minority-owned businesses and women-owned businesses. The participation goals established under this section shall apply to capital facility projects and state assisted building projects. The participation goals shall be expressed as overall annual program goals which shall be applicable to the total dollar amount of contracts awarded for construction work and design services on capital facility projects and state assisted building projects for the calendar year. The commissioner shall publish in the central register, established under section 20A of chapter 9, the

participation goals for minority-owned businesses and for women-owned businesses on capital facility projects and state assisted building projects. The participation goals for minority owned businesses and women owned businesses shall remain in effect until revised participation goals are established and published under this paragraph. The participation goals for minority owned businesses and women owned businesses, developed before the effective date of this section, under any existing executive order and in effect as of the January preceding the effective date of this section shall remain in effect until January 15 of the following year. The participation goals for minority-owned businesses and women-owned businesses shall be revised as necessary every 2 years thereafter.

(e) The commissioner, in consultation with the director of the state office of minority and women business assistance, shall develop a written procedure by which a public agency may, for an individual capital facility project, adjust the participation goals for minority-owned business and women-owned business based upon the actual availability of minority-owned businesses and women-owned businesses, the geographic location of the project, the scope of work of the capital facility project, or other relevant factors.

(f) The commissioner shall develop a written, good faith efforts waiver procedure by which public agencies may determine, at any time before the award of a contract, that compliance with the goals is not feasible and by which public agencies may reduce or waive the goals for an individual contract.

(g) In connection with the affirmative marketing program, the state office of minority and

women business assistance shall regularly review and, where necessary, modify its certification process to ensure that it operates effectively, and shall report annually to the secretary of administration and finance regarding these matters.

(h) The commissioner shall be responsible for the overall management, monitoring, and enforcement of the affirmative marketing program, as the program relates to capital facility projects under the control of the division, established under this section. The commissioner may appoint a program director within the office of the commissioner to assist in program development, coordination and compliance. The program director shall also have responsibility for monitoring contract compliance within the division, addressing potential program violations and coordinating division enforcement activities with the state office of minority and women business assistance and the attorney general.

(i) The commissioner shall by March 15 of each year submit to the joint committee on state administration and regulatory oversight, the house and senate committees on ways and means, the clerks of the house and senate a report on the performance of the division's affirmative marketing program for the preceding year. The report shall, at a minimum, show the name and address of each such minority owned business and women owned business, its designation as a minority-owned or women-owned business, the contract or subcontract price, a description of the work performed on the contract by class of work, and project type, and shall show separately the total number of contracts awarded to minority-owned and women-owned businesses as a percentage of the total number of contracts awarded and as a percentage of the total contract price.

(j) The commissioner shall promulgate regulations necessary to implement this section.

Section 7. Except as otherwise provided in section 3 of chapter 211, the commissioner of capital asset management and maintenance shall: (1) be responsible for the acquisition, control and disposition of court facilities on behalf of the commonwealth, in the manner and to the extent provided in this chapter for other real property of the commonwealth; (2) provide facilities for the trial court, the appeals court and the supreme judicial court; (3) be responsible for planning and budgeting for such court facilities in the manner and to the extent provided in this chapter and in chapter 29 for capital facilities of state agencies; and (4) have jurisdiction over capital facility projects undertaken by the office of the chief administrative justice of the trial court for such court facilities in the manner and to the extent provided in this chapter and in chapter 149 for capital facility projects undertaken by state agencies. Notwithstanding any other general or special law to the contrary, all real property owned by the commonwealth for use as a courthouse, whenever such property was acquired, shall be held in the name of the commonwealth as provided in sections 32 and 33, and the division of capital asset management and maintenance shall hold the deeds to all such property as provided in section 39.

There shall be within the division of capital asset management and maintenance a director of court facilities. The director of court facilities shall be appointed by the commissioner of capital asset management and maintenance with the advice of the chief administrative justice of the trial court and the approval of the secretary of administration and finance, and may be removed in like manner. Said position shall not be subject to section 9A of chapter 30 or chapter 31. Said

director shall have the qualifications deemed necessary by the commissioner of capital asset management and maintenance. Said director shall perform such duties of said commissioner with respect to court facilities as said commissioner shall assign, including at least the duty to respond to any inquiry from a county, city or town or from the office of the chief administrative justice of the trial court regarding court facilities.

Section 8. The commissioner of capital asset management and maintenance shall:

(1) develop and operate automated management and information systems and provide data processing services;

(2) develop and maintain all necessary accounting and financial systems;

(3) develop, justify and monitor internal operating budgets;

(4) provide business services including central filing, printing, and reproduction, correspondence and word processing services;

(5) develop and maintain all necessary systems to administer payments to those contracting for the provision of services and supply of materials;

(6) develop and operate an accounting, reporting, and financial management system that will permit proper management of the capital facility program;

(7) perform or contract for performance of research on innovative methods for the acquisition, planning, design, construction, demolition, installation, and repair and maintenance of capital facilities;

(8) give counsel on all legal matters affecting capital facility projects provided that this provision shall not preclude the employment of counsel by any office within the division of capital asset management and maintenance;

(9) approve project budgets and the award of contracts;

(10) recommend and where appropriate, certify for disbursement monies appropriated or authorized for capital facility projects;

(11) establish guidelines and requirements for the preparation and retention of records and reports pertaining to the nature, scope and progress of capital facility projects; and

(12) perform such other acts to assure the proper management of the operation of the division of capital asset management and maintenance and the proper coordination of the work of and effective operation of the individual offices located therein.

The commissioner shall, after providing an opportunity for the attorney general and other interested parties to comment, promulgate and from time to time revise uniform contract

conditions appropriate to the type of service being rendered to be incorporated in all contracts for services of that type related to capital facility projects. Such uniform contract conditions may be supplemented by but shall take precedence over additional contract conditions for any particular capital facility project.

The commissioner may from time to time establish within the division of capital asset management and maintenance such administrative units, in addition to the offices of programming, project management and facilities management and the bureau of state office buildings, necessary for efficient and economical administration of the work of said division; and when necessary for such purpose, he may abolish such unit or may merge any 2 or more of them. The said commissioner shall prepare and keep current a general statement of the organization of said division and of the assignment of functions to its various administrative units, officials, and employees. Said statement shall be known as the “description of organization” of said division, and shall be kept on file in said division.

The commissioner shall develop quantitative performance measures for each individual office and other administrative units located therein and for the division as a whole. Using such measures, the commissioner shall once each year prepare and submit to the secretary of administration and finance a report on the performance of the individual offices and of the division as a whole, comparing that performance with that of the previous 3 years, the reasons for any change, and recommending changes in the operation of the division and its offices, as will improve their performance.

The directors of individual offices and the heads of other administrative units located in the division shall, upon request by the commissioner conduct internal, operational, financial, and compliance audits.

Section 9. The commissioner shall, no less often than once every 3 months, prepare a comprehensive report on the progress of all capital facility projects subject to the jurisdiction of the division of capital asset management and maintenance as defined by section 5 but not including those for which a city or town is the administering agency. At the discretion of the commissioner, said reports may exclude capital facility projects with a total project cost of less than $25,000 for which the administering agency is other than a state agency. Said report shall include, but not be limited to, a statement of the name of each project, the administering agency and the using agency, a brief current description of the project and any substantial changes in the description of the project during the past 3 months, the source of funds, the state of progress of the project, a summary of the total and major costs of the projects as originally estimated and as currently expended or currently estimated to be expended, the original project schedule and the current and estimated progress of the project, and such other information as the commissioner may require be included. Said report shall be submitted to the secretary of administration and finance and the clerks of the house of representatives and the senate and shall be a public document.

The commissioner of capital asset management and maintenance shall by February 15 of each year prepare a comprehensive annual report on the progress of all capital facility projects subject to the jurisdiction of the division of capital asset management and maintenance defined by

section 4. At the discretion of the commissioner, said annual report need not include capital facility projects with a total project cost of less than $25,000 for which the administering agency is other than a state agency. Said annual report shall constitute 1 of the 4 reports required by the previous paragraph of this section but shall contain in addition to the information required in the previous paragraph for each capital facility project, the following data: the authorizations for and sources of funds and expenditure and unencumbered balances thereof; identification of the designers and contractors who have contracted with the administering agency to provide materials or services therefor, the administering agency's project and contract numbers, the value of the contracts and the amount of money paid in accordance with the contracts; and such other information as the commissioner may require be included. The commissioner shall also include in said report a statement of the problems which have arisen in the capital facility procurement programs and procedures of public agencies and specific recommendations for administrative and legislative action which are necessary to remedy such problems. Said report shall be submitted to the secretary of administration and finance and the general court and shall be a public document available for general distribution.

The commissioner shall by February 15 of each year prepare a comprehensive report including, but not limited to, an analysis of the utilization, cost and method of acquisition of real property acquired for the use of state agencies; the sale or rental of such real property and revenue realized therefrom; and problems which have arisen in the management of real property by the commonwealth, with specific recommendations for administrative and legislative action necessary to remedy such problems. Said report shall be submitted to the secretary of administration and finance, the joint committee on state administration and regulatory oversight

and the general court and shall be a public document available for general distribution.

The commissioner shall develop and annually revise a proposed capital repair and maintenance plan for state buildings subject to the jurisdiction of the division of capital asset management and maintenance. The plan shall be based upon repair and maintenance schedules formulated for each building and group of buildings by the director of facilities management in accordance with sections 24, 26, and 28. In addition to developing capital repair and maintenance schedules for state buildings, the plan shall analyze the costs and benefits of continuing minor repairs versus the costs and benefits of major renovation, rehabilitation, or replacement of the state buildings. The commissioner shall by February 15 of each year, submit the proposed capital repair and maintenance plan required by this paragraph to the house and senate committees on ways and means and the chairs of the joint committee on state administration and regulatory oversight.

The commissioner shall keep an up-to-date record, by years and cumulatively, on all capital repair and maintenance projects completed, in process, or scheduled for the future, on all building projects subject to the jurisdiction of the division of capital asset management and maintenance.

The commissioner shall, by February 15 of each year, prepare a report, by years and cumulatively, on all capital repair and maintenance projects completed, in process, or scheduled for the future, on all capital facility projects, said report shall include narrative statements indicating why such repairs or maintenance on such projects have been or will be postponed or cancelled. A copy of said report shall be sent to the house and senate committees on ways and

means, and to the chairs of the joint committee on state administration and regulatory oversight.

The governor may, include in his capital outlay budget or request, a budget narrative statement, indicating why any and all repairs or maintenance on capital facility projects of the commonwealth, have been or will be postponed or cancelled.

Upon completion of the final design of each state building project estimated to cost in excess of $5,000,000, the commissioner shall prepare an analysis detailing the maintenance costs projected annually over the useful life of the building. The commissioner shall, by February 16 of each year, prepare a report summarizing the annual maintenance costs projected for each building project described in this paragraph, for which final design was completed during the prior year. The report shall be filed with the chairs of the joint committee on state administration and regulatory oversight and the agency responsible for the operation and maintenance of the building project.

In subsequent fiscal years for which the maintenance report indicates that maintenance will be required, the agency responsible for the operation and maintenance of the building shall include the projected annual maintenance costs contained in the report in its annual budget request, provided that revisions to the maintenance costs originally projected by the commissioner shall be addressed in the agency's budget narrative.

The commissioner shall be responsible for providing state agencies with comprehensive maintenance manuals for all new building projects constructed on behalf of an agency.

Section 10. In order to assist himself in the performance of his functions the commissioner of capital asset management and maintenance shall establish an advisory council on capital asset management and maintenance which shall meet at such times as the commissioner shall set, but no less often than once every 3 months, to seek information, advice, and counsel as to the recommendation, establishment, and evaluation of priorities and schedules for the acquisition, planning, design, construction, demolition, installation, repair and maintenance of capital facilities. Such of the executive officers of public agencies directly responsible for the acquisition, planning, design, construction, demolition, installation, repair and maintenance of capital facilities or their designees as the commissioner may request shall attend those meetings.

Section 11. There shall be located within the division of capital asset management and maintenance an office of programming headed by a director of programming. Said director shall be appointed by the commissioner of capital asset management and maintenance, with the prior written approval of the secretary of administration and finance, and may be removed in like manner. The position of director shall not be subject to chapter 31 or section 9A of chapter 30.

No person shall be appointed director of the office of programming unless the person has extensive experience in the study and programming of buildings.

The commissioner of capital asset management and maintenance shall be responsible for the exercise of all powers and the performance of all duties assigned by law to the office of programming, which shall be under his direction, control, and supervision.

Section 12. Except as otherwise provided in this section or by any appropriation act, the director of programming shall, in the manner and to the extent provided by this section, have control and supervision of the study and programming of all capital facility projects of state agencies and building authorities.

The director may appoint such deputies and other supervisory staff as the work of the office may require, subject to appropriation and the commissioner's approval. Such staff shall serve at the pleasure of the director and shall not be subject to chapter 31 or to section 9A of chapter 30. The director shall appoint, subject to the commissioner's approval, all other officers and employees of said office, including such programmers, architects, engineers, landscape surveyors, cost estimators, as the director deems necessary to carry out the tasks assigned to the bureau.

The director shall:

(1) recommend to the commissioner rules and regulations, standards and guidelines for the preparation of master and other plans, studies, and programs for capital facility projects;

(2) review and make a written evaluation to the commissioner as to specific project studies, programs and other predesign documents and their consistency with long range capital facilities development plans and capital facility budget requests;

(3) upon request by using agencies, assist them in the development of specific project

descriptions and proposals forming a part of those agencies' long range capital development plans and specific capital facility budget requests;

(4) upon request of using agencies, and at his discretion, develop master and other plans, perform feasibility and other studies, or prepare programs for projects for which such plans, studies, and programs are authorized by the general court to be performed;

(5) upon request by using agencies assist the staff of using agencies, and at the discretion of said director assist others providing such services to using agencies in their performance of plans, studies, or programs to assure conformity with the rules and regulations, standards and guidelines for such plans, studies, and programs;

(6) provide guidance and assistance to other bureaus and sections or units within the division in the performance of their responsibilities as they relate to completed planning stages for projects;

(7) recommend to the commissioner rules and regulations, standards for the conduct of post-occupancy evaluations of all projects for which the division of capital asset management and maintenance has performed or caused to be performed programming services, such post-occupancy evaluation to be based on the program so developed and appropriate in scope and detail to the type, cost and significance of the project being evaluated;

(8) assist the commissioner in the evaluation of projects to determine the effectiveness of prior programming, planning, and budgeting decisions; and

(9) conduct, with staff or consultants, post-occupancy evaluations for projects under the jurisdiction of the bureau of project management, the cost of which exceeds a fixed sum to be determined by the director, assume such other responsibilities as the commissioner may direct.

The director shall create a depository for plans, studies, programs, and designs for building projects prepared for any using agency subject to the jurisdiction of the division of capital asset management and maintenance under section 4 of this chapter. Each such agency shall promptly send to the director a brief identification and description of each plan, study, program, and design after its completion. The designer selection board shall promptly send to the director a brief identification and description of any designs offered to it as part of any design competition administered by the board under section 49. Upon request by the director, the user agency or board shall send to the director a copy of said plan, study, program or design.

Section 13. There shall be within the division of capital asset management and maintenance an office of project management headed by a director of project management.

The director shall be appointed by the commissioner of capital asset management and maintenance with the approval of the secretary of administration and finance, and may be removed in like manner. Said position shall not be subject to section 9A of chapter 30 or chapter 31. No person shall be appointed director of said bureau unless at the time thereof he shall be registered by the commonwealth as an architect or professional engineer pursuant to the provisions of chapter 112 and shall have proven ability and extensive experience in the

management of the design and construction of buildings.

The director may appoint such deputies and other supervisory staff as the work of the office may require, subject to appropriation and the commissioner's approval. Such staff shall serve at the pleasure of the director and shall not be subject to chapter 31 or to section 9A of chapter 30. The director shall appoint, subject to appropriation and subject to the commissioner's approval, all other officers and employees of said office.

The commissioner shall be responsible for the exercise of all powers and the performance of all duties assigned by law to said office, which shall be under his direction. The director shall advise the commissioner as to rules and regulations, standards and guidelines, and priorities and schedules to be established for the office and the division of capital asset management and maintenance.

Section 14. The duties and responsibilities of the director shall include, but not be limited to, the following: review and comment on all long range capital facilities development plans and capital budget requests for building projects by any state agency or building authority for purpose of assisting in the development of schedules, cost estimates and projections; review of said plans and requests for technical feasibility; where appropriate, recommendation that a study or program be conducted; and recommendation to the commissioner of methods which might be used for the design and construction of new facilities or major additions to existing facilities.

The methods recommended shall include the latest developments in construction as well as

standard methods, for the purpose of insuring quality, timeliness and economy of construction, such techniques to include but not be limited to construction management, fast-tracked or phased construction, turnkey procurement and design and build procurement. The director shall also recommend to the commissioner the method for procuring design and construction services when an alternative construction method is recommended; such recommendation shall be in writing and contain the reasons for not complying with the standard selection and bidding laws provided that the legislature shall approve the method for procuring design or construction services for such project and provided that such procurement method shall comply with the policies and procedures of sections 44A through 44M, inclusive, of chapter 149, to the extent feasible.

The director shall develop guidelines regarding the types of projects that would most benefit from use of alternative construction methods and shall periodically evaluate their effectiveness.

The director, if otherwise permitted by statute or appropriation, may use a phased contracting procedure, provided that the contracts awarded can be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) in accordance with (i) any study or program which must be prepared under section 59 or (ii) any other pre-design document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith.

If the director considers it in the best interests of the commonwealth he may employ, in addition to the standard architectural and professional contractors, quantity surveyors, network scheduling consultants and cost estimators.

The director shall recommend to the commissioner standards for conducting studies, programs, and designs; for real property acquisition in anticipation of construction, including the kind and extent of testing required; for contractor selection; and for project evaluation. He may recommend to the commissioner such additional standards and guidelines as he shall deem necessary or desirable to expedite the work of the office.

The director shall hire such project managers, cost estimators, and architectural, engineering, and technical personnel as he deems appropriate to: (a) estimate and review project costs and schedules; (b) monitor design and construction standards; (c) perform design services; (d) review project designs to ensure that they meet the standards established for all projects; (e) provide technical assistance to using agencies; and (f) administer and supervise design and construction contracts.

The director shall recommend to the commissioner standards and procedures to be followed by project managers in overseeing individual construction projects, including standards and procedures for scheduling of the performance of particular aspects of projects; forms to be used in reporting and processing of information regarding change orders and price adjustments, periodic payment, and other payments pursuant to approved progress schedules; and all other standards and procedures necessary to the efficient administration and oversight of individual construction projects, or required by statute or regulation.

The director shall recommend to the commissioner standards for internal audits to be performed

on individual projects. Such audits shall be performed at the direction of the director when he has determined that an individual change order is so large, or a series of change orders cumulatively are so substantial, that the project should be reviewed, or when he has determined that there have been significant individual or cumulative delays in progress on the project, or at such times as he deems necessary. Whenever a change order is approved the director shall state in writing the reasons for not requesting an audit.

Section 15. The contract which the director shall make with the designer appointed under the preceding section shall provide, among other appropriate terms, that the designer shall, in consultation with the using agency and subject to that agency's approval, prepare plans and specifications for the building project for submission to said director for his approval and shall use standard contract documents and specifications which said director shall have prepared with the approval of the commissioner and made available within the office.

No obligation shall be incurred or payment made for preparation of any plans or specifications for any building project without the prior approval of the commissioner; and in the case of a building project undertaken on behalf of the commonwealth, no plans or specifications shall be prepared until a special appropriation shall have been made therefor or for the project or until federal funds or assistance shall have been made available therefor. No other obligation shall be incurred or payment made in connection with any building project until such obligation or payment shall have been approved in accordance with sections 1 to 40, inclusive, and section 60 and section 11 of chapter 35.

Schematic, preliminary and working plans and specifications for each building project shall, following initial submission to the using agency for comment, be submitted by the designer to the director for his approval. In reviewing such plans and specifications, the duty of the director shall be to see that they are clear and complete and permit execution of the building project (a) within the appropriation or authorization for the project or within project cost limits specified by the appropriation or authorization and (b) in accordance with (i) any study or program prepared in accordance with section 59 or (ii) any other pre-design document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. When a phased construction technique is approved by the legislature, the director shall approve working plans and specifications at appropriate stages of the project.

Following final approval of such plans and specifications, the director shall advertise in the central register published by the secretary of state pursuant to section 20 of chapter 9 and in such other publications as the commissioner shall direct, for applications to bid on or proposals for the performance of the work on the project; except that the commissioner may direct that the purchase of any materials, original equipment or original furnishings for the project shall be made under sections 22 to 26, inclusive, of chapter 7. Subject to the prior approval of the commissioner and the applicable provisions of sections 44A to 44M, inclusive, of chapter 149 he shall award the contract or contracts for such work to the lowest responsible and eligible bidder; but no such contract on behalf of the commonwealth shall be awarded by him for a sum in excess of the amount which the comptroller shall certify to be available therefor. If the director shall knowingly award a contract in violation of this section, the director may be removed from office by the governor.

The director shall be responsible for accepting or rejecting each project upon its completion and for directing final payment for work done thereon; provided, however, that if upon inspection of any project for acceptance he shall find that the plans, specifications, contracts or change orders for the project shall not have been fully complied with, he shall, until such compliance has been effected or adjustment satisfactory to him has been made, refuse to accept the project and direct such payment.

Upon acceptance of the project, the director shall release the same to the using agency, unless the using agency objects to said release, in which case the director shall work with the using agency to remove the causes of the objection. The director shall not refuse to accept the project from the contractor and shall not refuse to direct final payment to the contractor because of the using agency's objections if the director has determined that the contractor has completed the project in accordance with contract.

Section 16. The director shall appoint, for each project under the jurisdiction of the office of project management, a project manager, who shall oversee all planning, design and construction of the project or provide appropriate assistance to others as enumerated below. No person shall be appointed or employed as a project manager unless at the time thereof he shall be registered by the commonwealth as an architect or professional engineer under the provisions of chapter 112 or shall have a professional degree in a field providing equivalent experience and shall have at least 5 years experience in the construction and supervision of construction of buildings. Project managers employed by the bureau shall be exempt from section 9A of chapter 30 and

chapter 31.

The terms, conditions and duration of their employment shall be established by the director subject to appropriation and the building projects to which he has been assigned by the director. He shall:

(1) Assist and make recommendations to using agencies as to real property acquisition in anticipation of construction;

(2) Assist by reviewing and making recommendations to using agencies as to the study, programs or other planning documents for the project;

(3) Participate as a non-voting member of the designer selection board panel during the designer selection process for the particular building project to which the project manager has been assigned;

(4) Represent the using agency in the designer selection, design and construction phases of the building project, the project manager having exclusive authority to make decisions in these areas, except as provided in sections 17 to 21, inclusive, after consultation with the using agency and consideration, before such decisions are made, of using agency recommendations;

(5) During the design stage of each project to which he has been assigned, review and comment on said design or verify that said design has been reviewed by the authorities charged by law

with enforcement responsibility, in order to insure that the design complies with all federal and state laws, rules, regulations and codes; insure to the extent feasible that the design is such as to specify a project that (a) can be accomplished within the appropriation or authorization for that project or within the project cost limits specified by the appropriation or authorization, and (b) can be accomplished in accordance with (i) any study or program which must be prepared in accordance with section 59 or (ii) any other pre-design document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith; no building project shall be allowed to proceed to the construction stage until such reviews have been accomplished and compliance confirmed or certified;

(6) Insure the preparation of time schedules which shall serve as control standards for monitoring performance of building projects; and

(7) Assist in project evaluation including, but not limited to, written evaluations of the performance of the architect, engineers, contractors and other personnel, and evaluation of construction techniques and procurement mechanisms.

Section 17. As used in this section and sections 18 to 21, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings: “Change order”, a written order not requiring the consent of the contractor, signed by the project manager and designated as an approved change order, directing the contractor to make changes in the work within the general scope of the contract, or, any written or oral order from the project manager which causes any change in the work, provided that the contractor gives the commonwealth

written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

“Contract modification”, any written alteration in plans or specifications, period of performance, price, quantity, or any other provision of the contract accomplished by mutual action of the parties to the contract.

The project manager may at any time, subject to the requirements set forth herein and in section 39I of chapter 30, order changes in the work within the general scope of the contract, including but not limited to changes: (a) in the plans and specifications (including drawings and designs); (b) in the method or manner of performance of the work; (c) in the commonwealth furnished facilities, equipment, materials, services or site; or (d) in the schedule for performance of the work. All such orders shall be written and designated to be change orders. All change orders or other contract modifications shall require the approval of the director when: (a) the cumulative cost of all previously approved increases in the contract price exceeds 5 per cent of the original contracted construction cost of the project, or such other percentage or dollar amount or criteria as designated by regulations of the commissioner; or (b) the preliminary estimate of the change in the contract price resulting from the change order or contract modification is $5,000 or more. The director may, after review of building projects for which the cumulative total of increases in the contract price has exceeded 5 per cent of the original contracted construction cost or such other percentage or dollar amount or criteria, direct the project manager as to those proposed changes, the preliminary estimated cost of which are under $5,000, that shall require the director’s approval.

The commissioner shall promulgate regulations governing the procedures for obtaining preliminary estimates and giving notice to the contractor as to the necessity of obtaining the director's approval before any work pursuant to a change order or contract modification is commenced. Such procedures shall be designed so as to avoid delays in the progress of the project.

The project manager may delegate to the resident engineer, subject to approval by the director and notice to parties in interest, his authority to process and approve change orders when authorized to do so by regulations of the commissioner.

Section 20A of chapter 29 shall not apply to any change order request submitted and acted upon under sections 17 to 21, inclusive, of this chapter.

Section 18. Any request for a change order shall be processed promptly, in compliance with regulations promulgated by the commissioner, and otherwise according to the requirements of section 39P of chapter 30. Requests shall be submitted to the project manager, who shall, after consultation with the designer and the using agency, approve or disapprove the request. The project manager shall, after obtaining any other required approvals or disapprovals, notify in writing the designer, the using agency and the requesting party of the request and shall issue a written change order or written notice of disapproval to the contractor. If the approval or disapproval would result in a deviation, as defined by regulations of the commissioner from (a) any study or program which must be prepared in accordance with section 59 or (b) any other pre-

1993 design document which must be prepared in accordance with any other statute, appropriation or
1994 authorization or administrative directive consistent therewith, the decision made shall be subject
1995 to appeal by the using agency to the secretary of administration and finance. Such appeal shall
1996 set forth in writing the reasons therefor and a copy thereof shall be furnished to the commissioner
1997 at the time the appeal is filed with the commissioner. The commissioner shall, within 10 days
1998 following the receipt of such appeal, render a written decision thereon, which shall be final and
1999 conclusive.
2000
2001 Section 19. If any change order under section 17 causes any change in the contractor's cost of
2002 performance of any work under the contract, whether or not that work is changed by any order,
2003 either the contractor or the project manager may request an equitable adjustment in the contract
2004 price. A request for such an adjustment shall be in writing and shall be submitted by the party
2005 making such claim to the other party before commencement of the pertinent work or as soon
2006 thereafter as possible, and in any event within 30 days of receipt by the contractor of an approved
2007 change order or the mailing or furnishing to the commonwealth by the contractor of written
2008 notice that the contractor regards an order as a change order. Except for claims on defective
2009 specifications, no claim for any change under this section shall be allowed for any costs incurred
2010 more than 20 days before the contractor gives written notice as required by this section. In the
2011 case of defective specifications for which the commonwealth is responsible, the equitable
2012 adjustment shall include any cost reasonably incurred by the contractor in attempting to comply
2013 with such defective specifications.
2014
2015 The project manager and the contractor shall by negotiation agree upon an equitable adjustment

in the contract price before commencement of the pertinent work or as soon thereafter as possible. Notice of the adjustment shall be given to the director. In the absence of agreement by the parties on an equitable adjustment in the contract price, the project manager shall unilaterally determine the costs attributable to the change order. Unilateral equitable adjustments of the project manager shall be reduced to writing and a copy mailed or otherwise furnished to the contractor. Such adjustments shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the project manager a written appeal addressed to the commissioner, and otherwise complies with the requirements set forth in section 39Q of chapter 30. Said section shall govern further appeal to the division of hearing officers.

Section 20. The contractor shall submit, in accordance with regulations of the commissioner, cost and pricing data to be used when negotiating adjustments for change orders or other contract modifications. Such cost and pricing data shall be based on generally accepted accounting principles and be in conformity with the guidelines promulgated by the commissioner. Cost estimators employed within the division of capital asset management and maintenance shall review and evaluate cost and pricing data submitted by the contractor.

The contractor shall certify that, to the best of his knowledge and belief, the cost and pricing data submitted was accurate, complete, and current as of the date of submission. Any change order or contract modification under which a certificate is required shall contain a provision that the price to the commonwealth, including profit or fee, shall be adjusted to exclude any significant sums by which the commonwealth finds that such price was increased because the contractor-

2039 furnished cost or pricing data was inaccurate, incomplete, or not current as of the date of
2040 submission.
2041
2042 Section 13 of chapter 258 and section 67A to section 67C, inclusive, of chapter 266, shall fully
2043 apply to the cost and pricing data certification requirements of this section.
2044
2045 Section 21. Equitable adjustments in the contract price negotiated pursuant to section 19 or as
2046 part of a contract modification shall be made in accordance with the general principles in this
2047 section. The commissioner shall promulgate regulations designed to implement this section.
2048
2049 (1) Adjustments in the contract price shall be made to the maximum extent feasible on a fixed
2050 price basis prior to the execution of the change order or contract modification, if this can be done
2051 without adversely affecting the interests of the commonwealth.
2052
2053 (2) Where a fixed price cannot be set due to difficulty in estimating the scope of the change
2054 ordered, adjustment may be made on a lump-sum guaranteed maximum price basis calculated by
2055 use of unit prices specified in the contract or agreed upon by the parties.
2056
2057 (3) Cost reimbursement or time-and-materials methods of price adjustment shall not be used,
2058 except where, in the written opinion of the commissioner, no other pricing method is possible.
2059 When such pricing method is used, the contractor shall provide complete and accurate
2060 information disclosing the costs incurred in performing changes. The contractor shall maintain
2061 separate accounts, by job order or other suitable accounting procedure, of all segregable direct

cost of work, both changed and not changed, allocable to the change. The commissioner shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs.

Section 22. There shall be assigned to every building project under the supervision of the office a resident engineer. Resident engineers may be hired as permanent employees subject to chapter 31 or as consultants exempt from said chapter 31. No person shall be employed as a resident engineer unless at the time thereof he shall have had at least 10 years experience in the construction and supervision of construction of buildings, or shall have a degree in engineering, architecture or a field providing equivalent expertise and at least 5 years such experience.

The resident engineer shall represent the commonwealth daily on the site of construction projects and shall be responsible for checking, inspecting and reporting to the project manager on a regular basis both in writing and orally as to events at the construction site and shall send copies of written reports to the designer on a regular basis.

The project manager may delegate to the resident engineer, subject to approval by the director, notice in writing to all parties in interest, and limits otherwise imposed by this chapter, the authority to make decisions regarding plans, specifications, and materials; the authority to represent the project manager at job meetings; and the authority to order minor changes and make equitable adjustments in the contract price.

The resident engineer shall report in writing to the project manager all problems, disputes,

complaints or questions from or concerning designers, contractors or other personnel involved in the project.

There shall be assigned to every project under the control and supervision of the office a cost estimator, who shall be responsible for reviewing all project costs. Cost estimators may be hired as permanent employees subject to chapter 31 or as consultants exempt from said chapter 31.

Cost estimators shall have proven ability and experience in construction cost estimating and shall be familiar with various approaches to cost estimating, including but not limited to conceptual and preliminary estimating designed to provide budget and planning guidance in the early stages of a project, labor-cost estimating, fair cost estimating prepared from completed plans and specifications, contractors' bid estimating and definitive or detailed estimating.

The cost estimator, working in cooperation with using agencies requesting projects, shall provide estimates of the costs of proposed projects. He shall review all cost projections for studies, programs and designs, as well as contractors' cost estimates. The cost estimator shall review change order estimates, cost and pricing data, payment schedules and progress payment requests, and make recommendations to the project manager at the project manager's directive.

Public agencies other than political subdivisions of the commonwealth that conduct building projects outside the jurisdiction of the division of capital asset management and maintenance as provided in section 4 may request assignment of a project manager, resident engineer or cost estimator employed by the office of project management. Such assignment shall be subject to

approval by the commissioner. Any agency making use of the office's staff on a project outside the normal jurisdiction of the office shall reimburse the office for all expenses incurred, including salaries and overhead. The director shall recommend to the commissioner regulations governing fees to be paid by public agencies for use of the office's services on projects outside its normal jurisdiction.

Section 23. The director may, with the approval of the commissioner and the governor, accept on behalf of the commonwealth any federal funds or assistance for financing the cost of plans and specifications for any project.

If such funds or assistance shall be appropriated for aiding construction of any project, the director may, with like approval, apply for the same and may, with the approval of the governor, accept the same on behalf of the commonwealth. Any project so aided shall be executed in all respects subject to applicable federal laws and rules and regulations and also to the applicable provisions of this chapter not inconsistent therewith.

Section 24. There shall be located within the division of capital asset management and maintenance an office of facilities management, headed by a director of facilities management. The director shall be appointed by the commissioner, with the approval of the secretary of administration and finance, and may be removed in like manner. Said office shall not be subject to section 9A of chapter 30 or chapter 31. No person shall be appointed director of said office unless at the time thereof he shall be registered by the commonwealth as an architect or professional engineer pursuant to chapter 112 and shall have proven ability and extensive

2131 experience in the management and oversight of operation, maintenance and repair of buildings.

2132

2133 The director may appoint such deputies and other supervisory staff as the work of the office may
2134 require, subject to appropriation and the commissioner's approval. Such staff shall serve at the
2135 pleasure of the director and shall not be subject to chapter 31 or to section 9A of chapter 30. The
2136 director shall appoint, subject to the commissioner's approval, all other officers and employees
2137 of said office.

2138

2139 The director shall develop, in cooperation with the commissioner and using agencies, an
2140 inventory of buildings owned or otherwise occupied by state agencies and building authorities.
2141 Said inventory may detail the age, condition, type of construction, and physical life expectancy
2142 of each building and its major structural components. The inventory shall be updated as repairs,
2143 replacements and alterations are performed. Said inventory shall be filed by the commissioner by
2144 February 15 yearly with the clerks of the house of representatives and senate, and with the joint
2145 committee on state administration and regulatory oversight, and shall be a public document
2146 available for general distribution. The director shall recommend to the commissioner standards
2147 and guidelines governing the type of information to be included in said inventory, which shall be
2148 properly coordinated with the real property inventory established and maintained pursuant to
2149 section 38.

2150

2151 Section 25. The director shall control and supervise all projects allocated to the office of facilities
2152 management by the commissioner pursuant to section 5. All of said projects shall be subject to
2153 the procedures and requirements set forth in sections 13 through 23, except that the director may

recommend to the commissioner regulations governing the extent of representation of the commonwealth by the resident engineer required on the site of construction projects. The director shall, consistent with sections 13 through 23, develop and recommend to the commissioner procedures and requirements for control and supervision of said projects commensurate with the specialized nature of those projects.

Section 26. The director shall recommend to the commissioner standards and guidelines applicable to maintenance and repair. Said standards and guidelines shall be complied with by state agencies and building authorities. The director shall also develop maintenance and repair standards and guidelines for use by the department of housing and community development. Said standards and guidelines shall be advisory only.

State agencies and building authorities shall certify to the director, once each year, that all maintenance and repair standards and guidelines have been complied with, or if the state agency or building authority has not so complied, the reasons for noncompliance. The director may order, in his discretion and without prior notice, inspection of state agency or building authority buildings, for the purpose of insuring compliance with maintenance and repair standards and guidelines. If the director finds that a state agency or building authority is not in compliance, he shall report such noncompliance to the commissioner, the head of the state agency or building authority, the secretary of administration and finance, and in the case of building authorities, the board of higher education and the board of trustees of the relevant institution. If a state agency or building authority fails within 3 months of such notification to comply with said standards and guidelines, the director shall recommend to the commissioner emergency measures that should

be taken.

The director may direct, subject to the approval of the commissioner, once a state agency or building authority is found to be not in compliance with maintenance and repair standards and guidelines, that the state agency or building authority report in detail to the director on a monthly basis the status, progress and problems of maintenance and repair operations at the state agency or building authority's facilities. The director shall recommend to the commissioner regulations to be adopted governing information to be included in the monthly report. The director shall make quarterly reports to the commissioner on the status of maintenance and repair operations at the relevant state agency or building authority. At such time as the commissioner determines, with the advice of the director, that maintenance and repair operations have come into compliance with all applicable standards and guidelines, the state agency or building authority shall be relieved of the necessity of making monthly detailed reports.

Where it is deemed necessary, the commissioner, on the advice of the director, may recommend that the office assume supervision and control over maintenance and repair operations normally carried out by the state agency or building authority. The secretary of administration and finance, after consultation with the secretary of the executive office in which the relevant state agency or building authority is located, and, in the case of building authorities, after consultation with the board of trustees of the relevant institution, may order transfer of supervision and control of maintenance and repair operations to the commissioner. Upon making such order, the commissioner shall forthwith file a copy of said order with the budget director, the comptroller, the house and senate committees on ways and means, and the joint committee on post audit and

oversight, specifying the scope of the authority so transferred and the direction of said transfer. Said transfer may be for such period of time as the commissioner deems appropriate. Where the commissioner has so assumed control and supervision, the commissioner shall make quarterly reports to the secretary of administration and finance on the status of maintenance and repair operations at the affected state agency or building authority.

Section 27. The director may, with the approval of the commissioner, initiate capital budget requests for building projects to be performed at one or more using agencies and controlled and supervised by the office of facilities management. Such projects may include, but not be limited to: (a) projects designed to alleviate, through a single undertaking or a series of undertakings, problems of a common nature encountered in buildings of more than 1 using agency; (b) projects to correct problems which require immediate attention, where the using agency has failed to include the project in its capital budget requests for the year, or has given such a request low priority; and (c) such other projects as the director may, with the approval of the commissioner, designate, including energy conservation projects, handicapped access projects, and fire, health and safety projects.

Section 28. As used in this section, “using agencies” shall mean state agencies and building authorities.

The director of facilities management shall: (1) develop, in cooperation with individual state agencies and building authorities, policies, standards, programs and schedules governing the performance of preventive maintenance; (2) develop preventive maintenance training programs

for state agency and building authority personnel; (3) evaluate the status of preventive maintenance programs at each state agency and building authority; (4) review using agency maintenance operating budget requests together with maintenance reports submitted pursuant to section 3 of chapter 29 for the purpose of evaluating the priority, necessity, feasibility and appropriateness of said requests; (5) review using agency capital budget requests for repair projects and make recommendations to the commissioner as to those projects of each using agency that should be given funding priority; (6) recommend to the commissioner standards and guidelines for the control and supervision of repair projects controlled and supervised by using agencies; (7) advise the commissioner as to those methods available for the repair of deteriorating buildings, including the costs and benefits of continuing minor repairs versus the costs and benefits of major renovation or rehabilitation; (8) advise the commissioner as to maintenance and repair difficulties encountered in using agency buildings that may be due to faulty design or construction of new facilities; (9) advise the commissioner as to the feasibility and costs of renovating or rehabilitating for state use structures that have been certified historic landmarks, as provided by sections 26 to 27C of chapter 9, that have been listed in the National Register of Historic Places, as provided by 16 U.S.C. 470a, or that have been designated landmarks by the local governing authority; (10) advise the commissioner as to changes in operations and maintenance costs and operational and repair difficulties that may result from using agency proposals for alteration or conversion of existing facilities; and (11) assist using agencies in evaluating maintenance and repair problems and devising and implementing solutions.

Section 29. (a) The commissioner shall require a state agency that initiates the construction of a

new facility owned or operated by the commonwealth or a renovation of an existing facility owned or operated by the commonwealth when the renovation costs exceed $25,000 and includes the replacement of systems, components or other building elements which affect energy or water consumption to design and construct or renovate the facility in a manner that minimizes the life-cycle cost of the facility by utilizing energy efficiency, water conservation or renewable energy technologies under the following criteria:

(1) the state agency shall utilize alternate technologies when the life-cycle cost analysis conducted under subsection (b) shows that such systems are economically feasible;

(2) each new educational facility, including a municipal educational facility financed through the school building assistance program, for which the projected demand for hot water exceeds 1,000 gallons per day or which operates a heated swimming pool, shall be constructed, whenever economically and physically feasible, with a solar or other renewable energy system as the primary energy source for the domestic hot water system or swimming pool of the facility;

(3) the division of capital asset management and maintenance or the state agency shall, in the design, construction, equipping and operation of such facilities, coordinate these efforts with the department of energy resources in order to maximize reliance on, and the benefits of, renewable energy research and investment activities; and

(4) all higher education construction projects shall, at a minimum incorporate the MA-CHPS Green Schools Guidelines standards or an equivalent standard.

(b) The division of capital asset management and maintenance or the state agency initiating the construction or renovation of a facility as described in subsection (a) shall conduct a life-cycle cost analysis of any such facility's proposed design that evaluates the short-term and long-term costs and the technical feasibility of using alternate technologies to provide lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. In calculating life-cycle costs, a state agency shall include the value of avoiding carbon emissions, creating renewable energy certificates and other environmental and associated benefits created from the utilization of alternate technologies, as applicable. This value shall be equal to the bid price of the published market value of any such benefit and shall increase or decrease at a projected rate determined by the department of energy resources. To calculate life-cycle costs, a state agency shall use a discount rate equal to the rate that the commonwealth's tax-exempt long-term bonds are yielding at the time of said calculation and shall assume that the cost of fossil fuels and electricity will increase at the rate of 3 per cent per year above the estimated rate of inflation or at a rate determined by the department of energy resources.

(c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued thereunder, the division of capital asset management and maintenance may procure energy management services jointly with a state agency or a building authority that is procuring energy or related services. Said sections 11C and 11I shall apply to the extent feasible as determined by the commissioner of energy resources.

(d) For purposes of this section, the term "economically feasible" shall mean that the cost of

installing and operating an alternate technology is lower than the cost of installing and operating the energy, energy-using technology or water-using technology that would otherwise be installed, as determined by a life-cycle cost analysis.

(e) The division of capital asset management and maintenance or the state agency initiating the construction or renovation of a facility subject to the requirements of subsection (a) shall file with the department of energy resources a report detailing the agency's compliance with this section with respect to each such facility.

(f) The department of energy resources shall issue an annual report to the general court detailing the compliance record of all state agencies with the construction and renovation provisions of this section.

Section 30. The director of facilities management shall make provision, as part of development of an inventory of buildings owned or otherwise occupied by state agencies or building authorities pursuant to section 24, for evaluation of the energy consumption of each building and its major energy using systems. The director may, with the approval of the commissioner and subject to appropriation or allocation, hire consultants for the purpose of performing energy audits designed to determine the need for energy conservation projects.

The director shall recommend to the commissioner standards and guidelines governing energy conservation maintenance and operating procedures.

The director shall in conjunction with the commissioner of energy resources set priorities and energy efficiency standards for all state buildings and conduct energy audits of said buildings. The bureau may contract with professional consulting firms to perform the energy audits.

All energy conservation projects within the jurisdiction of the division of capital asset management and maintenance as defined by section 4, including projects funded out of any lump-sum energy conservation fund or account, shall be fully subject to this chapter except that alternative energy property program projects authorized pursuant to section 11 of chapter 25A shall not be subject to sections 11 and 12, sections 13 to 28, inclusive, or this section .

Section 31. The division of capital asset management and maintenance shall evaluate the potential for increasing the energy efficiency in each building owned by an authority or state agency, or leased by such authority or agency for at least a 10 year period. Energy efficiency measures, as used in this section shall include, but not be limited to, heating, air-conditioning, lighting, water, and electric systems powered by coal, electricity, natural gas, oil.

The annual energy cost savings realized by each authority or agency shall be retained in that the authority or agency utility account and applied to additional energy efficiency measures in subsequent years.

Actions taken by the division of capital asset management and maintenance in accordance with this section shall be coordinated with ongoing energy conservation projects in state-owned or leased buildings. Utility programs offering energy auditing services shall be used whenever

appropriate.

The term “authority” used in this section shall not include authorities of cities or towns, such as local housing projects.

Section 32. Real property, record title to which is held in the name of a state agency or the board of trustees of a state agency or similar board of a state agency, shall be deemed to be real property of the commonwealth. No deed or other instrument shall be required to effect the transfer to the commonwealth of title to such real property, but the land court department of the trial court shall, upon petition of the division of capital asset management and maintenance, issue in the name of the commonwealth a certificate of title to any real property, title to which is registered under chapter 185 in the name of a state agency or the board of trustees of a state agency or similar board of a state agency. Notwithstanding any general or special law to the contrary, no person shall acquire any rights by prescription or adverse possession in any lands or rights in lands held in the name of the commonwealth.

The commissioner of capital asset management and maintenance shall exercise the powers stated in this chapter, notwithstanding the delegations which the general court has made pertaining to the acquisition, control, and disposition of real property, including sections 28 of chapter 15; section 2 of chapter 15D; section 19 of chapter 16; sections 1, 14B and 27 of chapter 19; section 7 of chapter 19A; sections 14 to 16, inclusive, of chapter 20; sections 9A, 13, 17A, 17B, and 30 of chapter 21; sections 2 and 9 of chapter 21A; sections 8 and 26 of chapter 23A; section 7 of chapter 23B; section 41 of chapter 29; sections 4 and 5 of chapter 29A; sections 11, 12, 25, 26,

and 27 of chapter 75; sections 8, 9, 18, 19, and 22 of chapter 75A; sections 8, 13, and 14 of chapter 75B; sections 7, 7A, 7C, 7D, 7E, 7G, 7H, 7L, 7M, 11, 13A, and 13B of chapter 81; section 7 of chapter 82; section 4 of chapter 83; section 39B of chapter 90; sections 2, 3, 5, and 6 of chapter 91; sections 9A, 13, 33, 34, 77 to 85, inclusive, 87, and 88 of chapter 92; sections 62R, 83, and 86 of chapter 111; section 5 of chapter 111B; section 8 of chapter 115A; sections 1 and 2 of chapter 120; section 5 of chapter 122; sections 39 and 43 of chapter 123; section 10 of chapter 124; section 2 of chapter 147; sections 31 and 32 of chapter 184; provided, however, that the commissioner shall acquire, control and dispose of real property in accordance with the terms and purposes of the aforementioned provisions. The commissioner shall not make any acquisition of real property on behalf of a state agency by eminent domain or make any such delegation of power to acquire real property by eminent domain to any state agency unless such state agency is otherwise authorized by law to exercise the power of eminent domain. The commissioner may delegate to state agencies responsibility for the acquisition, control, and disposition of real property as provided for in this chapter; except that the commissioner may not delegate responsibility for determining that property is surplus to state needs as required in section 33. When responsibility is delegated to a state agency, the written approval of the commissioner shall be required before the transaction is completed, and a copy of said written approval shall be sent to the joint committee on state administration.

Section 33. For the purposes of sections 33 to 40, inclusive, the term “emergency” shall mean any situation caused by unforeseen circumstances which render currently used real property unusable or unavailable for the purposes intended and which creates an immediate need for other real property to preserve the health or safety of persons or property.

The commissioner of capital asset management and maintenance shall be responsible for the acquisition, control and disposition of real property in the manner and to the extent provided in this chapter. The commissioner may delegate such responsibility to an administrator, who has 10 years of experience in the management of commercial, industrial, institutional or public real property. When responsibility is delegated to an administrator the written approval of the commissioner shall be required before such transaction is finalized.

The commissioner shall acquire interest in real property on behalf of the commonwealth for the use of state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

In acquiring buildings for the use of state agencies, first consideration shall be given to any structures that have been certified as historic landmarks as provided by sections 26 through 27C inclusive of chapter 9, that have been listed in the National Register of Historic Places as provided by 16 U.S.C. section 470a (1974) or that have been designated historic landmarks by local historic commissions, unless use of such buildings would not be feasible in terms of costs and requirements when compared with other available properties.

Notwithstanding any laws to the contrary, real property acquired for the use of state agencies shall be held in the name of the commonwealth.

The commissioner shall assist in the preparation and shall approve of plans for the organization

of all space within and around buildings and appurtenant structures used by state agencies, and shall assign the use of space within and around the state house, subject to such rules as the committee on rules of the two branches acting concurrently may adopt, under sections 10, 16A and 17 of chapter 8 the John W. McCormack State Office Building; the Leverett Saltonstall State Office Building; the Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the Charles F. Hurley Building; any real property acquired for the use of state agencies, the greater part of which is not needed by any one state agency; and any other real property assigned by law to the division of capital asset management and maintenance.

The commissioner, with the written approval of the secretary of administration and finance, may transfer use of, and responsibility for maintenance of, buildings, including equipment therein, within or between state agencies. No such transfer within or between state agencies which involves either a change in the purposes for which such building is currently used or a change in use in excess of 50 per cent of the usable floor space, shall be made without the prior approval of the general court. Any such transfer shall be based on a determination, made by the commissioner with the advice of the executive heads of affected agencies and secretaries of the executive offices in which such agencies are located, that such property is not needed, is under utilized, or is not being put to optimum use under current conditions. The commissioner shall notify the house and senate committees on ways and means and the representatives to the general court from the city or town in which such real property is located not less than 30 days prior to the final authorization of any transfer which does not require the approval of the general court, and such transfer shall only be made when the general court is in session except as provided hereafter. Such transfer may be made when the general court is not in session, and the 30 day

notification requirement may be waived, only if the commissioner certifies in writing that an emergency exists; provided that, any such transfer may be authorized for a period not to exceed 6 months, and provided further, that the commissioner shall submit his certification to and notify the house and senate ways and means committees of such transfer at the earliest possible opportunity.

The commissioner may, after notification to and with the advice of the executive heads of state agencies and secretaries of the executive offices, determine that real property is not needed for the use of any state agency. If he determines that such property is surplus to both the current and foreseeable needs of state agencies, the commissioner shall determine whether any other public agency has a current or foreseeable direct public use for the property. For the purposes of determining whether property is surplus to direct public use, direct public use is defined in this section as use of property for a public agency's own operations, but does not include conveyance by such agency of any interest in the property to another party, but does include lease of the property by local housing authorities to public housing tenants.

When property is determined to be surplus, to either current state or current direct public uses, but not to foreseeable state or foreseeable direct public uses, the commissioner shall take such action as is necessary to ensure that any disposition of the property is temporary and maintains the commissioner's ability to make such property available to a state agency or other public agency at such time as it is needed.

If the commissioner determines that the property is not needed for current or foreseeable state or

direct public use as defined above and that the property should be disposed of, he shall declare that the property is available for disposition and shall identify restrictions, if any, on the property's use and development necessary to comply with established state and local plans and policies, and he shall send written notification of such to the house and senate committees on ways and means, and the joint committee on state administration.

The commissioner may convene an advisory committee to advise him on reuses and to recommend reuse restrictions for property declared surplus. If an advisory committee is convened, the commissioner shall invite the representatives to the general court from the city or town in which the property is located to serve on the committee. The commissioner shall prepare a preliminary report on his findings, which shall include both his recommendation, and those of the advisory committee if established, for reuse restrictions for the property.

The commissioner shall conduct a public hearing to consider potential reuses and reuse restrictions for the surplus property and to review the secretary of administration and finance preliminary report if the property exceeds two acres or if the commissioner determines that a hearing should be held for a smaller parcel. If he determines to conduct a hearing, the commissioner shall provide notice in the central register of the public hearing at least 60 days prior to (1) notification to the house and senate committees on ways and means and the joint committee on state administration, of a temporary disposition of property to a public agency for less than 5 years for a direct public use, or (2) submission of a request to the general court for authority to otherwise dispose of real property as provided in this section. A notice of the public hearing shall also be placed, at least once each week for the 4 consecutive weeks preceding the

hearing, in newspapers with sufficient circulation to inform the people of the affected locality. The hearing shall be held in the locality in which the property is located no sooner than 30 days and no later than 35 days after the notice is published in the central register.

The commissioner may, with the written approval of the secretary of administration and finance, enter into agreements for the direct public use of surplus real property by public agencies other than state agencies, for a term not to exceed 5 years. Such agreement shall prohibit subsequent conveyance of interest in the property by the public agency to another party. The commissioner shall notify the house and senate committees on ways and means and the joint committee on state administration and regulatory oversight 30 days prior to the final authorization of any such agreement. The notification shall include the commissioner's report on recommended reuse restrictions. In no event shall any such agreement be made when the general court is not in session.

The commissioner shall establish the value of surplus property through procedures customarily accepted by the appraising profession as valid for determining property value. The value shall be calculated both for: (1) the highest and best use of the property as currently encumbered; and (2) uses and encumbrances defined by the commissioner.

The commissioner may, with the approval of the commissioner, request from the general court authorization to dispose of state real property determined to be surplus to state agency needs: (1) to public agencies of the commonwealth other than state agencies for direct public uses, over a period exceeding 5 years, (2) to a public agency of the commonwealth other than a state agency,

for uses other than direct public uses, and (3) to an individual, entity, or the federal government; or any extension of any agreement for such use beyond a cumulative period of 5 years. Accompanying his request for authorization to dispose of property, the commissioner shall submit his report including a description of the property, its current use, structures, and approximate metes and bounds, the value of the property and recommended restrictions, if any, on reuses of the property. The commissioner shall also request authorization to negotiate real property disposition agreements with parties to be selected by the commissioner after he evaluates competitive proposals. Disposition agreements subsequently negotiated by the commissioner shall be consistent with the reuse restrictions approved by the general court.

Notwithstanding this section, leases for agricultural purposes on land owned by the commonwealth shall be made for a term of not more than 5 years, and the renewal date for such leases shall not be less than 1 year prior to the end of the lease period. Holders of such leases shall be given the opportunity to renew such leases for a consideration equal to the current lease amount plus an escalation amount to be established annually by the commissioner for application to all such leases.

The commissioner shall monitor compliance with disposition agreements.

The commissioner shall develop regulations governing the conditions under which he will recommend to the general court that a public agency, including but not limited to the government land bank, receive title to surplus property for other than direct public use.

For bills which authorize the sale, transfer, or other disposition of any state-owned real property filed by persons other than the commissioner of capital asset management and maintenance, the clerks of the house of representatives and the the senate shall, within 10 days of the filing, forward a copy of said bill to the commissioner. Within 90 days of the receipt of said copy, the commissioner shall submit in writing a report to the secretary of administration and finance, the legislative committee before which the bill is pending, and the joint committee on state administration and regulatory oversight together with a recommendation for either the approval or the disapproval of the bill and his reasons therefor.

If the commissioner is recommending the approval of a bill proposing the disposition of a parcel exceeding 2 acres, said report shall include: (1) a description of the property including its current use, structures, and approximate metes and bounds; (2) the value of the property, determined through procedures customarily accepted by the appraising profession as valid for such purposes, calculated both for (a) the highest and best use of the property as currently encumbered and (b) uses and encumbrances that would be imposed by the bill if enacted; (3) all current and foreseeable direct public uses identified by following the division's procedures for such purposes as they apply to the property to be disposed (4) other potential public and private uses of the property; and (5) any other information the general court may require.

The commissioner shall expeditiously review and recommend approval or disapproval of any proposal to the general court for the sale, rental or other disposition of real property acquired on behalf of state agencies, and shall dispose of real property as mandated by the general court. All legislation submitted to the general court by the division of capital asset management and

maintenance requesting authorization to convey or transfer real property under its jurisdiction shall be accompanied by a full report outlining the division's reasons for pursuing said conveyance or transfer.

Section 34. (a) When authorized by the general court to sell, rent or otherwise dispose of real property, the commissioner shall proceed in accordance with this section, provided that any action or determination required hereunder which the commissioner has undertaken within 18 months prior to enactment of the authorization to dispose of the property need not be repeated if the commissioner (1) files, as provided in subsection (b), a report fully describing such action or determination, a copy of which shall be sent to the clerks of the senate and the house of representatives, and the joint committee on state administration, and (2) certifies under penalties of perjury that such report is accurate and that the action or determination described therein was undertaken within 18 months prior to the date of enactment of the authorization to dispose of the property.

The commissioner shall, after notification to and with the advice of the executive heads of state agencies and secretaries of the executive offices, determine whether such property is surplus to both current and foreseeable needs of state agencies. If the commissioner determines that the property is not surplus to either current or foreseeable needs of state agencies, he shall make no disposition that is inconsistent with such determination.

If the commissioner determines that such property is surplus to both the current and foreseeable needs of state agencies, he shall provide written notice, for each city or town in which the

property is located, to the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency and the members of the general court. The commissioner shall set forth in such notice a description of the property; a declaration that the property is surplus to the needs of state agencies and that subject to the approval of the commissioner the property is available to any other public agency for a direct public use; and a statement that, if so requested by any public official or body entitled under this section to receive such notice, a public hearing will be conducted in the city or town where such property is located, to assist the commissioner in determining whether any other public agency has a current or foreseeable direct public use for the property. Following such hearing, if any, but in no event earlier than 30 days following the notice, the commissioner shall determine whether any other public agency has a current or foreseeable direct public use for the property. If he determines that the property is not surplus to either current or foreseeable direct public uses of public agencies, he shall make no disposition that is inconsistent with such determination.

When the property is determined to be surplus to either current state or current direct public uses, but not to foreseeable state or foreseeable direct public uses, the commissioner shall take such action as is necessary to ensure that any disposition of the property is temporary and maintains the commissioner’s ability to make such property available to a state agency or other public agency at such time as it is needed.

If the commissioner determines that the property is surplus to both current and foreseeable direct

public uses of public agencies, he may dispose of the property to a public agency for other than direct public use, or to an individual or entity, provided that any such disposition shall be subject to section 36.

If the commissioner determines that the property is not needed for current or foreseeable state or direct public use and that the property should be disposed of, either temporarily or permanently, he shall declare that the property is available for disposition and shall determine appropriate reuse restrictions. The commissioner shall ensure that any rental agreement, and in the case of a conveyance a deed or separate disposition agreement as deemed appropriate by the commissioner, shall set forth all such reuse restrictions; shall provide for effective remedies on behalf of the commonwealth, including if deemed appropriate by the commissioner that title to the property, or such lesser interest as is the subject of the disposition agreement, shall revert to the commonwealth in the event of a violation of any such reuse restriction; and shall provide, in the case of a disposition to a public agency for a direct public use, that the title to the property, or such lesser interest as is the subject of the disposition agreement, shall revert to the commonwealth in the event the property is no longer utilized for such direct public use.

In determining reuse restrictions, the commissioner shall conform to all such restrictions pertaining to the property which may have been mandated by the general court, and may adopt additional restrictions, taking account of established state and local plans and policies. The commissioner shall conduct a public hearing to consider reuse restrictions if the property exceeds 2 acres or if the commissioner determines that a hearing should be held for a smaller parcel. Notice of the public hearing shall be placed at least once each week for 4 consecutive weeks

preceding the hearing, in newspapers with sufficient circulation to inform the people of the affected locality. The hearing shall be held in the locality in which the property is located no sooner than 30 days and no later than 35 days after notice thereof is published in the central register.

The commissioner shall establish the value of the property, through procedures customarily accepted by the appraising profession as valid for determining property value, for both the highest and best use of the property as currently encumbered and under the reuse restrictions as determined pursuant to this section.

No agreement for the rental or other disposition of state-owned real property, and no deed, executed by or on behalf of the commonwealth, shall be valid unless such agreement or deed contains the following declaration, signed by the commissioner:

The undersigned certifies under penalties of perjury that I have fully complied with sections 34 and 36 of chapter 7C of the General Laws in connection with the property described herein.

It shall be the policy of the commonwealth that the commissioner shall not sell, rent, or dispose of any real property including but not limited to granting the right to lay, construct, maintain, or operate pipelines through, over, across, or under land, water, park, reservation or highway of the commonwealth, its agencies or its political subdivisions, to any person doing business in or with Burma (Myanmar). The commissioner may sell, rent, or dispose of said property or grant said rights to said person only after certifying in writing to the speaker of the house of representatives

and president of the senate that such action is essential to protect the health and safety of the public.

(b) The commissioner shall maintain, for a period of at least 6 years next following enactment of an authorization by the general court to dispose of real property, a file containing a copy of each document necessary to establish fulfillment of the requirements of subsection (a). Such file shall be open to public inspection.

Section 35. The commissioner of capital asset management and maintenance shall suggest to the budget director, as part of his recommendation for the annual appropriation for space rentals provided for by section 3 of chapter 29, the maximum rate to be paid for the rental of space by type and geographical area and the maximum percentage to be paid for the escalation of all such rental costs. The budget director shall consider the suggestions of the commissioner in recommending the approval of such costs by the general court, as part of the annual appropriations act.

The commissioner may rent, for the use of state agencies, through lease, tenancy-at-will or other rental agreement for a term not exceeding 10 years, premises outside of the state house or other buildings owned by the commonwealth. If the term of the rental agreement under which premises are being used for the purposes of a particular activity by any state agency expires between the beginning of a fiscal year and the effective date of an appropriation act for such fiscal year and no appropriation for rent for said premises has been made and if the general court has not provided otherwise, the commissioner may rent for such purposes the same or different

premises, for a term not exceeding 5 years, obligating the commonwealth to pay no greater amount of rent for any period than was paid for a corresponding period under the expiring agreement.

No charges for rentals provided for in this section shall exceed the maximum rate plus escalation cost approved by the general court. Further, the commissioner shall notify the house and senate committees on ways and means 30 days prior to the final authorization of any such rental agreement and such agreement shall only be made when the general court is in session, except as provided hereafter. Such agreement may be made when the general court is not in session, and the 30 day notification requirement may be waived, only if the commissioner certifies in writing that an emergency exists; provided that, any such agreement shall be authorized for a period not to exceed 6 months, and provided further, that the commissioner shall submit his certification to and notify the house and senate committees on ways and means of such agreement at the earliest possible opportunity.

Notwithstanding the time limitation of this section or of any other law, the commissioner may enter into rental-purchase agreements for the purchase or construction of premises to be occupied by the division of employment and training outside of the state house or other buildings owned by the commonwealth, provided, that the costs incident to such rental-purchase agreements, including amortization, shall be borne by the federal government. After expiration of the period of amortization in each such instance, the commonwealth shall not charge the department of employment and training with rent of such premises, provided the federal government shall bear the cost of service to and maintenance of such premises.

The secretary of administration and finance shall report quarterly to the house and senate committees on ways and means any lease, tenancy-at-will or other rental agreement, or any extensions thereof, made pursuant to this section; provided, however that said quarterly report shall include, by agency, the amount and location of such rental space, any new or additional space, the duration of the lease or agreement, the cost per square foot of such rental space, any increase or decrease in said cost, and the cost of the preceding lease or agreement.

Section 36. At least 30 days before opening proposals for the acquisition by purchase or rental of real property for the use of state agencies from an individual or entity, or for the sale or rental of real property used by state agencies (1) to a public agency other than a state agency for other than a direct public use, or (2) to an individual or entity, the commissioner of capital asset management and maintenance shall advertise in the central register published by the state secretary pursuant to section 20 of chapter 9 stating therein the need for or availability of such property, and inviting submission of such proposals. The advertisement shall specify the geographical area, terms and requirements of the proposed transaction, and shall state the time and place for the submission of such proposals and for the opening thereof. In advertising for the rental of real property for use as an area welfare office, the geographical area specified in the advertisement shall include all municipalities serviced by the welfare office. In case of the rental or sale of over 2500 square feet of real property, such advertisement shall also be placed at least once each week for 4 consecutive weeks in newspapers with a circulation sufficient to inform the people of the affected locality. The last publication shall occur at least 8 days preceding the day for opening proposals.

The advertising requirement may be shortened or waived if (1) the commissioner certifies in writing that an emergency exists, a copy of such written certification shall be sent to the joint committee on state administration, provided that every reasonable effort be made to seek competitive proposals, and provided that the commissioner shall disclose his reasons for declaring the emergency in the central register at the earliest opportunity; or (2) in the case of a proposed acquisition, if the commissioner determines that such advertising will not be beneficial to the commonwealth's interest because of the unique qualities or location of the property needed, provided that the commissioner shall set forth in writing his reasons for such determination, relating such unique requirements to the property proposed to be acquired, and that such determination and the reasons therefor shall be published in the central register not less than 30 days before any binding agreement to acquire such property is executed, together with the name of the parties having a beneficial interest in the property pursuant to section 38, the location and size of the property, and the proposed purchase price or rental terms.

No agreement on behalf of the commonwealth for the rental of real property for the use of state agencies from an individual or entity shall be valid unless such agreement contains the following declaration, signed by the commissioner:

The undersigned certifies under penalties of perjury that I have fully complied with the advertising requirements of section 36 of chapter 7C of the General Laws in connection with the property described herein.

The commissioner shall also place notification in the central register of the individual or firm selected as party to any such real property transaction, and the amount of such transaction. In no instance in which the state retains responsibility for maintenance of the property shall the terms provide for payment of less than the maintenance costs. If the commissioner decides to dispose of the property at a price less than any of its values established pursuant to section 34, the commissioner shall include a justification for such decision in the notice and shall disclose the difference between the calculated value and the price received.

After the execution of a rental or sale agreement completing such transaction, all proposals relating thereto shall be retained by the commissioner and shall be open to inspection by the public until the expiration of such agreement or 6 months from the date thereof, whichever occurs first, and may thereafter be destroyed by him.

Section 37. At least 120 days prior to any purchase, sale, rental, lease, transfer, or significant change in use of one or more acres of real property by the commonwealth on behalf of state agencies, the commissioner of capital asset management and maintenance shall notify in writing, for each city or town in which the real property is located: the city manager in the case of a city under Plan E form of government, the mayor and the city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the members of the general court. Such 120 day notification requirement may be shortened if: (1) the public officials referred to above agree to reduce the 120 day period upon the request of the commissioner; or (2) the commissioner certifies in writing that an emergency exists, provided that commissioner shall submit his certification to and

notify the appropriate local officials of any such transaction at the first possible opportunity. The notice shall include a statement of the present use, the reason for the proposed action, and the proposed use of the property. The commissioner shall at least 60 days prior to any such purchase, sale, rental, lease, transfer, or significant change in use of one or more acres of real property, cause a public hearing to be held, after giving timely notice, in the city or town where such real property is located for the purpose of disclosing the conditions or reasons for the proposed action.

Section 38. No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. This section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than 10 per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee’s interest is held by the organization of unit owners of a leasehold condominium created under chapter 183A, and time-shares are created in the leasehold condominium under chapter 183B, this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the

public agency is executed and (ii) who holds less than 3 per cent of the votes entitled to vote at the annual meeting of such organization of unit owners.

A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within 30 days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

Section 39. The commissioner of capital asset management and maintenance shall establish and maintain a comprehensive inventory of the real property owned, rented or otherwise occupied by public agencies. Such inventory shall include a detailed description of the allocation, utilization and condition of real property used by state agencies and a general description of the size, type and use of real property under the jurisdiction of other public agencies. The real property inventory shall be published annually for distribution to state agencies and regional planning agencies, shall be filed by February 15 each year with the clerks of the house of representatives

and the senate and the joint committee on state administration and regulatory oversight and shall be a public document available for general distribution.

The division of capital asset management and maintenance shall be the central depository for all certificates of title, copies of deeds, records of sale, rental agreements and other pertinent records relating to real property acquired for the use of state agencies. All such documents shall be public records and shall be open to inspection by the public during regular business hours.

The commissioner may delegate responsibility for the housing and care of such original records to a state agency if such records are necessary for the daily operation of said agency. A state agency requesting the delegation of such responsibility shall demonstrate to the commissioner that such records will be adequately maintained and housed. In case of such delegation, copies of essential records shall be deposited with the division.

All public agencies shall cooperate with the division in providing the information required by this section.

Section 40. The commissioner of capital asset management and maintenance shall establish rules and regulations for the acquisition, utilization and disposition of real property, which shall be applicable to state agencies and which shall be recommended to counties and building authorities and which shall be filed with the clerks of the house of representatives and the senate and the joint committee on state administration and regulatory oversight. The commissioner shall review rules and regulations promulgated by the director of housing and community development for

the acquisition, utilization and disposition of real property and shall recommend approval or disapproval of such rules and regulations to said director. The commissioner may, at his discretion, delegate responsibility for the establishment of rules and regulations for the acquisition, utilization and disposition of real property, subject to his approval, to state agencies with special needs and a proven capability to promulgate such rules and regulations.

Such rules and regulations shall, at a minimum, provide for:

(a) a determination of the amount and type of real property needed to accommodate functions performed by agencies of the commonwealth;

(b) a standard format for rental agreements and rental specifications;

(c) current fair market rentals by geographical area;

(d) methods of procurement and evaluation of service contracts for state-owned and rented real property;

(e) procedures and criteria for determining when real property is not needed, is underutilized, or is not being put to optimum use;

(f) rates to be charged in the rental of real property to public and federal agencies and private individuals and entities;

(g) the method of procurement of independent determinations of property value, the number of such determinations, and the review of such determinations required before real property may be sold, purchased, or rented;

(h) procedures to be employed in determining prices and terms for the sale, rental, or purchase of real property and certification required for proof of such procedures;

(i) the satisfaction of requirements for the acquisition and disposition of real property as mandated by law and regulation;

(j) the organization of space within buildings to maximize utilization;

(k) a standard format for the disclosure of beneficial interest as mandated by section 38; and

(l) the type and method of collection of information to be included in the real property inventory established by section 39.

All such rules and regulations shall be filed in accordance with and subject to section 2 by the commissioner of the division of capital asset management and maintenance.

Section 41. No department of the commonwealth shall occupy, or make any expenditure for the maintenance of, any land, buildings or other state-owned or state-occupied facilities or other

property other than that under its control or jurisdiction. No department of the commonwealth shall authorize or otherwise allow the use by any private agency of such land, buildings or facilities under its control or jurisdiction unless such use or expenditure shall have been approved by the general court after recommendation by the secretary of administration and finance. Use without such approval shall be deemed to be a violation of this section, and the user shall pay a civil penalty at the rate of $10 per square foot annually for the period of such use.

Section 42. The director of facilities management shall report quarterly to the house and senate committees on ways and means any lease negotiated or any agreement providing for a tenancy at will or other rental of space, and any renewal or extension thereof, which has been signed by the executive or administrative head of a state department, court, commission or board or which has been approved by the state superintendent of state office buildings and by the secretary of administration and finance; provided, however, that said quarterly report shall include by agency, the amount and location of such rental space, any new or additional space, the duration of the lease or agreement, the cost per square foot of such rental space, any increase or decrease in said cost, and the cost of the preceding lease or agreement.

Section 43. Upon the receipt of the commission of notice under section 6 of chapter 38 that a site evaluation will be made to determine if skeletal remains are American Indian, the commission may designate a representative to be present when said site evaluation is made. If the state archaeologist and commission determine that said remains are American Indian, the owner of the land whereon the remains were discovered, the state archaeologist, the commission and other interested parties shall determine whether prudent and feasible alternatives exist to avoid,

minimize or mitigate harm to the Indian burial site. If it is not prudent and feasible to preserve the remains in the original Indian burial site then the state archaeologist shall excavate and recover the remains under the supervision of the commission on Indian affairs. The commission and state archaeologist shall then consult to determine how the remains shall be disposed.

The final plan or agreement, which shall be in writing, may include provisions for preservation in situ; or the conducting of additional scientific and archaeological research and investigation with the approval of the commission on Indian affairs, or the immediate reinterment of the remains or with the consent of the site's owner, or the execution of a preservation restriction pursuant to section 32 of chapter 184. If it is determined that the remains are to be reinterred it shall be the responsibility of the commission on Indian affairs to conduct the reinterment.

The state archaeologist and commission shall consult to determine whether a skeletal analysis shall be made; said analysis must be completed within 1 year of the date of approval. If more than 1 year is required to conduct said analysis, the commission and state archaeologist shall consult to determine whether the 1 year may be extended. If they fail to agree on whether the skeletal analysis shall be extended for more than 1 year, they shall each designate three qualified persons who shall meet and make a recommendation to the commission on Indian affairs on whether a skeletal analysis of the remains shall be made. The commission shall make the final decision on whether a skeletal analysis of the remains shall be conducted for longer than 1 year. It will be the responsibility of the commission on Indian affairs to reinter the remains when the skeletal analysis is completed.

Section 44. (a) Sections 44 to 58, inclusive, shall: ensure that the commonwealth receives the highest quality design services for all its public building projects; provide for increased confidence in the procedures followed in the procurement of design and design related services; promote consistency in the methods of procurement of design and design related services for all public building projects in the commonwealth; foster effective broad-based participation in public work within the design professions; provide safeguards for the maintenance of the integrity of the system for procurement of designers' services within the commonwealth;

(b) As used in sections 44 to 58, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise, or a different definition is prescribed for a particular section or provision.

"Applicant", any person or entity applying to perform design services, the principal personnel responsible for the provision of such services for the project, and the persons who will be the principal staff for the project.

"Board", the designer selection board.

"Commissioner" and "division", the commissioner and the division of capital asset management and maintenance.

"Continued services", authorization for a designer who has been appointed for one stage of a project to act as the designer for a succeeding stage or stages of the same project.

“Construction manager”, any designer or any other corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of construction management or construction scheduling.

“Design services”, any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

(i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

(ii) preparation of drawings, plans, or specifications, including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;

(iii) supervision or administration of a construction contract;

(iv) construction management or scheduling.

“Designer”, an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:

(i) if an individual, the individual is a registered architect, landscape architect, or engineer;

(ii) if a partnership, a majority of all the partners are persons who are registered architects, landscape architects, or engineers;

(iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person to have the project in his or her charge is registered in the discipline required for the project;

(iv) if a joint venture, each joint venturer satisfies the requirements of this section.

“Director”, the director of the office of project management, or in the case of agencies subject to section 4B of chapter 7, the chief executive official of the agency or his designee.

“Extended services”, authorization for a designer who has been appointed to provide design services for a project to act as designer for work to be done on another project not originally included in that designer’s contract.

“Programmer”, any designer or any other individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity engaged in the preparation of architectural facility programs or studies.

“Public agency”, a department, agency, board, commission, authority, or other instrumentality of

the commonwealth or political subdivision of the commonwealth or two or more subdivisions thereof other than cities and towns, and any agency, unit, authority, or instrumentality thereof but not including the State College Building Authority or the University of Massachusetts Building Authority.

Section 45. (a) There shall be located within the executive office for administration and finance a designer selection board, consisting of 11 members. Eight members shall be appointed by the governor, 3 of whom shall be registered architects, 3 of whom shall be registered engineers, and 2 of whom shall be representatives of the public who are not architect designers, engineers or construction contractors. Three additional members shall be appointed as follows: 1 registered architect by the Massachusetts State Association of Architects, 1 registered engineer by the government affairs council of design professional and 1 general contractor by the associated general contractor. The board shall be expanded from the present 5 members to 11 members according to the following schedule: 1 additional architect, 1 additional engineer, and the 1 general contractor shall be appointed by the designated body within 90 days of the effective date of this section; another additional public representative shall be appointed within 1 year thereafter. Members shall be appointed for terms of 2 years and may be reappointed for no more than 1 successive 2 year term. The director shall designate a representative, who shall be the project manager in the case of a project under the jurisdiction of the office of project management, to act as a nonvoting member of the board for each project under his jurisdiction under consideration by the board. No provision of this section shall operate to reduce the tenure of members of the board serving at the time of the effective date of this section, except that the director of bureau of building construction shall cease to so serve upon the effective date of this

3005 section.

3006

3007 (b) Members of the board shall be reimbursed for all necessary expenses incurred in the

3008 discharge of their official duties.

3009

3010 (c) The board shall employ an executive director who shall be a registered architect or engineer

3011 registered in the commonwealth and such other staff or consultants as it may deem necessary,

3012 subject to appropriation, for the board. The board and its staff may travel within and without the

3013 commonwealth.

3014

3015 Section 46. (a) The board shall have jurisdiction over the selection of all designers,

3016 programmers, and construction managers performing design services in connection with any

3017 building project for all public agencies within paragraphs (1), (2) and (4) of section 4, except

3018 those public agencies within section 54, and the procedures promulgated by any agency of the

3019 commonwealth for such selection by any housing authority subject to paragraph (3) of said

3020 section, unless a specific exemption from the board's jurisdiction is provided under this section.

3021

3022 (b) The board shall grant an exemption for 2 years from its jurisdiction to each public agency

3023 within paragraphs (3) and (4) of section 4, but in no event to any public agency within

3024 paragraphs (1) and (2) of said section 4, if the agency has filed a written application for an

3025 exemption pursuant to subsection (c) of this section; provided, however, that the board shall

3026 withhold an exemption if the board determines that the designer selection procedure proposed by

3027 the public agency does not substantially incorporate the procedures required in section 45 to 53,

inclusive, and section 56, or that the selection of finalists will not be made with the advice of design professionals or that the procedure proposed by the public agency does not satisfy the purposes of sections 44 to 58, inclusive, as set forth in said section 44, or that withholding such an exemption is in the best interest of the commonwealth; provided, however, that nothing in this section shall be interpreted to require the establishment of a board as prescribed in section 45 or to waive or in any way diminish the requirements imposed by any other general law. No withholding of an exemption shall take effect until the board shall have specified in writing the reasons for withholding an exemption and any changes in the agency's procedures which are required before an exemption will be granted. An agency granted an exemption or renewal thereof from the jurisdiction of the board shall, during any period such exemption or renewal is in effect, advertise for designers, select any designers to perform any design services, and continue or extend the services of any designers in accordance with the agency's last written designer selection procedures approved by the board in conformity with this section.

(c) An application by a public agency for exemption from the jurisdiction of the board pursuant to this section must be verified by the agency director under the penalties of perjury, and must contain:

(i) a detailed description of the designer selection process and the written designer selection procedures which the agency proposes to use;

(ii) a statement that the agency's proposed designer selection process substantially incorporates the procedures required of the board in sections 45 to 53, inclusive, and section 56;

(iii) a statement that the agency's projects are not subject to the jurisdiction of the division of capital planning and operations; and

(iv) any other information required by the board.

(d) An exemption shall be renewed by the board on a biennial basis if:

(i) the board finds that the requirements of subsection (b) are met at the time of the renewal;

(ii) the agency director files a verified application for renewal containing a description of any proposed changes in its designer selection procedure; and

(iii) the agency director had filed a semi-annual report containing:

a list of all contracts for designer services awarded by the agency since its last application, including for each project the name and address of any designer awarded such contracts, a brief description of the project, the estimated, or if available, the final construction cost for the project, and the estimated or, if available, final fee paid to the designer; and certification that all contracts so listed were awarded by the procedure described in the agency's last application.

(e) Subject to subsection (f), a contract for design services shall be exempt from jurisdiction of the board if: (i) the design fee under the contract is less than $10,000; or (ii) the estimated

construction cost of the project for which the design services are required is less than $100,000; or (iii) the contract is for the fabrication or installation of modular buildings procured in accordance with section 44E of chapter 149; or (iv) the contract is for the demolition of buildings. Projects consisting of energy management services procured in accordance with section 11C of chapter 25A and regulations promulgated thereunder shall be exempt from the jurisdiction of the board.

(f) The following types of projects, and contracts for design services for such projects, shall not be exempt from the board's jurisdiction:

(i) contracts for continued or extended services on projects over which the board otherwise has jurisdiction; and

(ii) projects otherwise subject to the jurisdiction of the board for which an agency or the division intends to use its own staff to perform design services, except projects within Class I, as defined by subsection (d) of section 49, unless the board determines that the agency or the division has the capability with its existing staff to perform those services on the project in question, applying the same criteria as are used for selection of consultant designers.

Section 47. (a) Each contract for designer services for a project subject to the jurisdiction of the board shall be publicly advertised by the board in a newspaper of general circulation in the area in which the project is located or to be located, and in the central register established under section 20A of chapter 9, and in such places as the board requires by regulation, at least 2 weeks

before the deadline for filing applications; provided, however, that each contract for designer services for a project whose estimated cost of construction is not less than $10,000 nor more than $25,000 shall not be required to be advertised in a newspaper of general circulation but shall be required to be advertised in the central register.

(b) The public notice required by subsection (a) shall contain:

(i) a description of the project, including the specific designer services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost;

(ii) if there is a program for the project, a statement of when and where the program will be available for inspection for applicants, and when and where a briefing session will be held for applicants, if one is required by the board's regulations and if there is not a program for the project, a statement to the effect;

(iii) the qualification required of applicants for the projects;

(iv) the categories of designers' consultants, if any, for which applicants must list the names of consultants which the applicant may choose to use; and

(v) whether the fee has been set or will be negotiated, and if the fee has been set, the amount of the fee.

Section 48. (a) No designer, programmer, or construction manager may file an application for any project subject to the board's jurisdiction unless having first filed with the board a written statement containing the following information:

(i) certification that the applicant legal entity, if applying to perform design services other than preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or construction manager as defined in subsection (b) of section 44;

(ii) the names and addresses of all partners, if a partnership, of all officers, directors and all persons with an ownership interest of more than 5 per cent in the applicant if not a partnership;

(iii) the registration number and status of each such person in every jurisdiction in which such person has ever been registered as an architect, landscape architect or engineer;

(iv) a list of all projects for all public agencies within the commonwealth for which the applicant has performed or has entered into a contract to perform design services within the 5 year period immediately preceding the filing of the information required in this section;

(v) a list of all current projects for which the applicant is performing or is under contract to perform any design services; and

(vi) if the applicant is a joint venture, the information required in this section shall be required for each joint venturer, as well as for the joint venture itself.

(b) The board shall keep a permanent record of the statements filed pursuant to this section and shall require the statements to be made current on a regular basis, and that statements pursuant to clauses (v) and (vi) of subsection (a) be current with each application filed.

(c) An applicant to perform design, programming or construction management services on a project must file, in addition to the statement required under subsection (a), a written application as prescribed by the board, relating to the applicant's experience, ability, and qualifications.

(d) The board and its staff shall be allowed access to all records of all public agencies concerning any applicant, or any project for which the applicant performed any services, for the purpose of verifying information submitted by the applicant, or for the purpose of evaluating the applicant's experience, ability and qualifications.

(e) Every application or statement filed pursuant to this section shall be sworn to under penalties of perjury. A designer, programmer or construction manager who has been determined by the board to have filed materially false information under this section shall be disqualified by the board from further consideration for any project for such time as the board determines is appropriate.

(f) The board shall not advertise for designers nor select any finalists to perform any design services other than the preparation of master plans, studies, surveys, soil tests, cost estimates, or programs unless the deputy commissioner certifies that it is appropriate to do so and either that a

program defining the design services required has been prepared, and has been approved by the division, or that no program is required by the division.

(g) The division of capital asset management and maintenance in consultation with the board shall develop a standard designer evaluation form that shall be completed by every public agency, as defined in section 44A of chapter 149, upon completion of the work under a design contract under its control, and submitted to the division and the board for the designer's qualification file. The official from the public agency or the owner's representative as described in section 44A of said chapter 149 shall certify that the information contained on the designer evaluation form represents, to the best of his knowledge, a true and accurate analysis of the designer's performance record on the contract. The public agency shall mail a copy of the designer evaluation form to the designer who may, within 30 days, submit a written response to the division and board disputing any information contained in the form and setting forth any additional information concerning the building project or the oversight of the building construction contract by the public agency as may be relevant to the evaluation of the designer's performance on the contract. The division and board shall attach any such response to the evaluation form for inclusion in the designer's qualification file. No public employee or public employer, as defined in section 1 of chapter 258, and no person shall be liable for an injury or loss to a designer as a result of the completion of a designer evaluation form as required by this section unless the individual completing such evaluation form has been found by a superior court of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is commenced by a designer against any person who has completed a designer evaluation form as required by this section seeking to recover damages resulting from injury caused by such

evaluation, the public agency for whom such evaluation form was completed or the commonwealth, if such evaluation was completed for a state agency, shall provide for the legal representation of such person. Such public agency or the commonwealth, where an evaluation was completed for a state agency, shall also indemnify such person from all personal financial losses and expenses including, but not limited to, legal fees and filing costs, if any, in an amount not to exceed $1,000,000, but no such person shall be indemnified for losses other than legal fees and filing costs under this section if such person is found by a court or a jury to have acted in a willful, wanton or reckless manner.

The awarding authority shall provide the designer with a written preliminary evaluation at the completion of the schematic phase of the project for informational purposes.

Any public agency that fails to complete and submit the designer evaluation form, together with any written response by any designer, to the division within 70 days of the completion of a project shall be ineligible for the receipt of any public funds disbursed by the commonwealth for the purposes of public building or public works projects.

Section 49. (a) The board shall adopt written applicants' criteria for selection of semifinalists and finalists based upon information obtained under section 48 for each project. The criteria shall include:

(i) prior similar experience;

3212 (ii) past performance on public and private projects;

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3214 (iii) financial stability;

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3216 (iv) identity and qualifications of the consultants who will work with the applicant on the project;

3217 and

3218

3219 (v) any other criteria that the board considers relevant for any project.

3220

3221 (b) Semifinalists may be chosen for each project.

3222

3223 The board shall select at least 3 finalists from among all the applicants, or from the semifinalists

3224 selected under this section, and in doing so may require all the applicants or the semifinalists to:

3225

3226 (i) appear for an interview before the board;

3227

3228 (ii) present a written proposal to the board; or

3229

3230 (iii) participate in a design competition held by the board.

3231

3232 (c) The board shall transmit a list of the chosen finalists to the commissioner. No person or firm

3233 debarred pursuant to section 44C of chapter 149 or disqualified pursuant to section 47 shall be so

3234 included as a finalist. The board shall transmit to the commissioner all material made or received

relating to such recommendation.

The list shall rank the finalists in order of qualification and include a record of the final vote of the board on the selection; and include a written statement explaining the board's reasons for its choice and its ranking of the finalists.

(d) The board may delegate its powers and duties under subsection (b) of section 47, subsections (c) and (d) of section 48, subsections (a) and (b) of section 50 and sections 51 and 52 to panels of less than all the board members. A panel of not less than 6 members shall be required for selection of designers under this section, 4 of whom shall be architects or engineers, including at least 1 architect and 1 engineer on that panel.

(e) For the purposes of chapter 268A and subject to the penalties therein, no member of the board shall participate in the selection of a designer as a finalist or semifinalist for any project if the member or any member of his immediate family:

(i) has a direct or indirect financial interest in the award of the design contract to any applicant;

(ii) is currently employed by, or is a consultant to or under contract to an applicant.

(iii) is negotiating or has an arrangement concerning future employment or contracting with any applicant; or

(iv) has an ownership interest in, or is an officer or director of, any applicant.

Section 50. (a) In the selection of a designer when the fee for design services has been set by the commissioner prior to the selection process, the commissioner shall appoint a designer from among the list transmitted to the commissioner under section 49. If the commissioner appoints any designer other than the one ranked first by the board, the commissioner shall file a written justification of the appointment with the board.

(b) When the fee for design services is to be negotiated, the commissioner shall review the list transmitted by the board, and may exclude any designer from the list if a written explanation of the exclusion is filed with the board. The commissioner shall then appoint a designer based on successful fee negotiation. The commissioner or persons designated by the commissioner shall first negotiate with the first ranked designer remaining on the list. Should the commissioner be unable to negotiate a satisfactory fee with the first ranked designer within 30 days, negotiations shall be terminated and negotiations undertaken with the remaining designers, 1 at a time, in the order in which they were ranked by the board, until an agreement is reached. In no event may a fee be negotiated which is higher than a maximum fee set by the commissioner prior to selection of finalists. Should the commissioner be unable to negotiate a satisfactory fee with any designer initially selected as a finalist by the board, the board shall recommend additional finalists in accordance with this chapter. The commissioner may require a finalist with whom a fee is being negotiated to submit a fee proposal and include with it such information as the commissioner requires to provide current cost and pricing data on the basis of which the designer’s fee proposal may be evaluated.

(c) All fees shall be stated in designer's contracts and in any subsequent amendment thereto as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

(d) Notwithstanding any general or special law to the contrary, all public entities within the commonwealth, agencies and authorities of the commonwealth and municipal entities within the commonwealth, including departments, boards, committees or commissions shall be entitled to withhold up to 5 per cent of contract fees earned and invoiced as part of professional service contracts, during the life of the contract. Withheld fees shall be held for not longer than 2 invoice periods when the contractor is permitted to invoice monthly, or until successful completion of the next contract phase or stage when the contractor is permitted to invoice by project phase or stage. When the work covered by the contract is completed, all remaining withheld fees shall be paid to the contractor within 2 months from the date of completion. If the withholdings are not paid to the contractor within the stipulated time limit, the amount of the withholding in arrears shall be increased at a 12 per cent annual rate.

(e) Notwithstanding any general or special law to the contrary, agencies and authorities of the commonwealth and municipal entities within the commonwealth, including departments, boards, committees or commissions, shall pay all outstanding withheld fees on professional service contracts, when the withholding has been held for longer than 2 invoice periods for active contracts, or that remains withheld on contracts which have been completed, or for which the work of the contractor has been completed.

Section 51. (a) When the board has required that applicants list consultants which the applicants may employ, in no event shall a consultant be used who is debarred pursuant to section 44C of chapter 149 and any change in or addition to the consultants named in the application and allowed by the board upon appointment must be approved by the commissioner and reported to the board, along with a written statement by the designer or construction manager of the reasons for the change.

(b) If the designer's or construction manager's fee is negotiated, the designer or construction manager shall file a truth-in-negotiations certificate prior to being awarded the contract by the commissioner, which must be incorporated into the contract. The certificate shall contain:

(i) a statement that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and

(ii) an agreement that the original contract price and any additions to the contract may be adjusted within 1 year of completion of the contract to exclude any significant amounts if the commissioner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

(c) The board may specify other special conditions or requirements in selecting a particular applicant as a finalist. If any change is made by the applicant after appointment relating to such special conditions or requirements, the change must be approved by the commissioner and

reported to the board along with a written statement by the appointee of the reasons for the change.

(d) Every contract for design services awarded under sections 44 to 58, inclusive, shall include the following:

(i) certification that the designer or construction manager has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;

(ii) certification that no consultant to or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;

(iii) certification that no person, corporation or other entity, other than a bona fide full time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and

3350 (iv) certification with respect to contracts which exceed $10,000 or which are for the design of a
3351 building for which the budgeted or estimated construction costs exceed $100,000 that the
3352 designer has internal accounting controls as required by subsection (c) of section 39R of chapter
3353 30 and that the designer has filed and will continue to file an audited financial statement as
3354 required by subsection (d) of said section 39R.
3355
3356 (e) A public agency shall not enter into a contract for design services unless the public agency or
3357 the designer has obtained professional liability insurance covering negligent errors, omissions
3358 and acts of the designer or of any person or business entity for whose performance the designer
3359 is legally liable arising out of the performance of the contract. The total amount of such
3360 insurance shall at a minimum equal the lesser of $1,000,000 or 10 per cent of the project's
3361 estimated cost of construction, or such larger amounts as the public agency may require, for the
3362 applicable period of limitations. A designer required by the public agency to obtain all or a
3363 portion of such insurance coverage at his own expense shall furnish a certificate or certificates of
3364 insurance coverage to the public agency prior to the award of the contract. For purposes of this
3365 paragraph only, "public agency" shall have the meaning set forth in section 1.
3366
3367 At the request of the director, a consultant employed by a designer subject to this paragraph shall
3368 obtain and maintain a liability insurance policy covering negligent errors, omissions and acts of
3369 such consultant or of any person or business entity for whose performance the consultant is
3370 legally liable arising out of the performance of the contract for consultant services. The
3371 consultant shall furnish a certificate or certificates of such insurance coverage to the division in
3372 the case of a consultant hired by a designer selected pursuant to section 49 or to a public agency

not subject to the jurisdiction of said board prior to the employment of such consultant by the designer. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the public agency shall require.

(f) A designer, construction manager, or programmer who has been determined by the board to have provided materially false statements or information under this section shall be disqualified by the board from future work on any project for such time as the board determines is appropriate.

(g) Contracts for design service may include a requirement that the designer be responsible for overseeing the construction phase of the project.

(h) Awarding authorities in cities and towns may allow a designer who conducted a feasibility study to continue with the design of a project; but, nothing herein shall prohibit the awarding authorities from commissioning, at the discretion of the awarding authorities, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project.

(i) Contracts for design services shall include a provision that the designer or his consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the executive head of the public agency responsible for

3396 administering the design contract. For the purpose of this subsection, "public agency" shall have
3397 the meaning as set forth in section 1.
3398
3399 Section 52. The commissioner may appoint a designer to perform continued or extended services
3400 if the following conditions are met:
3401
3402 (i) a written statement is filed with the board explaining the reasons for the continuation or
3403 extension of services;
3404
3405 (ii) the program for the design services is filed with the board if one is required by the
3406 regulations of the division; and
3407
3408 (iii) the board approves the appointment of the designer for continued or extended services and
3409 states the reason therefor.
3410
3411 Section 53. (a) Whenever the health or safety of any persons will be endangered because of the
3412 time required for the selection of a designer, programmer or construction manager by the
3413 procedures prescribed by sections 44 to 58, inclusive, or whenever a deadline for action is set on
3414 a project by any court or federal agency which cannot be met if those selection procedures are
3415 followed, the commissioner may declare that an emergency situation exists.
3416
3417 (b) If the commissioner declares that an emergency situation exists, finalist selection may be
3418 made by the board by expedited procedures adopted by regulation by the board.

Section 54. (a) Every contract for design services for any building construction, reconstruction, alteration, remodeling, or repair estimated to exceed $100,000 by any city, town, or agency, board, commission, authority or instrumentality thereof, other than housing authorities and projects requesting funding from the Massachusetts School Building Authority shall be awarded only after a selection procedure adopted in writing, prior to publication requesting applications, complying with the purposes and intent of sections 44 to 58, inclusive, and the following requirements:

(i) section 47 regarding public notice;

(ii) the establishment of uniform requirements of information to be submitted by all applicants, a uniform procedure for the evaluation of all applications to a group of not fewer than 3 finalists, the opportunity to be afforded equally to all finalists to provide additional information to or appear before the selection body, and a procedure for the submission of a fee proposal and the negotiation of fees between the awarding authority and the selected applicant with whom the fee is being negotiated consistent with subsection (b) of section 50;

(iii) that a written explanation of the reasons for selection including the recorded vote if any was taken be made public and accompany the notification of award in the awarding authority's records;

(iv) subsection (c) of section 50 regarding the designation of fees in the contract;

3442

3443 (v) that nothing in this section shall be interpreted to require the establishment of a board or to
3444 waive or reduce the requirements of any other applicable law or regulation.

3445

3446 (b) The board shall publish guidelines to assist public agencies not within the board's jurisdiction
3447 in the establishment of a professional and objective designer selection procedure, including a
3448 model application form, consistent with the provisions and intent of sections 44 to 58, inclusive.
3449 The board shall publish a standard designer selection form which shall be used by all cities,
3450 towns and public agencies not within the board's jurisdiction; but, before publishing the standard
3451 form, the board shall seek input from the cities, towns and other public agencies not within the
3452 board's jurisdiction. Any fee guidelines promulgated by the board shall be accompanied by a
3453 recommended basic scope of designer's services that shall reflect the work associated with the
3454 fee guidelines. From time to time, and no less frequently than every 3 years, the board shall
3455 review and revise the fee schedule based upon prevailing costs at the time of such review and
3456 revision.

3457

3458 (c) Any city, town or other public agency not otherwise subject to the jurisdiction of the board
3459 may request the board to exercise jurisdiction regarding the selection of applicants to perform
3460 design services for a specified period of time or for a specified project. In such cases, all
3461 provisions of sections 44 to 58, inclusive, shall apply to the board, the applicants and the public
3462 agency so requesting.

3463

3464 (d) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or

instrumentality thereof may procure modular buildings in accordance with section 44E of chapter 149.

(e) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or instrumentality thereof may procure energy management services in accordance with section 11C of chapter 25A and regulations promulgated thereunder.

Section 55. The board, any public agency exempted under section 46 and all other governmental units engaged in the selection of applicants to perform design services but not otherwise subject to the board's jurisdiction shall keep the following records:

(i) all information supplied by or obtained about each applicant;

(ii) all actions taken by the board or agency relating to any project;

(iii) any other records related to designer selection required by the division.

The records of public agencies exempted under section 46 or not otherwise subject to the jurisdiction of the board shall be available for inspection by the board or the division.

Section 56. The board shall submit an annual report to the division of capital asset management and maintenance listing all finalists selected by the board and all awards made pursuant to sections 44 to 58, inclusive, a summary of the activities and other actions of the board and its

staff, and such other items as the board deems appropriate.

Section 57. The board shall independently adopt procedures and regulations as necessary to implement the requirements of sections 44 to 58, inclusive. Such procedures and regulations may vary according to the class of project.

Section 58. (a) For the purposes of this section the following words shall have the following meanings unless the context clearly requires otherwise:-

"Agency", the Massachusetts Department of Transportation, the Massachusetts Port Authority and the Massachusetts Bay Transportation Authority.

"Architectural and engineering services", (i) professional services of an architectural or engineering nature, as defined by state law, which are required to be performed or approved by a person licensed, registered or certified to provide those services as described herein; (ii) professional services of an architectural or engineering nature performed by contract that are associated with research planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration or repair of real property; and (iii) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies, investigations, surveying and mapping, soil tests, construction phase services, drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual

designs, plans and specifications, soils engineering, cost estimates or programs, preparation of drawings, plans or specifications, supervision or administration of construction contracts, construction management or scheduling, preparation of operation and maintenance manuals and other related services.

"Firm", an individual, firm, partnership, corporation, association or other legal entity authorized by law to practice the professions of architecture, engineering, land surveying, landscape architecture, environmental science, planning or program management.

"Public works project", a capital improvement project or a design, study, plan, survey or new or existing program activity of an agency, including the development of new or existing programs that require architectural, engineering or related professional services; provided, however, that "public works project" shall not include a public building construction project undertaken under chapters 7, 149 and 149A.

"Related professional services", (i) professional services, including land surveying, landscape architecture, environmental science and planning, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein; (ii) professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning program management, value engineering, construction, alteration or repair of real property; and (iii) such other professional services, or incidental services, which members of the related professions as described herein and individuals

in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or programs, preparation of drawings, plans or specifications, supervision or administration of construction contracts, construction management or scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related services; provided, however, that nothing herein shall be construed to constitute a regulation or oversight of any designated firms or identified professionals' services.

(b) For those agencies that prequalify architectural, engineering and related services, the agency shall require firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data every 2 years to the agency pursuant to the terms and schedule as determined by the agency. Agencies that prequalify shall have the option of selecting firms from their prequalified list of firms based on the agency policies and without further publically advertising the selection.

(c) Whenever a public works project requiring architectural, engineering or related professional services is to be advertised by an agency, the agency shall provide not less than 14 days advance notice published in a professional services bulletin or advertised on the official agency website setting forth the public works project and services to be procured. The professional services bulletin shall be made available to each firm that requests the information. The professional services bulletin shall include a description of each public works project and shall state the time and place for an interested firm to submit a statement of qualifications and, if required by the public notice, a letter of interest and technical proposal. If the agency determines that a sole

source selection of a qualified firm is in the best interest of the agency, then the public notice provisions of this subsection shall not apply.

(d) An agency shall evaluate the firms submitting statements of qualifications, taking into account qualifications, letters of interest and technical proposals, and the agency may consider, but shall not be limited to considering, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm and any other qualifications based on factors that the agency may determine in writing are applicable. The agency may conduct discussions with, and require presentations by, firms deemed to be the most qualified regarding their qualifications, approach to the public works project and ability to furnish the required services. An agency shall not, prior to selecting a firm for negotiation, seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost or any other measure of compensation.

(e) (1) An agency shall select architects, engineers and related professional firms on the basis of qualifications for the type of professional services required, and on technical proposals, if submitted. An agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a firm and initiated negotiations with the selected firm.

(2) The procedures that an agency creates for the screening and selection of firms shall be within the sole discretion of the agency and may be adjusted to accommodate the agency's scope,

schedule and budget objectives for a particular public works project.

(3) The decision of an agency that has complied with this chapter shall be final and binding.

(f) (1) The agency and the selected firm shall discuss and refine the scope of services for the public works project and shall negotiate conditions including, but not limited to, compensation level and performance schedule based on scope of services. The compensation level paid shall be reasonable and fair to the agency as determined solely by the agency. In making such determination, the agency shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature thereof.

(2) If the agency and the selected firm are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, in writing, formally terminate negotiations with the selected firm. The agency shall then negotiate with the second ranked most qualified firm. The negotiation process shall continue in this manner through successive ranked firms until an agreement is reached or the agency terminates the consultant contracting process.

(g) This section shall not apply to the procurement of architectural, engineering and related professional services by agencies: (i) when an agency determines in writing that it is in the best interest of the agency to proceed with the immediate selection of a firm; (ii) in emergencies when immediate services are necessary to protect the public health and safety; or (iii) when these services are to be provided as part of a design-build project pursuant to sections 14 to 21,

3603 inclusive, of chapter 149A.

3604

3605 (h) Each agency shall evaluate the performance of each firm upon completion of a contract. The
3606 evaluation shall be made available to the firm which may submit a written response.

3607

3608 Section 59. Every appropriation or authorization for the design or construction of a building
3609 project for which a state agency is the using agency shall be deemed to require the satisfactory
3610 completion of a study or program before any services for the design or construction of such
3611 project may be contracted for, performed by contract or otherwise, or funds allotted, encumbered
3612 or expended therefor, unless such appropriation or authorization specifically states that no such
3613 study or program need or shall be done.

3614

3615 No provider of design services for any building project for which a state agency is the using
3616 agency shall be selected by the designer selection board or by the administering agency and no
3617 design services shall be performed for or by such administering agency for any building project
3618 for which the satisfactory completion of a study program is required prior to the design or
3619 construction of that project, unless and until: (a) said study, program or where appropriate, both,
3620 have been satisfactorily completed; (b) the using agency certifies in writing to the commissioner
3621 of capital asset management and maintenance that the study, program, or where appropriate both,
3622 correspond to the current needs of that agency, including its current long term capital facilities
3623 development plan; (c) the commissioner requests that one or more of the directors of the office of
3624 programming, office of project management, or office of facilities management review the study
3625 or program, or where appropriate, both, and the director or directors certify in writing to the

commissioner that the study, program, or where appropriate both, reflect the using agency's needs as stated, that they provide an accurate estimate of the project requirements, cost and schedule, that the project can be accomplished within the appropriation or authorization for that project, and recommends proceeding with design, construction, or where appropriate, both; and (d) the commissioner of capital asset management and maintenance certifies in writing to the secretary of administration and finance that the study, program, or where appropriate both, are in conformity with the scope and purpose of the appropriation or authorization for the project and legislative intent in regard to long range capital facility plans for the using agency, and approves proceeding with design, construction, or where appropriate, both.

If either the director or directors whose review is requested or the commissioner of capital asset management and maintenance should fail to so certify, recommend, or approve, the commissioner shall forthwith send notice of his decision and the reasons therefor to the secretary of administration and finance and to the house and senate committees on ways and means.

Section 60. No allotment, encumbrance, or expenditure of funds appropriated or authorized for the design of a capital facility project shall be approved by the comptroller unless the executive head of the agency administering the project, or other person provided for by statute,certifies in writing that the design work is or shall be such as to specify a project that can be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from any (i) study or program which must be prepared in accordance with section 59 or (ii) any other pre-design document which must be prepared in accordance with any other statute, appropriation or

authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of square feet to be constructed in the project of more than 10 per cent from the number specified in the study, program or other pre-design document referred to in (b)(i) and (b)(ii).

No state agency,as defined by section 1, administering a capital facility project shall enter into any contracts or incur any other obligations or cause to be performed design services for that project if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation for (i) any study or program which must be prepared in accordance with section 59 or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than 10 per cent from the number specified in the study, program or other pre-design document referred to in (b)(i) and (b)(ii).

Section 61. No allotment, encumbrance, or expenditure of funds appropriated or authorized for the construction of a capital facility project shall be approved by the comptroller unless the executive head of the agency administering the project, or other person provided for by statute, certifies in writing that the construction work can be accomplished (a) within the appropriation or authorization for the project and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with section 59 or (ii) any other pre-design

document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the construction work be such as would result in a change in the number of square feet to be constructed in the project of more 10 ten per cent from the number specified in the study, program or other predesign document referred to in (b)(i) and (b)(ii).

No state agency, as defined by section 1, administering a facility administering project shall enter into any contracts or incur any obligations or cause to be performed construction of that project if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with section 59 or (ii) any other pre-design document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the construction work be such as would result in a change in the number of square feet to be constructed in the project of more than 10 per cent from the number specified in the study, program or other predesign document referred to in (b)(i) or (b)(ii).

Section 62. The governor and the commissioner of capital asset management and maintenance in their long range capital facilities development plans and capital budget requests and the secretaries of the various executive offices in their review and recommendations with regard to such plans and requests may include among them plans and requests for 1 or more contingency, or other lump-sum or reserve accounts, including but not limited to planning, design and construction contingency, preventive maintenance, emergency repair, energy conservation, life-

3695 safety, and architectural barrier funds or accounts. Each shall include in their plans and request
3696 recommendations as to the purpose of such funds or accounts and the priorities and procedures
3697 for allocating the monies kept therein.
3698
3699 The commissioner of capital asset management and maintenance shall forthwith establish
3700 priorities and procedures for allocating such funds in conformity with the terms of the
3701 appropriation authorizing them and legislative intent in regard to long range capital facilities
3702 development plans. The commissioner shall forthwith submit copies of the priorities and
3703 procedures so established to the secretary of administration and finance and to the house and
3704 senate committees on ways and means.
3705
3706 Unless otherwise provided for in the appropriation authorizing such funds or accounts or other
3707 applicable law and in conformity therewith and the priorities and procedures established by the
3708 commissioner of capital asset management and maintenance, the monies kept therein shall not be
3709 allocated unless and until:
3710
3711 (a) the using agency, whether or not it is the agency requesting the funds for the proposed
3712 project, certifies in writing to the commissioner of capital asset management and maintenance
3713 that the project corresponds to the current needs of the using agency, including its current long
3714 range capital facilities development plan;
3715
3716 (b) the commissioner requests that 1 or more of the directors of the office of programming, office
3717 of project management, or the office of facilities management review the project proposal, and

the director or directors certify in writing to the commissioner of capital asset management and maintenance that the project proposal reflects the agency's needs as stated, that it provides an accurate estimate of the project requirements, cost and schedule, and that the project can be accomplished within the limits of the funds requested;

(c) The commissioner of capital asset management and maintenance certifies in writing to the secretary of administration and finance and to the house and senate committees on ways and means that the project proposal has been evaluated in conformity with the terms of the appropriation or authorization of the fund or account and the priorities and procedures promulgated by him pursuant thereto and approves the allocation.

The commissioner of capital asset management and maintenance shall, upon his certification, file copies of the project proposal and other supporting documents, his certification and those of the director or directors whose review is requested and the agency requesting such funds with the secretary of administration and finance and with the house and senate committees on ways and means.

If either the director or directors whose review is requested or the commissioner of capital asset management and maintenance should fail to give the aforementioned certifications or approvals, the commissioner shall forthwith send notice of his decision and the reasons therefor to the secretary of administration and finance and to the house and senate committees on ways and means.

The commissioner of capital asset management and maintenance shall by February 15 of each year prepare and submit to the secretary of administration and finance and to the general court a report containing separate sections summarizing the disposition and the status of the funds or accounts and descriptions of all projects for which monies from such fund have been allocated.

Section 63. There is established and set up on the books of the commonwealth a separate fund, consisting of monies appropriated to the fund by the general court and income derived from the investment of monies appropriated to the fund, known as the capital facility planning fund.

Allocation of monies from such fund shall be made according to section 62. The purpose of the capital facility planning fund shall be to provide monies for the planning of capital facility projects by state agencies other than counties. Priority in the allocation of monies from such fund shall be given to projects:

(i) which are included in any long range capital facilities development plan previously approved by the general court or in any master plan, consistent with such long range plans, previously approved by the commissioner of capital asset management and maintenance or

(ii) whose rapid progress is indicated by statutes which provide for capital facility projects to advance specific agency programs, goals or objectives; and for which the delay in seeking monies through the normal capital budget process provided for by this chapter would cause a serious loss in use of the proposed capital facility if it were unavailable or cause a percentage increase in total project cost substantially larger than that for other projects at a comparable stage

of development.

Monies from the capital facility planning fund may be allocated, in accordance with priorities stated above, for the preparation of environmental impact reports to comply with the requirements of chapter 12 and chapter 30.

Monies from the capital facility fund may be allocated, in accordance with the priorities stated above, for options to purchase land or buildings which will be used for capital facility projects specifically identified in the allocation request.

If monies spent on a capital facility project are allocated from the capital facility planning fund and the funds for the acquisition of a site for or the design or design and construction of such project are appropriated or authorized then a sum of money equal to that allocation shall be deducted from the amount so appropriated or authorized and returned to the capital facility planning fund.

In no case shall a request for monies or monies be allocated for projects for which a similar request is currently being considered according to the capital budget process for the current fiscal year provided for by this chapter or which was so considered during the capital budget process for the previous fiscal year and failed to receive an appropriation or authorization.

Requests for monies from the capital facility planning fund may be made by state agencies other than counties and only after approval of such requests by the secretary of the executive office in

which that agency is located, except in the case of a public institution of higher learning, only after approval by the board of higher education.

Section 64. Each public agency other than a city or town shall prepare a long range capital facilities development plan. Such plan shall include projections at least 5 years from the date of submission of the plan. Each such public agency shall revise the plan annually or at such other time as the commissioner of capital asset management and maintenance may require, or as otherwise mandated by statute or appropriation act. Each plan or revision thereof shall be submitted to the commissioner at such time or according to such schedule as he shall specify. Each state agency the authorization of which is otherwise required for capital facility projects of 1 or more cities and towns shall include in its plan required by this section and its capital facility budget request required by section 66 the information about such projects specified by those sections. The state agency may request from cities and towns the information needed to complete the above-mentioned plan and budget and said information shall be promptly submitted to the state agency. To the maximum extent feasible the commissioner and state agencies shall coordinate the timing and content of their requests for information to minimize duplication of reporting. In the case of local operating agencies as defined in section 1 of chapter 121B, any such plan, revision, capital facility budget, or capital facility budget requests required by this section or section 66 of this chapter shall be prepared and submitted by the department of housing and community development.

After consultation with the governor and the secretary of administration and finance, the commissioner shall, in a timely manner, prepare and send to public agencies a capital facility

planning policy statement to inform in the formulation of their long range capital facilities development plans and capital facility budget requests.

The commissioner may at his discretion provide guidance and technical assistance to those public agencies lacking sufficient resources to prepare such plans. He shall specify the information required, the manner or preparation of the plan, and the form in which it is to be provided.

Section 65. In formulating requirements for the information to be provided in long-range capital facilities development plans, the commissioner of capital asset management and maintenance shall require at least the following: the history, legislative authority and major responsibilities of the public agency as defined by law and by administrative rule, regulation or directive; the programs being carried out by each as they affect capital facility needs; an appraisal of the responsibilities, objectives and current programs and evaluation of the factors expected to influence future programs; tabulations of the numbers of people served by and staffing the agency and its subunits; a detailed description of the land and facilities currently owned, leased or used by the agency to the extent that such description has not previously been submitted to the commissioner as part of the real property inventory maintained by him and an estimate of their utilization in relation to current and future programs.

In formulating requirements for each long-range capital facilities development plan, the commissioner shall require at least the following: a determination of the capital facility needs based on the programs, population to be served, and the adequacy of existing facilities; a

proposed capital facility project schedule and an explanation of the relationship between the need for each project and the stated programs; a summary of the schedule of needs for funds; a tabulation of the estimated staffs required for such new or modified programs and facilities; a tabulation of such projects showing the effect upon staffing, operating, and maintenance expenses; and a description of the geographic and spatial location of the facility relative to other facilities or land of the agency or its subunits.

In formulating requirements for any revisions of long-range capital facilities development plans the commissioner shall require at least the following: a statement of the changes in the agency's responsibilities, objectives and programs; revised estimates of institutional population and staff, and geographic and spatial descriptions of capital facilities; and changes in capital facility requirements as they would have effect at least 5 years from the date of submission.

Section 66. Each public agency other than cities and towns shall prepare and submit to the commissioner of capital asset management and maintenance in addition to its long-range capital facilities development plan or revision thereof, an annual capital facility budget at such time as the said commissioner shall require.

In preparing both long-range capital facilities development plans and revisions thereof and capital facility budget requests, the agency shall provide timely public notice of such proposed plans and requests and reasonable opportunity for potential users and staff of the facilities controlled or to be controlled by the agency to comment thereon.

The long-range capital facility development plans and capital facility budget requests submitted by the agency to the division of capital asset management and maintenance shall contain a summary of those comments and a statement of the extent to which they are reflected in the proposed plans and requests.

The commissioner may provide guidelines to agencies for soliciting and reporting on such views.

The commissioner may, at his discretion, provide guidance and technical assistance to agencies without sufficient resources to prepare capital facility budget requests. He shall specify the information being sought, how it might be prepared and the form in which it is to be provided.

The commissioner shall provide for a format and content of long-range capital facilities development plans and capital facility budget requests which is, to the maximum extent feasible, consistent with that provided for the operating budget by the director of the fiscal affairs division within the executive office for administration and finance.

Any public agency may include among its capital facility budget requests, ones for appropriations or authorizations for a class or classes of similar or related capital facility projects. Such request shall include a statement of (a) how the class of projects is defined; (b) the reasons for requesting appropriations or authorizations for a class of projects rather than individual projects; (c) the priorities and procedures for allocating the appropriated or authorized monies among the class of possible projects, making reference to and submitting copies of any studies, surveys, plans, analyses and other documents from which criteria for allocation are to be

derived; and (d) a proposed initial allocation of the appropriated or authorized monies based on the suggested priorities, procedures and criteria.

In formulating requirements for capital facility budget requests for individual projects, the commissioner shall include at least the following: (a) a concise title description of the project; (b) the location of the project and its site in relation to any existing facilities in close proximity; (c) the estimated schedule for completion of the project including the dates upon which the design and construction of the project are estimated to be commenced and completed and the facility occupied or used; (d) a description of the project and what it involves, appending any planning documents, accurate summaries of design documents and any other documents prepared for or pertaining to that project, if not previously submitted to the commissioner; (e) the useful life of the project before replacement would be necessary; (f) the current status of the plans and site for the project; (g) the status of utilities required for the project; (h) the relationship of the project to the long range capital facilities development plan; (i) the total project cost; (j) the effect of the proposed project on annual operating costs (including maintenance costs); (k) the proposed source of funds; and (l) an explanation of the need for the proposed project. The description of the project shall identify any and all previously approved appropriations or authorizations pertaining to the proposed or earlier phases of the project; the phase or phases approved, in progress, and completed, the estimated or final cost of each phase of the project through completion, and the sum of money permitted to be expended on the project as so approved. To assist his staff and user agencies in preparation and review of long-range plans and requests, the commissioner shall establish a file of approved appropriations and authorizations of all projects pertaining to each state-owned capital facility. The total project cost shall include at least the

following items: the cost of all real estate, properties, rights and easements acquired, utility services, site development; the cost of construction and the initial furnishing thereof; all architectural and engineering and legal expenses, the cost of surveys and plans and specifications; and such other expenses as are necessary or incident to determining the feasibility or practicability of any project. The estimate of the total project cost shall be based on the assumption that the project will be undertaken and completed according to the estimated schedule. Included in the estimate shall be a statement of its accuracy. The estimate of the effect of the proposed project on annual operating costs shall be based on the estimated date of use or occupancy of the facility. In the proposal for source of funds, there shall be included a statement of what federal funds are potentially available, what efforts are necessary and have been or must be made to obtain them, or why they cannot be obtained.

Section 67. Copies of the proposed plans and requests shall be submitted simultaneously to the commissioner of capital asset management and maintenance, the secretaries of all executive offices, the director of the fiscal affairs division within the executive office for administration and finance, the state treasurer, the commissioner of revenue and the house and senate committees on ways and means. The secretaries shall submit to the commissioner of capital asset management and maintenance a report on the consistency of any public agency's plans and requests with the programs and policies of the executive office on which it is located, except in the case of a public institution of higher learning, the board of higher education, including the secretary's recommendations as to those plans and requests. Prior to making their reports, each secretary shall conduct public hearings, for which he shall give 5 days public notice prior thereto, on his analysis and recommendations as to those plans and requests. Any secretary, when

requested by said commissioner of capital asset management and maintenance, shall submit to him a report on the impact of the specific statutory mission of the secretariat of the plans and request of any public agencies not located within his secretariat. Each secretary shall furnish to the house and senate committees on ways and means and the house and senate committees on post audit and oversight, copies of all such plans, requests and reports.

The director of the bureau of programming, director of the office of project management or the director of the office of facilities management, as said commissioner of capital asset management and maintenance directs, shall report to him as to the technical feasibility, cost, and schedule of proposed building projects; the technical, financial, and related requirements for the operation and maintenance of such buildings upon completion of the proposed projects; where relevant, the efficacy and efficiency of the proposed project in relation to current and projected available space and current and projected standards for the allocation and utilization of space; the accuracy and adequacy of any planning and design documents and any other documents prepared in relation to the stated needs, and as to any other matters which the commissioner of capital asset management and maintenance may require relative to his evaluation of such plans and requests. At the request of said commissioner of capital asset management and maintenance, the head of the public agency which administers or would administer a capital facility project, other than a building project, or consultants hired by him for that purpose, or members of said commissioner's staff shall report to him as to the technical feasibility, cost and schedule of that project; the technical, financial, and related requirements for the operation and maintenance of such facilities upon completion of the proposed projects; where relevant, the proposed project in relation to current and projected available facilities of a similar kind; the accuracy and adequacy

of any planning documents, accurate summaries of design documents and any other documents prepared in relation to stated needs, and as to any other matters which said commissioner may require relative to his evaluation of such plans and requests.

The director of the fiscal affairs division within the executive office for administration and finance shall report in writing to said commissioner of capital asset management and maintenance on the impact of proposed agency plans and requests, based on the stated and projected overall agency programs, on the agency's operating budgets for the next 5 years or for such longer period as said commissioner shall request. The commissioner of the department of revenue shall report in writing to said commissioner of capital asset management and maintenance on the impact of proposed agency plans and requests on their requirements for and production of revenue for at least the next 5 years or for such longer period as said commissioner of capital asset management and maintenance shall request. The reports of the director of the fiscal affairs division within the executive office for administration and finance and the commissioner of the department of revenue shall be sent to the state treasurer. The state treasurer may if requested by said commissioner of capital asset management and maintenance report in writing to said commissioner on the impact of all plans and requests, separately and as a whole on the financial health of the commonwealth and make such recommendations as to the form and nature of the financing as he deems necessary.

Copies of the proposed plans and requests shall in a timely manner be submitted to each of the regional planning agencies established pursuant to chapter 40B for their review. They shall submit to said commissioner of capital asset management and maintenance a statement of their

comments and recommendations, including those of cities and towns in the region which are affected by such plans and requests.

Said commissioner of capital asset management and maintenance may request such other reports from public agencies as said commissioner may deem necessary to fulfill his responsibilities for the integration and coordination of capital facility projects.

Section 68. The commissioner of capital asset management and maintenance shall study and review all long range capital facility development plans and capital facility budget requests and reports pertaining thereto filed with him as provided by sections 64, 65, 66 and 67, and shall make such investigations as will enable him to prepare a capital facility budget for the governor. The commissioner shall include in such budget an integrated and comprehensive long range capital facilities development plan and capital facility budget request and such other recommendations as the governor shall determine upon. The capital facility budget shall embody all plans, estimates, requests, and recommendations submitted to the commissioner in accordance with sections 64, 65, 66 and 67. The capital facility budget shall be classified and designated to present at least the same kind and quality of information as are required of plans and requests by sections 64, 65, 66 and 67. The commissioner shall include an evaluation of the proposed plan and budget request in terms of the capital facilities planning policy statement and any revisions thereof he proposes.

The governor in his capital facility budget and the commissioner of capital asset management and maintenance, in his recommendation to the governor of a capital facility budget, shall

include in such requests for each building project contained therein, for which the using agency is a state agency, a recommendation as to the need for and where appropriate, a request for, a study and program as a prerequisite to contracting for, performance of, or allotment or expenditure of funds for any design or construction-related activities. If a study or program is not recommended the governor and commissioner shall include the reasons therefor. They shall also include a recommendation as to the mode of procurement of such facility, including but not limited to, sequential, construction management, turnkey, design/build procurement, and the phasing of such procurement, including but not limited to approval of design and construction stages as separate or combined phases, which will most efficiently, economically and best serve the interests of the commonwealth. When an alternative mode of procurement is recommended, the governor and commissioner shall also recommend the method by which design and construction services shall be procured for such project, provided that such method shall be compatible with the policies and procedures for the selection of designers in sections 44 to 58, inclusive, and with the policies and procedures for the selection of contractors in sections 44A to 44M, inclusive of chapter 149, to the extent feasible. If the governor or the commissioner should recommend a mode of procurement other than the sequential mode or a phasing of procurement other than approval of design and construction as a combined phase, each shall state in detail the reasons therefor.

Furthermore, their requests shall contain a statement as to the expected useful life of the facility from the date of construction, renovation, acquisition, or other procurement; a statement of the proposed source of funds; where relevant, a recommendation as to the form and scheduling of financing of said project; and a recommendation as to the date upon which the authorization for

the expenditure of the funds should expire. If the governor or the commissioner of capital asset management and maintenance should recommend a means and form of financing of the project such that the term of repayment exceed the expected useful life of the project, the governor and commissioner shall state in detail the reasons therefor. The governor and the commissioner shall transmit therewith a statement showing the total indebtedness proposed to be incurred for each capital facility project and the fund to be charged therefor, and the total cost of financing said project according to the recommended form and scheduling of such financing. The governor and the commissioner shall also transmit therewith a statement relative to the condition of the state debt, including an analysis of the impact of the proposed capital facility budget, including the long range capital facilities plan, on the financial health of the commonwealth. Such statement shall, where appropriate, include reference to the impact of obligations of public agencies which are guaranteed by or are contingent liabilities of the commonwealth.

Section 69. The governor's and the commissioner of capital asset management and maintenance capital facility budget shall include provision for establishment of a design and construction contingency reserve account, the purpose of which shall be to provide monies for the design and construction of capital facility projects by state agencies which, because of unforeseeable circumstances, not within the contemplation of the using or the administering agency, and for justifiable reasons, would cause the project cost to exceed the sums then appropriated or authorized therefor. Allocation of monies from such reserve account shall be made according to section 62. Priority in the allocation of monies from such account shall be given to projects for which the delay in seeking monies through the normal capital budget process provided for by this chapter would cause a serious loss in use of the capital facility if it were unavailable when

needed or cause a percentage increase in total project cost substantially larger than that for other projects at a comparable stage of progress.

In no case shall a request for monies be made or monies be allocated for projects for which a similar request is currently being considered according to the capital budget process for the current fiscal year provided for by this chapter, or which was so considered during the capital budget process for the previous fiscal year and failed to receive an appropriation or authorization. Further, in no case shall a request for monies be made or monies be allocated if as a result of the review provided for by section 62 the commissioner of capital asset management and maintenance finds (a) that the proposal for use of such monies will result in a substantial deviation from any study or program for the project most recently approved by him or from any design for the project most recently approved by the administering agency or (b) that the proposal for use of such monies will result in a cumulative increase in the number of gross square feet to be constructed in the project in excess of 10 per cent of the number most recently specified in an appropriation or authorization for the project.

Requests for monies from the design and construction contingency reserve account may be made by state agencies which are the using agencies of those projects.

In establishing priorities and procedures for allocation of monies from the design and construction reserve account pursuant to section 62, the commissioner of capital asset management and maintenance shall establish specific limits for the amount of money which may be allocated from the account for any particular project, the amount which may be allocated for

the construction of any particular project excluding price inflation contingencies, and the amount which may be allocated for the construction of any particular project for price inflation contingencies. In no event shall the cumulative amount allocated from the account to any one capital facility project exceed 10 percentum of the total cost specified by the appropriation or authorization for that project.

Section 70. The governor's and the commissioner of capital asset management and maintenance capital facility budget shall include provisions for establishment of an emergency repair reserve account, the purpose of which shall be to provide monies for the performance of repair projects of such a nature that funding through the capital budget process provided for by this chapter would be burdensome. Allocation of monies from such reserve accounts shall be made according to the provisions of section 62. Priority in the allocation of monies from such fund shall be given as follows:

(1) top priority shall be given to funding requests for projects designed to remedy clear and present dangers to the health and safety of the users of the facility in question;

(2) secondary priority shall be given to funding requests for projects which would prevent imminent destruction or damage of property or equipment beyond reasonable repair; and

(3) third priority shall be given to funding requests for projects, that would restore use of a facility or part of a facility to its user, where the loss of use has seriously disrupted the agency's program functions.

In no case shall a request for monies be made or monies be allocated for projects for which a similar request was considered during the capital budget process for the previous year as provided for by this chapter, and which failed to receive an appropriation or authorization.

Requests for monies from the emergency repair reserve account may be made by state agencies other than counties and by the office of facility management.

Section 71. The governor shall submit to the general court annually within 3 weeks after the general court convenes in regular session a budget including an operating budget and a capital facility budget and long range capital facilities development plan. In the first year of the term of office of a governor who has not served in the preceding year, the governor shall recommend the budget within 8 weeks after the convening of the general court. The recommendations contained therein shall, to the fullest possible extent, conform with the programs of the several offices and departments as defined by the secretary of administration and finance with the advice of the agency heads or other officers responsible for the administration thereof and long range capital facilities development plans as defined by the commissioner of capital asset management and maintenance. The budget shall also include definite recommendations of the governor for financing the expenditures recommended, and the relative amounts to be raised from ordinary revenue, direct taxes or loans. All appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be designated the general appropriation bill. With the budget the governor shall submit to the general court statements detailing and explaining his reasons for recommending any increase in, decrease in, or deletion from the budgetary

recommendations (a) of any department office, commission, or institution, or other public agency, or in the case of a department, office, commission or institution within any executive office established by chapters 6A and 7 of the secretary of such executive office, (b) of the general court, (c) of the judiciary and (d) of the commissioner of capital asset management and maintenance. The governor shall also submit such other messages, statements of supplemental data relative to the budget as he deems expedient and, from time to time during the session of the general court may submit supplemental messages on recommendations relative to appropriations, revenues and loans. Upon submission of the budget to the general court, the governor shall, through the executive office for administration and finance, make available to the public all material relevant to said budget, including all supporting documents pertinent thereto. This shall include at least the mailing, at the time of submission of the governor's budget and subsequently the budgets of the house and senate committees on ways and means, of (a) copies of these budgets to the state house library, and to the state office building in Springfield, (b) copies of all reports, statements, recommendations, or evaluations required by sections 3, 3A, 4, 5, 5B, 6 of chapter 29, and 67, 68, or 73 of this chapter to the state house library. They shall be placed on public display and made available for reproduction during business hours.

All information required under this section to be filed with or as part of the budget by the governor, and which is not contained within the budget as filed or within accompanying documents filed at the same time, shall be filed by the governor within the following 14 days and shall be accompanied by a detailed statement explaining the failure to provide the material at the time the budget was submitted.

In the event that the governor determines from information supplied by the executive office for administration and finance, from the tax revenue resolution established pursuant to section 5B of chapter 29, or from any other competent source that the tax revenues or non-tax revenues supporting the general appropriation bill have materially decreased, or that appropriations or statutory amendments that would provide funding to support recommended levels of appropriations have materially changed from the time the general appropriation bill was originally submitted, he shall submit to the general court by message recommended corrective amendments to his original budget submission to ensure that total appropriations recommended in the general appropriation bill do not exceed total revenues supporting said bill. Such message shall be submitted to the general court within 15 days from the date of such determination.

Section 72. All requests and recommendations for appropriations or authorizations for expenditures by the commonwealth, other than those submitted by the governor to the general court pursuant to section 2 of Article LXIII of the Amendments to the Constitution, shall be submitted by the governor to the general court; shall be classified to show the request of each officer having charge of an office, department or undertaking, including the priorities assigned to each program by said officer, the recommendation of the secretary of the executive office within which such office, department or undertaking shall be, the recommendation of the governor, and the prior year appropriation, if any; and shall indicate the number, if any, of permanent positions proposed to be authorized for an office, department or undertaking and the number of persons to be served or the number of actions to be taken by such office, department or undertaking.

All such requests and recommendations as they pertain to capital facility projects shall also be

studied by the commissioner of capital asset management and maintenance with reference to any current long range capital facility development plans proposed in accordance with the requirements of sections 64, 65, 66 and 67. The commissioner in his study shall consider the effects upon the policies, programs, and priorities with regard to which he is required to report in accordance with section 73 and with reference to any other matters which the commissioner requires to be reported to him in his review and evaluation of capital facility budget requests by public agencies in accordance with the provisions of sections 64, 65, 66, 67 and 68. After such review and study, the commissioner shall promptly prepare and submit his recommendations to the general court.

The commissioner of capital asset management and maintenance shall promptly review any petition, motion or amendment introduced in either chamber of the general court which makes a provision for a capital facility project. During such review the commissioner shall study the necessity, desirability, and relative priority of such capital facility project by reference to any current long range capital facilities development plans proposed in accordance with the requirements of sections 64, 65, 66, 67 and 68. The commissioner in his study shall consider the effects upon the policies, programs, and priorities with regard to which he is required to report in accordance with section 73, and with reference to any other matters which the commissioner requires to be reported to him in his review and evaluation of capital facility budget requests by public agencies in accordance with the provisions of sections 64, 65, 66, 67 and 68. After such review and study the commissioner shall promptly prepare and forward his recommendation on the petition, motion, or amendment to the chamber in which it was introduced and where it is pending.

Section 73. The commissioner of capital asset management and maintenance shall, each year, no later than 30 days after the governor submits the budget in accordance with the provisions of section 71, submit to the governor and to the general court a report which shall include, but not be limited to, the following: an evaluation of the effect of the capital facility budget, and the implementation of the proposed long range capital facilities development plan upon important policies, programs, and priorities mandated by the general court or established by the governor in accordance with law such as impact on the environment, energy conservation, preventative maintenance, architectural barriers, and the effective coordination of such policies, programs, and priorities with those of the federal government to assure the maximum benefit to the commonwealth from such federal programs.

No later than an additional 30 days thereafter, the commissioner shall submit to the governor and to the general court a similar report on the impact of and the progress made in the implementation of long range capital facilities plans and previously authorized capital facility projects.

SECTION70. Section 1 of chapter 9 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 4 and 6, each time they appear, the words “and council”.

SECTION 71. Said chapter 9 is hereby further amended by striking out section 4, as so appearing.

Section 4A. The state secretary shall, at the close of each regular session of the general court, collate and cause to be printed in a single volume the following:

(1) All acts and resolves passed at such session.

(2) All amendments to the constitution referred at such session to the next general court and all such amendments acted upon at such session and to be submitted to the people at the next state election.

(3) All acts and resolves passed at any special session of the general court, except a general revision of the statutes, and not theretofore published in any preceding annual volume.

(4) In the volume of the year immediately following a state election, all constitutional amendments and proposed laws approved by the people at said election.

(5) A statement in bold type at the conclusion of each law as printed, or in a postscript at the end of the volume with a suitable reference to each law, as to which a petition asking for a referendum has been filed prior to the publication of the volume, with a sufficient number of signatures to procure its submission to the people, together with a recital of the pertinent provisions of Article XLVIII of the Amendments to the Constitution.

(6) In the volume of the year immediately following a state election, a statement showing what constitutional amendments, proposed laws and laws were submitted to the people at said

election, with the aggregate vote on each such measure, both affirmative and negative, arranged in such detail as the state secretary may determine.

(7) A table of changes in the general statutes and an index, to be prepared as provided in section 51 of chapter 3; provided, however, the state secretary may, in the secretary's discretion, cause the table of changes to be printed in a separate volume and not in the single volume.

The state secretary shall cause up to 10,000 copies of said volume to be printed each year and shall, immediately after their publication, distribute such copies as the secretary determines.

Section 4B. The state secretary shall, at the close of each regular session of the general court, publish in pamphlet form up to 20,000 copies, of the acts and resolves passed and of any proposed amendments to the constitution passed during such session. The secretary may also apportion the copies among the clerks of the several cities and towns, to be delivered by the clerks to inhabitants who apply for a copy.

The secretary shall also, as soon as any act or resolve is passed, send a copy of the act or resolve to the following: each state department, officer, board or commission whose duties are affected by the act or resolve, the clerks of the several cities and towns, for the use of the inhabitants of those cities and towns, the justices, clerks and registers of courts, district attorneys, sheriffs, justices of the peace authorized to issue warrants and take bail, county law libraries and all incorporated law libraries and branch libraries maintained by them; provided, however, upon written request approved by the secretary, additional copies may be distributed to the above list

and to any other public officials whose duties in the secretary's opinion require the use of such copies. The secretary may also send copies to such persons as apply for an act or resolve, charging not less than the cost of producing and distributing the copy.

Section 4C. The state secretary shall print from time to time during the session of the general court a cumulative table of changes in the general statutes, up to the date of publication, to be prepared by the counsel to the senate and the counsel to the house of representatives.

Section 4D. The state secretary shall furnish to each city and town of the commonwealth, to be preserved in a public place in the city or town, 1 copy of each of such report included in the public document series as the city or town clerk may apply for. The state secretary shall furnish 1 copy of each report to such public and other libraries as may apply for the reports. If the supervisor of public records shall report to the state secretary that a city or town is unable to properly care for and use the documents, the state secretary may discontinue sending the reports to that city or town.

Each member of the general court and of the executive department, the clerk of each branch of the general court and each reporter assigned to either branch may, upon a written, signed request delivered to the state secretary, receive a copy of any such document. Ten copies shall be placed in the state library for the use of the library and for exchange.

Section 4E. The state secretary shall annually procure copies of the proceedings of the annual encampments of the departments of Massachusetts, Grand Army of the Republic, United Spanish

War Veterans, The American Legion, Disabled American Veterans of the World War, Marine Corps League, American Veterans of World War II, AMVETS, Italian American War Veterans of the United States, Incorporated, Jewish War Veterans of the United States, Veterans of Foreign Wars of the United States, Polish-American Veterans of Massachusetts, Inc., and Veterans of World War I of the U.S.A., held in that year, with the general and special orders, circulars and other papers forming parts thereof, and shall cause the same to be kept as parts of the records of the commonwealth. The state secretary shall annually cause copies thereof, including in the case of those relating to the Grand Army of the Republic the portraits of the department officers and staff and of the executive committee of the national encampment, to be printed and bound; and shall cause 1 printed and bound copy of each to be sent to each city or town library in the commonwealth. The state secretary shall also send 1 copy of each volume relating to the Grand Army of the Republic to each Grand Army post, 1 copy of the volume relating to the United Spanish War Veterans to each camp of Spanish War Veterans, 1 copy of the volume relating to The American Legion to each post of The American Legion, 1 copy of the volume relating to the Disabled American Veterans of the World War to each chapter of the Disabled American Veterans of the World War, 1 copy of the volume relating to the Marine Corps League to each detachment of the Marine Corps League, 1 copy of the volume relating to the American Veterans of World War II, AMVETS to each post of the American Veterans of World War II, AMVETS, 1 copy of the volume relating to the Italian American War Veterans of the United States, Incorporated to each post of the Italian American War Veterans of the United States, Incorporated, 1 copy of the volume relating to the Jewish War Veterans of the United States to each post of the Jewish War Veterans of the United States, 1 copy of the volume relating to the Veterans of Foreign Wars to each post of the Veterans of Foreign Wars of the

United States, 1 copy of the volume relating to the Polish-American Veterans of Massachusetts, Inc. to each post of the Polish-American Veterans of Massachusetts, Inc. and 1 copy of the volume relating to the Veterans of World War I of the U.S.A. to each barracks of the Veterans of World War I of the U.S.A., in the commonwealth. The state secretary shall cause the other copies of each to be distributed in the same manner as the annual report of the state secretary.

Section 4F. The state secretary shall furnish to every city and town the reports of the decisions of the supreme judicial court from time to time, as published, and shall furnish to every town hereafter incorporated a full set of said decisions, the index-digest of those decisions, a copy of the General Laws, and copies of all such books and documents in the secretary's office as shall have been previously furnished to towns by the commonwealth; but the clerk of such town shall first file with the secretary a certificate that the town has made suitable provision for the preservation and convenient use of such books and documents.

Section 4G. A city or town which has once been furnished with such books and documents shall not again be supplied with the same at the expense of the commonwealth. Towns may effect insurance on the books and documents for their own benefit.

Section 4H. The state secretary shall, in the distribution of laws and documents to members of the general court, effect such exchanges among members as they shall direct; and the secretary may employ such additional clerical or other assistance as may be necessary for the purpose. Copies of the laws and documents apportioned to members of the general court which remain undisposed of for 3 months after the end of the year in which they were issued shall revert to the

commonwealth and be subject to general distribution.

SECTION72. Section 5 of said chapter 9, as so appearing, is hereby amended by striking out, in line 4, the words “sixty-six as the governor and council may approve” and inserting in place thereof the following figure:- 66.

SECTION 73. Section 19 of said chapter 9, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “, having first obtained authority from the governor and council,”.

SECTION 74. Section 5 of chapter 10 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “, with the consent of the governor and council, may appoint, and, with such consent, may for cause remove,” and inserting in place thereof the following words:- may appoint and may for cause remove.

SECTION 75. Section 5B of said chapter 10 is hereby repealed.

SECTION 76. Section 5C of said chapter 10, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words “with the advice of the council”.

SECTION 77. Said section 5C of said chapter 10, as so appearing, is hereby further amended by striking out, in line 6, the words “, with the advice of the council,”.

SECTION 78. Section 6 of said chapter 10 is hereby repealed.

SECTION 79. Chapter 7, as appearing in the 2010 Official Edition, is hereby amended by inserting the following section:-

Section 62. The Executive Office of Administration and Finance shall report annually to the house and senate committees on bonding, capital expenditures and state assets, no later than November 1, a list of all capital projects, the legislation and line item authorizing such funding, the municipalities and senate and house legislative districts in which such projects are located, the total estimated cost of each project and the total amount expended on each project in the immediately preceding fiscal year.

SECTION 80 Section 9 of said chapter 10, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “general”, in line 2, the following words:- and the house and senate committees on ways and means.

SECTION 80A. Said chapter 10 is hereby further amended by striking out section 9A, as amended by section 25 of the acts of 2009, and inserting in place thereof the following section:-

Section 9A. A debt statement shall be forwarded on a quarterly basis to the state treasurer, comptroller and the house and senate committees on ways and means by those agencies of the commonwealth and authorities identified by the comptroller under subsection (c) of section 12 of chapter 7A, having authority to issue notes or bonds. Said debt statement shall be certified by an authorized official of said agency or authority. Such debt statement shall include authorized, unissued and outstanding bonds and notes of the authority or agency as of the first day of each quarter. Said debt statement shall include the debt service requirements of both principal and

interest for the subsequent 24 month period and an estimate of the date and principal amount of bonds and notes to be sold in the subsequent 12 month period. Said debt statement shall be filed under rules and regulations prescribed by the state treasurer.

SECTION 80B. Said chapter 10 is hereby further amended by striking out section 10, as amended by chapter 240 of the acts of 2010, and inserting in place thereof the following section:-

Section 10. The state treasurer shall annually, on the second Wednesday in September, report to the general court a statement of the transactions of the department of the state treasurer for the preceding fiscal year, including a specific statement of all warrants remaining unpaid and of the names of the persons in whose favor they are drawn.

SECTION 81. Said chapter 10 is hereby further amended by inserting after section 10A the following section:-

Section 10B. The state treasurer, in consultation with the secretary of administration and finance and the comptroller, shall prepare and submit to the house and senate committees on ways and means on or before the last day of August, November, February and May official cash flow projections for the current fiscal year and for the fiscal quarters beginning October 1, January 1, April 1 and July 1, respectively. Included in said projections shall be actual spending and revenue through the latest possible date for inclusion in the projections, estimated spending and revenue, along with assumptions used to derive those estimates, a comparison of actual spending and revenue with previous estimates of spending and revenue for those months, an analysis of

the variances identified in that comparison and identification of any cash flow gaps. Variance reports, which compare actual revenues and spending with planned revenues and spending, shall be produced weekly by the treasurer and distributed to the comptroller's division, the department of revenue and the executive office for administration and finance. All data required by the treasurer for production of annual and quarterly cash flow projections and weekly variance reports shall be submitted by state agencies, including the state lottery, in a timely fashion, on or before deadlines established by the treasurer. To assist in the preparation of the weekly variance reports, the department of revenue shall be responsible for providing estimates of tax revenue receipts, by tax category as identified in section 1A of the general appropriation act and the office of the comptroller for providing estimates of agency spending and non-tax revenue receipts. Compilations of such variance reports shall be distributed monthly to the comptroller's division, the department of revenue, the executive office for administration and finance and the house and senate committees on ways and means. The executive office for administration and finance and the treasurer shall jointly develop and approve annual and quarterly cash management plans to address gaps identified by cash flow projections and variance reports. Said management plans shall clearly identify the roles to be played by short-term borrowing, investment policy, expenditure controls and revenue management in providing necessary cash.

The state treasurer shall semi-annually report to the house and senate committees on ways and means and the joint committee on revenue the lending and banking institutions into which the cash deposits of the commonwealth are being deposited.

SECTION 82. Section 11 of said chapter 10 is hereby repealed.

SECTION 83. Section 24 of said chapter 10, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “an”, in line 35, the following word:- audited.

SECTION 84. Said section 24 of said chapter 10, as so appearing, is hereby further amended by inserting after the word “advisable”, in line 38, the following words:- , which shall be made available electronically to the general public not later than the earliest date established for reports in section 12 of chapter 7A.

SECTION 85. Said section 24 of said chapter 10, as so appearing, is hereby further amended by striking out the last paragraph.

SECTION 86. Section 24A of said chapter 10 is hereby amended by striking out subsection (b), as so appearing, and inserting in place thereof the following subsection:-

(b) The revenues derived from the sale of multi-jurisdictional tickets or shares shall be apportioned under section 25.

SECTION 87. Section 25 of said chapter 10, as so appearing, is hereby amended by striking out clause (c) and inserting in place thereof the following clause:- (c) the balance shall be used to fund budgeted aid to cities and towns as provided in section 18C of chapter 58, subject to appropriation.

4431 SECTION 88. Said chapter 10 is hereby further amended by inserting after section 26 the
4432 following section:-
4433
4434 Section 26A. (a) The director shall operate and administer an office of performance management
4435 and innovation that shall, without limitation, administer this section. All departments of the
4436 commission shall report to the office of performance management and innovation with regard to
4437 setting goals and establishing performance measures to improve the commission and the
4438 departments' operations.
4439
4440 (b) The director shall establish a performance measurement system for the departments of the
4441 commission, which shall establish program goals, measure program performance against those
4442 goals and report publicly on progress to improve the effectiveness of the state lottery.
4443
4444 (c) The office of performance management and innovation shall be charged with evaluating the
4445 goals and measures established by the commission and its departments and monitoring the
4446 results reported. The office shall recommend changes to proposed goals and measures as are
4447 appropriate to align goals and measures with the strategic priorities of the commission and the
4448 director. The office shall report regularly to the public on the commission's and its departments'
4449 progress toward achieving stated goals. The office shall be responsible for reporting publicly and
4450 transparently and making all reports available through an on-line system.
4451
4452 The director shall use the performance criteria established under this section to determine the
4453 quality of service of all private entities that perform services on behalf of the commission. The

4454 results of such performance measures shall be criteria used in negotiating any contracts.

4455

4456 SECTION 89. The second paragraph of section 35 of said chapter 10, as appearing in the 2008

4457 Official Edition, is hereby amended by striking out clause (c) and inserting in place thereof the

4458 following clause:-

4459

4460 (c) For budgeted aid to cities and towns as provided in section 18C of chapter 58, subject to

4461 appropriation; and

4462

4463 SECTION 90. Section 37 of said chapter 10, as so appearing, is hereby amended by striking out,

4464 in lines 31 and 32, the words “Local Aid Fund established under the provisions of section 2D of

4465 chapter 29” and inserting in place thereof the following words:- State Lottery Fund.

4466

4467 SECTION 91. Said chapter 10 is hereby further amended by striking out section 39, as so

4468 appearing, and inserting in place thereof the following section:-

4469

4470 Section 39. Any organization operating or conducting a game under section 38 shall file a return

4471 with the commission, on a form prepared by it, within 10 days after such game is held or within

4472 such further time as the commission may allow, and shall pay with the return a tax of 5 per cent

4473 of the gross receipts derived from such game. All such returns shall be public records. All sums

4474 received by said commission from the tax imposed by this section as taxes, interest on those

4475 sums, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded on those sums,

4476 together with any interest or costs paid on account of such refunds, shall be paid into the treasury

of the commonwealth and shall be credited to the State Lottery Fund.

SECTION 92. Section 2 of chapter 11 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “, with the consent of the governor and council,”.

SECTION 93. Said section 2 of said chapter 11, as so appearing, is hereby further amended by striking out, in line 4, the words “, with the consent of the governor and council”.

SECTION 94. Section 5 of said chapter 11, as so appearing, is hereby amended by striking out, in line 1, the words “He may, subject to confirmation by the governor,” and inserting in place thereof the following words:- The state auditor may.

SECTION 95. Section 1 of chapter 14 of the General Laws, as so appearing, is hereby amended by inserting after the word “administration”, in line 4, the following words:- and finance.

SECTION 96. Section 1A of said chapter 14, as so appearing, is hereby amended by inserting after the word “administration”, in line 6, the following words:- and finance.

SECTION 97. Section 3 of said chapter 14, as so appearing, is hereby amended by adding the following words:- and finance.

SECTION 98.. The General Laws are hereby amended by striking out chapter 29 and inserting in place thereof the following chapter:-

CHAPTER 29

STATE FINANCE

Section 1. All words and terms defined by section 1of chapter 7C and appearing in this chapter, except for the phrases “state agency" and “state authority”, shall have the meaning defined in that section, unless the context shall indicate another meaning or intent.

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Account", a separate 8-digit number designated in the state accounting system to separately record budgetary, bond, federal or trust funds.

“Agency head” or “department head”, the administrative head of a state agency, department, board, bureau, office or division of the commonwealth who has been authorized through legislation to obligate and expend funds, comply with legislative mandates and make any certifications or approvals required under this chapter or other state or federal laws or regulations requiring an agency head certification or approval.

“Allotment”, that portion of an appropriation that may be spent by a department for a specified period as determined by the governor or the secretary of administration and finance under section 9B.

“Appropriation", the authorization by the general court with the approval of the governor, or by overriding the governor’s objection to the authorization, of the expenditure of budgeted revenues from a specified fund for a specified purpose up to a specified maximum amount for a specified period of time.

“Balanced budget", a condition of state finance in which the following requirements are met:

(i) the consolidated net surplus at the end of the fiscal year is greater than or equal to one-half of 1 per cent of state tax revenues for such fiscal year; and

(ii) the amount transferred to the stabilization fund under subsection (a) of section 5C is greater than or equal to 1/2 of 1 per cent of state tax revenue for such fiscal year.

“Bond authorization”, authorization by the legislature under section 3 of article LXII of the Amendments to the Constitution to borrow money.

“Bond fund", a fund of the commonwealth into which bond revenues are deposited and from which spending may occur.

“Bond revenues", the proceeds of bonds issued by the commonwealth and the interest earned on those bonds.

“Budget director", the administrative head of the fiscal affairs division within the executive office for administration and finance.

“Budgetary funds", state funds which are subject to appropriation as provided in section 6.

“Budgeted revenues”, all income in the budgetary funds from state taxes, departmental revenues, including retained revenues, federal reimbursements and transfers of budgeted revenues among funds, but not including federal grants.

“Capital appropriation”, an authorization by the general court of the expenditure of bond revenues, with the approval of the governor or by legislative override of a gubernatorial objection to such an authorization.

“Consolidated net surplus”, the sum of the undesignated balances in the budgetary funds, except funds established by section 2H and section 2I and by section 2C of chapter 131.

“Deficiency”, a condition of state finance in which expenditures during a fiscal year are expected to exceed the appropriation that authorizes those expenditures.

“Departmental revenues”, all income from state agency fees, whether established under section 3B of chapter 7 or otherwise, lottery receipts, fines, assessments, charges or court judgments, including retained revenues and the earnings on all state revenues.

4569 “Direct appropriation", a first-time appropriation of budgeted revenues, from sources other than
4570 retained revenues.
4571
4572 “Direct debt”, the sum of the principal amounts of all direct debt issued by the commonwealth to
4573 finance state projects and purposes, including obligations for leases for capital projects, except
4574 debt issued on a short-term basis in anticipation of receipts from taxes and other sources.
4575
4576 “Federal grant", any financial assistance available to a state agency from the United States
4577 government, either directly or through an intermediary, including a project, formula, or block
4578 grant, a subvention, a subsidy, an augmentation or a state plan but excluding federal
4579 reimbursements.
4580
4581 “Federal reimbursements”, financial assistance provided under Titles XVIII or XIX of the Social
4582 Security Act or other reimbursements received for state entitlement expenditures and credited to
4583 the General Fund, or other federal financial assistance from the United States government for
4584 direct payments to individuals, or for other purposes as provided for in section 2ZZZ, section 34
4585 of chapter 90, chapter 92, and section 48 of chapter 151A.
4586
4587 “Fund", an accounting entity established by general or special law to record all financial
4588 resources or revenues, together with all related expenditures or liabilities, that have been
4589 segregated for a particular purpose including, but not limited, to a grouping of related accounts
4590 into which resources have been further segregated for specific activities and purposes.
4591

“Line-item", a separate unit of appropriation identified by an 8-digit number representing a specific spending account authorized for a specific purpose and a defined amount.

“Prior appropriation continued" or “PAC", the re-appropriation of unexpended and unencumbered monies from one fiscal year for the following fiscal year.

“Retained revenue", income of a state agency or other public instrumentality, derived from its operations and which, by law, such agency or instrumentality may expend for a particular purpose up to a specified limit, without further appropriation, which would otherwise be subject to direct appropriation.

“Retained revenue line-item", a line-item which allows a state agency or other public instrumentality to use retained revenue during the fiscal year in which such revenue is received to maintain all or a portion of its operations.

“Revenue account”, a unique account established by the comptroller to record the collection of revenue by a state agency.

“Secretary", the officer in charge of each executive office established by chapter 6A or chapter 7 and the supreme judicial court.

“State agency" or “state department”, a legal entity of state government established by the General Court as an agency, board, bureau, department, office or division of the commonwealth

with a specific mission, which may either report to cabinet-level units of government, known as executive offices or secretariats, or be independent divisions or departments.

“State authority" a body politic and corporate constituted as a public instrumentality of the commonwealth and established by an act of the General Court to serve an essential governmental function; provided, however, that state authority shall not include: (1) a state agency; (2) a city or town; (3) a body controlled by a city or town; or (4) a separate body politic for which the governing body is elected, in whole or in part, by the general public or by representatives of member cities or towns.

“State revenue", inflows from tax and nontax sources that, by law, shall be accounted and reported to a fund.

“State tax revenues", the revenues of the commonwealth from every tax, surtax, receipt, penalty and other monetary exaction and interest in connection therewith including, but not limited to, taxes and surtaxes on personal income, excises and taxes on retail sales and use, meals, motor vehicle fuels, businesses and corporations, financial institutions, insurance companies, public utilities, alcoholic beverages, tobacco, inheritances, estates, deeds, room occupancy and pari-mutuel wagering, but excluding revenues collected by the state from local option taxes for further direct distribution to cities and towns.

“Surplus”, a condition of state finance in which an appropriation is expected to exceed expenditures from that appropriation during a fiscal year.

“Tax expenditures", state tax revenue foregone as a direct result of any general or special law which allows exemptions, deferrals, deductions from or credits against taxes imposed on income, businesses and corporations, financial institutions, insurance and sales but excluding revenue foregone as a direct result of any general or special law which allows a personal income tax exemption. Sales that do not involve tangible personal property shall not result in tax expenditures under this definition.

“Trust”, an account or fund into which are deposited monies held by the commonwealth or state agencies in a trustee capacity and which must be expended in accordance with the terms of the trust.

Section 2. There shall be a General Fund of the commonwealth, into which all revenue payable to the commonwealth shall be paid, except revenue required by law to be paid into a fund other than the General Fund and revenue for or on account of sinking funds, trust funds or trust deposits, which funds shall be maintained and the revenue applied in accordance with law or the purposes of the fund.

All such revenue shall be deposited in and credited to the General Fund or other state funds during the fiscal year in which it is received. In the event that a question arises as to the correct year to credit the receipt of revenues, the comptroller shall make a determination as to the correct fiscal year and the determination of the comptroller shall be conclusive. Every source of state revenue shall be classified according to a schedule of revenue accounts promulgated by the

comptroller. The commonwealth's receipt of such revenue shall be documented under rules and regulations promulgated by the comptroller.

Section 2B. There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Federal Capital Improvement Fund. Money received from the federal government on account of projects financed in whole or in part by appropriations authorized to be charged to said fund shall be credited to said fund.

Section 2C. All income from federal grants which shall include grants in aid and subventions, received by any department, institution, board, commission, agency, officer or employee of the commonwealth from the federal government, whether directly or through an intermediary, other than grants for capital improvements as provided in section 2B, shall be paid into the treasury of the commonwealth and credited to a separate special revenue fund to be known as the General Federal Grants Fund. Each such grant shall be kept in a separate account and subject to the law regulating the disbursement of public funds and the approval thereof.

Section 2H. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Stabilization Fund, consisting of amounts transferred to the fund under sections 5C and 5G and income derived from the investment of amounts so transferred. The purpose of the fund shall be to create and maintain a reserve to which any available portion of a consolidated net surplus in the operating funds shall be transferred and from which appropriations may be made: (1) to replace the state and local loss of federal funds; (2) to avoid or minimize the commonwealth's issuance of revenue anticipation notes as certified

by the state treasurer and the secretary of administration and finance, as long as any amount transferred under this clause is reimbursed by the General Fund to the Stabilization Fund before the consolidated net surplus is calculated under section 5C for the fiscal year in which the transfer is made, upon a written finding by the secretary of administration and finance and the treasurer that the loss of investment revenues to the Stabilization Fund would not exceed the interest costs incurred by the commonwealth in issuing revenue anticipation notes, which finding shall be delivered to the house and senate committees on ways and means and the comptroller at least 5 business days before the date assigned for a transfer under this clause; or (3) for any event which threatens the health, safety or welfare of the people or the fiscal stability of the commonwealth or any of its political subdivisions. Such event or events, as determined by the general court, shall include, but not be limited to, a substantial decline in economic indicators which result in severe reductions in state revenues or state financial assistance to local governmental units or court ordered or otherwise mandated assumptions by the commonwealth of programs or costs of programs previously borne by local governmental units. The determination by the general court to transfer and appropriate for any such purpose shall be made, after a hearing before the the committees on ways and means, sitting jointly and a comprehensive analysis of alternative legislative action and revenue sources, and upon a finding that the transfer and appropriation will not adversely affect the overall fiscal health of the commonwealth, taking into account indicators of future economic performance and conditions affecting state revenues.

In the event that the amount remaining in the fund at the close of a fiscal year exceeds 15 per cent of budgeted revenues, as confirmed by the comptroller in the statutory basis financial report

for the immediately preceding fiscal year, the amounts so in excess shall be transferred to the Tax Reduction Fund established by section 2I.

Section 2I. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Tax Reduction Fund, consisting of amounts transferred to the fund under section 2H and income derived from the investment of amounts so transferred. The purpose of the fund shall be to maintain a reserve which shall be used only to reduce personal income taxes as provided in this section.

On or before October 31, the comptroller shall certify to the governor the total amount in the Tax Reduction Fund as shown in the financial report of the comptroller for the preceding fiscal year. A temporary increase in the amounts of the personal exemption allowable on the income tax shall be provided, subject to appropriation, for the taxable year ending on the succeeding December 31 to the extent that the amount in the Tax Reduction Fund equals an integer multiple of 5 per cent of the amount of the personal income taxes which will not be collected for said taxable year on account of such personal exemptions. The commissioner of revenue shall calculate the amount of the temporary increase, if any, in such personal exemptions for said taxable year. The comptroller shall transfer the amount equal to such integer multiple of 5 per cent of the amounts not collected due to such personal exemptions from the Tax Reduction Fund to the General Fund.

Section 2L. There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Water Pollution Abatement Revolving Fund, consisting of amounts

credited to the fund under chapter 29C. The fund shall be administered under said chapter 29C by the board of trustees of the water pollution abatement trust created under that chapter and shall be held in trust exclusively for the purposes and the beneficiaries described in that chapter. The state treasurer shall be treasurer-custodian of the fund and shall have the custody of its monies and securities.

Section 2O. When authorized by a vote taken by the yeas and nays of two-thirds of each house of the general court present and voting on such authorization, including any authorization in effect as of July 1, 2009, the state treasurer, upon the request of the governor, may issue bonds of the commonwealth as hereinafter provided. Any such bonds shall be special obligations of the commonwealth payable solely from monies credited to the Commonwealth Transportation Fund established in section 2ZZZ; provided, however, that notwithstanding any general or special law to the contrary, including without limitation section 60A, such bonds shall not be general obligations of the commonwealth. Bonds may be issued in such manner and on such terms and conditions as the state treasurer may determine in accordance with this paragraph and, to the extent not inconsistent with this paragraph, the General Laws for the issuance of bonds of the commonwealth. Bonds may be secured by a trust agreement entered into by the state treasurer, with the concurrence of the secretary of administration and finance and the secretary of transportation, on behalf of the commonwealth, which trust agreement may pledge or assign all or any part of monies credited to the Commonwealth Transportation Fund and rights to receive the same, whether existing or coming into existence and whether held or thereafter acquired, and the proceeds thereof. The state treasurer may, with the concurrence of the secretary of administration and finance and the secretary of transportation, enter into additional security,

insurance or other forms of credit enhancement which may be secured on a parity or subordinate basis with the bonds. A pledge in any such trust agreement or credit enhancement agreement shall be valid and binding from the time such pledge shall be made without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, whether such parties have notice thereof or not. Any such pledge shall be perfected by filing of the trust agreement or credit enhancement agreement in the records of the state treasurer and no filing need be made under chapter 106. Any such trust agreement or credit enhancement agreement may establish provisions defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as determined by the state treasurer, including provisions relating to the establishment of reserves, the issuance of additional or refunding bonds, whether or not secured on a parity basis, the application of receipts, monies or funds pledged pursuant to such agreement , the regulation of the custody, investment and application of monies and such other matters deemed necessary or desirable by the state treasurer for the security of such bonds. Any such bonds shall be deemed to be investment securities under chapter 106, securities in which any public officer, fiduciary, insurance company, financial institution or investment company may properly invest funds and securities which may be deposited with any public custodian for any purpose for which the deposit of bonds is authorized by law. Any such bonds, the transfer of such bonds and the income from such bonds, including profit on the sale of such bonds, shall at all times be exempt from taxation by and within the commonwealth.

The provisions of this section relating to bonds shall also be applicable to the issuance of notes

insofar as such provisions may be appropriate for such bonds.

In order to increase the marketability of any such bonds or notes issued by the commonwealth and in consideration of the acceptance of payment for any such bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of any such bonds or notes that while any such bond or note shall remain outstanding, and so long as the principal of or interest on any such bond or note shall remain unpaid: (i) no pledged funds shall be diverted from the Commonwealth Transportation Fund; (ii) in any fiscal year of the commonwealth and until an appropriation has been made which is sufficient to pay the principal, including sinking fund payments, of and interest on all such bonds and notes of the commonwealth and to provide for or maintain any reserves, additional security, insurance or other forms of credit enhancement required or provided for in any trust agreement securing any such bonds or notes, no pledged funds shall be applied to any other use; and (iii) so long as such revenues are necessary, as determined by the state treasurer in accordance with any applicable trust agreement or credit enhancement agreement, for the purposes for which they have been pledged, and notwithstanding any general or special law to the contrary, the rates of the fees collected under sections 33 and 34 of chapter 90 and of the excises imposed in chapters 64A, 64E and 64F shall not be reduced below the amount in effect at the time of issuance of any such bond or note.

Section 2Q. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Intragovernmental Service Fund. There shall be credited to such fund all revenues generated through the charging of any state agency for services provided by another

state agency including, but not limited to, charges levied by the human resources division for workers' compensation chargeback.

Amounts credited to said fund shall be expended subject to appropriation.

Section 2V. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Dairy Equalization Fund. There shall be credited to such fund all monies payable under sections 10, 11 and 12 of chapter 94A and any interest earned on monies within the fund. Amounts credited to said fund shall be made available by the state treasurer, without further appropriation, exclusively for the purposes of said chapter 94A, only after receipt of notice certified by the commissioner of the department of food and agriculture that amounts are due under said chapter 94A. Said commissioner shall file quarterly reports with the house and senate clerk and the house and senate committees on ways and means regarding the distribution of monies from the fund.

Section 2W. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Water Pollution Abatement and Drinking Water Projects Administration Fund. There shall be credited to said fund any amounts transferred under sections 5 and 18 of chapter 29C and any income derived from the investment of amounts credited to said fund. Amounts credited to said fund shall be held in an expendable trust and the department of environmental protection shall report monthly all amounts credited to said fund and all expenditures by subsidiary on the Massachusetts management and accounting reporting system, so-called. Said amounts shall be used solely for the administration of section 27A of chapter 21

and section 18 of said chapter 29C.

Section 2Z. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Sewer Rate Relief Fund. The fund shall consist of all amounts credited to the fund and any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust and used solely for the purposes of this section. Amounts credited to the fund shall be available to mitigate sewer rate increases due to debt service obligations created by issuing eligible indebtedness. For the purposes of this section, eligible indebtedness shall mean debt issued on or after January 1, 1990, which has a final date of maturity more than 5 years after the date of issuance and which is incurred, wholly or in substantial part, to finance or refinance the cost of planning, design or construction of a water pollution abatement project, or part of such a project, required to be constructed to meet the Federal Water Pollution Control Act, 33 U.S.C. sections 1251 et seq., and sections 26 to 53, inclusive, of chapter 21, or any wastewater collection or transportation project related thereto. Eligible indebtedness shall not include any indebtedness for which the issuer has received assistance provided from state grants. Notwithstanding this section, eligible indebtedness shall include indebtedness incurred to finance the Metrowest Water Supply Tunnel and the Chicopee Valley Aqueduct Redundancy Project. Eligible indebtedness shall include indebtedness incurred under loan agreements under chapter 275 of the acts of 1989 which exceeded $50,000,000 by June 30, 1995, and the debt service attributable to those agreements for any year, for purposes of this section, shall be the net obligation borne by the issuer after application of any credits, subsidies or assistance, however characterized, provided under the aforementioned laws. No city, town, district, commission, agency, authority, board or other instrumentality of the

4845 commonwealth or any of its political subdivisions which is responsible for the ownership or
4846 operation of wastewater treatment projects and is authorized to finance all or any part of the cost
4847 of such projects through the issuance of eligible indebtedness, in this section called an issuer,
4848 shall receive relief authorized by this section in excess of 20 per cent of its annual debt service
4849 obligations due to eligible indebtedness. The division of local services of the department of
4850 revenue, in consultation with the department of environmental protection, shall develop
4851 guidelines to certify an issuer' eligible indebtedness and shall create a process to distribute funds
4852 equitably to eligible issuers, in order to mitigate extraordinary increases in sewer costs. Funds
4853 disbursed in any fiscal year shall be disbursed on or before March 31 of the fiscal year. The
4854 board, office or commission responsible for setting sewer charges in each city, town, district or
4855 commission that either receives aid itself or is a member of a regional entity that receives aid
4856 under this section shall certify to the division of local services that it has reduced sewer charges
4857 to reflect its share of any such aid. No expenditure shall cause the fund to be in deficit at the end
4858 of the fiscal year.
4859
4860 Section 2JJ. There shall be established and set up on the books of the commonwealth a separate
4861 fund to be known as the Child Care Quality Fund. There shall be credited to said Fund revenues
4862 received from the sale of Invest in Children distinctive registration plates issued under subsection
4863 (b) of section 2E of chapter 90. Amounts credited to said fund shall be available for expenditure
4864 by the commissioner of early education and care for providing grants to not for profit child care
4865 organizations for the purpose of improving child care services including, but not limited to,
4866 teacher training, training and education of consumers and parents, the purchase of educational
4867 curricula and materials, specialized training for bilingual and bicultural providers and consumers

and technical assistance for acquiring accreditation by the National Association for the Education of Young Children.

Section 2QQ. There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Drinking Water Revolving Fund, consisting of amounts credited to the fund under chapter 29C. The fund shall be administered under said chapter 29C by the board of trustees of the water pollution abatement trust created under that chapter and shall be held in trust exclusively for the purposes and the beneficiaries described in that chapter. The state treasurer shall be treasurer and custodian of the fund and shall have the custody of its moneys and securities.

Section 2RR. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Workforce Training Fund, in this section called the Fund. There shall be credited to the Fund the workforce training contributions required by section 14L of chapter 151A.

(b) Subject to appropriation, the commissioner, which in this section shall have the meaning assigned by section 1 of chapter 151A, shall make expenditures from the Fund for the following purposes:

(1) To provide grants to employers, employer groups, labor organizations and training providers for projects to provide education and training to existing employees and newly hired workers. In determining who shall receive grants, the commissioner shall consider the following criteria:

(i) whether the project will increase the skills of low-wage, low-skilled workers;

(ii) whether the project will create or preserve jobs at wages sufficient to support a family;

(iii) whether the project will have a positive economic impact on a region with high levels of unemployment or a high concentration of low-skilled workers;

(iv) whether the employer has made a commitment to provide significant private investment in training during the duration of the grant and after the grant has expired;

(v) whether the project will supplement, rather than replace, private investments in training;

(vi) whether the employer is a small business that lacks the capacity to provide adequate training without such assistance;

(vii) whether the project will provide residents of the commonwealth with training for jobs that could otherwise be filled only by residents of other nations; and

(viii) whether the project is consistent with the workforce development blueprint prepared by the regional employment board.

(ix) whether the employer has recently or plans to locate its business in the commonwealth and

4914 employ residents of the commonwealth who will benefit from training, provided that said
4915 employer shall not receive funds until said employer has located its business in the
4916 commonwealth.
4917
4918 Such grants shall be for amounts not to exceed $1,000,000 and shall be for a term not to exceed 2
4919 years.
4920
4921 (2) To provide technical assistance to increase training opportunities available to employees. The
4922 commissioner may provide this direct technical assistance by using existing institutions such as
4923 regional employment boards, community colleges, labor organizations, administrative entities for
4924 service delivery areas under the federal Job Training Partnership Act, and other entities that have
4925 expertise in providing technical assistance regarding employee training or with employees of the
4926 department of workforce development or of the Commonwealth Corporation. Such expenditures
4927 shall not exceed $3,000,000 each year and the commissioner shall demonstrate that each dollar
4928 expended generates not less than $5 in private investment in job training.
4929
4930 (c) The commissioner shall adopt regulations to carry out this section, including the criteria in
4931 paragraph (1) of subsection (b). The commissioner may contract with a private organization to
4932 carry out some or all of the commissioner's duties provided in this section.
4933
4934 (d) Not later than September 1 of each year, the commissioner shall file a report in writing with
4935 the joint committee on labor and workforce development and the house and senate committees
4936 on ways and means concerning the grants made in the fiscal year ending on the preceding June

30, together with such recommendations and additional information as the commissioner considers appropriate.

(e) Documentary materials or data made or received by an employee of the department of workforce development or the Commonwealth Corporation, to the extent that such materials or data consist of trade secrets or commercial or financial information regarding the operation of a business conducted by an applicant for a grant from the fund established by this section, shall not be public records and shall not be subject to section 10 of chapter 66.

(f) The director, in consultation with the secretary of housing and economic development, shall adopt regulations to carry out this section, including the criteria paragraph (1) of subsection (b). The regulations shall provide for a rolling applications process and shall allow employers with plans to locate in the commonwealth and employ commonwealth residents to apply for grants. The director may contract with a private organization to carry out some or all of the director's duties provided in this section.

The board may require a match or co-investment from participating organizations; provided, however, that in determining the amount of any match, the board shall establish different requirements for organizations based on the size of the organization, its profit or not-for-profit status and financial capacity.

(g) Documentary materials or data made or received by an employee of the department of workforce development, or by an employee of the division of employment and training, to the

4960 extent that such materials or data consist of trade secrets or commercial or financial information
4961 regarding the operation of a business conducted by an applicant for a grant from the fund
4962 established by this section, shall not be public records and shall not be subject to section 10 of
4963 chapter 66.
4964
4965 (h) The director shall, in accordance with section 328 of chapter 127 of the acts of 1999, prepare
4966 a performance evaluation of the workforce training grants awarded under this section. The
4967 evaluation shall assess the effectiveness of each grant awarded in terms of the: (1) development
4968 of employee skills; (2) increase in employee wages; (3) improvement in employee retention
4969 rates; (4) improvement of employee productivity; (5) impact on employer's business; and (6)
4970 impact on regional economy, including reduction of regional unemployment levels. As a
4971 condition of receiving a grant under this section, the director shall require employers to provide,
4972 within a time frame following the end of the grant period as established by the director, such
4973 information and data determined by the director to be necessary to complete the performance
4974 evaluation.
4975
4976 (i) The director shall make no grant under this section to any person or entity from the Fund, nor
4977 shall any technical assistance be provided by the department out of the proceeds of the Fund, to
4978 any person or entity unless the person or entity applies for and receives a certificate of tax in
4979 good standing with the department of revenue with respect to all tax types for which it should be
4980 registered and for which it is obligated to file reports or returns. A certified copy of the certificate
4981 shall be presented to the director before the issuance of any grant under this section and before
4982 the department provides any technical assistance to any person or entity.

(j) There is hereby established a board to be known as the Workforce Training Fund Advisory Board, consisting of 9 members, who shall be citizens of the commonwealth, to be appointed by the governor. Of the 9 members: 3 members shall be persons representing businesses or employers; 3 shall be persons representing employees or employees of labor organizations, 2 of whom shall be selected from a list of 5 recommended by the President of the Massachusetts AFL-CIO; and 3 shall be persons representative of the public, 2 of whom shall have expertise or experience in workforce training and 1 of whom shall represent a non-profit workforce training provider. The governor shall designate as chairman of the advisory board 1 of the members appointed as representative of the public. Members shall serve for a term of 6 years. Of the members originally appointed, 1 employer representative and 1 employee representative shall serve for a term of 4 years, and 1 employer representative and 1 employee representative shall serve for a term of 6 years; and thereafter, as their terms expire, the governor shall appoint members for terms of 6 years. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. All members shall serve until the qualification of their respective successors. Members shall serve without compensation. The advisory board shall advise the director of the department of workforce development on the administration of the workforce training fund grant program including, but not limited to, reviewing and making recommendations on grant requirements and selection criteria and reviewing grant applications and making recommendations relative to grant awards. The advisory board shall, from time to time, submit recommendations to the legislature on any legislative changes it deems necessary for the successful operation of the program.

5006 (k) To provide technical assistance to increase training opportunities available to employees. The
5007 director may provide this direct technical assistance by using existing institutions such as local
5008 workforce investment boards, community colleges, labor organizations, administrative entities
5009 for service delivery areas under the federal Workforce Investment Act, or its successor statute,
5010 and other entities that have expertise in providing technical assistance regarding employee
5011 training or with employees of the departments of labor and workforce development or of the
5012 Commonwealth Corporation. Such expenditures shall not exceed $3,000,000 each year and the
5013 director shall demonstrate that each dollar expended generates not less than $5 in private
5014 investment in job training. Of the $3,000,000, not less than $75,000 shall be provided annually to
5015 the Workforce Investment Board Association to support the activities of business, labor,
5016 education, youth councils and community members in leading regional workforce development
5017 systems; each of the 16 workforce investment boards shall receive $75,000 annually; and each of
5018 the 16 workforce investment boards shall receive $20,000 annually for youth councils.
5019
5020 Section 2TT. There is hereby established and set up on the books of the commonwealth a
5021 separate fund to be known as the Liability Management and Reduction Fund. The fund shall
5022 provide: (1) insurance coverage to state agencies by charging premiums to such agencies for the
5023 payment of judgments and settlements and the commonwealth's investigation and litigation costs
5024 in connection with tort claims under chapter 258; (2) services to reduce the number and size of
5025 claims against agencies including, but not limited to, risk reduction training programs and
5026 incentive payments of not more than $1,000 for effective risk reduction suggestions; and (3) such
5027 other services and activities as the comptroller shall determine are desirable to create financial
5028 and other incentives for agencies to reduce the commonwealth's tort and other monetary liability,

including litigation costs. The fund shall consist of premiums charged to agencies, any amounts appropriated for the purposes of the fund and interest income from investments made by the state treasurer of amounts in the fund. Monies in the fund shall be expended by the comptroller under section 16 of chapter 7A, without further appropriation, for the purposes of the fund.

The comptroller shall submit not later than December 31 of each year to the house and senate committees on ways and means, the secretary of administration and finance and the attorney general a report of the activities of the fund. The report shall include a financial statement which accounts for the revenues, expenditures and changes in fund balance for the preceding fiscal year. The comptroller shall also submit to said committees and officials, not later than October 1 of each fiscal year, a financial plan presenting all expected and proposed revenues and other financial sources, expenditures and other financial uses, net gain or loss from operations and changes in fund balance. All such reports shall also specify the number and duties of employees of the fund, if any, the amount of any direct appropriation requested or expected and any other information relevant to the achievement of the purposes of the fund. The comptroller may at any time recommend in such reports statutory changes necessary to expand the scope of said section 16 of said chapter 7A and this section in order to cover claims other than those asserted under chapter 258.

Section 2ZZ. (a) There is hereby established and set up on the books of the commonwealth a separate nonlapsing, revolving fund to be known as the Catastrophic Illness in Children Relief Fund, in this section called the fund. The fund shall be administered by The Catastrophic Illness in Children Relief Fund commission established in chapter 111K and shall be credited with

5052 monies received under sections 6, 9 and 10 of said chapter 111K.

5053

5054 (b) The state treasurer, ex officio, shall be the custodian of the fund and shall receive, deposit and
5055 invest all monies transmitted to the treasurer under this section and shall credit interest and
5056 earnings on the fund to said fund.

5057

5058 (c) The state treasurer shall adopt rules and regulations under chapter 30A on procedures for the
5059 collection of the fee established under section 9 of said chapter 111K.

5060

5061 Section 2AAA. There shall be established and set up on the books of the commonwealth a
5062 separate fund to be known as the Health Insurance Portability and Accountability Act Fund. The
5063 fund shall provide agencies under the executive office of health and human services with funding
5064 to meet the costs of compliance with the federal Health Insurance Portability and Accountability
5065 Act of 1996, HIPAA. There shall be credited to said fund revenues from federal reimbursements
5066 from Title XIX and Title XXI of the Social Security Act attributable to funds spent for HIPAA
5067 compliance and any other federal reimbursements, grants, premiums, gifts or other contributions
5068 received for HIPAA compliance. Amounts credited to the fund shall be held as an expendable
5069 trust and shall not be subject to further appropriation. No expenditure made from the fund shall
5070 cause the fund to be in deficit at the close of any fiscal year.

5071

5072 The secretary of health and human services may allocate amounts in said fund to agencies within
5073 said executive office to meet the costs of compliance with HIPAA if the amounts otherwise
5074 available are insufficient for such purpose, in accordance with an allocation plan to be filed in

advance with the secretary of administration and finance and the house and senate committees on ways and means. The secretary of health and human services shall also file a quarterly report with the house and senate committees on ways and means containing detailed information on each agency under the executive office of health and human services including, but not limited to, the following: (a) year-to-date expenditures from said fund and estimated year-end expenditures; (b) the status of HIPAA compliance; (c) steps necessary to attain full compliance with HIPAA and the estimated associated costs; and (d) year-to-date revenues credited to said fund and estimated year-end receipts.

Section 2DDD. There shall be established and set up on the books of the commonwealth, a separate fund to be known as the Department of Fire Services Hazardous Materials Emergency Mitigation Response Recovery Trust Fund, consisting of any monies appropriated to the fund by the general court, any monies recovered under chapter 21K, any monies received from fines and any income derived from the investment of monies transferred, appropriated or recovered by the fund, not to exceed $250,000 in any fiscal year. Amounts credited to the fund shall be available for expenditure, without prior appropriation, by the state fire marshal, as head of the department of fire services, who shall act as trustee, solely for the mitigation of hazardous materials emergency response incidents throughout the commonwealth and the reimbursement of all other reasonable related costs to hazardous materials mitigation emergency response member departments, cities and towns responding to said incidents or for other reasonable expenditures necessary to implement said chapter 21K. The department of fire services may incur expenses and the comptroller may certify amounts for payment in anticipation of expected receipts. Monies deposited in the trust fund that are unexpended at the end of the fiscal year, provided that

said monies do not exceed $250,000, shall not revert to the General Fund and any funds in excess of $250,000 shall revert to the General Fund and be made available for appropriation. No expenditures from said fund shall be authorized that would cause said fund to be deficient at the end of any fiscal year.

Section 2FFF. There is hereby established and set up on the books of the commonwealth an expendable trust to be known as the Dam Safety Trust. There shall be credited to the trust all receipts and revenues generated through agreements executed between the department of conservation and recreation and public or private entities for dam safety purposes, and all fines, costs, expenses, and interest imposed under sections 44 to 48A, inclusive, of chapter 253. The amounts credited to the trust shall be available for expenditure subject to appropriation, by the department of conservation and recreation up to an amount of $250,000 each fiscal year for the costs associated with the operations of the office of dam safety within the department, but such expenditures shall be solely for the purposes stated in this section and no funds shall be transferred from the trust to any other fund. The comptroller may assess the trust for fringe and overhead costs under section 5D and section 6B. If the amount credited to the trust exceeds $250,000, the excess amount shall be deposited into the General Fund. No expenditure made from the fund shall cause the fund to become deficient at any point during the fiscal year.

Section 2GGG. Notwithstanding any general or special law to the contrary, the executive office of health and human services and the department of public health shall deposit all monies collected as civil monetary penalties from nursing homes participating in the Medicaid program authorized by Title XIX of the Social Security Act into a separate expendable trust fund which

5121 shall be designated and known as the Commonwealth of Massachusetts Civil Monetary Penalties
5122 Fund. Monies collected as civil monetary penalties from nursing homes shall include both
5123 monies collected from Medicaid-only facilities, known as nursing facilities, and the
5124 commonwealth portion of funds collected from dually participating facilities, known as skilled
5125 nursing facilities or nursing facilities, for noncompliance with sections 1919(b), 1919(c) and
5126 1919(d) of the Social Security Act and monies collected from individuals pursuant to sections
5127 1919(b)(3)(B)(ii)(I), 1919(b)(3)(B)(ii)(II) and 1919(g)(2)(A)(i) of the Social Security Act. The
5128 department may expend monies from this fund without further appropriation in accordance with
5129 this section. The department shall administer the fund in accordance with law including, without
5130 limitation, section 1919(h)(2)(A)(ii) of the Social Security Act. The department shall expend
5131 monies in the fund for measures to protect the health and property of nursing home residents in
5132 nursing home facilities found by the department or the secretary of health and human services to
5133 be deficient including, without limitation, the following: (i) nursing facility staff training and
5134 education; (ii) technical assistance for troubled facilities; (iii) dissemination of best practice
5135 models for quality of care issues, such as malnutrition and dehydration; (iv) state operation of
5136 facilities pending correction of deficiencies or closure; (v) reimbursement of facility residents for
5137 lost personal funds or property; and (vi) costs of relocating residents from 1 facility to another.
5138 No expenditure shall cause the fund to be in deficit at the end of the fiscal year.
5139
5140 Section 2HHH. There shall be set up on the books of the commonwealth a separate fund to be
5141 known as the Open Space Acquisition Revolving Fund. There shall be credited to the fund all
5142 revenues or other financing sources directed to the fund by appropriation, any income derived
5143 from the investing of all amounts credited to the fund and the monies from the repayment of

loans from the fund. Monies credited to the fund may be expended by the department of conservation and recreation, without further appropriation, for loans to cities and towns for the acquisition of open space under section 3E of chapter 21.

Section 2III. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Agricultural Resolve and Security Fund, the funds of which shall be expended to foster agriculture, as defined in section 1A of chapter 128, in the commonwealth and for furthering other purposes of the department of agricultural resources as set forth in any general or special law including, but not limited to, agricultural education, support for sustainable agriculture and pollution prevention, agricultural integrated pest management programs, agricultural land preservation, control of animal diseases and emergency preparedness.

The Agricultural Resolve and Security Fund may receive monies from: (1) gifts, grants and donations from public or private sources; (2) federal reimbursements and grants-in-aid; and (3) any interest earned from the fund. The state treasurer shall receive, deposit and invest funds held in such a manner as to ensure the highest interest rate available consistent with the safety of the fund. The books and records of the fund shall be subject to an annual audit by the state auditor. The department may expend such funds, subject to appropriation, and no expenditure from the fund shall cause it to be in deficiency at the close of a fiscal year. The commissioner agricultural resourcesshall report annually to the house and senate committees on ways and means and the joint committee on environment, natural resources and agriculture on income received into the fund and the sources of that income, any expenditure from the fund and their purposes and fund

balances.

Section 2JJJ. (a) There shall be established on the books of the commonwealth a separate fund to be known as the Registers Technological Fund for the benefit of the registers of deeds under the control of the state secretary. This fund shall consist of the amounts specified in and collected under section 31 of chapter 9. The state treasurer shall deposit these amounts into the fund, which shall be expended solely for the purposes of automation, modernization, operation and technological improvements at the registries of deeds. The state secretary for the benefit of the registers under the secretary's control, shall submit a spending plan to the clerks of the house of representatives and senate, who shall refer the plan to the house and senate committees on ways and means and house and senate committees on post audit and oversight. In preparing the plan, the secretary shall consult with the commonwealth's chief information officer and require that the projects and purchases funded through disbursements in this section shall be consistent with the enterprise information technology strategy, plan and information technology standards adopted by the chief information officer. All such monies shall be used to purchase information technology systems that are interoperable with other like systems that are used or will be used by all registries. The plan shall include, but not be limited to, the cost and description of all intangible, personal and real property to be purchased or services to be received and any and all personnel changes for the automation, modernization, operation and technological improvements. If the general court takes no final action relative to the plan within 30 days after the date on which the plan is first referred to those committees, the state treasurer shall disburse the funds according to the plan.

5190 (b) In conjunction with the preparation of the commonwealth' comprehensive annual financial
5191 report, the comptroller shall prepare and issue an annual report detailing the revenue and
5192 expenditure of the fund.
5193
5194 Section 2KKK. (a) There shall be established on the books of the commonwealth a separate fund
5195 for the counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth and Nantucket, to be known as
5196 the County Registers Technological Fund, for the benefit of the registers of deeds under the
5197 control of the governments of those counties. The fund shall consist of the amounts specified in
5198 and collected under section 41 of chapter 36. The state treasurer shall deposit these amounts into
5199 the fund, which shall be expended, subject to section 40 of said chapter 36, solely for the
5200 purposes of automation, modernization, operation and technological improvements at the
5201 registries of deeds. Each such register shall submit a spending plan to the clerks of the house of
5202 representatives and senate, who shall refer the plan to the house and senate committees on ways
5203 and means and house and senate committees on post audit and oversight. In preparing the plan,
5204 the register shall consult with the commonwealth's chief information officer and the state
5205 secretary and require that the projects and purchases funded through disbursements in this
5206 section shall be consistent with the enterprise information technology strategy, plan information
5207 and technology standards adopted by the chief information officer. All such monies shall be used
5208 to purchase information technology systems that are interoperable with other like systems that
5209 are used or will be used by all registries. The plan shall include, but not be limited to, the cost
5210 and description of all intangible, personal and real property to be purchased or services to be
5211 received for the automation, modernization, operation and technological improvements. If the
5212 general court takes no final action relative to the plan within 30 days after the date on which the

5213 plan is first referred to those committees, the state treasurer shall disburse the funds according to
5214 the plan.
5215
5216 (b) In conjunction with the preparation of the commonwealth' comprehensive annual financial
5217 report, the comptroller shall prepare and issue an annual report detailing the revenue and
5218 expenditure of the fund.
5219
5220 Section 2LLL. There is hereby established and set up on the books of the commonwealth a
5221 separate fund to be known as the Firearms Fingerprint Identity Verification Trust Fund. Amounts
5222 credited to such fund shall be available, without further appropriation, to the department of state
5223 police to finance fingerprint identification verifications with the fingerprint records maintained
5224 by the Federal Bureau of Investigations or any other federal agency for the verification of
5225 firearms license applicant identities. $25 of the fee assessed under sections 122, 122B, 129B,
5226 131, 131A, 131F, and 131H of chapter 140 shall be deposited into the fund. The funds shall be
5227 utilized for the sole purpose of making payments charged to the department by the Federal
5228 Bureau of Investigations or other entity for fingerprint identification verification.
5229
5230 Section 2MMM. (a) There is hereby established and set up on the books of the commonwealth a
5231 separate fund to be known as the Massachusetts Science, Technology Engineering, and
5232 Mathematics Grant Fund, hereinafter referred to as the Pipeline Fund, to which shall be credited
5233 any appropriations, bond proceeds or other monies authorized by the general court and
5234 specifically designated to be credited to that fund, and any additional funds designated by the
5235 corporation for deposit into the Pipeline Fund, including any pension funds, federal grants or

5236 loans, or private donations made available to the commissioner of higher education for deposit
5237 into the fund. The board of higher education shall hold the Pipeline Fund in an account or
5238 accounts separate from other funds or accounts. Amounts credited to the Pipeline Fund shall be
5239 used by the chancellor of higher education, in consultation with the Massachusetts Development
5240 Finance Agency, the Massachusetts Technology Park Corporation and the Robert H. Goddard
5241 Council on Science, Technology Engineering, and Mathematics Education, established under
5242 section 4A of chapter 15A, in this section, referred to as "the council".
5243
5244 (b) The public purpose of the Pipeline Fund shall be to increase the number of students who
5245 participate in programs that support careers in fields related to science, technology, engineering
5246 and mathematics. In furtherance of this public purpose, and in a manner consistent with the
5247 recommendations of the council, the commissioner of higher education, in consultation with the
5248 commissioner of education and the president of the University of Massachusetts, shall employ
5249 the Pipeline Fund through grants and other disbursements and activities that are calculated to
5250 increase the number of qualified science, technology, engineering and mathematics teachers and
5251 to improve the science, technology, engineering and mathematics educational offerings available
5252 in public and private schools. The grants and other disbursements and activities may involve,
5253 without limitation, the University of Massachusetts, state universities and community colleges,
5254 business and industry partnerships, workforce investment boards, private colleges and
5255 universities, and public and private school districts to further the purposes of the Pipeline Fund.
5256 The grants and other disbursements and activities may support, without limitation: (i) the
5257 development and use of innovative curricula, courses and programs in science, technology,
5258 engineering and mathematics for new teachers and in-service teachers that provide appropriate

science, technology, engineering and mathematics content, and instruction in innovative ways to teach science, technology, engineering and mathematics including, but not limited to, the use of hands on, experimental learning and e-learning, that are consistent with the Massachusetts standards and curriculum frameworks established under sections 1D and 1E of chapter 69; (ii) the development of a science, technology, engineering and mathematics network to create, implement, share and make broadly and publicly available the best practices and innovative programs relative to science, technology, engineering and mathematics instruction and expanding and maintaining student interest in science, technology, engineering and mathematics studies and careers; (iii) effective ways to teach science, technology, engineering and mathematics; (iv) give priority to grants that provide effective course and curricula for in-service teachers in low income schools or school districts; and (v) summer programs for high school students, with appropriate stipends, that would allow interested and motivated students to intern in private or nonprofit corporations or in public programs that are in a position to further their interest, knowledge and experience in these fields; provided, that priority for the summer programs shall be given to students in groups that are presently underrepresented in these fields including, but not limited to, persons of color, women, and those whose native language is not English; provided further, that not more than 20 per cent of the fund shall be awarded to any 1 single institution and not more than 5 per cent of the fund shall be expended under clause (v).

(c) There shall be under Commonwealth Medicine at the University of Massachusetts medical school and the department of education's office for mathematics, science and technology engineering, the Massachusetts Academy for Life Sciences. The Massachusetts Academy for Life Sciences, subject to appropriation from the Pipeline Fund, shall establish a program which

5282 shall consist of mobile science labs with 1 mobile lab assigned and designated for each of the
5283 following 5 regions: western Massachusetts, central Massachusetts, metropolitan Boston,
5284 northeastern Massachusetts and southeastern Massachusetts. The mission of the Massachusetts
5285 Academy for Life Sciences shall be to encourage students to consider careers in life sciences and
5286 healthcare by participating in enhanced science courses through the use of the mobilelabs.
5287
5288 (d) The board of higher education shall, in consultation with the council, promulgate policies,
5289 rules and regulations for the administration and implementation of subsections (a) and (b). The
5290 chancellor of higher education shall file any policies, rules and regulations with the joint
5291 committee on education, the joint committee on higher education, the joint committee on
5292 economic development and emerging technologies and the joint committee on labor and
5293 workforce development for review and comment at least 30 days before the effective date of the
5294 policies, rules or regulations.
5295
5296 (e) The chancellor of higher education shall file a quarterly report with the house and senate
5297 committees on ways and means, the joint committee on economic development and emerging
5298 technologies, the joint committee on labor and workforce development, the joint committee on
5299 education and the joint committee on higher education on the following: (i) a list of grant
5300 recipients, (ii) the associated grant amounts, (iii) the amounts of non-state funding leveraged as a
5301 result of the grants, (iv) the purposes of the grants, (v) an annual statement of cash inflows and
5302 outflows detailing the sources and uses of funds, (vi) a forecast of future payments based on
5303 current binding obligations, and (vii) a detailed breakdown of the purposes and amounts of
5304 administrative costs charged to the fund.

Section 2NNN. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Roche Community Rink Fund. There shall be credited to such fund revenues generated from fees, fines, leases, gifts, grants, interest earned on any monies within this fund or any other revenue sources at the Roche Community Rink, formerly the Bryant Rink, in the West Roxbury section of the city of Boston. Revenues credited to the fund shall be used, not subject to appropriation, for operational costs, capital improvements, equipment and maintenance of said rink, including the costs of personnel, but no expenditure shall be made from the fund that shall cause the fund to be in deficit at the close of a fiscal year.

Section 2OOO. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Care Trust Fund, in this section called the trust fund. There shall be credited to the trust fund: (a) all contributions collected under section 188 of chapter 149; (b) all revenue from surcharges imposed under section 18B of chapter 118G; (c) any transfers from the Health Safety Net Trust Fund, established by section 57 of chapter 118E; and (d) revenue deposited from penalties collected under chapter 111M. Amounts credited to the trust fund shall be expended without further appropriation for programs designed to increase health coverage, including a program of subsidized health insurance provided to low-income residents of the commonwealth under chapter 118H and rate increases to certain Medicaid providers and supplemental payments to certain publicly operated or public-service hospital entities, as determined by law. Money from the trust fund may be transferred to the Uncompensated Care Trust Fund, established by section 18 of chapter 118G, or any successor fund, as necessary to provide payments to acute hospitals and community health centers for

5328 reimbursable health services. Not later than January 1, the comptroller shall report an update of
5329 revenues for the current fiscal year and prepare estimates of revenues to be credited to the trust
5330 fund in the subsequent fiscal year. The comptroller shall file this report with the secretary of
5331 administration and finance, the office of Medicaid, the joint committee on health care financing
5332 and the house and senate committees on ways and means. If revenues credited to the trust fund
5333 are less than the amounts estimated to be credited to the trust fund, the comptroller shall duly
5334 notify the secretary, office and committees that this revenue deficiency shall require
5335 proportionate reductions in expenditures from the revenues available to support programs
5336 appropriated from the trust fund.
5337
5338 Section 2PPP. There is hereby established and set up on the books of the commonwealth a
5339 separate fund to be known as the Essential Community Provider Trust Fund, in this section
5340 called the trust fund. There shall be credited to the trust fund: (a) any funds that may be
5341 appropriated or transferred for deposit into the trust fund; and (b) any income derived from
5342 investment of amounts credited to the trust fund. In conjunction with the preparation of the
5343 commonwealth's annual financial report, the comptroller shall prepare and issue an annual report
5344 detailing the revenues and expenditures of the trust fund. The comptroller shall certify payments,
5345 including payments during the accounts payable period, in anticipation of revenues, including
5346 receivables due and collectibles during the months of July and August, from the trust fund for the
5347 purpose of making authorized expenditures. The health safety net office shall administer the trust
5348 fund and disburse funds from the trust fund to pay acute hospitals and community health centers
5349 under clause (6) of subsection (b) of section 35 of chapter 118G and any further regulations
5350 promulgated by the office.

Section 2QQQ. There shall be established on the books of the commonwealth the Medical Assistance Trust Fund, which shall be administered by the secretary of health and human services. Funds from the trust fund may be expended for supplemental Medicaid payments to qualifying providers under an approved state plan or federal waiver. Amounts credited to the trust fund shall not be subject to further appropriation.

Section 2RRR. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Department of Developmental Services Trust Fund, in this section called the trust fund, administered by the secretary of health and human services. There shall be credited to the trust fund: (a) any receipts from the assessment collected under section 27 of chapter 118G, including transfers by the department of developmental services of amounts sufficient to pay the assessment for public facilities; (b) any federal financial participation received by the commonwealth as a result of expenditures funded by such assessments; and (c) any interest thereon. The secretary may authorize expenditures of amounts from such trust fund without further appropriation. The comptroller shall transfer to the trust fund no later than the first business day of each quarter, the amounts indicated by the department of developmental services to provide the appropriate payment adjustments for operating the intermediate care facilities for persons with an intellectual disability and the community residences serving individuals with an intellectual disability. The comptroller shall establish procedures necessary to effectuate this section, including procedures for the proper transfer, accounting and expenditures of funds. The comptroller may make payments in anticipation of receipts and shall establish procedures for reconciling overpayments and underpayments from the trust fund. The secretary

shall report semi-annually to the house and senate committees on ways and means on the revenue and expenditure activity within the trust fund.

Section 2SSS. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Educational Rewards Grant Program Fund, hereinafter referred to as the fund. The fund shall provide, without further appropriation, grants to students in accredited post-secondary certificate or vocational technology programs or associate degree programs in targeted high-demand occupations. The department of workforce development and the board of higher education in consultation with the Massachusetts Workforce Board Association, the state workforce investment board, the reach higher initiative and the workforce accountability task force established under section 11 of chapter 23H shall determine the eligible high demand occupations. If a Bachelor's degree program is needed for a profession in critical demand, it may be added to the eligible programs. Of the appropriation for grants, up to 1/3 may be used for students enrolled as full-time students and at least 2/3 of the total grant amount shall be reserved for students enrolled 1/2 time or less. Grant recipients shall be limited to dislocated workers or those with incomes at or below 200 per cent of the federal poverty level or other standards or criteria as may be established by the department and the board in consultation with the workforce accountability task force established under section 11 of chapter 23H. Grants from the program fund shall be a maximum of $3,000 and shall be used to fund tuition, fees and books; provided, however, that up to 30 per cent of the grant amount may be applied to fund living expenses. The grant program shall serve as a last resort, after other federal and state grants have been exhausted. The department of workforce development and the board of higher education shall jointly administer the grant program.

Section 2TTT. (a) There is hereby established and set up on the books of the commonwealth a separate fund known as the CITI Fund for the continuation of the Commonwealth Information Technology Initiative, or CITI, statewide. The University of Massachusetts shall hold the CITI Fund in an account or accounts separate from other funds or accounts. Amounts credited to the CITI Fund shall be used by the President of the University of Massachusetts or the president's designee, under subsection (b) and in consultation with the advisory board established in subsection (d).

(b) The public purpose of the CITI Fund shall be to provide funding for a collaborative approach to information technology education through a series of open competitions for grants to K-20 educational institutions in the areas of: (1) educator development - to ensure that K-20 faculty in all public higher education institutions and elementary and secondary schools have the skills to teach courses that meet industry' current and future information technology needs; (2) curriculum enhancement - to update existing courses and programs of computer science, management information systems and computer engineering in public higher education and to update academic discipline courses to facilitate the acquisition of knowledge through the understanding and application of information technology in the K-12 level; (3) IT across the curriculum - to implement the integration of information technology education into all aspects of non-technical disciplines and areas of study; and (4) regional cooperation - create geographically-based alliances among schools and industry to leverage faculty, courses and other resources for information technology education.

5420 (c) The president of the University of Massachusetts shall, no later than July 1, annually report to
5421 the house and senate committees on ways and means, the joint committee on economic
5422 development and emerging technologies, the joint committee on labor and workforce
5423 development, the joint committee on education and the joint committee on higher education. The
5424 report shall include: (i) a list of grant recipients; (ii) the associated grant amounts; (iii) the
5425 amounts of nonstate funding leveraged as a result of the grants, including in-kind and other non-
5426 cash contributions; (iv) the purposes of the grants; (v) an annual statement of cash inflows and
5427 outflows detailing the sources and uses of funds; (vi) a forecast of future payments based on
5428 current binding obligations; and (vii) a detailed breakdown of the purposes and amounts of
5429 administrative costs charged to the fund.
5430
5431 (d) There shall be an advisory board for the CITI Fund which shall consist of 12 members: 8 of
5432 whom shall be appointed by the governor, of which at least 2 shall be employed by a public
5433 institution of higher education in the commonwealth, at least 2 shall be employed at a public
5434 school for grades K-12 and at least 2 shall be employed by a corporation based in the
5435 commonwealth. One member shall be appointed by the speaker of the house, 1 member shall be
5436 appointed by the minority leader of the house of representatives, 1 member shall be appointed by
5437 the president of the senate and 1 member shall be appointed by the minority leader of the senate.
5438 The advisory board shall meet at least quarterly or when called by the president of the University
5439 of Massachusetts.
5440
5441 Section 2UUU. (a) There is hereby established and set up on the books of the commonwealth a
5442 separate fund to be known as the Massachusetts Board of Higher Education Scholar-Internship

Match Fund, hereinafter referred to as the Scholar-Internship Match Fund. The board of higher education shall hold the Scholar-Internship Match fund in an account separate from other funds or accounts. Amounts credited to the Scholarship-Internship Match Fund shall be used, without further appropriation, by the commissioner of higher education or the commissioner's designee, under this section and in consultation with participating industry and public higher education institutions. An amount not to exceed $100,000 shall be spent each year to promote the existence of the Scholar-Internship Match Fund with the goal of attracting and maximizing industry participation.

(b) The public purpose of the Scholar-Internship Match Fund shall be to provide a match for industry scholarships given to Massachusetts students going on to study for a post-secondary degrees at Massachusetts public higher education institutions. The amount to be matched through the Scholar-Internship Match Fund shall not exceed $5,000 per student, contingent upon receiving a corresponding industry scholarship or internship of up to the same amount.

(c) The commissioner of higher education shall, not later than July 1, annually report to the house and senate committees on ways and means, the joint committee on economic development and emerging technologies, the joint committee on labor and workforce development, the joint committee on education and the joint committee on higher education. The report shall include: (i) a list of matching scholarship recipients; (ii) the associated match amount; (iii) the amounts of non-state funding as a result of the match; (iv) the purposes of the match; (v) whether there was an internship associated with the industry match; (vi) an annual statement of cash inflows and outflows detailing the sources and uses of funds; (vii) a forecast of future payments based on

current binding obligations; and (viii) a detailed account of the purposes and amount of administrative costs charged to the fund. The chancellor shall include in annual report a detailed 5 year legislative review of the Scholar-Internship Match Fund for consideration for recapitalization.

Section 2VVV. (a) There shall be established and set upon the books of the commonwealth a separate fund to be known as the international education and foreign language grant program fund, hereinafter referred to as the international education fund, to which shall be credited any appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited thereto and additional funds designated for deposit to the international education fund, including any pension funds, federal grants or loans, or private donations made available to the commissioner of education for such purpose. The commissioner of education shall hold the international education fund in an account or accounts separate from other funds or accounts. Amounts credited to the international education fund shall be used by the commissioner of education, in consultation with the chairman of the board of higher education, and the global education advisory council to carry out the purposes of subsection (b).

(b) The public purpose of the international education fund shall be to increase the number of Massachusetts students, teachers, administrators and education policymakers participating in international studies, international exchange programs, and other activities that advance cultural awareness and promote mutual understanding and respect for citizens of other countries. In furtherance of this public purpose and in consultation with the chairman of the board of higher education and the global education advisory council, the commissioner of education shall

5489 employ the international education fund in support of programs and activities that advance
5490 cultural awareness, including the awarding of grants to local or regional school districts that use
5491 the funds to support international education programs and promote the study of foreign
5492 languages, including programs that establish foreign language and two-way bi-lingual education
5493 classes, teacher training and curriculum development to encourage students, teachers,
5494 administrators and educational policy makers to participate in international studies, international
5495 exchange programs and other activities.
5496
5497 Section 2WWW. (a) There is hereby established and set up on the books of the commonwealth a
5498 separate fund to be known as the Workforce Competitiveness Trust Fund, hereinafter called the
5499 fund. The fund shall be administered by the department of workforce development which shall
5500 contract with the Commonwealth Corporation to administer the fund. The objectives of the fund
5501 shall include, but shall not be limited to, the following: supporting, in conjunction with other
5502 private, public and philanthropic resources, the development and implementation of employer
5503 and worker responsive programs to enhance worker skills, incomes, productivity and retention
5504 and to increase the quality and competitiveness of Massachusetts firms; training and helping the
5505 unemployed find suitable employment; improving employment opportunities for low-income
5506 individuals and low wage workers; improving wages to a level sufficient to support a family or
5507 to place individuals on a career path leading to such employment and wages; training vulnerable
5508 youths to master basic academic skills, including the attainment of a high school degree and
5509 encouraging students to advance educationally and receive post-secondary degrees at colleges or
5510 post-secondary vocational schools or beyond; developing occupational skills and becoming
5511 employed in jobs that have career potential; and training older workers for new occupations. The

5512 department shall utilize these projects to improve the workforce development system by
5513 integrating employer and worker needs more fully into program design and delivery. The
5514 department shall support, through grants, partnership programs and planning, grant applications
5515 from the following eligible applicants to provide an integrated continuum of education and
5516 training: employers and employer associations; local workforce investment boards; labor
5517 organizations; community-based organizations, including adult basic education providers;
5518 institutions of higher education; vocational education institutions; one-stop career centers; local
5519 workforce development entities; and nonprofit education, training or other service providers. The
5520 fund shall leverage employer, public, philanthropic and other contributions and shall be available
5521 as a state match for federal funds that meet the requirements of the fund. The fund shall be an
5522 expendable trust fund and not subject to appropriation. Grants from the fund shall be offered on a
5523 competitive basis for a maximum of 3 years and shall not exceed $500,000.
5524
5525 (b) The director of workforce development shall appoint an advisory committee to represent
5526 significant constituencies and beneficiaries of the fund including, but not limited to, high growth
5527 or critical industries; the workforce development system; public education; adult basic education;
5528 the department of transitional assistance; public higher education; labor; community-based
5529 organizations and nonprofit education, training or other service providers; and advocates of
5530 customer populations, including representatives of education, training and the one-stop career
5531 center provider coalitions, including a minimum of 2 labor representatives selected by the
5532 president of the Massachusetts AFL-CIO and 2 representatives of the Massachusetts Workforce
5533 Board Association. The director shall serve as chair of the committee. The committee shall
5534 supply constituent focused labor market information, review general programmatic parameters

5535 and guidelines, assist with the identification of issues and barriers to the fund's efficiency and
5536 effectiveness and the dissemination of relevant information about the fund and support the
5537 general oversight of the fund's implementation. The committee shall meet from time to time, but
5538 not less frequently than quarterly.
5539
5540 (c) The Commonwealth Corporation shall be the administrator of the fund and shall maintain the
5541 fund as a separate fund and shall cause it to be audited by an independent accountant on an
5542 annual basis in accordance with generally-accepted accounting principles.
5543
5544 (d) There shall be credited to the fund any revenue from appropriations or other monies
5545 authorized by the general court and specifically designated to be credited to the fund, and any
5546 gifts, grants, private contributions, investment income earned on the fund's assets and all other
5547 sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General
5548 Fund.
5549
5550 (e) Partnership programs may include costs for support services including, but not limited to,
5551 transportation and childcare, to eliminate barriers to participation in the training program. For
5552 any unionized employer participating as a partner in a grant application, the impacted union shall
5553 be an active participant in the design and implementation of the grant.
5554
5555 (f) A competitive grant program shall be established that provides support to partnerships and
5556 eligible applicants as described above, and that leverages applicant co-investment of at least 30
5557 per cent of the grant amount from employers, philanthropic and public or private organizations.

The period of grant operations may be up to 3 years in duration. Grants may be targeted to specific populations, such as educationally or economically disadvantaged youth, low-income, low-skilled and low-wage workers, disabled citizens or industries that are deemed to be of critical consequence to the commonwealth. Special grant programs and funding allocations shall be determined by the committee and shall be distributed by a regionally-based competitive bid process, which shall require the defining of economic regions based on labor market factors as determined by the committee. Each municipality shall be accounted for in a designated region. A formula for regional distribution shall be created and competition for formula grant funds shall occur within each identified region and shall be subject to the rules and regulations established by the committee in consultation with regional partners. Respondents to the local competitions shall notify, in writing, the region' workforce investment board of their intent to respond to the request for proposals. A planning grant may be offered to define employer needs; to make necessary curriculum and other programmatic improvements to align with employer and worker needs; to determine the feasibility of a proposed workforce development intervention; to plan for and coordinate strong partnerships among stakeholders; to identify educational and skill needs of workers and program participants; to link training initiatives with employer-based career ladders; and to develop case management and additional support services that would address barriers to participation.

(g) A portion of the grant fund shall be used to support the current and future labor force needs of the healthcare industry. This portion of the fund shall support projects that address barriers and gaps in the healthcare workforce development pipeline. Small planning and needs assessment grants may be offered. A project grant program shall be designed by Commonwealth

Corporation in consultation with a Healthcare subcommittee of the fund committee, which shall include, at a minimum, appointments made by the following organizations: the Massachusetts Hospital Association; the Massachusetts Extended Care Federation; the Home and Health Care Association of Massachusetts; the Massachusetts Workforce Board Association; and the Massachusetts AFL-CIO, as well as representatives of the other mandatory advisory committee constituencies.

(h) A portion of the grant fund shall be used to support the current and future labor force needs of the travel and tourism industry. This portion of the grant fund shall be used to support the development of career ladder and wage improvement strategies, including employee ownership and profit-sharing strategies, within the travel and tourism industry. Small planning and needs assessment grants may be offered. A project grant program shall be designed by Commonwealth Corporation in consultation with the travel and tourism advisory committee, which shall include the primary industry associations that represent the industry in the commonwealth or, in their absence, a cohort of relevant industry employers, as well as representatives of the other mandatory advisory committee constituencies.

(i) Project grants shall be for a maximum of 3 years, shall be competitively based and shall not exceed $500,000. The committee shall determine how to apportion the grant fund between the healthcare industry, the travel and tourism industry and the general grant program; provided, however, that not more than 7.5 per cent of the funds appropriated in this subsection may be expended for the administration of each grant.

5604 (j) The director of workforce development shall annually, not later than December 31, report to
5605 the secretary of administration and finance, the house and senate committees on ways and means,
5606 the joint committee on community development and small businesses, the joint committee on
5607 education, the joint committee on economic development and emerging technologies, the joint
5608 committee on labor and workforce development and the joint committee on public health on the
5609 status of grants awarded under this section, including the number of educational and eligible
5610 service providers receiving grants; the number of participants receiving services; the number of
5611 participants placed in employment; the salary and benefits that participants receive after
5612 placement; the cost per participant; and job retention or promotion rates 1 year after training
5613 ends.
5614
5615 (k) The establishment of the Workforce Competitiveness Trust Fund, or any other worker
5616 training fund, shall not be determined to replace, displace or serve as a substitute for the
5617 Workforce Training Fund established in section 2RR.
5618
5619 Section 2XXX. There shall be established and set upon the books of the commonwealth a
5620 separate fund to be known as the District Local Technical Assistance Fund. Amounts credited to
5621 the fund shall be administered by the division of local services within the department of revenue
5622 which shall determine that the funds are used for activities consistent with the purpose of this
5623 section and the Massachusetts management and accounting reporting system. The amounts shall
5624 be used, without further appropriation, solely for the administration and implementation of this
5625 section.
5626

The fund shall be a separate and expendable trust fund administered by the division of local services within the department of revenue. There shall be credited to the fund, revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund and investment income earned on the fund's assets, and all other sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund, and shall be allocated to the regional planning agencies the following fiscal year under the formula established in the third paragraph.

One hundred per cent of the monies deposited in the district local technical assistance fund, but not more than $2,800,000 in the aggregate in any fiscal year, shall be used by the department of housing and community development to provide grants to regional planning agencies for technical assistance to municipalities and to develop a state-wide permitting model. The department shall grant each regional planning district created under chapter 40B or by special act a fixed base allocation of $150,000, except that the metropolitan area planning council shall receive a base allocation of $200,000, the Martha's Vineyard commission shall receive a full annual allocation of $100,000, and the Nantucket Planning and Economic Development Commission shall receive an annual allocation of $50,000. One-half of the remainder of the annual disbursement of net cash proceeds to the department of housing and community development for technical assistance grants under this section shall be allocated among said entities based on the percentage of the commonwealth's population served by each entity, with the other half allocated based on the percentage of the commonwealth's communities served by each entity. Each regional planning agency receiving the funds shall provide matching resources of not less than 10 per cent, no more than 1/2 of which may be in-kind services, and shall

annually file with the department of housing and community development, the house and senate committees on ways and means and constituent local governments a report detailing their expenses and program activities.

Technical assistance services funded by these grants shall be provided at the request of a municipality in any subject within regional planning expertise, including but not limited to: zoning and permitting; economic development; land use planning, conservation planning, and water resources; municipal management; public safety planning and emergency response; transportation; data management, information technology, geographic information systems, statistical trends and modeling; and other land use and smart growth issues.

Section 2YYY. There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Courts Capital Project Fund, in this section referred to as the fund. The fund shall be credited: (i) the portion of any net cash proceeds from the conveyance, lease or other disposition of any surplus court facilities vacated and determined to be surplus by the commissioner of capital asset management and maintenance as a result of or in anticipation of the construction of new court facilities or the consolidation of court facilities in the cities of Cambridge, Lowell, Salem and Worcester; (ii) any appropriations; (iii) bond proceeds; or (iv) other monies authorized by the general court and specifically designated to be credited to the fund. The comptroller shall disburse amounts in the fund at the direction of the secretary of administration and finance, without further appropriation, for the purpose of paying costs of, or paying down any portion of the debt incurred to pay costs related to the acquisition, temporary leasing or the construction of any replacement court facilities. The inspector general of the

5673 commonwealth shall make an annual oversight inquiry and report on the Capital Courts Project
5674 Fund and its disbursements. Said report shall be provided to the clerks of the house of
5675 representatives and senate, chairs of house and senate committees on ways and means and chairs
5676 of the house and senate committees on bonding, capital expenditures and state assets.
5677
5678 Section 2ZZZ. (a) There shall be established and set up on the books of the commonwealth a
5679 separate fund to be known as the Commonwealth Transportation Fund, which shall be used
5680 exclusively for financing transportation-related purposes. There shall be credited to the fund all
5681 fees received by the registrar of motor vehicles under section 34 of chapter 90, all receipts paid
5682 into the treasury of the commonwealth and directed to be credited to the Commonwealth
5683 Transportation Fund under chapters 64A, 64E, 64F and any other applicable general or special
5684 law and all amounts appropriated into the fund by the general court. The fund shall be subject to
5685 appropriation and shall be used for transportation related expenses of the executive office of
5686 transportation or any successor agency or authority, including to pay or reimburse the General
5687 Fund for payment of debt service on bonds issued by, or otherwise payable under a lease or other
5688 contract assistance agreement by, the commonwealth for transportation purposes.
5689
5690 (b) Notwithstanding subsection (a), the crediting of receipts from the tax imposed under chapter
5691 64A to the fund shall not affect the obligations of the commonwealth relating to notes issued
5692 under sections 9 to 10D, inclusive, of chapter 11 of the acts of 1997 and the pledge of receipts
5693 from the portion of the tax per gallon imposed under said chapter 64A equal to 10 cents per
5694 gallon, to secure the payment of such bonds under the circumstances described in the trust
5695 agreements relating to such notes is hereby ratified and confirmed in all respects and shall

remain in full force and effect as long as any such notes issued as of July 1, 2009 remain outstanding under their terms and secured by funds in the fund.

(c) In addition to those revenues credited to the fund under subsection (a) there shall be credited to the fund all monies received by the commonwealth equal to .385 percent of the receipts from sales, as defined by chapter 64H, and .385 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property, or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of section 10 of chapter 152 of the acts of 1997 or within the meaning of said subsection (b 1/2); provided, however, that if in a fiscal year the amount credited to the fund under this subsection is less than $275,000,000, then the comptroller shall transfer an amount from the General Fund to make up the difference between the amount credited to the fund and $275,000,000, not later than September 1 of the following fiscal year.

(d) Not less than the following amounts shall annually be distributed from the fund to the Massachusetts Bay Transportation Authority and regional transit authorities:

(1) $160,000,000 to the Massachusetts Bay Transportation Authority or any fund controlled by the authority in each fiscal year; and

(2) $15,000,000 to regional transit authorities organized under chapter 161B or predecessor

statutes in each fiscal year.

Section 2AAAA. There shall be established and set up on the books of the commonwealth a separate fund to be known as the State Athletic Commission Fund, in this section referred to as the fund, to be administered by the department of public safety. The fund shall consist of any monies from licensing fees or other fees and fines collected under sections 32 to 35, inclusive, sections 40, 40A and 42 of chapter 147 and section 12 of chapter 265. The amounts credited to the fund shall be available for expenditure without further appropriation by the department of public safety up to an amount not to exceed $200,000 each fiscal year for the costs of operating and administering the state athletic commission; provided, however, that if the amount credited to the fund exceeds $200,000, the excess amount shall be deposited into the General Fund. For the purposes of accommodating discrepancies between the receipt of retained revenues and related expenditures, the department may incur expense and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system.

Section 2BBBB. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Substance Abuse Prevention and Treatment Fund. The fund shall be credited with all sales tax revenues collected from the sale of alcoholic beverages under chapter 64H which are not part of the dedicated sales tax revenue amount described in section 35T or section 35BB of chapter 10. Amounts credited to the fund shall be expended, subject to appropriation, to support substance abuse treatment and prevention services.

Section 3. Every officer having charge of any state agency which receives a periodic appropriation from the commonwealth, including all periodic appropriations to be met from budgeted revenues shall annually, on or before a date set by the secretary of administration and finance submit to the budget director statements (1) showing in detail the amounts appropriated for the preceding and the current fiscal years; (2) the interchanges during the preceding fiscal year between the object classes established under section 27; (3) the deficiencies and surpluses, if any, in appropriations for the latest complete fiscal year and for the current fiscal year; (4) estimates of the amounts required for the operations of state agencies and programs for the ensuing fiscal year, with an explanation of any increased appropriations recommended and with citations of the statutes relating thereto, a statement indicating the priorities assigned to each program by said officer; and (5) statements showing in detail the revenue of the state agency in the officer's charge for the latest complete fiscal year, and the revenue and estimated revenue thereof for the current fiscal year, and the officer's estimated revenue from the same or any additional sources for the ensuing fiscal year, with the officer's recommendations as to any changes in the management, practices, rules, regulations or laws governing such state agency which would cause an increase or cause a decrease in revenue from operations, fees, taxes or other sources, or which would facilitate the collection thereof; (6) together with such other information on the expenditures, revenues, activities, output or performance of any such state agency as may be required by rule or regulation of the secretary of administration and finance, and any other information, including the priorities assigned to each program by said officer, required at any time by the budget director. Every such officer shall also submit to the budget director a statement showing in detail the number of permanent, temporary and part-time positions authorized for the state agency in the officer's charge, categorized by whether those

positions are funded by appropriation, bond authorizations, federal grants, trust funds or other funding sources and the volume of work performed in the latest complete fiscal year, and justifying the officer's request for permanent, temporary and part-time positions in the ensuing fiscal year in relation to the volume of work expected to be performed by the state agency.

All such statements, recommendations and estimates shall, to the fullest possible extent, conform with the programs of the state agency as defined by the secretary of administration and finance, with the advice of the officers responsible for the administration thereof and the officer making the submission to the budget director. The estimates submitted shall not include any estimate for any new or special purpose or object not authorized by statute.

Section 3A. Any officer having charge of any state agency which receives a periodic appropriation from the commonwealth, or any officer of a state authority, shall upon the request of any standing committee of the house or senate, or of any joint standing committee of the general court, furnish in writing to such committee, in a format prescribed by such committee, any information requested by such committee that is necessary for the committee to perform its duties. The information shall include, but not be limited to, historical, current or proposed operational costs funded through any appropriation, bond authorizations, federal grants, trust funds or other funding sources, the officer's estimate of the cost of proposed legislation affecting activities which are or would be under the officer's supervision, estimates of and reasons for any supplemental funding that is projected to be needed during the fiscal year, estimates of revenue collections, estimates of proposed changes in fees or taxes, and any other such information as may be required by the committee. Such estimates shall be provided to such committee within 10

days of the receipt of such a request by the officer. If the officer fails to respond within 10 days, the matter shall be referred to the house or senate committee on post audit and oversight which shall, in conjunction with the committee that originally requested the information, determine if further action is necessary.

Section 3B. The Massachusetts Bay Transportation Authority and the several regional transit authorities shall annually, on or before September 15, submit to the state budget director, the joint committee on transportation, the house and senate committees on ways and means and the Massachusetts Bay Transportation Authority advisory board (1) statements showing planned expenditures for the current fiscal year and the subsequent fiscal year; provided, however, that said statements shall detail planned expenditures according to program and to the expenditure classification plan promulgated by the state comptroller under section 27; and (2) a statement detailing the number of full time equivalent employees of the authority for the current fiscal year and an estimate of the number of full time equivalent employees for the subsequent fiscal year. The state budget director and the state comptroller shall establish such procedures as they deem necessary to implement and enforce this section.

Section 4. Every officer having charge of any state agency who, in the officer’s annual reports or otherwise, recommends or petitions for the expenditure of money by the commonwealth from any source of revenue, including expenditures to be met by assessments or from bond revenues or trust funds, for any purpose not covered by the estimates required to be submitted under section 3, shall, annually, on or before a date set by thesecretary of administration and finance, submit detailed estimates thereof to the budget director, together with any other information

required by said budget director.

Section 5B. The secretary of administration and finance, with the approval of the governor, shall on or before October 15 of every year, prepare estimates of budgeted revenues which in the secretary’s judgment will be available for both the current year and for the annual budget for the ensuing fiscal year. In making such estimates the secretary shall take into account existing taxes, the probable economic growth within the state, anticipated federal fund receipts, the anticipated growth in wages and salaries, departmental and other revenue based on existing laws, the transfers of capital gains income tax revenue required by section 5G and amounts available to be transferred into budgetary funds. Such estimates shall be delivered to the house and senate committees on ways and means and shall be made available to the general public in a conspicuous manner on the commonwealth's official website within 14 days of submission of such revisions to the governor. The secretary shall accompany any revision of previous estimates with explanations of any changes in the secretary’s estimates for specific sources of revenue.

In estimating revenues available for the current year, the secretary shall include the amount certified by the comptroller under section 5C as available from the consolidated net surplus in the operating funds at the close of the preceding fiscal year and not in excess of ½ of 1 per cent of the total state tax revenues in such fiscal year. In estimating revenues to be available for the annual budget for the ensuing fiscal year, the secretary shall include an amount of any anticipated consolidated net surplus in operating funds not in excess of ½ of 1 per cent of the estimated total state tax revenues for the current fiscal year.

The commissioner of revenue shall annually prepare and present with the governor’s proposed budget actual or updated estimates of tax expenditures which occurred during the preceding fiscal year, based on the best available information, and estimates of tax expenditures which in his judgment will occur during the current fiscal year and the ensuing fiscal year. Such estimates of tax expenditures shall be prepared to facilitate a comparison of increases or decreases from actual or estimated tax expenditures of the preceding fiscal year to the estimates of tax expenditures for the current fiscal year and to the ensuing fiscal year. Such estimates shall also compare actual or updated estimates of tax expenditures during the preceding fiscal year, based on the best available information, to estimates previously presented for that fiscal year by the commissioner of revenue under this paragraph. The commissioner shall identify and analyze reasons for updates in estimates or for significant discrepancies identified under the preceding sentence.

On or before January 15, the secretary of administration and finance shall meet with the house and senate committees on ways and means and shall jointly develop a consensus tax revenue forecast for the budget for the ensuing fiscal year which shall be agreed to by the secretary and said committees. In developing such a consensus tax revenue forecast, the secretary and said committees, or subcommittees of said committees, may hold joint hearings on the economy of the commonwealth and its impact on tax revenue forecasts; provided, however, that in the first year of the term of office of a governor who has not served in the preceding year, said parties shall agree to the consensus tax revenue forecast not later than January 31 of said year. Said consensus tax estimate shall be net of the amount necessary to transfer, from the General Fund to the Commonwealth's Pension Liability Fund, to amortize the unfunded liability of the system

5857 according to the schedule established under paragraph (1) of section 22C of chapter 32, and of
5858 the amounts transferred to the MBTA State and Local Contribution Fund under section 35T of
5859 chapter 10, and to the School Modernization and Reconstruction Trust Fund under section 35BB
5860 of chapter 10. Said consensus tax estimate shall also include an estimate of taxes collected under
5861 chapter 62 for capital gains income, as defined therein, and shall be net of any transfers of capital
5862 gains income tax revenue projected to be required by section 5G. Said consensus tax revenue
5863 forecast shall be included in a joint resolution and placed before the members of the general
5864 court for their consideration. Such joint resolution, if passed by both branches of the general
5865 court, shall establish the maximum amount of tax revenue which may be considered for the
5866 general appropriation act for the ensuing fiscal year.
5867
5868 Section 5C. The comptroller shall annually, on or before October 31, certify to the secretary of
5869 administration and finance the amount of the consolidated net surplus in the budgetary funds at
5870 the close of the preceding fiscal year. The amounts so certified shall be disposed as follows:
5871
5872 (a) an amount equal to 1/2 of 1 per cent of total state tax revenue in the preceding fiscal year
5873 shall be available to be used as revenue for the current fiscal year and 1/2 of 1 per cent of the
5874 total state tax revenue in the preceding fiscal year shall be transferred to the Stabilization Fund;
5875
5876 (b) 1/2 of any remaining amount of such consolidated net surplus after amounts made available
5877 in clause (a) shall be transferred to the Stabilization Fund, and 1/2 of any remaining amount of
5878 such consolidated net surplus after amounts made available in clause (a) shall be transferred to
5879 the Commonwealth’s State Retiree Benefits Trust Fund; and

(c) all transfers specified in this section shall be made from the undesignated fund balances in the budgetary funds proportionally from those undesignated fund balances, but no such transfer shall cause a deficit in any of those funds; provided, however, that prior to certifying the consolidated net surplus under this section, the comptroller shall, to the extent possible, eliminate deficits in any fund contributing to the surplus by transferring positive fund balances from any other fund contributing to the surplus.

Section 5D. The comptroller shall determine, based on procedures established by the secretary of administration and finance, the amount expended during the fiscal year from each fund, other than the General Fund, for indirect costs and for the compensation of state personnel. On the basis of said determination, the comptroller shall charge each fund an amount for indirect costs and for fringe benefit costs attributable to compensation paid from the other funds, based on an indirect costs rate and on a fringe benefit rate to be set annually by said secretary. The amount so charged shall be credited to the General Fund. Upon approval of the secretary, and subject to regulations established by the secretary, the amount of indirect costs, either in whole or in part, charged to an account may be waived. The costs of fringe benefits shall be recovered in cash.

The comptroller shall make charges to recover the commonwealth' indirect costs and the cost of fringe benefits provided to or on behalf of any person paid compensation by a state agency, authority or public institution of higher education, or by any entity otherwise directly or indirectly receiving state funds, from any source other than a direct expenditure of an appropriation charged to a state fund subject to the preceding paragraph. The comptroller may

establish such systems of periodic charges or billings as the comptroller considers necessary and appropriate to ensure the recovery of these costs. Any bill rendered for the purpose of recovery of these costs shall be payable to the comptroller within 30 days after receipt of the bill and all amounts so paid shall be credited to the General Fund.

Section 5F. Every officer having charge of any state agency which receives a periodic or other appropriation from the commonwealth, shall annually, on or before a date set by the secretary of administration and finance submit to the budget director a department financial plan for the current fiscal year and, at such times as specified by said secretary, revisions to said department financial plan; provided, however, that said officer shall also submit said financial plans to the chairmen of the house and senate committees on ways and means.

The department financial plan shall include statements, in a form prescribed by the budget director, showing in detail (1) amounts proposed to be expended from each account for each month in the current fiscal year; (2) amounts projected to be received in each revenue account, other than revenue from state taxes, federal grants or proceeds of bonds issued by the commonwealth, for each month in the current fiscal year; and, (3) such other information on the expenditures, revenues, activities, output or performance of the state agency as required by the budget director.

The budget director shall provide to the treasurer and comptroller information from department financial plans to develope estimates and projections of monthly, quarterly and annual cash flow required under section 10B of chapter 10, and to prepare monthly reports of planned and actual

5926 expenditure and planned and actual revenue for each major state program, department, and
5927 executive or other constitutional office.
5928
5929 Section 5G. After each quarter, the department of revenue shall certify to the state comptroller
5930 the amount of tax revenues estimated to have been collected during the preceding quarter from
5931 capital gains income. If the department of revenue certifies that the amount of tax revenues
5932 estimated to have been collected from capital gains income exceeds $1,000,000,000 in a fiscal
5933 year, the comptroller shall transfer quarterly any such amount that exceeds $1,000,000,000
5934 collected during that fiscal year to the Commonwealth Stabilization Fund established by section
5935 2H. The $1,000,000,000 threshold established in the preceding sentence shall be adjusted
5936 annually to reflect the most recently available annual changes in personal income of
5937 Massachusetts residents, as calculated and published by the Bureau of Economic Analysis. This
5938 transfer shall be made before the certification of the consolidated net surplus for the previous
5939 fiscal year under section 5C. The department of revenue shall report by November 30 to the state
5940 comptroller, the executive office for administration and finance and the house and senate
5941 committees on ways and means tax revenues estimated to have been collected during the
5942 preceding fiscal year from capital gains income. The comptroller shall not make adjustment to
5943 amounts previously transferred if the capital gains revenue reported on November 30 differs
5944 from the amounts estimated during the preceding fiscal year.
5945
5946 Five per cent of any amount transferred to the Commonwealth Stabilization Fund under this
5947 section shall then be transferred from the Commonwealth Stabilization Fund to the State Retiree
5948 Benefits Trust Fund established in section 24 of chapter 32A and 5 per cent of any amount

transferred to the Commonwealth Stabilization Fund under this section shall then be transferred from the Commonwealth Stabilization Fund to the Commonwealth's Pension Liability Fund established in section 22 of chapter 32.

Section 5H:

(a) For purposes of this section, "zero-based budget" shall mean a budget: (i) in which the appropriations are developed based on the cost-effective achievement of the tasks and goals of a particular agency or department without regard to prior appropriations, adjusted for inflation or otherwise; (ii) which has a $0 dollar amount as its basis; and (iii) which reflects the amount of funding deemed necessary to achieve the most cost-effective performance of each agency or department.

(b) Not less frequently than every 4 years, the budget filed by the governor under sections 6, 6C, 6D and 7H shall be a zero-based budget. The appropriation or set of appropriations for each agency or department shall be accompanied by a brief description of the tasks and goals of the agency or department for a period not to exceed 4 years, together with the performance measure of the achievement of those tasks and goals, published with the document and made available electronically on the official website of the commonwealth.

Section 6. The budget director shall study and review all estimates and requests for appropriations and other authorizations for expenditures of state funds filed with the budget director as provided by sections 3 and 4, and shall make such investigations as will enable the

budget director to prepare an operating budget for the governor, setting forth such recommendations as the governor shall determine. The governor may call upon the comptroller for information relative to finances and for assistance in the preparation of the operating budget. The operating budget shall embody all estimates, requests and recommendations for appropriations, distributions of state revenues and other authorizations for expenditures by the commonwealth under existing law, other than for capital facility projects and prior-year appropriations, but including those from retained revenue line-items and those from federal grants, as submitted by each officer having charge of any state agency which receives a periodic appropriation from the commonwealth. The budget recommendations of the governor shall not assume future continuing appropriation of the unspent balances of current or previous appropriations.

The operating budget shall be set out under section 6D and classified and designated so as to show separately estimates and recommendations for: (a) expenses for administration, operation and maintenance; (b) deficiencies or surpluses in appropriations for former years; (c) interest on the public debt and sinking fund and serial bond requirements; and (d) all requests and proposals for expenditures for new programs and other undertakings; and shall include in detail definite recommendations of the governor relative to the amounts which should be appropriated therefor. The operating budget shall show the estimated state revenue of each state agency. The operating budget shall indicate the number of positions proposed to be authorized for each state agency or such other public instrumentality for the ensuing fiscal year, the number of positions for each state agency in the current and ensuing fiscal years and such other information as may be held to explain the anticipated results of the proposed appropriations.

Section 6B. (a) The comptroller, in consultation with the secretary of administration and finance, shall promulgate regulations which shall not be subject to chapter 30A to govern notice requirements for applications for federal grants by a state agency and the receipt and expenditure of federal funds. Such requirements shall, at a minimum, include:

(1) reference to the federal statutory authority under which the action is proposed;

(2) a description of the substance of the application; and

(3) a fiscal statement setting forth:

(i) the projected grant budget per year including the number of personnel to be funded with federal funds;

(ii) the estimated amount of cash match, inkind match or other monies to be supplied by the state and any other source from which such match will be required, and a description of the federal allocation formula and matching requirements including whether the grant is distributed to the commonwealth on the basis of a federally specified formula or on the basis of the federal grantor's discretion and a description of the federal constraints placed on the agency's discretion to use the grant; and

(iii) the duration of the grant, the number of fiscal years the agency has been receiving assistance

and the number of fiscal years in which assistance can be expected to continue under the program, and a statement as to the priority of the program alongside other state or federally funded programs, including whether the agency would request that all or part of the program be funded out of the General Fund in the event federal funds are reduced or discontinued.

To avoid any inconsistency or duplication in review, notices given under this section shall be coordinated with other notice requirements for project or plan proposals in connection with federal aid including those required under Circular A-95 of the United States Office of Management and Budget.

(b) Upon official notification to a state agency from a federal department or agency of approval of a state plan or application for federal funds, the state agency shall notify the secretary of administration and finance and the comptroller promptly of the amount, duration, payment schedule and other attendant financial terms and conditions. Such notification shall be for the purposes of appropriate recording. The comptroller shall report to the house and senate committees on ways and means within 15 days after the last day of each quarter of the fiscal year detailing, by agency, the status of federal funds applied for, received and expended.

(c) Under section 6 the budget director shall include all federal grants received or anticipated by state agencies as a part of the budget.

(d) No state agency shall establish new, or expand existing programs involving federal or other non-state monies beyond the scope of those already established, recognized and approved by the

general court, until the program and the projected or actual availability of money is submitted to the budget director for recommendation to the general court under section 6. No state agency may make expenditures from any federal grant unless such expenditures are made under specific appropriations of the general court and allotment thereof, said allotment to be made by the comptroller upon receipt of federal grant funds.

Under section 2C, all such expenditures shall be charged to the General Federal Grants Fund. Notwithstanding the amount of the appropriation for a specific federal grant, the amount so expended from such federal grant shall not exceed the amount actually received and deposited in the General Federal Grants Fund for such federal grant. To the extent not precluded by the terms and conditions under which federal monies are made available by the United States government, a state agency shall use federal grants under any policies or priorities established by the general court for the activity being assisted.

(e) If federal grant monies become available to the state for expenditure, under subsection (a), and the availability of such monies could not reasonably have been anticipated and included in the budget approved by the general court for the fiscal year in question, the treasurer may accept such monies on behalf of the state and the department head may make expenditures of such monies as are authorized by federal and state law. Upon application for, and receipt of, such monies, the department head shall submit to the house and senate committees on ways and means a statement:

(1) describing the proposed federal expenditures in the same manner as described in the budget

document; and

(2) explaining why the availability of such federal grants and the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the budget enacted for that particular fiscal year.

(f) Each spending agency in receipt of federal grant monies shall at the commencement of each fiscal year, and no later than July 31, and any agency which has not previously been in receipt of a federal grant shall, upon notification of grant approval, authorize the comptroller upon the comptroller's receipt of notice of a federal grant award to initiate such procedures as are established by the secretary of administration and finance to transfer from the federal grant account to the General Fund for the costs of fringe benefits, indirect costs and space use charges related to each federal grant received by that spending agency. Upon approval by the secretary, and subject to regulations established by the secretary, the amount of indirect costs, either in whole or in part, charged to a federal grant may be utilized to comply with federal requirements for in kind contributions. The costs of fringe benefits must, in all cases, be recovered in cash. The comptroller shall not allow expenditures for the payment of salaries to be made from any federal grant account for which the comptroller has not been authorized to charge the full amount of fringe benefits to the account. Notwithstanding any general or special law to the contrary, this paragraph shall apply to all state agencies; provided, however, that any institution of higher learning shall be exempt from those charges associated with indirect costs, as described in the following paragraph.

(g) Any portion of a federal grant received by an institution of higher learning which, according to the conditions of said federal grant, is to be paid for or to cover any overhead expenses, indirect costs, supporting services or facilities, or for any purpose other than the direct object of the grant, may be transferred in whole or in part to separate accounts and expended without appropriation for the support of a computer or computers, of another research grant, or of publishing programs under the exclusive control of such institution, or for faculty research or research and scholarly work under the supervision of members of the faculty of such institution.

(h) No individual, corporation or other organization utilizing grants shall be permitted to occupy or use land, buildings, equipment or facilities of the commonwealth or use the services of any officer or employee of the commonwealth during his regular working hours unless there is a written agreement, approved by the secretary, between said individual, corporation or other organization and said officer or employee, that the commonwealth will be reimbursed for such occupancy or use; provided, however, that upon recommendation of any department, institution, board, commission, agency or employee setting forth good and sufficient reasons, this requirement may be waived in whole or in part by the secretary on a particular project or projects. All such reimbursements shall be paid into the state treasury. Notice of such waiver shall be filed with the state auditor.

(i) Federal grants shall not be used to supplement the regular salary or compensation of any officer or employee of the commonwealth for services performed during the officer or employee’s regular working hours.

6110 (j) The following are excluded from subsections (a), (d) and (e):

6111

6112 (1) federal grant funds coming to institutions of higher education, including research grants;

6113

6114 (2) research grants to individuals, agencies or institutions not exceeding $50,000 in annual

6115 amount and not creating new, or expanding existing, programs or commitments of state

6116 resources;

6117

6118 (3) any federal grant funds not exceeding $5,000 in annual amount; and

6119

6120 (4) federal grant funds made available to the state for costs and damages resulting from natural

6121 disasters, civil disobedience or other occurrences of sufficient severity to have occasioned the

6122 declaration by the governor of a state of emergency.

6123

6124 Section 6C. In addition to information required by section 6 to be included in the budget

6125 submitted by the governor, said budget shall also include the following information:

6126

6127 (a) a description of and the amount of expenditure by state agencies from trust funds and bond

6128 funds anticipated for the subsequent fiscal year; and

6129

6130 (b) a narrative description accompanied by appropriate fiscal statements which shall reconcile

6131 the amounts for state revenues and expenditures for the previous fiscal year as presented by the

6132 budget director in the governor’s budget with the amounts of state revenues and expenditures for

the previous fiscal year as presented by the comptroller in the annual financial report of the commonwealth.

Section 6D. Each appropriation contained in the general appropriations or any supplemental appropriations acts shall include the following information: (a) the line-item number of the appropriation; (b) the purpose of the appropriation and other restrictive language; and (c) the amount of the appropriation or the maximum expenditure allowed, set out in numeric figures. No appropriation otherwise set out in any act shall be valid and the comptroller shall not allow monies to be expended on any appropriation not conforming to the requirements herein established.

The general appropriations act shall include the following sections: (a) section 1 which shall include the enacting clause and general appropriation language; (b) section 1B which shall set forth the budgeted revenues appropriated in the budget according to category (state tax revenue, federal reimbursements, departmental revenues and budgeted transfers), by department, and identifying, by department, budgeted revenues that are restricted for the purpose of supporting retained revenue line-items; (c) section 2 which shall include all direct appropriations and authorizations to retain revenue; (d) section 2B which shall include all appropriations from the Intragovernmental Service Fund; (e) section 2D which shall include all appropriations of federal grants; and (f) section 2E, which shall set forth appropriations to support transfers to funds other than budgetary funds.

Supplemental and deficiency appropriations acts shall include, if necessary, the following

sections: (a) section 2 which shall include direct appropriations and authorizations to retain revenue which do not require changes to the purpose of the appropriation or other restrictive language; (b) section 2A which shall include direct appropriations and authorizations to retain revenue which require new language regarding the purpose of the appropriation or other restrictive language; (c) section 2B which shall include all appropriations from the Intragovernmental Service Fund; and (d) section 2C which shall include all authorizations to continue a prior appropriation.

This section shall apply to all appropriations of commonwealth funds, including direct appropriations, retained revenue authorizations, federal grant appropriations, accounts with prior appropriations continued and appropriations from the Intragovernmental Service Fund.

Section 6E. The governor shall recommend, the general court shall enact, and the governor shall approve a general appropriation bill which shall constitute a balanced budget for the commonwealth. No supplementary appropriation bill shall be approved by the governor which would cause the state budget for any fiscal year not to be balanced.

Section 7H. The governor shall submit to the general court annually within 3 weeks after the general court convenes in regular session a budget including an operating budget and a capital facility budget and long range capital facilities development plan. In the first year of the term of office of a governor who has not served in the preceding year, the governor shall recommend the budget within 8 weeks after the convening of the general court. The recommendations contained therein shall, to the fullest possible extent, conform with the programs of the several offices and

departments as defined by the secretary of administration and finance with the advice of the agency heads or other officers responsible for the administration thereof and long range capital facilities development plans as defined by the commissioner of capital asset management and maintenance. The budget shall also include definite recommendations of the governor for financing the expenditures recommended.

All appropriations based upon the budget to be paid from budgeted revenues shall be incorporated in a single bill to be designated the general appropriation bill, set out in conformity with section 6D. With the budget the governor shall submit to the general court statements detailing and explaining the governor's reasons for recommending any increase in, decrease in, or deletion from the budgetary recommendations (a) of any department office, commission, or institution, or other public agency, or in the case of a department, office, commission or institution within any executive office established by chapters 6A and 7 of the secretary of such executive office, (b) of the general court, and (c) of the judiciary.

The governor shall also submit such other messages, statements of supplemental data relative to the budget as the governor deems expedient and, from time to time during the session of the general court may submit supplemental messages on recommendations relative to appropriations, revenues and loans. Such statements of supplemental data shall include, at a minimum, statements of projected health care cost trends, caseload eligibility and enrollment trends, anticipated debt service costs and future growth in payments to fund the commonwealth's liability for pensions and the commonwealth's liability for retiree health care over the next 5 fiscal years. Upon submission of the budget to the general court, the governor shall, through the

executive office for administration and finance, make available to the public all material relevant to said budget, including all supporting documents pertinent thereto. This shall include at least the electronic or other distribution, at the time of submission of the governor's budget and subsequently the house and senate ways and means budgets, of (a) copies of these budgets to the state house library, and to the state office building in Springfield, (b) copies of all reports, statements, recommendations, or evaluations required by sections 3, 4, 5B, 5D, 6, 7 or any related reports required by any chapter of the general laws to the state house library. They shall be placed on public display and made available for reproduction during business hours.

Any information which is required to be filed under this section or section 6, either with the budget by the governor, or as a part thereof, and which is not contained within the budget as filed or within accompanying documents filed at the same time, shall be filed by the governor not later than 14 days following the required filing date; provided, however, that such information shall be accompanied by a detailed statement explaining the failure to provide the information at the time the budget was submitted.

In the event that the governor determines from information supplied by the executive office for administration and finance, from the tax revenue resolution established unswe section 5B, or from any other competent source that the tax revenues or non-tax revenues supporting the general appropriation bill have materially decreased, or that appropriations or statutory amendments that would provide funding to support recommended levels of appropriations have materially changed from the time the general appropriation bill was originally submitted, the governor shall submit to the general court by message recommended corrective amendments to

the governor's original budget submission to ensure that total appropriations recommended in the general appropriation bill do not exceed total revenues supporting said bill. Such message shall be submitted to the general court within 15 days from the date of such determination.

Section 7I. All requests and recommendations for appropriations or authorizations for expenditures by the commonwealth, other than those submitted by the governor to the general court under section 2 of Article LXIII of the Amendments to the Constitution, shall be submitted by the governor to the general court; shall be classified to show the request of each officer having charge of an office, department or undertaking, including the priorities assigned to each program by said officer, the recommendation of the secretary of the executive office within which such office, department or undertaking shall be, the recommendation of the governor, and the prior year appropriation, if any; and shall indicate the number, if any, of permanent positions proposed to be authorized for an office, department or undertaking and the number of persons to be served or the number of actions to be taken by such office, department or undertaking.

Section 7L. A law making an appropriation for expenses of the commonwealth shall not contain provisions on any other subject matter. As used in this section, expenses of the commonwealth shall include expenses of the executive, legislative, and judicial departments, interest, payments on the public debt, local aid, and other items of expense authorized or required by existing law.

Section 7M. The speaker of the house of representatives and the president of the senate may transfer funds, as needed, among items of appropriation for the house of representatives and the senate, respectively.

Section 7N. The speaker of the house of representatives and the president of the senate, acting jointly, may transfer funds, as needed, among the items of appropriation for joint legislative expenses.

Section 7O. The speaker of the house of representatives and the president of the senate, acting jointly, may transfer funds, as needed, from the items of appropriation for joint legislative expenses to the items of appropriation for the house of representatives and the senate.

Section 9B. Any monies made available by appropriation to state agencies under the control of the governor or a secretary, but not including the courts, the office of the governor and the office of the lieutenant governor, shall be expended only in such amounts as may be allotted as provided in this section. The secretary of administration and finance shall allot to each such state agency the amount which it may expend for each month out of the sums made available to it by appropriation or otherwise, taking into account the programmatic needs of the program supported by the appropriation and the cash-flow needs of the commonwealth. The initial allotment shall be the result of dividing the annual sum available for expenditure by 12, unless the full legislative objective of an appropriation would be accomplished, without amendment, by a lesser allotment than that required by the formula. The secretary may allot a greater amount than required by the formula provided, however, that the total amount allotted during the fiscal year will not exceed the amount available through appropriation or otherwise. If a greater allotment is authorized under the preceding sentence, the secretary shall document on the state's accounting system the reasons why the greater allotment was authorized, and why the resulting

expenditure will not exceed the amount available through appropriation or otherwise. Not less than 15 days prior to the initial allotment of such greater amount from any appropriation for which a supplemental appropriation will become necessary if current rates of spending continue, the secretary of administration and finance shall file with the house and senate committees on ways and means a report containing the following information: (1) the amount of the appropriation which the secretary proposes to allot; and (2) a detailed corrective action plan to prevent a deficiency in the account or accounts involved; a request for a supplemental or deficiency appropriation, if such corrective action plan would not eliminate the deficiency or would violate the legislative objective of the appropriation; or a statement explaining why neither a corrective action plan nor a supplemental appropriation is necessary.

If so designated, the secretary of administration and finance shall designate such member or members of the secretary's office as may be approved by the governor to exercise the foregoing powers in the absence of said secretary.

Whenever the officer in charge of each such state agency requests a supplemental allotment, the officer shall submit to the budget director, in such form and at such times as the budget director shall prescribe, such information as may be required by the secretary of administration and finance; provided, that before any such information relating to such a state agency has been so submitted to the budget director, it shall first be submitted to the secretary having charge of such state agency who shall review the same and make such additions thereto, deletions therefrom and modifications therein as the secretary deems appropriate.

Section 9C. Whenever, in the opinion of the secretary of administration and finance, budgeted revenues as determined by the secretary from time to time during any fiscal year under section 5B will be insufficient to meet all of the expenditures authorized to be made from any budgetary fund, the secretary shall within 5 days notify in writing the governor and the house and senate committees on ways and means of the amount of such probable deficiency of revenue and the governor shall, within 15 days after such notification, reduce allotments under section 9B, and submit in writing a report stating the reason for and effect of such reductions, or submit to the general court specific proposals to raise additional revenues by a total amount equal to such deficiency. Any action challenging the legality of an allotment reduction under this section shall be commenced in the supreme judicial court for Suffolk county.

Whenever the governor reduces allotments under the preceding paragraph, the governor shall notify the house and senate committees on ways and means in writing 15 days before any alterations to the original allotment reduction plan. Any alterations to the original allotment reduction plan that would seek to increase an allotment must provide an equal reduction in other allotments or propose to raise additional revenues to total the amount of the allotment increase.

As an alternative to the submission of such proposals to raise additional revenues and to the extent funds are available, the governor may recommend an appropriation equal to such deficiency from the Commonwealth Stabilization Fund in the manner provided in section 2H.

Section 9D. Whenever it appears probable to any officer having charge of any office, department or undertaking, that amounts to be received from the federal government or any other sources for

the purposes of such office, department or undertaking will be less than the amounts previously estimated to be received from such sources, such officer shall immediately notify the secretary of administration and finance and the house and senate committees on ways and means of such anticipated decrease in estimated revenue, and the secretary of administration and finance shall include such decrease in revenue in the secretary's determination of budgeted revenues under section 5B and the deficiency, if any, reported under the previous section.

Section 9E. Whenever it appears to any officer having charge of any office, department or undertaking that any appropriation therefor will be insufficient to meet all of the expenditures required in the current fiscal year by any law, rule, regulation or order not subject to the officer's control, the officer shall immediately notify the secretary of administration and finance and the house and senate committees on ways and means of the estimated amount of such additional requirements, and such amount shall be added by the secretary to any deficiency reported under section 9C unless, prior to such report, such provisions are changed to make the estimated additional expenditures unnecessary.

Section 9F. On or before the fifth day of each month, the comptroller shall notify the secretary of administration and finance and each officer having charge of an office, department or undertaking which receives a periodic appropriation, of the amount and per cent of each such appropriation which had been expended at the close of the preceding month for that month and for the year-to-date, of the amount available for each such appropriation and of the amount and per cent of each appropriation, if any, for the same purpose expended during the corresponding period in the preceding fiscal year.

Section 9G. Sums made available by appropriation or otherwise to offices, departments or undertakings for studies, plans, designs, construction, acquisition, purchase or repair of capital facilities, of highway improvement facilities, such as a highway, bridge or tunnel, and of transportation improvement facilities, such as a mass transportation or other public transit facility, shall be expended only in such amount as may be allotted for expenditure from time to time by the secretary of administration and finance or said secretary's approved designee. The officer in charge of each office, department or undertaking shall submit to the secretary, in such form and at such times as the secretary shall prescribe, such information as may be required by the secretary for making such allotments; provided that before any such information relating to an office, department or undertaking within any of the executive offices established by chapter 6A has been so submitted, it shall first be submitted to the secretary having charge of such executive office, who shall review the same and make such additions thereto, deletions therefrom and modifications therein as such secretary deems appropriate.

The secretary of administration and finance shall issue directives governing expenditure from bond authorizations; such directives shall include, but not be limited to, the following: (1) such measures as determined by said secretary to be necessary to regulate the rate of expenditure from any or all bond authorizations, and (2) such measures as determined by said secretary to be necessary to ensure compliance with such directives, including requiring prior written approval of said secretary before the award of contract or grants.

Section 12. Appropriations by the general court shall be made for the fiscal year unless otherwise

specifically provided therein.

Section 12A. Beginning June 1 of any year, obligations may be incurred against appropriations for items to be delivered or for services to be rendered on or after the beginning of the next fiscal year; provided, however, that said obligations are in accordance with law and the amounts of the obligations do not exceed one-twelfth of that appropriation for the current fiscal year.

Where the allotment of an appropriation is a condition precedent to expenditure, the obligations shall not exceed the amount allotted for said appropriation; provided, however, that during the month of June the comptroller may prepare warrants and the state treasurer may advance funds to the department of transitional assistance for the purpose of making payments on and after July 1 as authorized by chapter 658 of the acts of 1967; and provided further that said payments are in accordance with law and the amounts of said payments do not exceed the amount of the appropriation, provided, however, that no funds shall be expended until such funds have been appropriated. The certified copies of the schedules provided for in section 27 shall be filed with the comptroller and the budget director as of June 1. Where the allotment of an appropriation is required by law, such allotment shall be made as of June 1.

Notwithstanding any general or special law to the contrary, in order to comply with the Social Security Act, the state treasurer may transfer to the United States Treasury before July funds necessary to make July 1 Supplemental Security Income payments to commonwealth benefit recipients.

Section 12B. Notwithstanding any general or special law to the contrary, and in accordance with generally accepted accounting principles, the fiscal year for the payment of classified personal services shall be the fiscal year established by clause ninth of section 7 of chapter 4.

Section 13. Encumbrances outstanding on the records of the comptroller's office at the close of the fiscal year may be applied to the payment thereof in the 2 months immediately succeeding such fiscal year.

Section 15. An appropriation shall supersede an earlier one made for the same object.

Section 16. Payments authorized by appropriation acts shall be made from budgeted revenue, if no other provision is expressly made for such payment.

Section 17. An appropriation act shall not be construed to require a payment to a person with whom the commonwealth has an unadjusted account. The governor, upon receiving satisfactory information that money is illegally withheld from the commonwealth by any person, shall instruct the state treasurer to withhold all payments to such person until the person pays such account.

Section 18. Except as otherwise provided, no money shall be paid by the commonwealth without a warrant from the governor drawn under an appropriation then in effect, and after the demand or account to be paid has been certified by the comptroller; provided, that the principal and interest on all public debts shall be paid when due without any warrant and that no appropriation shall be

required for the payment of principal or income of funds held in trust by the commonwealth, or of sinking funds to meet maturing bonds, or of treasury notes issued for duly authorized temporary loans, or of corporation and other taxes collected by the commonwealth for distribution to towns, or for the investment of such funds as the state treasurer is duly authorized to invest, or for payments authorized by law out of the several prison industries funds, or for refunds of taxes or penalties or for refunds or payments of interest or costs lawfully made under chapters 58 to 65A, inclusive; and, provided, further, that the governor may, without an appropriation, draw the governor's warrant for the payment of the governor's own salary and the salaries of the justices of the supreme judicial court. No certificate shall be required from the comptroller for payment of the pay rolls of the members of the council and general court, or for the traveling and other expenses of members of the general court as provided in section 9B of chapter 3.

Section 19A. Whenever a general appropriation act provides that transfers shall be made from a fund, account or receipts, of a specific sum, a percentage of payments, or a sum equivalent to payments, such transfers of a specific sum shall be made upon the effective date of such act, and all other such transfers shall be made monthly unless otherwise provided, except that at the close of a fiscal year, the amount equivalent to payments in a continuing account shall be construed to mean the amount of such appropriation.

Section 20. No account or demand requiring the certificate of the comptroller or warrant of the governor shall be paid from an appropriation unless it has been authorized and approved by the head of the department, office, commission or institution for which it was contracted; nor shall

any appropriation be used for expenses unless properly approved vouchers therefor have been filed with the comptroller. No such voucher shall be submitted by such head nor shall any such approval be given by such head unless sufficient funds are allotted for such purposes at the time the voucher is submitted or the approval is given.

Section 20A. No order for, or claim for payment for, extra work or materials, furnishings or equipment, in addition to an existing contract for the construction or repair of any structure or of public works of any nature whatsoever or for equipment or furnishings, shall be approved by any official, board, department or commission on behalf of the commonwealth until 1 week after notice of intention to act upon such order or claim shall have been filed by him or it with the comptroller; provided, that, in the case of any such order estimated to involve a cost of less than $15,000 and in the case of any such order necessitated by extreme emergency involving the health or safety of persons or damage to property or to work in progress, notice of the approval of such order may be filed after the work has been commenced or completed, but such notice shall be so filed as soon as practicable, with a brief statement as to the character of the extreme emergency, if any, and in any event such notice shall be filed before final payment is made on the contract to which the order or claim for extra work or payment relates. The foregoing requirements shall not apply to change in quantities of work or materials covered at unit prices by an item or items in any such original contract, nor to work, other than extra work, for which payment is specifically provided in the contract or specifications. Every notice under this section shall contain the number or other designation of such contract, together with the title and date thereof, and a statement of the amount of the accepted bid and of the estimated total cost based on the bid prices of such contract, and of the total amount of orders or claims previously

approved for payment, and of the character and location of work proposed or included under each such order or claim, and of the estimated cost or amount under each such order or claim. Said notices shall be entered by the comptroller upon a docket and shall be open to public inspection.

No such order or claim shall be split or divided for the purpose of evading any provision of this section.

Section 20C. Any commercial vendor to whom any state agency of the commonwealth is liable for late penalty interest under section 29B shall, prior to payment of said interest, submit to said state agency an invoice for said interest under applicable rules and regulations of the comptroller.

Section 22. Except as otherwise expressly provided, no greater sum from an appropriation shall be drawn from the treasury at any one time than is necessary to meet expenses then incurred.

Section 23. Any officer authorized to expend money in behalf of the commonwealth may have money advanced to the officer from the treasury for such purposes, in such sums and subject to such rules and regulations as the comptroller may determine.

The state treasurer shall manage all cash, funds, or investments under the control or jurisdiction of any state agency, other than nonappropriated funds held by a public institution of higher education. “State agency" in this section shall mean any department, office, commission, committee, council, board, division, bureau, institution, office or other agency within the

executive or legislative department, excluding, however, the Massachusetts Bay Transportation Authority, and the Massachusetts Port Authority. Funds shall be deemed to be under the control of a state agency from the date of the initial deposit into any commonwealth account until the date a check or draft drawn on a commonwealth account clears the disbursing bank.

The state treasurer shall provide for the funding of checks or drafts drawn by any state officer, department, institution or other agency which has received proper authority to expend money on behalf of the commonwealth.

Section 23A. Subject to sections 24 and 25, the comptroller shall provide for payments by officers receiving advances under this chapter and to section 20 of chapter 18B, to eligible organizations under contract with the commonwealth to provide social, educational or rehabilitative services. Said payments shall be made under a schedule to be included in each such contract, on the basis of projected expenses or services and shall be adjusted monthly and at the end of each contract, under the submission of a voucher or other claim for payment, to reflect the actual cost or extent of services rendered.

The comptroller shall establish rules and regulations governing the eligibility of providers to receive such payments including but not limited to, proper incorporation and recording with the secretary of state, and compliance with all applicable state and federal laws. Each such eligible provider shall, at the end of each billing period, submit timely, complete and accurate documentation prepared under the terms of its contract and with requirements of the comptroller. Any violation of this paragraph shall result in ineligibility for such payments for a period of 2

years from the date of disqualification. Prior to reinstatement of eligibility, a provider shall submit proof of ability to comply with the requirements of this section and with any regulations promulgated under this section. The comptroller shall promulgate rules and regulations necessary to carry out this section.

Section 24. Such officers shall certify that the amount is needed for immediate use, and, as specifically as may be, the purposes for which the expenditure is required. The certificate shall bear the approval of the officer or department having the supervision of such expenditure and, when filed with the comptroller, his certificate and the warrant and payment shall follow as in case of claims against the commonwealth.

Section 25. Such officers shall, within 30 days after receipt of an advance, file with the comptroller a detailed statement of the amounts expended subsequent to the previous accounting, approved by the officer or department authorized to supervise such expenditure, with vouchers therefor if they can be obtained. All advances so made shall be accounted for and vouchers therefor filed with the comptroller before the close of the fiscal year.

Section 26. Expenses of offices and departments for compensation of officers, members and employees and for other purposes shall not exceed the appropriations made therefor by the general court or the allotments made therefor by the governor. No obligation incurred by any officer or servant of the commonwealth for any purpose in excess of the appropriation or allotment for such purpose for the office, department or institution which the officer or servant represents, shall impose any liability upon the commonwealth nor shall any liability be imposed

upon the commonwealth under a subsequent appropriation by any ongoing commitment against a current year appropriation.

Section 27. Notwithstanding any general or special law to the contrary, no department, office, commission and institution shall incur an expense, increase a salary or employ a new clerk, assistant or other subordinate, unless an appropriation by the general court and an allotment by the secretary of administration and finance, sufficient to cover the expense thereof, shall have been made. As soon as possible after the general appropriation bill or any other appropriation bill has the force of law conformably to the constitution, the budget director shall file with the house and senate committees on ways and means and the comptroller a schedule identifying the amount of each subsidiary account, if any, within every appropriation that shall be made available to departments, offices, commission or institutions within the state's central accounting system.

Section 27B. No state agency, excepting the departments of the attorney general, state auditor, state secretary and state treasurer, shall initiate any encumbrance or make any expenditure of funds, whether appropriated or not, for the lease or purchase of data processing or reproduction equipment or systems unless:

(1) if appropriated funds are to be used, a prior request therefor has been made to the budget director under sections 3 or 4, and at least 30 days written notification has been given to the house and senate committees on ways and means;

(2) the officer in charge of the agency has certified that funds are specifically available for the

purpose;

(3) in the case of a department, office, commission, board or institution within any of the executive offices established by chapters 6A and 7, the secretary having charge of such executive office has approved in writing the encumbrance or expenditure, and

(4) the secretary of administration and finance has approved in writing said encumbrance or expenditure.

The secretary of administration and finance shall establish rules and regulations governing the lease or purchase of data processing or reproduction equipment or systems and the procedure for requesting approval thereof as required by this section.

The secretary of administration and finance shall notify the house and senate committees on ways and means and the house and senate committees on post audit and oversight of the general court of any approval granted by the secretary under this section.

Section 27C. Notwithstanding any special or general law to the contrary:

(a) Any law taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, in the case of a city by the city council in accordance with its charter, and in the case of a town by a town meeting, unless

the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption.

(b) Any law taking effect on or after January 1, 1981 granting or increasing exemptions from local taxation shall be effective in any city or town only if the general court, at the same session in which such law is enacted, provides by general law and by appropriation for payment by the commonwealth to each city and town of any loss of taxes resulting from such exemption.

(c) Any administrative rule or regulation taking effect on or after January 1, 1981 which shall result in the imposition of additional costs upon any city or town shall not be effective until the general court has provided by general law and by appropriation for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption.

(d) Any city or town, any committee of the general court, and either house of the general court by a majority vote of its members, may submit written notice to the division of local mandates, established under section 6 of chapter 11, requesting that the division determine whether the costs imposed by the commonwealth by any law, rule or regulation subject to this section have been paid in full by the commonwealth in the preceding year and, if not, the amount of any deficiency in such payments. The division shall make public its determination within 60 days after such notice.

(e) Any city or town, or any 10 taxable inhabitants of any city or town may in a class action suit petition the superior court alleging that under subsections (a), (b) and (c) of this section with respect to a general or special law or rule or regulation of any administrative agency of the commonwealth under which any city or town is required to expend funds in anticipation of reimbursement by the commonwealth, the amount necessary for such reimbursement has not been included in the general or any special appropriation bill for any year. Any city or town, or any 10 taxable inhabitants of any city or town may in a class action suit petition the superior court alleging that under subsections (a), (b) and (c) of this section with respect to any general or special law, or rule or regulation of any administrative agency of the commonwealth which imposes additional costs on any city or town or which grants or increases exemptions from local taxation, the amount necessary to reimburse such city or town has not been included in the general or any special appropriation bill for any year. The determination of the amount of deficiency provided by the division of local mandates under subsection (d) of this section shall be prima facie evidence of the amount necessary. The superior court shall determine the amount of the deficiency, if any, and shall order that said city or town be exempt from such general or special law, or rule or regulation of any administrative agency until the commonwealth shall reimburse such city or town the amount of said deficiency or additional costs or shall repeal such exemption from local taxation.

(f) Any of the parties permitted to submit written notice to the division of local mandates under subsection (d) of this section may submit written notice to the division requesting that the division determine the total annual financial effect for a period of not less than 3 years of any

proposed law or rule or regulation of any administrative agency of the commonwealth. The division shall make public its determination within 60 days of such notice.

(g) Notwithstanding subsection (a), (b) and (c), any city or town shall be allowed to accept any law, rule or regulation specified by said subsections whether or not such law, rule or regulation is funded by the commonwealth.

(h) This section shall apply to regional school districts and educational collaboratives organized under section 4E of chapter 40, to the same extent as it applies to cities and towns. A regional school district may accept a law, rule or regulation by vote of its school committee and an educational collaborative by vote of its board of directors.

(i) This section shall not apply to any costs to cities and towns or exemptions to local taxation resulting from a decision of any court of competent jurisdiction, or to any law, rule or regulation enacted or promulgated as a direct result of such a decision.

Section 28. The cost of printing and publishing any publication issued by or on behalf of the commonwealth by any office or department shall be paid from the appropriation for such office or department.

Section 29. Any subsidiary account set up as prescribed in a schedule referred to in section 27, on the books of any department, office, commission or institution, receiving an appropriation from the commonwealth, may be increased or decreased by the interchange with any other such

subsidiary account within the same appropriation account by the officer in charge of such department, office, commission or institution upon his certification to the budget director that such interchange is required to incur obligations to meet statutory responsibilities under general or special law where funds are otherwise not available, unless otherwise provided by general or special act. For any certification requesting a transfer to a subsidiary account that has not been established within a schedule prescribed under said section 27, the officer must include the reasons for the new subsidiary account. Every such certification shall include a statement of the details of the necessity of the transfer and of the probable consequences if said interchange should not be made. An officer making any such certification shall file forthwith a copy thereof within the central accounting system under policies and procedures adopted by the secretary of administration and finance.

The secretary of administration and finance may establish regulations or policies governing the interchange of funds under this section.

Section 29A. The secretary of administration and finance shall make, and may from time to time amend, rules and regulations governing the use of consultants in all departments, offices, boards, agencies, commissions and institutions. Such rules and regulations shall be open to public inspection shall not be subject to chapter 30A. No person employed by the commonwealth as a consultant shall directly or indirectly supervise another temporary or permanent employee of the commonwealth. Consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions. The secretary shall submit quarterly to the house and senate committees on ways and means and the house and senate committees on post audit

and oversight a report which identifies all existing consultant contracts by agency, for all accounts established or maintained by the comptroller, including but not limited to appropriations, for federal grants, bond authorizations, revolving accounts, retained revenue line-items and trust accounts. Said report shall identify each contract, its duration, its maximum dollar obligation, the name of the contractor and the services performed by the contractor.

Section 29B. The secretary of administration and finance shall make, and may from time to time amend, rules and regulations governing the procurement and administration of contracts with organizations providing social, rehabilitative, health or special education services. Such rules and regulations shall not be subject to chapter 30A. No person employed by an organization providing social, rehabilitative, health or special education services as defined above shall directly or indirectly supervise a temporary or permanent employee of the commonwealth. Such contracts shall not be written or used by any department, office, agency, board, commission or institution of the commonwealth to procure full or part-time personal services or equipment to be used by such department, office, agency, board, commission or institution, or any goods or services not required in the direct provision by the contractor of social, rehabilitative, health, or special education services to populations being served by the contracting department, office, agency, board, commission or institution.

Section 29C. Except as otherwise provided for by law, the general court or any agency of the executive or judicial branches of the government which acquires property or services from a commercial vendor, including both profit and not for profit corporations, excluding state employees, recipients of public assistance, cities and towns and other municipal forms of

government, but which does not make full payment by the required payment date for each such complete and appropriate item of property or service delivered under an applicable purchase order contract, shall be liable for late penalty interest to said commercial vendor on the amount which is due under the following provisions:

(a) that the required payment date shall be the date on which payment is due under the terms of the contract for the provision of said property or services; or, if a specific date on which payment is due is not established by contract, not more than 45 days after receipt of a properly authorized, approved and submitted invoice for the amount of payment due, unless the usual and customary time for payment is longer;

(b) that the late penalty interest provided for under this section shall be computed at a rate to be set semi-annually by the secretary of administration and finance on January 1 and July 1 of each year; provided, however, that said rate shall be equal to the discount rate charged on said dates by the Federal Reserve Bank of Boston;

(c) that this section shall apply to any late penalty interest which may be due under this section;

(d) that this section shall not apply to the delivery of any property or services made at the beginning of any fiscal year unless a general appropriation act is in effect for said fiscal year. Upon the passage of a general appropriation act, a required payment date may be set or the 45 day period as provided in clause (a) may be commenced;

6708 (e) that, within 15 days after the date on which any invoice is received, state agencies notify any
6709 such commercial vendors of any defect or impropriety in such invoice which would prevent the
6710 running of the time period.
6711
6712 Any state agency required to pay interest under this section shall pay any amount required out of
6713 funds appropriated for the administration or operation of the program for which the interest was
6714 incurred.
6715
6716 The secretary of administration and finance shall, not more than 60 days after the conclusion of
6717 each fiscal year, file with the house and senate committees on ways and means a summary report
6718 on any interest penalties made under this section during the preceding fiscal year. Such report
6719 shall include the number, amounts, frequency of interest penalty payments and reasons such
6720 interest payments were made, summarized by state agency and secretariat, where applicable.
6721
6722 A copy of rules and regulations promulgated under this section, or any amendment or repeal of
6723 any such rules and regulations, shall be filed with the house and senate committees on ways and
6724 means at least 30 days prior to implementation.
6725
6726 Section 29D. Notwithstanding any law to the contrary, the officer having charge of any state
6727 agency may retain the services of 1 or more private persons, companies, associations or
6728 corporations for the purpose of collection of debts owed to the commonwealth, other than those
6729 covered by section 3A of chapter 14, under agreements between the comptroller and said private
6730 persons, companies, associations or corporations. No state agency shall assign the account of any

debtor to a private collection agency until such debtor has been sent a notice, at least 30 days prior thereto, of the intention of the agency to so assign the collection of such unpaid account of such debtor.

The comptroller shall from time to time enter into agreements with 1 or more private persons, companies, associations or corporations for the provision of debt collection services on behalf of state agencies. No such agreement shall be entered into unless proposals for the same have been invited by public notice published in at least 1 newspaper once a week for at least 2 consecutive weeks and the last publication to be at least 1 week prior to the time specified for the opening of said proposals. All such proposals shall be opened in public. The comptroller may reject any or all of such proposals. Any such agreement shall provide, in the discretion of the comptroller, the manner in which the compensation for such services will be paid. Under standards established by the comptroller, such compensation may be added to the amount of the debt and collected as part thereof by the contractor; deducted and retained by the contractor from the amount of debt collected; or paid by the commonwealth from the amount of debt collected without further appropriation therefor.

The comptroller shall, as part of the comptroller's annual report under section 12 of chapter 7A, list all private persons, companies, associations or corporations with whom the comptroller has agreements for collection services during the fiscal year and the amount of debts collected by and the compensation paid to each such person, company, association or corporation.

Section 29E. Notwithstanding any general or special law to the contrary, the comptroller may

6754 enter into contracts or interdepartmental service agreements for the purpose of identifying and
6755 pursuing increased revenue collection, cost avoidance, the maximum reimbursement
6756 opportunities for certain federally assisted and other programs of the commonwealth and any
6757 other reimbursements of overpayments or other revenues. The contractor payments, or oversight
6758 costs or fees related to this section shall be paid from the revenues or reimbursements collected,
6759 or as otherwise considered appropriate by the comptroller, without further appropriation, and the
6760 comptroller shall establish accounts and procedures within the affected departments as the
6761 comptroller considers appropriate and necessary to accomplish the revenue generation purposes
6762 of this section. The comptroller shall notify, in writing, the house and senate committees on ways
6763 and means 60 days before entering into any contract authorized under this section. The
6764 comptroller shall report on said projects as a part of the comptroller's annual report under section
6765 12 of chapter 7A.
6766
6767 Section 29F. (a) As used in this section the following words shall, unless the context clearly
6768 requires otherwise, have the following meanings:-
6769
6770 "Affiliates", entities which are affiliates of each other when either directly or indirectly one
6771 concern or individual controls or has the power to control another, or when a third party controls
6772 or has the power to control both.
6773
6774 "Commissioner", the commissioner of the division of capital asset management and maintenance
6775 or the commissioner's designee within such division.
6776

6777 “Contractor", any person that has furnished or seeks to furnish supplies or services under a
6778 contract with a public agency or with a person under a contract with a public agency.
6779
6780 “Debarment", an exclusion from public contracting or subcontracting for a reasonable, specified
6781 period of time commensurate with the seriousness of the offense.
6782
6783 “Person", any natural person, business, partnership, corporation, union, committee, club or other
6784 organization, entity or group of individuals.
6785
6786 “Public agency", a department, agency, board, commission, authority, activity or instrumentality
6787 of the commonwealth, or of any political subdivision of the commonwealth, or of 2 or more
6788 subdivisions of the commonwealth.
6789
6790 “Public contract", a contract for the furnishing of supplies or services to any public agency.
6791
6792 “Secretary", the head of an executive office established under chapter 6A or such head’s
6793 designee within such executive office, or the secretary of administration and finance appointed
6794 under section 4 of chapter 7 or a designee within the executive office.
6795
6796 “Suspension", the temporary disqualification of a contractor who is suspected upon adequate
6797 evidence of engaging or having engaged in conduct which constitutes grounds for debarment.
6798
6799 (b) The secretary of administration and finance shall establish and maintain a consolidated list of

contractors to whom public contracts shall not be awarded and from whom offers, bids or proposals shall not be solicited.

The list shall show at a minimum the following information: (1) the names of those persons debarred or suspended in alphabetical order with appropriate cross reference where more than one name is involved in a single debarment or suspension; (2) the basis of authority for each debarment or suspension, including the secretary or other official who imposed the debarment or suspension; (3) the extent of restrictions imposed; (4) the termination date of each debarment or suspension; and (5) in the case of a suspension, the hearing date, if and when set, for debarment proceedings.

The secretary of administration and finance shall cause the list to be kept current by the issuance of notices of additions and deletions. The list shall be published on a periodic basis, together with notices of additions to and deletions from the list, in the goods and services bulletin and the central register published by the state secretary and in such other publications as the secretary of administration and finance shall designate. The secretary of administration and finance shall also forward said list to the inspector general, the attorney general and the state auditor. A secretary or the commissioner, as the case may be, upon imposing a debarment or suspension or removing a suspension shall forthwith notify the secretary of administration and finance of all information required for inclusion on such list.

(c) Debarment may be imposed for the following causes but debarment shall be imposed in all causes where debarment is required by law:

(1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses: (i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; (ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the contractor's present responsibility as a public contractor; (iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals; (iv) a violation of state or federal laws regulating campaign contributions; (v) a violation of chapter 268A; (vi) a violation of any state or federal law regulating hours of labor, prevailing wages, minimum wages, overtime pay, equal pay, child labor, or worker's compensation; (vii) a violation of any state or federal law prohibiting discrimination in employment; or (viii) repeated or aggravated violation of any state or federal law regulating labor relations or occupational health or safety; or (ix) repeated or aggravated violation of any state or federal law protecting the environment; or (x) a violation of federal law prohibiting the employment of unauthorized aliens; or

(2) substantial evidence, as determined by a secretary or the commissioner, of any of the following acts: (i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or regulation; (iii) a record of failure to perform or of unsatisfactory performance under the terms of 1 or more public contracts, provided that such failure to perform or unsatisfactory performance has occurred

within a reasonable period of time preceding the determination to debar and provided further that such failure to perform or unsatisfactory performance was not caused by factors beyond the contractor's control; (iv) a record of health and safety or environmental violations of a sufficient frequency and severity so as to evidence a pattern of noncompliance with existing state and federal laws, or any rules and regulations applicable thereto; (v) any other cause affecting the responsibility of a contractor which the secretary or the commissioner determines to be of such serious and compelling nature as to warrant debarment. Notwithstanding any other provision of this section, any contractor debarred or suspended by any agency of the United States shall by reason of such debarment or suspension be simultaneously debarred or suspended under this section, with respect to non-federally aided contracts; the secretary or the commissioner may determine in writing that special circumstances exist which justify contracting with the affected contractor. The secretary or the commissioner shall give written notice to the secretary of administration and finance of any such determination.

(d) No contractor may be suspended unless a secretary or the commissioner has first informed the contractor by written notice of the proposed suspension mailed by registered or certified mail to the contractor's last known address, except when the secretary or the commissioner determines that immediate suspension is necessary to prevent serious harm to the commonwealth, in which case the suspension shall take effect immediately upon signing by the secretary or the commissioner of an order of suspension, and notice shall be mailed to the contractor at the earliest opportunity. The notice shall inform the contractor of the reasons for the proposed suspension and shall state that the contractor may within 14 days respond in writing and may in such response request a hearing. The secretary or the commissioner may extend the period for

6869 response at the request of the contractor. The secretary or the commissioner shall determine
6870 whether to impose the suspension or, in the case of an emergency suspension imposed prior to
6871 notice to the contractor, whether to continue the suspension after reviewing the contractor's
6872 response, if any, and making such investigation as the secretary or the commissioner determines
6873 is necessary and appropriate. An indictment, or any information or other filing by a public
6874 agency charging a criminal offense, for any of the offenses listed in paragraph (1) of subsection
6875 (c) shall constitute adequate evidence to support a suspension.
6876
6877 If the contractor requests a hearing, and the suspension is not based on an indictment, the
6878 secretary or the commissioner shall conduct a hearing according to the rules for the conduct of
6879 adjudicatory hearings established by the secretary of administration and finance under chapter
6880 30A. Such hearing shall be initiated within 30 days of the imposition of the suspension, unless
6881 the contractor requests that the hearing be delayed. Officers and employees of the office of the
6882 inspector general and records of said office shall not be subject to subpoena for such hearing, if
6883 in the opinion of the inspector general production of records or testimony would prejudice any
6884 pending investigation by said office.
6885
6886 A suspension shall not exceed 12 months unless a pending administrative or judicial proceeding
6887 in which the contractor is a party may result in a conviction or final adjudication of an offense
6888 listed in paragraph (1) of subsection (c).
6889
6890 (e) No contractor may be debarred under this section unless a secretary or the commissioner
6891 proposing the debarment has first informed the contractor by written notice of the proposed

6892 debarment mailed by registered or certified mail to the contractor's last known address. The
6893 notice shall inform the contractor of the reasons for the debarment and shall state that the
6894 contractor will be afforded an opportunity for a hearing if the contractor so requests within 14
6895 days of receipt of the notice. A hearing requested under this subsection shall be conducted by the
6896 secretary or the commissioner within 60 days of receipt of the request, unless the secretary or the
6897 commissioner grants additional time for the hearing at the request of the contractor. The hearing
6898 shall be conducted according to the rules for the conduct of adjudicatory hearings established by
6899 the secretary of administration and finance under chapter 30A. A debarment shall not be imposed
6900 until (i) 14 days after receipt by the contractor of notice of the proposed debarment if no hearing
6901 is requested, or (ii) the issuance of a written decision by the secretary or the commissioner which
6902 makes specific findings that there is sufficient evidence to support the debarment and that
6903 debarment for the period specified in the decision is required to protect the integrity of the public
6904 contracting process. A contractor shall be notified forthwith of the decision by registered or
6905 certified mail, and of the contractor's right to judicial review in the event that the decision is
6906 adverse to the contractor. If a suspension precedes a debarment, the suspension period shall be
6907 considered in determining the debarment period.
6908
6909 (f) A debarment or suspension may include all known affiliates of a contractor. The decision to
6910 include a known affiliate within the scope of a debarment or suspension shall be made on a case-
6911 by-case basis, after giving due regard to all relevant facts and circumstances. The offense or act
6912 of an individual justifying suspension, or the evidence justifying a suspension, may be imputed
6913 to the entity with which the individual is connected when such offense or act occurred in
6914 connection with the individual's performance of duties for or on behalf of the entity or with the

knowledge, approval, or acquiescence of the entity or 1 or more of its principals. The entity's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence. The offense or act of an entity justifying debarment, or the evidence justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the entity who participated in, knew of, or had reason to know of the entity's act. An entity or individual shall not be suspended or debarred except under the procedures in this section, provided that a public agency may reject a bid or proposal from any contractor when the public agency reasonably determines that such contractor is not responsible or eligible.

(g) In determining whether to debar a contractor, or the period of a debarment, all mitigating facts and circumstances shall be taken into consideration. Except as precluded by law, a debarment may be removed or the period of debarment may be reduced by the secretary or the commissioner who imposed the debarment or suspension upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management or the elimination of the cause for which the debarment was imposed.

(h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids or proposals to any public agency, nor shall any public agency solicit or consider offers, bids or proposals from, nor execute, renew or extend any contract with, a debarred or suspended contractor and a contractor shall not contract for supplies

or services from a debarred or suspended subcontractor on any public contract.

(i) The secretary of administration and finance shall by regulation drawn up in consultation with each secretary and the commissioner provide for, upon the request of any secretary or the commissioner the timely commencement by, the removal to, or consolidation at the executive office for administration and finance of debarment or suspension proceedings. Such regulations also shall provide that the contractor against whom debarment or suspension proceedings have been initiated may apply to the secretary of administration and finance for consolidation of such proceedings at the executive office for administration and finance. Such proceedings shall be conducted by the secretary of administration and finance or the secretary's designee under this section.

Section 29G. Notwithstanding any general or special law to the contrary, the officer having charge of a state agency may retain the services of private persons, companies, associations or corporations for the purpose of recoupment of overcharges to the commonwealth for utility expenses including, but not limited to, electric, gas, water and sewer expenses, under agreements between the operational services division within the executive office for administration and finance and any such private persons, companies, associations or corporations. The state purchasing agent of the operational services division shall, from time to time, enter into agreements with private persons, companies, associations or corporations for the provision of overcharge recoupment services on behalf of state agencies. No such agreement shall be entered into unless proposals for the same have been invited by public notice published in such manner as the state purchasing agent shall direct to ensure the widest possible cost-effective

dissemination of the notice, for at least 2 consecutive weeks prior to the time specified for the opening of said proposals. All such proposals shall be opened in public. Said state purchasing agent may reject any and all proposals. Any such agreements shall provide, in the discretion of said state purchasing agent, the manner in which compensation for such services shall be paid. Under regulations established by said state purchasing agent, such compensation may be deducted and retained from the recoupment of overcharges or paid by the commonwealth from existing expenditure accounts without additional appropriation therefrom; provided, further, that said state purchasing agent shall allow access to such agreements by political subdivisions of the commonwealth, including but not limited to towns, cities, counties, local housing authorities and any other instrumentalities. Said state purchasing agent shall report to the comptroller annually a list of all private persons, companies, associations or corporations with whom said state purchasing agent has agreements for recoupment of overcharges during the fiscal year, and the amount of overcharges recouped and the compensation paid to each such person, company, association, or corporation. Said comptroller shall include and disclose this information as part of the annual report under section 12 of chapter 7A.

Section 29H. (a) Except as otherwise provided by law, the comptroller may assess late charge rates, in addition to any other late fees or interest provided by law, against any person, entity or contractor owing an overdue payment to the commonwealth, or to a city, town housing or other authority or entity as provided under section 8 of chapter 7A, subject to the following provisions:-

(1) that the required payment date shall be the date on which payment is due under the laws,

6984 rules or regulations administered by the comptroller or other entity authorized to charge a late fee
6985 or interest; and
6986
6987 (2) that notice of intent to assess and collect late charges through debt collection, intercept or
6988 other legal process shall be provided to the debtor prior to collection.
6989
6990 (b) The comptroller may adopt rules and regulations to implement this section.
6991
6992 (c) The comptroller shall deposit all late fees and interest that the comptroller collects on behalf
6993 of the commonwealth in the revenue account that pertains to the original accounts receivable,
6994 and shall retain and expend all other late charges assessed under this section without further
6995 appropriation, in consultation with the information technology division of the executive office
6996 for administration and finance, for the costs of electronic revenue collection options, including
6997 intercept, that increase revenue and debt collection within the commonwealth.
6998
6999 (d) The comptroller shall include in the annual financial report a summary report on any late
7000 charges collected under this section during the preceding fiscal year. The report shall include the
7001 number, amounts and frequency of late charges collected, summarized by state agency and
7002 secretariat, where applicable.
7003
7004 Section 29I. The comptroller shall develop and implement a payment system and regulations for
7005 interdepartmental fiscal transactions including interdepartmental service agreements and
7006 interdepartmental chargebacks. The chargeback system and regulation shall require state

7007 agencies that purchase legislatively authorized goods or services from approved chargeback
7008 departments to remit fiscal obligations within 30 days of receipt of notice of said obligation. The
7009 comptroller shall submit periodic reports on request to the house and senate committees on ways
7010 and means listing those agencies which do not meet the 30 day payment schedule. Said report
7011 shall also include but not be limited to the identification of the agency receiving said goods or
7012 services and the agency providing said goods or services; provided, that said identification
7013 includes the name of the agency and the item number, the goods or services provided, and the
7014 amount of outstanding obligation. The comptroller may take such action as the comptroller
7015 deems necessary to ensure compliance with the payment obligations under this section.
7016
7017 Section 29J. Notwithstanding section 50 of chapter 3, or any other general or special law to the
7018 contrary, a state agency or state authority shall not use state funds to pay for an executive or
7019 legislative agent, as defined in section 39 of said chapter 3, unless the executive or legislative
7020 agent is a full-time employee of the state agency or state authority.
7021
7022 Section 30. No officer or board shall insure any property of the commonwealth without special
7023 authority of law.
7024
7025 Section 31. The comptroller, in consultation with the personnel administrator and the secretary of
7026 administration and finance, may establish a centralized payroll system and may include salaries
7027 payable by the commonwealth in that system, for all classified services in any agency of the
7028 commonwealth and for teachers and supervisors employed in any school or college in any
7029 department of the commonwealth and any salary payable by the commonwealth to a person

holding a statutory position.

Such centralized payroll system shall conform to such rules and regulations as the secretary of administration and finance, with the approval of the state treasurer, the comptroller and the personnel administrator, may from time to time make. Such rules and regulations shall not be subject to chapter 30A. Notwithstanding any other general or special law to the contrary, and under section 148 of chapter 149, to ensure the timely payment of wages and related payroll charges for work authorized by a spending authority and performed by employees, the comptroller shall have full authority to mandate the payment of such wages and payroll charges and prescribe, regulate and direct any spending authority to take the appropriate actions necessary to properly account for payroll charges, to ensure that payroll accounts are not in deficit at the close of the fiscal year and any other actions necessary to support sound fiscal management including appropriation, allotment or other funding limits.

The comptroller shall require certification from each spending authority that each employee receiving a salary under the warrant is being paid for duties performed directly for the employing agency and not for duties performed for another state agency.

The state treasurer or other state official authorized to expend money on behalf of the commonwealth may pay any salary, wages or other compensation to any person in the service of the commonwealth by means of deposits to employee bank accounts, provided, employees have expressly authorized said deposits.

7053 The state treasurer or other state official authorized to expend money on behalf of the
7054 commonwealth may pay any retirement benefit due to any retired employee in the state system
7055 or retired teachers in the teachers retirement system by means of deposits to such retired person's
7056 bank account, provided, the retired persons have expressly authorized said deposits.
7057
7058 The comptroller or other state official authorized to expend money on behalf of the
7059 commonwealth may comply with administrative wage garnishments for child support, student
7060 loans, state or federal tax liens, court order bankruptcy orders or other garnishments as
7061 determined by the comptroller which name the commonwealth as employer and mandating
7062 deductions under state or federal law for employees of the commonwealth in amounts not more
7063 than the percentage allowable under state or federal law or a greater amount as authorized by the
7064 employee, provided that the commonwealth shall not use state resources or be compelled to
7065 comply with voluntary private garnishments or trustee process orders. For the purposes of this
7066 section, the term “employee" shall mean “employee" as defined in section 1 of chapter 32.
7067
7068 Section 31A. (a) Upon the death of a state employee who is eligible for vacation under the rules
7069 of the director of personnel and standardization, or judge, justice or any other employee of the
7070 courts of the commonwealth who is eligible for vacation, payment shall be made in an amount
7071 equal to the vacation allowance as earned in the vacation year prior to the employee’s death but
7072 which had not been granted, and, in addition, that portion of the vacation allowance earned in the
7073 vacation year during which the employee died, up to the time of the employee’s separation from
7074 the payroll; provided, that no monetary or other allowance has already been made therefor. The
7075 bureau of personnel and standardization may, upon request of the appointing officer of the

7076 deceased employee, authorize the payment of such compensation upon the establishment of a
7077 valid claim therefor, in the following order of precedence.
7078
7079 First: To the surviving beneficiary or beneficiaries, if any, lawfully designated by the employee
7080 under the state employees' retirement system;
7081
7082 Second: If there be no such designated beneficiary, to the estate of the deceased.
7083
7084 The chief administrative justice of the trial court of the commonwealth may, upon request of the
7085 appointing officer of the deceased employee, authorize the payment of such compensation for the
7086 court system upon the establishment of a valid claim therefor, in the same order of precedence.
7087
7088 (b) Employees who are eligible for vacation under the rules of said personnel administrator and
7089 whose services are terminated by dismissal through no fault or delinquency of their own, or by
7090 retirement, shall be paid or at the option of the employee, entitled to a contribution to a qualified
7091 retirement plan established in the employee's name under section 401(a) of the Internal Revenue
7092 Code and under chapter 32 an amount equal to the vacation allowance as earned in the vacation
7093 year prior to such dismissal or retirement which had not been granted, and, in addition, that
7094 portion of the vacation allowance earned in the vacation year during which such dismissal or
7095 retirement occurred, up to the time of separation; provided, that no monetary or other allowance
7096 has already been made therefor.
7097
7098 (c) Employees who are eligible for vacation under the rules of said administrator and whose

7099 services were terminated for reasons other than those defined in subsections (a) or (b) shall be
7100 paid or at the option of the employee, entitled to a contribution to a qualified retirement plan
7101 established in the employee's name under section 401(a) of the Internal Revenue Code and under
7102 chapter 32 an amount equal to the vacation allowance credited but not granted to them as of the
7103 final date of the next preceding vacation year; provided, that no monetary or other allowance has
7104 already been made therefor.
7105
7106 (d) Managers and employees, except employees covered under chapter 150E, currently in the
7107 employment of the commonwealth who retire and who have accrued unused sick-leave credits
7108 shall be paid or at the option of the employee, entitled to a contribution to a qualified retirement
7109 plan established in the employee' name under section 401(a) of the Internal Revenue Code and
7110 under chapter 32 an amount equal to 20 per cent of the value of such credits computed by
7111 multiplying the number of days of sick-leave available times the daily rate of salary
7112 compensation received by the manager or employee at the time of retirement; provided,
7113 however, that such payment for unused sick-leave shall not affect the amount of retirement
7114 allowance available to such manager or employee.
7115
7116 Section 31B. Teachers in institutions of the commonwealth having weekly payrolls, at the option
7117 of the department within which such institutions are established, may be paid weekly.
7118
7119 Section 31C. Any officer or employee of the commonwealth, employed in a non-teaching
7120 position in any school or college within any department of the commonwealth, whose regular
7121 service is rendered between September 1 and June 30, may be granted the vacation leave to

7122 which the officer or employee is entitled either during the period of the officer or employee's
7123 regular service, or after the expiration of said period, as is determined by the employing authority
7124 of such officer and employee. Funds made available by appropriation for the payment of
7125 personal services required in the operation and maintenance of such schools shall be available for
7126 the payment of vacations, which, under the authority of this section, are granted to be taken after
7127 the termination of the period of regular service of an officer or employee subject to this section.
7128
7129 Section 31D. Whenever an officer or employee or former officer or employee of the
7130 commonwealth dies, and the commonwealth owes that officer or employee any sum or sums, by
7131 reason of services rendered or by reason of the terms of the officer or employee's employment,
7132 the comptroller may issue such sums to the beneficiaries designated to the employee under
7133 section 31A. Payments made as provided in this section shall discharge the liability of the
7134 commonwealth to all persons with respect to such sum or sums.
7135
7136 Section 31E. Notwithstanding any general or special law to the contrary, a state employee,
7137 during working hours and at such times as are approved by the employee's supervisor and under
7138 regulations promulgated hereunder, may, without loss of salary, provide voluntary services at a
7139 public elementary, secondary, or vocational-technical school to assist the improvement of a
7140 student's or school's educational program; provided, however, that said voluntary services do not
7141 exceed the equivalent of 1 work day per month. There shall be no requirement that the employee
7142 have a child as a student in the school or school district. Said services shall not be compensated
7143 by a school.
7144

7145 Section 32. Any check issued by the state treasurer or by any agent or agency of the
7146 commonwealth, other than checks issued in payment of obligations of the state board of
7147 retirement and the teachers' retirement board, which is not presented for payment within 1 year
7148 from its date shall be payable only at the office of the state treasurer. On June 30 in each year the
7149 comptroller shall transfer to the abandoned property fund all funds which are identified by the
7150 state treasurer as funds of the commonwealth which have remained in the unclaimed check fund
7151 for at least 1 year. On such date, the comptroller also shall refund to the unemployment
7152 compensation fund and to each applicable account of monies separately accounted for by the
7153 comptroller as other than commonwealth monies, such amounts which in the opinion of the state
7154 treasurer represent all monies of such unemployment compensation fund or such account which
7155 have remained in the unclaimed check fund for at least 1 year. All checks issued in payment of
7156 obligations of the state board of retirement and the teachers' retirement board shall be payable
7157 only under subdivision (3) of section 11 of chapter 32.
7158
7159 Section 32A. No wage or salary which is or shall be due from the commonwealth shall be
7160 payable later than 6 years after the same has or shall become due, and the obligation of the
7161 commonwealth to pay such wage or salary or otherwise to pay for the services rendered by the
7162 person to whom the wage or salary is or shall be due shall not be enforceable if the wage or
7163 salary is not claimed within 6 years after the same has or shall become due; provided, however,
7164 that section 32 shall be applicable and controlling in the case of any wage or salary represented
7165 by a check issued by the state treasurer or by any agent or agency of the commonwealth. On June
7166 30 in each year the comptroller shall transfer to the General Fund so much of the balance then in
7167 the unclaimed wage fund as, in the opinion of the state treasurer, shall not be needed for

7168 payments during the ensuing fiscal year from the said unclaimed wage fund. On such date the
7169 comptroller also shall refund to the unemployment compensation fund and to each applicable
7170 account of monies separately accounted for by the comptroller as other than commonwealth
7171 monies, such amount of the said balance as the state treasurer shall advise the comptroller shall
7172 represent all unclaimed wages or salaries from monies of the said fund or such account,
7173 respectively, the payment of which shall have been outlawed under this section during the fiscal
7174 year ending on such date.
7175
7176 Section 34. (a) State officers, departments, institutions and other agencies may, with the written
7177 consent of the state treasurer, deposit a portion of the public monies in their possession in
7178 national banks, federal savings banks and federal savings and loan associations, lawfully doing
7179 business within the commonwealth, and in trust companies, savings banks and cooperative banks
7180 chartered under the laws of the commonwealth. The state treasurer shall publish a list of
7181 qualified banks and shall transmit that list at least once every 6 months to the governor. The state
7182 treasurer shall not include on the list a state-chartered bank having a descriptive rating as
7183 described in clauses (d) or (e) of the sixth paragraph under section 14 of chapter 167 or any
7184 federally insured depository institution having an assigned rating of (C) or (D) under section
7185 807(b)(2) of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.
7186
7187 (b) A state treasurer who knowingly makes a deposit in violation of subsection (a) shall be guilty
7188 of misconduct and maladministration in the treasurer's office within the meaning of the
7189 constitution, any other officer who knowingly makes a deposit in violation of subsection (a) shall
7190 be guilty of misconduct and maladministration in his office, and a depository institution

knowingly receiving a deposit in violation of subsection (a) shall be disqualified from receiving such monies for 3 years from the date of the deposit.

(c) All interest received on any deposits under this section shall be paid to the commonwealth.

Section 35. No bond or security belonging to the commonwealth shall be transferred except with the written approval of the governor. A note, bond, mortgage or other security which has been made to the state treasurer by name may be assigned, transferred or discharged by him or by any successor in office.

Section 36. If the state treasurer is authorized to discharge a mortgage held by the commonwealth, the state treasurer may assign it instead of discharging it; but such assignment shall not impose upon the commonwealth any liability, express or implied.

Section 37. Real estate acquired by the commonwealth by foreclosure may, with the approval of the governor and council, be conveyed by the state treasurer upon payment of the amount of the mortgage debt with the interest and expenses accrued thereon.

Section 38. With the exception of funds used in connection with a deferred compensation program for state employees, and funds of the state employees' retirement system or the teachers' retirement system, all funds over which the commonwealth has exclusive control shall be invested by the state treasurer as follows:

7214 (a) In the public funds of the United States or of the District of Columbia or of this
7215 commonwealth, or in the legally authorized bonds of any other state of the United States, other
7216 than a territory or dependency of the United States, which has not within the 20 years prior to the
7217 making of such investment defaulted in the payment of any part of either principal or interest of
7218 any legal debt.
7219
7220 (b) In repurchase agreements secured by United States Treasury obligations or United States
7221 Treasury obligations bearing a maturity date not later than 1 year.
7222
7223 (c) In the bonds or notes of a county, city or town of this commonwealth.
7224
7225 (d) In shares of beneficial interest issued by money market funds registered with the Securities
7226 and Exchange Commission under the Investment Company Act of 1940, as amended, operated
7227 under section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the
7228 highest possible rating from at least 1 nationally recognized statistical rating organization. The
7229 purchase price of shares of beneficial interest purchased under this section shall not include a
7230 commission charged by the money market funds.
7231
7232 (e) In any other security that qualifies for inclusion in a fund operated under section 270.2a-7 of
7233 Title 17 of the Code of Federal Regulations, as amended.
7234
7235 (f) In investment agreements or guaranteed investment contracts rated, or with a financial
7236 institution whose senior long-term debt obligations are rated, or guaranteed by a financial

institution whose senior long-term debt obligations are rated, at the time the agreement or contract is entered into, in 1 of the 2 highest rating classifications by a nationally recognized rating service if the agreements or contracts do not exceed 1 year in duration.

(g) In investment agreements with a corporation whose principal business is to enter into the agreements if: the corporation and the investment agreements of the corporation are each rated in 1 of the 2 highest rating classifications by a nationally-recognized rating service; the commonwealth has an option to terminate each agreement in the event that the rating is downgraded below the 2 highest rating classifications; and the agreements or contracts do not exceed 1 year in duration.

(h) In the promissory notes of an industrial, commercial, finance, banking, railroad or public utility corporation conducting business in this state when such notes mature not later than 1 year subsequent to their respective dates of issue; provided, however, that, at the time of any such investment, (1) such corporation has capital stock, premium thereon and surplus of at least $25,000,000, (2) the securities of such corporation are eligible for investment by life insurance companies authorized to do business in the commonwealth, and (3) all outstanding debt obligations of such corporation which have any rating from 2 or more standard rating services are rated within the 3 highest classifications established by at least 2 such rating services, or, if none of the outstanding debt obligations of such corporation has any rating from 2 such rating services, that such outstanding debt obligations are rated at the time of investment within the 3 highest classifications established by at least 2 such rating services, or the notes of such corporation at the time of investment are rated prime by the National Credit Office; provided,

further, that the commonwealth' investment in the notes of any 1 company shall not exceed 20 per cent of the capital and surplus of such company.

(i) In bankers acceptances and bills of exchange eligible for purchase by federal reserve banks and which have been accepted by a bank, a trust company, a private banker or an investment company, or by a banking corporation which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system.

The state treasurer may purchase with a portion of the State Lottery Fund, as established and defined in section 35 of chapter 10, from insurance companies lawfully doing business in the commonwealth, annuities payable to the commonwealth to be used for payment of lottery prizes. Such annuities shall not be subject to section 118 of chapter 175 limiting payment of annuities to individuals, and shall, to the extent that such annuities are payable to the commonwealth, be exempt from taxation under section 20 of chapter 63. Contracts for the purchase of such annuities shall be subject to competitive bidding and shall be awarded to the lowest responsible bidder. All such bids and contracts shall be public records.

The state treasurer may also purchase with a portion of the State Lottery Fund, bonds, notes, shares in combined investment funds or other interest bearing obligations under the standards in subdivision (3) of section 23 of chapter 32.

Funds in connection with a deferred compensation program for state employees may be invested by the treasurer under section 64; provided, however, that such funds, whether or not invested,

shall remain in the sole control of the treasurer, and may be used by the commonwealth at any time and for any purpose.

The treasurer may lend securities purchased from funds authorized by this section, provided that at the time of the execution of the loan at least 100 per cent of the market value of the security lent shall be secured by cash or securities guaranteed by the United States government or any agency of the United States government. At all times during the term of each such loan the collateral shall be equal to not less than 95 per cent of the full market value of the security and said collateral shall not be more than $100,000 less than the full market value of the security.

Section 38A. Notwithstanding any general or special law to the contrary, the state treasurer may establish 1 or more combined investment funds to invest funds of the commonwealth, trust funds, and funds under the custody of agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth; provided, that the state treasurer shall adopt appropriate accounting procedures from which the exact interest of such funds so combined for investment can be determined. The state treasurer may adopt such rules and regulations as may be necessary to administer this section. The management of any fund established under this paragraph shall be competitively procured not later than once every 7 years.

The state treasurer may sell to all agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth, participation units in any such combined investment fund. Such participation units issued by the treasurer are made legal

7306 investments for all the funds under the custody of such agencies, authorities, commissions,
7307 boards, political subdivisions and other public units within the commonwealth. With the advice
7308 of the investment advisory council, the state treasurer shall adopt rules and regulations as may be
7309 necessary to administer this section.
7310
7311 The state treasurer may invest any funds established under this section in only those instruments
7312 permitted within this chapter or chapter 32.
7313
7314 Section 38B. There shall be in the office of the state treasurer a deferred compensation
7315 committee, consisting of 3 members; 1 of whom shall be appointed by the governor, shall
7316 represent the employees who contract with the state treasurer for a deferred compensation
7317 program under section 64 and shall be chairman; 1 of whom shall be appointed by the
7318 commissioner of insurance; and 1 of whom shall be appointed by the state treasurer. Said
7319 committee shall meet from time to time and shall oversee the day to day operation of the
7320 deferred compensation program. The members of said committee shall serve without
7321 compensation, but shall be reimbursed for expenses necessarily incurred in the performance of
7322 their duties.
7323
7324 Section 38C. In connection with or incidental to the acquisition or carrying of any investment or
7325 program of investment or carrying of bonds or notes, the state treasurer, after consultation with
7326 the finance advisory board, may enter into such contracts as the state treasurer may determine to
7327 be necessary or appropriate to place the investment or obligation of the commonwealth, as
7328 represented by the bonds or notes, investment or program of investment and the contract or

contracts, in whole or in part, on such interest rate or cash flow basis as the treasurer may desire, including without limitation interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures, contracts, contracts providing for payments based on levels of, or changes in, interest rates or stock or other indices, contracts to exchange cash flows or a series of payments and contracts to hedge payment, rate, spread or similar exposure, including without limitation interest rate floors or caps, options, puts and calls. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as the state treasurer, after consultation with the finance advisory board, may deem appropriate and shall be entered into with such party or parties as the state treasurer, after consultation with the finance advisory board, may select, after giving due consideration, where applicable, for the creditworthiness of the counterparty or counterparties, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. Scheduled, periodic payments to be made by the commonwealth under any such contract in existence on August 1, 2008 or any such contract related to bonds or notes of the commonwealth which shall be entered into by the state treasurer after August 1, 2008 shall constitute general obligations of the commonwealth to which the full faith and credit of the commonwealth shall have been pledged.

Section 39. When the commonwealth holds any bond, note or certificate of indebtedness payable to bearer and issued by a county, city, town or district or any domestic corporation, such county, city, town, district or corporation shall, at the request of the state treasurer, issue in exchange therefor a bond, note or certificate of the same effect, payable to the commonwealth by name. The commonwealth shall pay the expense involved in making such exchange. Any county, city, town, district or corporation neglecting or refusing to comply with this section shall be punished

by a fine of not more than $50.

Section 40. No deposit required to be made by any corporation in trust with the state treasurer, or any part thereof, shall consist of a mortgage upon real estate or of a loan upon personal notes or of notes secured by collateral. The state treasurer may receive, as a part of such deposit, money or certificates of deposit, or certified checks on any approved state depositary, and may hold the same without interest until it may reasonably be invested in a proper legal security.

Section 41. The state treasurer shall have the custody and keep a separate account of all notes, bonds and mortgages belonging to the commonwealth, and shall receive all money accruing therefrom. All deeds and instruments conveying real estate to the commonwealth shall, when recorded, be deposited with and safely kept by the state treasurer. Such records shall not include those pertaining to real property acquired for the use of state agencies, under sections 32, 33 and 39 of chapter 7C.

Section 44. The income or any surplus of funds belonging to or in the custody of the commonwealth shall, unless otherwise provided, be added to the principal.

Section 45. No securities shall hereafter be purchased for any sinking fund which do not mature on or prior to the maturity date of the indebtedness on account of which said sinking fund was established.

Section 46. The state treasurer, instead of selling any securities, belonging to any fund over

which the commonwealth has exclusive control, to meet maturing liabilities, may transfer them to any other such fund upon terms and conditions approved by the governor and council.

Section 47. The state treasurer may borrow at any time during the fiscal year, in anticipation of the receipts for that year, such sums of money as may be necessary for the payment of ordinary demands on the treasury, and other legal obligations, including guaranties, of the commonwealth, and may issue notes therefor. Money so borrowed and notes so issued may be at such rates of interest as shall be found necessary. The state treasurer shall repay any sums borrowed under this section as soon after said receipts are paid as is expedient, but in any event before the close of the fiscal year in which the same were borrowed.

Notes issued under this section may bear on their face a statement that if principal and interest thereon are not paid when due said notes will be accepted thereafter at face value plus accrued interest to the date of such acceptance as payment to that extent of taxes owed by the bearer to the commonwealth under chapters 62, 62B, 63, or 63B. Notes bearing such legend shall be accepted in payment of such taxes, including penalty and interest thereon, at face value plus accrued interest by all persons responsible for collecting taxes but shall otherwise be payable under their terms as provided in the first paragraph of this section.

Section 48. Bonds issued by the commonwealth shall be signed by the state treasurer or a deputy treasurer and approved by the governor. Notes issued by the commonwealth shall be signed by the state treasurer or a deputy treasurer, approved by the governor, and countersigned by the comptroller or a deputy comptroller or an assistant to the comptroller.

Section 48A. Facsimiles of the signature of the governor on original issues or transfers of bonds or notes of the commonwealth shall have the same validity and effect as the governor's written signature, and facsimiles of the seal of the commonwealth may be used on bonds and notes of the commonwealth and shall have the same validity and effect as though said seal were impressed thereon. Interest coupons, if any, attached to any bond or note of the commonwealth may bear the facsimile signature of the state treasurer. If any officer whose signature or a facsimile of whose signature appears on any notes, bonds or coupons shall cease to be such officer before the delivery of, and receipt of proceeds from the borrowing evidenced by, such notes or bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery and receipt of proceeds.

Section 48B. Any official statement prepared in connection with the sale of any bonds or notes of the commonwealth and all advertising of such bonds and notes, the interest on which is excludable from gross income for federal income tax purposes under section 103 of the Internal Revenue Code (26 USC 103), shall include a reference to the collateral tax consequences which may result under section 86 of said Code (26 USC 86) to the holders of such bonds or notes who are recipients of social security benefits.

Section 49. The aggregate principal amount of bonds, if any, of any issue of commonwealth bonds stated to mature in any year may vary from the aggregate principal amount of bonds of such issue stated to mature in any other year. The state treasurer may agree at or prior to the time such issue of bonds is issued with the holders of bonds of such issue or with a trustee, which

shall be a trust company or bank with trust powers doing business in the commonwealth, for the benefit of such holders to establish a sinking fund for such issue of bonds, to make deposits into such sinking fund according to a schedule theretofore established by the state treasurer and to use the monies in such sinking fund only for (a) the payment of principal of or interest on, or purchase, at a price not to exceed par of, the bonds of such an issue or (b) the payment of principal of or interest on, or purchase, at a price not to exceed par of, the bonds of any 1 or more specified maturities of such an issue. The full faith and credit of the commonwealth is pledged to the making of payments to any such sinking fund. Withdrawals from any such sinking fund for the payment of principal of or interest on such bonds, or for the purchase of such bonds as permitted by this paragraph, may be made without further appropriation or authorization by any officer of the commonwealth. Pending their application for such purpose, monies in any such sinking fund shall be held by the state treasurer or such trustee and invested in (i) direct obligations of, or obligations the payment of the principal and interest of which are unconditionally guaranteed by, the United States of America; (ii) obligations of the Federal National Mortgage Association, Government National Mortgage Association, Federal Financing Bank, Federal Intermediate Credit Banks, Federal Bank for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration, Export-Import Bank of the United States, Student Loan Marketing Association, United States Postal Service, Tennessee Valley Authority or Federal Home Loan Mortgage Corporation or by any other agency or corporation which has been or is hereafter created under an act of Congress of the United States as an agency or instrumentality of the United States of America; (iii) housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the

United States of America or project notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America; (iv) interest-bearing time deposits or certificates of deposit of banking institutions or trust companies organized under the laws of any state of the United States or any national banking association, provided that such deposits or certificates shall be continuously and fully secured by obligations described in clauses (i) to (iii), inclusive, having a market value, exclusive of accrued interest, at least equal to the aggregate amount of such deposits and certificates; (v) any of the securities described in clauses (i) to (iii), inclusive, which are subject to repurchase agreements with any bank or trust company organized under the laws of any state of the United States or any national banking association; or (vi) obligations that have been advance refunded or defeased prior to their maturity, that are fully and irrevocably secured as to principal and interest by moneys or securities described in clauses (i) to (iii), inclusive, held in trust for the payment thereof, and that are not callable prior to maturity except at the option of the holder thereof. Securities purchased as an investment of monies credited to any sinking fund shall be deemed at all times to be a part of such sinking fund. Notwithstanding any act authorizing all or part of an issue of commonwealth bonds to the effect that such bonds shall be issued upon the serial payment plan or to the effect that the maturities thereof shall be so arranged that the amounts payable in the several years of the period of amortization, other than the final year, shall be as nearly equal as in the opinion of the state treasurer it is practicable to make them or to any similar effect, this paragraph shall apply to any issue of commonwealth bonds made after January 1, 1980 unless the act authorizing such issue expressly states that this paragraph shall not apply to such issue.

Bonds of the commonwealth may be issued as registered bonds or as bearer bonds, with or without coupons, as the state treasurer may deem best. Such bonds shall bear interest at such rate or rates, including rates variable from time to time according to an index, banker's loan rate or otherwise, as the state treasurer, with the approval of the governor, shall fix. This paragraph shall apply to any bonds issued after January 1, 1982 unless the act authorizing such issue expressly states that this paragraph shall not apply.

Registered bonds may be uncertificated. Books shall be maintained by or on behalf of the state treasurer specifying the persons entitled to uncertificated bonds, and the rights represented thereby shall be registered upon such books. A true copy of the official actions of the commonwealth relating to such bonds shall be kept by or on behalf of the state treasurer, a copy of which, verified to be such by an authorized officer, shall be admissible before any court of record, administrative body or arbitration panel without further authentication.

Bonds or notes of the commonwealth which are subject to the requirement imposed by Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth that the governor recommend the term thereof to the general court shall not be issued, and monies to finance projects authorized to be financed by such bonds or notes shall not be advanced in anticipation of the issuance thereof, until legislation has been enacted upon such term recommendation.

Unless otherwise specifically provided, any statute authorizing the state treasurer to issue and sell bonds of the commonwealth shall authorize the state treasurer to issue and sell such bonds in such denominations as the state treasurer shall determine to be in the best interests of the

commonwealth, and any requirement that the maturities thereof be so arranged that the amounts payable in the several years of the period of amortization other than the final year shall be as nearly equal as in the opinion of the state treasurer it is practicable to make them shall mean that the amounts so payable shall be as nearly equal considering the denominations of the bonds issued and sold as in the opinion of the state treasurer it is practicable to make them.

Bonds issued under 2 or more bond authorization acts may be consolidated for the purpose of sale and issued, sold, printed and delivered as a single bond issue despite the requirement of any bond authorization act requiring or designating a particular total for bonds issued under that act. Notwithstanding any requirement of any such act that bonds issued thereunder shall bear any particular designation, bonds consolidated under this section shall be designated on their face "Consolidated Loan of" followed by the year of issue and the series thereof in such year. Notwithstanding this section, the state treasurer shall separately account for the bonds issued under and the proceeds received from bond sales under the particular authorizing act. In connection with any such consolidated issue, the state treasurer shall specify at the time of issuance (i) the amount of proceeds to be allocated to each bond authorization act or section thereof, in which case allocation of proceeds shall occur at the time of issuance, or (ii) the various sections of bond authorization acts to which proceeds of the issue may be allocated as expenditures are made under the authorizations referenced in such sections, in which case allocation of proceeds shall occur at such later time or times as such expenditures shall occur, or (iii) any combination of the foregoing. In lieu of allocating proceeds under clause (ii), the state treasurer may allocate proceeds of the issue to expenditures incurred under 1 or more bond authorization acts not specified at the time of issuance, including without limitation bond

authorization acts enacted after the time of issuance, so long as the term limitations contained in the substituted bond authorization acts and the related term recommendations of the governor are not inconsistent with the term of the consolidated issue.

Notwithstanding any general or special law to the contrary, a provision in any statute authorizing the state treasurer to issue and sell bonds of the commonwealth providing that such bonds shall bear interest at such rate as the state treasurer, with the approval of the governor, shall fix; or a provision of similar import, shall be construed to provide that such bonds shall bear interest at such rate or rates as the state treasurer, with the approval of the governor, shall fix.

Unless otherwise specifically provided, any act authorizing the state treasurer to issue and sell bonds of the commonwealth shall authorize the state treasurer, with the approval of the governor, to issue and sell bonds subject to call for redemption at any time or from time to time, with or without premium, as the state treasurer determines to be in the best interest of the commonwealth.

Bonds or notes of the commonwealth may be sold at par, premium or discount and may be sold as instruments the principal amount of which either remains constant or increases during the life of the instrument. Whenever bonds or notes are issued under a statute to which this paragraph applies, the amount issued shall be deemed to be the net proceeds of the issue; provided that the state treasurer may determine to apply all or a portion of any premium received on the sale of any such bonds or note, without appropriation, to the costs of issuance thereof or other financing costs related thereto or to the payment of the principal thereof or sinking fund installments with

respect thereto, in which case the amount of any premium so applied shall not be included in the amount of the issue. This paragraph shall apply to any bonds or notes issued after January 1, 1988 unless the act authorizing such issue expressly states that this paragraph shall not apply.

In connection with the issuance of bonds and notes of the commonwealth which are intended to qualify for tax exemption under the Internal Revenue Code of 1986, and to induce the purchase of such bonds and notes, the state treasurer may covenant on behalf of the commonwealth with the purchasers or with the holders from time to time of such bonds or notes or with a trustee or trustees for the benefit of such holders with respect to compliance with the requirements of said Internal Revenue Code relative to such tax exemption, including without limitation compliance with provisions relating to the use of proceeds by private parties, the investment of proceeds and the payment of rebate, so-called, to the federal government. Any such covenant may appear on the bonds or notes or may be included in a separate contract or trust indenture, a copy of which shall be available for public inspection at the office of the state treasurer. Any right of a holder of a bond or note in respect of any such covenant may be enforced as a claim against the commonwealth.

Any act authorizing the state treasurer to issue and sell bonds of the commonwealth shall also authorize the state treasurer, without any further authorization, to borrow from time to time on the credit of the commonwealth such sums of money as may be necessary for the purpose of making payments for the purposes for which such bonds are authorized and to issue and renew, from time to time, notes of the commonwealth therefor in anticipation, of such bonds, bearing interest payable at such time and at such rates as shall be fixed by the state treasurer. The notes

shall be issued and may be renewed 1 or more times for such terms not exceeding 3 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth. This paragraph; (i) shall apply to all bond authorization acts in effect as of July 1, 1999 and all bond authorization acts validly enacted after such date, unless any particular act expressly states that this paragraph shall not apply; and (ii) shall constitute authority to issue notes in anticipation of such bonds in addition to and not in limitation of any authority to issue notes in anticipation of bonds contained in any bond authorization act.

Section 49A. Notwithstanding any other general or special lawto the contrary, whenever the state treasurer is authorized to issue and sell bonds of the commonwealth and the state treasurer determines to issue and sell all or a portion of such bonds in denominations of less than $5,000 (minibonds), the state treasurer may issue and sell such minibonds at public or private sale, maturing in such amounts and upon such dates, at such interest rate or rates, payable at such time and in such manner, at par or at discount, in bearer or registered form, and upon such other terms and conditions, all as the state treasurer shall determine to be in the best interests of the commonwealth; provided that (1) not more than $50,000,000 principal amount of minibonds shall be sold by the state treasurer in any 1 fiscal year; (2) no minibond shall mature more than 5 years after its date; (3) no 1 sale to a purchaser of minibonds shall be in an aggregate principal amount equal to or greater than $5,000; and (4) each minibond shall provide that it shall be redeemed by the commonwealth upon due presentation by an appropriate person on any business day after 1 year from its date of sale by the state treasurer at such price as the state treasurer shall determine according to a schedule established with respect to each issue of minibonds prior to

7582 the sale thereof. The state treasurer may adopt regulations with respect to the issuance and sale of
7583 minibonds. A facsimile of the signature of the state treasurer on minibonds shall have the same
7584 validity and effect as the state treasurer's written signature. Sections 45, 49, and 53 of this
7585 chapter shall not apply to the issuance of minibonds.
7586
7587 Section 49B. In addition to any other security provided by laws, bonds and notes of the
7588 commonwealth may, in the discretion of the state treasurer, be secured or supported, in whole or
7589 in part, by insurance or by lines or letters of credit or other credit or liquidity facilities provided
7590 by any bank, trust company or other financial institution.
7591
7592 The state treasurer may enter into agreements with brokers for the placement of any such
7593 commonwealth notes issued as commercial paper.
7594
7595 Section 49C. (a) In issuing bonds of the commonwealth, under the law applicable thereto, the
7596 state treasurer may, under the conditions in this section, set aside and issue portions of said bonds
7597 in such form as shall be appropriate for the purposes of the college opportunity program, as
7598 defined in section 5A of chapter 15C, or for the purposes of such other college savings programs
7599 as may be established under paragraph (f1/2) of section 5 of said chapter 15C.
7600
7601 (b) Before issuing any bonds in a fiscal year for the use of a college savings program, the state
7602 treasurer shall prepare a report establishing the maximum amount of bonds to be issued in that
7603 year for use of such programs. Said report, and any subsequent amendment thereto which revises
7604 said maximum amount, shall include the state treasurer's reasons for determining that it is

7605 prudent for the commonwealth to authorize use of such bonds to the stated extent, in light of the
7606 anticipated future interest and principal payments on such bonds, as compared to the anticipated
7607 interest and principal payments on commonwealth bonds not issued in connection with such
7608 programs, and in light of available financial arrangements to limit or control the
7609 commonwealth's potential costs of meeting its obligations on such bonds, and in light of such
7610 other considerations as the state treasurer shall deem relevant. The state treasurer shall file copies
7611 of said report, and of any amendments thereto, with the Educational Financing Authority, the
7612 secretary of administration and finance, and the house and senate committees on ways and
7613 means.
7614
7615 (c) For the purposes of issuing bonds to support college savings programs, the state treasurer
7616 shall have, in addition to the state treasurer's other powers and duties, the following additional
7617 powers and duties:
7618
7619 (i) To employ financial, marketing, legal and other consultants and advisors for the purpose of
7620 consulting with the commonwealth on the implementation and ongoing administration of the
7621 savings programs and to enter into contracts and agreements necessary in connection therewith;
7622
7623 (ii) To enter into appropriate agreements or arrangements with banks or other financial
7624 institutions or with other departments or agencies of the commonwealth or other public entities
7625 to provide protection for the commonwealth from risks associated with the variable interest rate
7626 on such bonds, and to provide liquidity for purchasers of such bonds in the event of
7627 extraordinary circumstances which require them to have access to their capital, including but not

limited to interest rate swap agreements, interest rate caps, liquidity facilities, futures agreements, letters of credit and similar arrangements, including provisions regarding the custody of commonwealth funds and the maintenance of collateral and other security for the commonwealth's obligations thereunder;

(iii) To establish procedures to ensure that interest on such bonds is and remains excludable from the gross income of the owners thereof for federal income tax purposes;

(iv) To establish a schedule of fees and charges, including premiums in connection with the sale of such bonds, sufficient to provide for the estimated costs of the program incurred by the commonwealth, including the costs of any agreements or arrangements entered into under paragraph (ii) and reasonable amounts to allow the commonwealth to self-insure against possible variations in interest rates on such bonds; provided that the difference in anticipated future interest and principal payments on such bonds as compared to the anticipated interest and principal payments on commonwealth bonds not issued in connection with such programs shall not exceed $5,000,000 per year. Any such fees or charges shall be received by the state treasurer impressed with a trust on behalf of the participants in such college savings programs and shall be deposited in a separate fund. The amounts in said fund, including any income earned on amounts therein, shall be expended by the state treasurer, without appropriation, solely for the commonwealth's cost of operating such college savings programs, including without limitation the costs of agreements or arrangements entered into under paragraph (ii) and the costs of self-insuring against variations in interest rates on such bonds; and

7651 (v) To take such further actions and establish such further procedures as shall be appropriate to
7652 carry out the purposes of the savings programs.
7653
7654 (d) All bonds, or units of participation therein, issued under this section shall be subject to the
7655 following provisions:
7656
7657 (i) Any payment received by a purchaser of such bonds or units of participation under this
7658 section and chapter 15C and the interest or other income earned in connection therewith shall be
7659 exempt from all taxation by the commonwealth and any of its political subdivisions, including
7660 income, commonwealth, transfer, inheritance, death and personal property taxes.
7661
7662 (ii) The bonds and units of participation are hereby made securities in which administrators,
7663 guardians, executors, trustees, fiduciaries, and others authorized to invest in bonds of the
7664 commonwealth may properly and legally invest funds and shall be exempt from qualification and
7665 registration under the securities laws of the commonwealth.
7666
7667 (iii) The commonwealth hereby covenants and agrees to take all steps reasonably necessary to
7668 provide that interest on said bonds and units of participation whenever paid or accrued shall be
7669 excluded from the gross income of any person having an interest therein under the Internal
7670 Revenue Code of 1986 as amended from time to time.
7671
7672 (e) Section 53 shall not apply to the sale of any bonds issued in connection with college savings
7673 programs.

Section 50. The state treasurer shall annually in December certify to the budget director the amount necessary to provide for serial and sinking fund payments with respect to any bonds or notes of the commonwealth for the fiscal year beginning on July 1 following.

Section 53. Whenever there is to be an issue of bonds or notes of the commonwealth maturing at a time later than 3 years from their dates, excepting such bonds or notes as are to be issued for the investment of cash in any of the sinking or other established funds of the commonwealth, the state treasurer shall solicit bids for the purchase thereof, and shall provide reasonable notice to the public of such solicitations. The state treasurer may reserve the right to reject any or all bids. If no bid is accepted, the whole or any part of the loan may be awarded to any person. Compliance with this section may be waived with respect to an issue of bonds or notes upon the approval of the finance advisory board, established under section 97 of chapter 6.

Section 53A. The state treasurer may, upon request of the governor, issue and sell refunding bonds of the commonwealth in an amount to be specified by the governor from time to time for the purpose of paying, at maturity or upon acceleration or redemption, any bonds of the commonwealth then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of maturity, acceleration or redemption of such bonds; provided, however, that the state treasurer shall not issue any such refunding bonds unless the state treasurer shall find that the present value, discounted at such rate as the state treasurer shall deem appropriate, of the principal and interest payments due on the refunding bonds is less than the present value, discounted at such rate, of the principal and interest payments to be paid,

from the proceeds of such refunding bonds and investment earnings thereon, on the bonds to be refunded. In addition to and without compliance with the foregoing, the state treasurer may, upon request of the governor, issue and sell refunding bonds of the commonwealth in an amount to be specified by the governor from time to time for the purpose of substituting fixed-rate bonds for variable-rate bonds or 1 form of variable-rate bonds for another. The proceeds of any refunding bonds authorized by this section may also be used to purchase bonds in lieu of paying such bonds at maturity or redemption, through a tender offer or otherwise, whereupon the state treasurer may declare the purchased bonds to be paid in full. Such refunding bonds may be issued at such time prior to the maturity, acceleration or redemption of the bonds to be refunded thereby as the state treasurer, with the approval of the governor, may deem advisable. The issuance of such bonds, the security therefor, the maturities and other details thereof, the rights of the holders thereof and the rights, duties and obligations of the commonwealth with respect thereto shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor. Without limiting the generality of the foregoing, the provisions of section 49 applicable to sinking funds established with trustees shall apply to the deposit of refunding bond proceeds with a trustee except that such proceeds shall be held for the benefit of the holders of the bonds to be refunded thereby. All bonds issued by the commonwealth as aforesaid shall be designated on their face General Obligation Refunding Bonds or Special Obligation Refunding Bonds, as appropriate, and shall be issued for such maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth, provided, however, that the bonds of any particular issue shall mature not later than 5 years after the date of final maturity of the bonds being refunded by such issue; and

provided, further, that the debt service on such refunding bonds shall be charged to the various budgeted funds of the commonwealth in proportion to the principal amounts being refunded.

The state treasurer shall file a report with the house and senate committees on ways and means not later than 30 days after the sale of any refunding bonds issued under this section. Said report shall include written documentation of compliance with this section, including, but not limited to, the issue or issues to be refunded, the projected dollar savings and the projected present value savings.

Section 54. The state treasurer may require each bidder submitting a proposal under section 53, as a condition precedent to the consideration of such bidder's proposal, to submit a good faith deposit or otherwise secure such bidder's proposal, in such manner and amount as the state treasurer shall determine to be appropriate.

Section 55. The state treasurer may annually expend such sums as the general court shall appropriate for the purpose of providing for and advertising sales of bonds for the direct debt of the commonwealth and for the purpose of preparing and paying for bond books necessary for such sales.

Section 56. Funds from a sale of specific bonds or other securities which have reverted at the close of a fiscal year, under the act authorizing the expenditures to be financed by the sale of said bonds or other securities, or under section 14 shall first be transferred in the succeeding fiscal year or years on the books of account of the commonwealth, without appropriation, to the fund

which is liable for the maturities on said bonds or other securities but only in such amount as is necessary to meet the specific bonds or other securities matured and paid from said fund, if any, in a fiscal year. When such transfers are no longer required to meet such maturities any balance of said funds remaining, after setting aside a sufficient amount to cover any such bonds or other securities which have matured but have not been presented for payment, shall be transferred, without appropriation, on the books of account of the commonwealth to the fund from which said bonds or other securities were paid.

Section 58. The state treasurer may, upon terms and regulations prescribed by the governor and council, issue, in denominations of not less than $1,000, registered bonds in exchange for any coupon bonds of the commonwealth, which, with the exception of the coupons, shall be in conformity with the laws authorizing the issue of such coupon bonds. The state treasurer shall mutilate and retain the bonds so received in exchange. The comptroller shall certify such registered bonds; and the comptroller and the state treasurer shall each keep a register of their dates, numbers and amounts, the names of the persons to whom they were issued, when they are payable and for what bonds they were issued in exchange. The state treasurer may also, upon the same terms and regulations, issue in substitution for mutilated, defaced or endorsed bonds presented to the state treasurer other bonds of like or equivalent issues.

Section 59. If it appears to the governor and council that any interest-bearing bond of the commonwealth identified by number and description has, without bad faith upon the part of the owner, been lost or destroyed, wholly or in part, they shall, under regulations and with restrictions as to time and retention for security or otherwise prescribed by them, order the state

treasurer to issue a registered duplicate of such bond, payable at the same time, bearing the same rate of interest as the bond lost or destroyed, and so marked as to show the number and date of the original bond. If such bond was of a class or series which has been called in for redemption before the application for a reissue, it shall be paid, with such interest only as would have been paid if the bond had been presented under such call.

Section 60. The owner of such bond shall surrender so much thereof as may remain, if any, and shall give to the state treasurer a bond in double the amount of said lost or destroyed bond and of the interest which would accrue until the principal is due and payable, with a sufficient surety, a resident of the commonwealth, approved by the governor and council, conditioned to indemnify and save harmless the commonwealth from any claim on account of said lost or destroyed bond.

Section 60A. Unless otherwise specifically provided, provisions contained in any act heretofore or hereafter enacted by a vote, taken by the yeas and nays of two-thirds of each house of the general court present and voting thereon, and approved by the governor, authorizing the state treasurer to issue and sell bonds or notes of the commonwealth or authorizing the commonwealth to borrow money requiring that the principal of and interest on such bonds or notes shall be (i) paid by or from a particular fund or funds of the commonwealth now existing or hereafter created, (ii) part of the debt and expenses of a particular district, or (iii) assessed by particular methods, or other provisions or words of similar import, shall not affect the status of such bonds and notes as general obligations of the commonwealth to which the full faith and credit of the commonwealth is pledged for the payment of principal and interest when due. All bonds and notes executed under this chapter shall be deemed to be general obligations of the

commonwealth to which its full faith and credit is pledged for the payment of principal and interest when due, unless specifically provided on the face of such bond or note to the contrary. All bonds or notes of the commonwealth executed under this chapter shall have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code.

There is hereby established a direct debt limit for the commonwealth which shall apply to any direct bonds issued whose issuance would cause the sum of the principal amounts of all direct bonds issued by the commonwealth and then outstanding to exceed the limit set in this section; provided, however, that bonds for the payment or redemption of which, either at or prior to maturity, refunding bonds shall have been issued, shall be excluded in the computation of outstanding bonds; and provided, further, that the principal amount of bonds issued at a discount shall be the original net proceeds of such bonds. For the fiscal year starting July 1, 2011, such limit shall be $17,070,000,000. For each subsequent fiscal year, the limit shall be the lesser of: (a) the product of the limit established for the previous fiscal year and 1.05; or (b) the product of the limit established for the previous fiscal year and the ratio of the value of the implicit price deflator for state and local government purchases for the preceding fiscal year to such value for the fiscal year 2 years prior. The calculation described in this paragraph shall be announced by the treasurer not later than September 30 of any year. The preceding paragraph shall not apply to direct bonds in excess of the direct debt limit. The treasurer may issue regulations enforcing this paragraph. Under no circumstances shall this paragraph be interpreted to impair any bond covenants or other guarantees to bond holders relative to any such bonds or notes issued prior to July 1, 1990.

7812 Section 60B. (a) In this section, the following words shall, unless the context clearly requires
7813 otherwise, have the following meanings.
7814
7815 "Committee", the Finance Advisory Board established in M.G.L. Chapter 6, Section 97.
7816 "Tax supported debt", direct debt, as further described and limited in the first sentence of the
7817 second paragraph of section 60A; and other forms of debt, including state agency capital leases
7818 supported in whole or part by state tax revenues and debt of the department of transportation, and
7819 other units of commonwealth government which, in the opinion of the committee, are supported
7820 directly or indirectly by state tax revenues; provided that "tax supported debt", shall include debt
7821 issued by the department of transportation under chapter 6C that is secured by a pledge of future
7822 federal aid from any source.
7823
7824 (b) This section applies only to tax supported debt. This section shall not be construed to affect
7825 the authority of the governor to submit any bills under the procedures established in Article XLII
7826 or XLIII of the Amendments to the Constitution, or the authority of the general court to continue
7827 its independent analysis of commonwealth debt affordability or to consider bills that authorize
7828 commonwealth debt or appropriations bills under said Article XLII or XLIII of the Amendments
7829 to the Constitution.
7830
7831
7832 (c) The chairman shall call meetings of the committee as needed to perform its duties.
7833
7834 (d) The committee shall review on a continuing basis the size and condition of the

7835 commonwealth tax supported debt as well as other debt of any authority of the commonwealth
7836 that is determined to be a component unit of the commonwealth by the comptroller under
7837 subsection (c) of section 12 of chapter 7A. The estimate shall be made available electronically
7838 and prominently displayed on the official website of the commonwealth.
7839
7840 (e) On or before September 10 of each year, the committee shall submit to the governor and the
7841 general court the committee's estimate of the total amount of new commonwealth debt that
7842 prudently may be authorized for the next fiscal year. In making its estimate, the committee shall
7843 consider:
7844
7845 (1) the amount of state bonds that, during the next fiscal year:
7846
7847 (i) will be outstanding; and
7848
7849 (ii) will be authorized but unissued;
7850
7851 (2) the capital program prepared by the secretary of administration and finance;
7852
7853 (3) capital improvement and school construction needs during the next 5 fiscal years, as
7854 projected by the Massachusetts School Building Assistance Authority;
7855
7856 (4) projections of debt service requirements during the next 10 fiscal years;
7857

7858 (5) the criteria that recognized bond rating agencies use to judge the quality of issues of state
7859 bonds;
7860
7861 (6) any other factor that is relevant to:
7862
7863 (i) the ability of the state to meet its projected debt service requirements for the next 5 fiscal
7864 years; or
7865
7866 (ii) the marketability of state bonds;
7867
7868 (7) the effect of authorizations of new state debt on each of the factors in this subsection;
7869
7870 (8) identification of pertinent debt ratios, such as debt service to General Fund revenues, debt to
7871 personal income, debt to estimated full-value of property, and debt per capita;
7872
7873 (9) A comparison of the debt ratios prepared for paragraph (8) with the comparable debt ratios
7874 for the 5 other states in New England, New York and 5 other states the committee determines to
7875 offer a fair comparison to the commonwealth;
7876
7877 (10) A description of the percentage of the state's outstanding general obligation bonds
7878 constituting fixed rate bonds, variable rate bonds, bonds that have an effective fixed interest rate
7879 through a hedging contract, and bonds that have an effective variable interest rate through a
7880 hedging contract. The report shall also include, for each outstanding hedging contract, a

7881 description of the hedging contract, the outstanding notional amount, the effective date, the
7882 expiration date, the name and ratings of the counterparty, the rate or floating index paid by the
7883 state and the rate or floating index paid by the counterparty, and a summary of the performance
7884 of the state's hedging contracts in comparison to the objectives for which the hedging contracts
7885 were executed; and
7886
7887 (11) the amount of issuances, debt outstanding, and debt service requirement of other classes of
7888 commonwealth tax supported debt as well as other debt of commonwealth units.
7889
7890 (f) The estimate of the committee shall be advisory, and shall not bind the governor or the
7891 general court.
7892
7893 (g) On or before October 15 of each year, after considering the current estimate of the
7894 committee, the governor shall determine:
7895
7896 (1) the total authorizations of new commonwealth debt that the governor considers advisable for
7897 the next fiscal year; and
7898
7899 (2) the preliminary allocation of new commonwealth debt for capital facility projects.
7900
7901 Section 61. The comptroller or any other person authorized to approve claims for materials,
7902 supplies or other articles furnished to, or for service or labor performed for, the commonwealth,
7903 may, before approving any such claim, require the claimant to certify on oath that all the articles

have been furnished, for which the claim has been made, or that the service or labor has been performed, and that no commission, discount, bonus, present or reward of any kind has been received or promised or is expected on account of the same.

Section 63. If a department, commission, board, officer, employee or agent of the commonwealth is about to expend money or incur obligations purporting to bind the commonwealth for any purpose or object or in any manner other than that for and in which such department, commission, board, officer, employee or agent has the legal and constitutional right and power to expend money or incur obligations, the supreme judicial or superior court may, upon the petition of not less than 24 taxable inhabitants of the commonwealth, not more than 6 of whom shall be from any 1 county, determine the same in equity, and may, before the final determination of the cause, restrain the unlawful exercise or abuse of such right and power.

Section 64. The state treasurer, on behalf of the commonwealth, may contract with an employee to defer a portion of that employee's compensation and may, for the purposes of funding a deferred compensation program for the employee, established under the United States Internal Revenue Code, the “Code", invest the deferred portion of the employee's income in a life insurance or annuity contract, mutual fund, a bank investment trust, or additional investment alternatives available under the program. The treasurer, before making the investment, shall solicit bids from fund managers, investment managers and insurance companies authorized to conduct business within the commonwealth under chapter 175, mutual fund managers and banks, which bids shall be sealed, and opened at a time and place designated by the treasurer. A bid submitted by an insurance company, mutual fund, bank investment trust or other fund manager

or investment manager, to fund the deferred compensation program shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, the commissions which will be paid to the salesmen, the load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and other information as the treasurer may require. Any contract entered into between an employee and the commonwealth under this section shall include the information in terms the employee can reasonably be expected to understand.

As used in this section the word “employee" shall have the same meaning as “employee" in section 1 of chapter 32 and shall include members of the state police temporarily assigned to and paid by the Massachusetts Department of Transportation, the Massachusetts Port Authority or any other board, agency, commission or authority to which they may be temporarily assigned and by which they are paid, and consultants and independent contractors who are natural persons paid by the commonwealth.

An employee may defer compensation; provided, however, that such deferral shall not exceed the maximum allowable under the Code, as amended and in effect for the taxable year, and appropriate regulations under the Code.

Such deferred compensation program shall be in addition to and not a part of the retirement program or pension system as provided under said chapter 32 and any other benefit program provided by law for such employee. Any compensation deferred under such a plan shall continue to be included as regular compensation, as defined in said section 1 of said chapter 32, for the

7950 purpose of computing the retirement and pension benefits earned by any such employee, but any
7951 compensation so deferred shall not be included in the computation of any taxes withheld on
7952 behalf of any such employee.
7953
7954 The state treasurer, on behalf of the commonwealth, shall contract with every person, who is
7955 receiving compensation from the commonwealth for services performed for the commonwealth
7956 and who is not eligible for membership or has exercised an option not to participate in the state
7957 retirement system in chapter 32, to defer a portion of that person's compensation, and shall invest
7958 the deferred portion of that person's income in a deferred compensation program established
7959 under said Code. For persons holding positions which would have rendered the holder of the
7960 position eligible for participation in the commonwealth's deferred compensation program on
7961 November 5, 1990, the state treasurer shall contract for plan years prior to January 1, 1993, to
7962 defer 6 per cent of that person's regular compensation, as defined in section 1 of chapter 32 for
7963 the period subsequent to December 31, 1945, but no greater than the maximum deferral
7964 allowable for that person under said Code for government deferred compensation programs. For
7965 persons holding positions which would not have rendered the holder of the position eligible for
7966 participation in the commonwealth's deferred compensation program on November 5, 1990, the
7967 state treasurer shall contract to defer 7 ½ per cent of that person's regular compensation, as
7968 defined in said section 1 of said chapter 32 for the period subsequent to December 31, 1945, but
7969 no greater than the maximum deferral allowable for that person under said Code for government
7970 deferred compensation programs.
7971
7972 Notwithstanding this section, the state treasurer need not contract with any part-time, seasonal or

7973 temporary employee not required by said Code to participate in a public retirement system. All
7974 contracts formed with part-time, seasonal or temporary employees under the previous paragraph
7975 shall entitle the employee to a single-sum distribution of the employee's deferrals plus reasonable
7976 interest.
7977
7978 Nothing in this section shall be construed to create or grant any rights not previously enjoyed
7979 under chapter 32A or chapter150E.
7980
7981 Section 64A. The state treasurer of the commonwealth, on behalf of the commonwealth, may
7982 contract with an employee to make contributions for and in the name of such employee, from
7983 amounts otherwise payable to the employee as current compensation, to an Individual
7984 Retirement Account (“IRA") by such employee established under the U.S. Internal Revenue
7985 Code, (the “Code"). The participating employee may invest that portion of his income so
7986 contributed to an IRA in an annuity contract, mutual fund, bank investment trust or other
7987 investment authorized by the Code. Before making such deduction, the treasurer shall be
7988 required to solicit bids from insurance companies authorized to conduct business within the
7989 commonwealth under chapter 175, mutual fund managers, and banks, which bids shall be sealed,
7990 and opened at a time and place designated by the treasurer. Any bid submitted by an insurance
7991 company, mutual fund, or bank investment trust seeking investment of the IRA contribution
7992 shall, where applicable, clearly indicate the interest rate which shall be paid on the invested
7993 funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of
7994 administering the funds, expected payouts, tax implications for participating employees and such
7995 other information as the treasurer may require. Upon the treasurer's determining which provider

offers the product or products most beneficial to the employee in each category for which bids were solicited, the treasurer may offer such employee the opportunity to establish an IRA with 1 or more such providers. The employee who wishes to invest his IRA funds with any such provider, or combination of providers, may authorize the treasurer to deduct from amounts otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the employee's IRA. If the employee so elects, the treasurer shall pay to the providers the amount designated by the employee, in the name of the employee, to the employee's IRA. Amounts so paid to the providers for the employee's IRA account shall belong exclusively to the employee. Except as otherwise provided herein, the treasurer may restrict an employee's right to contract to have contributions made to an IRA through deductions and payments by the treasurer, to those providers selected as the result of the competitive bidding process outlined herein, but the authority conferred upon the treasurer shall not be construed to restrict or limit the right of any employee to establish one or more IRAs with such banks, insurance companies, or similar authorized institutions as the employee may choose in any manner other than through an authorized deduction by the treasurer of a portion of the employees compensation as outlined herein. Any contract entered into between an employee and the commonwealth under this section shall include all information in terms the employee can reasonably be expected to understand.

As used in this section the word “employee" shall have the same meaning as “employee" in section 1 of chapter 32 and shall include members of the state police temporarily assigned to and paid by the Massachusetts Department of Transportation, the Massachusetts Port Authority or any other board, agency, commission or authority to which they may be temporarily assigned and by which they are paid, and consultants and independent contractors who are natural persons

8019 paid by the commonwealth.

8020

8021 An employee may contribute a portion of his compensation to an IRA under the program
8022 outlined herein so long as such contribution, for an employee who is single, is the lesser of
8023 $2,000 or 100 per cent of the employee’s compensation for a taxable year, and, for an employee
8024 who is married, the contribution is the lesser of $2,250 or 100 per cent of the employee’s
8025 compensation for a taxable year. If an employee has any compensation deferred under a deferred
8026 compensation plan for employees of the commonwealth, if one is established by the treasurer
8027 under section 64, then the aggregate amount of such deferred compensation deduction and
8028 amounts contributed to such employee's IRA shall not exceed the limits imposed upon such
8029 combined deduction and contribution by the Code.

8030

8031 Notwithstanding any provisions to the contrary, the treasurer shall not be required to solicit bids
8032 to invest the contributed portion of an employee's income into the employee's IRA provided: (a)
8033 the treasurer is authorized by the employee to pay that portion of the employee's compensation
8034 into the employee's IRA in the same investment products as provided through a deferred
8035 compensation or IRA plan for employees of the commonwealth administered by the state
8036 treasurer, or a deferred compensation plan for employees of the city or town administered by the
8037 treasurer, provided such plan resulted from the solicitation of bids under bidding requirements
8038 comparable to those required under this section; or (b) the treasurer is authorized by the
8039 employee to pay that portion of the employee's compensation into the employee's IRA in the
8040 investment products offered under a deferred compensation plan or an IRA investment option
8041 program developed through a competitive selection process, provided that such plan or program

8042 resulted from the solicitation of bids by a group of any combination of 3 or more city, town,
8043 county or public authority treasurers acting as a “Common Group" for purposes of soliciting such
8044 proposals under bidding requirements comparable to those required under this section.
8045
8046 Such IRA plan shall be in addition to and not a part of the retirement program or pension system
8047 as provided under said chapter 32 and any other benefit program provided by law for such
8048 employee. Any compensation contributed by the employee to his IRA under such a plan shall
8049 continue to be included as regular compensation, as defined in section 1 of said chapter 32, for
8050 the purpose of computing the retirement and pension benefits earned by any such employee, but
8051 any compensation so contributed shall not be included in the computation of federal taxes but
8052 shall be included in the computation of state taxes withheld on behalf of any such employee.
8053
8054 Section 64B. The treasurer or, if there is no treasurer, the chief financial officer by whatever
8055 name that person is called, on behalf of any political subdivision, body politic and corporate, or
8056 public instrumentality created by the commonwealth or any county, city or town or group thereof
8057 by whatever name the body is called, including without limitation, an agency, authority, board,
8058 corporation or district, including also without limitation, any regional school, police, fire, refuse
8059 or sewage district, and hereinafter referred to as a “governmental body,” which is not otherwise
8060 subject to any general or special law authorizing deferred compensation contracts with its
8061 employees, may contract with an employee of such governmental body to defer a portion of an
8062 employee’s compensation and may, for the purposes of funding a deferred compensation
8063 program for said employee, established under the U.S. Internal Revenue Code, (the “Code”)
8064 invest the deferred portion of the employee’s income in a life insurance or annuity contract,

mutual fund or a bank investment trust. The treasurer or chief financial officer shall, before making any such investment, solicit bids from insurance companies authorized to conduct business within the commonwealth under chapter 175, mutual fund managers, and banks, which bids shall be sealed, and opened at a time and place designated by the treasurer or chief financial officer. Any bid submitted by an insurance company, mutual fund, or bank investment trust to fund the deferred compensation program shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer or chief financial officer may require. Any contract entered into between an employee and the governmental body under this section shall include all such information in terms the employee can reasonably be expected to understand.

As used in this section the word “employee” shall have the same meaning as the word “employee” in section 1 of chapter 32 and shall include consultants and independent contractors who are natural persons paid by the governmental body.

Notwithstanding any general or special law to the contrary, the treasurer or chief financial officer shall not be required to solicit bids to invest the deferred portion of an employee’s income provided: (a) the treasurer or chief financial officer elects to invest such funds in the same investment products as are provided through the deferred compensation plan for employees of the commonwealth administered by the state treasurer, provided such plan resulted from the solicitation of bids under bidding requirements comparable to those required under this section;

8088 or (b) the treasurer or chief financial officer elects to invest such funds in the investment
8089 products offered under a plan developed through a competitive process, provided that such plan
8090 resulted from the solicitation of bids by a group of any combination of 3 or more city, town,
8091 county or public authority treasurers or treasurers or chief financial officers of governmental
8092 bodies covered by this section acting as a "Common Group" for purposes of soliciting such
8093 proposals under bidding requirements comparable to those required under this section.
8094
8095 An employee may defer compensation; provided, however, that such deferral does not exceed
8096 the maximum allowable under the Code, as amended and in effect for the taxable year, and
8097 appropriate regulations under the Code.
8098
8099 Such deferred compensation program shall be in addition to and not a part of any retirement
8100 program or pension system as provided under said chapter 32 and any other benefit program
8101 provided by law for such employee. Any compensation deferred under such a plan shall continue
8102 to be included as regular compensation, as defined in section 1 of said chapter 32, for the
8103 purpose of computing any retirement and pension benefits earned by any such employee, but any
8104 compensation so deferred shall not be included in the computation of any taxes withheld on
8105 behalf of any such employee.
8106
8107 Section 64C. The treasurer or, if there is no treasurer, the chief financial officer, by whatever
8108 name that person is called, of any political subdivision, body politic and corporate, or public
8109 instrumentality created by the commonwealth or by any county, city, or town or group thereof by
8110 whatever name the body is called, including without limitation an agency, board, authority,

8111 corporation or district, including, also without limitation, any regional school, police, fire, refuse
8112 or sewage district, hereinafter referred to as a “governmental body,” which is not subject to a
8113 general or special law authorizing deferred compensation contracts with its employees, may
8114 contract with an employee of that governmental body to make contribution for and in the name
8115 of such employee, from amounts otherwise payable to the employee as current compensation, to
8116 an Individual Retirement Account (“IRA”) by such employee established under the U.S. Internal
8117 Revenue Code, (the “Code”). The participating employee may invest that portion of the
8118 employee’s income so contributed to an IRA in an annuity contract, mutual fund, bank
8119 investment trust or other investment authorized by the Code. Before making such deduction, the
8120 treasurer or chief financial officer shall be required to solicit bids from insurance companies
8121 authorized to conduct business within the commonwealth under chapter 175, mutual fund
8122 managers and banks, which bids shall be sealed and opened at a time and place designated by the
8123 treasurer or chief financial officer. Any bid submitted by an insurance company, mutual fund or
8124 bank investment trust seeking investment of the IRA contribution shall, where applicable, clearly
8125 indicate the interest rate which shall be paid on the invested funds, any commissions which will
8126 be paid to the salesmen, any load imposed for the purpose of administering the funds, expected
8127 payouts, tax implications for participating employees and such other information as the treasurer
8128 or chief financial officer may require. Upon the treasurer’s or chief financial officer’s
8129 determining which provider offers the product or products most beneficial to the employee in
8130 each category for which bids were solicited, the treasurer or chief financial officer may offer
8131 such employee the opportunity to establish an IRA with 1 or more such providers. The employee
8132 who wishes to invest the employee’s IRA funds with such provider, or combination of providers,
8133 may authorize the treasurer or chief financial officer to deduct from amounts otherwise payable

8134 to the employee, at 1 time or on a periodic basis, amounts to be paid into the employee's IRA. If
8135 the employee so elects, the treasurer or chief financial officer shall pay to the providers the
8136 amount designated by the employee, in the name of the employee, to the employee's IRA.
8137 Amounts so paid to the providers for the employee's IRA account shall belong exclusively to the
8138 employee. Except as otherwise provided herein, the treasurer or chief financial officer may
8139 restrict an employee's right to contract to have contributions made to an IRA through deductions
8140 and payments by the treasurer or chief financial officer, to those providers selected as the result
8141 of the competitive bidding process outlined herein, but the authority conferred upon the treasurer
8142 or chief financial officer shall not be construed to restrict or limit the right of any employee to
8143 establish 1 or more IRAs with such banks, insurance companies, or similar authorized
8144 institutions as the employee may choose in any manner other than through an authorized
8145 deduction by the treasurer or chief financial officer of a portion of the employee's compensation
8146 as outlined herein. Any contract entered into between an employee and the governmental body
8147 under this section shall include all information in terms the employee can reasonably be expected
8148 to understand.
8149
8150 As used in this section the word "employee" shall have the same meaning as the word
8151 "employee" in section 1 of chapter 32 and shall also include consultants and independent
8152 contractors who are natural persons paid by the governmental body.
8153
8154 An employee may contribute a portion of the employee's compensation to an IRA under the
8155 program outlined herein so long as such contribution, for an employee who is single, is the lesser
8156 of $2,000 or 100 per cent of the employee's compensation for a taxable year, and, for an

employee who is married, the contribution is the lesser of $2,250 or 100 per cent of the employee's compensation for a taxable year, such dollar amount to be adjusted to reflect any applicable amendments to the code adopted from time to time. If an employee has any compensation deferred under a deferred compensation plan for employees of the governmental body, if one is established by the treasurer or chief financial officer under section 64B, then the aggregate amount of such deferred compensation deduction and amounts contributed to such employee's IRA shall not exceed the limits imposed upon such combined deduction and contribution by the Code.

Notwithstanding any provisions to the contrary, the treasurer or chief financial officer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's IRA provided: (a) the treasurer or chief financial officer is authorized by the employee to pay that portion of the employee' compensation into the employee' IRA in the same investment products as are provided through a deferred compensation or IRA plan for employees of the commonwealth administered by the state treasurer or a deferred compensation plan for employees of the governmental body administered by the treasurer or chief financial officer, provided such plan resulted from the solicitation of bids under bidding requirements comparable to those required under this section; or (b) the treasurer or chief financial officer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the investment products offered under a deferred compensation or IRA plan developed through a competitive selection process, provided that such plan resulted from the solicitation of bids by a group of any combination of 3 or more city, town, county or public authority treasurers or treasurers or chief financial officers of government bodies covered by this section acting as a

8180 “Common Group” for purposes of soliciting such proposals under bidding requirements
8181 comparable to those required under this section.
8182
8183 Such IRA plan shall be in addition to and not a part of any retirement program or pension system
8184 as provided under said chapter 32 and any other benefit program provided by law for such
8185 employee. Any compensation contributed by the employee to the employee’s IRA under such a
8186 plan shall continue to be included as regular compensation, as defined in section 1 of said
8187 chapter 32, for the purpose of computing any retirement and pension benefits earned by any such
8188 employee, but any compensation so contributed shall not be included in the computation of
8189 federal taxes but shall be included in the computation of state taxes withheld on behalf of any
8190 such employee.
8191
8192 Section 64D. Any governmental body, as defined in section 64B, may require any person, who is
8193 receiving compensation from the governmental body for services performed and who is not a
8194 member of a retirement system as provided under chapter 32 or any other retirement system
8195 which meets the requirements of Section 3121(b)(7)(F) of the Internal Revenue Code and the
8196 regulations promulgated thereunder, to participate in the deferred compensation program
8197 established with regard to the governmental body, or tax sheltered annuity or any other defined
8198 contribution plan. The treasurer, or if there is no treasurer, the chief financial officer by whatever
8199 name that person is called, on behalf of a governmental body which has accepted this section
8200 shall contract with any person, who is receiving compensation from the governmental body for
8201 services performed for the governmental body and who is not eligible for membership in the
8202 retirement system in said chapter 32 that pertains to the governmental body, to withhold from

that person's compensation at least such amounts as are necessary to provide the minimum level of benefits required to qualify said deferred compensation program, tax sheltered annuity or other defined contribution plan as a retirement system for said person as defined under said Section 3121(b)(7)(F) of said Code and the regulations promulgated thereunder but no greater than permitted under other provisions of the Internal Revenue Code.

All contracts formed with part-time, seasonal or temporary employees under the first paragraph shall entitle the employee to a single-sum distribution of the employee's deferral plus reasonable interest.

A governmental body may accept this section by a majority vote of the selectmen for a town, the city council for a city, the county council for a county, the district members in a district, the members of the authority in an authority, and the governing body, by whatever name and in whatever form composed, in any other political subdivision, body politic and corporate, or public instrumentality created by the commonwealth.

Any governmental body already requiring, on the effective date of this section, participation in a public retirement system for persons who are receiving compensation from the governmental body for services performed and who are not members of a retirement system as provided under said chapter 32 shall be deemed to have accepted this section without the requirement of a majority vote of the selectmen for a town, the city council for a city, the county council for a county, the district members in a district, the members of the authority in an authority, and the governing body, by whatever name and in whatever form composed, in any other political

subdivision, body politic and corporate, or public instrumentality created by the commonwealth.

Section 65. The secretary having charge of any of the executive offices established by chapters 6A and 7 may by rule or regulation not inconsistent with the law delegate to 1 officer within the office of the secretary, in whole or in part, the authority to exercise in the secretary's name any power, or to discharge in the secretary's name any duty conferred upon such secretary by sections 27A, 27B, 29, and 29A; sections 24C, 25B, 36 and paragraph (5A) of section 46 of chapter 30; and section 15, section 15F, section 16A and section 16B of chapter 31.

The secretary of administration and finance shall from time to time make a random examination of approvals granted and actions taken by such secretary or the secretary's designee identified in the preceding paragraph, under the aforementioned sections, in order to determine the extent of compliance with such sections and the rules or regulations established thereunder. Following any such examination, the secretary of administration and finance may, after consultation with the secretary, by order transfer from such officer to the secretary of administration and finance, for such period of time as said secretary deems appropriate, the authority to give such approvals or to take such actions. Upon making such order, the secretary of administration and finance shall forthwith file a copy of said order with the budget director, the comptroller, and the house and senate committees on ways and means, specifying the scope of the authority so transferred and the duration of said transfer.

Section 66. Any officer or employee who knowingly violates, authorizes or directs another officer or employee to violate this chapter, or any rule or regulation promulgated under this

chapter, or any other law relating to the incurring of liability or expenditure of public funds, shall be punished by a fine of not more than $1,000 or by imprisonment in a jail or house of correction for not more than 1 year, or both.

Section 71. This chapter shall not be construed to affect the obligation of the state treasurer to withhold from the receipts, distributions, reimbursements or other assistance payable to any city, town or other local governmental unit under any reimbursement, grant, assistance or other local aid program any amount determined under section 10 of chapter 44 A or any amount certified to the state treasurer as owing to a public instrumentality of the commonwealth under paragraph (b) of section 10 of chapter 372 of the acts of 1984 or paragraph (d) of section 10 or section 11 of chapter 29 C, or any similar provision relative to local aid intercepts.

SECTION 99. Section 18 of chapter 30A of the Massachusetts General Laws as appearing, in the 2010 official edition, is hereby amended by deleting the following:-

(d) Intentional Violation – Any act or omission by a public body, or any member thereof, in knowing violation of the open meeting law.

SECTION 100. Section 23(c) of said chapter is hereby amended by deleting the following:-

Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional.

SECTION 101. Section 23(c)(7) of said chapter is hereby amended by deleting the following:-

(7) prescribe other appropriate action.

And replacing it with the following:-

(7) reprimanding a member or members of a public body, said reprimand to be a public record; or

(8) prescribe other appropriate action.

SECTION 102. Section 23(f) of said chapter is hereby amended by inserting at the end:-

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section. In an action brought by three or more registered voters, such order may also require the public body to reimburse said voters reasonable attorney's fees and court costs.

Such order may also include a civil fine against the public body in an amount no greater than one thousand dollars for each meeting held in violation of this section and/or a civil fine of not more than two hundred dollars for each violation against any individual member of a public body who has already been fined pursuant to this section or received a reprimand pursuant to section 23(c)(7). A fine shall not be imposed against any member of the public body who is recorded in

opposition to the act that is found to be in violation of the open meeting law. A penalty against an individual member shall not be reimbursable with public funds.

SECTION 103. Section 23(g) of said chapter is hereby amended by adding after “body” the first time it appears the following:-

It shall be a defense to the imposition of a penalty that the public body or any member thereof, after full disclosure, acted in good faith compliance with the advice of the public body’s legal counsel.

SECTION 104. The General Laws are hereby amended by inserting after chapter 40S the following new chapter:-

Chapter 40T: Additional Assistance to Municipalities

Section 1. The following words, as used in this chapter, unless the text otherwise requires or a different meaning is specifically required, shall mean—

“Additional Assistance”, the amount appropriated to a municipality in section 3 of acts making general appropriations for each fiscal year and designated therein as “unrestricted general government aid,” less the distribution to said municipality pursuant to clause (c) of the second paragraph of section 35 of chapter 10 of the General Laws.

“Municipal Cost”, the sum of 28.0 times the municipality’s population density, plus 19.8 times the municipality’s poverty rate, plus 81.0 times the municipality’s unemployment rate, plus 272 times the jobs per capita rate of the municipality, plus 570.2.

“Municipal Gap”, the difference between municipal costs and municipal revenue raising capacity.

8312 “Municipal Revenue Capacity”, the sum of 0.0142 times the per capita taxable residential
8313 property value raised to the two-thirds power, multiplied by the per capita income of the
8314 municipality’s residents raised to the one-thirds power, plus 0.0126 multiplied by the per capita
8315 taxable nonresidential property value of the municipality.

8316 “Secretary”, the secretary of administration and finance.

8317 Section 2. The secretary shall calculate the municipal gap for each municipality and shall make
8318 available to the house and senate committees on ways and means, in an electronically compatible
8319 format the underlying data and calculations necessary to generate the municipal gap and each
8320 component of state aid authorized for distribution to municipalities pursuant to this chapter.

8321 Section 3. Any additional assistance appropriated beyond that contained in Chapter 68 of the
8322 acts of 2011 shall be appropriated solely to those municipalities with a municipal gap greater
8323 than zero and in proportion to each municipalities’ municipal gap as determined pursuant to
8324 section 2. SECTION 105. Section 54 of chapter 54 of the General Laws, as appearing in the
8325 2008 Official Edition, is hereby amended by adding the following paragraph:-
8326
8327 The state secretary shall also cause to be printed and sent, in the manner provided in section 53, a
8328 fiscal impact statement to be prepared by the secretary of administration and finance. The
8329 statement shall be not more than 100 words and shall describe the fiscal consequence for state
8330 and local government finances of an affirmative decision on the question described.
8331
8332 SECTION 106. Chapter 58 of the General Laws is hereby amended by striking out section 18C,
8333 as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 18C.(a) In this section, “budgeted aid” shall mean unrestricted aid to cities and towns, including proceeds from the state lottery established under chapter 10, payments in lieu of taxes from the commonwealth to cities and towns and education aid to cities and towns under chapter 70.

(b) In fiscal year 2012 and each fiscal year thereafter, the state treasurer shall, subject to appropriation but not subject to allotment under section 9B of chapter 29, distribute budgeted aid to cities and towns. The distribution shall be made in 12 equal payments, on or before the last day of each month.

Notwithstanding clause Forty-first of section 7 of chapter 4 or any other general or special law to the contrary, the commissioner of revenue or any official responsible for a local reimbursement or assistance program reported by said commissioner under section 25A shall use, as appropriate, the most recent city and town population estimates of the United States Bureau of the Census in calculating distributions or assessments under local reimbursement or assistance programs. Such distribution programs shall include, but not be limited to, the chapter 70 school aid program, and aid to regional public libraries. Such assessments shall include, but not be limited to, air pollution control districts, the metropolitan area planning council, the old colony planning council, the Massachusetts Bay Transportation Authority and any other entity for which said commissioner is required to give notice under said section 25A.

(c) This section shall not be construed to prohibit the distribution of other state government

8357 payments to cities and towns that are not budgeted aid through 1 or more of the monthly
8358 payments to cities and towns. Nor shall this section be construed to prohibit the deduction from
8359 distributions to satisfy amounts owed to the state by cities and towns under section 20A or any
8360 other general or special law.
8361
8362 SECTION 107. Section 2 of chapter 62F of the General Laws, as so appearing, is hereby
8363 amended by striking out the definitions of “Cumulative net state tax revenues,”, “Cumulative
8364 permissible tax revenues,”, “Permissible revenue growth rate,” and “Permissible tax revenue,”.
8365
8366 SECTION 108. Section 6A of said chapter 62F is hereby repealed.

8367 SECTION 109. Chapter 66 of the General Laws is hereby amended by striking out section 1, as
8368 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-:—

8369 Section 1. Public records division; commission of public records.

8370 (a) There is established a public records division within the office of the secretary of the
8371 commonwealth.

8372 (b) There shall be established a commission of public records to govern the division of public
8373 records. The commission shall be composed of five members.

8374 (c) Three members shall be appointed by the governor, one of whom shall be the president of
8375 the Massachusetts Municipal Association or his designee and one of whom shall be the president
8376 of the Massachusetts Newspaper Publishers Association or his designee. One member shall be
8377 appointed by the secretary of state and shall serve as chairman and one member shall be
8378 appointed by the attorney general.

8379 (d) Members shall serve for terms of five years.

8380 (e) No member or employee of the commission shall hold or be a candidate for any other
8381 public office while a member or employee or for one year thereafter.

8382 (f) Members may be removed by a majority vote of the governor, state secretary and
8383 attorney general for substantial neglect of duty, inability to discharge the powers and duties of
8384 office, violation of subsection d of this section, gross misconduct or conviction of a felony.

8385 (g) Any vacancy occurring on the commission shall be filled within ninety days by the
8386 original appointing authority. A person appointed to fill a vacancy occurring other than by
8387 expiration of a term of office shall be appointed for the unexpired term of the member he
8388 succeeds.

8389 (h) The commission shall elect a vice chairman, who shall serve as chairman in the
8390 chairman's absence. Three members shall constitute a quorum and three affirmative votes shall
8391 be required for any action or recommendation of the commission. Any member may call a
8392 meeting; at least seven days advance notice of all meetings shall be given to all members and to
8393 any other person who requests such notice and posted on line.

8394 (i) Members shall be compensated for work performed for the commission at such rate as
8395 the secretary of state and the secretary of administration and finance shall jointly determine, and
8396 shall be reimbursed for their reasonable expenses.

8397 (j) The commission shall annually report to the general court and the governor concerning
8398 the action it has taken; the names and salaries and duties of all individuals in its employ and the

money it has disbursed; and shall make such further reports on matters within its jurisdiction as may appear necessary.

(k) The commission shall hire and employ a supervisor of public records and, subject to appropriations, such other staff as it shall require, who shall serve at the pleasure of the commission.

SECTION 110. Said chapter 66 is hereby further amended by striking out section 2 and inserting in place thereof the following section:-:—

Section 2. The supervisor of public records, in this chapter called the supervisor of records, shall take necessary measures to put the records of the commonwealth, counties, cities or towns in the custody and condition required by law and to secure their preservation. He shall see that the records of churches, parishes or religious societies are kept in the custody and condition contemplated by the various laws relating to churches, parishes or religious societies, and for these purposes he may expend from the amount appropriated for expenses such amount as he considers necessary. The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

SECTION 111. Said chapter 66 is hereby further amended by inserting after Section 3 the following new section:--

Section 3A. When designing or acquiring an electronic recordkeeping system or database, any person having custody of a public record shall ensure that such system or database is capable of providing data in a common format such as, but not limited to, the American Standard Code for Information Interchange or the Uniform Character Set Transformation Format. When records maintained electronically include both public record information and exempt information that

may be withheld from public inspection, the custodian shall design its information storage and retrieval methods in a manner that permits the segregation and retrieval of public record information in order to provide maximum public access. No custodian of a public record may enter into a contract for the storage of electronic records containing public record information that impairs or restricts public access to those records.

SECTION 112. Said chapter 66 is hereby further amended by inserting after Section 6 the following new section:--

Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more employees as records access officers, who shall have the custody of all its public records other than those records for which a clerk is the statutory custodian. Each agency shall publicize by posting in a conspicuous location at its offices and in a conspicuous location on its website, if any, the name, title, business address and business telephone number of the designated records access officers. The designation of one or more records access officers shall not be construed to prohibit employees who have in the past been authorized to make records or information available to the public from continuing to do so.

Records access officers shall be responsible for coordinating such agency's response to requests for access to records under the provisions of this chapter, shall facilitate the informal resolution of requests by timely and thorough production of records, and shall ensure that the agency:

(a) Assist requesters seeking records to identify the records sought;

(b) In responding to a request, indicate whether the records are available in electronic form and the manner in which the records are stored, filed, retrieved or generated, to assist requesters in describing the records sought;

8443 (c) Contact requesters when the response to a request would be voluminous so the agency may,
8444 at the option of the requester, assist the requester in focusing the request in order to facilitate the
8445 timely and thorough production of the records sought;

8446 (d) Maintain a reasonably detailed document classification scheme outlining categories of
8447 records maintained by the agency, whether or not open for public inspection. The document
8448 classification scheme shall be updated annually, conspicuously marked with the date of the most
8449 recent update, and posted on the agency's website, if any.

8450

8451 SECTION 113. Section 10 of said chapter 66 is hereby amended by striking subsection (a) and
8452 inserting the following:--

8453 (a) Every person having custody of any public record, as defined in clause Twenty-sixth of
8454 section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit
8455 it, or any segregable portion of a record which is an independent public record, including public
8456 record information which may be separately retrieved from an electronic record, to be inspected
8457 and examined by any person, under his supervision, and shall furnish one copy thereof upon
8458 payment of a reasonable fee not to exceed the actual cost of reproducing the record.

8459 In determining the actual cost of reproducing a record, the custodian of the record may include
8460 only: (i) the actual cost of any storage devices or materials provided to the requester in
8461 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest
8462 paid employee who has the necessary skill required to prepare a copy of the requested record,
8463 provided that no fee shall be charged unless at least two hours of employee time is needed to
8464 prepare a copy of the record requested, and further provided that no fee shall be charged for

8465 employee time to prepare photocopies of records or retrieve electronic public record information;
8466 and (iii) when the custodian`s information technology capabilities are inadequate to prepare a
8467 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
8468 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary
8469 attributed to the lowest paid state employee who has the necessary skill required to prepare such
8470 a copy. In no case shall fees for black and white photocopies exceed 5 cents per letter size page
8471 or smaller, or 7 cents per larger page.

8472 Every person having custody of a record shall inform the requester of the estimated cost of
8473 preparing a copy of the record if more than two hours of an employee`s time is needed, or if an
8474 outside professional service would be retained to prepare a copy of the record. No fee shall be
8475 charged for the following: (1) search time; or (2) review of the content of requested records to
8476 determine the extent to which exempt and public information must be segregated.

8477 SECTION 114. Section 10 of said chapter 66 is hereby further amended by striking out
8478 subsection (b) and inserting in place thereof the following:--

8479

8480 (b) A custodian of a public record shall, within ten days following receipt of a request for
8481 inspection or copy of a public record, comply with such request. Such request may be delivered
8482 in hand to the office of the custodian or mailed via first class mail or sent electronically if the
8483 office has designated a secure means of receiving such requests electronically that allows the
8484 requester to obtain a written receipt of said request. If the record is maintained electronically, the
8485 custodian shall provide the requested public record in electronic form if so requested. If the
8486 custodian refuses or fails to comply with such a request, the person making the request may

8487 petition the supervisor of records for a determination whether the record requested is public.
8488 Upon the determination by the supervisor of records that the record is public, he shall order the
8489 custodian of the public record to comply with the person's request. If the custodian refuses or
8490 fails to comply with any such order, the supervisor of records shall, within five days, notify the
8491 attorney general or the appropriate district attorney thereof who shall take whatever measures he
8492 deems necessary to insure compliance with the provisions of this section. The supervisor of
8493 records may also seek compliance with his order pursuant to section 10A where neither the
8494 attorney general nor the appropriate district attorney has achieved enforcement of the order
8495 within sixty days of notification. The administrative remedy provided by this section shall in no
8496 way limit the availability of the administrative remedies provided by the commissioner of
8497 administration and finance with respect to any officer or employee of any agency, executive
8498 office, department or board; nor shall the administrative remedy provided by this section in any
8499 way limit the availability of judicial remedies otherwise available to any person requesting a
8500 public record. If a custodian of a public record refuses or fails to comply with the request of any
8501 person for inspection or copy of a public record or with an administrative order under this
8502 section, the supreme judicial or superior court shall have jurisdiction to order compliance. The
8503 person making the request shall be entitled to an award of reasonable attorney's fees and costs if
8504 the custodian withholding the public record was in violation of this chapter.

8505 SECTION 115. Section 10 of said chapter 66 is hereby further amended by adding at the end the
8506 following:--

8507 (e) If a public record or public record information is available in electronic form, the custodian
8508 shall, at the option of the requester, provide it in that form. In making a record available to a
8509 requestor, the custodian shall provide the record in any format requested if the record is readily

reproducible in that format. If a request does not specify the format for producing electronically stored information, the custodian shall provide the record information in a common format that is reasonably usable. For public records in electronic form, a custodian may charge the requestor only the actual cost of any storage devices or materials provided to the requestor. When the custodian`s information technology capabilities are inadequate to prepare a copy of the record, the custodian may charge the requestor the actual cost of engaging an outside service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary attributed to the lowest paid state employee who has the necessary skill required to prepare such a copy. Any programming necessary to retrieve a public record or public record information and provide the record or record information in the requested format, or to allow the record or record information to be read or printed, shall not be deemed to be the preparation or creation of a new record.

SECTION 116. Said chapter 66 is hereby further amended by inserting after Section 10 the following new sections:--

Section 10A. The supervisor of records is hereby authorized to conduct adjudicatory proceedings and promulgate regulations relative to conducting said proceedings. There shall be within the division a division of administrative law appeals under the direction of a chief administrative magistrate who shall be appointed by the supervisor of records. Said chief administrative magistrate, shall be a resident of the commonwealth at the time of his appointment and shall be a person with substantial experience as a trial attorney. He shall hear, or assign for hearing, appeals filed pursuant to this chapter or regulations promulgated thereof and may, subject to appropriation, appoint and make available presiding officers who serve as administrative magistrates or the equivalent thereof, to hear appeals assigned pursuant to this chapter. Said presiding officers shall serve under the direction, supervision and control of the supervisor of

records and shall be utilized to expedite appeals of the public records division. The chief administrative magistrate, shall, when necessary, promulgate regulations governing the proceedings or appeals to be so conducted or heard prior to conducting or hearing any proceedings or appeals.

It shall be the responsibility of said chief administrative magistrate to organize his division to provide speedy and fair disposition of all appeals and to establish policies that will encourage and aid parties in their compliance with this chapter. The division may summon witnesses, administer oath and require the production of books, records, papers, electronic records and any other document at any hearing before the division, upon any matter within its jurisdiction. Witnesses may be summoned by any party to the proceeding in the same manner, be paid the same fees and be subject to the same penalties as witnesses in civil cases before the courts of the commonwealth.

The division may institute by its own initiative appropriate proceedings in the court with appropriate jurisdiction for enforcement of its final orders or decisions. Any party aggrieved by a final order or decision of the division following a hearing pursuant to any section of this chapter or chapter thirty-one A may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision. Any proceedings in the court with appropriate jurisdiction shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A, and may be instituted in the court with appropriate jurisdiction.

Section 10B. (a) Every state agency, as defined by Chapter 66A, that has the ability to provide public internet access, at no charge, to a public record in its custody, shall make reasonable efforts to do so. A custodian state agency shall be required to provide public internet access, at

8555 no charge, to the following types of public records in searchable format: (i) final opinions,
8556 decisions, orders, or votes from agency proceedings; (ii) annual reports; (iii) reports to the
8557 General Court; (iv) notices of regulations proposed under chapter 30A; (v) notices of hearings;
8558 (vi) winning bids for public contracts; and (vii) any public record information of significant
8559 interest to the general public including, but not limited to, public record information which is the
8560 subject of multiple public records requests.

8561 (b) Every state agency shall prepare and maintain reference materials to enhance access to
8562 public records in its custody and enable requestors to make informed requests, including: (i) a
8563 reasonably detailed document classification scheme, to be updated annually, outlining categories
8564 of records maintained by the agency, whether or not open for public inspection,; and (ii) an index
8565 and description of all major databases, document management applications, and electronic
8566 recordkeeping and locator systems maintained by the agency, including an indication of which
8567 records are publicly accessible, at no charge, on the internet. Each state agency that maintains a
8568 website shall post such reference materials on its website.

8569 (c) The secretary of each executive office shall, on or before January 1, 2012, promulgate
8570 rules and regulations to carry out the purposes of this act which shall be applicable to all
8571 agencies, departments, boards, commissions, authorities, and instrumentalities within each of
8572 said executive offices subject to the approval of the secretary of administration and finance, in
8573 consultation with the chief information officer of the commonwealth. Any agency not within any
8574 such executive office shall be subject to the regulations of the secretary of administration and
8575 finance. The attorney general, the state secretary, the state treasurer and the state auditor shall
8576 adopt applicable regulations for their respective departments on or before January 1, 2013.

SECTION 117. Said chapter 66 is hereby further amended by striking out section 15 and inserting in place thereof the following section:-:—

Section 15. Whoever unlawfully keeps in his possession any public record or removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or both. Any public officer who refuses or neglects to perform any duty required of him by this chapter shall for each month of such neglect or refusal be punished by a fine of not more than five hundred dollars. SECTION 118. Chapter 81 of the General Laws is hereby amended by inserting after section 8A the following 2 sections:-

Section 8B. The commissioner of highways or the commissioner of the department of conservation and recreation shall require that any person proposing to bid on any work, excepting the construction, reconstruction, repair or alteration of buildings, to be awarded by the division of highways or by the department of conservation and recreation, respectively, and the commissioner of highways shall require that any person proposing to bid on any such work to be awarded by a municipality under section 34 of chapter 90, submit a statement under the penalties of perjury setting forth the person’s qualifications to perform such work. Such statement shall be in such detail and form and shall be submitted at such times as such commissioner may prescribe under rules promulgated by said division or commission, respectively, subject to the requirements of chapter 30A. Such rules may require such information as may be necessary to implement this section and may establish a basis for the classification and maximum capacity rating of bidders which shall determine the class and aggregate amount of work such bidders are

qualified to perform. The statement shall set forth, among other matters that may be prescribed by the rules, the proposed bidders' financial resources, proposed bidders' current bonding capacity, proposed bidders' experience, the number and kinds of equipment which proposed bidder has for use on such work, and the number, size and completion dates of other construction jobs, whether in this state or another state, which proposed bidderhas under contract. The information contained within such statement, together with other relevant available information and the proposed bidder's past performance on work of a similar nature, may be considered by said division or commission in determining whether or not the proposed bidder is qualified to perform any specific work for which proposals to bid are invited.

Based on information received and available and on past performance of the proposed bidder on work of a similar nature, each such commissioner, acting through a prequalification committee consisting of engineering personnel of said division or commission, respectively, to be appointed by each such commissioner, shall determine the class and aggregate amount of work that a proposed bidder is qualified to perform, and shall limit a proposed bidder to such class and aggregate amount of work as the proposed bidder may be qualified to perform. Said aggregate amount of work shall not be less than the amount of the bidder's current bonding capacity, as verified to the commissioner's satisfaction, by a surety company incorporated under section 105 of chapter 175, or authorized to do business in the commonwealth under section 106 of said chapter 175, and satisfactory to the commissioner; provided, however, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable. Said division or commission shall limit the bid proposals to be furnished to a proposed bidder to such bidders as are determined by its commissioner to have the classification and capacity rating to perform the

work required.

Any such statement filed with either such commissioner by a proposed bidder shall be confidential, and shall be used only by the division of highways or the department of conservation and recreation, as the case may be, in determining the qualifications of such proposed bidder to perform work for said division or commission, or for a municipality under section 34 of chapter 90. No information contained in such statement shall be imparted to any other person without the written consent of said bidder.

If any proposed bidder fails to file the statement required by this section, or if, in the judgment of the commissioner, the proposed bidder is not qualified to carry out the work required under a contract which is proposed to be awarded, the commissioner shall refuse to furnish such proposed bidder with bid proposals for such work and shall reject any bid by such proposed bidder for such work.

Only persons filing the statement required in this section shall be authorized as prime contractors and then only as to the class and aggregate amount of work which their qualifications warrant.

Any bidder qualified as authorized in this section shall be promptly notified by the commissioner.

Any proposed bidder who is aggrieved by any decision or determination of the prequalification committee or the commissioner which affects the bidder’s right to bid may file a new application

for qualification at any time, or within 15 days after receiving notice of such decision the applicant may request in writing a hearing before an appeal board to reconsider the bidder's application or qualifications. The appeal board in the division of highways shall consist of the commissioner, the associate commissioners and the chief engineer of highways, or their designees, and the appeal board in the department of conservation and recreation shall consist of the commissioner, the associate commissioners, and the director or chief engineer of the division involved, or their designees.

Any bidder or proposed bidder who so requests shall be granted a hearing by such appeal board at which the bidder may submit any and all additional information or evidence bearing upon the bidder's finances, current bonding capacity, experience or other qualifications which may be relevant thereto. Such hearing shall be held without delay and the board shall promptly render its decision after taking into consideration all relevant information or evidence submitted relating to the bidder' qualifications. The appeal board may modify, amend or reverse any previous decision of the prequalification committee or the commissioner with respect to the qualification of the applicant or may sustain such previous decision. Such hearing shall be deemed to be an adjudicatory proceeding, and any bidder or proposed bidder who is aggrieved by the decision of the appeal board shall have a right to judicial review under said chapter 30A.

The commissioner of highways or the commissioner of the department of conservation and recreation shall not consider any bid filed with such commissioner by any person for any contract to be awarded by said division or department, respectively, who has not been qualified as required by the rules promulgated by said division or department, and any such bid of any

unqualified bidder may be rejected without being opened. No contract shall be awarded to any bidder not qualified to bid on the contract at the time fixed for receiving bids.

Any person, firm or corporation who knowingly and willfully makes, or causes to be made, any false or fraudulent statement in any application for qualification filed with such division or department as required herein shall, upon final conviction, be disqualified from submitting bids on contracts advertised by the division or commission for a period of 1 year following the date of said conviction.

This section shall not apply to any proposed bidder the aggregate amount of whose work with said division of highways or with the department of conservation and recreation, including the amount of his proposal, is less than $50,000.

Section 8C. Any contract for the resurfacing, maintenance, minor reconstruction, or minor repair of any major state highway or numbered route within the city of Boston, between said city and state highway route 128, of state highway route 3 as far south as the junction of state highway route 139, on which the average daily traffic exceeds 70,000 vehicles per day, and any contract for the maintenance, minor reconstruction, or minor repair of state highway route 128 between its junction with state highway route 3 in the town of Braintree and its junction with U.S. route 1 in the town of Lynnfield, to be awarded by the division of highways, the department of conservation and recreation, or by a municipality under section 34 of chapter 90 shall, unless such contract involves the performance of emergency work as described in this section, provide that no work shall be performed between the hours of 6:30 and 9:00 a.m. on lanes inbound to the

city of Boston or between the hours of 4:00 and 6:00 p.m. on lanes outbound from the city of Boston, Monday through Friday, except holidays. No such work, except emergency work, shall be performed on such a highway or route by a public employee during such hours. As used in this section emergency work shall include only those projects immediately necessary to insure the safety of persons using such highways or routes.

SECTION 119. Chapter 447 of the acts of 1947 is hereby amended by striking the following:

"; provided, that the substance of debates by and among the members of the city council shall not be so published or published elsewhere at the expense of said city"

SECTION 120. Chapter 240 of the acts of 2010 is hereby amended by striking out sections 67 and 68 and inserting in place thereof the following 2 sections:-

Section 67. Section 2 of said chapter 30A, as so appearing, is hereby amended by inserting after the third paragraph the following 2 paragraphs:-

The notice shall also include a small business impact statement considering the impact of the proposed regulation on small business with the state secretary. Notwithstanding section 6, the state secretary shall include the statement of small business consideration and the full text of said small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may also be inspected and copied in the office of the state secretary during business hours. That small business impact statement shall include, but not be limited to, the following:

8714 (1) an estimate of the number of small businesses subject to the proposed regulation;

8715

8716 (2) projected reporting, recordkeeping and other administrative costs required for compliance

8717 with the proposed regulation;

8718

8719 (3) the appropriateness of performance standards versus design standards;

8720

8721 (4) an identification of regulations of the promulgating agency, or of another agency or

8722 department of the commonwealth, which may duplicate or conflict with the proposed regulation;

8723 and

8724

8725 (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of

8726 new businesses in the commonwealth.

8727

8728 Section 68. Section 3 of said chapter 30A, as so appearing, is hereby amended by inserting after

8729 the third paragraph the following 2 paragraphs:-

8730

8731 The notice shall also include a small business impact statement considering the impact of the

8732 proposed action on small businesses with the state secretary. Notwithstanding section 6, the state

8733 secretary shall include the statement of small business consideration and the full text of said

8734 small business impact statement on the electronic website of the state secretary; provided,

8735 however, that the full text of the small business impact statement may also be inspected and

8736 copied in the office of the state secretary during business hours.

8737

8738 That small business impact statement shall include, but not be limited to, the following:

8739

8740 (1) an estimate of the number of small businesses subject to the proposed regulation;

8741

8742 (2) projected reporting, recordkeeping and other administrative costs required for compliance

8743 with the proposed regulation;

8744

8745 (3) the appropriateness of performance standards versus design standards;

8746

8747 (4) an identification of regulations of the promulgating agency, or of another agency or

8748 department of the commonwealth, which may duplicate or conflict with the proposed regulation;

8749 and

8750

8751 (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of

8752 new businesses in the commonwealth.

8753

8754 SECTION 121. There is hereby created a commission called the registry of deeds modernization

8755 and efficiency commission, hereinafter referred to as the commission, for the purpose of

8756 identifying best practices and efficiencies for the registry of deeds.

8757

8758 The commission shall be made up of 14 members: 3 members of the senate, 1 of whom shall be

8759 selected by the minority leader; 3 members of the house of representatives, 1 of whom shall be

8760 selected by the minority leader, the secretary of state or the secretary's designee; 3 elected
8761 registers of deeds from geographically diverse areas of the state, who shall be chosen by the
8762 secretary of state; and 4 additional members to be appointed by the governor who shall be
8763 knowledgeable in land surveying, law, record keeping, county government or information and
8764 technology.
8765
8766 The commission shall examine possible efficiencies including, but not limited to, (i) eliminating
8767 duplicitous management, including elected registry positions (ii) expanding the use of
8768 technology at all registries, and (iii) consolidating all registry of deeds under the office of the
8769 secretary of state. The commission shall report its findings and recommendations for legislation,
8770 if any, to the joint committee on election laws, the joint committee on state administration and
8771 regulatory oversight and the senate and house committee on ways and means not later than 1
8772 year after the effective date of this act.
8773
8774 SECTION 121A. Notwithstanding any general or special law to the contrary all state authorities
8775 as defined by section 1 of chapter 29 of the General Laws shall compile a report on the salaries
8776 and compensation of its executive director, officers, board members, senior management and
8777 other highly-compensated employees, exclusive of the executive director. The report shall
8778 include, but not limited to, base salary, bonuses, severance, retirement or deferred compensation
8779 packages and policies relative to the accrual and payment of sick and vacation time, including
8780 payouts for unused sick and vacation time. Each state authority shall file the report with and the
8781 clerks of the senate and house of representatives, the senate and house committees on ways and
8782 means and the senate and house committees on post audit and oversight not later than September

30, 2011.

SECTION 121B. Notwithstanding any general or special law to the contrary, the governor shall develop, on a biennial basis, a plan to maximize the personnel efficiencies of the commonwealth, to control the commonwealth's personnel costs and which details the number of state employees and the costs of those employees. The plan shall be first filed not later than 9 months after the effective date of this act, and on a biennial schedule thereafter, with the house and senate committees on ways and means.

SECTION 122. Each executive office shall comply with the requirements of section 4A of chapter 6A of the General Laws, as inserted by section 13 of this act, and section 4R of chapter 7 of the General Laws, as inserted by section 30 of this act not later than July 1, 2012. Such compliance shall be documented in reports by each executive office to the house and senate committees on ways and means, the house and senate committees on post-audit and oversight and the joint committee on state administration and regulatory oversight not later than July 1, 2012.

SECTION 123. Buildings which have been scheduled for comprehensive energy conservation improvements before the effective date of chapter 7C of the General Laws may, upon approval of the commissioner of energy resources, be exempted from section 31 of said chapter 7C.

SECTION 124. The state lottery commission shall comply with the requirements of section 26A of chapter 10 of the General laws, as inserted by section 88 of this act, not later than July 1,

2012. Such compliance shall be documented in a report by the state lottery commission to the house and senate committees on ways and means, the house and senate committees on post audit and oversight and the joint committee on state administration and regulatory oversight not later than July 1, 2012.

SECTION 125. The comptroller shall promulgate the schedule of revenue accounts, as required in section 2 of chapter 29 of the General Laws, as inserted by section 98, not later than June 30, 2012.

SECTION 125A. The first zero-based budget required under section 5H of chapter 29, as inserted by section 98, shall be filed under section 7H of said chapter 29, as inserted by this act, for the fiscal year starting on July 1, 2016.

SECTION 126. Any appropriation previously available for expenditure in multiple fiscal years under section 14 of chapter 29 of the General Laws shall not be available after June 30, 2011.

SECTION 127. The state treasurer shall competitively procure any fund established under section 38A of chapter 29 of the General Laws, as inserted by section 98, not later than September 30, 2011.

SECTION 127A. Section 49 of chapter 29, as inserted by section 98, shall apply to all bonds issued after the effective date of this act.

SECTION 127. Sections 83 and 84 shall take effect for the fiscal year ending on June 30, 2011.

SECTION 128 Section 106 shall take effect for the fiscal year starting on July 1, 2012.

SECTION129. Except as otherwise specified, this act shall take effect on July 1, 2011.”.