

HOUSE No. 3944

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill to improve the administration of state government and finance (Senate, No. 1940). February 13, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

The Committee on Ways and Means recommends that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION 1. Chapter 3 of the General Laws, as appearing in the 2010 Official Edition, is hereby
2 amended by striking out section 8 and inserting in place thereof the following section:-

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

7 SECTION 2. Said chapter 3 of the General Laws is hereby further amended by inserting after
8 section 12A the following section:-

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

12 SECTION 3. Section 15 of said chapter 3, as so appearing, is hereby amended by striking out the

13 first paragraph and inserting in place thereof the following paragraph:-

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

17 SECTION 4. Section 16 of said chapter 3, as so appearing, is hereby amended by striking out, in
18 lines 4 and 5, the words “or, during its recess, of the governor”.

19 SECTION 5. Said section 16 of said chapter 3, as so appearing, is hereby further amended by
20 striking out the words “or, during its recess, by the governor and council, in lines 9 and 10.

21 SECTION 6. Said chapter 3 of the General Laws is hereby further amended by inserting after
22 section 22 the following section:-

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

26 SECTION 7. Section 23 of said chapter 3, as so appearing, is hereby amended by striking out the
27 third paragraph.

28 SECTION 8. Said chapter 3, as so appearing, is hereby further amended by striking out section
29 35, and inserting in place thereof the following section:-

30 Section 35. Advertisements of hearings of legislative committees shall be published on the
31 official website of the general court and may be published in additional publications if the chairs
32 of the committee determine that additional publication is necessary to reach those with a
33 substantial interest in a matter pending at the hearing.

34 SECTION 9. Section 38A of said chapter 3, as so appearing, is hereby amended by striking out,
35 in lines 1 and 2, the words “and the committees on ways and means of either branch thereof” and

36 inserting in place thereof the following words:- , the house and senate committees on ways and
37 means and the house and senate committees on bonding, capital expenditures and state assets
38 SECTION 10. Section 38B of said chapter 3, as so appearing, is hereby amended by striking out,
39 in line 2, the words “, or the joint committee on ways and means,”.

40 SECTION 11. Sections 56 to 61, inclusive of chapter 3 of the General Laws are hereby repealed.

41 SECTION 12. Chapter 5 of the General Laws is hereby repealed.

42 SECTION 13. Chapter 6 of the General Laws is hereby amended by striking out section 5, as
43 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-
44 Section 5. The governor may appoint such employees as may be necessary, who shall hold office
45 during the pleasure of the governor, and shall receive such salaries as may be approved by the
46 governor.

47 SECTION 14. Sections 6 to 7, inclusive, of said chapter 6 are hereby repealed.

48 SECTION 15. Section 10 of said chapter 6, as so appearing, is hereby amended by striking out
49 the last sentence.

50 SECTION 16. Section 11 of said chapter 6 is hereby repealed.

51 SECTION 17. Section 12 of said chapter 6, as so appearing, is hereby amended by striking out,
52 in lines 3 and 4, the words “and council, who shall approve such claims before they are sent to
53 the comptroller”.

54 SECTION 18. Section 17 of said chapter 6, as so appearing, is hereby amended by striking out,
55 in line 11, the words “finance advisory board” and inserting in place thereof the following
56 words:- state finance and governance board established under section 97 of chapter 6.

57 SECTION 19. Chapter 6 of the General Laws is hereby amended by striking out sections 97 and
58 98, as so appearing, and inserting in place thereof the following 2 sections:-

59 Section 97. (a) As used in this section and section 98, the following terms shall have the
60 following meanings:

61 "Board", the state finance and governance board established by subsection (b).

62 "Derivative financial products", financial instruments with values derived from or based upon the
63 value of other assets or on the level of an interest rate index including, but not limited to,
64 detached call options, interest rate swaps or swaptions, caps, floors and collars, but not including
65 bond insurance or other credit or liquidity enhancement of bonds or notes or agreements related
66 to the lending or investment of the proceeds of bonds or notes.

67 "State entity", the commonwealth, a state authority or another state entity with responsibility for
68 managing and overseeing public funds.

69 "Secretary", the secretary of administration and finance.

70 (b) There shall be a state finance and governance consisting of 5 members: 3 of whom shall be
71 appointed by the governor and 2 of whom shall be appointed by the state treasurer. Upon the
72 expiration of the term of a member, a successor shall be appointed for a term of 4 years. At least
73 2 members appointed by the governor shall be persons with expert knowledge of the field of
74 public finance. The governor shall, from time to time, designate one of the members to serve as
75 chair. The members shall serve without compensation but shall receive their necessary expenses
76 incurred in the discharge of their official duties. The secretary shall provide the board with
77 appropriate staff and other assistance, and may engage professionals to advise the board.

78 Section 98. (a) The board shall promote transparency, public accountability and adherence to
79 best practices by all state entities with respect to proper governance of state entities and
80 investments, borrowing or other financial transactions made or entered into by state entities and
81 involving public funds, including tax supported debt. The board shall make an annual written

82 report to the secretary, the state treasurer, the state auditor, the house and senate committees on
83 ways and means and the senate and house committees on bonding, capital expenditures and state
84 assets with respect to its findings regarding investments, borrowing and other financial
85 transactions carried out by state entities and its activities to promote proper governance,
86 transparency, public accountability and best practices. If the board so requests, the secretary
87 shall provide the board with copies of reports and other information about the accountability and
88 transparency of state authorities, provided to the secretary under section 29K of chapter 29.

89 (b) The board shall conduct a review, before its execution, of any transaction relating to
90 derivative financial products, proposed to be entered into by a state entity. All state entities shall
91 submit to the board the terms of the proposed transaction and any supporting documents. The
92 board shall complete its review of the proposed transaction and notify the submitting entity of its
93 conclusions within a reasonable period of time after receiving the proposal.

94 (c) In order to carry out its duties, the board may:

95 (1) adopt regulations or guidelines requiring state entities to report, adopt appropriate policies
96 and adhere to best practices with respect to governance, investments, borrowing and other
97 financial transactions;

98 (2) make recommendations to state entities or state officers and propose legislative changes to
99 improve governance practices or the management of public funds;

100 (3) conduct oversight hearings with respect to governance practices, investment, borrowing and
101 other financial transactions made or entered into by state entities; and

102 (4) conduct meetings, conferences, or training sessions, maintain a website, publish materials, or
103 other activities to disseminate best practices to state officials, board members and managers of
104 state entities and the public.

105 SECTION 20. Section 1 of chapter 6A of the General Laws, as so appearing, is hereby amended
106 by striking out the definition of “State agency” and inserting in place thereof the following
107 definition:-

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

109 SECTION 21. Section 4 of said chapter 6A, as so appearing, is hereby amended by striking out,
110 in lines 13 and 14, the words “sections two C, three, three A, four, nine B and twenty-nine of”

111 SECTION 22. Section 6 of said chapter 6A, as so appearing, is hereby amended by striking out,
112 in lines 1 and 2, the words “commissioner of administration” and inserting in place thereof the
113 following words:- secretary of administration and finance.

114 SECTION 23. Said section 6 of said chapter 6A is hereby further amended by striking out the
115 last sentence and inserting in place thereof the following sentence:- All such funds may be
116 expended by the secretary under chapter 29 and any rules or regulations promulgated under that
117 chapter.

118 SECTION 24. Section 16 of said chapter 6A, as so appearing, is hereby amended by striking out
119 the seventh paragraph.

120 SECTION 25. Section 1 of chapter 7 of the General Laws, as so appearing, is hereby amended
121 by striking out the definitions of “Commissioner” and “Finance committee”.

122 SECTION 26. Said section 1 of said chapter 7, as so appearing, is hereby further amended by
123 adding the following definition:-

124 “Secretary”, the secretary of administration and finance.

125 SECTION 27. Said chapter 7 is hereby amended by striking out section 2, as so appearing, and
126 inserting in place thereof the following section:-

127 Section 2. There shall be an executive office for administration and finance, which shall serve

128 directly under the governor.

129 SECTION 28. Section 3B of said chapter 7, as so appearing, is hereby amended by striking out
130 the first 3 paragraphs.

131 SECTION 29. Said section 3B of said chapter 7, as so appearing, is hereby further amended by
132 striking out in lines 26 to 28, inclusive, the words “Notwithstanding any other general or special
133 law to the contrary, for the period beginning March first, nineteen hundred and ninety-one, the
134 secretary of administration” and inserting in place thereof the following words:- Each fiscal year,
135 under a schedule promulgated by the secretary, the secretary:.

136 SECTION 30. Said section 3B of said chapter 7, as so appearing, is hereby further amended by
137 striking out, in line 45, the words “of administration and finance”.

138 SECTION 31. The fourth paragraph of said section 3B of said chapter 7, as so appearing, is
139 hereby amended by striking out the last sentence.

140 SECTION 32. Said chapter 7 is hereby further amended by inserting after section 3B the
141 following 3 sections:-

142 Section 3D. The state purchasing agent shall supervise the state printing and all publications by
143 the commonwealth shall be printed under the agent’s direction; provided, that this section shall
144 not apply to topographic maps issued by state departments, legislative printing or publications
145 required to be issued by the state secretary under sections 2 to 4, inclusive, or under chapter 90 of
146 the resolves of 1920 or any other special law. Unless otherwise provided, all publications by the
147 commonwealth shall be distributed under the direction of the state secretary.

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

151 Section 3F. Each state agency shall also provide 2 copies of its publication, as defined in section
152 39 of chapter 6 to the state secretary, 1 of which shall be retained for 2 years as a reference copy.
153 The state secretary shall determine which publications are of sufficient public interest and may
154 then either provide for electronic availability of such publications, reproduce the publications in
155 appropriate quantities or acquire the publications in appropriate quantities directly from the
156 issuing agency, at the cost of printing, for distribution by said secretary.

157 SECTION 33. Section 4 of said chapter 7, as appearing in the 2010 Official Edition, is hereby
158 amended by striking out the first sentence and inserting in place thereof the following sentence:-
159 The governor shall appoint the secretary of administration and finance.

160 SECTION 34. Section 4A of said chapter 7, as so appearing, is hereby amended by striking out,
161 in line 27, the words “commissioner of administration” and inserting in place thereof the
162 following word:- secretary.

163 SECTION 35. Paragraph (d) of said section 4A of said chapter 7, as most recently amended by
164 section 11 of chapter 68 of the acts of 2011, is hereby amended by striking out the word
165 “governor” and inserting in place thereof the following word:- secretary.

166 SECTION 36. The first paragraph of section 4D of said chapter 7, as amended by section 13 of
167 chapter 68 of the acts of 2011, is hereby amended by striking out the word “commissioner”,
168 wherever it appears, , and inserting in place thereof, in each instance, the following word:-
169 secretary.

170 SECTION 37. The second paragraph of said section 4D of said chapter 7, as amended by section
171 13 of chapter 68 of the acts of 2011, is hereby amended by striking out the word
172 “commissioner”, wherever it appears, and inserting in place thereof, in each instance, the
173 following word:- secretary.

174 SECTION 38. Said chapter 7 is hereby further amended by striking out sections 4E and 4F, as
175 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-
176 Section 4E. In addition to any powers provided in chapter 6A, in making any examination or
177 investigation authorized under this chapter, the secretary may require the production of books,
178 papers, contracts and documents in the custody of any agency other than those within the
179 executive office of administration and finance, which relate to any matter within the scope of
180 such examination or investigation.

181 SECTION 39. Section 4G of said chapter 7, as so appearing, is hereby amended by striking out,
182 in line 4, the words “finance advisory board” and inserting in place thereof the following words:-
183 state finance and governance board established under section 97 of chapter 6.

184 SECTION 40. Said section 4G of said chapter 7 is hereby further amended by striking out, in
185 line 6, the words “the board of economic advisors”.

186 SECTION 41. Section 5 of said chapter 7, as so appearing, is hereby amended by striking out,
187 wherever it appears, the word “commissioner” and inserting in place thereof, in each instance,
188 the following word:- secretary.

189 SECTION 42. Sections 6B and 6E of said chapter 7 are hereby repealed.

190 SECTION 43. Section 7 of said chapter 7, as so appearing, is hereby amended by striking out, in
191 line 1, the words “commissioner of administration” and inserting in place thereof the following
192 word:- secretary.

193 SECTION 44. Said section 7 of said chapter 7 is hereby further amended by striking out, in line
194 13, the word “commissioner” and inserting in place thereof the following word:- secretary.

195 SECTION 45. Section 7A of said chapter 7, as so appearing, is hereby amended by striking out,
196 in line 1, the words “commissioner of administration” and inserting in place thereof the

197 following word:- secretary.

198 SECTION 46. Said section 7A of said chapter 7 is hereby further amended by striking out, in
199 line 5, the words “said commissioner” and inserting in place thereof the following words:- the
200 secretary.

201 SECTION 47. Section 8 of said chapter 7, as so appearing, is hereby amended by striking out, in
202 lines 2 and 3, the words “or of the council, or of the finance committee, the commissioner” and
203 inserting in place thereof the following words:- the secretary.

204 SECTION 48. Said chapter 7 is hereby further amended by striking out section 9, as so
205 appearing, and inserting in place thereof the following section:-

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

212 SECTION 49. Section 9A of said chapter 7, as so appearing, is hereby amended by striking out
213 in lines 1, 16 and 48, each time they appear, the words “of administration and finance”.

214 SECTION 50. Said section 9A of said chapter 7 is hereby further amended by striking out, in
215 lines 26 and 27, the words “provided in administrative bulletin 896 issued by the executive office
216 for administration and finance” and inserting in place thereof the following words:- established
217 by the executive office for administration and finance through administrative action.

218 SECTION 51. Said section 9A of said chapter 7 is hereby further amended by striking out, in
219 line 69, the words “division of capital asset management and maintenance” and inserting in place

220 thereof the following words:- operational services division.

221 SECTION 52. Said chapter 7 is hereby further amended by striking out sections 10 and 11, as so
222 appearing, and inserting in place thereof the following 2 sections:-

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

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

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

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

236 (1) attend;

237 (2) be sworn or to affirm;

238 (3) answer any question; or

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

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

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

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

256 SECTION 53. Section 14C of said chapter 7, as so appearing, is hereby amended by striking out
257 the definition of "Secretary".

258 SECTION 54. Section 22 of chapter 7, as appearing in the 2010 Official Edition, is hereby
259 amended by striking out, in lines 1, 77, 89 and 90, and 111, the words "commissioner of
260 administration" and inserting in place thereof, in each instance, the following word:- secretary.

261 SECTION 55. Said section 22 of said chapter 7 is hereby further amended by striking out, in
262 lines 14 and 116, the word "commissioner" and inserting in place thereof, in each instance, the
263 following word:- secretary.

264 SECTION 56. Section 22B½ of said chapter 7 is hereby amended by striking out the definition
265 of "State authority", as so appearing, and inserting in place thereof the following definition:-

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

267 SECTION 57. Section 22G of chapter 7 is hereby amended by striking out the definition of

268 “State authority”, as so appearing, and inserting in place thereof the following definition:-

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

270 SECTION 58. Section 28 of chapter 7, as so appearing, is hereby amended by striking out, in

271 lines 6, 57 and 58, 65 and 66, and 72, the words “commissioner of administration” and inserting

272 in place thereof, in each instance, the following word:- secretary.

273 SECTION 59. Said section 28 of said chapter 7 is hereby further amended by striking out, in line

274 68, the words “commissioner of labor and industries” and inserting in place thereof the following

275 words:- director of labor standards.

276 SECTION 60. Section 28A of said chapter 7, as so appearing, is hereby amended by striking out,

277 in lines 8 and 9, the words “commissioner of administration” and inserting in place thereof the

278 following word:- secretary.

279 SECTION 61. Section 29 of said chapter 7, as so appearing, is hereby amended by striking out in

280 lines 1 and 2, the words “, including the board of education and the department of education,”.

281 SECTION 62. Said section 29 of said chapter 7 is hereby further amended by striking out, in line

282 18, the words “commissioner of administration” and inserting in place thereof the following

283 word:- secretary.

284 SECTION 63. Section 31A of said chapter 7, as so appearing, is hereby further amended by

285 striking out, in lines 2 and 3, the words “commissioner of administration” and inserting in place

286 thereof the following word:- secretary.

287 SECTION 64. Sections 38A½ to 43I, inclusive, of said chapter 7 are hereby repealed.

288 SECTION 65. Section 50 of said chapter 7, as so appearing, is hereby amended by striking out,

289 in line 2, the figure “4A” and inserting in place thereof the following figure:- 49.

290 SECTION 66. Section 61 of said chapter 7, as so appearing, is hereby amended by striking out
291 the words “section 40N of chapter 7”, each time they appear, and inserting in place thereof the
292 following words:- section 6 of chapter 7C.

293 SECTION 67. Chapter 7 is hereby amended by inserting after section 61 the following section:-

294 Section 62. The executive office for administration and finance shall report annually to the
295 house and senate committees on bonding, capital expenditures and state assets, no later than
296 November 1, a list of all capital projects, the legislation and line item authorizing such funding,
297 the municipalities and senate and house legislative districts in which such projects are located,
298 the total estimated cost of each project and the total amount expended on each project in the
299 immediately preceding fiscal year.

300 SECTION 68. Section 1 of chapter 7A of the General Laws, as so appearing, is hereby amended

301 by striking out the first sentence and inserting in place thereof the following sentence:- There
302 shall be an office of the comptroller which shall be an independent state agency.

303 SECTION 69. Section 2 of said chapter 7A, as so appearing, is hereby amended by striking out,

304 in lines 2 and 3, the words “commissioner of administration” and inserting in place thereof the
305 following words:- secretary of administration and finance.

306 SECTION 70. Section 8 of said chapter 7A, as so appearing, is hereby amended by inserting

307 after the word “accounts”, in line 5, the following words:- , including adjustments for current or
308 prior periods.

309 SECTION 71. Section 11 of said chapter 7A, as so appearing, is hereby amended by inserting

310 after the word “equipped”, in line 1, the following words:- , subject to appropriation,.

311 SECTION 72. Section 13 of said chapter 7A, as so appearing, is hereby amended by striking out,

312 in lines 1 and 2, the words “and commissioner of capital asset management and maintenance”.

313 SECTION 73. Said chapter 7A is hereby further amended by striking out section 16, as so

314 appearing, and inserting in place thereof the following section:-

315 Section 16. The comptroller, in consultation with the secretary of administration and finance and

316 the attorney general, shall administer the Liability Management and Reduction Fund established

317 in section 2TT of chapter 29. The comptroller may appoint a liability manager of said fund

318 whose compensation shall be paid out of said fund. The comptroller shall have the following

319 powers and duties with respect to the fund:

320 (1) to use amounts in the fund to make payments or to purchase insurance coverage to make

321 payments for the purposes set forth in said section 2TT of said chapter 29; provided, however,

322 that any insurance coverage so purchased shall recognize and preserve the commonwealth’s

323 constitutional, statutory and common law rights, defenses, immunities and control including,

324 without limitation, the provisions of chapters 12 and 258;

325 (2) to determine a deductible amount, which an agency shall be directly responsible for making

326 payment relative to a claim arising under said chapter 258 and which deductible shall be

327 excluded from the computation of the premiums subsequently charged to such agency;

328 (3) to determine and assess not later than October 1 annually the premium amounts to be charged

329 to each state agency; provided, however, that:

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

331 (A) a 5-year experience rating reflecting, without limitation, liability incurred by reasons of

332 judgments, settlements and litigation costs for tort claims pursuant to said chapter 258;

333 (B) minimum-estimated-liability amounts for pending claims as to which presentment has been

334 made pursuant to said chapter 258;

335 (C) the record of the agency regarding safety or other training programs designed to reduce
336 litigation or to detect and defend against frivolous or insubstantial claims; and
337 (D) any extraordinary factors warranting an adjustment in the discretion of the comptroller;
338 (ii) any disputes between agencies relative to their respective proportions of responsibility for
339 any resolved or pending claim or disputes relative to the valuation or the appropriate nature of
340 such claims shall be determined by the comptroller, in consultation with the attorney general;
341 and
342 (iii) the comptroller may pay rebates to agencies that reduce their resolved and pending claims
343 totals below expected levels in a fiscal year and may assess surcharges on agencies experiencing
344 unexpectedly high resolved and pending claims totals in a fiscal year;
345 (4) to make such other expenditures from the fund as are necessary, appropriate and reasonable
346 for management and administration of the fund, including personnel costs; provided, however,
347 that all direct and indirect costs for such employees shall be paid from the fund; and provided
348 further, that the fund shall not be used directly or indirectly for the compensation of attorneys
349 representing the commonwealth or its officers or employees.

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

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

354 SECTION 74. The General Laws are hereby amended by inserting after chapter 7B the following
355 chapter:-

356 CHAPTER 7C

357 CAPITAL ASSET MANAGEMENT AND MAINTENANCE

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

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

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

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

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

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

370 “Building project”, a capital facility project undertaken for the planning, acquisition, design,
371 construction, demolition, installation, repair or maintenance of any building and appurtenant
372 structures, facilities and utilities, including initial equipment and furnishings thereof; provided,
373 however, that appurtenant buildings or structures which are required to be constructed as integral
374 parts of the development of sewer, water and highway systems shall not be subject to section 46.

375 “Capital facility”, a public improvement such as a building or other structure; a utility, fire
376 protection, and other major system and facility; a power plant facility and appurtenances; a
377 heating, ventilating, air conditioning or other system; initial equipment and furnishings for a new
378 building or building added to or remodeled for some other use; a public parking facility; an
379 airport or port facility; a recreational improvement such as a facility or development in a park or
380 other recreational facility; or any other facility which, by statute or under standards as they may

381 be prescribed from time to time by the commissioner of capital asset management and
382 maintenance, according to the provisions of this section, may be defined as such, provided
383 however that a highway improvement such as a highway, bridge or tunnel or other structure or
384 building integral to the operation of the Central Artery/Ted Williams Tunnel Project in the city
385 of Boston and the city of Cambridge; a transportation improvement such as a mass transportation
386 or other public transit facility, but not including a department of transportation building in the
387 Park Square area of the city of Boston, shall not be considered a capital facility as defined herein;
388 provided further that an improvement in information technology shall not be a capital facility to
389 the extent it does not result in the creation or expansion of tangible property.

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

392 “Commissioner”, the commissioner of capital asset management and maintenance.

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

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

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

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

402 “Energy conservation projects”, projects to promote energy conservation, including but not
403 limited to energy conserving modification to windows and doors; caulking and weatherstripping;

404 insulation, automatic energy control systems; hot water systems; plant and distribution system
405 modifications including replacement of burners, furnaces or boilers; devices for modifying fuel
406 openings; electrical or mechanical furnace ignition systems; utility plant system conversions;
407 replacement or modification of lighting fixtures; energy recovery systems; and, cogeneration
408 systems.

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

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

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

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

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

427 “Public agency”, a department, agency, board, commission, authority, or other instrumentality of
428 the commonwealth or political subdivision of the commonwealth or 2 or more subdivisions
429 thereof.

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

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

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

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

445 “Study”, a feasibility or other study to identify and evaluate alternative solutions to and
446 recommend a solution to the needs and requirements defined by the public agency proposing a
447 capital facility project which may involve a further definition of that agency’s needs and
448 requirements, gather additional information on the nature of the project, develop and review
449 potential solutions to those needs and requirements, evaluate the financial, environmental, and

450 other aspects of such solutions, estimate the degree to which solutions do not fulfill proposed
451 objectives and criteria, and recommend a means of project implementation and site acquisition.
452 “Using agency”, the public agency which will be the major user of a capital facility project or the
453 occupant of a building project.

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

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

462 Section 2. The commissioner of capital asset management and maintenance shall be appointed by
463 the secretary of administration and finance, with the prior written approval of the governor, and
464 may be removed in like manner. The commissioner shall be a person of ability and experience,
465 shall be familiar with the principles of the systematic and coordinated planning of capital
466 facilities and shall carry out such functions and duties as the commissioner may from time to
467 time deem necessary for the efficient and economical administration of the capital assets of the
468 commonwealth including, but not limited to, the systematic review of capital assets, the
469 scheduling of routine and schedule maintenance repairs, tracking the deferred maintenance needs
470 of capital assets and the coordinated planning of capital facilities in relation to the programmatic
471 needs of state agencies. The commissioner shall devote his entire time to the duties of his office.
472 No person holding such position shall be subject to chapter 31 or section 9A of chapter 30.

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

- 475 (a) integrated and coordinated planning and budgeting of capital facilities on an annual and long-
476 term basis;
- 477 (b) acquisition, allocation and disposition of real property;
- 478 (c) direction, control, supervision and oversight as to the planning, design, construction,
479 demolition, installation, repair and maintenance of specific capital facilities and capital facility
480 projects;
- 481 (d) efficient management of the operation of the division of capital asset management and
482 maintenance as a whole and the proper coordination of the work of and effective operation of
483 individual offices, bureaus, and other sections which might be located therein. The commissioner
484 may, subject to appropriation, appoint deputy commissioners and associate deputy
485 commissioners and legal counsel as appropriate and may authorize such deputy commissioners
486 or associate deputy commissioners or legal counsel to act in his stead in particular matters or
487 classes of matters.
- 488 (e) direction, control, supervision, planning and oversight of the scheduled maintenance and
489 repair needs of capital assets owned by the commonwealth.

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

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

494 The commissioner and his staff shall provide information to and cooperate with the general court
495 or any of its committees in connection with the development and analysis of any long term

496 capital facilities development plan or capital budget proposal.

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

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

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

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

519 of the commonwealth and submit his comments and recommendations to the agency designated
520 as the state clearinghouse.

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

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

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

534 (3) For housing projects within the jurisdiction of the department of housing and community
535 development as defined by section 1 of chapter 121B, the division of capital asset management
536 and maintenance shall provide only for the establishment of minimum requirements for record
537 keeping and reporting by the department and operating agencies, as each is defined by section 1
538 of chapter 121B, and review of and recommendation as to the standards and guidelines for,
539 direction, control, and supervision of their building projects. The department and operating
540 agencies shall cooperate with the division of capital asset management and maintenance,
541 regarding inquiries and inspections conducted as to housing projects within their respective

542 jurisdictions.

543 (4) For all capital facility projects of cities and towns for which specific approval or
544 authorization by the general court or a state agency is otherwise required and for all capital
545 facility projects of all other public agencies not included within the scope of paragraphs (1), (2),
546 and (3), establishment of requirements for record keeping and reporting by the administering
547 agency as to control and supervision of capital facility projects, so that the division of capital
548 asset management and maintenance may assess the nature, scope and programs of all planned or
549 current capital facility projects and fulfill its responsibilities as defined by this chapter and other
550 relevant statutes. For the purposes of identifying agricultural lands, the commissioner shall
551 utilize criteria established by the secretary of environmental affairs. Such criteria shall determine
552 agricultural land according to past and present agricultural use, and according to the agricultural
553 production suitability of land as defined by the standards of the United States Department of
554 Agriculture Soil Conservation Service. For all capital facility projects or programs funded in
555 whole or in part by federal funds, the record keeping and reporting requirements established
556 pursuant to this paragraph and other relevant statutes may be satisfied by the federal
557 requirements, but only to the extent that the state requirements duplicate the federal requirements
558 or materially conflict with them. State and federal requirements shall be deemed to be materially
559 conflicting only when it would be impossible or unduly burdensome to comply with both sets of
560 requirements. Neither this provision nor any other provision of sections 1 through 32, inclusive,
561 and sections 32 through 40, inclusive, of this chapter is intended or shall be construed to limit the
562 authority of any public agency — other than those specified in paragraphs (1) and (2) of this
563 section — to control and supervise any capital facility project undertaken by that agency.
564 Section 5. The commissioner shall, in a manner and to the extent provided by this chapter,

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

574 Section 6. (a) The general court finds that: (1) the Massachusetts commission against
575 discrimination conducted hearings and investigations which documented a history of
576 discrimination against minorities and women in the commonwealth; (2) and in 1994, the
577 executive office of transportation and construction produced a disparity study which documented
578 a history of discrimination against minority and women owned businesses, in which the
579 commonwealth's agencies were participants; (3) this discrimination against minorities and
580 women currently affects the use of minority and women owned businesses in state contracting;
581 (4) the commonwealth has a compelling interest in promoting the use of minority owned
582 business and women owned businesses through the use of the available and qualified pool of
583 minority and women owned businesses; (5) it is the policy of the commonwealth to promote
584 equality in the market and, to that end, to encourage full participation of minority and women
585 owned businesses in all areas of state contracting, including contracts for construction and design
586 services.

587 (b) As used in this section, the following words shall, unless the context clearly requires

588 otherwise, have the following meanings:—

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

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

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

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

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

600 (iii) supervision or administration of a construction contract;

601 (iv) construction management or scheduling.

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

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

607 (i) the business must be at least 51 per cent owned by minority persons; in the case of a

608 corporation having more than one class of stockholders, the ownership requirement must be met
609 as to each class of stock;

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

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

613 (iv) in the case of a joint venture between a minority business meeting the requirements of
614 clauses (i) to (iii), inclusive, and a non-minority business, the joint venture shall be found to be a
615 minority business if the minority business meeting the requirements of said clauses (i) to (iii),
616 inclusive, shall have more than one-half control over management of the project bid upon and
617 shall have the right to receive more than one-half of the profits deriving from that project.

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

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

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

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

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

648 (d) Not later than January 15 of each year, the commissioner, in consultation with the director of
649 state office of minority and women business assistance, shall establish participation goals for
650 minority-owned businesses and women-owned businesses. The participation goals established
651 pursuant to this section shall apply to capital facility projects and state assisted building projects.
652 The participation goals shall be expressed as overall annual program goals which shall be
653 applicable to the total dollar amount of contracts awarded for construction work and design
654 services on capital facility projects and state assisted building projects for the calendar year. The
655 commissioner shall publish in the central register, established pursuant to section 20A of chapter
656 9, the participation goals for minority-owned businesses and for women-owned businesses on

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

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

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

675 (g) In connection with the affirmative marketing program, the state office of minority and
676 women business assistance shall regularly review and, where necessary, modify its certification
677 process to ensure that it operates effectively, and shall report annually to the secretary of
678 administration and finance regarding these matters.

679 (h) The commissioner shall be responsible for the overall management, monitoring, and

680 enforcement of the affirmative marketing program, as the program relates to capital facility
681 projects under the control of the division, established pursuant to this section. The commissioner
682 may appoint a program director within the office of the commissioner to assist in program
683 development, coordination and compliance. The program director shall also have responsibility
684 for monitoring contract compliance within the division, addressing potential program violations
685 and coordinating division enforcement activities with the state office of minority and women
686 business assistance and the attorney general.

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

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

698 Section 7. Except as otherwise provided in section 3 of chapter 211, the commissioner of capital
699 asset management and maintenance shall: (1) be responsible for the acquisition, control and
700 disposition of court facilities on behalf of the commonwealth, in the manner and to the extent
701 provided in this chapter for other real property of the commonwealth; (2) provide facilities for
702 the trial court, the appeals court and the supreme judicial court; (3) be responsible for planning

703 and budgeting for such court facilities in the manner and to the extent provided in this chapter
704 and in chapter 29 for capital facilities of state agencies; and (4) have jurisdiction over capital
705 facility projects undertaken by the office of the chief administrative justice of the trial court for
706 such court facilities in the manner and to the extent provided in this chapter and in chapter 149
707 for capital facility projects undertaken by state agencies. Notwithstanding any other general or
708 special law to the contrary, all real property owned by the commonwealth for use as a
709 courthouse, whenever such property was acquired, shall be held in the name of the
710 commonwealth as provided in sections 32 and 33, and the division of capital asset management
711 and maintenance shall hold the deeds to all such property as provided in section 39.
712 There shall be within the division of capital asset management and maintenance a director of
713 court facilities. The director of court facilities shall be appointed by the commissioner of capital
714 asset management and maintenance with the advice of the chief administrative justice of the trial
715 court and the approval of the secretary of administration and finance, and may be removed in
716 like manner. Said position shall not be subject to section 9A of chapter 30 or chapter 31. Said
717 director shall have the qualifications deemed necessary by the commissioner of capital asset
718 management and maintenance. Said director shall perform such duties of said commissioner with
719 respect to court facilities as said commissioner shall assign, including at least the duty to respond
720 to any inquiry from a county, city or town or from the office of the chief administrative justice of
721 the trial court regarding court facilities.

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

- 723 (1) develop and operate automated management and information systems and provide data
724 processing services;
- 725 (2) develop and maintain all necessary financial management systems, as prescribed by the

726 comptroller, that will permit the proper management of the capital facility program, including a
727 system to administer payments to those contracting for services and supply of materials;

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

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

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

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

737 (7) approve project budgets and the award of contracts;

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

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

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

745 The commissioner shall, after providing an opportunity for the attorney general and other
746 interested parties to comment, promulgate and from time to time revise uniform contract
747 conditions appropriate to the type of service being rendered to be incorporated in all contracts for
748 services of that type related to capital facility projects. Such uniform contract conditions may be

749 supplemented by but shall take precedence over additional contract conditions for any particular
750 capital facility project.

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

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

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

770 Section 9. The commissioner shall, no less often than once every 3 months, prepare a
771 comprehensive report on the progress of all capital facility projects subject to the jurisdiction of

772 the division of capital asset management and maintenance as defined by section 5 but not
773 including those for which a city or town is the administering agency. At the discretion of the
774 commissioner, said reports may exclude capital facility projects with a total project cost of less
775 than \$25,000 for which the administering agency is other than a state agency. Said report shall
776 include, but not be limited to, a statement of the name of each project, the administering agency
777 and the using agency, a brief current description of the project and any substantial changes in the
778 description of the project during the past 3 months, the source of funds, the state of progress of
779 the project, a summary of the total and major costs of the projects as originally estimated and as
780 currently expended or currently estimated to be expended, the original project schedule and the
781 current and estimated progress of the project, and such other information as the commissioner
782 may require be included. Said report shall be submitted to the secretary of administration and
783 finance and the clerks of the house of representatives and the senate and shall be a public
784 document.

785 The commissioner of capital asset management and maintenance shall by February 15 of each
786 year prepare a comprehensive annual report on the progress of all capital facility projects subject
787 to the jurisdiction of the division of capital asset management and maintenance defined by
788 section 4. At the discretion of the commissioner, said annual report need not include capital
789 facility projects with a total project cost of less than \$25,000 for which the administering agency
790 is other than a state agency. Said annual report shall constitute 1 of the 4 reports required by the
791 previous paragraph of this section but shall contain in addition to the information required in the
792 previous paragraph for each capital facility project, the following data: the authorizations for and
793 sources of funds and expenditure and unencumbered balances thereof; identification of the
794 designers and contractors who have contracted with the administering agency to provide

795 materials or services therefor, the administering agency's project and contract numbers, the value
796 of the contracts and the amount of money paid in accordance with the contracts; and such other
797 information as the commissioner may require be included. The commissioner shall also include
798 in said report a statement of the problems which have arisen in the capital facility procurement
799 programs and procedures of public agencies and specific recommendations for administrative
800 and legislative action which are necessary to remedy such problems. Said report shall be
801 submitted to the secretary of administration and finance and the general court and shall be a
802 public document available for general distribution.

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

811 The commissioner shall develop and annually revise a proposed capital repair and maintenance
812 plan for state buildings subject to the jurisdiction of the division of capital asset management and
813 maintenance. The plan shall be based upon repair and maintenance schedules formulated for
814 each building and group of buildings by the director of facilities management in accordance with
815 sections 24, 26, and 28. In addition to developing capital repair and maintenance schedules for
816 state buildings, the plan shall analyze the costs and benefits of continuing minor repairs versus
817 the costs and benefits of major renovation, rehabilitation, or replacement of the state buildings.

818 The commissioner shall by February 15 of each year, submit the proposed capital repair and
819 maintenance plan required by this paragraph to the house and senate committees on ways and
820 means and the chairs of the joint committee on state administration and regulatory oversight.

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

825 The commissioner shall, by February 15 of each year, prepare a report, by years and
826 cumulatively, on all capital repair and maintenance projects completed, in process, or scheduled
827 for the future, on all capital facility projects, said report shall include narrative statements
828 indicating why such repairs or maintenance on such projects have been or will be postponed or
829 cancelled. A copy of said report shall be sent to the house and senate committees on ways and
830 means, and to the chairs of the joint committee on state administration and regulatory oversight.

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

834 Upon completion of the final design of each state building project estimated to cost in excess of
835 \$5,000,000, the commissioner shall prepare an analysis detailing the maintenance costs projected
836 annually over the useful life of the building. The commissioner shall, by February 16 of each
837 year, prepare a report summarizing the annual maintenance costs projected for each building
838 project described in this paragraph, for which final design was completed during the prior year.

839 The report shall be filed with the chairs of the joint committee on state administration and
840 regulatory oversight and the agency responsible for the operation and maintenance of the

841 building project.

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

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

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

858 Section 11. There shall be located within the division of capital asset management and
859 maintenance an office of programming headed by a director of programming. Said director shall
860 be appointed by the commissioner of capital asset management and maintenance, with the prior
861 written approval of the secretary of administration and finance, and may be removed in like
862 manner. The position of director shall not be subject to chapter 31 or section 9A of chapter 30.
863 No person shall be appointed director of the office of programming unless the person has

864 extensive experience in the study and programming of buildings.

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

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

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

878 The director shall:

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

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

884 (3) upon request by using agencies, assist them in the development of specific project
885 descriptions and proposals forming a part of those agencies' long range capital development
886 plans and specific capital facility budget requests;

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

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

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

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

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

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

906 The director shall create a depository for plans, studies, programs, and designs for building
907 projects prepared for any using agency subject to the jurisdiction of the division of capital asset
908 management and maintenance under section 4 of this chapter. Each such agency shall promptly
909 send to the director a brief identification and description of each plan, study, program, and design

910 after its completion. The designer selection board shall promptly send to the director a brief
911 identification and description of any designs offered to it as part of any design competition
912 administered by the board pursuant to section 49. Upon request by the director, the user agency
913 or board shall send to the director a copy of said plan, study, program or design.

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

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

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

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

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

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

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

952 The director, if otherwise permitted by statute or appropriation, may use a phased contracting
953 procedure, provided that the contracts awarded can be accomplished (a) within the appropriation
954 or authorization for the project or within the project cost limits specified by the appropriation or
955 authorization and (b) in accordance with (i) any study or program which must be prepared under

956 section 59 or (ii) any other pre-design document which must be prepared in accordance with any
957 other statute, appropriation or authorization or administrative directive consistent therewith.

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

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

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

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

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

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

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

1000 Schematic, preliminary and working plans and specifications for each building project shall,
1001 following initial submission to the using agency for comment, be submitted by the designer to

1002 the director for his approval. In reviewing such plans and specifications, the duty of the director
1003 shall be to see that they are clear and complete and permit execution of the building project (a)
1004 within the appropriation or authorization for the project or within project cost limits specified by
1005 the appropriation or authorization and (b) in accordance with (i) any study or program prepared
1006 in accordance with section 59 or (ii) any other pre-design document which must be prepared in
1007 accordance with any other statute, appropriation or authorization or administrative directive
1008 consistent therewith. When a phased construction technique is approved by the legislature, the
1009 director shall approve working plans and specifications at appropriate stages of the project.
1010 Following final approval of such plans and specifications, the director shall advertise in the
1011 central register published by the secretary of state pursuant to section 20 of chapter 9 and in such
1012 other publications as the commissioner shall direct, for applications to bid on or proposals for the
1013 performance of the work on the project; except that the commissioner may direct that the
1014 purchase of any materials, original equipment or original furnishings for the project shall be
1015 made under sections 22 to 26, inclusive, of chapter 7. Subject to the prior approval of the
1016 commissioner and the applicable provisions of sections 44A to 44M, inclusive, of chapter 149
1017 the director shall award the contract or contracts for such work to the lowest responsible and
1018 eligible bidder; but no such contract on behalf of the commonwealth shall be awarded by him for
1019 a sum in excess of the amount which the comptroller shall certify to be available therefor. If the
1020 director shall knowingly award a contract in violation of this section, the director may be
1021 removed from office by the governor.

1022 The director shall be responsible for accepting or rejecting each project upon its completion and
1023 for directing final payment for work done thereon; provided, however, that if upon inspection of
1024 any project for acceptance the director shall find that the plans, specifications, contracts or

1025 change orders for the project shall not have been fully complied with, the director shall, until
1026 such compliance has been effected or adjustment satisfactory to him has been made, refuse to
1027 accept the project and direct such payment.

1028 Upon acceptance of the project, the director shall release the same to the using agency, unless the
1029 using agency objects to said release, in which case the director shall work with the using agency
1030 to remove the causes of the objection. The director shall not refuse to accept the project from the
1031 contractor and shall not refuse to direct final payment to the contractor because of the using
1032 agency's objections if the director has determined that the contractor has completed the project in
1033 accordance with contract.

1034 Section 16. The director shall appoint, for each project under the jurisdiction of the office of
1035 project management, a project manager, who shall oversee all planning, design and construction
1036 of the project or provide appropriate assistance to others as enumerated below. No person shall
1037 be appointed or employed as a project manager unless at the time thereof said person shall be
1038 registered by the commonwealth as an architect or professional engineer under the provisions of
1039 chapter 112 or shall have a professional degree in a field providing equivalent experience and
1040 shall have at least 5 years experience in the construction and supervision of construction of
1041 buildings. Project managers employed by the bureau shall be exempt from section 9A of chapter
1042 30 and chapter 31.

1043 The terms, conditions and duration of their employment shall be established by the director
1044 subject to appropriation and the building projects to which the project manager has been assigned
1045 by the director. The project manager shall:

1046 (1) Assist and make recommendations to using agencies as to real property acquisition in
1047 anticipation of construction;

1048 (2) Assist by reviewing and making recommendations to using agencies as to the study,
1049 programs or other planning documents for the project;

1050 (3) Participate as a non-voting member of the designer selection board panel during the designer
1051 selection process for the particular building project to which the project manager has been
1052 assigned;

1053 (4) Represent the using agency in the designer selection, design and construction phases of the
1054 building project, the project manager having exclusive authority to make decisions in these areas,
1055 except as provided in sections 17 to 21, inclusive, after consultation with the using agency and
1056 consideration, before such decisions are made, of using agency recommendations;

1057 (5) During the design stage of each project to which the project manager has been assigned,
1058 review and comment on said design or verify that said design has been reviewed by the
1059 authorities charged by law with enforcement responsibility, in order to insure that the design
1060 complies with all federal and state laws, rules, regulations and codes; insure to the extent feasible
1061 that the design is such as to specify a project that (a) can be accomplished within the
1062 appropriation or authorization for that project or within the project cost limits specified by the
1063 appropriation or authorization, and (b) can be accomplished in accordance with (i) any study or
1064 program which must be prepared in accordance with section 59 or (ii) any other pre-design
1065 document which must be prepared in accordance with any other statute, appropriation or
1066 authorization or administrative directive consistent therewith; no building project shall be
1067 allowed to proceed to the construction stage until such reviews have been accomplished and
1068 compliance confirmed or certified;

1069 (6) Insure the preparation of time schedules which shall serve as control standards for monitoring
1070 performance of building projects; and

1071 (7) Assist in project evaluation including, but not limited to, written evaluations of the
1072 performance of the architect, engineers, contractors and other personnel, and evaluation of
1073 construction techniques and procurement mechanisms.

1074 Section 17. As used in this section and sections 18 to 21, inclusive, the following words shall,
1075 unless the context clearly requires otherwise, have the following meanings: “Change order”, a
1076 written order not requiring the consent of the contractor, signed by the project manager and
1077 designated as an approved change order, directing the contractor to make changes in the work
1078 within the general scope of the contract, or, any written or oral order from the project manager
1079 which causes any change in the work, provided that the contractor gives the commonwealth
1080 written notice stating the date, circumstances, and source of the order and that the contractor
1081 regards the order as a change order.

1082 “Contract modification”, any written alteration in plans or specifications, period of performance,
1083 price, quantity, or any other provision of the contract accomplished by mutual action of the
1084 parties to the contract.

1085 The project manager may at any time, subject to the requirements set forth herein and in section
1086 39I of chapter 30, order changes in the work within the general scope of the contract, including
1087 but not limited to changes: (a) in the plans and specifications (including drawings and designs);
1088 (b) in the method or manner of performance of the work; (c) in the commonwealth furnished
1089 facilities, equipment, materials, services or site; or (d) in the schedule for performance of the
1090 work. All such orders shall be written and designated to be change orders. All change orders or
1091 other contract modifications shall require the approval of the director when: (a) the cumulative
1092 cost of all previously approved increases in the contract price exceeds 5 per cent of the original
1093 contracted construction cost of the project, or such other percentage or dollar amount or criteria

1094 as designated by regulations of the commissioner; or (b) the preliminary estimate of the change
1095 in the contract price resulting from the change order or contract modification is \$5,000 or more.
1096 The director may, after review of building projects for which the cumulative total of increases in
1097 the contract price has exceeded 5 per cent of the original contracted construction cost or such
1098 other percentage or dollar amount or criteria, direct the project manager as to those proposed
1099 changes, the preliminary estimated cost of which are under \$5,000, that shall require the
1100 director's approval.

1101 The commissioner shall promulgate regulations governing the procedures for obtaining
1102 preliminary estimates and giving notice to the contractor as to the necessity of obtaining the
1103 director's approval before any work pursuant to a change order or contract modification is
1104 commenced. Such procedures shall be designed so as to avoid delays in the progress of the
1105 project.

1106 The project manager may delegate to the resident engineer, subject to approval by the director
1107 and notice to parties in interest, his authority to process and approve change orders when
1108 authorized to do so by regulations of the commissioner.

1109 Section 20A of chapter 29 shall not apply to any change order request submitted and acted upon
1110 under sections 17 to 21, inclusive, of this chapter.

1111 Section 18. Any request for a change order shall be processed promptly, in compliance with
1112 regulations promulgated by the commissioner, and otherwise according to the requirements of
1113 section 39P of chapter 30. Requests shall be submitted to the project manager, who shall, after
1114 consultation with the designer and the using agency, approve or disapprove the request. The
1115 project manager shall, after obtaining any other required approvals or disapprovals, notify in
1116 writing the designer, the using agency and the requesting party of the request and shall issue a

1117 written change order or written notice of disapproval to the contractor. If the approval or
1118 disapproval would result in a deviation, as defined by regulations of the commissioner from (a)
1119 any study or program which must be prepared in accordance with section 59 or (b) any other pre-
1120 design document which must be prepared in accordance with any other statute, appropriation or
1121 authorization or administrative directive consistent therewith, the decision made shall be subject
1122 to appeal by the using agency to the secretary of administration and finance. Such appeal shall
1123 set forth in writing the reasons therefor and a copy thereof shall be furnished to the commissioner
1124 at the time the appeal is filed with the commissioner. The commissioner shall, within 10 days
1125 following the receipt of such appeal, render a written decision thereon, which shall be final and
1126 conclusive.

1127 Section 19. If any change order under section 17 causes any change in the contractor's cost of
1128 performance of any work under the contract, whether or not that work is changed by any order,
1129 either the contractor or the project manager may request an equitable adjustment in the contract
1130 price. A request for such an adjustment shall be in writing and shall be submitted by the party
1131 making such claim to the other party before commencement of the pertinent work or as soon
1132 thereafter as possible, and in any event within 30 days of receipt by the contractor of an approved
1133 change order or the mailing or furnishing to the commonwealth by the contractor of written
1134 notice that the contractor regards an order as a change order. Except for claims on defective
1135 specifications, no claim for any change under this section shall be allowed for any costs incurred
1136 more than 20 days before the contractor gives written notice as required by this section. In the
1137 case of defective specifications for which the commonwealth is responsible, the equitable
1138 adjustment shall include any cost reasonably incurred by the contractor in attempting to comply
1139 with such defective specifications.

1140 The project manager and the contractor shall by negotiation agree upon an equitable adjustment
1141 in the contract price before commencement of the pertinent work or as soon thereafter as
1142 possible. Notice of the adjustment shall be given to the director. In the absence of agreement by
1143 the parties on an equitable adjustment in the contract price, the project manager shall unilaterally
1144 determine the costs attributable to the change order. Unilateral equitable adjustments of the
1145 project manager shall be reduced to writing and a copy mailed or otherwise furnished to the
1146 contractor. Such adjustments shall be final and conclusive unless, within 30 days from the date
1147 of receipt of such copy, the contractor mails or otherwise furnishes to the project manager a
1148 written appeal addressed to the commissioner, and otherwise complies with the requirements set
1149 forth in section 39Q of chapter 30. Said section shall govern further appeal to the division of
1150 hearing officers.

1151 Section 20. The contractor shall submit, in accordance with regulations of the commissioner, cost
1152 and pricing data to be used when negotiating adjustments for change orders or other contract
1153 modifications. Such cost and pricing data shall be based on generally accepted accounting
1154 principles and be in conformity with the guidelines promulgated by the commissioner. Cost
1155 estimators employed within the division of capital asset management and maintenance shall
1156 review and evaluate cost and pricing data submitted by the contractor.

1157 The contractor shall certify that, to the best of his knowledge and belief, the cost and pricing data
1158 submitted was accurate, complete, and current as of the date of submission. Any change order or
1159 contract modification under which a certificate is required shall contain a provision that the price
1160 to the commonwealth, including profit or fee, shall be adjusted to exclude any significant sums
1161 by which the commonwealth finds that such price was increased because the contractor-
1162 furnished cost or pricing data was inaccurate, incomplete, or not current as of the date of

1163 submission.

1164 Section 13 of chapter 258 and section 67A to section 67C, inclusive, of chapter 266, shall fully
1165 apply to the cost and pricing data certification requirements of this section.

1166 Section 21. Equitable adjustments in the contract price negotiated pursuant to section 19 or as
1167 part of a contract modification shall be made in accordance with the general principles in this
1168 section. The commissioner shall promulgate regulations designed to implement this section.

1169 (1) Adjustments in the contract price shall be made to the maximum extent feasible on a fixed
1170 price basis prior to the execution of the change order or contract modification, if this can be done
1171 without adversely affecting the interests of the commonwealth.

1172 (2) Where a fixed price cannot be set due to difficulty in estimating the scope of the change
1173 ordered, adjustment may be made on a lump-sum guaranteed maximum price basis calculated by
1174 use of unit prices specified in the contract or agreed upon by the parties.

1175 (3) Cost reimbursement or time-and-materials methods of price adjustment shall not be used,
1176 except where, in the written opinion of the commissioner, no other pricing method is possible.
1177 When such pricing method is used, the contractor shall provide complete and accurate
1178 information disclosing the costs incurred in performing changes. The contractor shall maintain
1179 separate accounts, by job order or other suitable accounting procedure, of all segregable direct
1180 cost of work, both changed and not changed, allocable to the change. The commissioner shall
1181 promulgate regulations setting forth cost principles which shall be used to determine the
1182 allowability of incurred costs for the purpose of reimbursing costs.

1183 Section 22. There shall be assigned to every building project under the supervision of the office a
1184 resident engineer. Resident engineers may be hired as permanent employees subject to chapter
1185 31 or as consultants exempt from said chapter 31. No person shall be employed as a resident

1186 engineer unless at the time thereof said person shall have had at least 10 years experience in the
1187 construction and supervision of construction of buildings, or shall have a degree in engineering,
1188 architecture or a field providing equivalent expertise and at least 5 years such experience.

1189 The resident engineer shall represent the commonwealth daily on the site of construction projects
1190 and shall be responsible for checking, inspecting and reporting to the project manager on a
1191 regular basis both in writing and orally as to events at the construction site and shall send copies
1192 of written reports to the designer on a regular basis.

1193 The project manager may delegate to the resident engineer, subject to approval by the director,
1194 notice in writing to all parties in interest, and limits otherwise imposed by this chapter, the
1195 authority to make decisions regarding plans, specifications, and materials; the authority to
1196 represent the project manager at job meetings; and the authority to order minor changes and
1197 make equitable adjustments in the contract price.

1198 The resident engineer shall report in writing to the project manager all problems, disputes,
1199 complaints or questions from or concerning designers, contractors or other personnel involved in
1200 the project.

1201 There shall be assigned to every project under the control and supervision of the office a cost
1202 estimator, who shall be responsible for reviewing all project costs. Cost estimators may be hired
1203 as permanent employees subject to chapter 31 or as consultants exempt from said chapter 31.

1204 Cost estimators shall have proven ability and experience in construction cost estimating and shall
1205 be familiar with various approaches to cost estimating, including but not limited to conceptual
1206 and preliminary estimating designed to provide budget and planning guidance in the early stages
1207 of a project, labor-cost estimating, fair cost estimating prepared from completed plans and
1208 specifications, contractors' bid estimating and definitive or detailed estimating.

1209 The cost estimator, working in cooperation with using agencies requesting projects, shall provide
1210 estimates of the costs of proposed projects. The cost estimator shall review all cost projections
1211 for studies, programs and designs, as well as contractors' cost estimates. The cost estimator shall
1212 review change order estimates, cost and pricing data, payment schedules and progress payment
1213 requests, and make recommendations to the project manager at the project manager's directive.
1214 Public agencies other than political subdivisions of the commonwealth that conduct building
1215 projects outside the jurisdiction of the division of capital asset management and maintenance as
1216 provided in section 4 may request assignment of a project manager, resident engineer or cost
1217 estimator employed by the office of project management. Such assignment shall be subject to
1218 approval by the commissioner. Any agency making use of the office's staff on a project outside
1219 the normal jurisdiction of the office shall reimburse the office for all expenses incurred,
1220 including salaries and overhead. The director shall recommend to the commissioner regulations
1221 governing fees to be paid by public agencies for use of the office's services on projects outside
1222 its normal jurisdiction.

1223 Section 23. The director may, with the approval of the commissioner and the governor, accept on
1224 behalf of the commonwealth any federal funds or assistance for financing the cost of plans and
1225 specifications for any project.

1226 If such funds or assistance shall be appropriated for aiding construction of any project, the
1227 director may, with like approval, apply for the same and may, with the approval of the governor,
1228 accept the same on behalf of the commonwealth. Any project so aided shall be executed in all
1229 respects subject to applicable federal laws and rules and regulations and also to the applicable
1230 provisions of this chapter not inconsistent therewith.

1231 Section 24. There shall be located within the division of capital asset management and

1232 maintenance an office of facilities management, headed by a director of facilities management.
1233 The director shall be appointed by the commissioner, with the approval of the secretary of
1234 administration and finance, and may be removed in like manner. Said office shall not be subject
1235 to section 9A of chapter 30 or chapter 31. No person shall be appointed director of said office
1236 unless at the time thereof said person shall be registered by the commonwealth as an architect or
1237 professional engineer pursuant to chapter 112 and shall have proven ability and extensive
1238 experience in the management and oversight of operation, maintenance and repair of buildings.
1239 The director may appoint such deputies and other supervisory staff as the work of the office may
1240 require, subject to appropriation and the commissioner's approval. Such staff shall serve at the
1241 pleasure of the director and shall not be subject to chapter 31 or to section 9A of chapter 30. The
1242 director shall appoint, subject to the commissioner's approval, all other officers and employees
1243 of said office.

1244 The director shall develop, in cooperation with the commissioner and using agencies, an
1245 inventory of buildings owned or otherwise occupied by state agencies and building authorities.
1246 Said inventory may detail the age, condition, type of construction, and physical life expectancy
1247 of each building and its major structural components. The inventory shall be updated as repairs,
1248 replacements and alterations are performed. Said inventory shall be filed by the commissioner by
1249 February 15 yearly with the clerks of the house of representatives and senate, and with the joint
1250 committee on state administration and regulatory oversight, and shall be a public document
1251 available for general distribution. The director shall recommend to the commissioner standards
1252 and guidelines governing the type of information to be included in said inventory, which shall be
1253 properly coordinated with the real property inventory established and maintained pursuant to
1254 section 38.

1255 Section 25. The director shall control and supervise all projects allocated to the office of facilities
1256 management by the commissioner pursuant to section 5. All of said projects shall be subject to
1257 the procedures and requirements set forth in sections 13 through 23, except that the director may
1258 recommend to the commissioner regulations governing the extent of representation of the
1259 commonwealth by the resident engineer required on the site of construction projects. The
1260 director shall, consistent with sections 13 through 23, develop and recommend to the
1261 commissioner procedures and requirements for control and supervision of said projects
1262 commensurate with the specialized nature of those projects.

1263 Section 26. The director shall recommend to the commissioner standards and guidelines
1264 applicable to maintenance and repair. Said standards and guidelines shall be complied with by
1265 state agencies and building authorities. The director shall also develop maintenance and repair
1266 standards and guidelines for use by the department of housing and community development. Said
1267 standards and guidelines shall be advisory only.

1268 State agencies and building authorities shall certify to the director, once each year, that all
1269 maintenance and repair standards and guidelines have been complied with, or if the state agency
1270 or building authority has not so complied, the reasons for noncompliance. The director may
1271 order, in his discretion and without prior notice, inspection of state agency or building authority
1272 buildings, for the purpose of insuring compliance with maintenance and repair standards and
1273 guidelines. If the director finds that a state agency or building authority is not in compliance, the
1274 director shall report such noncompliance to the commissioner, the head of the state agency or
1275 building authority, the secretary of administration and finance, and in the case of building
1276 authorities, the board of higher education and the board of trustees of the relevant institution. If a
1277 state agency or building authority fails within 3 months of such notification to comply with said

1278 standards and guidelines, the director shall recommend to the commissioner emergency measures
1279 that should be taken.

1280 The director may direct, subject to the approval of the commissioner, once a state agency or
1281 building authority is found to be not in compliance with maintenance and repair standards and
1282 guidelines, that the state agency or building authority report in detail to the director on a monthly
1283 basis the status, progress and problems of maintenance and repair operations at the state agency
1284 or building authority's facilities. The director shall recommend to the commissioner regulations
1285 to be adopted governing information to be included in the monthly report. The director shall
1286 make quarterly reports to the commissioner on the status of maintenance and repair operations at
1287 the relevant state agency or building authority. At such time as the commissioner determines,
1288 with the advice of the director, that maintenance and repair operations have come into
1289 compliance with all applicable standards and guidelines, the state agency or building authority
1290 shall be relieved of the necessity of making monthly detailed reports.

1291 Where it is deemed necessary, the commissioner, on the advice of the director, may recommend
1292 that the office assume supervision and control over maintenance and repair operations normally
1293 carried out by the state agency or building authority. The secretary of administration and finance,
1294 after consultation with the secretary of the executive office in which the relevant state agency or
1295 building authority is located, and, in the case of building authorities, after consultation with the
1296 board of trustees of the relevant institution, may order transfer of supervision and control of
1297 maintenance and repair operations to the commissioner. Upon making such order, the
1298 commissioner shall forthwith file a copy of said order with the budget director, the comptroller,
1299 the house and senate committees on ways and means, and the joint committee on post audit and
1300 oversight, specifying the scope of the authority so transferred and the direction of said transfer.

1301 Said transfer may be for such period of time as the commissioner deems appropriate. Where the
1302 commissioner has so assumed control and supervision, the commissioner shall make quarterly
1303 reports to the secretary of administration and finance on the status of maintenance and repair
1304 operations at the affected state agency or building authority.

1305 Section 27. The director may, with the approval of the commissioner, initiate capital budget
1306 requests for building projects to be performed at one or more using agencies and controlled and
1307 supervised by the office of facilities management. Such projects may include, but not be limited
1308 to: (a) projects designed to alleviate, through a single undertaking or a series of undertakings,
1309 problems of a common nature encountered in buildings of more than 1 using agency; (b) projects
1310 to correct problems which require immediate attention, where the using agency has failed to
1311 include the project in its capital budget requests for the year, or has given such a request low
1312 priority; and (c) such other projects as the director may, with the approval of the commissioner,
1313 designate, including energy conservation projects, handicapped access projects, and fire, health
1314 and safety projects.

1315 Section 28. As used in this section, "using agencies" shall mean state agencies and building
1316 authorities.

1317 The director of facilities management shall: (1) develop, in cooperation with individual state
1318 agencies and building authorities, policies, standards, programs and schedules governing the
1319 performance of preventive maintenance; (2) develop preventive maintenance training programs
1320 for state agency and building authority personnel; (3) evaluate the status of preventive
1321 maintenance programs at each state agency and building authority; (4) review using agency
1322 maintenance operating budget requests together with maintenance reports submitted pursuant to
1323 section 3 of chapter 29 for the purpose of evaluating the priority, necessity, feasibility and

1324 appropriateness of said requests; (5) review using agency capital budget requests for repair
1325 projects and make recommendations to the commissioner as to those projects of each using
1326 agency that should be given funding priority; (6) recommend to the commissioner standards and
1327 guidelines for the control and supervision of repair projects controlled and supervised by using
1328 agencies; (7) advise the commissioner as to those methods available for the repair of
1329 deteriorating buildings, including the costs and benefits of continuing minor repairs versus the
1330 costs and benefits of major renovation or rehabilitation; (8) advise the commissioner as to
1331 maintenance and repair difficulties encountered in using agency buildings that may be due to
1332 faulty design or construction of new facilities; (9) advise the commissioner as to the feasibility
1333 and costs of renovating or rehabilitating for state use structures that have been certified historic
1334 landmarks, as provided by sections 26 to 27C of chapter 9, that have been listed in the National
1335 Register of Historic Places, as provided by 16 U.S.C. 470a, or that have been designated
1336 landmarks by the local governing authority; (10) advise the commissioner as to changes in
1337 operations and maintenance costs and operational and repair difficulties that may result from
1338 using agency proposals for alteration or conversion of existing facilities; and (11) assist using
1339 agencies in evaluating maintenance and repair problems and devising and implementing
1340 solutions.

1341 Section 29. (a) The commissioner shall require a state agency that initiates the construction of a
1342 new facility owned or operated by the commonwealth or a renovation of an existing facility
1343 owned or operated by the commonwealth when the renovation costs exceed \$25,000 and
1344 includes the replacement of systems, components or other building elements which affect energy
1345 or water consumption to design and construct or renovate the facility in a manner that minimizes
1346 the life-cycle cost of the facility by utilizing energy efficiency, water conservation or renewable

1347 energy technologies under the following criteria:

1348 (1) the state agency shall utilize alternate technologies when the life-cycle cost analysis

1349 conducted under subsection (b) shows that such systems are economically feasible;

1350 (2) each new educational facility, including a municipal educational facility financed through the

1351 school building assistance program, for which the projected demand for hot water exceeds 1,000

1352 gallons per day or which operates a heated swimming pool, shall be constructed, whenever

1353 economically and physically feasible, with a solar or other renewable energy system as the

1354 primary energy source for the domestic hot water system or swimming pool of the facility;

1355 (3) the division of capital asset management and maintenance or the state agency shall, in the

1356 design, construction, equipping and operation of such facilities, coordinate these efforts with the

1357 department of energy resources in order to maximize reliance on, and the benefits of, renewable

1358 energy research and investment activities; and

1359 (4) all higher education construction projects shall, at a minimum incorporate the MA-CHPS

1360 Green Schools Guidelines standards or an equivalent standard.

1361 (b) The division of capital asset management and maintenance or the state agency initiating the

1362 construction or renovation of a facility as described in subsection (a) shall conduct a life-cycle

1363 cost analysis of any such facility's proposed design that evaluates the short-term and long-term

1364 costs and the technical feasibility of using alternate technologies to provide lighting, heat, water

1365 heating, air conditioning, refrigeration, gas or electricity. In calculating life-cycle costs, a state

1366 agency shall include the value of avoiding carbon emissions, creating renewable energy

1367 certificates and other environmental and associated benefits created from the utilization of

1368 alternate technologies, as applicable. This value shall be equal to the bid price of the published

1369 market value of any such benefit and shall increase or decrease at a projected rate determined by

1370 the department of energy resources. To calculate life-cycle costs, a state agency shall use a
1371 discount rate equal to the rate that the commonwealth's tax-exempt long-term bonds are yielding
1372 at the time of said calculation and shall assume that the cost of fossil fuels and electricity will
1373 increase at the rate of 3 per cent per year above the estimated rate of inflation or at a rate
1374 determined by the department of energy resources.

1375 (c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued thereunder,
1376 the division of capital asset management and maintenance may procure energy management
1377 services jointly with a state agency or a building authority that is procuring energy or related
1378 services. Said sections 11C and 11I shall apply to the extent feasible as determined by the
1379 commissioner of energy resources.

1380 (d) For purposes of this section, the term "economically feasible" shall mean that the cost of
1381 installing and operating an alternate technology is lower than the cost of installing and operating
1382 the energy, energy-using technology or water-using technology that would otherwise be
1383 installed, as determined by a life-cycle cost analysis.

1384 (e) The division of capital asset management and maintenance or the state agency initiating the
1385 construction or renovation of a facility subject to the requirements of subsection (a) shall file
1386 with the department of energy resources a report detailing the agency's compliance with this
1387 section with respect to each such facility.

1388 (f) The department of energy resources shall issue an annual report to the general court detailing
1389 the compliance record of all state agencies with the construction and renovation provisions of
1390 this section.

1391 Section 30. The director of facilities management shall make provision, as part of development
1392 of an inventory of buildings owned or otherwise occupied by state agencies or building

1393 authorities pursuant to section 24, for evaluation of the energy consumption of each building and
1394 its major energy using systems. The director may, with the approval of the commissioner and
1395 subject to appropriation or allocation, hire consultants for the purpose of performing energy
1396 audits designed to determine the need for energy conservation projects.

1397 The director shall recommend to the commissioner standards and guidelines governing energy
1398 conservation maintenance and operating procedures.

1399 The director shall in conjunction with the commissioner of energy resources set priorities and
1400 energy efficiency standards for all state buildings and conduct energy audits of said buildings.

1401 The bureau may contract with professional consulting firms to perform the energy audits.

1402 All energy conservation projects within the jurisdiction of the division of capital asset
1403 management and maintenance as defined by section 4, including projects funded out of any
1404 lump-sum energy conservation fund or account, shall be fully subject to this chapter except that
1405 alternative energy property program projects authorized pursuant to section 11 of chapter 25A
1406 shall not be subject to sections 11 and 12, sections 13 to 28, inclusive, or this section .

1407 Section 31. The division of capital asset management and maintenance shall evaluate the
1408 potential for increasing the energy efficiency in each building owned by an authority or state
1409 agency, or leased by such authority or agency for at least a 10 year period. Energy efficiency
1410 measures, as used in this section shall include, but not be limited to, heating, air-conditioning,
1411 lighting, water, and electric systems powered by coal, electricity, natural gas, oil.

1412 The annual energy cost savings realized by each authority or agency shall be retained in that the
1413 authority or agency utility account and applied to additional energy efficiency measures in
1414 subsequent years.

1415 Actions taken by the division of capital asset management and maintenance in accordance with

1416 this section shall be coordinated with ongoing energy conservation projects in state-owned or
1417 leased buildings. Utility programs offering energy auditing services shall be used whenever
1418 appropriate.

1419 The term “authority” used in this section shall not include authorities of cities or towns, such as
1420 local housing projects.

1421 Section 32. Real property, record title to which is held in the name of a state agency or the board
1422 of trustees of a state agency or similar board of a state agency, shall be deemed to be real
1423 property of the commonwealth. No deed or other instrument shall be required to effect the
1424 transfer to the commonwealth of title to such real property, but the land court department of the
1425 trial court shall, upon petition of the division of capital asset management and maintenance, issue
1426 in the name of the commonwealth a certificate of title to any real property, title to which is
1427 registered under chapter 185 in the name of a state agency or the board of trustees of a state
1428 agency or similar board of a state agency. Notwithstanding any general or special law to the
1429 contrary, no person shall acquire any rights by prescription or adverse possession in any lands or
1430 rights in lands held in the name of the commonwealth.

1431 The commissioner of capital asset management and maintenance shall exercise the powers stated
1432 in this chapter, notwithstanding the delegations which the general court has made pertaining to
1433 the acquisition, control, and disposition of real property, including sections 28 of chapter 15;
1434 section 2 of chapter 15D; section 19 of chapter 16; sections 1, 14B and 27 of chapter 19; section
1435 7 of chapter 19A; sections 14 to 16, inclusive, of chapter 20; sections 9A, 13, 17A, 17B, and 30
1436 of chapter 21; sections 2 and 9 of chapter 21A; sections 8 and 26 of chapter 23A; section 7 of
1437 chapter 23B; section 41 of chapter 29; sections 4 and 5 of chapter 29A; sections 11, 12, 25, 26,
1438 and 27 of chapter 75; sections 8, 9, 18, 19, and 22 of chapter 75A; sections 8, 13, and 14 of

1439 chapter 75B; sections 7, 7A, 7C, 7D, 7E, 7G, 7H, 7L, 7M, 11, 13A, and 13B of chapter 81;
1440 section 7 of chapter 82; section 4 of chapter 83; section 39B of chapter 90; sections 2, 3, 5, and 6
1441 of chapter 91; sections 9A, 13, 33, 34, 77 to 85, inclusive, 87, and 88 of chapter 92; sections
1442 62R, 83, and 86 of chapter 111; section 5 of chapter 111B; section 8 of chapter 115A; sections 1
1443 and 2 of chapter 120; section 5 of chapter 122; sections 39 and 43 of chapter 123; section 10 of
1444 chapter 124; section 2 of chapter 147; sections 31 and 32 of chapter 184; provided, however, that
1445 the commissioner shall acquire, control and dispose of real property in accordance with the terms
1446 and purposes of the aforementioned provisions. The commissioner shall not make any
1447 acquisition of real property on behalf of a state agency by eminent domain or make any such
1448 delegation of power to acquire real property by eminent domain to any state agency unless such
1449 state agency is otherwise authorized by law to exercise the power of eminent domain. The
1450 commissioner may delegate to state agencies responsibility for the acquisition, control, and
1451 disposition of real property as provided for in this chapter; except that the commissioner may not
1452 delegate responsibility for determining that property is surplus to state needs as required in
1453 section 33. When responsibility is delegated to a state agency, the written approval of the
1454 commissioner shall be required before the transaction is completed, and a copy of said written
1455 approval shall be sent to the joint committee on state administration.

1456 Section 33. For the purposes of sections 33 to 40, inclusive, the term “emergency” shall mean
1457 any situation caused by unforeseen circumstances which render currently used real property
1458 unusable or unavailable for the purposes intended and which creates an immediate need for other
1459 real property to preserve the health or safety of persons or property.

1460 The commissioner of capital asset management and maintenance shall be responsible for the
1461 acquisition, control and disposition of real property in the manner and to the extent provided in

1462 this chapter. The commissioner may delegate such responsibility to an administrator, who has 10
1463 years of experience in the management of commercial, industrial, institutional or public real
1464 property. When responsibility is delegated to an administrator the written approval of the
1465 commissioner shall be required before such transaction is finalized.

1466 The commissioner shall acquire interest in real property on behalf of the commonwealth for the
1467 use of state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-
1468 purchase or otherwise.

1469 In acquiring buildings for the use of state agencies, first consideration shall be given to any
1470 structures that have been certified as historic landmarks as provided by sections 26 through 27C
1471 inclusive of chapter 9, that have been listed in the National Register of Historic Places as
1472 provided by 16 U.S.C. section 470a (1974) or that have been designated historic landmarks by
1473 local historic commissions, unless use of such buildings would not be feasible in terms of costs
1474 and requirements when compared with other available properties.

1475 Notwithstanding any laws to the contrary, real property acquired for the use of state agencies
1476 shall be held in the name of the commonwealth.

1477 The commissioner shall assist in the preparation and shall approve of plans for the organization
1478 of all space within and around buildings and appurtenant structures used by state agencies, and
1479 shall assign the use of space within and around the state house, subject to such rules as the
1480 committee on rules of the two branches acting concurrently may adopt, under sections 10, 16A
1481 and 17 of chapter 8 the John W. McCormack State Office Building; the Leverett Saltonstall State
1482 Office Building; the Springfield Office Building; the Pittsfield Office Building; the Erich
1483 Lindemann Building; the Charles F. Hurley Building; any real property acquired for the use of
1484 state agencies, the greater part of which is not needed by any one state agency; and any other real

1485 property assigned by law to the division of capital asset management and maintenance.
1486 The commissioner, with the written approval of the secretary of administration and finance, may
1487 transfer use of, and responsibility for maintenance of, buildings, including equipment therein,
1488 within or between state agencies. No such transfer within or between state agencies which
1489 involves either a change in the purposes for which such building is currently used or a change in
1490 use in excess of 50 per cent of the usable floor space, shall be made without the prior approval of
1491 the general court. Any such transfer shall be based on a determination, made by the
1492 commissioner with the advice of the executive heads of affected agencies and secretaries of the
1493 executive offices in which such agencies are located, that such property is not needed, is
1494 underutilized, or is not being put to optimum use under current conditions. The commissioner
1495 shall notify the house and senate committees on ways and means and the representatives to the
1496 general court from the city or town in which such real property is located not less than 30 days
1497 prior to the final authorization of any transfer which does not require the approval of the general
1498 court, and such transfer shall only be made when the general court is in session except as
1499 provided hereafter. Such transfer may be made when the general court is not in session, and the
1500 30 day notification requirement may be waived, only if the commissioner certifies in writing that
1501 an emergency exists; provided that, any such transfer may be authorized for a period not to
1502 exceed 6 months, and provided further, that the commissioner shall submit his certification to
1503 and notify the house and senate ways and means committees of such transfer at the earliest
1504 possible opportunity.

1505 The commissioner may, after notification to and with the advice of the executive heads of state
1506 agencies and secretaries of the executive offices, determine that real property is not needed for
1507 the use of any state agency. If the commissioner determines that such property is surplus to both

1508 the current and foreseeable needs of state agencies, the commissioner shall determine whether
1509 any other public agency has a current or foreseeable direct public use for the property. For the
1510 purposes of determining whether property is surplus to direct public use, direct public use is
1511 defined in this section as use of property for a public agency's own operations, but does not
1512 include conveyance by such agency of any interest in the property to another party, but does
1513 include lease of the property by local housing authorities to public housing tenants.

1514 When property is determined to be surplus, to either current state or current direct public uses,
1515 but not to foreseeable state or foreseeable direct public uses, the commissioner shall take such
1516 action as is necessary to ensure that any disposition of the property is temporary and maintains
1517 the commissioner's ability to make such property available to a state agency or other public
1518 agency at such time as it is needed.

1519 If the commissioner determines that the property is not needed for current or foreseeable state or
1520 direct public use as defined above and that the property should be disposed of, the commissioner
1521 shall declare that the property is available for disposition and shall identify restrictions, if any, on
1522 the property's use and development necessary to comply with established state and local plans
1523 and policies, and the commissioner shall send written notification of such to the house and senate
1524 committees on ways and means, and the joint committee on state administration.

1525 The commissioner may convene an advisory committee to advise him on reuses and to
1526 recommend reuse restrictions for property declared surplus. If an advisory committee is
1527 convened, the commissioner shall invite the representatives to the general court from the city or
1528 town in which the property is located to serve on the committee. The commissioner shall prepare
1529 a preliminary report on his findings, which shall include both his recommendation, and those of
1530 the advisory committee if established, for reuse restrictions for the property.

1531 The commissioner shall conduct a public hearing to consider potential reuses and reuse
1532 restrictions for the surplus property and to review the secretary of administration and finance
1533 preliminary report if the property exceeds two acres or if the commissioner determines that a
1534 hearing should be held for a smaller parcel. If the commissioner determines to conduct a hearing,
1535 the commissioner shall provide notice in the central register of the public hearing at least 60 days
1536 prior to (1) notification to the house and senate committees on ways and means and the joint
1537 committee on state administration, of a temporary disposition of property to a public agency for
1538 less than 5 years for a direct public use, or (2) submission of a request to the general court for
1539 authority to otherwise dispose of real property as provided in this section. A notice of the public
1540 hearing shall also be placed, at least once each week for the 4 consecutive weeks preceding the
1541 hearing, in newspapers with sufficient circulation to inform the people of the affected locality.
1542 The hearing shall be held in the locality in which the property is located no sooner than 30 days
1543 and no later than 35 days after the notice is published in the central register.

1544 The commissioner may, with the written approval of the secretary of administration and finance,
1545 enter into agreements for the direct public use of surplus real property by public agencies other
1546 than state agencies, for a term not to exceed 5 years. Such agreement shall prohibit subsequent
1547 conveyance of interest in the property by the public agency to another party. The commissioner
1548 shall notify the house and senate committees on ways and means and the joint committee on state
1549 administration and regulatory oversight 30 days prior to the final authorization of any such
1550 agreement. The notification shall include the commissioner's report on recommended reuse
1551 restrictions. In no event shall any such agreement be made when the general court is not in
1552 session.

1553 The commissioner shall establish the value of surplus property through procedures customarily

1554 accepted by the appraising profession as valid for determining property value. The value shall be
1555 calculated both for: (1) the highest and best use of the property as currently encumbered; and (2)
1556 uses and encumbrances defined by the commissioner.

1557 The commissioner may, with the approval of the commissioner, request from the general court
1558 authorization to dispose of state real property determined to be surplus to state agency needs: (1)
1559 to public agencies of the commonwealth other than state agencies for direct public uses, over a
1560 period exceeding 5 years, (2) to a public agency of the commonwealth other than a state agency,
1561 for uses other than direct public uses, and (3) to an individual, entity, or the federal government;
1562 or any extension of any agreement for such use beyond a cumulative period of 5 years.

1563 Accompanying his request for authorization to dispose of property, the commissioner shall
1564 submit his report including a description of the property, its current use, structures, and
1565 approximate metes and bounds, the value of the property and recommended restrictions, if any,
1566 on reuses of the property. The commissioner shall also request authorization to negotiate real
1567 property disposition agreements with parties to be selected by the commissioner after the
1568 commissioner evaluates competitive proposals. Disposition agreements subsequently negotiated
1569 by the commissioner shall be consistent with the reuse restrictions approved by the general court.

1570 Notwithstanding this section, leases for agricultural purposes on land owned by the
1571 commonwealth shall be made for a term of not more than 5 years, and the renewal date for such
1572 leases shall not be less than 1 year prior to the end of the lease period. Holders of such leases
1573 shall be given the opportunity to renew such leases for a consideration equal to the current lease
1574 amount plus an escalation amount to be established annually by the commissioner for application
1575 to all such leases.

1576 The commissioner shall monitor compliance with disposition agreements.

1577 The commissioner shall develop regulations governing the conditions under which the
1578 commissioner will recommend to the general court that a public agency, including but not
1579 limited to the government land bank, receive title to surplus property for other than direct public
1580 use.

1581 For bills which authorize the sale, transfer, or other disposition of any state-owned real property
1582 filed by persons other than the commissioner of capital asset management and maintenance, the
1583 clerks of the house of representatives and the senate shall, within 10 days of the filing, forward a
1584 copy of said bill to the commissioner. Within 90 days of the receipt of said copy, the
1585 commissioner shall submit in writing a report to the secretary of administration and finance, the
1586 legislative committee before which the bill is pending, and the joint committee on state
1587 administration and regulatory oversight together with a recommendation for either the approval
1588 or the disapproval of the bill and his reasons therefor.

1589 If the commissioner is recommending the approval of a bill proposing the disposition of a parcel
1590 exceeding 2 acres, said report shall include: (1) a description of the property including its current
1591 use, structures, and approximate metes and bounds; (2) the value of the property, determined
1592 through procedures customarily accepted by the appraising profession as valid for such purposes,
1593 calculated both for (a) the highest and best use of the property as currently encumbered and (b)
1594 uses and encumbrances that would be imposed by the bill if enacted; (3) all current and
1595 foreseeable direct public uses identified by following the division's procedures for such purposes
1596 as they apply to the property to be disposed (4) other potential public and private uses of the
1597 property; and (5) any other information the general court may require.

1598 The commissioner shall expeditiously review and recommend approval or disapproval of any
1599 proposal to the general court for the sale, rental or other disposition of real property acquired on

1600 behalf of state agencies, and shall dispose of real property as mandated by the general court. All
1601 legislation submitted to the general court by the division of capital asset management and
1602 maintenance requesting authorization to convey or transfer real property under its jurisdiction
1603 shall be accompanied by a full report outlining the division's reasons for pursuing said
1604 conveyance or transfer.

1605 Section 34. (a) When authorized by the general court to sell, rent or otherwise dispose of real
1606 property, the commissioner shall proceed in accordance with this section, provided that any
1607 action or determination required hereunder which the commissioner has undertaken within 18
1608 months prior to enactment of the authorization to dispose of the property need not be repeated if
1609 the commissioner (1) files, as provided in subsection (b), a report fully describing such action or
1610 determination, a copy of which shall be sent to the clerks of the senate and the house of
1611 representatives, and the joint committee on state administration, and (2) certifies under penalties
1612 of perjury that such report is accurate and that the action or determination described therein was
1613 undertaken within 18 months prior to the date of enactment of the authorization to dispose of the
1614 property.

1615 The commissioner shall, after notification to and with the advice of the executive heads of state
1616 agencies and secretaries of the executive offices, determine whether such property is surplus to
1617 both current and foreseeable needs of state agencies. If the commissioner determines that the
1618 property is not surplus to either current or foreseeable needs of state agencies, the commissioner
1619 shall make no disposition that is inconsistent with such determination.

1620 If the commissioner determines that such property is surplus to both the current and foreseeable
1621 needs of state agencies, the commissioner shall provide written notice, for each city or town in
1622 which the property is located, to the city manager in the case of a city under Plan E form of

1623 government, the mayor and city council in the case of all other cities, the chairman of the board
1624 of selectmen in the case of a town, the county commissioners, the regional planning agency and
1625 the members of the general court. The commissioner shall set forth in such notice a description
1626 of the property; a declaration that the property is surplus to the needs of state agencies and that
1627 subject to the approval of the commissioner the property is available to any other public agency
1628 for a direct public use; and a statement that, if so requested by any public official or body entitled
1629 under this section to receive such notice, a public hearing will be conducted in the city or town
1630 where such property is located, to assist the commissioner in determining whether any other
1631 public agency has a current or foreseeable direct public use for the property. Following such
1632 hearing, if any, but in no event earlier than 30 days following the notice, the commissioner shall
1633 determine whether any other public agency has a current or foreseeable direct public use for the
1634 property. If the commissioner determines that the property is not surplus to either current or
1635 foreseeable direct public uses of public agencies, the commissioner shall make no disposition
1636 that is inconsistent with such determination.

1637 When the property is determined to be surplus to either current state or current direct public uses,
1638 but not to foreseeable state or foreseeable direct public uses, the commissioner shall take such
1639 action as is necessary to ensure that any disposition of the property is temporary and maintains
1640 the commissioner's ability to make such property available to a state agency or other public
1641 agency at such time as it is needed.

1642 If the commissioner determines that the property is surplus to both current and foreseeable direct
1643 public uses of public agencies, the commissioner may dispose of the property to a public agency
1644 for other than direct public use, or to an individual or entity, provided that any such disposition
1645 shall be subject to section 36.

1646 If the commissioner determines that the property is not needed for current or foreseeable state or
1647 direct public use and that the property should be disposed of, either temporarily or permanently,
1648 the commissioner shall declare that the property is available for disposition and shall determine
1649 appropriate reuse restrictions. The commissioner shall ensure that any rental agreement, and in
1650 the case of a conveyance a deed or separate disposition agreement as deemed appropriate by the
1651 commissioner, shall set forth all such reuse restrictions; shall provide for effective remedies on
1652 behalf of the commonwealth, including if deemed appropriate by the commissioner that title to
1653 the property, or such lesser interest as is the subject of the disposition agreement, shall revert to
1654 the commonwealth in the event of a violation of any such reuse restriction; and shall provide, in
1655 the case of a disposition to a public agency for a direct public use, that the title to the property, or
1656 such lesser interest as is the subject of the disposition agreement, shall revert to the
1657 commonwealth in the event the property is no longer utilized for such direct public use.

1658 In determining reuse restrictions, the commissioner shall conform to all such restrictions
1659 pertaining to the property which may have been mandated by the general court, and may adopt
1660 additional restrictions, taking account of established state and local plans and policies. The
1661 commissioner shall conduct a public hearing to consider reuse restrictions if the property exceeds
1662 2 acres or if the commissioner determines that a hearing should be held for a smaller parcel.

1663 Notice of the public hearing shall be placed at least once each week for 4 consecutive weeks
1664 preceding the hearing, in newspapers with sufficient circulation to inform the people of the
1665 affected locality. The hearing shall be held in the locality in which the property is located no
1666 sooner than 30 days and no later than 35 days after notice thereof is published in the central
1667 register.

1668 The commissioner shall establish the value of the property, through procedures customarily

1669 accepted by the appraising profession as valid for determining property value, for both the
1670 highest and best use of the property as currently encumbered and under the reuse restrictions as
1671 determined pursuant to this section.

1672 No agreement for the rental or other disposition of state-owned real property, and no deed,
1673 executed by or on behalf of the commonwealth, shall be valid unless such agreement or deed
1674 contains the following declaration, signed by the commissioner:

1675 The undersigned certifies under penalties of perjury that I have fully complied with sections 34
1676 and 36 of chapter 7C of the General Laws in connection with the property described herein.

1677 It shall be the policy of the commonwealth that the commissioner shall not sell, rent, or dispose
1678 of any real property including but not limited to granting the right to lay, construct, maintain, or
1679 operate pipelines through, over, across, or under land, water, park, reservation or highway of the
1680 commonwealth, its agencies or its political subdivisions, to any person doing business in or with
1681 Burma (Myanmar). The commissioner may sell, rent, or dispose of said property or grant said
1682 rights to said person only after certifying in writing to the speaker of the house of representatives
1683 and president of the senate that such action is essential to protect the health and safety of the
1684 public.

1685 (b) The commissioner shall maintain, for a period of at least 6 years next following enactment of
1686 an authorization by the general court to dispose of real property, a file containing a copy of each
1687 document necessary to establish fulfillment of the requirements of subsection (a). Such file shall
1688 be open to public inspection.

1689 Section 35. The commissioner of capital asset management and maintenance shall suggest to the
1690 budget director, as part of his recommendation for the annual appropriation for space rentals
1691 provided for by section 3 of chapter 29, the maximum rate to be paid for the rental of space by

1692 type and geographical area and the maximum percentage to be paid for the escalation of all such
1693 rental costs. The budget director shall consider the suggestions of the commissioner in
1694 recommending the approval of such costs by the general court, as part of the annual
1695 appropriations act.

1696 The commissioner may rent, for the use of state agencies, through lease, tenancy-at-will or other
1697 rental agreement for a term not exceeding 10 years, premises outside of the state house or other
1698 buildings owned by the commonwealth. If the term of the rental agreement under which
1699 premises are being used for the purposes of a particular activity by any state agency expires
1700 between the beginning of a fiscal year and the effective date of an appropriation act for such
1701 fiscal year and no appropriation for rent for said premises has been made and if the general court
1702 has not provided otherwise, the commissioner may rent for such purposes the same or different
1703 premises, for a term not exceeding 5 years, obligating the commonwealth to pay no greater
1704 amount of rent for any period than was paid for a corresponding period under the expiring
1705 agreement.

1706 No charges for rentals provided for in this section shall exceed the maximum rate plus escalation
1707 cost approved by the general court. Further, the commissioner shall notify the house and senate
1708 committees on ways and means 30 days prior to the final authorization of any such rental
1709 agreement and such agreement shall only be made when the general court is in session, except as
1710 provided hereafter. Such agreement may be made when the general court is not in session, and
1711 the 30 day notification requirement may be waived, only if the commissioner certifies in writing
1712 that an emergency exists; provided that, any such agreement shall be authorized for a period not
1713 to exceed 6 months, and provided further, that the commissioner shall submit his certification to
1714 and notify the house and senate committees on ways and means of such agreement at the earliest

1715 possible opportunity.

1716 Notwithstanding the time limitation of this section or of any other law, the commissioner may
1717 enter into rental-purchase agreements for the purchase or construction of premises to be occupied
1718 by the division of employment and training outside of the state house or other buildings owned
1719 by the commonwealth, provided, that the costs incident to such rental-purchase agreements,
1720 including amortization, shall be borne by the federal government. After expiration of the period
1721 of amortization in each such instance, the commonwealth shall not charge the department of
1722 employment and training with rent of such premises, provided the federal government shall bear
1723 the cost of service to and maintenance of such premises.

1724 The secretary of administration and finance shall report quarterly to the house and senate
1725 committees on ways and means any lease, tenancy-at-will or other rental agreement, or any
1726 extensions thereof, made pursuant to this section; provided, however that said quarterly report
1727 shall include, by agency, the amount and location of such rental space, any new or additional
1728 space, the duration of the lease or agreement, the cost per square foot of such rental space, any
1729 increase or decrease in said cost, and the cost of the preceding lease or agreement.

1730 Section 36. At least 30 days before opening proposals for the acquisition by purchase or rental of
1731 real property for the use of state agencies from an individual or entity, or for the sale or rental of
1732 real property used by state agencies (1) to a public agency other than a state agency for other
1733 than a direct public use, or (2) to an individual or entity, the commissioner of capital asset
1734 management and maintenance shall advertise in the central register published by the state
1735 secretary pursuant to section 20 of chapter 9 stating therein the need for or availability of such
1736 property, and inviting submission of such proposals. The advertisement shall specify the
1737 geographical area, terms and requirements of the proposed transaction, and shall state the time

1738 and place for the submission of such proposals and for the opening thereof. In advertising for the
1739 rental of real property for use as an area welfare office, the geographical area specified in the
1740 advertisement shall include all municipalities serviced by the welfare office. In case of the rental
1741 or sale of over 2500 square feet of real property, such advertisement shall also be placed at least
1742 once each week for 4 consecutive weeks in newspapers with a circulation sufficient to inform the
1743 people of the affected locality. The last publication shall occur at least 8 days preceding the day
1744 for opening proposals.

1745 The advertising requirement may be shortened or waived if (1) the commissioner certifies in
1746 writing that an emergency exists, a copy of such written certification shall be sent to the joint
1747 committee on state administration, provided that every reasonable effort be made to seek
1748 competitive proposals, and provided that the commissioner shall disclose his reasons for
1749 declaring the emergency in the central register at the earliest opportunity; or (2) in the case of a
1750 proposed acquisition, if the commissioner determines that such advertising will not be beneficial
1751 to the commonwealth's interest because of the unique qualities or location of the property
1752 needed, provided that the commissioner shall set forth in writing his reasons for such
1753 determination, relating such unique requirements to the property proposed to be acquired, and
1754 that such determination and the reasons therefor shall be published in the central register not less
1755 than 30 days before any binding agreement to acquire such property is executed, together with
1756 the name of the parties having a beneficial interest in the property pursuant to section 38, the
1757 location and size of the property, and the proposed purchase price or rental terms.

1758 No agreement on behalf of the commonwealth for the rental of real property for the use of state
1759 agencies from an individual or entity shall be valid unless such agreement contains the following
1760 declaration, signed by the commissioner:

1761 The undersigned certifies under penalties of perjury that I have fully complied with the
1762 advertising requirements of section 36 of chapter 7C of the General Laws in connection with the
1763 property described herein.

1764 The commissioner shall also place notification in the central register of the individual or firm
1765 selected as party to any such real property transaction, and the amount of such transaction. In no
1766 instance in which the state retains responsibility for maintenance of the property shall the terms
1767 provide for payment of less than the maintenance costs. If the commissioner decides to dispose
1768 of the property at a price less than any of its values established pursuant to section 34, the
1769 commissioner shall include a justification for such decision in the notice and shall disclose the
1770 difference between the calculated value and the price received.

1771 After the execution of a rental or sale agreement completing such transaction, all proposals
1772 relating thereto shall be retained by the commissioner and shall be open to inspection by the
1773 public until the expiration of such agreement or 6 months from the date thereof, whichever
1774 occurs first, and may thereafter be destroyed by him.

1775 Section 37. At least 120 days prior to any purchase, sale, rental, lease, transfer, or significant
1776 change in use of one or more acres of real property by the commonwealth on behalf of state
1777 agencies, the commissioner of capital asset management and maintenance shall notify in writing,
1778 for each city or town in which the real property is located: the city manager in the case of a city
1779 under Plan E form of government, the mayor and the city council in the case of all other cities,
1780 the chairman of the board of selectmen in the case of a town, the county commissioners, the
1781 regional planning agency, and the members of the general court. Such 120 day notification
1782 requirement may be shortened if: (1) the public officials referred to above agree to reduce the
1783 120 day period upon the request of the commissioner; or (2) the commissioner certifies in

1784 writing that an emergency exists, provided that commissioner shall submit his certification to and
1785 notify the appropriate local officials of any such transaction at the first possible opportunity. The
1786 notice shall include a statement of the present use, the reason for the proposed action, and the
1787 proposed use of the property. The commissioner shall at least 60 days prior to any such purchase,
1788 sale, rental, lease, transfer, or significant change in use of one or more acres of real property,
1789 cause a public hearing to be held, after giving timely notice, in the city or town where such real
1790 property is located for the purpose of disclosing the conditions or reasons for the proposed
1791 action.

1792 Section 38. No agreement to rent or to sell real property to or to rent or purchase real property
1793 from a public agency, and no renewal or extension of such agreement, shall be valid and no
1794 payment shall be made to the lessor or seller of such property unless a statement, signed, under
1795 the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of
1796 a corporation by a duly authorized officer thereof giving the true names and addresses of all
1797 persons who have or will have a direct or indirect beneficial interest in said property with the
1798 commissioner of capital asset management and maintenance. This section shall not apply to any
1799 stockholder of a corporation the stock of which is listed for sale to the general public with the
1800 securities and exchange commission, if such stockholder holds less than 10 per cent of the
1801 outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an
1802 agreement to rent property from a public agency where the lessee's interest is held by the
1803 organization of unit owners of a leasehold condominium created under chapter 183A, and time-
1804 shares are created in the leasehold condominium under chapter 183B, this section shall not apply
1805 to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or
1806 after a bona fide arms length transfer of such time-share made after the rental agreement with the

1807 public agency is executed and (ii) who holds less than 3 per cent of the votes entitled to vote at
1808 the annual meeting of such organization of unit owners.

1809 A disclosure statement shall also be made in writing, under penalty of perjury, during the term of
1810 a rental agreement in case of any change of interest in such property, as provided for above,
1811 within 30 days of such change.

1812 Any official elected to public office in the commonwealth, or any employee of the division of
1813 capital asset management and maintenance disclosing beneficial interest in real property
1814 pursuant to this section, shall identify his position as part of the disclosure statement. The
1815 commissioner shall notify the state ethics commission of such names, and shall make copies of
1816 any and all disclosure statements received available to the state ethics commission upon request.

1817 The commissioner shall keep a copy of each disclosure statement received available for public
1818 inspection during regular business hours.

1819 Section 39. The commissioner of capital asset management and maintenance shall establish and
1820 maintain a comprehensive inventory of the real property owned, rented or otherwise occupied by
1821 public agencies. Such inventory shall include a detailed description of the allocation, utilization
1822 and condition of real property used by state agencies and a general description of the size, type
1823 and use of real property under the jurisdiction of other public agencies. The real property
1824 inventory shall be published annually for distribution to state agencies and regional planning
1825 agencies, shall be filed by February 15 each year with the clerks of the house of representatives
1826 and the senate and the joint committee on state administration and regulatory oversight and shall
1827 be a public document available for general distribution.

1828 The division of capital asset management and maintenance shall be the central depository for all
1829 certificates of title, copies of deeds, records of sale, rental agreements and other pertinent records

1830 relating to real property acquired for the use of state agencies. All such documents shall be
1831 public records and shall be open to inspection by the public during regular business hours.
1832 The commissioner may delegate responsibility for the housing and care of such original records
1833 to a state agency if such records are necessary for the daily operation of said agency. A state
1834 agency requesting the delegation of such responsibility shall demonstrate to the commissioner
1835 that such records will be adequately maintained and housed. In case of such delegation, copies of
1836 essential records shall be deposited with the division.

1837 All public agencies shall cooperate with the division in providing the information required by
1838 this section.

1839 Section 40. The commissioner of capital asset management and maintenance shall establish rules
1840 and regulations for the acquisition, utilization and disposition of real property, which shall be
1841 applicable to state agencies and which shall be recommended to counties and building authorities
1842 and which shall be filed with the clerks of the house of representatives and the senate and the
1843 joint committee on state administration and regulatory oversight. The commissioner shall review
1844 rules and regulations promulgated by the director of housing and community development for
1845 the acquisition, utilization and disposition of real property and shall recommend approval or
1846 disapproval of such rules and regulations to said director. The commissioner may, at his
1847 discretion, delegate responsibility for the establishment of rules and regulations for the
1848 acquisition, utilization and disposition of real property, subject to his approval, to state agencies
1849 with special needs and a proven capability to promulgate such rules and regulations.

1850 Such rules and regulations shall, at a minimum, provide for:

1851 (a) a determination of the amount and type of real property needed to accommodate functions
1852 performed by agencies of the commonwealth;

- 1853 (b) a standard format for rental agreements and rental specifications;
- 1854 (c) current fair market rentals by geographical area;
- 1855 (d) methods of procurement and evaluation of service contracts for state-owned and rented real
1856 property;
- 1857 (e) procedures and criteria for determining when real property is not needed, is underutilized, or
1858 is not being put to optimum use;
- 1859 (f) rates to be charged in the rental of real property to public and federal agencies and private
1860 individuals and entities;
- 1861 (g) the method of procurement of independent determinations of property value, the number of
1862 such determinations, and the review of such determinations required before real property may be
1863 sold, purchased, or rented;
- 1864 (h) procedures to be employed in determining prices and terms for the sale, rental, or purchase of
1865 real property and certification required for proof of such procedures;
- 1866 (i) the satisfaction of requirements for the acquisition and disposition of real property as
1867 mandated by law and regulation;
- 1868 (j) the organization of space within buildings to maximize utilization;
- 1869 (k) a standard format for the disclosure of beneficial interest as mandated by section 38; and
- 1870 (l) the type and method of collection of information to be included in the real property inventory
1871 established by section 39.

1872 All such rules and regulations shall be filed in accordance with and subject to section 2 by the
1873 commissioner of the division of capital asset management and maintenance.

1874 Section 41. No department of the commonwealth shall occupy, or make any expenditure for the
1875 maintenance of, any land, buildings or other state-owned or state-occupied facilities or other

1876 property other than that under its control or jurisdiction. No department of the commonwealth
1877 shall authorize or otherwise allow the use by any private agency of such land, buildings or
1878 facilities under its control or jurisdiction unless such use or expenditure shall have been approved
1879 by the general court after recommendation by the secretary of administration and finance. Use
1880 without such approval shall be deemed to be a violation of this section, and the user shall pay a
1881 civil penalty at the rate of \$10 per square foot annually for the period of such use.

1882 Section 42. The director of facilities management shall report quarterly to the house and senate
1883 committees on ways and means any lease negotiated or any agreement providing for a tenancy at
1884 will or other rental of space, and any renewal or extension thereof, which has been signed by the
1885 executive or administrative head of a state department, court, commission or board or which has
1886 been approved by the state superintendent of state office buildings and by the secretary of
1887 administration and finance; provided, however, that said quarterly report shall include by agency,
1888 the amount and location of such rental space, any new or additional space, the duration of the
1889 lease or agreement, the cost per square foot of such rental space, any increase or decrease in said
1890 cost, and the cost of the preceding lease or agreement.

1891 Section 43. Upon the receipt of the commission of notice under section 6 of chapter 38 that a site
1892 evaluation will be made to determine if skeletal remains are American Indian, the commission
1893 may designate a representative to be present when said site evaluation is made. If the state
1894 archaeologist and commission determine that said remains are American Indian, the owner of the
1895 land whereon the remains were discovered, the state archaeologist, the commission and other
1896 interested parties shall determine whether prudent and feasible alternatives exist to avoid,
1897 minimize or mitigate harm to the Indian burial site. If it is not prudent and feasible to preserve
1898 the remains in the original Indian burial site then the state archaeologist shall excavate and

1899 recover the remains under the supervision of the commission on Indian affairs. The commission
1900 and state archaeologist shall then consult to determine how the remains shall be disposed.

1901 The final plan or agreement, which shall be in writing, may include provisions for preservation
1902 in situ; or the conducting of additional scientific and archaeological research and investigation
1903 with the approval of the commission on Indian affairs, or the immediate reinterment of the
1904 remains or with the consent of the site's owner, or the execution of a preservation restriction
1905 pursuant to section 32 of chapter 184. If it is determined that the remains are to be reinterred it
1906 shall be the responsibility of the commission on Indian affairs to conduct the reinterment.

1907 The state archaeologist and commission shall consult to determine whether a skeletal analysis
1908 shall be made; said analysis must be completed within 1 year of the date of approval. If more
1909 than 1 year is required to conduct said analysis, the commission and state archaeologist shall
1910 consult to determine whether the 1 year may be extended. If they fail to agree on whether the
1911 skeletal analysis shall be extended for more than 1 year, they shall each designate three qualified
1912 persons who shall meet and make a recommendation to the commission on Indian affairs on
1913 whether a skeletal analysis of the remains shall be made. The commission shall make the final
1914 decision on whether a skeletal analysis of the remains shall be conducted for longer than 1 year.
1915 It will be the responsibility of the commission on Indian affairs to reinter the remains when the
1916 skeletal analysis is completed.

1917 Section 44. (a) Sections 44 to 58, inclusive, shall: ensure that the commonwealth receives the
1918 highest quality design services for all its public building projects; provide for increased
1919 confidence in the procedures followed in the procurement of design and design related services;
1920 promote consistency in the methods of procurement of design and design related services for all
1921 public building projects in the commonwealth; foster effective broad-based participation in

1922 public work within the design professions; provide safeguards for the maintenance of the
1923 integrity of the system for procurement of designers' services within the commonwealth;
1924 (b) As used in sections 44 to 58, inclusive, the following words shall have the following
1925 meanings, unless the context clearly requires otherwise, or a different definition is prescribed for
1926 a particular section or provision.

1927 "Applicant", any person or entity applying to perform design services, the principal personnel
1928 responsible for the provision of such services for the project, and the persons who will be the
1929 principal staff for the project.

1930 "Board", the designer selection board.

1931 "Commissioner" and "division", the commissioner and the division of capital asset management
1932 and maintenance.

1933 "Continued services", authorization for a designer who has been appointed for one stage of a
1934 project to act as the designer for a succeeding stage or stages of the same project.

1935 "Construction manager", any designer or any other corporation, partnership, individual, sole
1936 proprietorship, joint stock company, joint venture, or other entity engaged in the practice of
1937 construction management or construction scheduling.

1938 "Design services", any of the following services provided by any designer, programmer, or
1939 construction manager in connection with any public building project:

1940 (i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

1941 (ii) preparation of drawings, plans, or specifications, including but not limited to schematic
1942 drawings, preliminary plans and specifications, working plans and specifications or other
1943 administration of construction contracts documents;

1944 (iii) supervision or administration of a construction contract;

1945 (iv) construction management or scheduling.

1946 “Designer”, an individual, corporation, partnership, sole proprietorship, joint stock company,
1947 joint venture, or other entity engaged in the practice of architecture, landscape architecture, or
1948 engineering, which satisfies the following:

1949 (i) if an individual, the individual is a registered architect, landscape architect, or engineer;

1950 (ii) if a partnership, a majority of all the partners are persons who are registered architects,
1951 landscape architects, or engineers;

1952 (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the
1953 directors or a majority of the stock ownership and the chief executive officer are persons who are
1954 registered architects, landscape architects, or engineers, and the person to have the project in his
1955 or her charge is registered in the discipline required for the project;

1956 (iv) if a joint venture, each joint venturer satisfies the requirements of this section.

1957 “Director”, the director of the office of project management, or in the case of agencies subject to
1958 section 4B of chapter 7, the chief executive official of the agency or his designee.

1959 “Extended services”, authorization for a designer who has been appointed to provide design
1960 services for a project to act as designer for work to be done on another project not originally
1961 included in that designer’s contract.

1962 “Programmer”, any designer or any other individual, corporation, partnership, sole
1963 proprietorship, joint stock company, joint venture or other entity engaged in the preparation of
1964 architectural facility programs or studies.

1965 “Public agency”, a department, agency, board, commission, authority, or other instrumentality of
1966 the commonwealth or political subdivision of the commonwealth or two or more subdivisions
1967 thereof other than cities and towns, and any agency, unit, authority, or instrumentality thereof but

1968 not including the State College Building Authority or the University of Massachusetts Building
1969 Authority.

1970 Section 45. (a) There shall be located within the executive office for administration and finance a
1971 designer selection board, consisting of 11 members. Eight members shall be appointed by the
1972 governor, 3 of whom shall be registered architects, 3 of whom shall be registered engineers, and
1973 2 of whom shall be representatives of the public who are not architect designers, engineers or
1974 construction contractors. Three additional members shall be appointed as follows: 1 registered
1975 architect by the Massachusetts State Association of Architects, 1 registered engineer by the
1976 government affairs council of design professional and 1 general contractor by the associated
1977 general contractor. The board shall be expanded from the present 5 members to 11 members
1978 according to the following schedule: 1 additional architect, 1 additional engineer, and the 1
1979 general contractor shall be appointed by the designated body within 90 days of the effective date
1980 of this section; another additional public representative shall be appointed within 1 year
1981 thereafter. Members shall be appointed for terms of 2 years and may be reappointed for no more
1982 than 1 successive 2 year term. The director shall designate a representative, who shall be the
1983 project manager in the case of a project under the jurisdiction of the office of project
1984 management, to act as a nonvoting member of the board for each project under his jurisdiction
1985 under consideration by the board. No provision of this section shall operate to reduce the tenure
1986 of members of the board serving at the time of the effective date of this section, except that the
1987 director of bureau of building construction shall cease to so serve upon the effective date of this
1988 section.

1989 (b) Members of the board shall be reimbursed for all necessary expenses incurred in the
1990 discharge of their official duties.

1991 (c) The board shall employ an executive director who shall be a registered architect or engineer
1992 registered in the commonwealth and such other staff or consultants as it may deem necessary,
1993 subject to appropriation, for the board. The board and its staff may travel within and without the
1994 commonwealth.

1995 Section 46. (a) The board shall have jurisdiction over the selection of all designers,
1996 programmers, and construction managers performing design services in connection with any
1997 building project for all public agencies within paragraphs (1), (2) and (4) of section 4, except
1998 those public agencies within section 54, and the procedures promulgated by any agency of the
1999 commonwealth for such selection by any housing authority subject to paragraph (3) of said
2000 section, unless a specific exemption from the board's jurisdiction is provided under this section.

2001 (b) The board shall grant an exemption for 2 years from its jurisdiction to each public agency
2002 within paragraphs (3) and (4) of section 4, but in no event to any public agency within
2003 paragraphs (1) and (2) of said section 4, if the agency has filed a written application for an
2004 exemption pursuant to subsection (c) of this section; provided, however, that the board shall
2005 withhold an exemption if the board determines that the designer selection procedure proposed by
2006 the public agency does not substantially incorporate the procedures required in section 45 to 53,
2007 inclusive, and section 56, or that the selection of finalists will not be made with the advice of
2008 design professionals or that the procedure proposed by the public agency does not satisfy the
2009 purposes of sections 44 to 58, inclusive, as set forth in said section 44, or that withholding such
2010 an exemption is in the best interest of the commonwealth; provided, however, that nothing in this
2011 section shall be interpreted to require the establishment of a board as prescribed in section 45 or
2012 to waive or in any way diminish the requirements imposed by any other general law. No
2013 withholding of an exemption shall take effect until the board shall have specified in writing the

2014 reasons for withholding an exemption and any changes in the agency's procedures which are
2015 required before an exemption will be granted. An agency granted an exemption or renewal
2016 thereof from the jurisdiction of the board shall, during any period such exemption or renewal is
2017 in effect, advertise for designers, select any designers to perform any design services, and
2018 continue or extend the services of any designers in accordance with the agency's last written
2019 designer selection procedures approved by the board in conformity with this section.

2020 (c) An application by a public agency for exemption from the jurisdiction of the board pursuant
2021 to this section must be verified by the agency director under the penalties of perjury, and must
2022 contain:

2023 (i) a detailed description of the designer selection process and the written designer selection
2024 procedures which the agency proposes to use;

2025 (ii) a statement that the agency's proposed designer selection process substantially incorporates
2026 the procedures required of the board in sections 45 to 53, inclusive, and section 56;

2027 (iii) a statement that the agency's projects are not subject to the jurisdiction of the division of
2028 capital planning and operations; and

2029 (iv) any other information required by the board.

2030 (d) An exemption shall be renewed by the board on a biennial basis if:

2031 (i) the board finds that the requirements of subsection (b) are met at the time of the renewal;

2032 (ii) the agency director files a verified application for renewal containing a description of any
2033 proposed changes in its designer selection procedure; and

2034 (iii) the agency director had filed a semi-annual report containing:

2035 a list of all contracts for designer services awarded by the agency since its last application,

2036 including for each project the name and address of any designer awarded such contracts, a brief

2037 description of the project, the estimated, or if available, the final construction cost for the project,
2038 and the estimated or, if available, final fee paid to the designer; and certification that all contracts
2039 so listed were awarded by the procedure described in the agency's last application.

2040 (e) Subject to subsection (f), a contract for design services shall be exempt from jurisdiction of
2041 the board if: (i) the design fee under the contract is less than \$10,000; or (ii) the estimated
2042 construction cost of the project for which the design services are required is less than \$100,000;
2043 or (iii) the contract is for the fabrication or installation of modular buildings procured in
2044 accordance with section 44E of chapter 149; or (iv) the contract is for the demolition of
2045 buildings. Projects consisting of energy management services procured in accordance with
2046 section 11C of chapter 25A and regulations promulgated thereunder shall be exempt from the
2047 jurisdiction of the board.

2048 (f) The following types of projects, and contracts for design services for such projects, shall not
2049 be exempt from the board's jurisdiction:

2050 (i) contracts for continued or extended services on projects over which the board otherwise has
2051 jurisdiction; and

2052 (ii) projects otherwise subject to the jurisdiction of the board for which an agency or the division
2053 intends to use its own staff to perform design services, except projects within Class I, as defined
2054 by subsection (d) of section 49, unless the board determines that the agency or the division has
2055 the capability with its existing staff to perform those services on the project in question, applying
2056 the same criteria as are used for selection of consultant designers.

2057 Section 47. (a) Each contract for designer services for a project subject to the jurisdiction of the
2058 board shall be publicly advertised by the board in a newspaper of general circulation in the area
2059 in which the project is located or to be located, and in the central register established under

2060 section 20A of chapter 9, and in such places as the board requires by regulation, at least 2 weeks
2061 before the deadline for filing applications; provided, however, that each contract for designer
2062 services for a project whose estimated cost of construction is not less than \$10,000 nor more than
2063 \$25,000 shall not be required to be advertised in a newspaper of general circulation but shall be
2064 required to be advertised in the central register.

2065 (b) The public notice required by subsection (a) shall contain:

2066 (i) a description of the project, including the specific designer services sought, the time period
2067 within which the project is to be completed, and, if available, the estimated construction cost;

2068 (ii) if there is a program for the project, a statement of when and where the program will be
2069 available for inspection for applicants, and when and where a briefing session will be held for
2070 applicants, if one is required by the board's regulations and if there is not a program for the
2071 project, a statement to the effect;

2072 (iii) the qualification required of applicants for the projects;

2073 (iv) the categories of designers' consultants, if any, for which applicants must list the names of
2074 consultants which the applicant may choose to use; and

2075 (v) whether the fee has been set or will be negotiated, and if the fee has been set, the amount of
2076 the fee.

2077 Section 48. (a) No designer, programmer, or construction manager may file an application for
2078 any project subject to the board's jurisdiction unless having first filed with the board a written
2079 statement containing the following information:

2080 (i) certification that the applicant legal entity, if applying to perform design services other than
2081 preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or
2082 construction manager as defined in subsection (b) of section 44;

2083 (ii) the names and addresses of all partners, if a partnership, of all officers, directors and all
2084 persons with an ownership interest of more than 5 per cent in the applicant if not a partnership;
2085 (iii) the registration number and status of each such person in every jurisdiction in which such
2086 person has ever been registered as an architect, landscape architect or engineer;

2087 (iv) a list of all projects for all public agencies within the commonwealth for which the applicant
2088 has performed or has entered into a contract to perform design services within the 5 year period
2089 immediately preceding the filing of the information required in this section;

2090 (v) a list of all current projects for which the applicant is performing or is under contract to
2091 perform any design services; and

2092 (vi) if the applicant is a joint venture, the information required in this section shall be required
2093 for each joint venturer, as well as for the joint venture itself.

2094 (b) The board shall keep a permanent record of the statements filed pursuant to this section and
2095 shall require the statements to be made current on a regular basis, and that statements pursuant to
2096 clauses (v) and (vi) of subsection (a) be current with each application filed.

2097 (c) An applicant to perform design, programming or construction management services on a
2098 project must file, in addition to the statement required under subsection (a), a written application
2099 as prescribed by the board, relating to the applicant's experience, ability, and qualifications.

2100 (d) The board and its staff shall be allowed access to all records of all public agencies concerning
2101 any applicant, or any project for which the applicant performed any services, for the purpose of
2102 verifying information submitted by the applicant, or for the purpose of evaluating the applicant's
2103 experience, ability and qualifications.

2104 (e) Every application or statement filed pursuant to this section shall be sworn to under penalties
2105 of perjury. A designer, programmer or construction manager who has been determined by the

2106 board to have filed materially false information under this section shall be disqualified by the
2107 board from further consideration for any project for such time as the board determines is
2108 appropriate.

2109 (f) The board shall not advertise for designers nor select any finalists to perform any design
2110 services other than the preparation of master plans, studies, surveys, soil tests, cost estimates, or
2111 programs unless the deputy commissioner certifies that it is appropriate to do so and either that a
2112 program defining the design services required has been prepared, and has been approved by the
2113 division, or that no program is required by the division.

2114 (g) The division of capital asset management and maintenance in consultation with the board
2115 shall develop a standard designer evaluation form that shall be completed by every public
2116 agency, as defined in section 44A of chapter 149, upon completion of the work under a design
2117 contract under its control, and submitted to the division and the board for the designer's
2118 qualification file. The official from the public agency or the owner's representative as described
2119 in section 44A of said chapter 149 shall certify that the information contained on the designer
2120 evaluation form represents, to the best of his knowledge, a true and accurate analysis of the
2121 designer's performance record on the contract. The public agency shall mail a copy of the
2122 designer evaluation form to the designer who may, within 30 days, submit a written response to
2123 the division and board disputing any information contained in the form and setting forth any
2124 additional information concerning the building project or the oversight of the building
2125 construction contract by the public agency as may be relevant to the evaluation of the designer's
2126 performance on the contract. The division and board shall attach any such response to the
2127 evaluation form for inclusion in the designer's qualification file. No public employee or public
2128 employer, as defined in section 1 of chapter 258, and no person shall be liable for an injury or

2129 loss to a designer as a result of the completion of a designer evaluation form as required by this
2130 section unless the individual completing such evaluation form has been found by a superior court
2131 of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is
2132 commenced by a designer against any person who has completed a designer evaluation form as
2133 required by this section seeking to recover damages resulting from injury caused by such
2134 evaluation, the public agency for whom such evaluation form was completed or the
2135 commonwealth, if such evaluation was completed for a state agency, shall provide for the legal
2136 representation of such person. Such public agency or the commonwealth, where an evaluation
2137 was completed for a state agency, shall also indemnify such person from all personal financial
2138 losses and expenses including, but not limited to, legal fees and filing costs, if any, in an amount
2139 not to exceed \$1,000,000, but no such person shall be indemnified for losses other than legal fees
2140 and filing costs under this section if such person is found by a court or a jury to have acted in a
2141 willful, wanton or reckless manner.

2142 The awarding authority shall provide the designer with a written preliminary evaluation at the
2143 completion of the schematic phase of the project for informational purposes.

2144 Any public agency that fails to complete and submit the designer evaluation form, together with
2145 any written response by any designer, to the division within 70 days of the completion of a
2146 project shall be ineligible for the receipt of any public funds disbursed by the commonwealth for
2147 the purposes of public building or public works projects.

2148 Section 49. (a) The board shall adopt written applicants' criteria for selection of semifinalists and
2149 finalists based upon information obtained under section 48 for each project. The criteria shall
2150 include:

2151 (i) prior similar experience;

- 2152 (ii) past performance on public and private projects;
2153 (iii) financial stability;
2154 (iv) identity and qualifications of the consultants who will work with the applicant on the project;
2155 and
2156 (v) any other criteria that the board considers relevant for any project.

2157 (b) Semifinalists may be chosen for each project.

2158 The board shall select at least 3 finalists from among all the applicants, or from the semifinalists
2159 selected under this section, and in doing so may require all the applicants or the semifinalists to:

- 2160 (i) appear for an interview before the board;
2161 (ii) present a written proposal to the board; or
2162 (iii) participate in a design competition held by the board.

2163 (c) The board shall transmit a list of the chosen finalists to the commissioner. No person or firm
2164 debarred pursuant to section 44C of chapter 149 or disqualified pursuant to section 47 shall be so
2165 included as a finalist. The board shall transmit to the commissioner all material made or received
2166 relating to such recommendation.

2167 The list shall rank the finalists in order of qualification and include a record of the final vote of
2168 the board on the selection; and include a written statement explaining the board's reasons for its
2169 choice and its ranking of the finalists.

2170 (d) The board may delegate its powers and duties under subsection (b) of section 47, subsections
2171 (c) and (d) of section 48, subsections (a) and (b) of section 50 and sections 51 and 52 to panels of
2172 less than all the board members. A panel of not less than 6 members shall be required for
2173 selection of designers under this section, 4 of whom shall be architects or engineers, including at
2174 least 1 architect and 1 engineer on that panel.

2175 (e) For the purposes of chapter 268A and subject to the penalties therein, no member of the board
2176 shall participate in the selection of a designer as a finalist or semifinalist for any project if the
2177 member or any member of his immediate family:

2178 (i) has a direct or indirect financial interest in the award of the design contract to any applicant;

2179 (ii) is currently employed by, or is a consultant to or under contract to an applicant.

2180 (iii) is negotiating or has an arrangement concerning future employment or contracting with any
2181 applicant; or

2182 (iv) has an ownership interest in, or is an officer or director of, any applicant.

2183 Section 50. (a) In the selection of a designer when the fee for design services has been set by the
2184 commissioner prior to the selection process, the commissioner shall appoint a designer from
2185 among the list transmitted to the commissioner under section 49. If the commissioner appoints
2186 any designer other than the one ranked first by the board, the commissioner shall file a written
2187 justification of the appointment with the board.

2188 (b) When the fee for design services is to be negotiated, the commissioner shall review the list
2189 transmitted by the board, and may exclude any designer from the list if a written explanation of
2190 the exclusion is filed with the board. The commissioner shall then appoint a designer based on
2191 successful fee negotiation. The commissioner or persons designated by the commissioner shall
2192 first negotiate with the first ranked designer remaining on the list. Should the commissioner be
2193 unable to negotiate a satisfactory fee with the first ranked designer within 30 days, negotiations
2194 shall be terminated and negotiations undertaken with the remaining designers, 1 at a time, in the
2195 order in which they were ranked by the board, until an agreement is reached. In no event may a
2196 fee be negotiated which is higher than a maximum fee set by the commissioner prior to selection
2197 of finalists. Should the commissioner be unable to negotiate a satisfactory fee with any designer

2198 initially selected as a finalist by the board, the board shall recommend additional finalists in
2199 accordance with this chapter. The commissioner may require a finalist with whom a fee is being
2200 negotiated to submit a fee proposal and include with it such information as the commissioner
2201 requires to provide current cost and pricing data on the basis of which the designer's fee proposal
2202 may be evaluated.

2203 (c) All fees shall be stated in designer's contracts and in any subsequent amendment thereto as a
2204 total dollar amount. Contracts may provide for equitable adjustments in the event of changes in
2205 scope or services.

2206 (d) Notwithstanding any general or special law to the contrary, all public entities within the
2207 commonwealth, agencies and authorities of the commonwealth and municipal entities within the
2208 commonwealth, including departments, boards, committees or commissions shall be entitled to
2209 withhold up to 5 per cent of contract fees earned and invoiced as part of professional service
2210 contracts, during the life of the contract. Withheld fees shall be held for not longer than 2 invoice
2211 periods when the contractor is permitted to invoice monthly, or until successful completion of
2212 the next contract phase or stage when the contractor is permitted to invoice by project phase or
2213 stage. When the work covered by the contract is completed, all remaining withheld fees shall be
2214 paid to the contractor within 2 months from the date of completion. If the withholdings are not
2215 paid to the contractor within the stipulated time limit, the amount of the withholding in arrears
2216 shall be increased at a 12 per cent annual rate.

2217 (e) Notwithstanding any general or special law to the contrary, agencies and authorities of the
2218 commonwealth and municipal entities within the commonwealth, including departments, boards,
2219 committees or commissions, shall pay all outstanding withheld fees on professional service
2220 contracts, when the withholding has been held for longer than 2 invoice periods for active

2221 contracts, or that remains withheld on contracts which have been completed, or for which the
2222 work of the contractor has been completed.

2223 Section 51. (a) When the board has required that applicants list consultants which the applicants
2224 may employ, in no event shall a consultant be used who is debarred pursuant to section 44C of
2225 chapter 149 and any change in or addition to the consultants named in the application and
2226 allowed by the board upon appointment must be approved by the commissioner and reported to
2227 the board, along with a written statement by the designer or construction manager of the reasons
2228 for the change.

2229 (b) If the designer's or construction manager's fee is negotiated, the designer or construction
2230 manager shall file a truth-in-negotiations certificate prior to being awarded the contract by the
2231 commissioner, which must be incorporated into the contract. The certificate shall contain:

2232 (i) a statement that the wage rates and other costs used to support the designer's compensation
2233 are accurate, complete, and current at the time of contracting; and

2234 (ii) an agreement that the original contract price and any additions to the contract may be
2235 adjusted within 1 year of completion of the contract to exclude any significant amounts if the
2236 commissioner determines that the fee was increased by such amounts due to inaccurate,
2237 incomplete or noncurrent wage rates or other costs.

2238 (c) The board may specify other special conditions or requirements in selecting a particular
2239 applicant as a finalist. If any change is made by the applicant after appointment relating to such
2240 special conditions or requirements, the change must be approved by the commissioner and
2241 reported to the board along with a written statement by the appointee of the reasons for the
2242 change.

2243 (d) Every contract for design services awarded under sections 44 to 58, inclusive, shall include

2244 the following:

2245 (i) certification that the designer or construction manager has not given, offered or agreed to give
2246 any person, corporation or other entity any gift, contribution or offer of employment as an
2247 inducement for, or in connection with, the award of the contract for design services;

2248 (ii) certification that no consultant to or subcontractor for the designer or construction manager
2249 has given, offered or agreed to give any gift, contribution or offer of employment to the designer
2250 or construction manager, or to any other person, corporation, or entity as an inducement for, or in
2251 connection with, the award to the consultant or subcontractor of a contract by the designer or
2252 construction manager;

2253 (iii) certification that no person, corporation or other entity, other than a bona fide full time
2254 employee of the designer or construction manager, has been retained or hired by the designer or
2255 construction manager to solicit for or in any way assist the designer or construction manager in
2256 obtaining the contract for design services upon an agreement or understanding that such person,
2257 corporation or other entity be paid a fee or other consideration contingent upon the award of the
2258 contract to the designer; and

2259 (iv) certification with respect to contracts which exceed \$10,000 or which are for the design of a
2260 building for which the budgeted or estimated construction costs exceed \$100,000 that the
2261 designer has internal accounting controls as required by subsection (c) of section 39R of chapter
2262 30 and that the designer has filed and will continue to file an audited financial statement as
2263 required by subsection (d) of said section 39R.

2264 (e) A public agency shall not enter into a contract for design services unless the public agency or
2265 the designer has obtained professional liability insurance covering negligent errors, omissions
2266 and acts of the designer or of any person or business entity for whose performance the designer

2267 is legally liable arising out of the performance of the contract. The total amount of such
2268 insurance shall at a minimum equal the lesser of \$1,000,000 or 10 per cent of the project's
2269 estimated cost of construction, or such larger amounts as the public agency may require, for the
2270 applicable period of limitations. A designer required by the public agency to obtain all or a
2271 portion of such insurance coverage at his own expense shall furnish a certificate or certificates of
2272 insurance coverage to the public agency prior to the award of the contract. For purposes of this
2273 paragraph only, "public agency" shall have the meaning set forth in section 1.

2274 At the request of the director, a consultant employed by a designer subject to this paragraph shall
2275 obtain and maintain a liability insurance policy covering negligent errors, omissions and acts of
2276 such consultant or of any person or business entity for whose performance the consultant is
2277 legally liable arising out of the performance of the contract for consultant services. The
2278 consultant shall furnish a certificate or certificates of such insurance coverage to the division in
2279 the case of a consultant hired by a designer selected pursuant to section 49 or to a public agency
2280 not subject to the jurisdiction of said board prior to the employment of such consultant by the
2281 designer. A liability insurance policy maintained under this paragraph shall provide for coverage
2282 of such type and duration and in such amount as the public agency shall require.

2283 (f) A designer, construction manager, or programmer who has been determined by the board to
2284 have provided materially false statements or information under this section shall be disqualified
2285 by the board from future work on any project for such time as the board determines is
2286 appropriate.

2287 (g) Contracts for design service may include a requirement that the designer be responsible for
2288 overseeing the construction phase of the project.

2289 (h) Awarding authorities in cities and towns may allow a designer who conducted a feasibility

2290 study to continue with the design of a project; but, nothing herein shall prohibit the awarding
2291 authorities from commissioning, at the discretion of the awarding authorities, an independent
2292 review, by a knowledgeable and competent individual or business doing such work, of the
2293 feasibility of the designer's work to insure its reasonableness and its adequacy before allowing
2294 the designer to continue on the project.

2295 (i) Contracts for design services shall include a provision that the designer or his consultants
2296 shall not be compensated for any services involved in preparing changes that are required for
2297 additional work that should have been anticipated by the designer in the preparation of the bid
2298 documents, as reasonably determined by the executive head of the public agency responsible for
2299 administering the design contract. For the purpose of this subsection, "public agency" shall have
2300 the meaning as set forth in section 1.

2301 Section 52. The commissioner may appoint a designer to perform continued or extended services
2302 if the following conditions are met:

2303 (i) a written statement is filed with the board explaining the reasons for the continuation or
2304 extension of services;

2305 (ii) the program for the design services is filed with the board if one is required by the
2306 regulations of the division; and

2307 (iii) the board approves the appointment of the designer for continued or extended services and
2308 states the reason therefor.

2309 Section 53. (a) Whenever the health or safety of any persons will be endangered because of the
2310 time required for the selection of a designer, programmer or construction manager by the
2311 procedures prescribed by sections 44 to 58, inclusive, or whenever a deadline for action is set on
2312 a project by any court or federal agency which cannot be met if those selection procedures are

2313 followed, the commissioner may declare that an emergency situation exists.

2314 (b) If the commissioner declares that an emergency situation exists, finalist selection may be

2315 made by the board by expedited procedures adopted by regulation by the board.

2316 Section 54. (a) Every contract for design services for any building construction, reconstruction,

2317 alteration, remodeling, or repair estimated to exceed \$100,000 by any city, town, or agency,

2318 board, commission, authority or instrumentality thereof, other than housing authorities and

2319 projects requesting funding from the Massachusetts School Building Authority shall be awarded

2320 only after a selection procedure adopted in writing, prior to publication requesting applications,

2321 complying with the purposes and intent of sections 44 to 58, inclusive, and the following

2322 requirements:

2323 (i) section 47 regarding public notice;

2324 (ii) the establishment of uniform requirements of information to be submitted by all applicants, a

2325 uniform procedure for the evaluation of all applications to a group of not fewer than 3 finalists,

2326 the opportunity to be afforded equally to all finalists to provide additional information to or

2327 appear before the selection body, and a procedure for the submission of a fee proposal and the

2328 negotiation of fees between the awarding authority and the selected applicant with whom the fee

2329 is being negotiated consistent with subsection (b) of section 50;

2330 (iii) that a written explanation of the reasons for selection including the recorded vote if any was

2331 taken be made public and accompany the notification of award in the awarding authority's

2332 records;

2333 (iv) subsection (c) of section 50 regarding the designation of fees in the contract;

2334 (v) that nothing in this section shall be interpreted to require the establishment of a board or to

2335 waive or reduce the requirements of any other applicable law or regulation.

2336 (b) The board shall publish guidelines to assist public agencies not within the board's jurisdiction
2337 in the establishment of a professional and objective designer selection procedure, including a
2338 model application form, consistent with the provisions and intent of sections 44 to 58, inclusive.
2339 The board shall publish a standard designer selection form which shall be used by all cities,
2340 towns and public agencies not within the board's jurisdiction; but, before publishing the standard
2341 form, the board shall seek input from the cities, towns and other public agencies not within the
2342 board's jurisdiction. Any fee guidelines promulgated by the board shall be accompanied by a
2343 recommended basic scope of designer's services that shall reflect the work associated with the
2344 fee guidelines. From time to time, and no less frequently than every 3 years, the board shall
2345 review and revise the fee schedule based upon prevailing costs at the time of such review and
2346 revision.

2347 (c) Any city, town or other public agency not otherwise subject to the jurisdiction of the board
2348 may request the board to exercise jurisdiction regarding the selection of applicants to perform
2349 design services for a specified period of time or for a specified project. In such cases, all
2350 provisions of sections 44 to 58, inclusive, shall apply to the board, the applicants and the public
2351 agency so requesting.

2352 (d) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or
2353 instrumentality thereof may procure modular buildings in accordance with section 44E of chapter
2354 149.

2355 (e) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or
2356 instrumentality thereof may procure energy management services in accordance with section
2357 11C of chapter 25A and regulations promulgated thereunder.

2358 Section 55. The board, any public agency exempted under section 46 and all other governmental

2359 units engaged in the selection of applicants to perform design services but not otherwise subject
2360 to the board's jurisdiction shall keep the following records:

2361 (i) all information supplied by or obtained about each applicant;

2362 (ii) all actions taken by the board or agency relating to any project;

2363 (iii) any other records related to designer selection required by the division.

2364 The records of public agencies exempted under section 46 or not otherwise subject to the
2365 jurisdiction of the board shall be available for inspection by the board or the division.

2366 Section 56. The board shall submit an annual report to the division of capital asset management
2367 and maintenance listing all finalists selected by the board and all awards made pursuant to
2368 sections 44 to 58, inclusive, a summary of the activities and other actions of the board and its
2369 staff, and such other items as the board deems appropriate.

2370 Section 57. The board shall independently adopt procedures and regulations as necessary to
2371 implement the requirements of sections 44 to 58, inclusive. Such procedures and regulations may
2372 vary according to the class of project.

2373 Section 58. (a) For the purposes of this section the following words shall have the following
2374 meanings unless the context clearly requires otherwise:-

2375 "Agency", the Massachusetts Department of Transportation, the Massachusetts Port Authority
2376 and the Massachusetts Bay Transportation Authority.

2377 "Architectural and engineering services", (i) professional services of an architectural or
2378 engineering nature, as defined by state law, which are required to be performed or approved by a
2379 person licensed, registered or certified to provide those services as described herein; (ii)
2380 professional services of an architectural or engineering nature performed by contract that are
2381 associated with research planning, development, design, investigations, inspections, tests,

2382 evaluations, consultations, program management, value engineering, construction, alteration or
2383 repair of real property; and (iii) such other professional services of an architectural or
2384 engineering nature, or incidental services, which members of the architectural and engineering
2385 professions and individuals in their employ may logically or justifiably perform, including
2386 studies, investigations, surveying and mapping, soil tests, construction phase services, drawing
2387 reviews, evaluations, consultations, comprehensive planning, program management, conceptual
2388 designs, plans and specifications, soils engineering, cost estimates or programs, preparation of
2389 drawings, plans or specifications, supervision or administration of construction contracts,
2390 construction management or scheduling, preparation of operation and maintenance manuals and
2391 other related services.

2392 "Firm", an individual, firm, partnership, corporation, association or other legal entity authorized
2393 by law to practice the professions of architecture, engineering, land surveying, landscape
2394 architecture, environmental science, planning or program management.

2395 "Public works project", a capital improvement project or a design, study, plan, survey or new or
2396 existing program activity of an agency, including the development of new or existing programs
2397 that require architectural, engineering or related professional services; provided, however, that
2398 "public works project" shall not include a public building construction project undertaken under
2399 chapters 7, 149 and 149A.

2400 "Related professional services", (i) professional services, including land surveying, landscape
2401 architecture, environmental science and planning, which are required to be performed or
2402 approved by a person licensed, registered or certified to provide such services as described
2403 herein; (ii) professional services performed by contract that are associated with research,
2404 planning, development, design, investigations, inspections, surveying and mapping, tests,

2405 evaluations, consultations, comprehensive planning program management, value engineering,
2406 construction, alteration or repair of real property; and (iii) such other professional services, or
2407 incidental services, which members of the related professions as described herein and individuals
2408 in their employ may logically or justifiably perform, including master plans, studies, surveys,
2409 soil tests, cost estimates or programs, preparation of drawings, plans or specifications,
2410 supervision or administration of construction contracts, construction management or scheduling,
2411 conceptual designs, plans and specifications, construction phase services, soils engineering,
2412 drawing reviews, cost estimating, preparation of operation and maintenance manuals and other
2413 related services; provided, however, that nothing herein shall be construed to constitute a
2414 regulation or oversight of any designated firms or identified professionals' services.

2415 (b) For those agencies that prequalify architectural, engineering and related services, the agency
2416 shall require firms engaged in the lawful practice of their profession to submit a statement of
2417 qualifications and performance data every 2 years to the agency pursuant to the terms and
2418 schedule as determined by the agency. Agencies that prequalify shall have the option of selecting
2419 firms from their prequalified list of firms based on the agency policies and without further
2420 publically advertising the selection.

2421 (c) Whenever a public works project requiring architectural, engineering or related professional
2422 services is to be advertised by an agency, the agency shall provide not less than 14 days advance
2423 notice published in a professional services bulletin or advertised on the official agency website
2424 setting forth the public works project and services to be procured. The professional services
2425 bulletin shall be made available to each firm that requests the information. The professional
2426 services bulletin shall include a description of each public works project and shall state the time
2427 and place for an interested firm to submit a statement of qualifications and, if required by the

2428 public notice, a letter of interest and technical proposal. If the agency determines that a sole
2429 source selection of a qualified firm is in the best interest of the agency, then the public notice
2430 provisions of this subsection shall not apply.

2431 (d) An agency shall evaluate the firms submitting statements of qualifications, taking into
2432 account qualifications, letters of interest and technical proposals, and the agency may consider,
2433 but shall not be limited to considering, ability of professional personnel, past record and
2434 experience, performance data on file, willingness to meet time requirements, location, workload
2435 of the firm and any other qualifications based on factors that the agency may determine in
2436 writing are applicable. The agency may conduct discussions with, and require presentations by,
2437 firms deemed to be the most qualified regarding their qualifications, approach to the public
2438 works project and ability to furnish the required services. An agency shall not, prior to selecting
2439 a firm for negotiation, seek formal or informal submission of verbal or written estimates of costs
2440 or proposals in terms of dollars, hours required, percentage of construction cost or any other
2441 measure of compensation.

2442 (e) (1) An agency shall select architects, engineers and related professional firms on the basis of
2443 qualifications for the type of professional services required, and on technical proposals, if
2444 submitted. An agency may solicit or use pricing policies and proposals or other pricing
2445 information to determine consultant compensation only after the agency has selected a firm and
2446 initiated negotiations with the selected firm.

2447 (2) The procedures that an agency creates for the screening and selection of firms shall be within
2448 the sole discretion of the agency and may be adjusted to accommodate the agency's scope,
2449 schedule and budget objectives for a particular public works project.

2450 (3) The decision of an agency that has complied with this chapter shall be final and binding.

2451 (f) (1) The agency and the selected firm shall discuss and refine the scope of services for the
2452 public works project and shall negotiate conditions including, but not limited to, compensation
2453 level and performance schedule based on scope of services. The compensation level paid shall be
2454 reasonable and fair to the agency as determined solely by the agency. In making such
2455 determination, the agency shall take into account the estimated value of the services to be
2456 rendered and the scope, complexity and professional nature thereof.

2457 (2) If the agency and the selected firm are unable for any reason to negotiate a contract at a
2458 compensation level that is reasonable and fair to the agency, the agency shall, in writing,
2459 formally terminate negotiations with the selected firm. The agency shall then negotiate with the
2460 second ranked most qualified firm. The negotiation process shall continue in this manner through
2461 successive ranked firms until an agreement is reached or the agency terminates the consultant
2462 contracting process.

2463 (g) This section shall not apply to the procurement of architectural, engineering and related
2464 professional services by agencies: (i) when an agency determines in writing that it is in the best
2465 interest of the agency to proceed with the immediate selection of a firm; (ii) in emergencies when
2466 immediate services are necessary to protect the public health and safety; or (iii) when these
2467 services are to be provided as part of a design-build project pursuant to sections 14 to 21,
2468 inclusive, of chapter 149A.

2469 (h) Each agency shall evaluate the performance of each firm upon completion of a contract. The
2470 evaluation shall be made available to the firm which may submit a written response.

2471 Section 59. Every appropriation or authorization for the design or construction of a building
2472 project for which a state agency is the using agency shall be deemed to require the satisfactory
2473 completion of a study or program before any services for the design or construction of such

2474 project may be contracted for, performed by contract or otherwise, or funds allotted, encumbered
2475 or expended therefor, unless such appropriation or authorization specifically states that no such
2476 study or program need or shall be done.

2477 No provider of design services for any building project for which a state agency is the using
2478 agency shall be selected by the designer selection board or by the administering agency and no
2479 design services shall be performed for or by such administering agency for any building project
2480 for which the satisfactory completion of a study program is required prior to the design or
2481 construction of that project, unless and until: (a) said study, program or where appropriate, both,
2482 have been satisfactorily completed; (b) the using agency certifies in writing to the commissioner
2483 of capital asset management and maintenance that the study, program, or where appropriate both,
2484 correspond to the current needs of that agency, including its current long term capital facilities
2485 development plan; (c) the commissioner requests that one or more of the directors of the office of
2486 programming, office of project management, or office of facilities management review the study
2487 or program, or where appropriate, both, and the director or directors certify in writing to the
2488 commissioner that the study, program, or where appropriate both, reflect the using agency's
2489 needs as stated, that they provide an accurate estimate of the project requirements, cost and
2490 schedule, that the project can be accomplished within the appropriation or authorization for that
2491 project, and recommends proceeding with design, construction, or where appropriate, both; and
2492 (d) the commissioner of capital asset management and maintenance certifies in writing to the
2493 secretary of administration and finance that the study, program, or where appropriate both, are in
2494 conformity with the scope and purpose of the appropriation or authorization for the project and
2495 legislative intent in regard to long range capital facility plans for the using agency, and approves
2496 proceeding with design, construction, or where appropriate, both.

2497 If either the director or directors whose review is requested or the commissioner of capital asset
2498 management and maintenance should fail to so certify, recommend, or approve, the
2499 commissioner shall forthwith send notice of his decision and the reasons therefor to the secretary
2500 of administration and finance and to the house and senate committees on ways and means.

2501 Section 60. No allotment, encumbrance, or expenditure of funds appropriated or authorized for
2502 the design of a capital facility project shall be approved by the comptroller unless the executive
2503 head of the agency administering the project, or other person provided for by statute, certifies in
2504 writing that the design work is or shall be such as to specify a project that can be accomplished
2505 (a) within the appropriation or authorization for the project or within the project cost limits
2506 specified by the appropriation or authorization and (b) without substantial deviation from any (i)
2507 study or program which must be prepared in accordance with section 59 or (ii) any other pre-
2508 design document which must be prepared in accordance with any other statute, appropriation or
2509 authorization or administrative directive consistent therewith. In no event shall the design work
2510 be such as would result in a change in the number of square feet to be constructed in the project
2511 of more than 10 per cent from the number specified in the study, program or other pre-design
2512 document referred to in (b)(i) and (b)(ii).

2513 No state agency, as defined by section 1, administering a capital facility project shall enter into
2514 any contracts or incur any other obligations or cause to be performed design services for that
2515 project if such would result in the completion of a project which cannot be accomplished (a)
2516 within the appropriation or authorization for the project or within the project cost limits specified
2517 by the appropriation or authorization and (b) without substantial deviation for (i) any study or
2518 program which must be prepared in accordance with section 59 or (ii) any other pre-design
2519 planning document which must be prepared in accordance with any other statute, appropriation

2520 or authorization or administrative directive consistent therewith. In no event shall the design
2521 work be such as would result in a change in the number of gross square feet to be constructed in
2522 the project of more than 10 per cent from the number specified in the study, program or other
2523 pre-design document referred to in (b)(i) and (b)(ii).

2524 Section 61. No allotment, encumbrance, or expenditure of funds appropriated or authorized for
2525 the construction of a capital facility project shall be approved by the comptroller unless the
2526 executive head of the agency administering the project, or other person provided for by statute,
2527 certifies in writing that the construction work can be accomplished (a) within the appropriation
2528 or authorization for the project and (b) without substantial deviation from (i) any study or
2529 program which must be prepared in accordance with section 59 or (ii) any other pre-design
2530 document which must be prepared in accordance with any other statute, appropriation or
2531 authorization or administrative directive consistent therewith. In no event shall the construction
2532 work be such as would result in a change in the number of square feet to be constructed in the
2533 project of more 10 ten per cent from the number specified in the study, program or other
2534 predesign document referred to in (b)(i) and (b)(ii).

2535 No state agency, as defined by section 1, administering a facility administering project shall enter
2536 into any contracts or incur any obligations or cause to be performed construction of that project if
2537 such would result in the completion of a project which cannot be accomplished (a) within the
2538 appropriation or authorization for the project and (b) without substantial deviation from (i) any
2539 study or program which must be prepared in accordance with section 59 or (ii) any other pre-
2540 design document which must be prepared in accordance with any other statute, appropriation or
2541 authorization or administrative directive consistent therewith. In no event shall the construction
2542 work be such as would result in a change in the number of square feet to be constructed in the

2543 project of more than 10 per cent from the number specified in the study, program or other
2544 predesign document referred to in (b)(i) or (b)(ii).

2545 Section 62. The governor and the commissioner of capital asset management and maintenance in
2546 their long range capital facilities development plans and capital budget requests and the
2547 secretaries of the various executive offices in their review and recommendations with regard to
2548 such plans and requests may include among them plans and requests for 1 or more contingency,
2549 or other lump-sum or reserve accounts, including but not limited to planning, design and
2550 construction contingency, preventive maintenance, emergency repair, energy conservation, life-
2551 safety, and architectural barrier funds or accounts. Each shall include in their plans and request
2552 recommendations as to the purpose of such funds or accounts and the priorities and procedures
2553 for allocating the monies kept therein.

2554 The commissioner of capital asset management and maintenance shall forthwith establish
2555 priorities and procedures for allocating such funds in conformity with the terms of the
2556 appropriation authorizing them and legislative intent in regard to long range capital facilities
2557 development plans. The commissioner shall forthwith submit copies of the priorities and
2558 procedures so established to the secretary of administration and finance and to the house and
2559 senate committees on ways and means.

2560 Unless otherwise provided for in the appropriation authorizing such funds or accounts or other
2561 applicable law and in conformity therewith and the priorities and procedures established by the
2562 commissioner of capital asset management and maintenance, the monies kept therein shall not be
2563 allocated unless and until:

2564 (a) the using agency, whether or not it is the agency requesting the funds for the proposed
2565 project, certifies in writing to the commissioner of capital asset management and maintenance

2566 that the project corresponds to the current needs of the using agency, including its current long
2567 range capital facilities development plan;

2568 (b) the commissioner requests that 1 or more of the directors of the office of programming, office
2569 of project management, or the office of facilities management review the project proposal, and
2570 the director or directors certify in writing to the commissioner of capital asset management and
2571 maintenance that the project proposal reflects the agency's needs as stated, that it provides an
2572 accurate estimate of the project requirements, cost and schedule, and that the project can be
2573 accomplished within the limits of the funds requested;

2574 (c) The commissioner of capital asset management and maintenance certifies in writing to the
2575 secretary of administration and finance and to the house and senate committees on ways and
2576 means that the project proposal has been evaluated in conformity with the terms of the
2577 appropriation or authorization of the fund or account and the priorities and procedures
2578 promulgated by him pursuant thereto and approves the allocation.

2579 The commissioner of capital asset management and maintenance shall, upon his certification, file
2580 copies of the project proposal and other supporting documents, his certification and those of the
2581 director or directors whose review is requested and the agency requesting such funds with the
2582 secretary of administration and finance and with the house and senate committees on ways and
2583 means.

2584 If either the director or directors whose review is requested or the commissioner of capital asset
2585 management and maintenance should fail to give the aforementioned certifications or approvals,
2586 the commissioner shall forthwith send notice of his decision and the reasons therefor to the
2587 secretary of administration and finance and to the house and senate committees on ways and
2588 means.

2589 The commissioner of capital asset management and maintenance shall by February 15 of each
2590 year prepare and submit to the secretary of administration and finance and to the general court a
2591 report containing separate sections summarizing the disposition and the status of the funds or
2592 accounts and descriptions of all projects for which monies from such fund have been allocated.

2593 Section 63. There is established and set up on the books of the commonwealth a separate fund,
2594 consisting of monies appropriated to the fund by the general court and income derived from the
2595 investment of monies appropriated to the fund, known as the capital facility planning fund.

2596 Allocation of monies from such fund shall be made according to section 62. The purpose of the
2597 capital facility planning fund shall be to provide monies for the planning of capital facility
2598 projects by state agencies other than counties. Priority in the allocation of monies from such fund
2599 shall be given to projects:

2600 (i) which are included in any long range capital facilities development plan previously approved
2601 by the general court or in any master plan, consistent with such long range plans, previously
2602 approved by the commissioner of capital asset management and maintenance or

2603 (ii) whose rapid progress is indicated by statutes which provide for capital facility projects to
2604 advance specific agency programs, goals or objectives; and for which the delay in seeking
2605 monies through the normal capital budget process provided for by this chapter would cause a
2606 serious loss in use of the proposed capital facility if it were unavailable or cause a percentage
2607 increase in total project cost substantially larger than that for other projects at a comparable stage
2608 of development.

2609 Monies from the capital facility planning fund may be allocated, in accordance with priorities
2610 stated above, for the preparation of environmental impact reports to comply with the
2611 requirements of chapter 12 and chapter 30.

2612 Monies from the capital facility fund may be allocated, in accordance with the priorities stated
2613 above, for options to purchase land or buildings which will be used for capital facility projects
2614 specifically identified in the allocation request.

2615 If monies spent on a capital facility project are allocated from the capital facility planning fund
2616 and the funds for the acquisition of a site for or the design or design and construction of such
2617 project are appropriated or authorized then a sum of money equal to that allocation shall be
2618 deducted from the amount so appropriated or authorized and returned to the capital facility
2619 planning fund.

2620 In no case shall a request for monies or monies be allocated for projects for which a similar
2621 request is currently being considered according to the capital budget process for the current fiscal
2622 year provided for by this chapter or which was so considered during the capital budget process
2623 for the previous fiscal year and failed to receive an appropriation or authorization.

2624 Requests for monies from the capital facility planning fund may be made by state agencies other
2625 than counties and only after approval of such requests by the secretary of the executive office in
2626 which that agency is located, except in the case of a public institution of higher learning, only
2627 after approval by the board of higher education.

2628 Section 64. Each public agency other than a city or town shall prepare a long range capital
2629 facilities development plan. Such plan shall include projections at least 5 years from the date of
2630 submission of the plan. Each such public agency shall revise the plan annually or at such other
2631 time as the commissioner of capital asset management and maintenance may require, or as
2632 otherwise mandated by statute or appropriation act. Each plan or revision thereof shall be
2633 submitted to the commissioner at such time or according to such schedule as the commissioner
2634 shall specify. Each state agency the authorization of which is otherwise required for capital

2635 facility projects of 1 or more cities and towns shall include in its plan required by this section and
2636 its capital facility budget request required by section 66 the information about such projects
2637 specified by those sections. The state agency may request from cities and towns the information
2638 needed to complete the above-mentioned plan and budget and said information shall be promptly
2639 submitted to the state agency. To the maximum extent feasible the commissioner and state
2640 agencies shall coordinate the timing and content of their requests for information to minimize
2641 duplication of reporting. In the case of local operating agencies as defined in section 1 of chapter
2642 121B, any such plan, revision, capital facility budget, or capital facility budget requests required
2643 by this section or section 66 of this chapter shall be prepared and submitted by the department of
2644 housing and community development.

2645 After consultation with the governor and the secretary of administration and finance, the
2646 commissioner shall, in a timely manner, prepare and send to public agencies a capital facility
2647 planning policy statement to inform in the formulation of their long range capital facilities
2648 development plans and capital facility budget requests.

2649 The commissioner may provide guidance and technical assistance to those public agencies
2650 lacking sufficient resources to prepare such plans. The commissioner shall specify the
2651 information required, the manner or preparation of the plan, and the form in which it is to be
2652 provided.

2653 Section 65. In formulating requirements for the information to be provided in long-range capital
2654 facilities development plans, the commissioner of capital asset management and maintenance
2655 shall require at least the following: the history, legislative authority and major responsibilities of
2656 the public agency as defined by law and by administrative rule, regulation or directive; the
2657 programs being carried out by each as they affect capital facility needs; an appraisal of the

2658 responsibilities, objectives and current programs and evaluation of the factors expected to
2659 influence future programs; tabulations of the numbers of people served by and staffing the
2660 agency and its subunits; a detailed description of the land and facilities currently owned, leased
2661 or used by the agency to the extent that such description has not previously been submitted to the
2662 commissioner as part of the real property inventory maintained by him and an estimate of their
2663 utilization in relation to current and future programs.

2664 In formulating requirements for each long-range capital facilities development plan, the
2665 commissioner shall require at least the following: a determination of the capital facility needs
2666 based on the programs, population to be served, and the adequacy of existing facilities; a
2667 proposed capital facility project schedule and an explanation of the relationship between the need
2668 for each project and the stated programs; a summary of the schedule of needs for funds; a
2669 tabulation of the estimated staffs required for such new or modified programs and facilities; a
2670 tabulation of such projects showing the effect upon staffing, operating, and maintenance
2671 expenses; and a description of the geographic and spatial location of the facility relative to other
2672 facilities or land of the agency or its subunits.

2673 In formulating requirements for any revisions of long-range capital facilities development plans
2674 the commissioner shall require at least the following: a statement of the changes in the agency's
2675 responsibilities, objectives and programs; revised estimates of institutional population and staff,
2676 and geographic and spatial descriptions of capital facilities; and changes in capital facility
2677 requirements as they would have effect at least 5 years from the date of submission.

2678 Section 66. Each public agency other than cities and towns shall prepare and submit to the
2679 commissioner, in addition to its long-range capital facilities development plan or revision
2680 thereof, an annual capital facility budget at such time as the said commissioner shall require.

2681 In preparing both long-range capital facilities development plans, and revisions thereof, and
2682 capital facility budget requests, the agency shall provide timely public notice of such proposed
2683 plans and requests and reasonable opportunity for potential users and staff of the facilities
2684 controlled or to be controlled by the agency to comment thereon.

2685 The long-range capital facility development plans and capital facility budget requests submitted
2686 by the agency to the division of capital asset management and maintenance shall contain a
2687 summary of those comments and a statement of the extent to which they are reflected in the
2688 proposed plans and requests.

2689 The commissioner may provide guidelines to agencies for soliciting and reporting on such views.

2690 The commissioner may, at his discretion, provide guidance and technical assistance to agencies
2691 without sufficient resources to prepare capital facility budget requests. He shall specify the
2692 information being sought, how it might be prepared and the form in which it is to be provided.

2693 The commissioner shall provide for a format and content of long-range capital facilities
2694 development plans and capital facility budget requests which is, to the maximum extent feasible,
2695 consistent with that provided for the operating budget by the director of the fiscal affairs division
2696 within the executive office for administration and finance.

2697 Any public agency may include among its capital facility budget requests, ones for
2698 appropriations or authorizations for a class or classes of similar or related capital facility
2699 projects. Such request shall include a statement of (a) how the class of projects is defined; (b) the
2700 reasons for requesting appropriations or authorizations for a class of projects rather than
2701 individual projects; (c) the priorities and procedures for allocating the appropriated or authorized
2702 monies among the class of possible projects, making reference to and submitting copies of any
2703 studies, surveys, plans, analyses and other documents from which criteria for allocation are to be

2704 derived; and (d) a proposed initial allocation of the appropriated or authorized monies based on
2705 the suggested priorities, procedures and criteria.

2706 In formulating requirements for capital facility budget requests for individual projects, the
2707 commissioner shall include at least the following: (a) a concise title description of the project; (b)
2708 the location of the project and its site in relation to any existing facilities in close proximity; (c)
2709 the estimated schedule for completion of the project including the dates upon which the design
2710 and construction of the project are estimated to be commenced and completed and the facility
2711 occupied or used; (d) a description of the project and what it involves, appending any planning
2712 documents, accurate summaries of design documents and any other documents prepared for or
2713 pertaining to that project, if not previously submitted to the commissioner; (e) the useful life of
2714 the project before replacement would be necessary; (f) the current status of the plans and site for
2715 the project; (g) the status of utilities required for the project; (h) the relationship of the project to
2716 the long range capital facilities development plan; (i) the total project cost; (j) the effect of the
2717 proposed project on annual operating costs (including maintenance costs); (k) the proposed
2718 source of funds; and (l) an explanation of the need for the proposed project. The description of
2719 the project shall identify any and all previously approved appropriations or authorizations
2720 pertaining to the proposed or earlier phases of the project; the phase or phases approved, in
2721 progress, and completed, the estimated or final cost of each phase of the project through
2722 completion, and the sum of money permitted to be expended on the project as so approved. To
2723 assist his staff and user agencies in preparation and review of long-range plans and requests, the
2724 commissioner shall establish a file of approved appropriations and authorizations of all projects
2725 pertaining to each state-owned capital facility. The total project cost shall include at least the
2726 following items: the cost of all real estate, properties, rights and easements acquired, utility

2727 services, site development; the cost of construction and the initial furnishing thereof; all
2728 architectural and engineering and legal expenses, the cost of surveys and plans and
2729 specifications; and such other expenses as are necessary or incident to determining the feasibility
2730 or practicability of any project. The estimate of the total project cost shall be based on the
2731 assumption that the project will be undertaken and completed according to the estimated
2732 schedule. Included in the estimate shall be a statement of its accuracy. The estimate of the effect
2733 of the proposed project on annual operating costs shall be based on the estimated date of use or
2734 occupancy of the facility. In the proposal for source of funds, there shall be included a statement
2735 of what federal funds are potentially available, what efforts are necessary and have been or must
2736 be made to obtain them, or why they cannot be obtained.

2737 Section 67. Copies of the proposed plans and requests shall be submitted simultaneously to the
2738 commissioner, the secretaries of all executive offices, the director of the fiscal affairs division
2739 within the executive office for administration and finance, the state treasurer, the commissioner
2740 of revenue and the house and senate committees on ways and means. The secretaries shall submit
2741 to the commissioner of capital asset management and maintenance a report on the consistency of
2742 any public agency's plans and requests with the programs and policies of the executive office on
2743 which it is located, except in the case of a public institution of higher learning, the board of
2744 higher education, including the secretary's recommendations as to those plans and requests. Prior
2745 to making their reports, each secretary shall conduct public hearings, for which each secretary
2746 shall give 5 days public notice prior thereto, on the secretary's analysis and recommendations as
2747 to those plans and requests. Any secretary, when requested by the commissioner, shall submit to
2748 the commissioner a report on the impact of the specific statutory mission of the secretariat of the
2749 plans and request of any public agencies not located within his secretariat. Each secretary shall

2750 furnish to the house and senate committees on ways and means and the house and senate
2751 committees on post audit and oversight, copies of all such plans, requests and reports.

2752 The director of the bureau of programming, director of the office of project management or the
2753 director of the office of facilities management, as the commissioner directs, shall report to him as
2754 to the technical feasibility, cost, and schedule of proposed building projects; the technical,
2755 financial, and related requirements for the operation and maintenance of such buildings upon
2756 completion of the proposed projects; where relevant, the efficacy and efficiency of the proposed
2757 project in relation to current and projected available space and current and projected standards
2758 for the allocation and utilization of space; the accuracy and adequacy of any planning and design
2759 documents and any other documents prepared in relation to the stated needs, and as to any other
2760 matters which the commissioner of capital asset management and maintenance may require
2761 relative to his evaluation of such plans and requests. At the request of said commissioner of
2762 capital asset management and maintenance, the head of the public agency which administers or
2763 would administer a capital facility project, other than a building project, or consultants hired by
2764 him for that purpose, or members of said commissioner's staff shall report to him as to the
2765 technical feasibility, cost and schedule of that project; the technical, financial, and related
2766 requirements for the operation and maintenance of such facilities upon completion of the
2767 proposed projects; where relevant, the proposed project in relation to current and projected
2768 available facilities of a similar kind; the accuracy and adequacy of any planning documents,
2769 accurate summaries of design documents and any other documents prepared in relation to stated
2770 needs, and as to any other matters which said commissioner may require relative to his
2771 evaluation of such plans and requests.

2772 The director of the fiscal affairs division within the executive office for administration and

2773 finance shall report in writing to said commissioner of capital asset management and
2774 maintenance on the impact of proposed agency plans and requests, based on the stated and
2775 projected overall agency programs, on the agency's operating budgets for the next 5 years or for
2776 such longer period as said commissioner shall request. The commissioner of the department of
2777 revenue shall report in writing to said commissioner of capital asset management and
2778 maintenance on the impact of proposed agency plans and requests on their requirements for and
2779 production of revenue for at least the next 5 years or for such longer period as said commissioner
2780 of capital asset management and maintenance shall request. The reports of the director of the
2781 fiscal affairs division within the executive office for administration and finance and the
2782 commissioner of the department of revenue shall be sent to the state treasurer. The state treasurer
2783 may, if requested by said commissioner of capital asset management and maintenance, report in
2784 writing to said commissioner on the impact of all plans and requests, separately and as a whole
2785 on the financial health of the commonwealth and make such recommendations as to the form and
2786 nature of the financing as the treasurer deems necessary.

2787 Copies of the proposed plans and requests shall in a timely manner be submitted to each of the
2788 regional planning agencies established pursuant to chapter 40B for their review. They shall
2789 submit to said commissioner of capital asset management and maintenance a statement of their
2790 comments and recommendations, including those of cities and towns in the region which are
2791 affected by such plans and requests.

2792 Said commissioner of capital asset management and maintenance may request such other reports
2793 from public agencies as said commissioner may deem necessary to fulfill his responsibilities for
2794 the integration and coordination of capital facility projects.

2795 Section 68. The commissioner of capital asset management and maintenance shall study and

2796 review all long range capital facility development plans and capital facility budget requests and
2797 reports pertaining thereto filed with him as provided by sections 64, 65, 66 and 67, and shall
2798 make such investigations as will enable him to prepare a capital facility budget for the governor.
2799 The commissioner shall include in such budget an integrated and comprehensive long range
2800 capital facilities development plan and capital facility budget request and such other
2801 recommendations as the governor shall determine upon. The capital facility budget shall embody
2802 all plans, estimates, requests, and recommendations submitted to the commissioner in accordance
2803 with sections 64, 65, 66 and 67. The capital facility budget shall be classified and designated to
2804 present at least the same kind and quality of information as are required of plans and requests by
2805 sections 64, 65, 66 and 67. The commissioner shall include an evaluation of the proposed plan
2806 and budget request in terms of the capital facilities planning policy statement and any revisions
2807 thereof the commissioner proposes.

2808 The governor in his capital facility budget and the commissioner of capital asset management
2809 and maintenance, in his recommendation to the governor of a capital facility budget, shall
2810 include in such requests for each building project contained therein, for which the using agency
2811 is a state agency, a recommendation as to the need for and where appropriate, a request for, a
2812 study and program as a prerequisite to contracting for, performance of, or allotment or
2813 expenditure of funds for any design or construction-related activities. If a study or program is not
2814 recommended the governor and commissioner shall include the reasons therefor. They shall also
2815 include a recommendation as to the mode of procurement of such facility, including but not
2816 limited to, sequential, construction management, turnkey, design/build procurement, and the
2817 phasing of such procurement, including but not limited to approval of design and construction
2818 stages as separate or combined phases, which will most efficiently, economically and best serve

2819 the interests of the commonwealth. When an alternative mode of procurement is recommended,
2820 the governor and commissioner shall also recommend the method by which design and
2821 construction services shall be procured for such project, provided that such method shall be
2822 compatible with the policies and procedures for the selection of designers in sections 44 to 58,
2823 inclusive, and with the policies and procedures for the selection of contractors in sections 44A to
2824 44M, inclusive of chapter 149, to the extent feasible. If the governor or the commissioner should
2825 recommend a mode of procurement other than the sequential mode or a phasing of procurement
2826 other than approval of design and construction as a combined phase, each shall state in detail the
2827 reasons therefor.

2828 Furthermore, their requests shall contain a statement as to the expected useful life of the facility
2829 from the date of construction, renovation, acquisition, or other procurement; a statement of the
2830 proposed source of funds; where relevant, a recommendation as to the form and scheduling of
2831 financing of said project; and a recommendation as to the date upon which the authorization for
2832 the expenditure of the funds should expire. If the governor or the commissioner of capital asset
2833 management and maintenance should recommend a means and form of financing of the project
2834 such that the term of repayment exceed the expected useful life of the project, the governor and
2835 commissioner shall state in detail the reasons therefor. The governor and the commissioner shall
2836 transmit therewith a statement showing the total indebtedness proposed to be incurred for each
2837 capital facility project and the fund to be charged therefor, and the total cost of financing said
2838 project according to the recommended form and scheduling of such financing. The governor and
2839 the commissioner shall also transmit therewith a statement relative to the condition of the state
2840 debt, including an analysis of the impact of the proposed capital facility budget, including the
2841 long range capital facilities plan, on the financial health of the commonwealth. Such statement

2842 shall, where appropriate, include reference to the impact of obligations of public agencies which
2843 are guaranteed by or are contingent liabilities of the commonwealth.

2844 Section 69. The governor's and the commissioner of capital asset management and maintenance
2845 capital facility budget shall include provision for establishment of a design and construction
2846 contingency reserve account, the purpose of which shall be to provide monies for the design and
2847 construction of capital facility projects by state agencies which, because of unforeseeable
2848 circumstances, not within the contemplation of the using or the administering agency, and for
2849 justifiable reasons, would cause the project cost to exceed the sums then appropriated or
2850 authorized therefor. Allocation of monies from such reserve account shall be made according to
2851 section 62. Priority in the allocation of monies from such account shall be given to projects for
2852 which the delay in seeking monies through the normal capital budget process provided for by
2853 this chapter would cause a serious loss in use of the capital facility if it were unavailable when
2854 needed or cause a percentage increase in total project cost substantially larger than that for other
2855 projects at a comparable stage of progress.

2856 In no case shall a request for monies be made or monies be allocated for projects for which a
2857 similar request is currently being considered according to the capital budget process for the
2858 current fiscal year provided for by this chapter, or which was so considered during the capital
2859 budget process for the previous fiscal year and failed to receive an appropriation or
2860 authorization. Further, in no case shall a request for monies be made or monies be allocated if as
2861 a result of the review provided for by section 62 the commissioner of capital asset management
2862 and maintenance finds (a) that the proposal for use of such monies will result in a substantial
2863 deviation from any study or program for the project most recently approved by him or from any
2864 design for the project most recently approved by the administering agency or (b) that the

2865 proposal for use of such monies will result in a cumulative increase in the number of gross
2866 square feet to be constructed in the project in excess of 10 per cent of the number most recently
2867 specified in an appropriation or authorization for the project.

2868 Requests for monies from the design and construction contingency reserve account may be made
2869 by state agencies which are the using agencies of those projects.

2870 In establishing priorities and procedures for allocation of monies from the design and
2871 construction reserve account pursuant to section 62, the commissioner of capital asset
2872 management and maintenance shall establish specific limits for the amount of money which may
2873 be allocated from the account for any particular project, the amount which may be allocated for
2874 the construction of any particular project excluding price inflation contingencies, and the amount
2875 which may be allocated for the construction of any particular project for price inflation
2876 contingencies. In no event shall the cumulative amount allocated from the account to any one
2877 capital facility project exceed 10 percentum of the total cost specified by the appropriation or
2878 authorization for that project.

2879 Section 70. The governor's and the commissioner of capital asset management and maintenance
2880 capital facility budget shall include provisions for establishment of an emergency repair reserve
2881 account, the purpose of which shall be to provide monies for the performance of repair projects
2882 of such a nature that funding through the capital budget process provided for by this chapter
2883 would be burdensome. Allocation of monies from such reserve accounts shall be made according
2884 to the provisions of section 62. Priority in the allocation of monies from such fund shall be given
2885 as follows:

2886 (1) top priority shall be given to funding requests for projects designed to remedy clear and
2887 present dangers to the health and safety of the users of the facility in question;

2888 (2) secondary priority shall be given to funding requests for projects which would prevent
2889 imminent destruction or damage of property or equipment beyond reasonable repair; and
2890 (3) third priority shall be given to funding requests for projects, that would restore use of a
2891 facility or part of a facility to its user, where the loss of use has seriously disrupted the agency's
2892 program functions.

2893 In no case shall a request for monies be made or monies be allocated for projects for which a
2894 similar request was considered during the capital budget process for the previous year as
2895 provided for by this chapter, and which failed to receive an appropriation or authorization.

2896 Requests for monies from the emergency repair reserve account may be made by state agencies
2897 other than counties and by the office of facility management.

2898 Section 71. All requests and recommendations for appropriations or authorizations for
2899 expenditures by the commonwealth
2900 that pertain to capital facility projects shall be studied by the commissioner with reference to any
2901 current long range capital facility development plans proposed in accordance with the
2902 requirements of sections 64, 65, 66 and 67. The commissioner shall consider the effects upon the
2903 policies, programs, and priorities with regard to which the commissioner is required to report in
2904 accordance with section 73 and with reference to any other matters which the commissioner
2905 requires to be reported to him in his review and evaluation of capital facility budget requests by
2906 public agencies in accordance with the provisions of sections 64, 65, 66, 67 and 68. After such
2907 review and study, the commissioner shall promptly prepare and submit his recommendations to
2908 the general court.

2909 The commissioner shall promptly review any petition, motion or amendment introduced in either
2910 chamber of the general court which makes a provision for a capital facility project. During such

2911 review the commissioner shall study the necessity, desirability, and relative priority of such
2912 capital facility project by reference to any current long range capital facilities development plans
2913 proposed in accordance with the requirements of sections 64, 65, 66, 67 and 68. The
2914 commissioner shall consider the effects upon the policies, programs, and priorities with regard to
2915 which the commissioner is required to report in accordance with section 73, and with reference
2916 to any other matters which the commissioner requires to be reported to him in his review and
2917 evaluation of capital facility budget requests by public agencies in accordance with the
2918 provisions of sections 64, 65, 66, 67 and 68. After such review and study the commissioner shall
2919 promptly prepare and forward his recommendation on the petition, motion, or amendment to the
2920 chamber in which it was introduced and where it is pending.

2921 Section 72. The commissioner shall, each year, no later than 30 days after the governor submits
2922 the budget in accordance with the provisions of section 71, submit to the governor and to the
2923 general court a report which shall include, but not be limited to, the following: an evaluation of
2924 the effect of the capital facility budget, and the implementation of the proposed long range
2925 capital facilities development plan upon important policies, programs, and priorities mandated by
2926 the general court or established by the governor in accordance with law such as impact on the
2927 environment, energy conservation, preventative maintenance, architectural barriers, and the
2928 effective coordination of such policies, programs, and priorities with those of the federal
2929 government to assure the maximum benefit to the commonwealth from such federal programs.
2930 No later than an additional 30 days thereafter, the commissioner shall submit to the governor and
2931 to the general court a similar report on the impact of and the progress made in the
2932 implementation of long range capital facilities plans and previously authorized capital facility
2933 projects.

2934 SECTION 75. Section 1 of chapter 9 of the General Laws, as appearing in the 2010 Official
2935 Edition, is hereby amended by striking out, in lines 4 and 6, each time they appear, the words
2936 “and council”.

2937 SECTION 76. Said chapter 9 is hereby further amended by inserting after section 4 the following
2938 8 sections:-

2939 Section 4A. The state secretary shall, at the close of each regular session of the general court,
2940 collate and cause to be printed in a single volume the following:

2941 (1) All acts and resolves passed at such session.

2942 (2) All amendments to the constitution referred at such session to the next general court and all
2943 such amendments acted upon at such session and to be submitted to the people at the next state
2944 election.

2945 (3) All acts and resolves passed at any special session of the general court, except a general
2946 revision of the statutes, and not theretofore published in any preceding annual volume.

2947 (4) In the volume of the year immediately following a state election, all constitutional
2948 amendments and proposed laws approved by the people at said election.

2949 (5) A statement in bold type at the conclusion of each law as printed, or in a postscript at the end
2950 of the volume with a suitable reference to each law, as to which a petition asking for a
2951 referendum has been filed prior to the publication of the volume, with a sufficient number of
2952 signatures to procure its submission to the people, together with a recital of the pertinent
2953 provisions of Article XLVIII of the Amendments to the Constitution.

2954 (6) In the volume of the year immediately following a state election, a statement showing what
2955 constitutional amendments, proposed laws and laws were submitted to the people at said
2956 election, with the aggregate vote on each such measure, both affirmative and negative, arranged

2957 in such detail as the state secretary may determine.

2958 (7) A table of changes in the general statutes and an index, to be prepared as provided in section
2959 51 of chapter 3; provided, however, the state secretary may, in the secretary's discretion, cause
2960 the table of changes to be printed in a separate volume and not in the single volume.

2961 The state secretary shall cause up to 10,000 copies of said volume to be printed each year and
2962 shall, immediately after their publication, distribute such copies as the secretary determines.

2963 Section 4B. The state secretary shall, at the close of each regular session of the general court,
2964 publish in pamphlet form up to 20,000 copies, of the acts and resolves passed and of any
2965 proposed amendments to the constitution passed during such session. The secretary may also
2966 apportion the copies among the clerks of the several cities and towns, to be delivered by the
2967 clerks to inhabitants who apply for a copy.

2968 The secretary shall also, as soon as any act or resolve is passed, send a copy of the act or resolve
2969 to the following: each state department, officer, board or commission whose duties are affected
2970 by the act or resolve, the clerks of the several cities and towns, for the use of the inhabitants of
2971 those cities and towns, the justices, clerks and registers of courts, district attorneys, sheriffs,
2972 justices of the peace authorized to issue warrants and take bail, county law libraries and all
2973 incorporated law libraries and branch libraries maintained by them; provided, however, upon
2974 written request approved by the secretary, additional copies may be distributed to the above list
2975 and to any other public officials whose duties in the secretary's opinion require the use of such
2976 copies. The secretary may also send copies to such persons as apply for an act or resolve,
2977 charging not less than the cost of producing and distributing the copy.

2978 Section 4C. The state secretary shall print from time to time during the session of the general
2979 court a cumulative table of changes in the general statutes, up to the date of publication, to be

2980 prepared by the counsel to the senate and the counsel to the house of representatives.
2981 Section 4D. The state secretary shall furnish to each city and town of the commonwealth, to be
2982 preserved in a public place in the city or town, 1 copy of each of such report included in the
2983 public document series as the city or town clerk may apply for. The state secretary shall furnish 1
2984 copy of each report to such public and other libraries as may apply for the reports. If the
2985 supervisor of public records shall report to the state secretary that a city or town is unable to
2986 properly care for and use the documents, the state secretary may discontinue sending the reports
2987 to that city or town.

2988 Each member of the general court and of the executive department, the clerk of each branch of
2989 the general court and each reporter assigned to either branch may, upon a written, signed request
2990 delivered to the state secretary, receive a copy of any such document. Ten copies shall be placed
2991 in the state library for the use of the library and for exchange.

2992 Section 4E. The state secretary shall annually procure copies of the proceedings of the annual
2993 encampments of the departments of Massachusetts, Grand Army of the Republic, United Spanish
2994 War Veterans, The American Legion, Disabled American Veterans of the World War, Marine
2995 Corps League, American Veterans of World War II, AMVETS, Italian American War Veterans
2996 of the United States, Incorporated, Jewish War Veterans of the United States, Veterans of
2997 Foreign Wars of the United States, Polish-American Veterans of Massachusetts, Inc., and
2998 Veterans of World War I of the U.S.A., held in that year, with the general and special orders,
2999 circulars and other papers forming parts thereof, and shall cause the same to be kept as parts of
3000 the records of the commonwealth. The state secretary shall annually cause copies thereof,
3001 including in the case of those relating to the Grand Army of the Republic the portraits of the
3002 department officers and staff and of the executive committee of the national encampment, to be

3003 printed and bound; and shall cause 1 printed and bound copy of each to be sent to each city or
3004 town library in the commonwealth. The state secretary shall also send 1 copy of each volume
3005 relating to the Grand Army of the Republic to each Grand Army post, 1 copy of the volume
3006 relating to the United Spanish War Veterans to each camp of Spanish War Veterans, 1 copy of
3007 the volume relating to The American Legion to each post of The American Legion, 1 copy of the
3008 volume relating to the Disabled American Veterans of the World War to each chapter of the
3009 Disabled American Veterans of the World War, 1 copy of the volume relating to the Marine
3010 Corps League to each detachment of the Marine Corps League, 1 copy of the volume relating to
3011 the American Veterans of World War II, AMVETS to each post of the American Veterans of
3012 World War II, AMVETS, 1 copy of the volume relating to the Italian American War Veterans of
3013 the United States, Incorporated to each post of the Italian American War Veterans of the United
3014 States, Incorporated, 1 copy of the volume relating to the Jewish War Veterans of the United
3015 States to each post of the Jewish War Veterans of the United States, 1 copy of the volume
3016 relating to the Veterans of Foreign Wars to each post of the Veterans of Foreign Wars of the
3017 United States, 1 copy of the volume relating to the Polish-American Veterans of Massachusetts,
3018 Inc. to each post of the Polish-American Veterans of Massachusetts, Inc. and 1 copy of the
3019 volume relating to the Veterans of World War I of the U.S.A. to each barracks of the Veterans of
3020 World War I of the U.S.A., in the commonwealth. The state secretary shall cause the other
3021 copies of each to be distributed in the same manner as the annual report of the state secretary.
3022 Section 4F. The state secretary shall furnish to every city and town the reports of the decisions of
3023 the supreme judicial court from time to time, as published, and shall furnish to every town
3024 hereafter incorporated a full set of said decisions, the index-digest of those decisions, a copy of
3025 the General Laws, and copies of all such books and documents in the secretary's office as shall

3026 have been previously furnished to towns by the commonwealth; but the clerk of such town shall
3027 first file with the secretary a certificate that the town has made suitable provision for the
3028 preservation and convenient use of such books and documents.

3029 Section 4G. A city or town which has once been furnished with such books and documents shall
3030 not again be supplied with the same at the expense of the commonwealth. Towns may effect
3031 insurance on the books and documents for their own benefit.

3032 Section 4H. The state secretary shall, in the distribution of laws and documents to members of
3033 the general court, effect such exchanges among members as they shall direct; and the secretary
3034 may employ such additional clerical or other assistance as may be necessary for the purpose.

3035 Copies of the laws and documents apportioned to members of the general court which remain
3036 undisposed of for 3 months after the end of the year in which they were issued shall revert to the
3037 commonwealth and be subject to general distribution.

3038 SECTION 77. Section 5 of said chapter 9, as appearing in the 2010 Official Edition, is hereby
3039 amended by striking out, in line 4, the words “sixty-six as the governor and council may
3040 approve” and inserting in place thereof the following figure:- 66.

3041 SECTION 78. Section 19 of said chapter 9, as so appearing, is hereby amended by striking out,
3042 in lines 1 and 2, the words “, having first obtained authority from the governor and council,”.

3043 SECTION 79. Section 5 of chapter 10 of the General Laws, as so appearing, is hereby amended
3044 by striking out, in lines 1 and 2, the words “, with the consent of the governor and council, may
3045 appoint, and, with such consent, may for cause remove,” and inserting in place thereof the
3046 following words:- may appoint and may for cause remove.

3047 SECTION 80. Section 5B of said chapter 10 is hereby repealed.

3048 SECTION 81. Section 5C of said chapter 10, as appearing in the 2010 Official Edition, is hereby

3049 amended by striking out, in lines 1 and 2, the words “with the advice of the council”.

3050 SECTION 82. Said section 5C of said chapter 10, as so appearing, is hereby further amended by
3051 striking out, in line 6, the words “, with the advice of the council,”.

3052 SECTION 83. Section 9 of said chapter 10, as so appearing, is hereby amended by inserting after
3053 the word “general”, in line 2, the following words:- and the house and senate committees on
3054 ways and means.

3055 SECTION 84. Said chapter 10 is hereby further amended by striking out section 9A, as so
3056 appearing, and inserting in place thereof the following section:-

3057 Section 9A. A debt statement shall be forwarded on a quarterly basis to the state treasurer,
3058 comptroller and the house and senate committees on ways and means by those agencies of the
3059 commonwealth and authorities identified by the comptroller under subsection (c) of section 12 of
3060 chapter 7A, having authority to issue notes or bonds. Said debt statement shall be certified by an
3061 authorized official of said agency or authority. Such debt statement shall include authorized,
3062 unissued and outstanding bonds and notes of the authority or agency as of the first day of each
3063 quarter. Said debt statement shall include the debt service requirements of both principal and
3064 interest for the subsequent 24 month period and an estimate of the date and principal amount of
3065 bonds and notes to be sold in the subsequent 12 month period. Said debt statement shall be filed
3066 under rules and regulations prescribed by the state treasurer.

3067 SECTION 85. Said chapter 10 is hereby further amended by striking out section 10, as so
3068 appearing, and inserting in place thereof the following section:-

3069 Section 10. The state treasurer shall annually, on the second Wednesday in September, report to
3070 the general court a statement of the transactions of the department of the state treasurer for the
3071 preceding fiscal year, including a specific statement of all warrants remaining unpaid and of the

3072 names of the persons in whose favor they are drawn.

3073 SECTION 86. Said chapter 10 is hereby further amended by inserting after section 10A the

3074 following section:-

3075 Section 10B. The state treasurer, in consultation with the secretary of administration and finance

3076 and the comptroller, shall prepare and submit to the house and senate committees on ways and

3077 means on or before the last day of August, November, February and May official cash flow

3078 projections for the current fiscal year and for the fiscal quarters beginning October 1, January 1,

3079 April 1 and July 1, respectively. Included in said projections shall be actual spending and

3080 revenue through the latest possible date for inclusion in the projections, estimated spending and

3081 revenue, along with assumptions used to derive those estimates, a comparison of actual spending

3082 and revenue with previous estimates of spending and revenue for those months, an analysis of

3083 the variances identified in that comparison and identification of any cash flow gaps.

3084 Variance reports, which compare actual revenues and spending with planned revenues and

3085 spending, shall be produced quarterly by the treasurer and distributed to the comptroller's

3086 division, the department of revenue and the executive office for administration and finance. All

3087 data required by the treasurer for production of annual and quarterly cash flow projections and

3088 quarterly variance reports shall be submitted by state agencies, including the state lottery, in a

3089 timely fashion, on or before deadlines established by the treasurer. To assist in the preparation of

3090 the quarterly variance reports, the department of revenue shall be responsible for providing to the

3091 state treasurer estimates of tax revenue receipts, by tax category as identified in section 1A of the

3092 general appropriation act and the office of the comptroller for providing estimates of agency

3093 spending and non-tax revenue receipts that will assist in the production of a quarterly report

3094 based on estimated daily revenues.

3095 Compilations of such variance reports shall be distributed quarterly to the comptroller's division,
3096 the department of revenue, the executive office for administration and finance and the house and
3097 senate committees on ways and means. The executive office for administration and finance and
3098 the treasurer shall jointly develop and approve annual and quarterly cash management plans to
3099 address gaps identified by cash flow projections and variance reports. Said management plans
3100 shall clearly identify the roles to be played by short-term borrowing, investment policy,
3101 expenditure controls and revenue management in providing necessary cash.

3102 The state treasurer shall semi-annually report to the house and senate committees on ways and
3103 means and the joint committee on revenue the lending and banking institutions into which the
3104 cash deposits of the commonwealth are being deposited.

3105 SECTION 87. Section 11 of said chapter 10 is hereby repealed.

3106 SECTION 88. Section 24 of said chapter 10, as appearing in the 2010 Official Edition, is hereby
3107 further amended by inserting after the word "advisable", in line 38, the following words:- , which
3108 shall be made available electronically to the general public not later than the earliest date
3109 established for reports in section 12 of chapter 7A.

3110 SECTION 89. Said section 24 of said chapter 10 is hereby further amended by striking out the
3111 last paragraph.

3112 SECTION 90. Section 24A of said chapter 10 is hereby amended by striking out subsection (b),
3113 as so appearing, and inserting in place thereof the following subsection:-

3114 (b) The revenues derived from the sale of multi-jurisdictional tickets or shares shall be
3115 apportioned under section 25.

3116 SECTION 91. Section 25 of said chapter 10 is hereby amended by striking out clause (c), as so
3117 appearing, and inserting in place thereof the following clause:-

3118 (c) the balance shall be used to fund budgeted aid to cities and towns as provided in section 18C
3119 of chapter 58, subject to appropriation.

3120 SECTION 92. The second paragraph of section 35 of said chapter 10 is hereby amended by
3121 striking out clause (c), as most recently amended by section 5 of chapter 194 of the acts of 2011,
3122 and inserting in place thereof the following clause:-

3123 (c) For budgeted aid to cities and towns as provided in section 18C of chapter 58, subject to
3124 appropriation; and

3125 SECTION 93. Section 37 of said chapter 10, as so appearing, is hereby amended by striking out,
3126 in lines 31 and 32, the words “Local Aid Fund established under the provisions of section 2D of
3127 chapter 29” and inserting in place thereof the following words:- State Lottery and Gaming Fund.

3128 SECTION 94. Section 39 of said chapter 10 is hereby amended by striking out, in line 22, the
3129 words “Local Aid Fund” and inserting in place thereof the following words:- General Fund.

3130 SECTION 95. Section 2 of chapter 11 of the General Laws, as so appearing, is hereby amended
3131 by striking out, in lines 1 and 2, the words “, with the consent of the governor and council,”.

3132 SECTION 96. Said section 2 of said chapter 11 is hereby further amended by striking out, in line
3133 4, the words “, with the consent of the governor and council”.

3134 SECTION 97. Section 5 of said chapter 11, as so appearing, is hereby amended by striking out,
3135 in line 1, the words “He may, subject to confirmation by the governor,” and inserting in place
3136 thereof the following words:- The state auditor may.

3137 SECTION 98. Section 1 of chapter 14 of the General Laws, as so appearing, is hereby amended
3138 by inserting after the word “administration”, in line 4, the following words:- and finance.

3139 SECTION 99. Section 1A of said chapter 14, as so appearing, is hereby amended by inserting
3140 after the word “administration”, in line 6, the following words:- and finance.

3141 SECTION 100. Section 3 of said chapter 14, as so appearing, is hereby amended by adding the
3142 following words:- and finance.

3143 SECTION 101. Chapter 29 of the General Laws is hereby amended by striking out section 1, as
3144 so appearing, and inserting in place thereof the following section:-

3145 Section 1. All words and terms defined by section 1 of chapter 7C and appearing in this chapter,
3146 except for the phrases "state agency" and "state authority", shall have the meaning defined in that
3147 section, unless the context shall indicate another meaning or intent.

3148 As used in this chapter, the following words shall, unless the context clearly requires otherwise,
3149 have the following meanings:-

3150 "Account", a separate 8-digit number designated in the state accounting system to separately
3151 record budgetary, bond, federal or trust funds.

3152 "Agency head" or "department head", the administrative head of a state agency, department,
3153 board, bureau, office or division of the commonwealth who has been authorized through
3154 legislation to obligate and expend funds, comply with legislative mandates and make any
3155 certifications or approvals required under this chapter or other state or federal laws or regulations
3156 requiring an agency head certification or approval.

3157 "Allotment", that portion of an appropriation that may be spent by a department for a specified
3158 period as determined by the governor or the secretary of administration and finance under section
3159 9B.

3160 "Appropriation", the authorization by the general court with the approval of the governor, or by
3161 overriding the governor's objection to the authorization, of the expenditure of budgeted revenues
3162 from a specified fund for a specified purpose up to a specified maximum amount for a specified
3163 period of time.

3164 “Balanced budget”, a condition of state finance in which the following requirements are met:
3165 (i) the consolidated net surplus at the end of the fiscal year is greater than or equal to one-half of
3166 1 per cent of state tax revenues for such fiscal year; and
3167 (ii) the amount transferred to the stabilization fund under subsection (a) of section 5C is greater
3168 than or equal to 1/2 of 1 per cent of state tax revenue for such fiscal year.

3169 “Bond authorization”, authorization by the legislature under section 3 of article LXII of the
3170 Amendments to the Constitution to borrow money.

3171 “Bond fund”, a fund of the commonwealth into which bond revenues are deposited and from
3172 which spending may occur.

3173 “Bond revenues”, the proceeds of bonds issued by the commonwealth and the interest earned on
3174 those bonds.

3175 “Budget director”, the administrative head of the fiscal affairs division within the executive
3176 office for administration and finance.

3177 “Budgetary funds”, state funds which are subject to appropriation as provided in section 6.

3178 “Budgeted revenues”, all income in the budgetary funds from state taxes, departmental revenues,
3179 including retained revenues, federal reimbursements and transfers of such budgeted revenues
3180 among funds, but not including federal grants.

3181 “Capital appropriation”, an authorization by the general court of the expenditure of bond
3182 revenues, with the approval of the governor or by legislative override of a gubernatorial
3183 objection to such an authorization.

3184 “Consolidated net surplus”, the sum of the undesignated balances in the budgetary funds, except
3185 funds established by section 2H and section 2I and by section 35NN of chapter 10 and by section
3186 2C of chapter 131.

3187 “Deficiency”, a condition of state finance in which expenditures during a fiscal year are expected
3188 to exceed the appropriation that authorizes those expenditures.

3189 “Departmental revenues”, all income from state agency fees, lottery receipts, fines, assessments,
3190 charges or court judgments, including retained revenues and the earnings on all state revenues.

3191 “Direct appropriation”, a first-time appropriation of budgeted revenues, from sources other than
3192 retained revenues.

3193 “Direct debt”, the sum of the principal amounts of all direct debt issued by the commonwealth to
3194 finance state projects and purposes, including obligations for leases for capital projects, except
3195 debt issued on a short-term basis in anticipation of receipts from taxes and other sources.

3196 “Federal grant”, any financial assistance available to a state agency from the United States
3197 government, either directly or through an intermediary, including a project, formula, or block
3198 grant, a subvention, a subsidy, an augmentation or a state plan but excluding federal
3199 reimbursements.

3200 “Federal reimbursements”, financial assistance provided under Titles XVIII or XIX of the Social
3201 Security Act or other reimbursements received for state entitlement expenditures and credited to
3202 the General Fund, or other federal financial assistance from the United States government for
3203 direct payments to individuals, or for other purposes as provided for in section 2ZZZ, section 34
3204 of chapter 90, chapter 92, and section 48 of chapter 151A.

3205 “Fund”, an accounting entity established by general or special law to record all financial
3206 resources or revenues, together with all related expenditures or liabilities, that have been
3207 segregated for a particular purpose including, but not limited, to a grouping of related accounts
3208 into which resources have been further segregated for specific activities and purposes.

3209 “Line-item”, a separate unit of appropriation identified by an 8-digit number representing a

3210 specific spending account authorized for a specific purpose and a defined amount.

3211 “Prior appropriation continued” or “PAC”, the re-appropriation of unexpended and
3212 unencumbered monies from one fiscal year for the following fiscal year.

3213 “Retained revenue”, income of a state agency or other public instrumentality, derived from its
3214 operations and which, by law, such agency or instrumentality may expend for a particular
3215 purpose up to a specified limit, without further appropriation, which would otherwise be subject
3216 to direct appropriation.

3217 “Retained revenue line-item”, a line-item which allows a state agency or other public
3218 instrumentality to use retained revenue during the fiscal year in which such revenue is received
3219 to maintain all or a portion of its operations.

3220 “Revenue account”, an account established by the comptroller to record the collection of revenue
3221 by a state agency.

3222 “Secretary”, the officer in charge of each executive office established by chapter 6A or chapter 7
3223 and the supreme judicial court.

3224 “State agency” or “state department”, a legal entity of state government established by the
3225 General Court as an agency, board, bureau, commission, department, office or division of the
3226 commonwealth with a specific mission, which may either report to cabinet-level units of
3227 government, known as executive offices or secretariats, or be independent divisions or
3228 departments.

3229 “State authority” a body politic and corporate constituted as a public instrumentality of the
3230 commonwealth and established by an act of the General Court to serve an essential governmental
3231 function; provided, however, that state authority shall not include: (1) a state agency; (2) a city or
3232 town; (3) a body controlled by a city or town; or (4) a separate body politic for which the

3233 governing body is elected, in whole or in part, by the general public or by representatives of
3234 member cities or towns.

3235 “State revenue”, inflows from tax and nontax sources that, by law, shall be accounted and
3236 reported to a fund.

3237 “State tax revenues”, the revenues of the commonwealth from every tax, surtax, receipt, penalty
3238 and other monetary exaction and interest in connection therewith including, but not limited to,
3239 taxes and surtaxes on personal income, excises and taxes on retail sales and use, meals, motor
3240 vehicle fuels, businesses and corporations, financial institutions, insurance companies, public
3241 utilities, alcoholic beverages, tobacco, inheritances, estates, deeds, room occupancy and pari-
3242 mutuel wagering, but excluding revenues collected by the state from local option taxes for
3243 further direct distribution to cities and towns.

3244 “Surplus”, a condition of state finance in which an appropriation is expected to exceed
3245 expenditures from that appropriation during a fiscal year.

3246 “Tax expenditures”, state tax revenue foregone as a direct result of any general or special law
3247 which allows exemptions, exclusions, deductions from or credits against taxes imposed on
3248 income, corporations, and sales.

3249 “Trust”, an account or fund into which are deposited monies held by the commonwealth or state
3250 agencies in a trustee capacity and which must be expended in accordance with the terms of the
3251 trust.

3252 SECTION 102. The second paragraph of section 2 of said chapter 29, as so appearing, is hereby
3253 amended by adding at the end thereof the following sentences:-

3254 Every source of state revenue shall be classified according to a schedule of revenue accounts
3255 promulgated by the comptroller. The commonwealth’s receipt of such revenue shall be

3256 documented under rules and regulations promulgated by the comptroller.

3257 SECTION 103. Sections 2F and 2G of chapter 29 of the General Laws are hereby repealed.

3258 SECTION 104. Chapter 29 of the General Laws is hereby amended by striking out section 2I and

3259 inserting in place thereof the following section-

3260 Section 2I. There shall be established and set up on the books of the commonwealth a separate

3261 fund to be known as the Tax Reduction Fund, consisting of amounts transferred to the fund

3262 under section 2H and income derived from the investment of amounts so transferred. The

3263 purpose of the fund shall be to maintain a reserve which shall be used only to reduce personal

3264 income taxes as provided in this section.

3265 On or before October 31, the comptroller shall certify to the governor the total amount in the Tax

3266 Reduction Fund as shown in the financial report of the comptroller for the preceding fiscal year.

3267 A temporary increase in the amounts of the personal exemption allowable on the income tax

3268 shall be provided, subject to appropriation, for the taxable year ending on the succeeding

3269 December 31 to the extent that the amount in the Tax Reduction Fund equals an integer multiple

3270 of 5 per cent of the amount of the personal income taxes which will not be collected for said

3271 taxable year on account of such personal exemptions. The commissioner of revenue shall

3272 calculate the amount of the temporary increase, if any, in such personal exemptions for said

3273 taxable year. The comptroller shall transfer the amount equal to such integer multiple of 5 per

3274 cent of the amounts not collected due to such personal exemptions from the Tax Reduction Fund

3275 to the General Fund.

3276 SECTION 105. Section 2X of chapter 29 of the General Laws is hereby repealed.

3277 SECTION 106. Chapter 29 of the General Laws is hereby amended by striking out section 2TT,

3278 as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

3279 Section 2TT. There is hereby established and set up on the books of the commonwealth a
3280 separate fund to be known as the Liability Management and Reduction Fund. The fund shall
3281 provide: (1) insurance coverage to state agencies by charging premiums to such agencies for the
3282 payment of judgments and settlements and the commonwealth's investigation and litigation costs
3283 in connection with tort claims under chapter 258; (2) services to reduce the number and size of
3284 claims against agencies including, but not limited to, risk reduction training programs and
3285 incentive payments of not more than \$1,000 for effective risk reduction suggestions; and (3) such
3286 other services and activities as the comptroller shall determine are desirable to create financial
3287 and other incentives for agencies to reduce the commonwealth's tort and other monetary liability,
3288 including litigation costs. The fund shall consist of premiums charged to agencies, any amounts
3289 appropriated for the purposes of the fund and interest income from investments made by the state
3290 treasurer of amounts in the fund. Monies in the fund shall be expended by the comptroller under
3291 section 16 of chapter 7A, without further appropriation, for the purposes of the fund.

3292 The comptroller shall submit not later than December 31 of each year to the house and senate
3293 committees on ways and means, the secretary of administration and finance and the attorney
3294 general a report of the activities of the fund. The report shall include a financial statement which
3295 accounts for the revenues, expenditures and changes in fund balance for the preceding fiscal
3296 year. The comptroller shall also submit to said committees and officials, not later than October 1
3297 of each fiscal year, a financial plan presenting all expected and proposed revenues and other
3298 financial sources, expenditures and other financial uses, net gain or loss from operations and
3299 changes in fund balance. All such reports shall also specify the number and duties of employees
3300 of the fund, if any, the amount of any direct appropriation requested or expected and any other
3301 information relevant to the achievement of the purposes of the fund. The comptroller may at any

3302 time recommend in such reports statutory changes necessary to expand the scope of said section
3303 16 of said chapter 7A and this section in order to cover claims other than those asserted under
3304 chapter 258.

3305 SECTION 107. Section 2FFF of said chapter 29, as so appearing, is hereby amended by striking
3306 out, in lines 4 and 5 and 9, the words “environmental management” and inserting in place
3307 thereof, in each instance, the following words:- conservation and recreation.

3308 SECTION 108. Section 2GGG of said chapter 29, as so appearing, is hereby amended by striking
3309 out, in line 2, the words “division of medical assistance” and inserting in place thereof the
3310 following words:- executive office of health and human services.

3311 SECTION 109. Section 2HHH of said chapter 29, as so appearing, is hereby amended by striking
3312 out, in line 7 the words “environmental management” and inserting in place thereof the
3313 following words:- conservation and recreation.

3314 SECTION 110. Section 2III of said chapter 29, as so appearing, is hereby amended by striking
3315 out, in lines 6 and 21, the words “food and agriculture” and inserting in place thereof, in each
3316 instance, the following words:- agricultural resources.

3317 SECTION 111. Section 2RRR of said chapter 29, as so appearing, is hereby amended by striking
3318 out the fourth sentence and inserting in place thereof the following sentence:-

3319 The comptroller shall transfer to the trust fund no later than the first business day of each quarter,
3320 the amounts indicated by the department of developmental services to provide the appropriate
3321 payment adjustments for operating the intermediate care facilities for persons with a
3322 developmental disability and the community residences serving individuals with a developmental
3323 disability.

3324 SECTION 112. Section 2UUU of said chapter 29, as so appearing, is hereby amended by striking

3325 out, in line 8 and 21, the word “chancellor” and inserting in place thereof, in each instance, the
3326 following word:- commissioner.

3327 SECTION 113. Chapter 29 of the General Laws is hereby amended by striking out section 3, as
3328 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

3329 Section 3. Every officer having charge of any state agency which receives a periodic
3330 appropriation from the commonwealth, including all periodic appropriations to be met from
3331 budgeted revenues shall annually, on or before a date set by the secretary of administration and
3332 finance submit to the budget director statements (1) showing in detail the amounts appropriated
3333 for the preceding and the current fiscal years; (2) the interchanges during the preceding fiscal
3334 year between the subsidiary accounts established pursuant to section 27; (3) the deficiencies and
3335 surpluses, if any, in appropriations for the latest complete fiscal year and for the current fiscal
3336 year; (4) estimates of the amounts required for the operations of state agencies and programs for
3337 the ensuing fiscal year, with an explanation of any increased appropriations recommended and
3338 with citations of the statutes relating thereto, a statement indicating the priorities assigned to each
3339 program by said officer; and (5) statements showing in detail the revenue of the state agency in
3340 the officer’s charge for the latest complete fiscal year, and the revenue and estimated revenue
3341 thereof for the current fiscal year, and the officer’s estimated revenue from the same or any
3342 additional sources for the ensuing fiscal year, with the officer’s recommendations as to any
3343 changes in the management, practices, rules, regulations or laws governing such state agency
3344 which would cause an increase or decrease in revenue from operations, fees, taxes or other
3345 sources, or which would facilitate the collection thereof; (6) together with such other information
3346 on the expenditures, revenues, activities, output or performance of any such state agency as may
3347 be required by rule or regulation of the secretary of administration and finance, and any other

3348 information, including the priorities assigned to each program by said officer, required at any
3349 time by the budget director. Every such officer shall also submit to the budget director a
3350 statement showing in detail the number of permanent, temporary and part-time positions
3351 authorized for the state agency in the officer's charge, categorized by whether those positions are
3352 funded by appropriation, bond authorizations, federal grants, trust funds or other funding sources
3353 and the volume of work performed in the latest complete fiscal year, and justifying the officer's
3354 request for permanent, temporary and part-time positions in the ensuing fiscal year in relation to
3355 the volume of work expected to be performed by the state agency.

3356 All such statements, recommendations and estimates shall, to the fullest possible extent, conform
3357 with the programs of the state agency as defined by the secretary of administration and finance,
3358 with the advice of the officers responsible for the administration thereof and the officer making
3359 the submission to the budget director. The estimates submitted shall not include any estimate for
3360 any new or special purpose or object not authorized by statute.

3361 Before any such statements, estimates, recommendations or other information relating to a state
3362 agency shall be so submitted, each state agency shall submit such statements, estimates,
3363 recommendations, and other information to the secretary having charge of such state agency, if
3364 any, who shall review the same and make such additions thereto, deletions therefrom and
3365 modifications therein as such secretary deems appropriate; provided, however, that prior to
3366 making any such additions, deletions or modifications, such secretary shall conduct public
3367 hearings, for which the secretary shall give five days' public notice prior thereto, on all items for
3368 which the secretary shall submit a recommendation for appropriations to the governor.

3369 SECTION 114. Section 3A of said chapter 29, as so appearing, is hereby amended by striking
3370 out the second sentence and inserting in place thereof the following sentence:-

3371 The information shall include, but not be limited to, historical, current or proposed operational
3372 costs funded through any appropriation, bond authorizations, federal grants, trust funds or other
3373 funding sources, the officer's estimate of the cost of proposed legislation affecting activities
3374 which are or would be under the officer's supervision, estimates of and reasons for any
3375 supplemental funding that is projected to be needed during the fiscal year, estimates of revenue
3376 collections, estimates of proposed changes in fees or taxes, and any other such information as
3377 may be required by the committee.

3378 SECTION 115. Said chapter 29 is hereby further amended by striking out sections 4 and 5B, as
3379 so appearing, and inserting in place thereof the following 2 sections:-

3380 Section 4. Every officer having charge of any state agency who, in the officer's annual reports or
3381 otherwise, recommends or petitions for the expenditure of money by the commonwealth from
3382 any source of revenue, including expenditures to be met by assessments or from bond revenues
3383 or trust funds, for any purpose not covered by the estimates required to be submitted under
3384 section 3, shall, annually, on or before a date set by the secretary of administration and finance,
3385 submit detailed estimates thereof to the budget director, together with any other information
3386 required by said budget director. Such estimates and other information relating to such state
3387 agency before being submitted to the budget director, shall first be submitted to the appropriate
3388 secretary, if any, on or before a date set by him; said secretary shall review the same and make
3389 such additions thereto, deletions therefrom and modifications therein as the secretary deems
3390 appropriate; provided, however, that prior to making any such additions, deletions or
3391 modifications, said secretary shall conduct public hearings, for which he shall give five days'
3392 public notice prior thereto, on all items for which he shall submit to the governor a
3393 recommendation for an appropriation of one million dollars or more.

3394 Section 5B. The secretary of administration and finance, with the approval of the governor, shall
3395 on or before October 15 of every year, prepare estimates of budgeted revenues which in the
3396 secretary's judgment will be available for both the current year and for the annual budget for the
3397 ensuing fiscal year. In making such estimates the secretary shall take into account existing taxes,
3398 the probable economic growth within the state, anticipated federal fund receipts, the anticipated
3399 growth in wages and salaries, departmental and other revenue based on existing laws, the
3400 transfers of capital gains income tax revenue required by section 5G and amounts available to be
3401 transferred into budgetary funds. Such estimates shall be delivered to the house and senate
3402 committees on ways and means and shall be made available to the general public in a
3403 conspicuous manner on the commonwealth's official website within 14 days of submission of
3404 such revisions to the governor. The secretary shall accompany any revision of previous estimates
3405 with explanations of any changes in the secretary's estimates for specific sources of revenue.
3406 In estimating revenues available for the current year, the secretary shall include the amount
3407 certified by the comptroller under section 5C as available from the consolidated net surplus in
3408 the operating funds at the close of the preceding fiscal year and not in excess of ½ of 1 per cent
3409 of the total state tax revenues in such fiscal year. In estimating revenues to be available for the
3410 annual budget for the ensuing fiscal year, the secretary shall include an amount of any
3411 anticipated consolidated net surplus in operating funds not in excess of ½ of 1 per cent of the
3412 estimated total state tax revenues for the current fiscal year.

3413 The commissioner of revenue shall annually prepare and present with the governor's proposed
3414 budget actual or updated estimates of tax expenditures which occurred during the preceding
3415 fiscal year and estimates of tax expenditures which will likely occur during the current fiscal
3416 year and the ensuing fiscal year. Such estimates of tax expenditures shall be prepared to facilitate

3417 a comparison of increases or decreases from actual or estimated tax expenditures of the
3418 preceding fiscal year to the estimates of tax expenditures for the current fiscal year and to the
3419 ensuing fiscal year. The commissioner shall identify and analyze reasons for updates in estimates
3420 or for significant discrepancies identified under the preceding sentence.

3421 On or before January 15, the secretary of administration and finance shall meet with the house
3422 and senate committees on ways and means and shall jointly develop a consensus tax revenue
3423 forecast for the budget for the ensuing fiscal year which shall be agreed to by the secretary and
3424 said committees. In developing such a consensus tax revenue forecast, the secretary and said
3425 committees, or subcommittees of said committees, may hold joint hearings on the economy of
3426 the commonwealth and its impact on tax revenue forecasts; provided, however, that in the first
3427 year of the term of office of a governor who has not served in the preceding year, said parties
3428 shall agree to the consensus tax revenue forecast not later than January 31 of said year. Said
3429 consensus tax estimate shall be net of the amount necessary to transfer, from the General Fund to
3430 the Commonwealth's Pension Liability Fund, to amortize the unfunded liability of the system
3431 according to the schedule established under paragraph (1) of section 22C of chapter 32, and of
3432 the amounts transferred to the MBTA State and Local Contribution Fund under section 35T of
3433 chapter 10, and to the School Modernization and Reconstruction Trust Fund under section 35BB
3434 of chapter 10. Said consensus tax estimate shall also include an estimate of taxes collected under
3435 chapter 62 for capital gains income, as defined therein, and shall be net of any transfers of capital
3436 gains income tax revenue projected to be required by section 5G. Said consensus tax revenue
3437 forecast shall be included in a joint resolution and placed before the members of the general
3438 court for their consideration. Such joint resolution, if passed by both branches of the general
3439 court, shall establish the maximum amount of tax revenue which may be considered for the

3440 general appropriation act for the ensuing fiscal year.

3441 SECTION 116. Section 5D of said chapter 29 is hereby amended by striking out the first

3442 paragraph, as so appearing, and inserting in place thereof the following paragraph:-

3443 The comptroller shall determine, based on procedures established by the secretary of

3444 administration and finance, the amount expended during the fiscal year from each fund, other

3445 than the General Fund, for indirect costs and for the compensation of state personnel. On the

3446 basis of said determination, the comptroller shall charge each fund an amount for indirect costs

3447 and for fringe benefit costs attributable to compensation paid from the other funds, based on an

3448 indirect costs rate and on a fringe benefit rate to be set annually by said secretary. The amount so

3449 charged shall be credited to the General Fund. Upon approval of the secretary, and subject to

3450 regulations established by the secretary, the amount of indirect costs, either in whole or in part,

3451 charged to an account may be waived. The costs of fringe benefits shall be recovered in cash.

3452 SECTION 117. Said chapter 29 is hereby amended by striking out section 5F, as so appearing,

3453 and inserting in place thereof the following section:-

3454 Section 5F. Every officer having charge of any state agency which receives a periodic or other

3455 appropriation from the commonwealth, shall annually, on or before a date set by the secretary of

3456 administration and finance submit to the budget director a department financial plan for the

3457 current fiscal year and, at such times as specified by said secretary, revisions to said department

3458 financial plan; provided, however, that said officer shall also submit said financial plans to the

3459 chairmen of the house and senate committees on ways and means.

3460 The department financial plan shall include statements, in a form prescribed by the budget

3461 director, showing in detail (1) amounts proposed to be expended from each account for each

3462 month in the current fiscal year; (2) amounts projected to be received in each revenue account,

3463 other than revenue from state taxes, federal grants or proceeds of bonds issued by the
3464 commonwealth, for each month in the current fiscal year; and, (3) such other information on the
3465 expenditures, revenues, activities, output or performance of the state agency as required by the
3466 budget director.

3467 The budget director shall provide to the treasurer and comptroller information from department
3468 financial plans to develop estimates and projections of monthly, quarterly and annual cash flow
3469 required under section 10B of chapter 10, and to prepare monthly reports of planned and actual
3470 expenditure and planned and actual revenue for each major state program, department, and
3471 executive or other constitutional office.

3472 SECTION 118. Said chapter 29 is hereby further amended by striking out section 6B, as so
3473 appearing, and inserting in place thereof the following section:-

3474 Section 6B. (a) The comptroller, in consultation with the secretary of administration and finance,
3475 shall promulgate regulations which shall not be subject to chapter 30A to govern notice
3476 requirements for applications for federal grants by a state agency and the receipt and expenditure
3477 of federal funds. Such requirements shall, at a minimum, include:

3478 (1) reference to the federal statutory authority under which the action is proposed;

3479 (2) a description of the substance of the application; and

3480 (3) a fiscal statement setting forth:

3481 (i) the projected grant budget per year including the number of personnel to be funded with
3482 federal funds;

3483 (ii) the estimated amount of cash match, in kind match or other monies to be supplied by the

3484 state and any other source from which such match will be required, and a description of the

3485 federal allocation formula and matching requirements including whether the grant is distributed

3486 to the commonwealth on the basis of a federally specified formula or on the basis of the federal
3487 grantor's discretion and a description of the federal constraints placed on the agency's discretion
3488 to use the grant; and

3489 (iii) the duration of the grant, the number of fiscal years the agency has been receiving assistance
3490 and the number of fiscal years in which assistance can be expected to continue under the
3491 program, and a statement as to the priority of the program alongside other state or federally
3492 funded programs, including whether the agency would request that all or part of the program be
3493 funded out of the General Fund in the event federal funds are reduced or discontinued.

3494 To avoid any inconsistency or duplication in review, notices given under this section shall be
3495 coordinated with other notice requirements for project or plan proposals in connection with
3496 federal aid including those required under Circular A-95 of the United States Office of
3497 Management and Budget.

3498 (b) Upon official notification to a state agency from a federal department or agency of approval
3499 of a state plan or application for federal funds, the state agency shall notify the secretary of
3500 administration and finance and the comptroller promptly of the amount, duration, payment
3501 schedule and other attendant financial terms and conditions. Such notification shall be for the
3502 purposes of appropriate recording. The comptroller shall report to the house and senate
3503 committees on ways and means within 15 days after the last day of each quarter of the fiscal year
3504 detailing, by agency, the status of federal funds applied for, received and expended.

3505 (c) Under section 6 the budget director shall include all federal grants received or anticipated by
3506 state agencies as a part of the budget.

3507 (d) No state agency shall establish new, or expand existing programs involving federal or other
3508 non-state monies beyond the scope of those already established, recognized and approved by the

3509 general court, until the program and the projected or actual availability of money is submitted to
3510 the budget director for recommendation to the general court under section 6. No state agency
3511 may make expenditures from any federal grant unless such expenditures are made under specific
3512 appropriations of the general court and allotment thereof, said allotment to be made by the
3513 comptroller upon receipt of federal grant funds.

3514 Under section 2C, all such expenditures shall be charged to the General Federal Grants Fund.

3515 Notwithstanding the amount of the appropriation for a specific federal grant, the amount so
3516 expended from such federal grant shall not exceed the amount actually received and deposited in
3517 the General Federal Grants Fund for such federal grant. To the extent not precluded by the terms
3518 and conditions under which federal monies are made available by the United States government,
3519 a state agency shall use federal grants under any policies or priorities established by the general
3520 court for the activity being assisted.

3521 (e) If federal grant monies become available to the state for expenditure, under subsection (a),
3522 and the availability of such monies could not reasonably have been anticipated and included in
3523 the budget approved by the general court for the fiscal year in question, the treasurer may accept
3524 such monies on behalf of the state and the department head may make expenditures of such
3525 monies as are authorized by federal and state law. Upon application for, and receipt of, such
3526 monies, the department head shall submit to the house and senate committees on ways and
3527 means a statement:

3528 (1) describing the proposed federal expenditures in the same manner as described in the budget
3529 document; and

3530 (2) explaining why the availability of such federal grants and the necessity of their expenditure
3531 could not have been anticipated in time for such expenditures to have been approved as part of

3532 the budget enacted for that particular fiscal year.

3533 (f) Each spending agency in receipt of federal grant monies shall at the commencement of each
3534 fiscal year, and no later than July 31, and any agency which has not previously been in receipt of
3535 a federal grant shall, upon notification of grant approval, authorize the comptroller upon the
3536 comptroller's receipt of notice of a federal grant award to initiate such procedures as are
3537 established by the secretary of administration and finance to transfer from the federal grant
3538 account to the General Fund for the costs of fringe benefits, indirect costs and space use charges
3539 related to each federal grant received by that spending agency. Upon approval by the secretary,
3540 and subject to regulations established by the secretary, the amount of indirect costs, either in
3541 whole or in part, charged to a federal grant may be utilized to comply with federal requirements
3542 for in kind contributions. The costs of fringe benefits must, in all cases, be recovered in cash.
3543 The comptroller shall not allow expenditures for the payment of salaries to be made from any
3544 federal grant account for which the comptroller has not been authorized to charge the full amount
3545 of fringe benefits to the account. Notwithstanding any general or special law to the contrary, this
3546 paragraph shall apply to all state agencies; provided, however, that any institution of higher
3547 learning shall be exempt from those charges associated with indirect costs, as described in the
3548 following paragraph.

3549 (g) Any portion of a federal grant received by an institution of higher learning which, according
3550 to the conditions of said federal grant, is to be paid for or to cover any overhead expenses,
3551 indirect costs, supporting services or facilities, or for any purpose other than the direct object of
3552 the grant, may be transferred in whole or in part to separate accounts and expended without
3553 appropriation for the support of a computer or computers, of another research grant, or of
3554 publishing programs under the exclusive control of such institution, or for faculty research or

3555 research and scholarly work under the supervision of members of the faculty of such institution.

3556 (h) No individual, corporation or other organization utilizing grants shall be permitted to occupy
3557 or use land, buildings, equipment or facilities of the commonwealth or use the services of any
3558 officer or employee of the commonwealth during his regular working hours unless there is a
3559 written agreement, approved by the secretary, between said individual, corporation or other
3560 organization and said officer or employee, that the commonwealth will be reimbursed for such
3561 occupancy or use; provided, however, that upon recommendation of any department, institution,
3562 board, commission, agency or employee setting forth good and sufficient reasons, this
3563 requirement may be waived in whole or in part by the secretary on a particular project or
3564 projects. All such reimbursements shall be paid into the state treasury. Notice of such waiver
3565 shall be filed with the state auditor.

3566 (i) Federal grants shall not be used to supplement the regular salary or compensation of any
3567 officer or employee of the commonwealth for services performed during the officer or
3568 employee's regular working hours.

3569 (j) The following are excluded from subsections (a), (d) and (e):

3570 (1) federal grant funds coming to institutions of higher education, including research grants;

3571 (2) research grants to individuals, agencies or institutions not exceeding \$50,000 in annual
3572 amount and not creating new, or expanding existing, programs or commitments of state
3573 resources;

3574 (3) any federal grant funds not exceeding \$5,000 in annual amount; and

3575 (4) federal grant funds made available to the state for costs and damages resulting from natural
3576 disasters, civil disobedience or other occurrences of sufficient severity to have occasioned the
3577 declaration by the governor of a state of emergency.

3578 SECTION 119. Said chapter 29 is hereby further amended by striking out section 6D, as so
3579 appearing, and inserting in place thereof the following section:-

3580 Section 6D. Each appropriation contained in the general appropriations or any supplemental
3581 appropriations acts shall include the following information: (1) the line-item number of the
3582 appropriation; (2) the purpose of the appropriation and other restrictive language; and (3) the
3583 amount of the appropriation or the maximum expenditure allowed, set out in numeric figures. No
3584 appropriation otherwise set out in any act shall be valid and the comptroller shall not allow
3585 monies to be expended on any appropriation not conforming to the requirements herein
3586 established.

3587 The general appropriations act shall include the following sections: (1) section 1 which shall
3588 include the enacting clause and general appropriation language; (2) section 1B which shall set
3589 forth the budgeted revenues appropriated in the budget according to category, by department,
3590 and identifying by department, budgeted revenues that are restricted for the purpose of
3591 supporting retained revenue line-items; (3) section 2 which shall include all direct appropriations
3592 and authorizations to retain revenue; (4) section 2B which shall include all appropriations from
3593 the Intragovernmental Service Fund; (e5) section 2C which shall include any authorizations to
3594 continue a prior appropriation; (6) section 2D which shall include all appropriations of federal
3595 grants; and (7) section 2E, which shall set forth appropriations to support transfers to funds other
3596 than budgetary funds.

3597 Supplemental and deficiency appropriations acts shall include, if necessary, the following
3598 sections: (a) section 2 which shall include direct appropriations and authorizations to retain
3599 revenue which do not require changes to the purpose of the appropriation or other restrictive
3600 language; (b) section 2A which shall include direct appropriations and authorizations to retain

3601 revenue which require new language regarding the purpose of the appropriation or other
3602 restrictive language; (c) section 2B which shall include all appropriations from the
3603 Intragovernmental Service Fund; and (d) section 2C which shall include all authorizations to
3604 continue a prior appropriation.

3605 This section shall apply to all appropriations of commonwealth funds, including direct
3606 appropriations, retained revenue authorizations, federal grant appropriations, accounts with prior
3607 appropriations continued and appropriations from the Intragovernmental Service Fund.

3608 SECTION 120. Sections 7A to 7G, inclusive, of said chapter 29 are hereby repealed.

3609 SECTION 121. Said chapter 29 is hereby further amended by striking out sections 7H to 7K,
3610 inclusive, and inserting in place thereof the following 2 sections:-

3611 Section 7H. The governor shall submit to the general court annually within 3 weeks after the
3612 general court convenes in regular session a budget including an operating budget and a capital
3613 facility budget and long range capital facilities development plan. In the first year of the term of
3614 office of a governor who has not served in the preceding year, the governor shall recommend the
3615 budget within 8 weeks after the convening of the general court. The recommendations contained
3616 therein shall, to the fullest possible extent, conform with the programs of the several offices and
3617 departments as defined by the secretary of administration and finance with the advice of the
3618 agency heads or other officers responsible for the administration thereof and long range capital
3619 facilities development plans as defined by the commissioner of capital asset management and
3620 maintenance. The budget shall also include definite recommendations of the governor for
3621 financing the expenditures recommended.

3622 All appropriations based upon the budget to be paid from budgeted revenues shall be
3623 incorporated in a single bill to be designated the general appropriation bill, set out in conformity

3624 with section 6D. With the budget, the governor shall submit to the general court statements
3625 detailing and explaining the governor's reasons for recommending any increase in, decrease in,
3626 or deletion from the budgetary recommendations of any department office, commission,
3627 institution or other public agency or, in the case of a department, office, commission or
3628 institution within any executive office established by chapters 6A and 7 of the secretary of such
3629 executive office; of the general court; and of the judiciary.

3630 The governor shall also submit such other messages, statements of supplemental data relative to
3631 the budget as the governor deems expedient and, from time to time during the session of the
3632 general court may submit supplemental messages on recommendations relative to appropriations,
3633 revenues and loans. Such statements of supplemental data shall include, at a minimum,
3634 statements of projected health care cost trends, caseload eligibility and enrollment trends,
3635 anticipated debt service costs and future growth in payments to fund the commonwealth's
3636 liability for pensions and the commonwealth's liability for retiree health care over the next 5
3637 fiscal years. Upon submission of the budget to the general court, the governor shall, through the
3638 executive office for administration and finance, make available to the public all material relevant
3639 to said budget, including all supporting documents pertinent thereto. This shall include at least
3640 the electronic or other distribution, at the time of submission of the governor's budget and
3641 subsequently the house and senate ways and means budgets, of (a) copies of these budgets to the
3642 state house library, and to the state office building in Springfield, (b) copies of all reports,
3643 statements, recommendations, or evaluations required by sections 3, 4, 5B, 5D, 6, 7 or any
3644 related reports required by any chapter of the general laws to the state house library. They shall
3645 be placed on public display and made available for reproduction during business hours.
3646 Any information which is required to be filed under this section or section 6, either with the

3647 budget by the governor, or as a part thereof, and which is not contained within the budget as filed
3648 or within accompanying documents filed at the same time, shall be filed by the governor not later
3649 than 14 days following the required filing date; provided, however, that such information shall be
3650 accompanied by a detailed statement explaining the failure to provide the information at the time
3651 the budget was submitted.

3652 In the event that the governor determines from information supplied by the executive office for
3653 administration and finance, from the tax revenue resolution established under section 5B, or from
3654 any other competent source that the tax revenues or non-tax revenues supporting the general
3655 appropriation bill have materially decreased, or that appropriations or statutory amendments that
3656 would provide funding to support recommended levels of appropriations have materially
3657 changed from the time the general appropriation bill was originally submitted, the governor shall
3658 submit to the general court by message recommended corrective amendments to the governor's
3659 original budget submission to ensure that total appropriations recommended in the general
3660 appropriation bill do not exceed total revenues supporting said bill. Such message shall be
3661 submitted to the general court within 15 days from the date of such determination.

3662 Section 7I. All requests and recommendations for appropriations or authorizations for
3663 expenditures by the commonwealth, other than those submitted by the governor to the general
3664 court under section 2 of Article LXIII of the Amendments to the Constitution, shall be submitted
3665 by the governor to the general court; shall be classified to show the request of each officer
3666 having charge of an office, department or undertaking, including the priorities assigned to each
3667 program by said officer, the recommendation of the secretary of the executive office within
3668 which such office, department or undertaking shall be, the recommendation of the governor, and
3669 the prior year appropriation, if any; and shall indicate the number, if any, of permanent positions

3670 proposed to be authorized for an office, department or undertaking and the number of persons to
3671 be served or the number of actions to be taken by such office, department or undertaking.

3672 Requests and recommendations as they pertain to capital facilities projects shall be studied by the
3673 commissioner of capital asset management and maintenance pursuant to chapter 7C.

3674 SECTION 122. Sections 8B, 8C and 9 of chapter 29 of the General Laws are hereby repealed.

3675 SECTION 123. Said chapter 29 is hereby amended by striking out sections 9F and 9G, as so
3676 appearing, and inserting in place thereof the following 2 sections:-

3677 Section 9F. After the close of each monthly accounting period, the comptroller shall notify the
3678 secretary of administration and finance and each officer having charge of an office, department
3679 or undertaking which receives a periodic appropriation, of the amount and per cent of each such
3680 appropriation which had been expended at the close of the preceding month for that month and
3681 for the year-to-date, of the amount available for each such appropriation and of the amount and
3682 per cent of each appropriation, if any, for the same purpose expended during the corresponding
3683 period in the preceding fiscal year.

3684 Section 9G. Sums made available by appropriation or otherwise to offices, departments or
3685 undertakings for studies, plans, designs, construction, acquisition, purchase or repair of capital
3686 facilities, of highway improvement facilities, such as a highway, bridge or tunnel, and of
3687 transportation improvement facilities, such as a mass transportation or other public transit
3688 facility, shall be expended only in such amount as may be allotted for expenditure from time to
3689 time by the secretary of administration and finance or said secretary's approved designee. The
3690 officer in charge of each office, department or undertaking shall submit to the secretary, in such
3691 form and at such times as the secretary shall prescribe, such information as may be required by
3692 the secretary for making such allotments; provided that before any such information relating to

3693 an office, department or undertaking within any of the executive offices established by chapter
3694 6A has been so submitted, it shall first be submitted to the secretary having charge of such
3695 executive office, who shall review the same and make such additions thereto, deletions therefrom
3696 and modifications therein as such secretary deems appropriate.

3697 The secretary of administration and finance shall issue directives governing expenditure from
3698 bond authorizations; such directives shall include, but not be limited to, the following: (1) such
3699 measures as determined by said secretary to be necessary to regulate the rate of expenditure from
3700 any or all bond authorizations, and (2) such measures as determined by said secretary to be
3701 necessary to ensure compliance with such directives, including requiring prior written approval
3702 of said secretary before the award of contract or grants.

3703 SECTION 124. Said chapter 29 is hereby further amended by striking out section 12A, as so
3704 appearing, and inserting in place thereof the following section:-

3705 Section 12A. Beginning June 1 of any year, obligations may be incurred against appropriations
3706 for items to be delivered or for services to be rendered on or after the beginning of the next fiscal
3707 year; provided, however, that said obligations are in accordance with law and the amounts of the
3708 obligations do not exceed one-twelfth of that appropriation for the current fiscal year.

3709 Where the allotment of an appropriation is a condition precedent to expenditure, the obligations
3710 shall not exceed the amount allotted for said appropriation; provided, however, that during the
3711 month of June the comptroller may prepare warrants and the state treasurer may advance funds
3712 to the department of transitional assistance for the purpose of making payments on and after July
3713 1 as authorized by chapter 658 of the acts of 1967; and provided further that said payments are in
3714 accordance with law and the amounts of said payments do not exceed the amount of the
3715 appropriation, provided, however, that no funds shall be expended until such funds have been

3716 appropriated. The certified copies of the schedules provided for in section 27 shall be filed with
3717 the comptroller and the budget director as of June 1. Where the allotment of an appropriation is
3718 required by law, such allotment shall be made as of June 1.

3719 Notwithstanding any general or special law to the contrary, in order to comply with the Social
3720 Security Act, the state treasurer may transfer to the United States Treasury before July funds
3721 necessary to make July 1 Supplemental Security Income payments to commonwealth benefit
3722 recipients.

3723 SECTION 125. Said chapter 29 is hereby further amended by striking out section 13, as so
3724 appearing, and inserting in place thereof the following section:-

3725 Section 13. Encumbrances outstanding on the records of the comptroller's office at the close of
3726 the fiscal year may be applied to the payment thereof in the 2 months immediately succeeding
3727 such fiscal year.

3728 SECTION 126. Said chapter 29 is hereby further amended by striking out section 16, as so
3729 appearing, and inserting in place thereof the following section:-

3730 Section 16. Payments authorized by appropriation acts shall be made from budgeted revenue, if
3731 no other provision is expressly made for such payment.

3732 SECTION 127. Section 18 of said chapter 29 is hereby amended by inserting at the end thereof
3733 the following sentence:-

3734 In lieu of paying bonds at maturity or redemption, the state treasurer may apply monies available
3735 for the payment of debt service to the purchase of such bonds through a tender offer or otherwise
3736 at a price not to exceed the par amount thereof whereupon the state treasurer shall declare the
3737 purchase bonds to be paid in full.

3738 SECTION 128. Section 20 of said chapter 29, as so appearing, is hereby amended by striking

3739 out, in lines 5 and 6, the words “except gratuities and special allowances by the general court,
3740 SECTION 129. Section 21 of said chapter 29 is hereby repealed.

3741 SECTION 130. Section 23 of said chapter 29, as so appearing, is hereby amended by striking
3742 out, in lines 11 and 12, the words “Massachusetts Department of Transportation”.

3743 SECTION 131. Sections 26A and 26B of said chapter 29 are hereby repealed.

3744 SECTION 132. Said chapter 29 is hereby further amended by striking out section 27, as so
3745 appearing, and inserting in place thereof the following section:-

3746 Section 27. Notwithstanding any general or special law to the contrary, no department, office,
3747 commission and institution shall incur an expense, increase a salary or employ a new clerk,
3748 assistant or other subordinate, unless an appropriation by the general court and an allotment by
3749 the secretary of administration and finance, sufficient to cover the expense thereof, shall have
3750 been made. As soon as possible after the general appropriation bill or any other appropriation bill
3751 has the force of law conformably to the constitution, the budget director shall file with the house
3752 and senate committees on ways and means and the comptroller a schedule identifying the amount
3753 of each subsidiary account, if any, within every appropriation that shall be made available to
3754 departments, offices, commission or institutions within the state’s central accounting system.

3755 SECTION 133. Said chapter 29, as so appearing, is hereby amended by striking out sections 29 to
3756 29B, inclusive, and inserting in place thereof the following section:-

3757 Section 29. Any subsidiary account set up as prescribed in a schedule referred to in section 27,
3758 on the books of any department, office, commission or institution, receiving an appropriation
3759 from the commonwealth, may be increased or decreased by the interchange with any other such
3760 subsidiary account within the same appropriation account by the officer in charge of such
3761 department, office, commission or institution upon his certification to the budget director that

3762 such interchange is required to incur obligations to meet statutory responsibilities under general
3763 or special law where funds are otherwise not available, unless otherwise provided by general or
3764 special act. For any certification requesting a transfer to a subsidiary account that has not been
3765 established within a schedule prescribed under said section 27, the officer must include the
3766 reasons for the new subsidiary account. Every such certification shall include a statement of the
3767 details of the necessity of the transfer and of the probable consequences if said interchange
3768 should not be made. An officer making any such certification shall file forthwith a copy thereof
3769 within the central accounting system under policies and procedures adopted by the secretary of
3770 administration and finance.

3771 The comptroller may accept affidavits that expenditures are in accordance with the purpose of
3772 such appropriation or subsidiary accounts and do not exceed the unencumbered balances of the
3773 amounts provided therefor. The comptroller shall refuse to permit a disbursement or the
3774 incurring of an obligation if funds or allotments of funds under an appropriation account or
3775 subsidiary account under an appropriation account, sufficient to cover such disbursement or
3776 obligation are not available and shall immediately give notice of such refusal to the department,
3777 office, commission or institution proposing the expenditure, and, in the case of a department,
3778 office, commission or institution within any of the executive offices established by chapters six
3779 A and seven to the secretary having charge of such executive office.

3780 The secretary of administration and finance may establish regulations or policies governing the
3781 interchange of funds under this section.

3782 Section 29A. The secretary of administration and finance shall make, and may from time to time
3783 amend, rules and regulations governing the use of consultants in all departments, offices, boards,
3784 agencies, commissions and institutions. Such rules and regulations shall be open to public

3785 inspection shall not be subject to chapter 30A. No person employed by the commonwealth as a
3786 consultant shall directly or indirectly supervise another temporary or permanent employee of the
3787 commonwealth. Consultant contracts, whether written with organizations or individuals, shall
3788 not be used as substitutes for state positions. The secretary shall submit quarterly to the house
3789 and senate committees on ways and means and the house and senate committees on post audit
3790 and oversight a report which identifies all existing consultant contracts by agency, for all
3791 accounts established or maintained by the comptroller, including but not limited to
3792 appropriations, for federal grants, bond authorizations, revolving accounts, retained revenue line-
3793 items and trust accounts. Said report shall identify each contract, its duration, its maximum dollar
3794 obligation, the name of the contractor and the services performed by the contractor.

3795 Section 29B. The secretary of administration and finance shall make, and may from time to time
3796 amend, rules and regulations governing the procurement and administration of contracts with
3797 organizations providing social, rehabilitative, health or special education services. Such rules and
3798 regulations shall not be subject to chapter 30A. No person employed by an organization
3799 providing social, rehabilitative, health or special education services as defined above shall
3800 directly or indirectly supervise a temporary or permanent employee of the commonwealth. Such
3801 contracts shall not be written or used by any department, office, agency, board, commission or
3802 institution of the commonwealth to procure full or part-time personal services or equipment to be
3803 used by such department, office, agency, board, commission or institution, or any goods or
3804 services not required in the direct provision by the contractor of social, rehabilitative, health, or
3805 special education services to populations being served by the contracting department, office,
3806 agency, board, commission or institution.

3807 SECTION 134. The second paragraph of section 29D of chapter 29 is hereby amended by

3808 striking out the first through the fourth sentences and inserting in place thereof the following
3809 sentence:-. The comptroller shall, from time to time, competitively procure agreements with 1 or
3810 more private persons, companies, associations or corporations for the provision of debt collection
3811 services on behalf of state agencies.

3812 SECTION 135. Section 29F of said chapter 29, as so appearing, is hereby amended by inserting
3813 after the word “administration”, wherever it appears, the following words:- and finance.

3814 SECTION 136. Section 29G of said chapter 29, as so appearing, is hereby amended by striking
3815 out the third sentence and inserting in place thereof the following sentence:-

3816 No such agreement shall be entered into unless proposals for the same have been invited by
3817 public notice published in such manner as the state purchasing agent shall direct to ensure the
3818 widest possible cost-effective dissemination of the notice, for at least 2 consecutive weeks prior
3819 to the time specified for the opening of said proposals.

3820 SECTION 137. Said chapter 29 is hereby amended by striking out section 31, as so appearing,
3821 and inserting in place thereof the following section:-

3822 Section 31. The comptroller, in consultation with the personnel administrator and the secretary of
3823 administration and finance, may establish a centralized payroll system and may include salaries
3824 payable by the commonwealth in that system, for all classified services in any agency of the
3825 commonwealth and for teachers and supervisors employed in any school or college in any
3826 department of the commonwealth and any salary payable by the commonwealth to a person
3827 holding a statutory position.

3828 Such centralized payroll system shall conform to such rules and regulations as the secretary of
3829 administration and finance, with the approval of the state treasurer, the comptroller and the
3830 personnel administrator, may from time to time make. Such rules and regulations shall not be

3831 subject to chapter 30A. Notwithstanding any other general or special law to the contrary, and
3832 under section 148 of chapter 149, to ensure the timely payment of wages and related payroll
3833 charges for work authorized by a spending authority and performed by employees, the
3834 comptroller shall have full authority to mandate the payment of such wages and payroll charges
3835 and prescribe, regulate and direct any spending authority to take the appropriate actions
3836 necessary to properly account for payroll charges, to ensure that payroll accounts are not in
3837 deficit at the close of the fiscal year and any other actions necessary to support sound fiscal
3838 management including appropriation, allotment or other funding limits.

3839 The comptroller shall require certification from each spending authority that each employee
3840 receiving a salary under the warrant is being paid for duties performed directly for the employing
3841 agency and not for duties performed for another state agency or other legal entity.

3842 The state treasurer or other state official authorized to expend money on behalf of the
3843 commonwealth may pay any salary, wages or other compensation to any person in the service of
3844 the commonwealth by means of deposits to employee bank accounts, provided, employees have
3845 expressly authorized said deposits.

3846 The state treasurer or other state official authorized to expend money on behalf of the
3847 commonwealth may pay any retirement benefit due to any retired employee in the state system
3848 or retired teachers in the teachers retirement system by means of deposits to such retired person's
3849 bank account, provided, the retired persons have expressly authorized said deposits.

3850 The comptroller or other state official authorized to expend money on behalf of the
3851 commonwealth may comply with administrative wage garnishments for child support, student
3852 loans, state or federal tax liens, court order bankruptcy orders or other garnishments as
3853 determined by the comptroller which name the commonwealth as employer and mandating

3854 deductions under state or federal law for employees of the commonwealth in amounts not more
3855 than the percentage allowable under state or federal law or a greater amount as authorized by the
3856 employee, provided that the commonwealth shall not use state resources or be compelled to
3857 comply with voluntary private garnishments or trustee process orders. For the purposes of this
3858 section, the term "employee" shall mean "employee" as defined in section 1 of chapter 32.

3859 SECTION 138. Said chapter 29 is hereby further amended by striking out section 31D, as so
3860 appearing, and inserting in place thereof the following section:-

3861 Section 31D. Whenever an officer or employee or former officer or employee of the
3862 commonwealth dies, and the commonwealth owes that officer or employee any sum or sums, by
3863 reason of services rendered or by reason of the terms of the officer or employee's employment,
3864 the comptroller may issue such sums to the beneficiaries designated to the employee under
3865 section 31A. Payments made as provided in this section shall discharge the liability of the
3866 commonwealth to all persons with respect to such sum or sums.

3867 SECTION 139. Section 34 of said chapter 29 is hereby amended by striking out paragraph (a), as
3868 so appearing, and inserting in place thereof the following paragraph:-

3869 (a) State officers, departments, institutions and other agencies may, with the written consent of
3870 the state treasurer, deposit a portion of the public monies in their possession in national banks,
3871 federal savings banks and federal savings and loan associations, lawfully doing business within
3872 the commonwealth, and in trust companies, savings banks and cooperative banks chartered under
3873 the laws of the commonwealth. The state treasurer shall publish a list of qualified banks and shall
3874 transmit that list at least once every 6 months to the governor. The state treasurer shall not
3875 include on the list a state-chartered bank having a descriptive rating as described in clauses (d) or
3876 (e) of the sixth paragraph under section 14 of chapter 167 or any federally insured depository

3877 institution having an assigned rating of (C) or (D) under section 807(b)(2) of the Community
3878 Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.

3879 SECTION 140. Said chapter 29 is hereby further amended by striking out section 38, as so
3880 appearing, and inserting in place thereof the following section:-

3881 Section 38. With the exception of funds used in connection with a deferred compensation
3882 program for state employees, and funds of the state employees' retirement system or the
3883 teachers' retirement system, all funds over which the commonwealth has exclusive control shall
3884 be invested by the state treasurer as follows:

3885 (a) In the public funds of the United States or of the District of Columbia or of this
3886 commonwealth, or in the legally authorized bonds of any other state of the United States, other
3887 than a territory or dependency of the United States, which has not within the 20 years prior to the
3888 making of such investment defaulted in the payment of any part of either principal or interest of
3889 any legal debt.

3890 (b) In repurchase agreements secured by United States Treasury obligations or United States
3891 Treasury obligations bearing a maturity date not later than 1 year.

3892 (c) In the bonds or notes of a county, city or town of this commonwealth.

3893 (d) In shares of beneficial interest issued by money market funds registered with the Securities
3894 and Exchange Commission under the Investment Company Act of 1940, as amended, operated
3895 under section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the
3896 highest possible rating from at least 1 nationally recognized statistical rating organization. The
3897 purchase price of shares of beneficial interest purchased under this section shall not include a
3898 commission charged by the money market funds.

3899 (e) In any other security that qualifies for inclusion in a fund operated under section 270.2a-7 of

3900 Title 17 of the Code of Federal Regulations, as amended.

3901 (f) In investment agreements or guaranteed investment contracts rated, or with a financial
3902 institution whose senior long-term debt obligations are rated, or guaranteed by a financial
3903 institution whose senior long-term debt obligations are rated, at the time the agreement or
3904 contract is entered into, in 1 of the 2 highest rating classifications by a nationally recognized
3905 rating service if the agreements or contracts do not exceed 1 year in duration, or, in the case of
3906 bond proceeds, 3 years duration.

3907 (g) In investment agreements with a corporation whose principal business is to enter into the
3908 agreements if: the corporation and the investment agreements of the corporation are each rated in
3909 1 of the 2 highest rating classifications by a nationally-recognized rating service; the
3910 commonwealth has an option to terminate each agreement in the event that the rating is
3911 downgraded below the 2 highest rating classifications; and the agreements or contracts do not
3912 exceed 1 year in duration, or, in the case of bond proceeds, 3 years duration.

3913 (h) In the promissory notes of an industrial, commercial, finance, banking, railroad or public
3914 utility corporation conducting business in this state when such notes mature not later than 1 year
3915 subsequent to their respective dates of issue; provided, however, that, at the time of any such
3916 investment, (1) such corporation has capital stock, premium thereon and surplus of at least
3917 \$25,000,000, (2) the securities of such corporation are eligible for investment by life insurance
3918 companies authorized to do business in the commonwealth, and (3) all outstanding debt
3919 obligations of such corporation which have any rating from 2 or more standard rating services
3920 are rated within the 3 highest classifications established by at least 2 such rating services, or, if
3921 none of the outstanding debt obligations of such corporation has any rating from 2 such rating
3922 services, that such outstanding debt obligations are rated at the time of investment within the 3

3923 highest classifications established by at least 2 such rating services, or the notes of such
3924 corporation at the time of investment are rated prime by the National Credit Office; provided,
3925 further, that the commonwealth' investment in the notes of any 1 company shall not exceed 20
3926 per cent of the capital and surplus of such company.

3927 (i) In bankers acceptances and bills of exchange eligible for purchase by federal reserve banks
3928 and which have been accepted by a bank, a trust company, a private banker or an investment
3929 company, or by a banking corporation which is organized under the laws of the United States or
3930 of any state thereof and which is a member of the federal reserve system.

3931 The state treasurer may purchase with a portion of the State Lottery and Gaming Fund, as
3932 established and defined in section 35 of chapter 10, from insurance companies lawfully doing
3933 business in the commonwealth, annuities payable to the commonwealth to be used for payment
3934 of lottery prizes. Such annuities shall not be subject to section 118 of chapter 175 limiting
3935 payment of annuities to individuals, and shall, to the extent that such annuities are payable to the
3936 commonwealth, be exempt from taxation under section 20 of chapter 63. Contracts for the
3937 purchase of such annuities shall be subject to competitive bidding and shall be awarded to the
3938 lowest responsible bidder. All such bids and contracts shall be public records.

3939 The state treasurer may also purchase with a portion of the State Lottery and Gaming Fund,
3940 bonds, notes, shares in combined investment funds or other interest bearing obligations under the
3941 standards in subdivision (3) of section 23 of chapter 32.

3942 Funds in connection with a deferred compensation program for state employees may be invested
3943 by the treasurer under section 64; provided, however, that such funds, whether or not invested,
3944 shall remain in the sole control of the treasurer, and may be used by the commonwealth at any
3945 time and for any purpose.

3946 The treasurer may lend securities purchased from funds authorized by this section, provided that
3947 at the time of the execution of the loan at least 100 per cent of the market value of the security
3948 lent shall be secured by cash or securities guaranteed by the United States government or any
3949 agency of the United States government. At all times during the term of each such loan the
3950 collateral shall be equal to not less than 95 per cent of the full market value of the security and
3951 said collateral shall not be more than \$100,000 less than the full market value of the security.

3952 SECTION 141. The first paragraph of section 38A of said chapter 29, as so appearing, is hereby
3953 amended by inserting at the end thereof the following sentence:-

3954 The management of any fund established under this paragraph shall be competitively procured
3955 not later than once every 7 years.

3956 SECTION 142. Section 38C of said chapter 29, as so appearing, is hereby amended by striking
3957 out, in line 17, the words "finance advisory board" and inserting in place thereof the following
3958 words:- state finance and governance board established under section 97 of chapter 6.

3959 SECTION 143. Said section 38C of said chapter 29 is hereby further amended by inserting at
3960 the end thereof the following sentence:-

3961 The state treasurer may expend amounts received pursuant to this section without further
3962 appropriation to make payments pursuant to this section or to pay debt service on debt
3963 obligations of the commonwealth, including, without limitation, by funding escrow accounts for
3964 the payment of such debt service.

3965 SECTION 144. Section 42 of chapter 29 of the General Laws is hereby repealed.

3966 SECTION 145. Section 47 of said chapter 29, as so appearing, is hereby amended by striking
3967 out, in lines 2 and 3, the words "other than assessments for the metropolitan districts,".

3968 SECTION 146. Section 47A of chapter 29 is hereby repealed.

3969 SECTION 147. Section 49 of said chapter 29, as most recently amended by section 42 of chapter
3970 68 of the acts of 2011, is hereby amended by striking out the last sentence in the eighth
3971 paragraph.

3972 SECTION 148. Said section 49 is hereby further amended by inserting at the end thereof the
3973 following sentence:-

3974 Bonds and notes issued by the commonwealth their transfer and income therefrom, including any
3975 profit made on the sale thereof, shall at all times be free from taxation within the commonwealth.

3976 SECTION 149. Section 49B of chapter 29 of the General Laws, as appearing in the 2010 Official
3977 Edition, is hereby amended by inserting at the end thereof the following sentence:-

3978 The state treasurer may enter into agreements with or for the benefit of the purchasers and
3979 subsequent and transferees of bonds or notes of the commonwealth to provide liquidities support
3980 for such bonds and such notes upon such terms as the state treasurer may deem appropriate and
3981 consistent with the liquidity needs of the state treasury from amounts in the Stabilization Fund,
3982 the General Fund and any other state fund over which the state treasurer has investment authority
3983 except sinking funds, trust funds, trust deposits and agency funds.

3984 SECTION 150. Said chapter 29 is hereby further amended by striking out sections 50 and 51, as
3985 so appearing, and inserting in place thereof the following section:-

3986 Section 50. The state treasurer shall annually in December certify to the budget director the
3987 amount necessary to provide for serial and sinking fund payments with respect to any bonds or
3988 notes of the commonwealth for the fiscal year beginning on July 1 following.

3989 SECTION 151. Section 53 of said chapter 29, as so appearing, is hereby amended by striking
3990 out, in lines 10 and 11, the words “finance advisory board” and inserting in place thereof the
3991 following words:- state finance and governance board established under section 97 of chapter 6.

3992 SECTION 152. Section 55 of said chapter 29, as so appearing, is hereby amended by striking out
3993 the last sentence.

3994 SECTION 153. The second paragraph of section 60A of said chapter 29, as so appearing, is
3995 hereby amended by striking out the second sentence and inserting in place thereof the following
3996 sentence:-

3997 For the fiscal year starting July 1, 2012, such limit shall be \$17,070,000,000.

3998 SECTION 154. Said chapter 29 is hereby further amended by striking out section 60B, as so
3999 appearing, and inserting in place thereof the following section:-

4000 Section 60B. (a) In this section, the following words shall, unless the context clearly requires
4001 otherwise, have the following meanings.

4002 "Board", the state finance and governance board established pursuant to section 97 of chapter 6.

4003 "Tax supported debt", direct debt, as further described and limited in section 60A, and other
4004 forms of debt, including state agency capital leases supported in whole or part by state tax
4005 revenues and debt of the department of transportation, and other units of commonwealth
4006 government which, in the opinion of the board, are supported directly or indirectly by state tax
4007 revenues, including debt issued by the department of transportation under chapter 6C that is
4008 secured by a pledge of future federal aid from any source.

4009 (b) As part of its duties under section 98 of chapter 6, the board shall review on a continuing
4010 basis the size and condition of the commonwealth tax supported debt as well as other debt of any
4011 authority of the commonwealth that is determined to be a component unit of the commonwealth

4012 by the comptroller under subsection (c) of section 12 of chapter 7A. The estimate shall be made
4013 available electronically and prominently displayed on the official website of the commonwealth.

4014 (c) On or before September 10 of each year, the board shall submit to the governor and the
4015 general court the board's estimate of the total amount of new commonwealth debt that prudently
4016 may be authorized for the next fiscal year. In making its estimate, the board shall consider:

4017 (1) the amount of state bonds that, during the next fiscal year, will be outstanding and authorized
4018 but unissued;

4019 (2) the capital program prepared by the secretary of administration and finance;

4020 (3) capital improvement and school construction needs during the next 5 fiscal years, as
4021 projected by the Massachusetts School Building Assistance Authority;

4022 (4) projections of debt service requirements during the next 10 fiscal years;

4023 (5) the criteria that recognized bond rating agencies use to judge the quality of issues of state
4024 bonds;

4025 (6) any other factor that is relevant to the ability of the state to meet its projected debt service
4026 requirements for the next 5 fiscal years or the marketability of state bonds;

4027 (7) the effect of authorizations of new state debt on each of the factors in this subsection;

4028 (8) identification of pertinent debt ratios, such as debt service to General Fund revenues, debt to
4029 personal income, debt to estimated full-value of property, and debt per capita;

4030 (9) A comparison of the debt ratios prepared for paragraph (8) with the comparable debt ratios
4031 for other New England states, New York and other states that the board determines to offer a fair
4032 comparison to the commonwealth;

4033 (10) A description of the percentage of the state's outstanding general obligation bonds
4034 constituting fixed rate bonds, variable rate bonds, bonds that have an effective fixed interest rate

4035 through a hedging contract, and bonds that have an effective variable interest rate through a
4036 hedging contract. The report shall also include, for each outstanding hedging contract, a
4037 description of the hedging contract, the outstanding notional amount, the effective date, the
4038 expiration date, the name and ratings of the counterparty, the rate or floating index paid by the
4039 state and the rate or floating index paid by the counterparty, and a summary of the performance
4040 of the state's hedging contracts in comparison to the objectives for which the hedging contracts
4041 were executed; and

4042 (11) the amount of issuances, debt outstanding, and debt service requirement of other classes of
4043 commonwealth tax supported debt as well as other debt of commonwealth units.

4044 (f) The estimate of the board shall be advisory and non-binding.

4045 (g) On or before October 15 of each year, after considering the current estimate of the
4046 committee, the governor shall determine:

4047 (1) the total authorizations of new commonwealth debt that the governor considers advisable for
4048 the next fiscal year; and

4049 (2) the preliminary allocation of new commonwealth debt for capital facility projects.

4050 SECTION 155. The second paragraph of section 65 of chapter 29 is hereby amended by striking
4051 out, each time they appear, the words "commissioner or administration" and inserting in place
4052 thereof, in each instance, the following words:- secretary of administration and finance.

4053 SECTION 156. Section 66 of said chapter 29, as so appearing, is hereby amended by striking out
4054 the last sentence.

4055 SECTION 157. Section 9 of chapter 29C of the General Laws, as so appearing, is hereby
4056 amended by striking out, in line 11, the words "finance advisory board" and inserting in place
4057 thereof the following words:- state finance and governance board established under section 97 of

4058 chapter 6.

4059 SECTION 158. Chapter 58 of the General Laws is hereby amended by striking out section 18C,

4060 as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

4061 Section 18C.(a) In this section, "budgeted aid" shall mean unrestricted aid to cities and towns,
4062 including proceeds from the state lottery established under chapter 10, payments in lieu of taxes
4063 from the commonwealth to cities and towns and education aid to cities and towns under chapter
4064 70.

4065 (b) In fiscal year 2012 and each fiscal year thereafter, the state treasurer shall, subject to
4066 appropriation but not subject to allotment under section 9B of chapter 29, distribute budgeted aid
4067 to cities and towns. The distribution shall be made annually in 4 equal payments, to be made on
4068 or before September 30, December 31, March 31 and June 30.

4069 Notwithstanding clause Forty-first of section 7 of chapter 4 or any other general or special law to
4070 the contrary, the commissioner of revenue or any official responsible for a local reimbursement
4071 or assistance program reported by said commissioner pursuant to section 25A shall use, as
4072 appropriate, the most recent city and town population estimates of the United States Bureau of
4073 the Census in calculating distributions or assessments under local reimbursement or assistance
4074 programs. Such distribution programs shall include, but not be limited to, the chapter 70 school
4075 aid program, and aid to regional public libraries. Such assessments shall include, but not be
4076 limited to, air pollution control districts, the metropolitan area planning council, the old colony
4077 planning council, the Massachusetts Bay Transportation Authority and any other entity for which
4078 said commissioner is required to give notice pursuant to said section 25A.

4079 (c) This section shall not be construed to prohibit the distribution of other state government
4080 payments to cities and towns that are not budgeted aid nor shall this section be construed to

4081 prohibit the deduction from distributions to satisfy amounts owed to the state by cities and towns
4082 under section 20A or any other general or special law.

4083 SECTION 159. Section 2 of chapter 62F of the General Laws, as so appearing, is hereby
4084 amended by striking out the definitions of “Cumulative net state tax revenues,” “Cumulative
4085 permissible tax revenues,” “Permissible revenue growth rate,” and “Permissible tax revenue.”.

4086 SECTION 160. Section 6A of said chapter 62F is hereby repealed.

4087 SECTION 161. Section 3B of chapter 70B of the General Laws, as appearing in the 2010
4088 Official Edition, is hereby amended by striking out, in line 13, the words “finance advisory
4089 board” and inserting in place thereof the following words:- state finance and governance board
4090 established under section 97 of chapter 6.

4091 SECTION 162. Chapter 81 of the General Laws is hereby amended by inserting after section 8A
4092 the following 2 sections:-

4093 Section 8B. The commissioner of highways or the commissioner of the department of
4094 conservation and recreation shall require that any person proposing to bid on any work,
4095 excepting the construction, reconstruction, repair or alteration of buildings, to be awarded by the
4096 division of highways or by the department of conservation and recreation, respectively, and the
4097 commissioner of highways shall require that any person proposing to bid on any such work to be
4098 awarded by a municipality under section 34 of chapter 90, submit a statement under the penalties
4099 of perjury setting forth the person’s qualifications to perform such work. Such statement shall be
4100 in such detail and form and shall be submitted at such times as such commissioner may prescribe
4101 under rules promulgated by said division or commission, respectively, subject to the
4102 requirements of chapter 30A. Such rules may require such information as may be necessary to
4103 implement this section and may establish a basis for the classification and maximum capacity

4104 rating of bidders which shall determine the class and aggregate amount of work such bidders are
4105 qualified to perform. The statement shall set forth, among other matters that may be prescribed
4106 by the rules, the proposed bidders' financial resources, proposed bidders' current bonding
4107 capacity, proposed bidders' experience, the number and kinds of equipment which proposed
4108 bidder has for use on such work, and the number, size and completion dates of other construction
4109 jobs, whether in this state or another state, which proposed bidder has under contract. The
4110 information contained within such statement, together with other relevant available information
4111 and the proposed bidder's past performance on work of a similar nature, may be considered by
4112 said division or commission in determining whether or not the proposed bidder is qualified to
4113 perform any specific work for which proposals to bid are invited.

4114 Based on information received and available and on past performance of the proposed bidder on
4115 work of a similar nature, each such commissioner, acting through a prequalification committee
4116 consisting of engineering personnel of said division or commission, respectively, to be appointed
4117 by each such commissioner, shall determine the class and aggregate amount of work that a
4118 proposed bidder is qualified to perform, and shall limit a proposed bidder to such class and
4119 aggregate amount of work as the proposed bidder may be qualified to perform. Said aggregate
4120 amount of work shall not be less than the amount of the bidder's current bonding capacity, as
4121 verified to the commissioner's satisfaction, by a surety company incorporated under section 105
4122 of chapter 175, or authorized to do business in the commonwealth under section 106 of said
4123 chapter 175, and satisfactory to the commissioner; provided, however, that if there is more than 1
4124 surety company, the surety companies shall be jointly and severally liable. Said division or
4125 commission shall limit the bid proposals to be furnished to a proposed bidder to such bidders as
4126 are determined by its commissioner to have the classification and capacity rating to perform the

4127 work required.

4128 Any such statement filed with either such commissioner by a proposed bidder shall be
4129 confidential, and shall be used only by the division of highways or the department of
4130 conservation and recreation, as the case may be, in determining the qualifications of such
4131 proposed bidder to perform work for said division or commission, or for a municipality under
4132 section 34 of chapter 90. No information contained in such statement shall be imparted to any
4133 other person without the written consent of said bidder.

4134 If any proposed bidder fails to file the statement required by this section, or if, in the judgment of
4135 the commissioner, the proposed bidder is not qualified to carry out the work required under a
4136 contract which is proposed to be awarded, the commissioner shall refuse to furnish such
4137 proposed bidder with bid proposals for such work and shall reject any bid by such proposed
4138 bidder for such work.

4139 Only persons filing the statement required in this section shall be authorized as prime contractors
4140 and then only as to the class and aggregate amount of work which their qualifications warrant.

4141 Any bidder qualified as authorized in this section shall be promptly notified by the
4142 commissioner.

4143 Any proposed bidder who is aggrieved by any decision or determination of the prequalification
4144 committee or the commissioner which affects the bidder's right to bid may file a new application
4145 for qualification at any time, or within 15 days after receiving notice of such decision the
4146 applicant may request in writing a hearing before an appeal board to reconsider the bidder's
4147 application or qualifications. The appeal board in the division of highways shall consist of the
4148 commissioner, the associate commissioners and the chief engineer of highways, or their
4149 designees, and the appeal board in the department of conservation and recreation shall consist of

4150 the commissioner, the associate commissioners, and the director or chief engineer of the division
4151 involved, or their designees.

4152 Any bidder or proposed bidder who so requests shall be granted a hearing by such appeal board
4153 at which the bidder may submit any and all additional information or evidence bearing upon the
4154 bidder's finances, current bonding capacity, experience or other qualifications which may be
4155 relevant thereto. Such hearing shall be held without delay and the board shall promptly render its
4156 decision after taking into consideration all relevant information or evidence submitted relating to
4157 the bidder's qualifications. The appeal board may modify, amend or reverse any previous decision
4158 of the prequalification committee or the commissioner with respect to the qualification of the
4159 applicant or may sustain such previous decision. Such hearing shall be deemed to be an
4160 adjudicatory proceeding, and any bidder or proposed bidder who is aggrieved by the decision of
4161 the appeal board shall have a right to judicial review under said chapter 30A.

4162 The commissioner of highways or the commissioner of the department of conservation and
4163 recreation shall not consider any bid filed with such commissioner by any person for any
4164 contract to be awarded by said division or department, respectively, who has not been qualified
4165 as required by the rules promulgated by said division or department, and any such bid of any
4166 unqualified bidder may be rejected without being opened. No contract shall be awarded to any
4167 bidder not qualified to bid on the contract at the time fixed for receiving bids.

4168 Any person, firm or corporation who knowingly and willfully makes, or causes to be made, any
4169 false or fraudulent statement in any application for qualification filed with such division or
4170 department as required herein shall, upon final conviction, be disqualified from submitting bids
4171 on contracts advertised by the division or commission for a period of 1 year following the date of
4172 said conviction.

4173 This section shall not apply to any proposed bidder the aggregate amount of whose work with
4174 said division of highways, or with the department of conservation and recreation, including the
4175 amount of the bidder's proposal, is less than \$50,000.

4176 Section 8C. Any contract for the resurfacing, maintenance, minor reconstruction, or minor repair
4177 of any major state highway or numbered route within the city of Boston, between said city and
4178 state highway route 128, of state highway route 3 as far south as the junction of state highway
4179 route 139, on which the average daily traffic exceeds 70,000 vehicles per day, and any contract
4180 for the maintenance, minor reconstruction, or minor repair of state highway route 128 between
4181 its junction with state highway route 3 in the town of Braintree and its junction with U.S. route 1
4182 in the town of Lynnfield, to be awarded by the division of highways, the department of
4183 conservation and recreation, or by a municipality under section 34 of chapter 90 shall, unless
4184 such contract involves the performance of emergency work as described in this section, provide
4185 that no work shall be performed between the hours of 6:30 and 9:00 a.m. on lanes inbound to the
4186 city of Boston or between the hours of 4:00 and 6:00 p.m. on lanes outbound from the city of
4187 Boston, Monday through Friday, except holidays. No such work, except emergency work, shall
4188 be performed on such a highway or route by a public employee during such hours. As used in
4189 this section emergency work shall include only those projects immediately necessary to insure
4190 the safety of persons using such highways or routes.

4191 SECTION 163. Section 12 of chapter 161A of the General Laws, as so appearing, is hereby
4192 amended by striking out, in lines 3 and 4, the words "finance advisory board" and inserting in
4193 place thereof the following words:- state finance and governance board established under section
4194 97 of chapter 6.

4195 SECTION 164. Section 13 of said chapter 161A, as so appearing, is hereby amended by striking
4196 out, in line 24, the words “finance advisory board” and inserting in place thereof the following
4197 words:- state finance and governance board established under section 97 of chapter 6.

4198 SECTION 165. Section 29 of chapter 304 of the acts of 2008 is hereby amended by striking out
4199 the last sentence and inserting in place thereof the following sentence:-

4200 For purposes of this section, the term “derivative financial products” shall mean financial
4201 instruments with values derived from or based upon the value of other assets or on the level of an
4202 interest rate index including, but not limited to, detached call options, interest rate swaps or
4203 swaptions, caps, floors and collars, but not including bond insurance or other credit or liquidity
4204 enhancement of bonds or notes or agreements related to the lending or investment of the
4205 proceeds of bonds or notes.

4206 SECTION 166. The present members of the finance advisory board shall continue in office as
4207 members of the state finance and governance oversight board, established under section 97 of
4208 chapter 6, until their terms expire and their successors are qualified.

4209 SECTION 167. The comptroller shall promulgate the schedule of revenue accounts, as required
4210 in section 2 of chapter 29 of the General Laws, as inserted by section 98, on or before January 1,
4211 2012.

4212 SECTION 168. The state treasurer shall competitively procure any fund established under
4213 section 38A of chapter 29 of the General Laws, as inserted by section 98, on or before November
4214 1, 2012.

4215 SECTION 169. Except as otherwise specified, this act shall take effect on July 1, 2012.