

HOUSE No. 3949

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), as changed by the committee on Bills in the Third Reading, and as amended by the House. February 13 and February 15, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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

1 SECTION 1. Chapter 3 of the General Laws is hereby amended by striking out section 8, as appearing in
2 the 2010 Official Edition, 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 the
4 statutory limit of indebtedness under section 10 of chapter 44, the legislative committee to which that
5 petition may be referred shall solicit a report on the financial condition of the city or town from the
6 division of local services, which shall deliver the report as soon as possible.

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

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

12 SECTION 3. Section 15 of said chapter 3, as appearing in the 2010 Official Edition, is hereby amended
13 by striking out the first paragraph and inserting in place thereof the following paragraph:-

14 The general court shall choose a sergeant-at-arms who shall hold office until removed or until another is

15 chosen by the general court. The sergeant-at-arms shall receive such salary as may be established by the
16 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 lines 4
18 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 striking out,
20 in lines 9 and 10, the words “or, during its recess, by the governor and council.

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

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

26 SECTION 7. Section 23 of said chapter 3, as appearing in the 2010 Official Edition, is hereby amended
27 by striking out the third paragraph.

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

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

34 SECTION 9. Section 38A of said chapter 3, as so appearing, is hereby amended by striking out, in lines 1
35 and 2, the words “and the committees on ways and means of either branch thereof” and inserting in place
36 thereof the following words:- , the house and senate committees on ways and means and the house and
37 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, in line
39 2, the words “, or the joint committee on ways and means,”.

40 SECTION 11. Sections 56 to 61, inclusive of said chapter 3 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 appearing in
43 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 during
45 the pleasure of the governor, and shall receive such salaries as may be approved by the governor.

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

47 SECTION 15. Section 10 of said chapter 6, as appearing in the 2010 Official Edition, is hereby amended
48 by striking out the last sentence.

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

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

52 SECTION 18. Section 17 of said chapter 6, as appearing in the 2010 Official Edition, is hereby amended
53 by striking out, in line 11, the words “finance advisory board” and inserting in place thereof the following
54 words:- state finance and governance board established under section 97 of chapter 6.

55 SECTION 19. Said chapter 6 is hereby further amended by striking out sections 97 and 98, as so
56 appearing, and inserting in place thereof the following 2 sections:-

57 Section 97. (a) As used in this section and section 98, the following words shall have the following
58 meanings:

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

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

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

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

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

76 Section 98. (a) The board shall promote transparency, public accountability and adherence to best
77 practices by all state entities with respect to proper governance of state entities and investments,
78 borrowing or other financial transactions made or entered into by state entities and involving public funds,
79 including tax supported debt. The board shall make an annual written report to the secretary, the state
80 treasurer, the state auditor, the house and senate committees on ways and means and the senate and house
81 committees on bonding, capital expenditures and state assets with respect to its findings regarding
82 investments, borrowing and other financial transactions carried out by state entities and its activities to
83 promote proper governance, transparency, public accountability and best practices. If the board so
84 requests, the secretary shall provide the board with copies of reports and other information about the
85 accountability and transparency of state authorities, provided to the secretary under section 29K of
86 chapter 29.

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

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

93 (1) adopt regulations or guidelines requiring state entities to report, adopt appropriate policies and adhere
94 to best practices with respect to governance, investments, borrowing and other financial transactions;
95 (2) make recommendations to state entities or state officers and propose legislative changes to improve
96 governance practices or the management of public funds;
97 (3) conduct oversight hearings with respect to governance practices, investment, borrowing and other
98 financial transactions made or entered into by state entities; and
99 (4) conduct meetings, conferences, or training sessions, maintain a website, publish materials, or other
100 activities to disseminate best practices to state officials, board members and managers of state entities and
101 the public.

102 SECTION 20. Section 1 of chapter 6A of the General Laws, as so appearing, is hereby amended by
103 striking out the definition of “State agency” and inserting in place thereof the following definition:-
104 “State agency”, as defined in section 1 of chapter 29.

105 SECTION 21. Section 4 of said chapter 6A, as so appearing, is hereby amended by striking out, in lines
106 13 and 14, the words “sections two C, three, three A, four, nine B and twenty-nine of”

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

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

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

115 SECTION 25. Section 1 of chapter 7 of the General Laws, as so appearing, is hereby amended by striking
116 out the definition of “Commissioner”.

117 SECTION 26. Said section 1 of said chapter 7, as so appearing, is hereby further amended by striking out
118 the definition of “Finance committee”.

119 SECTION 27. Said section 1 of said chapter 7, as so appearing, is hereby further amended by adding the
120 following definition:-

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

122 SECTION 28. Said chapter 7 is hereby further amended by striking out section 2, as so appearing, and
123 inserting in place thereof the following section:-

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

126 SECTION 29. Section 3B of said chapter 7, as so appearing, is hereby amended by striking out the first 3
127 paragraphs.

128 SECTION 30. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking
129 out in lines 26 to 28, inclusive, the words “Notwithstanding any other general or special law to the
130 contrary, for the period beginning March first, nineteen hundred and ninety-one, the secretary of
131 administration” and inserting in place thereof the following words:- Each fiscal year, under a schedule
132 promulgated by the secretary, the secretary:.

133 SECTION 31. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking
134 out, in line 45, the words “of administration and finance”.

135 SECTION 32. The fourth paragraph of said section 3B of said chapter 7, as so appearing, is hereby
136 amended by striking out the last sentence.

137 SECTION 33. Said chapter 7 is hereby further amended by inserting after section 3B the following 3
138 sections:-

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

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

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

154 SECTION 34. Section 4 of said chapter 7, as appearing in the 2010 Official Edition, is hereby amended
155 by striking out the first sentence and inserting in place thereof the following sentence:- The governor shall
156 appoint the secretary of administration and finance.

157 SECTION 35. Section 4A of said chapter 7, as so appearing, is hereby amended by striking out, in line
158 27, the words “commissioner of administration” and inserting in place thereof the following word:-
159 secretary.

160 SECTION 36. Paragraph (d) of said section 4A of said chapter 7 is hereby amended by striking out, in
161 line 17, as so appearing, the word “governor” and inserting in place thereof the following word:-
162 secretary.

163 SECTION 37. Section 4D of said chapter 7 is hereby further amended by striking out, in lines 1, 5, 9, 14,
164 16, 18, 21, 27, and 43, as so appearing, the word “commissioner”, wherever it appears, , and inserting in
165 place thereof, in each instance, the following word:- secretary.

166 SECTION 38. Said chapter 7 is hereby further amended by striking out sections 4E and 4F, as so
167 appearing, and inserting in place thereof the following section:-

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

171 finance, which relate to any matter within the scope of such examination or investigation.

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

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

177 SECTION 41. Section 5 of said chapter 7, as so appearing, is hereby amended by striking out, in lines 1,
178 2, 3, 5, line 8, both times it appears, and in lines 9, 10 and in line 11 the word “commissioner” and
179 inserting in place thereof, in each instance, the following word:- secretary.

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

181 SECTION 43. Section 7 of said chapter 7, as appearing in the 2010 Official Edition, is hereby amended
182 by striking out, in line 1, the words “commissioner of administration” and inserting in place thereof the
183 following word:- secretary.

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

186 SECTION 45. Section 7A of said chapter 7, as so appearing, is hereby amended by striking out, in line 1,
187 the words “commissioner of administration” and inserting in place thereof the following word:-
188 secretary.

189 SECTION 46. Said section 7A of said chapter 7, as so appearing, is hereby further amended by striking
190 out, in line 5, the words “said commissioner” and inserting in place thereof the following words:- the
191 secretary.

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

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

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

202 SECTION 49. Section 9A of said chapter 7, as so appearing, is hereby amended by striking out in lines 1,
203 16 and 48, the words "of administration and finance".

204 SECTION 50. Said section 9A of said chapter 7, as so appearing, is hereby further amended by striking
205 out, in lines 26 and 27, the words "as provided in administrative bulletin 896 issued by the executive
206 office for administration and finance" and inserting in place thereof the following words:- established by
207 the executive office for administration and finance through administrative action.

208 SECTION 51. Said section 9A of said chapter 7, as so appearing, is hereby further amended by striking
209 out, in line 69, the words "division of capital asset management and maintenance" and inserting in place
210 thereof the following words:- operational services division.

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

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

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

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

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

226 (1) attend;

227 (2) be sworn or to affirm;

228 (3) answer any question; or

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

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

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

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

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

247 SECTION 54. Section 22 of chapter 7, as so appearing, is hereby amended by striking out, in lines 1, 77,
248 lines 89 and 90, and line 111, the words "commissioner of administration" and inserting in place thereof,

249 in each instance, the following word:- secretary.

250 SECTION 55. Said section 22 of said chapter 7 is hereby further amended by striking out, in lines 14 and
251 116, the word “commissioner” and inserting in place thereof, in each instance, the following word:-
252 secretary.

253 SECTION 56. Section 22B½ of said chapter 7, as so appearing, is hereby amended by striking out the
254 definition of “State authority” and inserting in place thereof the following definition:-
255 “State authority”, as defined in section 1 of chapter 29.

256 SECTION 57. Section 22G of chapter 7 is hereby amended by striking out the definition of “State
257 authority”, as so appearing, and inserting in place thereof the following definition:-
258 “State authority”, as defined in section 1 of chapter 29.

259 SECTION 58. Section 28 of chapter 7, as so appearing, is hereby amended by striking out, in line 6, lines
260 57 and 58, lines 65 and 66, and line 72, the words “commissioner of administration” and inserting in
261 place thereof, in each instance, the following word:- secretary.

262 SECTION 59. Said section 28 of said chapter 7 is hereby further amended by striking out, in line 68, the
263 words “commissioner of labor and industries” and inserting in place thereof the following words:-
264 director of labor standards.

265 SECTION 60. Section 28A of said chapter 7, as so appearing, is hereby amended by striking out, in lines
266 8 and 9, the words “commissioner of administration” and inserting in place thereof the following word:-
267 secretary.

268 SECTION 61. Section 29 of said chapter 7, as so appearing, is hereby amended by striking out in lines 1
269 and 2, the words “, including the board of education and the department of education,”.

270 SECTION 62. Said section 29 of said chapter 7 is hereby further amended by striking out, in line 18, the
271 words “commissioner of administration” and inserting in place thereof the following word:- secretary.

272 SECTION 63. Section 31A of said chapter 7, as so appearing, is hereby further amended by striking out,
273 in lines 2 and 3, the words “commissioner of administration” and inserting in place thereof the following
274 word:- secretary.

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

276 SECTION 65. The first paragraph of section 50 of said chapter 7, as appearing in the 2010 Official
277 Edition, is hereby amended by striking out, in line 2, the figure “4A” and inserting in place thereof the
278 following figure:- 49.

279 SECTION 66. Section 61 of said chapter 7, as so appearing, is hereby amended by striking out in lines 78,
280 93, 96 and in line 98 the words “section 40N of chapter 7” and inserting in place thereof, in each instance,
281 the following words:- section 6 of chapter 7C.

282 SECTION 67. Chapter 7 is hereby amended by adding the following section:-

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

288 SECTION 68. Section 1 of chapter 7A of the General Laws, as appearing in the 2010 Official Edition, is
289 hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

290 There shall be an office of the comptroller which shall be an independent state agency.

291 SECTION 69. Section 2 of said chapter 7A, as so appearing, is hereby amended by striking out, in lines 2
292 and 3, the words “commissioner of administration” and inserting in place thereof the following words:-
293 secretary of administration and finance.

294 SECTION 70. Section 8 of said chapter 7A, as so appearing, is hereby amended by inserting after the
295 word “accounts”, in line 5, the following words:- , including adjustments for current or prior periods.

296 SECTION 71. Section 11 of said chapter 7A, as so appearing, is hereby amended by striking out, in line
297 2, the word “and” and inserting in place thereof the following words:- , subject to appropriation, and.

298 SECTION 72. Section 13 of said chapter 7A, as so appearing, is hereby amended by striking out, in lines
299 1 and 2, the words “and commissioner of capital asset management and maintenance”.

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

301 inserting in place thereof the following section:-

302 Section 16. The comptroller, in consultation with the secretary of administration and finance and the
303 attorney general, shall administer the Liability Management and Reduction Fund established in section
304 2TT of chapter 29. The comptroller may appoint a liability manager of said fund whose compensation
305 shall be paid out of said fund. The comptroller shall have the following powers and duties with respect to
306 the fund:

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

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

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

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

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

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

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

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

325 (ii) any disputes between agencies relative to their respective proportions of responsibility for any
326 resolved or pending claim or disputes relative to the valuation or the appropriate nature of such claims

327 shall be determined by the comptroller, in consultation with the attorney general; and
328 (iii) the comptroller may pay rebates to agencies that reduce their resolved and pending claims totals
329 below expected levels in a fiscal year and may assess surcharges on agencies experiencing unexpectedly
330 high resolved and pending claims totals in a fiscal year;
331 (4) to make such other expenditures from the fund as are necessary, appropriate and reasonable for
332 management and administration of the fund, including personnel costs; provided, however, that all direct
333 and indirect costs for such employees shall be paid from the fund; and provided further, that the fund shall
334 not be used directly or indirectly for the compensation of attorneys representing the commonwealth or its
335 officers or employees.

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

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

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

342 CHAPTER 7C

343 CAPITAL ASSET MANAGEMENT AND MAINTENANCE

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

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

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

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

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

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

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

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

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

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

378 “Construction”, new construction, alteration, renovation, rehabilitation or other activity that is intended to

379 result in a significant increase in internal usable space.

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

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

383 “Counties” means the following counties, exclusive, Barnstable, Bristol, Dukes, Nantucket, Norfolk and
384 Plymouth. “Energy audit”, in-depth engineering analysis of factors causing energy waste in building that
385 investigates the amount and cost of energy waste and compares the energy waste with the expense of
386 remedying the energy waste on a cost-effective basis.

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

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

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

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

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

404 “Program”, a document which defines a capital facility project in terms of its content, time, and cost so

405 that it provides a clear and detailed frame of reference for the design and implementation process, the
406 preparation of such document involving the gathering of data and the analysis of cost necessary to (i) the
407 production of content, time and cost plans based on criteria deriving from those originally defined by any
408 study or similar report and as finally stated within the body of the program itself and (ii) the evaluation of
409 those plans in terms of such criteria.

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

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

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

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

422 “State agency” or “state department”, a legal entity of state government established by the general court
423 as an agency, board, bureau, department, office or division of the commonwealth with a specific mission
424 that may report to cabinet-level units of government known as executive offices or secretariats or may be
425 independent divisions or departments. In sections 32 to 40, inclusive, state agency shall not include
426 counties.

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

431 requirements, evaluate the financial, environmental, and other aspects of such solutions, estimate the
432 degree to which solutions do not fulfill proposed objectives and criteria, and recommend a means of
433 project implementation and site acquisition.

434 “Using agency”, the public agency which will be the major user of a capital facility project or the
435 occupant of a building project.

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

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

443 Section 2. The commissioner of capital asset management and maintenance shall be appointed by the
444 secretary of administration and finance, with the prior written approval of the governor, and may be
445 removed in like manner. The commissioner shall be a person of ability and experience, shall be familiar
446 with the principles of the systematic and coordinated planning of capital facilities and shall carry out such
447 functions and duties as the commissioner may from time to time deem necessary for the efficient and
448 economical administration of the capital assets of the commonwealth including, but not limited to, the
449 systematic review of capital assets, the scheduling of routine and schedule maintenance repairs, tracking
450 the deferred maintenance needs of capital assets and the coordinated planning of capital facilities in
451 relation to the programmatic needs of state agencies. The commissioner shall devote his entire time to the
452 duties of his office. No person holding such position shall be subject to chapter 31 or section 9A of
453 chapter 30.

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

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

457 basis;

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

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

461 (d) efficient management of the operation of the division of capital asset management and maintenance as
462 a whole and the proper coordination of the work of and effective operation of individual offices, bureaus,
463 and other sections which might be located therein. The commissioner may, subject to appropriation,
464 appoint deputy commissioners and associate deputy commissioners and legal counsel as appropriate and
465 may authorize such deputy commissioners or associate deputy commissioners or legal counsel to act in
466 his stead in particular matters or classes of matters.

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

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

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

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

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

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

482 Section 3. The commissioner of capital asset management and maintenance shall advise the governor and

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

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

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

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

507 (2) Oversight as to building projects undertaken by any building authority, except to the extent provided
508 for by sections 5 and 26. Building authorities shall cooperate in any inquiries or inspections conducted by

509 the division of capital asset management and maintenance to ensure conformity with all applicable
510 standards and guidelines.

511 (3) For housing projects within the jurisdiction of the department of housing and community development
512 as defined by section 1 of chapter 121B, the division of capital asset management and maintenance shall
513 provide only for the establishment of minimum requirements for record keeping and reporting by the
514 department and operating agencies, as each is defined by section 1 of chapter 121B, and review of and
515 recommendation as to the standards and guidelines for, direction, control, and supervision of their
516 building projects. The department and operating agencies shall cooperate with the division of capital asset
517 management and maintenance, regarding inquiries and inspections conducted as to housing projects
518 within their respective jurisdictions.

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

535 provision of sections 1 through 32, inclusive, and sections 32 to 40, inclusive, is intended or shall be
536 construed to limit the authority of any public agency, other than those specified in paragraphs (1) and (2),
537 to control and supervise any capital facility project undertaken by that agency.

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

548 Section 6. (a) The general court finds that: (1) the Massachusetts commission against discrimination
549 conducted hearings and investigations which documented a history of discrimination against minorities
550 and women in the commonwealth; (2) and in 1994, the executive office of transportation and construction
551 produced a disparity study which documented a history of discrimination against minority and women
552 owned businesses, in which the commonwealth's agencies were participants; (3) this discrimination
553 against minorities and women currently affects the use of minority and women owned businesses in state
554 contracting; (4) the commonwealth has a compelling interest in promoting the use of minority owned
555 business and women owned businesses through the use of the available and qualified pool of minority and
556 women owned businesses; (5) it is the policy of the commonwealth to promote equality in the market and,
557 to that end, to encourage full participation of minority and women owned businesses in all areas of state
558 contracting, including contracts for construction and design services.

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

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

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

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

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

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

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

573 (iv) construction management or scheduling.

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

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

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

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

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

584 (iv) in the case of a joint venture between a minority business meeting the requirements of clauses (i) to
585 (iii), inclusive, and a non-minority business, the joint venture shall be found to be a minority business if
586 the minority business meeting the requirements of said clauses (i) to (iii), inclusive, shall have more than

587 one-half control over management of the project bid upon and shall have the right to receive more than
588 one-half of the profits deriving from that project.

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

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

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

600 (c) The commissioner, in consultation with the director of the state office of minority and women
601 business assistance, may establish an affirmative marketing program to ensure the fair participation of
602 minority-owned and women-owned businesses on capital facility projects and state assisted building
603 projects. The affirmative marketing program shall establish participation goals for minority-owned and
604 women-owned business in the capital facility projects and state assisted building projects. The
605 participation goals for minority-owned business and women-owned business shall be based upon the
606 broadest and most inclusive pool of available minority-owned businesses and women-owned businesses
607 interested in and capable of performing construction work and design services on the capital facility
608 projects, state funded building projects, and state assisted building projects; but, the commissioner may
609 establish both statewide and regional participation goals based upon the availability of minority-owned
610 businesses and women-owned businesses. The state office of minority and women business assistance, or
611 its successor agency, shall create and maintain a current directory of certified minority-owned businesses
612 and women-owned businesses which will serve as one source of information in determining the pool of

613 available minority-owned businesses and women-owned businesses. The commissioner and the director
614 of SOMWBA shall meet on a quarterly basis to determine the status of the implementation of the
615 affirmative marketing program and what further steps both agencies consider necessary to achieve the
616 purpose of this section.

617 (d) Not later than January 15 of each year, the commissioner, in consultation with the director of state
618 office of minority and women business assistance, shall establish participation goals for minority-owned
619 businesses and women-owned businesses. The participation goals established pursuant to this section
620 shall apply to capital facility projects and state assisted building projects. The participation goals shall be
621 expressed as overall annual program goals which shall be applicable to the total dollar amount of
622 contracts awarded for construction work and design services on capital facility projects and state assisted
623 building projects for the calendar year. The commissioner shall publish in the central register, established
624 pursuant to section 20A of chapter 9, the participation goals for minority-owned businesses and for
625 women-owned businesses on capital facility projects and state assisted building projects. The
626 participation goals for minority owned businesses and women owned businesses shall remain in effect
627 until revised participation goals are established and published pursuant to this paragraph. The
628 participation goals for minority owned businesses and women owned businesses, developed before the
629 effective date of this section, under any existing executive order and in effect as of the January preceding
630 the effective date of this section shall remain in effect until January 15 of the following year. The
631 participation goals for minority-owned businesses and women-owned businesses shall be revised as
632 necessary every 2 years thereafter.

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

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

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

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

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

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

663 Section 7. Except as otherwise provided in section 3 of chapter 211, the commissioner of capital asset
664 management and maintenance shall: (1) be responsible for the acquisition, control and disposition of court

665 facilities on behalf of the commonwealth, in the manner and to the extent provided in this chapter for
666 other real property of the commonwealth; (2) provide facilities for the trial court, the appeals court and
667 the supreme judicial court; (3) be responsible for planning and budgeting for such court facilities in the
668 manner and to the extent provided in this chapter and in chapter 29 for capital facilities of state agencies;
669 and (4) have jurisdiction over capital facility projects undertaken by the office of the chief administrative
670 justice of the trial court for such court facilities in the manner and to the extent provided in this chapter
671 and in chapter 149 for capital facility projects undertaken by state agencies. Notwithstanding any other
672 general or special law to the contrary, all real property owned by the commonwealth for use as a
673 courthouse, whenever such property was acquired, shall be held in the name of the commonwealth as
674 provided in sections 32 and 33, and the division of capital asset management and maintenance shall hold
675 the deeds to all such property as provided in section 39.

676 There shall be within the division of capital asset management and maintenance a director of court
677 facilities. The director of court facilities shall be appointed by the commissioner of capital asset
678 management and maintenance with the advice of the chief administrative justice of the trial court and the
679 approval of the secretary of administration and finance, and may be removed in like manner. Said position
680 shall not be subject to section 9A of chapter 30 or chapter 31. Said director shall have the qualifications
681 deemed necessary by the commissioner of capital asset management and maintenance. Said director shall
682 perform such duties of said commissioner with respect to court facilities as said commissioner shall
683 assign, including at least the duty to respond to any inquiry from a county, city or town or from the office
684 of the chief administrative justice of the trial court regarding court facilities.

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

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

688 (2) develop and maintain all necessary financial management systems, as prescribed by the comptroller,
689 that will permit the proper management of the capital facility program, including a system to administer
690 payments to those contracting for services and supply of materials;

- 691 (3) develop, justify and monitor internal operating budgets;
- 692 (4) provide business services including central filing, printing, and reproduction, correspondence and
693 word processing services;
- 694 (5) perform or contract for performance of research on innovative methods for the acquisition, planning,
695 design, construction, demolition, installation, and repair and maintenance of capital facilities;
- 696 (6) give counsel on all legal matters affecting capital facility projects provided that this provision shall not
697 preclude the employment of counsel by any office within the division of capital asset management and
698 maintenance;
- 699 (7) approve project budgets and the award of contracts;
- 700 (8) recommend and where appropriate, certify for disbursement monies appropriated or authorized for
701 capital facility projects;
- 702 (9) establish guidelines and requirements for the preparation and retention of records and reports
703 pertaining to the nature, scope and progress of capital facility projects; and
- 704 (10) perform such other acts to assure the proper management of the operation of the division of capital
705 asset management and maintenance and the proper coordination of the work of and effective operation of
706 the individual offices located therein.

707 The commissioner shall, after providing an opportunity for the attorney general and other interested
708 parties to comment, promulgate and from time to time revise uniform contract conditions appropriate to
709 the type of service being rendered to be incorporated in all contracts for services of that type related to
710 capital facility projects. Such uniform contract conditions may be supplemented by but shall take
711 precedence over additional contract conditions for any particular capital facility project.

712 The commissioner may from time to time establish within the division of capital asset management and
713 maintenance such administrative units, in addition to the offices of programming, project management
714 and facilities management and the bureau of state office buildings, necessary for efficient and economical
715 administration of the work of said division; and when necessary for such purpose, the commissioner may
716 abolish such unit or may merge any 2 or more of them. The commissioner shall prepare and keep current

717 a general statement of the organization of said division and of the assignment of functions to its various
718 administrative units, officials, and employees. Said statement shall be known as the “description of
719 organization” of said division, and shall be kept on file in said division.

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

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

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

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

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

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

766 The commissioner shall develop and annually revise a proposed capital repair and maintenance plan for
767 state buildings subject to the jurisdiction of the division of capital asset management and maintenance.

768 The plan shall be based upon repair and maintenance schedules formulated for each building and group of

769 buildings by the director of facilities management in accordance with sections 24, 26, and 28. In addition
770 to developing capital repair and maintenance schedules for state buildings, the plan shall analyze the costs
771 and benefits of continuing minor repairs versus the costs and benefits of major renovation, rehabilitation,
772 or replacement of the state buildings. The commissioner shall by February 15 of each year, submit the
773 proposed capital repair and maintenance plan required by this paragraph to the house and senate
774 committees on ways and means and the chairs of the joint committee on state administration and
775 regulatory oversight.

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

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

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

788 Upon completion of the final design of each state building project estimated to cost in excess of
789 \$5,000,000, the commissioner shall prepare an analysis detailing the maintenance costs projected
790 annually over the useful life of the building. The commissioner shall, by February 16 of each year,
791 prepare a report summarizing the annual maintenance costs projected for each building project described
792 in this paragraph, for which final design was completed during the prior year. The report shall be filed
793 with the chairs of the joint committee on state administration and regulatory oversight and the agency
794 responsible for the operation and maintenance of the building project.

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

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

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

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

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

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

821 Section 12. Except as otherwise provided in this section or by any appropriation act, the director of
822 programming shall, in the manner and to the extent provided by this section, have control and supervision
823 of the study and programming of all capital facility projects of state agencies and building authorities.
824 The director may appoint such deputies and other supervisory staff as the work of the office may require,
825 subject to appropriation and the commissioner's approval. Such staff shall serve at the pleasure of the
826 director and shall not be subject to chapter 31 or to section 9A of chapter 30. The director shall appoint,
827 subject to the commissioner's approval, all other officers and employees of said office, including such
828 programmers, architects, engineers, landscape surveyors, cost estimators, as the director deems necessary
829 to carry out the tasks assigned to the bureau.

830 The director shall:

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

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

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

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

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

846 (6) provide guidance and assistance to other bureaus and sections or units within the division in the

847 performance of their responsibilities as they relate to completed planning stages for projects;

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

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

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

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

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

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

873 ability and extensive experience in the management of the design and construction of buildings.
874 The director may appoint such deputies and other supervisory staff as the work of the office may require,
875 subject to appropriation and the commissioner's approval. Such staff shall serve at the pleasure of the
876 director and shall not be subject to chapter 31 or to section 9A of chapter 30. The director shall appoint,
877 subject to appropriation and subject to the commissioner's approval, all other officers and employees of
878 said office.

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

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

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

899 extent feasible.

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

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

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

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

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

921 The director shall recommend to the commissioner standards and procedures to be followed by project
922 managers in overseeing individual construction projects, including standards and procedures for
923 scheduling of the performance of particular aspects of projects; forms to be used in reporting and
924 processing of information regarding change orders and price adjustments, periodic payment, and other

925 payments pursuant to approved progress schedules; and all other standards and procedures necessary to
926 the efficient administration and oversight of individual construction projects, or required by statute or
927 regulation.

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

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

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

948 Schematic, preliminary and working plans and specifications for each building project shall, following
949 initial submission to the using agency for comment, be submitted by the designer to the director for his
950 approval. In reviewing such plans and specifications, the duty of the director shall be to see that they are

951 clear and complete and permit execution of the building project (a) within the appropriation or
952 authorization for the project or within project cost limits specified by the appropriation or authorization
953 and (b) in accordance with (i) any study or program prepared in accordance with section 59 or (ii) any
954 other pre-design document which must be prepared in accordance with any other statute, appropriation or
955 authorization or administrative directive consistent therewith. When a phased construction technique is
956 approved by the legislature, the director shall approve working plans and specifications at appropriate
957 stages of the project.

958 Following final approval of such plans and specifications, the director shall advertise in the central
959 register published by the secretary of state pursuant to section 20 of chapter 9 and in such other
960 publications as the commissioner shall direct, for applications to bid on or proposals for the performance
961 of the work on the project; except that the commissioner may direct that the purchase of any materials,
962 original equipment or original furnishings for the project shall be made under sections 22 to 26, inclusive,
963 of chapter 7. Subject to the prior approval of the commissioner and the applicable provisions of sections
964 44A to 44M, inclusive, of chapter 149 the director shall award the contract or contracts for such work to
965 the lowest responsible and eligible bidder; but no such contract on behalf of the commonwealth shall be
966 awarded by him for a sum in excess of the amount which the comptroller shall certify to be available
967 therefor. If the director shall knowingly award a contract in violation of this section, the director may be
968 removed from office by the governor.

969 The director shall be responsible for accepting or rejecting each project upon its completion and for
970 directing final payment for work done thereon; provided, however, that if upon inspection of any project
971 for acceptance the director shall find that the plans, specifications, contracts or change orders for the
972 project shall not have been fully complied with, the director shall, until such compliance has been effected
973 or adjustment satisfactory to him has been made, refuse to accept the project and direct such payment.
974 Upon acceptance of the project, the director shall release the same to the using agency, unless the using
975 agency objects to said release, in which case the director shall work with the using agency to remove the
976 causes of the objection. The director shall not refuse to accept the project from the contractor and shall

977 not refuse to direct final payment to the contractor because of the using agency's objections if the director
978 has determined that the contractor has completed the project in accordance with contract.

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

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

989 The project manager shall:

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

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

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

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

1000 (5) During the design stage of each project to which the project manager has been assigned, review and
1001 comment on said design or verify that said design has been reviewed by the authorities charged by law
1002 with enforcement responsibility, in order to insure that the design complies with all federal and state laws,

1003 rules, regulations and codes; insure to the extent feasible that the design is such as to specify a project that
1004 (a) can be accomplished within the appropriation or authorization for that project or within the project
1005 cost limits specified by the appropriation or authorization, and (b) can be accomplished in accordance
1006 with (i) any study or program which must be prepared in accordance with section 59 or (ii) any other pre-
1007 design document which must be prepared in accordance with any other statute, appropriation or
1008 authorization or administrative directive consistent therewith; no building project shall be allowed to
1009 proceed to the construction stage until such reviews have been accomplished and compliance confirmed
1010 or certified;

1011 (6) Insure the preparation of time schedules which shall serve as control standards for monitoring
1012 performance of building projects; and

1013 (7) Assist in project evaluation including, but not limited to, written evaluations of the performance of the
1014 architect, engineers, contractors and other personnel, and evaluation of construction techniques and
1015 procurement mechanisms.

1016 Section 17. As used in this section and sections 18 to 21, inclusive, the following words shall, unless the
1017 context clearly requires otherwise, have the following meanings:

1018 “Change order”, a written order not requiring the consent of the contractor, signed by the project manager
1019 and designated as an approved change order, directing the contractor to make changes in the work within
1020 the general scope of the contract, or, any written or oral order from the project manager which causes any
1021 change in the work, provided that the contractor gives the commonwealth written notice stating the date,
1022 circumstances, and source of the order and that the contractor regards the order as a change order.

1023 “Contract modification”, any written alteration in plans or specifications, period of performance, price,
1024 quantity, or any other provision of the contract accomplished by mutual action of the parties to the
1025 contract.

1026 The project manager may at any time, subject to the requirements set forth herein and in section 39I of
1027 chapter 30, order changes in the work within the general scope of the contract, including but not limited to

1028 changes: (a) in the plans and specifications (including drawings and designs); (b) in the method or manner
1029 of performance of the work; (c) in the commonwealth furnished facilities, equipment, materials, services
1030 or site; or (d) in the schedule for performance of the work. All such orders shall be written and designated
1031 to be change orders. All change orders or other contract modifications shall require the approval of the
1032 director when: (a) the cumulative cost of all previously approved increases in the contract price exceeds 5
1033 per cent of the original contracted construction cost of the project, or such other percentage or dollar
1034 amount or criteria as designated by regulations of the commissioner; or (b) the preliminary estimate of the
1035 change in the contract price resulting from the change order or contract modification is \$5,000 or more.
1036 The director may, after review of building projects for which the cumulative total of increases in the
1037 contract price has exceeded 5 per cent of the original contracted construction cost or such other
1038 percentage or dollar amount or criteria, direct the project manager as to those proposed changes, the
1039 preliminary estimated cost of which are under \$5,000, that shall require the director's approval.
1040 The commissioner shall promulgate regulations governing the procedures for obtaining preliminary
1041 estimates and giving notice to the contractor as to the necessity of obtaining the director's approval before
1042 any work pursuant to a change order or contract modification is commenced. Such procedures shall be
1043 designed so as to avoid delays in the progress of the project.
1044 The project manager may delegate to the resident engineer, subject to approval by the director and notice
1045 to parties in interest, his authority to process and approve change orders when authorized to do so by
1046 regulations of the commissioner.
1047 Section 20A of chapter 29 shall not apply to any change order request submitted and acted upon under
1048 sections 17 to 21, inclusive, of this chapter.
1049 Section 18. Any request for a change order shall be processed promptly, in compliance with regulations
1050 promulgated by the commissioner, and otherwise according to the requirements of section 39P of chapter
1051 30. Requests shall be submitted to the project manager, who shall, after consultation with the designer and
1052 the using agency, approve or disapprove the request. The project manager shall, after obtaining any other
1053 required approvals or disapprovals, notify in writing the designer, the using agency and the requesting

1054 party of the request and shall issue a written change order or written notice of disapproval to the
1055 contractor. If the approval or disapproval would result in a deviation, as defined by regulations of the
1056 commissioner from (a) any study or program which must be prepared in accordance with section 59 or (b)
1057 any other pre-design document which must be prepared in accordance with any other statute,
1058 appropriation or authorization or administrative directive consistent therewith, the decision made shall be
1059 subject to appeal by the using agency to the secretary of administration and finance. Such appeal shall set
1060 forth in writing the reasons therefor and a copy thereof shall be furnished to the commissioner at the time
1061 the appeal is filed with the commissioner. The commissioner shall, within 10 days following the receipt
1062 of such appeal, render a written decision thereon, which shall be final and conclusive.

1063 Section 19. If any change order under section 17 causes any change in the contractor's cost of
1064 performance of any work under the contract, whether or not that work is changed by any order, either the
1065 contractor or the project manager may request an equitable adjustment in the contract price. A request for
1066 such an adjustment shall be in writing and shall be submitted by the party making such claim to the other
1067 party before commencement of the pertinent work or as soon thereafter as possible, and in any event
1068 within 30 days of receipt by the contractor of an approved change order or the mailing or furnishing to the
1069 commonwealth by the contractor of written notice that the contractor regards an order as a change order.
1070 Except for claims on defective specifications, no claim for any change under this section shall be allowed
1071 for any costs incurred more than 20 days before the contractor gives written notice as required by this
1072 section. In the case of defective specifications for which the commonwealth is responsible, the equitable
1073 adjustment shall include any cost reasonably incurred by the contractor in attempting to comply with such
1074 defective specifications.

1075 The project manager and the contractor shall by negotiation agree upon an equitable adjustment in the
1076 contract price before commencement of the pertinent work or as soon thereafter as possible. Notice of the
1077 adjustment shall be given to the director. In the absence of agreement by the parties on an equitable
1078 adjustment in the contract price, the project manager shall unilaterally determine the costs attributable to
1079 the change order. Unilateral equitable adjustments of the project manager shall be reduced to writing and

1080 a copy mailed or otherwise furnished to the contractor. Such adjustments shall be final and conclusive
1081 unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to
1082 the project manager a written appeal addressed to the commissioner, and otherwise complies with the
1083 requirements set forth in section 39Q of chapter 30. Said section shall govern further appeal to the
1084 division of hearing officers.

1085 Section 20. The contractor shall submit, in accordance with regulations of the commissioner, cost and
1086 pricing data to be used when negotiating adjustments for change orders or other contract modifications.
1087 Such cost and pricing data shall be based on generally accepted accounting principles and be in
1088 conformity with the guidelines promulgated by the commissioner. Cost estimators employed within the
1089 division of capital asset management and maintenance shall review and evaluate cost and pricing data
1090 submitted by the contractor.

1091 The contractor shall certify that, to the best of his knowledge and belief, the cost and pricing data
1092 submitted was accurate, complete, and current as of the date of submission. Any change order or contract
1093 modification under which a certificate is required shall contain a provision that the price to the
1094 commonwealth, including profit or fee, shall be adjusted to exclude any significant sums by which the
1095 commonwealth finds that such price was increased because the contractor-furnished cost or pricing data
1096 was inaccurate, incomplete, or not current as of the date of submission.

1097 Section 13 of chapter 258 and section 67A to section 67C, inclusive, of chapter 266, shall fully apply to
1098 the cost and pricing data certification requirements of this section.

1099 Section 21. Equitable adjustments in the contract price negotiated pursuant to section 19 or as part of a
1100 contract modification shall be made in accordance with the general principles in this section. The
1101 commissioner shall promulgate regulations designed to implement this section.

1102 (1) Adjustments in the contract price shall be made to the maximum extent feasible on a fixed price basis
1103 prior to the execution of the change order or contract modification, if this can be done without adversely
1104 affecting the interests of the commonwealth.

1105 (2) Where a fixed price cannot be set due to difficulty in estimating the scope of the change ordered,
1106 adjustment may be made on a lump-sum guaranteed maximum price basis calculated by use of unit prices
1107 specified in the contract or agreed upon by the parties.

1108 (3) Cost reimbursement or time-and-materials methods of price adjustment shall not be used, except
1109 where, in the written opinion of the commissioner, no other pricing method is possible. When such
1110 pricing method is used, the contractor shall provide complete and accurate information disclosing the
1111 costs incurred in performing changes. The contractor shall maintain separate accounts, by job order or
1112 other suitable accounting procedure, of all segregable direct cost of work, both changed and not changed,
1113 allocable to the change. The commissioner shall promulgate regulations setting forth cost principles
1114 which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs.

1115 Section 22. There shall be assigned to every building project under the supervision of the office a resident
1116 engineer. Resident engineers may be hired as permanent employees subject to chapter 31 or as consultants
1117 exempt from said chapter 31. No person shall be employed as a resident engineer unless at the time
1118 thereof said person shall have had at least 10 years experience in the construction and supervision of
1119 construction of buildings, or shall have a degree in engineering, architecture or a field providing
1120 equivalent expertise and at least 5 years such experience.

1121 The resident engineer shall represent the commonwealth daily on the site of construction projects and
1122 shall be responsible for checking, inspecting and reporting to the project manager on a regular basis both
1123 in writing and orally as to events at the construction site and shall send copies of written reports to the
1124 designer on a regular basis.

1125 The project manager may delegate to the resident engineer, subject to approval by the director, notice in
1126 writing to all parties in interest, and limits otherwise imposed by this chapter, the authority to make
1127 decisions regarding plans, specifications, and materials; the authority to represent the project manager at
1128 job meetings; and the authority to order minor changes and make equitable adjustments in the contract
1129 price.

1130 The resident engineer shall report in writing to the project manager all problems, disputes, complaints or
1131 questions from or concerning designers, contractors or other personnel involved in the project.

1132 There shall be assigned to every project under the control and supervision of the office a cost estimator,
1133 who shall be responsible for reviewing all project costs. Cost estimators may be hired as permanent
1134 employees subject to chapter 31 or as consultants exempt from said chapter 31.

1135 Cost estimators shall have proven ability and experience in construction cost estimating and shall be
1136 familiar with various approaches to cost estimating, including but not limited to conceptual and
1137 preliminary estimating designed to provide budget and planning guidance in the early stages of a project,
1138 labor-cost estimating, fair cost estimating prepared from completed plans and specifications, contractors'
1139 bid estimating and definitive or detailed estimating.

1140 The cost estimator, working in cooperation with using agencies requesting projects, shall provide
1141 estimates of the costs of proposed projects. The cost estimator shall review all cost projections for studies,
1142 programs and designs, as well as contractors' cost estimates. The cost estimator shall review change order
1143 estimates, cost and pricing data, payment schedules and progress payment requests, and make
1144 recommendations to the project manager at the project manager's directive.

1145 Public agencies other than political subdivisions of the commonwealth that conduct building projects
1146 outside the jurisdiction of the division of capital asset management and maintenance as provided in
1147 section 4 may request assignment of a project manager, resident engineer or cost estimator employed by
1148 the office of project management. Such assignment shall be subject to approval by the commissioner. Any
1149 agency making use of the office's staff on a project outside the normal jurisdiction of the office shall
1150 reimburse the office for all expenses incurred, including salaries and overhead. The director shall
1151 recommend to the commissioner regulations governing fees to be paid by public agencies for use of the
1152 office's services on projects outside its normal jurisdiction.

1153 Section 23. The director may, with the approval of the commissioner and the governor, accept on behalf
1154 of the commonwealth any federal funds or assistance for financing the cost of plans and specifications for
1155 any project.

1156 If such funds or assistance shall be appropriated for aiding construction of any project, the director may,
1157 with like approval, apply for the same and may, with the approval of the governor, accept the same on
1158 behalf of the commonwealth. Any project so aided shall be executed in all respects subject to applicable
1159 federal laws and rules and regulations and also to the applicable provisions of this chapter not inconsistent
1160 therewith.

1161 Section 24. There shall be located within the division of capital asset management and maintenance an
1162 office of facilities management, headed by a director of facilities management. The director shall be
1163 appointed by the commissioner, with the approval of the secretary of administration and finance, and may
1164 be removed in like manner. Said office shall not be subject to section 9A of chapter 30 or chapter 31. No
1165 person shall be appointed director of said office unless at the time thereof said person shall be registered
1166 by the commonwealth as an architect or professional engineer pursuant to chapter 112 and shall have
1167 proven ability and extensive experience in the management and oversight of operation, maintenance and
1168 repair of buildings.

1169 The director may appoint such deputies and other supervisory staff as the work of the office may require,
1170 subject to appropriation and the commissioner's approval. Such staff shall serve at the pleasure of the
1171 director and shall not be subject to chapter 31 or to section 9A of chapter 30. The director shall appoint,
1172 subject to the commissioner's approval, all other officers and employees of said office.

1173 The director shall develop, in cooperation with the commissioner and using agencies, an inventory of
1174 buildings owned or otherwise occupied by state agencies and building authorities. Said inventory may
1175 detail the age, condition, type of construction, and physical life expectancy of each building and its major
1176 structural components. The inventory shall be updated as repairs, replacements and alterations are
1177 performed. Said inventory shall be filed by the commissioner by February 15 yearly with the clerks of the
1178 house of representatives and senate, and with the joint committee on state administration and regulatory
1179 oversight, and shall be a public document available for general distribution. The director shall recommend
1180 to the commissioner standards and guidelines governing the type of information to be included in said

1181 inventory, which shall be properly coordinated with the real property inventory established and
1182 maintained pursuant to section 38.

1183 Section 25. The director shall control and supervise all projects allocated to the office of facilities
1184 management by the commissioner pursuant to section 5. All of said projects shall be subject to the
1185 procedures and requirements set forth in sections 13 through 23, except that the director may recommend
1186 to the commissioner regulations governing the extent of representation of the commonwealth by the
1187 resident engineer required on the site of construction projects. The director shall, consistent with sections
1188 13 through 23, develop and recommend to the commissioner procedures and requirements for control and
1189 supervision of said projects commensurate with the specialized nature of those projects.

1190 Section 26. The director shall recommend to the commissioner standards and guidelines applicable to
1191 maintenance and repair. Said standards and guidelines shall be complied with by state agencies and
1192 building authorities. The director shall also develop maintenance and repair standards and guidelines for
1193 use by the department of housing and community development. Said standards and guidelines shall be
1194 advisory only.

1195 State agencies and building authorities shall certify to the director, once each year, that all maintenance
1196 and repair standards and guidelines have been complied with, or if the state agency or building authority
1197 has not so complied, the reasons for noncompliance. The director may order, in his discretion and without
1198 prior notice, inspection of state agency or building authority buildings, for the purpose of insuring
1199 compliance with maintenance and repair standards and guidelines. If the director finds that a state agency
1200 or building authority is not in compliance, the director shall report such noncompliance to the
1201 commissioner, the head of the state agency or building authority, the secretary of administration and
1202 finance, and in the case of building authorities, the board of higher education and the board of trustees of
1203 the relevant institution. If a state agency or building authority fails within 3 months of such notification to
1204 comply with said standards and guidelines, the director shall recommend to the commissioner emergency
1205 measures that should be taken.

1206 The director may direct, subject to the approval of the commissioner, once a state agency or building
1207 authority is found to be not in compliance with maintenance and repair standards and guidelines, that the
1208 state agency or building authority report in detail to the director on a monthly basis the status, progress
1209 and problems of maintenance and repair operations at the state agency or building authority's facilities.
1210 The director shall recommend to the commissioner regulations to be adopted governing information to be
1211 included in the monthly report. The director shall make quarterly reports to the commissioner on the
1212 status of maintenance and repair operations at the relevant state agency or building authority. At such
1213 time as the commissioner determines, with the advice of the director, that maintenance and repair
1214 operations have come into compliance with all applicable standards and guidelines, the state agency or
1215 building authority shall be relieved of the necessity of making monthly detailed reports.

1216 Where it is deemed necessary, the commissioner, on the advice of the director, may recommend that the
1217 office assume supervision and control over maintenance and repair operations normally carried out by the
1218 state agency or building authority. The secretary of administration and finance, after consultation with the
1219 secretary of the executive office in which the relevant state agency or building authority is located, and, in
1220 the case of building authorities, after consultation with the board of trustees of the relevant institution,
1221 may order transfer of supervision and control of maintenance and repair operations to the commissioner.
1222 Upon making such order, the commissioner shall forthwith file a copy of said order with the budget
1223 director, the comptroller, the house and senate committees on ways and means, and the joint committee
1224 on post audit and oversight, specifying the scope of the authority so transferred and the direction of said
1225 transfer. Said transfer may be for such period of time as the commissioner deems appropriate. Where the
1226 commissioner has so assumed control and supervision, the commissioner shall make quarterly reports to
1227 the secretary of administration and finance on the status of maintenance and repair operations at the
1228 affected state agency or building authority.

1229 Section 27. The director may, with the approval of the commissioner, initiate capital budget requests for
1230 building projects to be performed at one or more using agencies and controlled and supervised by the
1231 office of facilities management. Such projects may include, but not be limited to: (a) projects designed to

1232 alleviate, through a single undertaking or a series of undertakings, problems of a common nature
1233 encountered in buildings of more than 1 using agency; (b) projects to correct problems which require
1234 immediate attention, where the using agency has failed to include the project in its capital budget requests
1235 for the year, or has given such a request low priority; and (c) such other projects as the director may, with
1236 the approval of the commissioner, designate, including energy conservation projects, handicapped access
1237 projects, and fire, health and safety projects.

1238 Section 28. As used in this section, “using agencies” shall mean state agencies and building authorities.

1239 The director of facilities management shall: (1) develop, in cooperation with individual state agencies and
1240 building authorities, policies, standards, programs and schedules governing the performance of preventive
1241 maintenance; (2) develop preventive maintenance training programs for state agency and building
1242 authority personnel; (3) evaluate the status of preventive maintenance programs at each state agency and
1243 building authority; (4) review using agency maintenance operating budget requests together with
1244 maintenance reports submitted pursuant to section 3 of chapter 29 for the purpose of evaluating the
1245 priority, necessity, feasibility and appropriateness of said requests; (5) review using agency capital budget
1246 requests for repair projects and make recommendations to the commissioner as to those projects of each
1247 using agency that should be given funding priority; (6) recommend to the commissioner standards and
1248 guidelines for the control and supervision of repair projects controlled and supervised by using agencies;
1249 (7) advise the commissioner as to those methods available for the repair of deteriorating buildings,
1250 including the costs and benefits of continuing minor repairs versus the costs and benefits of major
1251 renovation or rehabilitation; (8) advise the commissioner as to maintenance and repair difficulties
1252 encountered in using agency buildings that may be due to faulty design or construction of new facilities;
1253 (9) advise the commissioner as to the feasibility and costs of renovating or rehabilitating for state use
1254 structures that have been certified historic landmarks, as provided by sections 26 to 27C of chapter 9, that
1255 have been listed in the National Register of Historic Places, as provided by 16 U.S.C. 470a, or that have
1256 been designated landmarks by the local governing authority; (10) advise the commissioner as to changes
1257 in operations and maintenance costs and operational and repair difficulties that may result from using

1258 agency proposals for alteration or conversion of existing facilities; and (11) assist using agencies in
1259 evaluating maintenance and repair problems and devising and implementing solutions.

1260 Section 29. (a) The commissioner shall require a state agency that initiates the construction of a new
1261 facility owned or operated by the commonwealth or a renovation of an existing facility owned or operated
1262 by the commonwealth when the renovation costs exceed \$25,000 and includes the replacement of
1263 systems, components or other building elements which affect energy or water consumption to design and
1264 construct or renovate the facility in a manner that minimizes the life-cycle cost of the facility by utilizing
1265 energy efficiency, water conservation or renewable energy technologies under the following criteria:

1266 (1) the state agency shall utilize alternate technologies when the life-cycle cost analysis conducted under
1267 subsection (b) shows that such systems are economically feasible;

1268 (3) the division of capital asset management and maintenance or the state agency shall, in the design,
1269 construction, equipping and operation of such facilities, coordinate these efforts with the department of
1270 energy resources in order to maximize reliance on, and the benefits of, renewable energy research and
1271 investment activities; and

1272 (4) all higher education construction projects shall, at a minimum incorporate the MA-CHPS Green
1273 Schools Guidelines standards or an equivalent standard.

1274 (b) The division of capital asset management and maintenance or the state agency initiating the
1275 construction or renovation of a facility as described in subsection (a) shall conduct a life-cycle cost
1276 analysis of any such facility's proposed design that evaluates the short-term and long-term costs and the
1277 technical feasibility of using alternate technologies to provide lighting, heat, water heating, air
1278 conditioning, refrigeration, gas or electricity. In calculating life-cycle costs, a state agency shall include
1279 the value of avoiding carbon emissions, creating renewable energy certificates and other environmental
1280 and associated benefits created from the utilization of alternate technologies, as applicable. This value
1281 shall be equal to the bid price of the published market value of any such benefit and shall increase or
1282 decrease at a projected rate determined by the department of energy resources. To calculate life-cycle
1283 costs, a state agency shall use a discount rate equal to the rate that the commonwealth's tax-exempt long-

1284 term bonds are yielding at the time of said calculation and shall assume that the cost of fossil fuels and
1285 electricity will increase at the rate of 3 per cent per year above the estimated rate of inflation or at a rate
1286 determined by the department of energy resources.

1287 (c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued thereunder, the
1288 division of capital asset management and maintenance may procure energy management services jointly
1289 with a state agency or a building authority that is procuring energy or related services. Said sections 11C
1290 and 11I shall apply to the extent feasible as determined by the commissioner of energy resources.

1291 (d) For purposes of this section, the term “economically feasible” shall mean that the cost of installing and
1292 operating an alternate technology is lower than the cost of installing and operating the energy, energy-
1293 using technology or water-using technology that would otherwise be installed, as determined by a life-
1294 cycle cost analysis.

1295 (e) The division of capital asset management and maintenance or the state agency initiating the
1296 construction or renovation of a facility subject to the requirements of subsection (a) shall file with the
1297 department of energy resources a report detailing the agency’s compliance with this section with respect
1298 to each such facility.

1299 (f) The department of energy resources shall issue an annual report to the general court detailing the
1300 compliance record of all state agencies with the construction and renovation provisions of this section.

1301 Section 30. The director of facilities management shall make provision, as part of development of an
1302 inventory of buildings owned or otherwise occupied by state agencies or building authorities pursuant to
1303 section 24, for evaluation of the energy consumption of each building and its major energy using systems.
1304 The director may, with the approval of the commissioner and subject to appropriation or allocation, hire
1305 consultants for the purpose of performing energy audits designed to determine the need for energy
1306 conservation projects.

1307 The director shall recommend to the commissioner standards and guidelines governing energy
1308 conservation maintenance and operating procedures.

1309 The director shall in conjunction with the commissioner of energy resources set priorities and energy
1310 efficiency standards for all state buildings and conduct energy audits of said buildings. The bureau may
1311 contract with professional consulting firms to perform the energy audits.

1312 All energy conservation projects within the jurisdiction of the division of capital asset management and
1313 maintenance as defined by section 4, including projects funded out of any lump-sum energy conservation
1314 fund or account, shall be fully subject to this chapter except that alternative energy property program
1315 projects authorized pursuant to section 11 of chapter 25A shall not be subject to sections 11 and 12,
1316 sections 13 to 28, inclusive, or this section.

1317 Section 31. The division of capital asset management and maintenance shall evaluate the potential for
1318 increasing the energy efficiency in each building owned by an authority or state agency, or leased by such
1319 authority or agency for at least a 10 year period. Energy efficiency measures, as used in this section shall
1320 include, but not be limited to, heating, air-conditioning, lighting, water, and electric systems powered by
1321 coal, electricity, natural gas, oil.

1322 The annual energy cost savings realized by each authority or agency shall be retained in that the authority
1323 or agency utility account and applied to additional energy efficiency measures in subsequent years.

1324 Actions taken by the division of capital asset management and maintenance in accordance with this
1325 section shall be coordinated with ongoing energy conservation projects in state-owned or leased
1326 buildings. Utility programs offering energy auditing services shall be used whenever appropriate.

1327 The term “authority” used in this section shall not include authorities of cities or towns, such as local
1328 housing projects.

1329 Section 32. Real property, record title to which is held in the name of a state agency or the board of
1330 trustees of a state agency or similar board of a state agency, shall be deemed to be real property of the
1331 commonwealth. No deed or other instrument shall be required to effect the transfer to the commonwealth
1332 of title to such real property, but the land court department of the trial court shall, upon petition of the
1333 division of capital asset management and maintenance, issue in the name of the commonwealth a
1334 certificate of title to any real property, title to which is registered under chapter 185 in the name of a state

1335 agency or the board of trustees of a state agency or similar board of a state agency. Notwithstanding any
1336 general or special law to the contrary, no person shall acquire any rights by prescription or adverse
1337 possession in any lands or rights in lands held in the name of the commonwealth.

1338 The commissioner shall exercise the powers stated in this chapter, notwithstanding the delegations under
1339 certain terms and purposes which the general court has made pertaining to the acquisition, control, and
1340 disposition of real property.. The commissioner shall not make any acquisition of real property on behalf
1341 of a state agency by eminent domain or make any such delegation of power to acquire real property by
1342 eminent domain to any state agency unless such state agency is otherwise authorized by law to exercise
1343 the power of eminent domain. The commissioner may delegate to state agencies responsibility for the
1344 acquisition, control, and disposition of real property as provided for in this chapter; except that the
1345 commissioner may not delegate responsibility for determining that property is surplus to state needs as
1346 required in section 33. When responsibility is delegated to a state agency, the written approval of the
1347 commissioner shall be required before the transaction is completed, and a copy of said written approval
1348 shall be sent to the joint committee on state administration.

1349 Section 33. For the purposes of sections 33 to 40, inclusive, the term “emergency” shall mean any
1350 situation caused by unforeseen circumstances which render currently used real property unusable or
1351 unavailable for the purposes intended and which creates an immediate need for other real property to
1352 preserve the health or safety of persons or property.

1353 The commissioner of capital asset management and maintenance shall be responsible for the acquisition,
1354 control and disposition of real property in the manner and to the extent provided in this chapter. The
1355 commissioner may delegate such responsibility to an administrator, who has 10 years of experience in the
1356 management of commercial, industrial, institutional or public real property. When responsibility is
1357 delegated to an administrator the written approval of the commissioner shall be required before such
1358 transaction is finalized.

1359 The commissioner shall acquire interest in real property on behalf of the commonwealth for the use of
1360 state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

1361 In acquiring buildings for the use of state agencies, first consideration shall be given to any structures that
1362 have been certified as historic landmarks as provided by sections 26 to 27C, inclusive, of chapter 9, that
1363 have been listed in the National Register of Historic Places as provided by 16 U.S.C. section 470a (1974)
1364 or that have been designated historic landmarks by local historic commissions, unless use of such
1365 buildings would not be feasible in terms of costs and requirements when compared with other available
1366 properties.

1367 Notwithstanding any laws to the contrary, real property acquired for the use of state agencies shall be held
1368 in the name of the commonwealth.

1369 The commissioner shall assist in the preparation and shall approve of plans for the organization of all
1370 space within and around buildings and appurtenant structures used by state agencies, and shall assign the
1371 use of space within and around the state house, subject to such rules as the committee on rules of the two
1372 branches acting concurrently may adopt, under sections 10, 16A and 17 of chapter 8 the John W.
1373 McCormack State Office Building; the Leverett Saltonstall State Office Building; the Springfield Office
1374 Building; the Pittsfield Office Building; the Erich Lindemann Building; the Charles F. Hurley Building;
1375 any real property acquired for the use of state agencies, the greater part of which is not needed by any one
1376 state agency; and any other real property assigned by law to the division of capital asset management and
1377 maintenance.

1378 The commissioner, with the written approval of the secretary of administration and finance, may transfer
1379 use of, and responsibility for maintenance of, buildings, including equipment therein, within or between
1380 state agencies. No such transfer within or between state agencies which involves either a change in the
1381 purposes for which such building is currently used or a change in use in excess of 50 per cent of the
1382 usable floor space, shall be made without the prior approval of the general court. Any such transfer shall
1383 be based on a determination, made by the commissioner with the advice of the executive heads of affected
1384 agencies and secretaries of the executive offices in which such agencies are located, that such property is
1385 not needed, is underutilized, or is not being put to optimum use under current conditions. The
1386 commissioner shall notify the house and senate committees on ways and means and the representatives to

1387 the general court from the city or town in which such real property is located not less than 30 days prior to
1388 the final authorization of any transfer which does not require the approval of the general court, and such
1389 transfer shall only be made when the general court is in session except as provided hereafter. Such
1390 transfer may be made when the general court is not in session, and the 30 day notification requirement
1391 may be waived, only if the commissioner certifies in writing that an emergency exists; provided that, any
1392 such transfer may be authorized for a period not to exceed 6 months, and provided, further, that the
1393 commissioner shall submit his certification to and notify the house and senate ways and means
1394 committees of such transfer at the earliest possible opportunity.

1395 The commissioner may, after notification to and with the advice of the executive heads of state agencies
1396 and secretaries of the executive offices, determine that real property is not needed for the use of any state
1397 agency. If the commissioner determines that such property is surplus to both the current and foreseeable
1398 needs of state agencies, the commissioner shall determine whether any other public agency has a current
1399 or foreseeable direct public use for the property. For the purposes of determining whether property is
1400 surplus to direct public use, direct public use is defined in this section as use of property for a public
1401 agency's own operations, but does not include conveyance by such agency of any interest in the property
1402 to another party, but does include lease of the property by local housing authorities to public housing
1403 tenants.

1404 When property is determined to be surplus, to either current state or current direct public uses, but not to
1405 foreseeable state or foreseeable direct public uses, the commissioner shall take such action as is necessary
1406 to ensure that any disposition of the property is temporary and maintains the commissioner's ability to
1407 make such property available to a state agency or other public agency at such time as it is needed.

1408 If the commissioner determines that the property is not needed for current or foreseeable state or direct
1409 public use as defined above and that the property should be disposed of, the commissioner shall declare
1410 that the property is available for disposition and shall identify restrictions, if any, on the property's use
1411 and development necessary to comply with established state and local plans and policies, and the

1412 commissioner shall send written notification of such to the house and senate committees on ways and
1413 means, and the joint committee on state administration.

1414 The commissioner may convene an advisory committee to advise him on reuses and to recommend reuse
1415 restrictions for property declared surplus; provided however that the Commissioner shall not convene a
1416 new advisory committee to advise on reuses if a re-use committee is currently active. If an advisory
1417 committee is convened, the commissioner shall invite the representatives to the general court from the
1418 city or town in which the property is located to serve on the committee. The commissioner shall prepare a
1419 preliminary report on his findings, which shall include both his recommendation, and those of the
1420 advisory committee if established, for reuse restrictions for the property.

1421 The commissioner shall conduct a public hearing to consider potential reuses and reuse restrictions for the
1422 surplus property and to review the secretary of administration and finance preliminary report if the
1423 property exceeds two acres or if the commissioner determines that a hearing should be held for a smaller
1424 parcel. If the commissioner determines to conduct a hearing, the commissioner shall provide notice in the
1425 central register of the public hearing at least 60 days prior to (1) notification to the house and senate
1426 committees on ways and means and the joint committee on state administration, of a temporary
1427 disposition of property to a public agency for less than 5 years for a direct public use, or (2) submission of
1428 a request to the general court for authority to otherwise dispose of real property as provided in this
1429 section. A notice of the public hearing shall also be placed, at least once each week for the 4 consecutive
1430 weeks preceding the hearing, in newspapers with sufficient circulation to inform the people of the
1431 affected locality. The hearing shall be held in the locality in which the property is located no sooner than
1432 30 days and no later than 35 days after the notice is published in the central register.

1433 The commissioner may, with the written approval of the secretary of administration and finance, enter
1434 into agreements for the direct public use of surplus real property by public agencies other than state
1435 agencies, for a term not to exceed 5 years. Such agreement shall prohibit subsequent conveyance of
1436 interest in the property by the public agency to another party. The commissioner shall notify the house

1437 and senate committees on ways and means and the joint committee on state administration and regulatory
1438 oversight 30 days prior to the final authorization of any such agreement. The notification shall include the
1439 commissioner's report on recommended reuse restrictions. In no event shall any such agreement be made
1440 when the general court is not in session.

1441 The commissioner shall establish the value of surplus property through procedures customarily accepted
1442 by the appraising profession as valid for determining property value. The value shall be calculated both
1443 for: (1) the highest and best use of the property as currently encumbered; and (2) uses and encumbrances
1444 defined by the commissioner.

1445 The commissioner may, with the approval of the commissioner, request from the general court
1446 authorization to dispose of state real property determined to be surplus to state agency needs: (1) to public
1447 agencies of the commonwealth other than state agencies for direct public uses, over a period exceeding 5
1448 years, (2) to a public agency of the commonwealth other than a state agency, for uses other than direct
1449 public uses, and (3) to an individual, entity, or the federal government; or any extension of any agreement
1450 for such use beyond a cumulative period of 5 years. Accompanying his request for authorization to
1451 dispose of property, the commissioner shall submit his report including a description of the property, its
1452 current use, structures, and approximate metes and bounds, the value of the property and recommended
1453 restrictions, if any, on reuses of the property. The commissioner shall also request authorization to
1454 negotiate real property disposition agreements with parties to be selected by the commissioner after the
1455 commissioner evaluates competitive proposals. Disposition agreements subsequently negotiated by the
1456 commissioner shall be consistent with the reuse restrictions approved by the general court.

1457 Notwithstanding this section, leases for agricultural purposes on land owned by the commonwealth shall
1458 be made for a term of not more than 5 years, and the renewal date for such leases shall not be less than 1
1459 year prior to the end of the lease period. Holders of such leases shall be given the opportunity to renew
1460 such leases for a consideration equal to the current lease amount plus an escalation amount to be
1461 established annually by the commissioner for application to all such leases.

1462 The commissioner shall monitor compliance with disposition agreements.

1463 The commissioner shall develop regulations governing the conditions under which the commissioner will
1464 recommend to the general court that a public agency, including but not limited to the government land
1465 bank, receive title to surplus property for other than direct public use.

1466 For petitions which authorize the sale, transfer or other disposition of any state-owned real property filed
1467 by persons other than the governor, the legislative committee to which that petition may be referred shall
1468 solicit a report from the commissioner stating the recommendation of the commissioner for either the
1469 approval or the disapproval of the bill and the reasons of the commissioner therefor. If the commissioner is
1470 recommending the approval of a bill proposing the disposition of a parcel exceeding 2 acres, said report
1471 shall include: (1) a description of the property including its current use, structures, and approximate metes
1472 and bounds; (2) the value of the property, determined through procedures customarily accepted by the
1473 appraising profession as valid for such purposes, calculated both for (a) the highest and best use of the
1474 property as currently encumbered and (b) uses and encumbrances that would be imposed by the bill if
1475 enacted; (3) all current and foreseeable direct public uses identified by following the division's
1476 procedures for such purposes as they apply to the property to be disposed (4) other potential public and
1477 private uses of the property; and (5) any other information the general court may require.

1478 The commissioner shall expeditiously review and recommend approval or disapproval of any proposal to
1479 the general court for the sale, rental or other disposition of real property acquired on behalf of state
1480 agencies, and shall dispose of real property as mandated by the general court. All legislation submitted to
1481 the general court by the division of capital asset management and maintenance requesting authorization to
1482 convey or transfer real property under its jurisdiction shall be accompanied by a full report outlining the
1483 division's reasons for pursuing said conveyance or transfer.

1484 Section 34. (a) When authorized by the general court to sell, rent or otherwise dispose of real property,
1485 the commissioner shall proceed in accordance with this section, provided that any action or determination
1486 required hereunder which the commissioner has undertaken within 18 months prior to enactment of the
1487 authorization to dispose of the property need not be repeated if the commissioner (1) files, as provided in
1488 subsection (b), a report fully describing such action or determination, a copy of which shall be sent to the

1489 clerks of the senate and the house of representatives, and the joint committee on state administration, and
1490 (2) certifies under penalties of perjury that such report is accurate and that the action or determination
1491 described therein was undertaken within 18 months prior to the date of enactment of the authorization to
1492 dispose of the property.

1493 The commissioner shall, after notification to and with the advice of the executive heads of state agencies
1494 and secretaries of the executive offices, determine whether such property is surplus to both current and
1495 foreseeable needs of state agencies. If the commissioner determines that the property is not surplus to
1496 either current or foreseeable needs of state agencies, the commissioner shall make no disposition that is
1497 inconsistent with such determination.

1498 If the commissioner determines that such property is surplus to both the current and foreseeable needs of
1499 state agencies, the commissioner shall provide written notice, for each city or town in which the property
1500 is located, to the city manager in the case of a city under Plan E form of government, the mayor and city
1501 council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the
1502 county commissioners, the regional planning agency and the members of the general court. The
1503 commissioner shall set forth in such notice a description of the property; a declaration that the property is
1504 surplus to the needs of state agencies and that subject to the approval of the commissioner the property is
1505 available to any other public agency for a direct public use; and a statement that, if so requested by any
1506 public official or body entitled under this section to receive such notice, a public hearing will be
1507 conducted in the city or town where such property is located, to assist the commissioner in determining
1508 whether any other public agency has a current or foreseeable direct public use for the property. Following
1509 such hearing, if any, but in no event earlier than 30 days following the notice, the commissioner shall
1510 determine whether any other public agency has a current or foreseeable direct public use for the property.
1511 If the commissioner determines that the property is not surplus to either current or foreseeable direct
1512 public uses of public agencies, the commissioner shall make no disposition that is inconsistent with such
1513 determination.

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

1519 If the commissioner determines that the property is surplus to both current and foreseeable direct public
1520 uses of public agencies, the commissioner may dispose of the property to a public agency for other than
1521 direct public use, or to an individual or entity, provided that any such disposition shall be subject to
1522 section 36.

1523 If the commissioner determines that the property is not needed for current or foreseeable state or direct
1524 public use and that the property should be disposed of, either temporarily or permanently, the
1525 commissioner shall declare that the property is available for disposition and shall determine appropriate
1526 reuse restrictions. The commissioner shall ensure that any rental agreement, and in the case of a
1527 conveyance a deed or separate disposition agreement as deemed appropriate by the commissioner, shall
1528 set forth all such reuse restrictions; shall provide for effective remedies on behalf of the commonwealth,
1529 including if deemed appropriate by the commissioner that title to the property, or such lesser interest as is
1530 the subject of the disposition agreement, shall revert to the commonwealth in the event of a violation of
1531 any such reuse restriction; and shall provide, in the case of a disposition to a public agency for a direct
1532 public use, that the title to the property, or such lesser interest as is the subject of the disposition
1533 agreement, shall revert to the commonwealth in the event the property is no longer utilized for such direct
1534 public use.

1535 In determining reuse restrictions, the commissioner shall conform to all such restrictions pertaining to the
1536 property which may have been mandated by the general court, and may adopt additional restrictions,
1537 taking account of established state and local plans and policies. The commissioner shall conduct a public
1538 hearing to consider reuse restrictions if the property exceeds 2 acres or if the commissioner determines
1539 that a hearing should be held for a smaller parcel. Notice of the public hearing shall be placed at least

1540 once each week for 4 consecutive weeks preceding the hearing, in newspapers with sufficient circulation
1541 to inform the people of the affected locality. The hearing shall be held in the locality in which the
1542 property is located no sooner than 30 days and no later than 35 days after notice thereof is published in
1543 the central register.

1544 The commissioner shall establish the value of the property, through procedures customarily accepted by
1545 the appraising profession as valid for determining property value, for both the highest and best use of the
1546 property as currently encumbered and under the reuse restrictions as determined pursuant to this section.

1547 No agreement for the rental or other disposition of state-owned real property, and no deed, executed by or
1548 on behalf of the commonwealth, shall be valid unless such agreement or deed contains the following
1549 declaration, signed by the commissioner:

1550 The undersigned certifies under penalties of perjury that I have fully complied with sections 34 and 36 of
1551 chapter 7C of the General Laws in connection with the property described herein.

1552 It shall be the policy of the commonwealth that the commissioner shall not sell, rent, or dispose of any
1553 real property including but not limited to granting the right to lay, construct, maintain, or operate
1554 pipelines through, over, across, or under land, water, park, reservation or highway of the commonwealth,
1555 its agencies or its political subdivisions, to any person doing business in or with Burma (Myanmar). The
1556 commissioner may sell, rent, or dispose of said property or grant said rights to said person only after
1557 certifying in writing to the speaker of the house of representatives and president of the senate that such
1558 action is essential to protect the health and safety of the public.

1559 (b) The commissioner shall maintain, for a period of at least 6 years next following enactment of an
1560 authorization by the general court to dispose of real property, a file containing a copy of each document
1561 necessary to establish fulfillment of the requirements of subsection (a). Such file shall be open to public
1562 inspection.

1563 Section 35. The commissioner of capital asset management and maintenance shall suggest to the budget
1564 director, as part of his recommendation for the annual appropriation for space rentals provided for by
1565 section 3 of chapter 29, the maximum rate to be paid for the rental of space by type and geographical area

1566 and the maximum percentage to be paid for the escalation of all such rental costs. The budget director
1567 shall consider the suggestions of the commissioner in recommending the approval of such costs by the
1568 general court, as part of the annual appropriations act.

1569 The commissioner may rent, for the use of state agencies, through lease, tenancy-at-will or other rental
1570 agreement for a term not exceeding 10 years, premises outside of the state house or other buildings owned
1571 by the commonwealth. If the term of the rental agreement under which premises are being used for the
1572 purposes of a particular activity by any state agency expires between the beginning of a fiscal year and the
1573 effective date of an appropriation act for such fiscal year and no appropriation for rent for said premises
1574 has been made and if the general court has not provided otherwise, the commissioner may rent for such
1575 purposes the same or different premises, for a term not exceeding 5 years, obligating the commonwealth
1576 to pay no greater amount of rent for any period than was paid for a corresponding period under the
1577 expiring agreement.

1578 No charges for rentals provided for in this section shall exceed the maximum rate plus escalation cost
1579 approved by the general court. Further, the commissioner shall notify the house and senate committees on
1580 ways and means 30 days prior to the final authorization of any such rental agreement and such agreement
1581 shall only be made when the general court is in session, except as provided hereafter. Such agreement
1582 may be made when the general court is not in session, and the 30 day notification requirement may be
1583 waived, only if the commissioner certifies in writing that an emergency exists; provided that, any such
1584 agreement shall be authorized for a period not to exceed 6 months, and provided further, that the
1585 commissioner shall submit his certification to and notify the house and senate committees on ways and
1586 means of such agreement at the earliest possible opportunity.

1587 Notwithstanding the time limitation of this section or of any other law, the commissioner may enter into
1588 rental-purchase agreements for the purchase or construction of premises to be occupied by the division of
1589 employment and training outside of the state house or other buildings owned by the commonwealth,
1590 provided, that the costs incident to such rental-purchase agreements, including amortization, shall be
1591 borne by the federal government. After expiration of the period of amortization in each such instance, the

1592 commonwealth shall not charge the department of employment and training with rent of such premises,
1593 provided the federal government shall bear the cost of service to and maintenance of such premises.
1594 The secretary of administration and finance shall report quarterly to the house and senate committees on
1595 ways and means any lease, tenancy-at-will or other rental agreement, or any extensions thereof, made
1596 pursuant to this section; provided, however that said quarterly report shall include, by agency, the amount
1597 and location of such rental space, any new or additional space, the duration of the lease or agreement, the
1598 cost per square foot of such rental space, any increase or decrease in said cost, and the cost of the
1599 preceding lease or agreement.

1600 Section 36. At least 30 days before opening proposals for the acquisition by purchase or rental of real
1601 property for the use of state agencies from an individual or entity, or for the sale or rental of real property
1602 used by state agencies (1) to a public agency other than a state agency for other than a direct public use, or
1603 (2) to an individual or entity, the commissioner of capital asset management and maintenance shall
1604 advertise in the central register published by the state secretary pursuant to section 20 of chapter 9 stating
1605 therein the need for or availability of such property, and inviting submission of such proposals. The
1606 advertisement shall specify the geographical area, terms and requirements of the proposed transaction,
1607 and shall state the time and place for the submission of such proposals and for the opening thereof. In
1608 advertising for the rental of real property for use as an area welfare office, the geographical area specified
1609 in the advertisement shall include all municipalities serviced by the welfare office. In case of the rental or
1610 sale of over 2500 square feet of real property, such advertisement shall also be placed at least once each
1611 week for 4 consecutive weeks in newspapers with a circulation sufficient to inform the people of the
1612 affected locality. The last publication shall occur at least 8 days preceding the day for opening proposals.
1613 The advertising requirement may be shortened or waived if (1) the commissioner certifies in writing that
1614 an emergency exists, a copy of such written certification shall be sent to the joint committee on state
1615 administration, provided that every reasonable effort be made to seek competitive proposals, and provided
1616 that the commissioner shall disclose his reasons for declaring the emergency in the central register at the
1617 earliest opportunity; or (2) in the case of a proposed acquisition, if the commissioner determines that such

1618 advertising will not be beneficial to the commonwealth's interest because of the unique qualities or
1619 location of the property needed, provided that the commissioner shall set forth in writing his reasons for
1620 such determination, relating such unique requirements to the property proposed to be acquired, and that
1621 such determination and the reasons therefor shall be published in the central register not less than 30 days
1622 before any binding agreement to acquire such property is executed, together with the name of the parties
1623 having a beneficial interest in the property pursuant to section 38, the location and size of the property,
1624 and the proposed purchase price or rental terms.

1625 No agreement on behalf of the commonwealth for the rental of real property for the use of state agencies
1626 from an individual or entity shall be valid unless such agreement contains the following declaration,
1627 signed by the commissioner:

1628 The undersigned certifies under penalties of perjury that I have fully complied with the advertising
1629 requirements of section 36 of chapter 7C of the General Laws in connection with the property described
1630 herein.

1631 The commissioner shall also place notification in the central register of the individual or firm selected as
1632 party to any such real property transaction, and the amount of such transaction. In no instance in which
1633 the state retains responsibility for maintenance of the property shall the terms provide for payment of less
1634 than the maintenance costs. If the commissioner decides to dispose of the property at a price less than any
1635 of its values established pursuant to section 34, the commissioner shall include a justification for such
1636 decision in the notice and shall disclose the difference between the calculated value and the price
1637 received.

1638 After the execution of a rental or sale agreement completing such transaction, all proposals relating
1639 thereto shall be retained by the commissioner and shall be open to inspection by the public until the
1640 expiration of such agreement or 6 months from the date thereof, whichever occurs first, and may
1641 thereafter be destroyed by him.

1642 Section 37. At least 120 days prior to any purchase, sale, rental, lease, transfer, or significant change in
1643 use of one or more acres of real property by the commonwealth on behalf of state agencies, the

1644 commissioner of capital asset management and maintenance shall notify in writing, for each city or town
1645 in which the real property is located: the city manager in the case of a city under Plan E form of
1646 government, the mayor and the city council in the case of all other cities, the chairman of the board of
1647 selectmen in the case of a town, the county commissioners, the regional planning agency, and the
1648 members of the general court. Such 120 day notification requirement may be shortened if: (1) the public
1649 officials referred to above agree to reduce the 120-day period upon the request of the commissioner; or
1650 (2) the commissioner certifies in writing that an emergency exists, provided that commissioner shall
1651 submit his certification to and notify the appropriate local officials of any such transaction at the first
1652 possible opportunity. The notice shall include a statement of the present use, the reason for the proposed
1653 action, and the proposed use of the property. The commissioner shall at least 60 days prior to any such
1654 purchase, sale, rental, lease, transfer, or significant change in use of one or more acres of real property,
1655 cause a public hearing to be held, after giving timely notice, in the city or town where such real property
1656 is located for the purpose of disclosing the conditions or reasons for the proposed action.

1657 Section 38. No agreement to rent or to sell real property to or to rent or purchase real property from a
1658 public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be
1659 made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has
1660 been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized
1661 officer thereof giving the true names and addresses of all persons who have or will have a direct or
1662 indirect beneficial interest in said property with the commissioner of capital asset management and
1663 maintenance. This section shall not apply to any stockholder of a corporation the stock of which is listed
1664 for sale to the general public with the securities and exchange commission, if such stockholder holds less
1665 than 10 per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the
1666 case of an agreement to rent property from a public agency where the lessee's interest is held by the
1667 organization of unit owners of a leasehold condominium created under chapter 183A, and time-shares are
1668 created in the leasehold condominium under chapter 183B, this section shall not apply to an owner of a
1669 time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms

1670 length transfer of such time-share made after the rental agreement with the public agency is executed and
1671 (ii) who holds less than 3 per cent of the votes entitled to vote at the annual meeting of such organization
1672 of unit owners.

1673 A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental
1674 agreement in case of any change of interest in such property, as provided for above, within 30 days of
1675 such change.

1676 Any official elected to public office in the commonwealth, or any employee of the division of capital
1677 asset management and maintenance disclosing beneficial interest in real property pursuant to this section,
1678 shall identify his position as part of the disclosure statement. The commissioner shall notify the state
1679 ethics commission of such names, and shall make copies of any and all disclosure statements received
1680 available to the state ethics commission upon request.

1681 The commissioner shall keep a copy of each disclosure statement received available for public inspection
1682 during regular business hours.

1683 Section 39. The commissioner of capital asset management and maintenance shall establish and maintain
1684 a comprehensive inventory of the real property owned, rented or otherwise occupied by public agencies.

1685 Such inventory shall include a detailed description of the allocation, utilization and condition of real
1686 property used by state agencies and a general description of the size, type and use of real property under
1687 the jurisdiction of other public agencies. The real property inventory shall be published annually for
1688 distribution to state agencies and regional planning agencies, shall be filed by February 15 each year with
1689 the clerks of the house of representatives and the senate and the joint committee on state administration
1690 and regulatory oversight and shall be a public document available for general distribution.

1691 The division of capital asset management and maintenance shall be the central depository for all
1692 certificates of title, copies of deeds, records of sale, rental agreements and other pertinent records relating
1693 to real property acquired for the use of state agencies. All such documents shall be public records and
1694 shall be open to inspection by the public during regular business hours.

1695 The commissioner may delegate responsibility for the housing and care of such original records to a state
1696 agency if such records are necessary for the daily operation of said agency. A state agency requesting the
1697 delegation of such responsibility shall demonstrate to the commissioner that such records will be
1698 adequately maintained and housed. In case of such delegation, copies of essential records shall be
1699 deposited with the division.

1700 All public agencies shall cooperate with the division in providing the information required by this section.

1701 Section 40. The commissioner of capital asset management and maintenance shall establish rules and
1702 regulations for the acquisition, utilization and disposition of real property, which shall be applicable to
1703 state agencies and which shall be recommended to counties and building authorities and which shall be
1704 filed with the clerks of the house of representatives and the senate and the joint committee on state
1705 administration and regulatory oversight. The commissioner shall review rules and regulations
1706 promulgated by the director of housing and community development for the acquisition, utilization and
1707 disposition of real property and shall recommend approval or disapproval of such rules and regulations to
1708 said director. The commissioner may, at his discretion, delegate responsibility for the establishment of
1709 rules and regulations for the acquisition, utilization and disposition of real property, subject to his
1710 approval, to state agencies with special needs and a proven capability to promulgate such rules and
1711 regulations.

1712 Such rules and regulations shall, at a minimum, provide for:

1713 (a) a determination of the amount and type of real property needed to accommodate functions performed
1714 by agencies of the commonwealth;

1715 (b) a standard format for rental agreements and rental specifications;

1716 (c) current fair market rentals by geographical area;

1717 (d) methods of procurement and evaluation of service contracts for state-owned and rented real property;

1718 (e) procedures and criteria for determining when real property is not needed, is underutilized, or is not
1719 being put to optimum use;

- 1720 (f) rates to be charged in the rental of real property to public and federal agencies and private individuals
1721 and entities;
- 1722 (g) the method of procurement of independent determinations of property value, the number of such
1723 determinations, and the review of such determinations required before real property may be sold,
1724 purchased, or rented;
- 1725 (h) procedures to be employed in determining prices and terms for the sale, rental, or purchase of real
1726 property and certification required for proof of such procedures;
- 1727 (i) the satisfaction of requirements for the acquisition and disposition of real property as mandated by law
1728 and regulation;
- 1729 (j) the organization of space within buildings to maximize utilization;
- 1730 (k) a standard format for the disclosure of beneficial interest as mandated by section 38; and
- 1731 (l) the type and method of collection of information to be included in the real property inventory
1732 established by section 39.

1733 All such rules and regulations shall be filed in accordance with and subject to section 2 by the
1734 commissioner of the division of capital asset management and maintenance.

1735 Section 41. No department of the commonwealth shall occupy, or make any expenditure for the
1736 maintenance of, any land, buildings or other state-owned or state-occupied facilities or other property
1737 other than that under its control or jurisdiction. No department of the commonwealth shall authorize or
1738 otherwise allow the use by any private agency of such land, buildings or facilities under its control or
1739 jurisdiction unless such use or expenditure shall have been approved by the general court after
1740 recommendation by the secretary of administration and finance. Use without such approval shall be
1741 deemed to be a violation of this section, and the user shall pay a civil penalty at the rate of \$10 per square
1742 foot annually for the period of such use.

1743 Section 42. The director of facilities management shall report quarterly to the house and senate
1744 committees on ways and means any lease negotiated or any agreement providing for a tenancy at will or
1745 other rental of space, and any renewal or extension thereof, which has been signed by the executive or

1746 administrative head of a state department, court, commission or board or which has been approved by the
1747 state superintendent of state office buildings and by the secretary of administration and finance; provided,
1748 however, that said quarterly report shall include by agency, the amount and location of such rental space,
1749 any new or additional space, the duration of the lease or agreement, the cost per square foot of such rental
1750 space, any increase or decrease in said cost, and the cost of the preceding lease or agreement.

1751 Section 43. Upon the receipt of the commission of notice under section 6 of chapter 38 that a site
1752 evaluation will be made to determine if skeletal remains are American Indian, the commission may
1753 designate a representative to be present when said site evaluation is made. If the state archaeologist and
1754 commission determine that said remains are American Indian, the owner of the land whereon the remains
1755 were discovered, the state archaeologist, the commission and other interested parties shall determine
1756 whether prudent and feasible alternatives exist to avoid, minimize or mitigate harm to the Indian burial
1757 site. If it is not prudent and feasible to preserve the remains in the original Indian burial site then the state
1758 archaeologist shall excavate and recover the remains under the supervision of the commission on Indian
1759 affairs. The commission and state archaeologist shall then consult to determine how the remains shall be
1760 disposed.

1761 The final plan or agreement, which shall be in writing, may include provisions for preservation in situ; or
1762 the conducting of additional scientific and archaeological research and investigation with the approval of
1763 the commission on Indian affairs, or the immediate reinterment of the remains or with the consent of the
1764 site's owner, or the execution of a preservation restriction pursuant to section 32 of chapter 184. If it is
1765 determined that the remains are to be reinterred it shall be the responsibility of the commission on Indian
1766 affairs to conduct the reinterment.

1767 The state archaeologist and commission shall consult to determine whether a skeletal analysis shall be
1768 made; said analysis must be completed within 1 year of the date of approval. If more than 1 year is
1769 required to conduct said analysis, the commission and state archaeologist shall consult to determine
1770 whether the 1 year may be extended. If they fail to agree on whether the skeletal analysis shall be
1771 extended for more than 1 year, they shall each designate three qualified persons who shall meet and make

1772 a recommendation to the commission on Indian affairs on whether a skeletal analysis of the remains shall
1773 be made. The commission shall make the final decision on whether a skeletal analysis of the remains shall
1774 be conducted for longer than 1 year. It will be the responsibility of the commission on Indian affairs to
1775 reinter the remains when the skeletal analysis is completed.

1776 Section 44. (a) Sections 44 to 58, inclusive, shall: ensure that the commonwealth receives the highest
1777 quality design services for all its public building projects; provide for increased confidence in the
1778 procedures followed in the procurement of design and design related services; promote consistency in the
1779 methods of procurement of design and design related services for all public building projects in the
1780 commonwealth; foster effective broad-based participation in public work within the design professions;
1781 provide safeguards for the maintenance of the integrity of the system for procurement of designers'
1782 services within the commonwealth;

1783 (b) As used in sections 44 to 58, inclusive, the following words shall have the following meanings, unless
1784 the context clearly requires otherwise, or a different definition is prescribed for a particular section or
1785 provision.

1786 "Applicant", any person or entity applying to perform design services, the principal personnel responsible
1787 for the provision of such services for the project, and the persons who will be the principal staff for the
1788 project.

1789 "Board", the designer selection board.

1790 "Commissioner" and "division", the commissioner and the division of capital asset management and
1791 maintenance.

1792 "Continued services", authorization for a designer who has been appointed for one stage of a project to
1793 act as the designer for a succeeding stage or stages of the same project.

1794 "Construction manager", any designer or any other corporation, partnership, individual, sole
1795 proprietorship, joint stock company, joint venture, or other entity engaged in the practice of construction
1796 management or construction scheduling.

1797 “Design services”, any of the following services provided by any designer, programmer, or construction
1798 manager in connection with any public building project:

1799 (i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

1800 (ii) preparation of drawings, plans, or specifications, including but not limited to schematic drawings,
1801 preliminary plans and specifications, working plans and specifications or other administration of
1802 construction contracts documents;

1803 (iii) supervision or administration of a construction contract;

1804 (iv) construction management or scheduling.

1805 “Designer”, an individual, corporation, partnership, sole proprietorship, joint stock company, joint
1806 venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering,
1807 which satisfies the following:

1808 (i) if an individual, the individual is a registered architect, landscape architect, or engineer;

1809 (ii) if a partnership, a majority of all the partners are persons who are registered architects, landscape
1810 architects, or engineers;

1811 (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors
1812 or a majority of the stock ownership and the chief executive officer are persons who are registered
1813 architects, landscape architects, or engineers, and the person to have the project in his or her charge is
1814 registered in the discipline required for the project;

1815 (iv) if a joint venture, each joint venturer satisfies the requirements of this section.

1816 “Director”, the director of the office of project management, or in the case of agencies subject to section
1817 4B of chapter 7, the chief executive official of the agency or his designee.

1818 “Extended services”, authorization for a designer who has been appointed to provide design services for a
1819 project to act as designer for work to be done on another project not originally included in that designer’s
1820 contract.

1821 “Programmer”, any designer or any other individual, corporation, partnership, sole proprietorship, joint
1822 stock company, joint venture or other entity engaged in the preparation of architectural facility programs
1823 or studies.

1824 “Public agency”, a department, agency, board, commission, authority, or other instrumentality of the
1825 commonwealth or political subdivision of the commonwealth or two or more subdivisions thereof other
1826 than cities and towns, and any agency, unit, authority, or instrumentality thereof but not including the
1827 State College Building Authority or the University of Massachusetts Building Authority.

1828 Section 45. (a) There shall be located within the executive office for administration and finance a designer
1829 selection board, consisting of 11 members. Eight members shall be appointed by the governor, 3 of whom
1830 shall be registered architects, 3 of whom shall be registered engineers, and 2 of whom shall be
1831 representatives of the public who are not architect designers, engineers or construction contractors. Three
1832 additional members shall be appointed as follows: 1 registered architect by the Massachusetts State
1833 Association of Architects, 1 registered engineer by the government affairs council of design professional
1834 and 1 general contractor by the associated general contractor. The board shall be expanded from the
1835 present 5 members to 11 members according to the following schedule: 1 additional architect, 1 additional
1836 engineer, and the 1 general contractor shall be appointed by the designated body within 90 days of the
1837 effective date of this section; another additional public representative shall be appointed within 1 year
1838 thereafter. Members shall be appointed for terms of 2 years and may be reappointed for no more than 1
1839 successive 2 year term. The director shall designate a representative, who shall be the project manager in
1840 the case of a project under the jurisdiction of the office of project management, to act as a nonvoting
1841 member of the board for each project under his jurisdiction under consideration by the board. No

1842 provision of this section shall operate to reduce the tenure of members of the board serving at the time of
1843 the effective date of this section, except that the director of bureau of building construction shall cease to
1844 so serve upon the effective date of this section.

1845 (b) Members of the board shall be reimbursed for all necessary expenses incurred in the discharge of their
1846 official duties.

1847 (c) The board shall employ an executive director who shall be a registered architect or engineer registered
1848 in the commonwealth and such other staff or consultants as it may deem necessary, subject to
1849 appropriation, for the board. The board and its staff may travel within and without the commonwealth.

1850 Section 46. (a) The board shall have jurisdiction over the selection of all designers, programmers, and
1851 construction managers performing design services in connection with any building project for all public
1852 agencies within paragraphs (1), (2) and (4) of section 4, except those public agencies within section 54,
1853 and the procedures promulgated by any agency of the commonwealth for such selection by any housing
1854 authority subject to paragraph (3) of said section, unless a specific exemption from the board's
1855 jurisdiction is provided under this section.

1856 (b) The board shall grant an exemption for 2 years from its jurisdiction to each public agency within
1857 paragraphs (3) and (4) of section 4, but in no event to any public agency within paragraphs (1) and (2) of
1858 said section 4, if the agency has filed a written application for an exemption pursuant to subsection (c) of
1859 this section; provided, however, that the board shall withhold an exemption if the board determines that
1860 the designer selection procedure proposed by the public agency does not substantially incorporate the
1861 procedures required in section 45 to 53, inclusive, and section 56, or that the selection of finalists will not
1862 be made with the advice of design professionals or that the procedure proposed by the public agency does
1863 not satisfy the purposes of sections 44 to 58, inclusive, as set forth in said section 44, or that withholding
1864 such an exemption is in the best interest of the commonwealth; provided, however, that nothing in this
1865 section shall be interpreted to require the establishment of a board as prescribed in section 45 or to waive

1866 or in any way diminish the requirements imposed by any other general law. No withholding of an
1867 exemption shall take effect until the board shall have specified in writing the reasons for withholding an
1868 exemption and any changes in the agency's procedures which are required before an exemption will be
1869 granted. An agency granted an exemption or renewal thereof from the jurisdiction of the board shall,
1870 during any period such exemption or renewal is in effect, advertise for designers, select any designers to
1871 perform any design services, and continue or extend the services of any designers in accordance with the
1872 agency's last written designer selection procedures approved by the board in conformity with this section.

1873 (c) An application by a public agency for exemption from the jurisdiction of the board pursuant to this
1874 section must be verified by the agency director under the penalties of perjury, and must contain:

1875 (i) a detailed description of the designer selection process and the written designer selection procedures
1876 which the agency proposes to use;

1877 (ii) a statement that the agency's proposed designer selection process substantially incorporates the
1878 procedures required of the board in sections 45 to 53, inclusive, and section 56;

1879 (iii) a statement that the agency's projects are not subject to the jurisdiction of the division of capital
1880 planning and operations; and

1881 (iv) any other information required by the board.

1882 (d) An exemption shall be renewed by the board on a biennial basis if:

1883 (i) the board finds that the requirements of subsection (b) are met at the time of the renewal;

1884 (ii) the agency director files a verified application for renewal containing a description of any proposed
1885 changes in its designer selection procedure; and

1886 (iii) the agency director had filed a semi-annual report containing:

1887 a list of all contracts for designer services awarded by the agency since its last application, including for
1888 each project the name and address of any designer awarded such contracts, a brief description of the
1889 project, the estimated, or if available, the final construction cost for the project, and the estimated or, if
1890 available, final fee paid to the designer; and certification that all contracts so listed were awarded by the
1891 procedure described in the agency's last application.

1892 (e) Subject to subsection (f), a contract for design services shall be exempt from jurisdiction of the board
1893 if: (i) the design fee under the contract is less than \$10,000; or (ii) the estimated construction cost of the
1894 project for which the design services are required is less than \$100,000; or (iii) the contract is for the
1895 fabrication or installation of modular buildings procured in accordance with section 44E of chapter 149;
1896 or (iv) the contract is for the demolition of buildings. Projects consisting of energy management services
1897 procured in accordance with section 11C of chapter 25A and regulations promulgated thereunder shall be
1898 exempt from the jurisdiction of the board.

1899 (f) The following types of projects, and contracts for design services for such projects, shall not be
1900 exempt from the board's jurisdiction:

1901 (i) contracts for continued or extended services on projects over which the board otherwise has
1902 jurisdiction; and

1903 (ii) projects otherwise subject to the jurisdiction of the board for which an agency or the division intends
1904 to use its own staff to perform design services, except projects within Class I, as defined by subsection (d)
1905 of section 49, unless the board determines that the agency or the division has the capability with its
1906 existing staff to perform those services on the project in question, applying the same criteria as are used
1907 for selection of consultant designers.

1908 Section 47. (a) Each contract for designer services for a project subject to the jurisdiction of the board
1909 shall be publicly advertised by the board in a newspaper of general circulation in the area in which the
1910 project is located or to be located, and in the central register established under section 20A of chapter 9,

1911 and in such places as the board requires by regulation, at least 2 weeks before the deadline for filing
1912 applications; provided, however, that each contract for designer services for a project whose estimated
1913 cost of construction is not less than \$10,000 nor more than \$25,000 shall not be required to be advertised
1914 in a newspaper of general circulation but shall be required to be advertised in the central register.

1915 (b) The public notice required by subsection (a) shall contain:

1916 (i) a description of the project, including the specific designer services sought, the time period within
1917 which the project is to be completed, and, if available, the estimated construction cost;

1918 (ii) if there is a program for the project, a statement of when and where the program will be available for
1919 inspection for applicants, and when and where a briefing session will be held for applicants, if one is
1920 required by the board's regulations and if there is not a program for the project, a statement to the effect;

1921 (iii) the qualification required of applicants for the projects;

1922 (iv) the categories of designers' consultants, if any, for which applicants must list the names of
1923 consultants which the applicant may choose to use; and

1924 (v) whether the fee has been set or will be negotiated, and if the fee has been set, the amount of the fee.

1925 Section 48. (a) No designer, programmer, or construction manager may file an application for any project
1926 subject to the board's jurisdiction unless having first filed with the board a written statement containing
1927 the following information:

1928 (i) certification that the applicant legal entity, if applying to perform design services other than
1929 preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or construction
1930 manager as defined in subsection (b) of section 44;

1931 (ii) the names and addresses of all partners, if a partnership, of all officers, directors and all persons with
1932 an ownership interest of more than 5 per cent in the applicant if not a partnership;

1933 (iii) the registration number and status of each such person in every jurisdiction in which such person has
1934 ever been registered as an architect, landscape architect or engineer;

1935 (iv) a list of all projects for all public agencies within the commonwealth for which the applicant has
1936 performed or has entered into a contract to perform design services within the 5 year period immediately
1937 preceding the filing of the information required in this section;

1938 (v) a list of all current projects for which the applicant is performing or is under contract to perform any
1939 design services; and

1940 (vi) if the applicant is a joint venture, the information required in this section shall be required for each
1941 joint venturer, as well as for the joint venture itself.

1942 (b) The board shall keep a permanent record of the statements filed pursuant to this section and shall
1943 require the statements to be made current on a regular basis, and that statements pursuant to clauses (v)
1944 and (vi) of subsection (a) be current with each application filed.

1945 (c) An applicant to perform design, programming or construction management services on a project must
1946 file, in addition to the statement required under subsection (a), a written application as prescribed by the
1947 board, relating to the applicant's experience, ability, and qualifications.

1948 (d) The board and its staff shall be allowed access to all records of all public agencies concerning any
1949 applicant, or any project for which the applicant performed any services, for the purpose of verifying
1950 information submitted by the applicant, or for the purpose of evaluating the applicant's experience, ability
1951 and qualifications.

1952 (e) Every application or statement filed pursuant to this section shall be sworn to under penalties of
1953 perjury. A designer, programmer or construction manager who has been determined by the board to have
1954 filed materially false information under this section shall be disqualified by the board from further
1955 consideration for any project for such time as the board determines is appropriate.

1956 (f) The board shall not advertise for designers nor select any finalists to perform any design services other
1957 than the preparation of master plans, studies, surveys, soil tests, cost estimates, or programs unless the
1958 deputy commissioner certifies that it is appropriate to do so and either that a program defining the design
1959 services required has been prepared, and has been approved by the division, or that no program is
1960 required by the division.

1961 (g) The division of capital asset management and maintenance in consultation with the board shall
1962 develop a standard designer evaluation form that shall be completed by every public agency, as defined in
1963 section 44A of chapter 149, upon completion of the work under a design contract under its control, and
1964 submitted to the division and the board for the designer's qualification file. The official from the public
1965 agency or the owner's representative as described in section 44A of said chapter 149 shall certify that the
1966 information contained on the designer evaluation form represents, to the best of his knowledge, a true and
1967 accurate analysis of the designer's performance record on the contract. The public agency shall mail a
1968 copy of the designer evaluation form to the designer who may, within 30 days, submit a written response
1969 to the division and board disputing any information contained in the form and setting forth any additional
1970 information concerning the building project or the oversight of the building construction contract by the
1971 public agency as may be relevant to the evaluation of the designer's performance on the contract. The
1972 division and board shall attach any such response to the evaluation form for inclusion in the designer's
1973 qualification file. No public employee or public employer, as defined in section 1 of chapter 258, and no
1974 person shall be liable for an injury or loss to a designer as a result of the completion of a designer
1975 evaluation form as required by this section unless the individual completing such evaluation form has
1976 been found by a superior court of competent jurisdiction to have acted in a willful, wanton or reckless
1977 manner. If a suit is commenced by a designer against any person who has completed a designer evaluation
1978 form as required by this section seeking to recover damages resulting from injury caused by such
1979 evaluation, the public agency for whom such evaluation form was completed or the commonwealth, if
1980 such evaluation was completed for a state agency, shall provide for the legal representation of such

1981 person. Such public agency or the commonwealth, where an evaluation was completed for a state agency,
1982 shall also indemnify such person from all personal financial losses and expenses including, but not
1983 limited to, legal fees and filing costs, if any, in an amount not to exceed \$1,000,000, but no such person
1984 shall be indemnified for losses other than legal fees and filing costs under this section if such person is
1985 found by a court or a jury to have acted in a willful, wanton or reckless manner.

1986 The awarding authority shall provide the designer with a written preliminary evaluation at the completion
1987 of the schematic phase of the project for informational purposes.

1988 Any public agency that fails to complete and submit the designer evaluation form, together with any
1989 written response by any designer, to the division within 70 days of the completion of a project shall be
1990 ineligible for the receipt of any public funds disbursed by the commonwealth for the purposes of public
1991 building or public works projects.

1992 Section 49. (a) The board shall adopt written applicants' criteria for selection of semifinalists and finalists
1993 based upon information obtained under section 48 for each project. The criteria shall include:

1994 (i) prior similar experience;

1995 (ii) past performance on public and private projects;

1996 (iii) financial stability;

1997 (iv) identity and qualifications of the consultants who will work with the applicant on the project; and

1998 (v) any other criteria that the board considers relevant for any project.

1999 (b) Semifinalists may be chosen for each project.

2000 The board shall select at least 3 finalists from among all the applicants, or from the semifinalists selected
2001 under this section, and in doing so may require all the applicants or the semifinalists to:

2002 (i) appear for an interview before the board;

2003 (ii) present a written proposal to the board; or

2004 (iii) participate in a design competition held by the board.

2005 (c) The board shall transmit a list of the chosen finalists to the commissioner. No person or firm debarred

2006 pursuant to section 44C of chapter 149 or disqualified pursuant to section 47 shall be so included as a

2007 finalist. The board shall transmit to the commissioner all material made or received relating to such

2008 recommendation.

2009 The list shall rank the finalists in order of qualification and include a record of the final vote of the board

2010 on the selection; and include a written statement explaining the board's reasons for its choice and its

2011 ranking of the finalists.

2012 (d) The board may delegate its powers and duties under subsection (b) of section 47, subsections (c) and

2013 (d) of section 48, subsections (a) and (b) of section 50 and sections 51 and 52 to panels of less than all the

2014 board members. A panel of not less than 6 members shall be required for selection of designers under this

2015 section, 4 of whom shall be architects or engineers, including at least 1 architect and 1 engineer on that

2016 panel.

2017 (e) For the purposes of chapter 268A and subject to the penalties therein, no member of the board shall

2018 participate in the selection of a designer as a finalist or semifinalist for any project if the member or any

2019 member of his immediate family:

2020 (i) has a direct or indirect financial interest in the award of the design contract to any applicant;

2021 (ii) is currently employed by, or is a consultant to or under contract to an applicant.

2022 (iii) is negotiating or has an arrangement concerning future employment or contracting with any

2023 applicant; or

2024 (iv) has an ownership interest in, or is an officer or director of, any applicant.

2025 Section 50. (a) In the selection of a designer when the fee for design services has been set by the
2026 commissioner prior to the selection process, the commissioner shall appoint a designer from among the
2027 list transmitted to the commissioner under section 49. If the commissioner appoints any designer other
2028 than the one ranked first by the board, the commissioner shall file a written justification of the
2029 appointment with the board.

2030 (b) When the fee for design services is to be negotiated, the commissioner shall review the list transmitted
2031 by the board, and may exclude any designer from the list if a written explanation of the exclusion is filed
2032 with the board. The commissioner shall then appoint a designer based on successful fee negotiation. The
2033 commissioner or persons designated by the commissioner shall first negotiate with the first ranked
2034 designer remaining on the list. Should the commissioner be unable to negotiate a satisfactory fee with the
2035 first ranked designer within 30 days, negotiations shall be terminated and negotiations undertaken with
2036 the remaining designers, 1 at a time, in the order in which they were ranked by the board, until an
2037 agreement is reached. In no event may a fee be negotiated which is higher than a maximum fee set by the
2038 commissioner prior to selection of finalists. Should the commissioner be unable to negotiate a satisfactory
2039 fee with any designer initially selected as a finalist by the board, the board shall recommend additional
2040 finalists in accordance with this chapter. The commissioner may require a finalist with whom a fee is
2041 being negotiated to submit a fee proposal and include with it such information as the commissioner
2042 requires to provide current cost and pricing data on the basis of which the designer's fee proposal may be
2043 evaluated.

2044 (c) All fees shall be stated in designer's contracts and in any subsequent amendment thereto as a total
2045 dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or
2046 services.

2047 (d) Notwithstanding any general or special law to the contrary, all public entities within the
2048 commonwealth, agencies and authorities of the commonwealth and municipal entities within the
2049 commonwealth, including departments, boards, committees or commissions shall be entitled to withhold
2050 up to 5 per cent of contract fees earned and invoiced as part of professional service contracts, during the
2051 life of the contract. Withheld fees shall be held for not longer than 2 invoice periods when the contractor
2052 is permitted to invoice monthly, or until successful completion of the next contract phase or stage when
2053 the contractor is permitted to invoice by project phase or stage. When the work covered by the contract is
2054 completed, all remaining withheld fees shall be paid to the contractor within 2 months from the date of
2055 completion. If the withholdings are not paid to the contractor within the stipulated time limit, the amount
2056 of the withholding in arrears shall be increased at a 12 per cent annual rate.

2057 (e) Notwithstanding any general or special law to the contrary, agencies and authorities of the
2058 commonwealth and municipal entities within the commonwealth, including departments, boards,
2059 committees or commissions, shall pay all outstanding withheld fees on professional service contracts,
2060 when the withholding has been held for longer than 2 invoice periods for active contracts, or that remains
2061 withheld on contracts which have been completed, or for which the work of the contractor has been
2062 completed.

2063 Section 51. (a) When the board has required that applicants list consultants which the applicants may
2064 employ, in no event shall a consultant be used who is debarred pursuant to section 44C of chapter 149 and
2065 any change in or addition to the consultants named in the application and allowed by the board upon
2066 appointment must be approved by the commissioner and reported to the board, along with a written
2067 statement by the designer or construction manager of the reasons for the change.

2068 (b) If the designer's or construction manager's fee is negotiated, the designer or construction manager
2069 shall file a truth-in-negotiations certificate prior to being awarded the contract by the commissioner,
2070 which must be incorporated into the contract. The certificate shall contain:

2071 (i) a statement that the wage rates and other costs used to support the designer's compensation are
2072 accurate, complete, and current at the time of contracting; and

2073 (ii) an agreement that the original contract price and any additions to the contract may be adjusted within
2074 1 year of completion of the contract to exclude any significant amounts if the commissioner determines
2075 that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or
2076 other costs.

2077 (c) The board may specify other special conditions or requirements in selecting a particular applicant as a
2078 finalist. If any change is made by the applicant after appointment relating to such special conditions or
2079 requirements, the change must be approved by the commissioner and reported to the board along with a
2080 written statement by the appointee of the reasons for the change.

2081 (d) Every contract for design services awarded under sections 44 to 58, inclusive, shall include the
2082 following:

2083 (i) certification that the designer or construction manager has not given, offered or agreed to give any
2084 person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or
2085 in connection with, the award of the contract for design services;

2086 (ii) certification that no consultant to or subcontractor for the designer or construction manager has given,
2087 offered or agreed to give any gift, contribution or offer of employment to the designer or construction
2088 manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the
2089 award to the consultant or subcontractor of a contract by the designer or construction manager;

2090 (iii) certification that no person, corporation or other entity, other than a bona fide full time employee of
2091 the designer or construction manager, has been retained or hired by the designer or construction manager
2092 to solicit for or in any way assist the designer or construction manager in obtaining the contract for design
2093 services upon an agreement or understanding that such person, corporation or other entity be paid a fee or
2094 other consideration contingent upon the award of the contract to the designer; and

2095 (iv) certification with respect to contracts which exceed \$10,000 or which are for the design of a building
2096 for which the budgeted or estimated construction costs exceed \$100,000 that the designer has internal
2097 accounting controls as required by subsection (c) of section 39R of chapter 30 and that the designer has
2098 filed and will continue to file an audited financial statement as required by subsection (d) of said section
2099 39R.

2100 (e) A public agency shall not enter into a contract for design services unless the public agency or the
2101 designer has obtained professional liability insurance covering negligent errors, omissions and acts of the
2102 designer or of any person or business entity for whose performance the designer is legally liable arising
2103 out of the performance of the contract. The total amount of such insurance shall at a minimum equal the
2104 lesser of \$1,000,000 or 10 per cent of the project's estimated cost of construction, or such larger amounts
2105 as the public agency may require, for the applicable period of limitations. A designer required by the
2106 public agency to obtain all or a portion of such insurance coverage at his own expense shall furnish a
2107 certificate or certificates of insurance coverage to the public agency prior to the award of the contract. For
2108 purposes of this paragraph only, "public agency" shall have the meaning set forth in section 1.

2109 At the request of the director, a consultant employed by a designer subject to this paragraph shall obtain
2110 and maintain a liability insurance policy covering negligent errors, omissions and acts of such consultant
2111 or of any person or business entity for whose performance the consultant is legally liable arising out of the
2112 performance of the contract for consultant services. The consultant shall furnish a certificate or
2113 certificates of such insurance coverage to the division in the case of a consultant hired by a designer
2114 selected pursuant to section 49 or to a public agency not subject to the jurisdiction of said board prior to
2115 the employment of such consultant by the designer. A liability insurance policy maintained under this
2116 paragraph shall provide for coverage of such type and duration and in such amount as the public agency
2117 shall require.

2118 (f) A designer, construction manager, or programmer who has been determined by the board to have
2119 provided materially false statements or information under this section shall be disqualified by the board
2120 from future work on any project for such time as the board determines is appropriate.

2121 (g) Contracts for design service may include a requirement that the designer be responsible for overseeing
2122 the construction phase of the project.

2123 (h) Awarding authorities in cities and towns may allow a designer who conducted a feasibility study to
2124 continue with the design of a project; but, nothing herein shall prohibit the awarding authorities from
2125 commissioning, at the discretion of the awarding authorities, an independent review, by a knowledgeable
2126 and competent individual or business doing such work, of the feasibility of the designer's work to insure
2127 its reasonableness and its adequacy before allowing the designer to continue on the project.

2128 (i) Contracts for design services shall include a provision that the designer or his consultants shall not be
2129 compensated for any services involved in preparing changes that are required for additional work that
2130 should have been anticipated by the designer in the preparation of the bid documents, as reasonably
2131 determined by the executive head of the public agency responsible for administering the design contract.

2132 For the purpose of this subsection, "public agency" shall have the meaning as set forth in section 1.

2133 Section 52. The commissioner may appoint a designer to perform continued or extended services if the
2134 following conditions are met:

2135 (i) a written statement is filed with the board explaining the reasons for the continuation or extension of
2136 services;

2137 (ii) the program for the design services is filed with the board if one is required by the regulations of the
2138 division; and

2139 (iii) the board approves the appointment of the designer for continued or extended services and states the
2140 reason therefor.

2141 Section 53. (a) Whenever the health or safety of any persons will be endangered because of the time
2142 required for the selection of a designer, programmer or construction manager by the procedures
2143 prescribed by sections 44 to 58, inclusive, or whenever a deadline for action is set on a project by any
2144 court or federal agency which cannot be met if those selection procedures are followed, the commissioner
2145 may declare that an emergency situation exists.

2146 (b) If the commissioner declares that an emergency situation exists, finalist selection may be made by the

2147 board by expedited procedures adopted by regulation by the board.

2148 Section 54. (a) Every contract for design services for any building construction, reconstruction, alteration,
2149 remodeling, or repair estimated to exceed \$100,000 by any city, town, or agency, board, commission,
2150 authority or instrumentality thereof, other than housing authorities and projects requesting funding from
2151 the Massachusetts School Building Authority shall be awarded only after a selection procedure adopted in
2152 writing, prior to publication requesting applications, complying with the purposes and intent of sections
2153 44 to 58, inclusive, and the following requirements:

2154 (i) section 47 regarding public notice;

2155 (ii) the establishment of uniform requirements of information to be submitted by all applicants, a uniform
2156 procedure for the evaluation of all applications to a group of not fewer than 3 finalists, the opportunity to
2157 be afforded equally to all finalists to provide additional information to or appear before the selection
2158 body, and a procedure for the submission of a fee proposal and the negotiation of fees between the
2159 awarding authority and the selected applicant with whom the fee is being negotiated consistent with
2160 subsection (b) of section 50;

2161 (iii) that a written explanation of the reasons for selection including the recorded vote if any was taken be
2162 made public and accompany the notification of award in the awarding authority's records;

2163 (iv) subsection (c) of section 50 regarding the designation of fees in the contract;

2164 (v) that nothing in this section shall be interpreted to require the establishment of a board or to waive or
2165 reduce the requirements of any other applicable law or regulation.

2166 (b) The board shall publish guidelines to assist public agencies not within the board's jurisdiction in the
2167 establishment of a professional and objective designer selection procedure, including a model application
2168 form, consistent with the provisions and intent of sections 44 to 58, inclusive. The board shall publish a
2169 standard designer selection form which shall be used by all cities, towns and public agencies not within
2170 the board's jurisdiction; but, before publishing the standard form, the board shall seek input from the
2171 cities, towns and other public agencies not within the board's jurisdiction. Any fee guidelines
2172 promulgated by the board shall be accompanied by a recommended basic scope of designer's services that

2173 shall reflect the work associated with the fee guidelines. From time to time, and no less frequently than
2174 every 3 years, the board shall review and revise the fee schedule based upon prevailing costs at the time
2175 of such review and revision.

2176 (c) Any city, town or other public agency not otherwise subject to the jurisdiction of the board may
2177 request the board to exercise jurisdiction regarding the selection of applicants to perform design services
2178 for a specified period of time or for a specified project. In such cases, all provisions of sections 44 to 58,
2179 inclusive, shall apply to the board, the applicants and the public agency so requesting.

2180 (d) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or
2181 instrumentality thereof may procure modular buildings in accordance with section 44E of chapter 149.

2182 (e) Notwithstanding subsection (a), a city, town, or agency, board, commission, authority or
2183 instrumentality thereof may procure energy management services in accordance with section 11C of
2184 chapter 25A and regulations promulgated thereunder.

2185 Section 55. The board, any public agency exempted under section 46 and all other governmental units
2186 engaged in the selection of applicants to perform design services but not otherwise subject to the board's
2187 jurisdiction shall keep the following records:

- 2188 (i) all information supplied by or obtained about each applicant;
- 2189 (ii) all actions taken by the board or agency relating to any project;
- 2190 (iii) any other records related to designer selection required by the division.

2191 The records of public agencies exempted under section 46 or not otherwise subject to the jurisdiction of
2192 the board shall be available for inspection by the board or the division.

2193 Section 56. The board shall submit an annual report to the division of capital asset management and
2194 maintenance listing all finalists selected by the board and all awards made pursuant to sections 44 to 58,
2195 inclusive, a summary of the activities and other actions of the board and its staff, and such other items as
2196 the board deems appropriate.

2197 Section 57. The board shall independently adopt procedures and regulations as necessary to implement
2198 the requirements of sections 44 to 58, inclusive. Such procedures and regulations may vary according to

2199 the class of project.

2200 Section 58. (a) For the purposes of this section the following words shall have the following meanings

2201 unless the context clearly requires otherwise:-

2202 "Agency", the Massachusetts Department of Transportation, the Massachusetts Port Authority and the

2203 Massachusetts Bay Transportation Authority.

2204 "Architectural and engineering services", (i) professional services of an architectural or engineering

2205 nature, as defined by state law, which are required to be performed or approved by a person licensed,

2206 registered or certified to provide those services as described herein; (ii) professional services of an

2207 architectural or engineering nature performed by contract that are associated with research planning,

2208 development, design, investigations, inspections, tests, evaluations, consultations, program management,

2209 value engineering, construction, alteration or repair of real property; and (iii) such other professional

2210 services of an architectural or engineering nature, or incidental services, which members of the

2211 architectural and engineering professions and individuals in their employ may logically or justifiably

2212 perform, including studies, investigations, surveying and mapping, soil tests, construction phase services,

2213 drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual

2214 designs, plans and specifications, soils engineering, cost estimates or programs, preparation of drawings,

2215 plans or specifications, supervision or administration of construction contracts, construction management

2216 or scheduling, preparation of operation and maintenance manuals and other related services.

2217 "Firm", an individual, firm, partnership, corporation, association or other legal entity authorized by law to

2218 practice the professions of architecture, engineering, land surveying, landscape architecture,

2219 environmental science, planning or program management.

2220 "Public works project", a capital improvement project or a design, study, plan, survey or new or existing

2221 program activity of an agency, including the development of new or existing programs that require

2222 architectural, engineering or related professional services; provided, however, that "public works project"

2223 shall not include a public building construction project undertaken under chapters 7, 149 and 149A.

2224 "Related professional services", (i) professional services, including land surveying, landscape

2225 architecture, environmental science and planning, which are required to be performed or approved by a
2226 person licensed, registered or certified to provide such services as described herein; (ii) professional
2227 services performed by contract that are associated with research, planning, development, design,
2228 investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive
2229 planning program management, value engineering, construction, alteration or repair of real property; and
2230 (iii) such other professional services, or incidental services, which members of the related professions as
2231 described herein and individuals in their employ may logically or justifiably perform, including master
2232 plans, studies, surveys, soil tests, cost estimates or programs, preparation of drawings, plans or
2233 specifications, supervision or administration of construction contracts, construction management or
2234 scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering,
2235 drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related
2236 services; provided, however, that nothing herein shall be construed to constitute a regulation or oversight
2237 of any designated firms or identified professionals' services.

2238 (b) For those agencies that prequalify architectural, engineering and related services, the agency shall
2239 require firms engaged in the lawful practice of their profession to submit a statement of qualifications and
2240 performance data every 2 years to the agency pursuant to the terms and schedule as determined by the
2241 agency. Agencies that prequalify shall have the option of selecting firms from their prequalified list of
2242 firms based on the agency policies and without further publically advertising the selection.

2243 (c) Whenever a public works project requiring architectural, engineering or related professional services
2244 is to be advertised by an agency, the agency shall provide not less than 14 days advance notice published
2245 in a professional services bulletin or advertised on the official agency website setting forth the public
2246 works project and services to be procured. The professional services bulletin shall be made available to
2247 each firm that requests the information. The professional services bulletin shall include a description of
2248 each public works project and shall state the time and place for an interested firm to submit a statement of
2249 qualifications and, if required by the public notice, a letter of interest and technical proposal. If the agency
2250 determines that a sole source selection of a qualified firm is in the best interest of the agency, then the

2251 public notice provisions of this subsection shall not apply.

2252 (d) An agency shall evaluate the firms submitting statements of qualifications, taking into account
2253 qualifications, letters of interest and technical proposals, and the agency may consider, but not be limited
2254 to, considering, ability of professional personnel, past record and experience, performance data on file,
2255 willingness to meet time requirements, location, workload of the firm and any other qualifications based
2256 on factors that the agency may determine in writing are applicable. The agency may conduct discussions
2257 with, and require presentations by, firms deemed to be the most qualified regarding their qualifications,
2258 approach to the public works project and ability to furnish the required services. An agency shall not,
2259 prior to selecting a firm for negotiation, seek formal or informal submission of verbal or written estimates
2260 of costs or proposals in terms of dollars, hours required, percentage of construction cost or any other
2261 measure of compensation.

2262 (e) (1) An agency shall select architects, engineers and related professional firms on the basis of
2263 qualifications for the type of professional services required, and on technical proposals, if submitted. An
2264 agency may solicit or use pricing policies and proposals or other pricing information to determine
2265 consultant compensation only after the agency has selected a firm and initiated negotiations with the
2266 selected firm.

2267 (2) The procedures that an agency creates for the screening and selection of firms shall be within the sole
2268 discretion of the agency and may be adjusted to accommodate the agency's scope, schedule and budget
2269 objectives for a particular public works project.

2270 (3) The decision of an agency that has complied with this chapter shall be final and binding.

2271 (f) (1) The agency and the selected firm shall discuss and refine the scope of services for the public works
2272 project and shall negotiate conditions including, but not limited to, compensation level and performance
2273 schedule based on scope of services. The compensation level paid shall be reasonable and fair to the
2274 agency as determined solely by the agency. In making such determination, the agency shall take into
2275 account the estimated value of the services to be rendered and the scope, complexity and professional
2276 nature thereof.

2277 (2) If the agency and the selected firm are unable for any reason to negotiate a contract at a compensation
2278 level that is reasonable and fair to the agency, the agency shall, in writing, formally terminate negotiations
2279 with the selected firm. The agency shall then negotiate with the second ranked most qualified firm. The
2280 negotiation process shall continue in this manner through successive ranked firms until an agreement is
2281 reached or the agency terminates the consultant contracting process.

2282 (g) This section shall not apply to the procurement of architectural, engineering and related professional
2283 services by agencies: (i) when an agency determines in writing that it is in the best interest of the agency
2284 to proceed with the immediate selection of a firm; (ii) in emergencies when immediate services are
2285 necessary to protect the public health and safety; or (iii) when these services are to be provided as part of
2286 a design-build project pursuant to sections 14 to 21, inclusive, of chapter 149A.

2287 (h) Each agency shall evaluate the performance of each firm upon completion of a contract. The
2288 evaluation shall be made available to the firm which may submit a written response.

2289 Section 59. Every appropriation or authorization for the design or construction of a building project for
2290 which a state agency is the using agency shall be deemed to require the satisfactory completion of a study
2291 or program before any services for the design or construction of such project may be contracted for,
2292 performed by contract or otherwise, or funds allotted, encumbered or expended therefor, unless such
2293 appropriation or authorization specifically states that no such study or program need or shall be done.

2294 No provider of design services for any building project for which a state agency is the using agency shall
2295 be selected by the designer selection board or by the administering agency and no design services shall be
2296 performed for or by such administering agency for any building project for which the satisfactory
2297 completion of a study program is required prior to the design or construction of that project, unless and
2298 until: (a) said study, program or where appropriate, both, have been satisfactorily completed; (b) the using
2299 agency certifies in writing to the commissioner of capital asset management and maintenance that the
2300 study, program, or where appropriate both, correspond to the current needs of that agency, including its
2301 current long term capital facilities development plan; (c) the commissioner requests that one or more of
2302 the directors of the office of programming, office of project management, or office of facilities

2303 management review the study or program, or where appropriate, both, and the director or directors certify
2304 in writing to the commissioner that the study, program, or where appropriate both, reflect the using
2305 agency's needs as stated, that they provide an accurate estimate of the project requirements, cost and
2306 schedule, that the project can be accomplished within the appropriation or authorization for that project,
2307 and recommends proceeding with design, construction, or where appropriate, both; and (d) the
2308 commissioner of capital asset management and maintenance certifies in writing to the secretary of
2309 administration and finance that the study, program, or where appropriate both, are in conformity with the
2310 scope and purpose of the appropriation or authorization for the project and legislative intent in regard to
2311 long range capital facility plans for the using agency, and approves proceeding with design, construction,
2312 or where appropriate, both.

2313 If either the director or directors whose review is requested or the commissioner of capital asset
2314 management and maintenance should fail to so certify, recommend, or approve, the commissioner shall
2315 forthwith send notice of his decision and the reasons therefor to the secretary of administration and
2316 finance and to the house and senate committees on ways and means.

2317 Section 60. No allotment, encumbrance, or expenditure of funds appropriated or authorized for the design
2318 of a capital facility project shall be approved by the comptroller unless the executive head of the agency
2319 administering the project, or other person provided for by statute, certifies in writing that the design work
2320 is or shall be such as to specify a project that can be accomplished: (a) within the appropriation or
2321 authorization for the project or within the project cost limits specified by the appropriation or
2322 authorization; and (b) without substantial deviation from any: (i) study or program which must be
2323 prepared in accordance with section 59 or (ii) any other pre-design document which must be prepared in
2324 accordance with any other statute, appropriation or authorization or administrative directive consistent
2325 therewith. In no event shall the design work be such as would result in a change in the number of square
2326 feet to be constructed in the project of more than 10 per cent from the number specified in the study,
2327 program or other pre-design document referred to in subclauses (i) and (ii) of clause (b). No state agency,
2328 as defined by section 1, administering a capital facility project shall enter into any contracts or incur any

2329 other obligations or cause to be performed design services for that project if such would result in the
2330 completion of a project which cannot be accomplished: (a) within the appropriation or authorization for
2331 the project or within the project cost limits specified by the appropriation or authorization, and (b) without
2332 substantial deviation for (i) any study or program which must be prepared in accordance with section 59;
2333 or (ii) any other pre-design planning document which must be prepared in accordance with any other
2334 statute, appropriation or authorization or administrative directive consistent therewith. In no event shall
2335 the design work be such as would result in a change in the number of gross square feet to be constructed
2336 in the project of more than 10 per cent from the number specified in the study, program or other pre-
2337 design document referred to in subclauses (i) and (ii) of clause (b).

2338 Section 61. No allotment, encumbrance, or expenditure of funds appropriated or authorized for the
2339 construction of a capital facility project shall be approved by the comptroller unless the executive head of
2340 the agency administering the project, or other person provided for by statute, certifies in writing that the
2341 construction work can be accomplished: (a) within the appropriation or authorization for the project, and
2342 (b) without substantial deviation from: (i) any study or program which must be prepared in accordance
2343 with section 59, or (ii) any other pre-design document which must be prepared in accordance with any
2344 other statute, appropriation or authorization or administrative directive consistent therewith. In no event
2345 shall the construction work be such as would result in a change in the number of square feet to be
2346 constructed in the project of more 10 ten per cent from the number specified in the study, program or
2347 other predesign document referred to in subclauses (i) and (ii) of clause (b).

2348 No state agency, as defined by section 1, administering a facility administering project shall enter into any
2349 contracts or incur any obligations or cause to be performed construction of that project if such would
2350 result in the completion of a project which cannot be accomplished (a) within the appropriation or
2351 authorization for the project, and (b) without substantial deviation from: (i) any study or program which
2352 must be prepared in accordance with section 59, or (ii) any other pre-design document which must be
2353 prepared in accordance with any other statute, appropriation or authorization or administrative directive
2354 consistent therewith. In no event shall the construction work be such as would result in a change in the

2355 number of square feet to be constructed in the project of more than 10 per cent from the number specified
2356 in the study, program or other predesign document referred to in subclauses (i) and (ii) of clause (b).

2357 Section 62. The governor and the commissioner of capital asset management and maintenance in their
2358 long range capital facilities development plans and capital budget requests and the secretaries of the
2359 various executive offices in their review and recommendations with regard to such plans and requests
2360 may include among them plans and requests for 1 or more contingency, or other lump-sum or reserve
2361 accounts, including but not limited to planning, design and construction contingency, preventive
2362 maintenance, emergency repair, energy conservation, life-safety, and architectural barrier funds or
2363 accounts. Each shall include in their plans and request recommendations as to the purpose of such funds
2364 or accounts and the priorities and procedures for allocating the monies kept therein.

2365 The commissioner of capital asset management and maintenance shall forthwith establish priorities and
2366 procedures for allocating such funds in conformity with the terms of the appropriation authorizing them
2367 and legislative intent in regard to long range capital facilities development plans. The commissioner shall
2368 forthwith submit copies of the priorities and procedures so established to the secretary of administration
2369 and finance and to the house and senate committees on ways and means.

2370 Unless otherwise provided for in the appropriation authorizing such funds or accounts or other applicable
2371 law and in conformity therewith and the priorities and procedures established by the commissioner of
2372 capital asset management and maintenance, the monies kept therein shall not be allocated unless and
2373 until:

2374 (a) the using agency, whether or not it is the agency requesting the funds for the proposed project,
2375 certifies in writing to the commissioner of capital asset management and maintenance that the project
2376 corresponds to the current needs of the using agency, including its current long range capital facilities
2377 development plan;

2378 (b) the commissioner requests that 1 or more of the directors of the office of programming, office of
2379 project management, or the office of facilities management review the project proposal, and the director
2380 or directors certify in writing to the commissioner of capital asset management and maintenance that the

2381 project proposal reflects the agency's needs as stated, that it provides an accurate estimate of the project
2382 requirements, cost and schedule, and that the project can be accomplished within the limits of the funds
2383 requested;

2384 (c) The commissioner of capital asset management and maintenance certifies in writing to the secretary of
2385 administration and finance and to the house and senate committees on ways and means that the project
2386 proposal has been evaluated in conformity with the terms of the appropriation or authorization of the fund
2387 or account and the priorities and procedures promulgated by him pursuant thereto and approves the
2388 allocation.

2389 The commissioner of capital asset management and maintenance shall, upon his certification, file copies
2390 of the project proposal and other supporting documents, his certification and those of the director or
2391 directors whose review is requested and the agency requesting such funds with the secretary of
2392 administration and finance and with the house and senate committees on ways and means.

2393 If either the director or directors whose review is requested or the commissioner of capital asset
2394 management and maintenance should fail to give the aforementioned certifications or approvals, the
2395 commissioner shall forthwith send notice of his decision and the reasons therefor to the secretary of
2396 administration and finance and to the house and senate committees on ways and means.

2397 The commissioner of capital asset management and maintenance shall by February 15 of each year
2398 prepare and submit to the secretary of administration and finance and to the general court a report
2399 containing separate sections summarizing the disposition and the status of the funds or accounts and
2400 descriptions of all projects for which monies from such fund have been allocated.

2401 Section 63. There is established and set up on the books of the commonwealth a separate fund, consisting
2402 of monies appropriated to the fund by the general court and income derived from the investment of
2403 monies appropriated to the fund, known as the capital facility planning fund.

2404 Allocation of monies from such fund shall be made according to section 62. The purpose of the capital
2405 facility planning fund shall be to provide monies for the planning of capital facility projects by state
2406 agencies other than counties. Priority in the allocation of monies from such fund shall be given to

2407 projects:

2408 (i) which are included in any long range capital facilities development plan previously approved by the
2409 general court or in any master plan, consistent with such long range plans, previously approved by the
2410 commissioner of capital asset management and maintenance or

2411 (ii) whose rapid progress is indicated by statutes which provide for capital facility projects to advance
2412 specific agency programs, goals or objectives; and for which the delay in seeking monies through the
2413 normal capital budget process provided for by this chapter would cause a serious loss in use of the
2414 proposed capital facility if it were unavailable or cause a percentage increase in total project cost
2415 substantially larger than that for other projects at a comparable stage of development.

2416 Monies from the capital facility planning fund may be allocated, in accordance with priorities stated
2417 above, for the preparation of environmental impact reports to comply with the requirements of chapter 12
2418 and chapter 30.

2419 Monies from the capital facility fund may be allocated, in accordance with the priorities stated above, for
2420 options to purchase land or buildings which will be used for capital facility projects specifically identified
2421 in the allocation request.

2422 If monies spent on a capital facility project are allocated from the capital facility planning fund and the
2423 funds for the acquisition of a site for or the design or design and construction of such project are
2424 appropriated or authorized then a sum of money equal to that allocation shall be deducted from the
2425 amount so appropriated or authorized and returned to the Capital Facility Planning Fund.

2426 In no case shall a request for monies or monies be allocated for projects for which a similar request is
2427 currently being considered according to the capital budget process for the current fiscal year provided for
2428 by this chapter or which was so considered during the capital budget process for the previous fiscal year
2429 and failed to receive an appropriation or authorization.

2430 Requests for monies from the capital facility planning fund may be made by state agencies other than
2431 counties and only after approval of such requests by the secretary of the executive office in which that
2432 agency is located, except in the case of a public institution of higher learning, only after approval by the

2433 board of higher education.

2434 Section 64. Each public agency other than a city or town shall prepare a long range capital facilities
2435 development plan. Such plan shall include projections at least 5 years from the date of submission of the
2436 plan. Each such public agency shall revise the plan annually or at such other time as the commissioner of
2437 capital asset management and maintenance may require, or as otherwise mandated by statute or
2438 appropriation act. Each plan or revision thereof shall be submitted to the commissioner at such time or
2439 according to such schedule as the commissioner shall specify. Each state agency the authorization of
2440 which is otherwise required for capital facility projects of 1 or more cities and towns shall include in its
2441 plan required by this section and its capital facility budget request required by section 66 the information
2442 about such projects specified by those sections. The state agency may request from cities and towns the
2443 information needed to complete the above-mentioned plan and budget and said information shall be
2444 promptly submitted to the state agency. To the maximum extent feasible the commissioner and state
2445 agencies shall coordinate the timing and content of their requests for information to minimize duplication
2446 of reporting. In the case of local operating agencies as defined in section 1 of chapter 121B, any such
2447 plan, revision, capital facility budget, or capital facility budget requests required by this section or section
2448 66 of this chapter shall be prepared and submitted by the department of housing and community
2449 development.

2450 After consultation with the governor and the secretary of administration and finance, the commissioner
2451 shall, in a timely manner, prepare and send to public agencies a capital facility planning policy statement
2452 to inform in the formulation of their long range capital facilities development plans and capital facility
2453 budget requests.

2454 The commissioner may provide guidance and technical assistance to those public agencies lacking
2455 sufficient resources to prepare such plans. The commissioner shall specify the information required, the
2456 manner or preparation of the plan, and the form in which it is to be provided.

2457 Section 65. In formulating requirements for the information to be provided in long-range capital facilities
2458 development plans, the commissioner of capital asset management and maintenance shall require at least

2459 the following: the history, legislative authority and major responsibilities of the public agency as defined
2460 by law and by administrative rule, regulation or directive; the programs being carried out by each as they
2461 affect capital facility needs; an appraisal of the responsibilities, objectives and current programs and
2462 evaluation of the factors expected to influence future programs; tabulations of the numbers of people
2463 served by and staffing the agency and its subunits; a detailed description of the land and facilities
2464 currently owned, leased or used by the agency to the extent that such description has not previously been
2465 submitted to the commissioner as part of the real property inventory maintained by him and an estimate of
2466 their utilization in relation to current and future programs.

2467 In formulating requirements for each long-range capital facilities development plan, the commissioner
2468 shall require at least the following: a determination of the capital facility needs based on the programs,
2469 population to be served, and the adequacy of existing facilities; a proposed capital facility project
2470 schedule and an explanation of the relationship between the need for each project and the stated
2471 programs; a summary of the schedule of needs for funds; a tabulation of the estimated staffs required for
2472 such new or modified programs and facilities; a tabulation of such projects showing the effect upon
2473 staffing, operating, and maintenance expenses; and a description of the geographic and spatial location of
2474 the facility relative to other facilities or land of the agency or its subunits.

2475 In formulating requirements for any revisions of long-range capital facilities development plans the
2476 commissioner shall require at least the following: a statement of the changes in the agency's
2477 responsibilities, objectives and programs; revised estimates of institutional population and staff, and
2478 geographic and spatial descriptions of capital facilities; and changes in capital facility requirements as
2479 they would have effect at least 5 years from the date of submission.

2480 Section 66. Each public agency other than cities and towns shall prepare and submit to the commissioner,
2481 in addition to its long-range capital facilities development plan or revision thereof, an annual capital
2482 facility budget at such time as the said commissioner shall require.

2483 In preparing both long-range capital facilities development plans, and revisions thereof, and capital
2484 facility budget requests, the agency shall provide timely public notice of such proposed plans and requests

2485 and reasonable opportunity for potential users and staff of the facilities controlled or to be controlled by
2486 the agency to comment thereon.

2487 The long-range capital facility development plans and capital facility budget requests submitted by the
2488 agency to the division of capital asset management and maintenance shall contain a summary of those
2489 comments and a statement of the extent to which they are reflected in the proposed plans and requests.
2490 The commissioner may provide guidelines to agencies for soliciting and reporting on such views.

2491 The commissioner may, at his discretion, provide guidance and technical assistance to agencies without
2492 sufficient resources to prepare capital facility budget requests. He shall specify the information being
2493 sought, how it might be prepared and the form in which it is to be provided.

2494 The commissioner shall provide for a format and content of long-range capital facilities development
2495 plans and capital facility budget requests which is, to the maximum extent feasible, consistent with that
2496 provided for the operating budget by the director of the fiscal affairs division within the executive office
2497 for administration and finance.

2498 Any public agency may include among its capital facility budget requests, ones for appropriations or
2499 authorizations for a class or classes of similar or related capital facility projects. Such request shall
2500 include a statement of (a) how the class of projects is defined; (b) the reasons for requesting
2501 appropriations or authorizations for a class of projects rather than individual projects; (c) the priorities and
2502 procedures for allocating the appropriated or authorized monies among the class of possible projects,
2503 making reference to and submitting copies of any studies, surveys, plans, analyses and other documents
2504 from which criteria for allocation are to be derived; and (d) a proposed initial allocation of the
2505 appropriated or authorized monies based on the suggested priorities, procedures and criteria.

2506 In formulating requirements for capital facility budget requests for individual projects, the commissioner
2507 shall include at least the following: (a) a concise title description of the project; (b) the location of the
2508 project and its site in relation to any existing facilities in close proximity; (c) the estimated schedule for
2509 completion of the project including the dates upon which the design and construction of the project are
2510 estimated to be commenced and completed and the facility occupied or used; (d) a description of the

2511 project and what it involves, appending any planning documents, accurate summaries of design
2512 documents and any other documents prepared for or pertaining to that project, if not previously submitted
2513 to the commissioner; (e) the useful life of the project before replacement would be necessary; (f) the
2514 current status of the plans and site for the project; (g) the status of utilities required for the project; (h) the
2515 relationship of the project to the long range capital facilities development plan; (i) the total project cost;
2516 (j) the effect of the proposed project on annual operating costs (including maintenance costs); (k) the
2517 proposed source of funds; and (l) an explanation of the need for the proposed project. The description of
2518 the project shall identify any and all previously approved appropriations or authorizations pertaining to
2519 the proposed or earlier phases of the project; the phase or phases approved, in progress, and completed,
2520 the estimated or final cost of each phase of the project through completion, and the sum of money
2521 permitted to be expended on the project as so approved. To assist his staff and user agencies in
2522 preparation and review of long-range plans and requests, the commissioner shall establish a file of
2523 approved appropriations and authorizations of all projects pertaining to each state-owned capital facility.
2524 The total project cost shall include at least the following items: the cost of all real estate, properties, rights
2525 and easements acquired, utility services, site development; the cost of construction and the initial
2526 furnishing thereof; all architectural and engineering and legal expenses, the cost of surveys and plans and
2527 specifications; and such other expenses as are necessary or incident to determining the feasibility or
2528 practicability of any project. The estimate of the total project cost shall be based on the assumption that
2529 the project will be undertaken and completed according to the estimated schedule. Included in the
2530 estimate shall be a statement of its accuracy. The estimate of the effect of the proposed project on annual
2531 operating costs shall be based on the estimated date of use or occupancy of the facility. In the proposal for
2532 source of funds, there shall be included a statement of what federal funds are potentially available, what
2533 efforts are necessary and have been or must be made to obtain them, or why they cannot be obtained.
2534 Section 67. Copies of the proposed plans and requests shall be submitted simultaneously to the
2535 commissioner, the secretaries of all executive offices, the director of the fiscal affairs division within the
2536 executive office for administration and finance, the state treasurer, the commissioner of revenue and the

2537 house and senate committees on ways and means. The secretaries shall submit to the commissioner of
2538 capital asset management and maintenance a report on the consistency of any public agency's plans and
2539 requests with the programs and policies of the executive office on which it is located, except in the case of
2540 a public institution of higher learning, the board of higher education, including the secretary's
2541 recommendations as to those plans and requests. Prior to making their reports, each secretary shall
2542 conduct public hearings, for which each secretary shall give 5 days public notice prior thereto, on the
2543 secretary's analysis and recommendations as to those plans and requests. Any secretary, when requested
2544 by the commissioner, shall submit to the commissioner a report on the impact of the specific statutory
2545 mission of the secretariat of the plans and request of any public agencies not located within his secretariat.
2546 Each secretary shall furnish to the house and senate committees on ways and means and the house and
2547 senate committees on post audit and oversight, copies of all such plans, requests and reports.
2548 The director of the bureau of programming, director of the office of project management or the director of
2549 the office of facilities management, as the commissioner directs, shall report to him as to the technical
2550 feasibility, cost, and schedule of proposed building projects; the technical, financial, and related
2551 requirements for the operation and maintenance of such buildings upon completion of the proposed
2552 projects; where relevant, the efficacy and efficiency of the proposed project in relation to current and
2553 projected available space and current and projected standards for the allocation and utilization of space;
2554 the accuracy and adequacy of any planning and design documents and any other documents prepared in
2555 relation to the stated needs, and as to any other matters which the commissioner of capital asset
2556 management and maintenance may require relative to his evaluation of such plans and requests. At the
2557 request of said commissioner of capital asset management and maintenance, the head of the public agency
2558 which administers or would administer a capital facility project, other than a building project, or
2559 consultants hired by him for that purpose, or members of said commissioner's staff shall report to him as
2560 to the technical feasibility, cost and schedule of that project; the technical, financial, and related
2561 requirements for the operation and maintenance of such facilities upon completion of the proposed
2562 projects; where relevant, the proposed project in relation to current and projected available facilities of a

2563 similar kind; the accuracy and adequacy of any planning documents, accurate summaries of design
2564 documents and any other documents prepared in relation to stated needs, and as to any other matters
2565 which said commissioner may require relative to his evaluation of such plans and requests.

2566 The director of the fiscal affairs division within the executive office for administration and finance shall
2567 report in writing to said commissioner of capital asset management and maintenance on the impact of
2568 proposed agency plans and requests, based on the stated and projected overall agency programs, on the
2569 agency's operating budgets for the next 5 years or for such longer period as said commissioner shall
2570 request. The commissioner of the department of revenue shall report in writing to said commissioner of
2571 capital asset management and maintenance on the impact of proposed agency plans and requests on their
2572 requirements for and production of revenue for at least the next 5 years or for such longer period as said
2573 commissioner of capital asset management and maintenance shall request. The reports of the director of
2574 the fiscal affairs division within the executive office for administration and finance and the commissioner
2575 of the department of revenue shall be sent to the state treasurer. The state treasurer may, if requested by
2576 said commissioner of capital asset management and maintenance, report in writing to said commissioner
2577 on the impact of all plans and requests, separately and as a whole on the financial health of the
2578 commonwealth and make such recommendations as to the form and nature of the financing as the
2579 treasurer deems necessary.

2580 Copies of the proposed plans and requests shall in a timely manner be submitted to each of the regional
2581 planning agencies established pursuant to chapter 40B for their review. They shall submit to said
2582 commissioner of capital asset management and maintenance a statement of their comments and
2583 recommendations, including those of cities and towns in the region which are affected by such plans and
2584 requests.

2585 Said commissioner of capital asset management and maintenance may request such other reports from
2586 public agencies as said commissioner may deem necessary to fulfill his responsibilities for the integration
2587 and coordination of capital facility projects.

2588 Section 68. The commissioner of capital asset management and maintenance shall study and review all

2589 long range capital facility development plans and capital facility budget requests and reports pertaining
2590 thereto filed with him as provided by sections 64, 65, 66 and 67, and shall make such investigations as
2591 will enable him to prepare a capital facility budget for the governor. The commissioner shall include in
2592 such budget an integrated and comprehensive long range capital facilities development plan and capital
2593 facility budget request and such other recommendations as the governor shall determine upon. The capital
2594 facility budget shall embody all plans, estimates, requests, and recommendations submitted to the
2595 commissioner in accordance with sections 64, 65, 66 and 67. The capital facility budget shall be classified
2596 and designated to present at least the same kind and quality of information as are required of plans and
2597 requests by sections 64, 65, 66 and 67. The commissioner shall include an evaluation of the proposed plan
2598 and budget request in terms of the capital facilities planning policy statement and any revisions thereof
2599 the commissioner proposes.

2600 The governor in his capital facility budget and the commissioner of capital asset management and
2601 maintenance, in his recommendation to the governor of a capital facility budget, shall include in such
2602 requests for each building project contained therein, for which the using agency is a state agency, a
2603 recommendation as to the need for and where appropriate, a request for, a study and program as a
2604 prerequisite to contracting for, performance of, or allotment or expenditure of funds for any design or
2605 construction-related activities. If a study or program is not recommended the governor and commissioner
2606 shall include the reasons therefor. They shall also include a recommendation as to the mode of
2607 procurement of such facility, including but not limited to, sequential, construction management, turnkey,
2608 design/build procurement, and the phasing of such procurement, including but not limited to approval of
2609 design and construction stages as separate or combined phases, which will most efficiently, economically
2610 and best serve the interests of the commonwealth. When an alternative mode of procurement is
2611 recommended, the governor and commissioner shall also recommend the method by which design and
2612 construction services shall be procured for such project, provided that such method shall be compatible
2613 with the policies and procedures for the selection of designers in sections 44 to 58, inclusive, and with the
2614 policies and procedures for the selection of contractors in sections 44A to 44M, inclusive, of chapter 149,

2615 to the extent feasible. If the governor or the commissioner should recommend a mode of procurement
2616 other than the sequential mode or a phasing of procurement other than approval of design and
2617 construction as a combined phase, each shall state in detail the reasons therefor.
2618 Furthermore, their requests shall contain a statement as to the expected useful life of the facility from the
2619 date of construction, renovation, acquisition, or other procurement; a statement of the proposed source of
2620 funds; where relevant, a recommendation as to the form and scheduling of financing of said project; and a
2621 recommendation as to the date upon which the authorization for the expenditure of the funds should
2622 expire. If the governor or the commissioner of capital asset management and maintenance should
2623 recommend a means and form of financing of the project such that the term of repayment exceed the
2624 expected useful life of the project, the governor and commissioner shall state in detail the reasons
2625 therefor. The governor and the commissioner shall transmit therewith a statement showing the total
2626 indebtedness proposed to be incurred for each capital facility project and the fund to be charged therefor,
2627 and the total cost of financing said project according to the recommended form and scheduling of such
2628 financing. The governor and the commissioner shall also transmit therewith a statement relative to the
2629 condition of the state debt, including an analysis of the impact of the proposed capital facility budget,
2630 including the long range capital facilities plan, on the financial health of the commonwealth. Such
2631 statement shall, where appropriate, include reference to the impact of obligations of public agencies
2632 which are guaranteed by or are contingent liabilities of the commonwealth.

2633 Section 69. The governor's and the commissioner of capital asset management and maintenance capital
2634 facility budget shall include provision for establishment of a design and construction contingency reserve
2635 account, the purpose of which shall be to provide monies for the design and construction of capital facility
2636 projects by state agencies which, because of unforeseeable circumstances, not within the contemplation of
2637 the using or the administering agency, and for justifiable reasons, would cause the project cost to exceed
2638 the sums then appropriated or authorized therefor. Allocation of monies from such reserve account shall
2639 be made according to section 62. Priority in the allocation of monies from such account shall be given to
2640 projects for which the delay in seeking monies through the normal capital budget process provided for by

2641 this chapter would cause a serious loss in use of the capital facility if it were unavailable when needed or
2642 cause a percentage increase in total project cost substantially larger than that for other projects at a
2643 comparable stage of progress.

2644 In no case shall a request for monies be made or monies be allocated for projects for which a similar
2645 request is currently being considered according to the capital budget process for the current fiscal year
2646 provided for by this chapter, or which was so considered during the capital budget process for the
2647 previous fiscal year and failed to receive an appropriation or authorization. Further, in no case shall a
2648 request for monies be made or monies be allocated if as a result of the review provided for by section 62
2649 the commissioner of capital asset management and maintenance finds (a) that the proposal for use of such
2650 monies will result in a substantial deviation from any study or program for the project most recently
2651 approved by him or from any design for the project most recently approved by the administering agency
2652 or (b) that the proposal for use of such monies will result in a cumulative increase in the number of gross
2653 square feet to be constructed in the project in excess of 10 per cent of the number most recently specified
2654 in an appropriation or authorization for the project.

2655 Requests for monies from the design and construction contingency reserve account may be made by state
2656 agencies which are the using agencies of those projects.

2657 In establishing priorities and procedures for allocation of monies from the design and construction reserve
2658 account pursuant to section 62, the commissioner of capital asset management and maintenance shall
2659 establish specific limits for the amount of money which may be allocated from the account for any
2660 particular project, the amount which may be allocated for the construction of any particular project
2661 excluding price inflation contingencies, and the amount which may be allocated for the construction of
2662 any particular project for price inflation contingencies. In no event shall the cumulative amount allocated
2663 from the account to any one capital facility project exceed 10 percentum of the total cost specified by the
2664 appropriation or authorization for that project.

2665 Section 70. The governor's and the commissioner of capital asset management and maintenance capital
2666 facility budget shall include provisions for establishment of an emergency repair reserve account, the

2667 purpose of which shall be to provide monies for the performance of repair projects of such a nature that
2668 funding through the capital budget process provided for by this chapter would be burdensome. Allocation
2669 of monies from such reserve accounts shall be made according to the provisions of section 62. Priority in
2670 the allocation of monies from such fund shall be given as follows:

2671 (1) top priority shall be given to funding requests for projects designed to remedy clear and present
2672 dangers to the health and safety of the users of the facility in question;

2673 (2) secondary priority shall be given to funding requests for projects which would prevent imminent
2674 destruction or damage of property or equipment beyond reasonable repair; and

2675 (3) third priority shall be given to funding requests for projects, that would restore use of a facility or part
2676 of a facility to its user, where the loss of use has seriously disrupted the agency's program functions.

2677 In no case shall a request for monies be made or monies be allocated for projects for which a similar
2678 request was considered during the capital budget process for the previous year as provided for by this
2679 chapter, and which failed to receive an appropriation or authorization.

2680 Requests for monies from the emergency repair reserve account may be made by state agencies other than
2681 counties and by the office of facility management.

2682 Section 71. All requests and recommendations for appropriations or authorizations for expenditures by the
2683 commonwealth

2684 that pertain to capital facility projects shall be studied by the commissioner with reference to any current

2685 long range capital facility development plans proposed in accordance with the requirements of sections

2686 64, 65, 66 and 67. The commissioner shall consider the effects upon the policies, programs, and priorities

2687 with regard to which the commissioner is required to report in accordance with section 73 and with

2688 reference to any other matters which the commissioner requires to be reported to him in his review and

2689 evaluation of capital facility budget requests by public agencies in accordance with the provisions of

2690 sections 64, 65, 66, 67 and 68. After such review and study, the commissioner shall promptly prepare and

2691 submit his recommendations to the general court.

2692 The commissioner shall promptly review any petition, motion or amendment introduced in either chamber

2693 of the general court which makes a provision for a capital facility project. During such review the
2694 commissioner shall study the necessity, desirability, and relative priority of such capital facility project by
2695 reference to any current long range capital facilities development plans proposed in accordance with the
2696 requirements of sections 64, 65, 66, 67 and 68. The commissioner shall consider the effects upon the
2697 policies, programs, and priorities with regard to which the commissioner is required to report in
2698 accordance with section 73, and with reference to any other matters which the commissioner requires to
2699 be reported to him in his review and evaluation of capital facility budget requests by public agencies in
2700 accordance with the provisions of sections 64, 65, 66, 67 and 68. After such review and study the
2701 commissioner shall promptly prepare and forward his recommendation on the petition, motion, or
2702 amendment to the chamber in which it was introduced and where it is pending.

2703 Section 72. The commissioner shall, each year, no later than 30 days after the governor submits the
2704 budget in accordance with the provisions of section 71, submit to the governor and to the general court a
2705 report which shall include, but not be limited to, the following: an evaluation of the effect of the capital
2706 facility budget, and the implementation of the proposed long range capital facilities development plan
2707 upon important policies, programs, and priorities mandated by the general court or established by the
2708 governor in accordance with law such as impact on the environment, energy conservation, preventative
2709 maintenance, architectural barriers, and the effective coordination of such policies, programs, and
2710 priorities with those of the federal government to assure the maximum benefit to the commonwealth from
2711 such federal programs.

2712 No later than an additional 30 days thereafter, the commissioner shall submit to the governor and to the
2713 general court a similar report on the impact of and the progress made in the implementation of long range
2714 capital facilities plans and previously authorized capital facility projects.

2715 SECTION 75. Section 1 of chapter 9 of the General Laws, as appearing in the 2010 Official Edition, is
2716 hereby amended by striking out, in lines 4 and 6, the words “and council”.

2717 SECTION 76. Said chapter 9 is hereby further amended by inserting after section 4 the following 8
2718 sections:-

2719 Section 4A. The state secretary shall, at the close of each regular session of the general court, collate and
2720 cause to be printed in a single volume the following:

2721 (1) All acts and resolves passed at such session.

2722 (2) All amendments to the constitution referred at such session to the next general court and all such
2723 amendments acted upon at such session and to be submitted to the people at the next state election.

2724 (3) All acts and resolves passed at any special session of the general court, except a general revision of the
2725 statutes, and not theretofore published in any preceding annual volume.

2726 (4) In the volume of the year immediately following a state election, all constitutional amendments and
2727 proposed laws approved by the people at said election.

2728 (5) A statement in bold type at the conclusion of each law as printed, or in a postscript at the end of the
2729 volume with a suitable reference to each law, as to which a petition asking for a referendum has been filed
2730 prior to the publication of the volume, with a sufficient number of signatures to procure its submission to
2731 the people, together with a recital of the pertinent provisions of Article XLVIII of the Amendments to the
2732 Constitution.

2733 (6) In the volume of the year immediately following a state election, a statement showing what
2734 constitutional amendments, proposed laws and laws were submitted to the people at said election, with
2735 the aggregate vote on each such measure, both affirmative and negative, arranged in such detail as the
2736 state secretary may determine.

2737 (7) A table of changes in the general statutes and an index, to be prepared as provided in section 51 of
2738 chapter 3; provided, however, the state secretary may, in the secretary's discretion, cause the table of
2739 changes to be printed in a separate volume and not in the single volume.

2740 The state secretary shall cause up to 10,000 copies of said volume to be printed each year and shall,
2741 immediately after their publication, distribute such copies as the secretary determines.

2742 Section 4B. The state secretary shall, at the close of each regular session of the general court, publish in
2743 pamphlet form up to 20,000 copies, of the acts and resolves passed and of any proposed amendments to
2744 the constitution passed during such session. The secretary may also apportion the copies among the clerks

2745 of the several cities and towns, to be delivered by the clerks to inhabitants who apply for a copy.

2746 The secretary shall also, as soon as any act or resolve is passed, send a copy of the act or resolve to the
2747 following: each state department, officer, board or commission whose duties are affected by the act or
2748 resolve, the clerks of the several cities and towns, for the use of the inhabitants of those cities and towns,
2749 the justices, clerks and registers of courts, district attorneys, sheriffs, justices of the peace authorized to
2750 issue warrants and take bail, county law libraries and all incorporated law libraries and branch libraries
2751 maintained by them; provided, however, upon written request approved by the secretary, additional copies
2752 may be distributed to the above list and to any other public officials whose duties in the secretary's
2753 opinion require the use of such copies. The secretary may also send copies to such persons as apply for an
2754 act or resolve, charging not less than the cost of producing and distributing the copy.

2755 Section 4C. The state secretary shall print from time to time during the session of the general court a
2756 cumulative table of changes in the general statutes, up to the date of publication, to be prepared by the
2757 counsel to the senate and the counsel to the house of representatives.

2758 Section 4D. The state secretary shall furnish to each city and town of the commonwealth, to be preserved
2759 in a public place in the city or town, 1 copy of each of such report included in the public document series
2760 as the city or town clerk may apply for. The state secretary shall furnish 1 copy of each report to such
2761 public and other libraries as may apply for the reports. If the supervisor of public records shall report to
2762 the state secretary that a city or town is unable to properly care for and use the documents, the state
2763 secretary may discontinue sending the reports to that city or town.

2764 Each member of the general court and of the executive department, the clerk of each branch of the general
2765 court and each reporter assigned to either branch may, upon a written, signed request delivered to the state
2766 secretary, receive a copy of any such document. Ten copies shall be placed in the state library for the use
2767 of the library and for exchange.

2768 Section 4E. The state secretary shall annually procure copies of the proceedings of the annual
2769 encampments of the departments of Massachusetts, Grand Army of the Republic, United Spanish War
2770 Veterans, The American Legion, Disabled American Veterans of the World War, Marine Corps League,

2771 American Veterans of World War II, AMVETS, Italian American War Veterans of the United States,
2772 Incorporated, Jewish War Veterans of the United States, Veterans of Foreign Wars of the United States,
2773 Polish-American Veterans of Massachusetts, Inc., and Veterans of World War I of the U.S.A., held in that
2774 year, with the general and special orders, circulars and other papers forming parts thereof, and shall cause
2775 the same to be kept as parts of the records of the commonwealth. The state secretary shall annually cause
2776 copies thereof, including in the case of those relating to the Grand Army of the Republic the portraits of
2777 the department officers and staff and of the executive committee of the national encampment, to be
2778 printed and bound; and shall cause 1 printed and bound copy of each to be sent to each city or town
2779 library in the commonwealth. The state secretary shall also send 1 copy of each volume relating to the
2780 Grand Army of the Republic to each Grand Army post, 1 copy of the volume relating to the United
2781 Spanish War Veterans to each camp of Spanish War Veterans, 1 copy of the volume relating to The
2782 American Legion to each post of The American Legion, 1 copy of the volume relating to the Disabled
2783 American Veterans of the World War to each chapter of the Disabled American Veterans of the World
2784 War, 1 copy of the volume relating to the Marine Corps League to each detachment of the Marine Corps
2785 League, 1 copy of the volume relating to the American Veterans of World War II, AMVETS to each post
2786 of the American Veterans of World War II, AMVETS, 1 copy of the volume relating to the Italian
2787 American War Veterans of the United States, Incorporated to each post of the Italian American War
2788 Veterans of the United States, Incorporated, 1 copy of the volume relating to the Jewish War Veterans of
2789 the United States to each post of the Jewish War Veterans of the United States, 1 copy of the volume
2790 relating to the Veterans of Foreign Wars to each post of the Veterans of Foreign Wars of the United
2791 States, 1 copy of the volume relating to the Polish-American Veterans of Massachusetts, Inc. to each post
2792 of the Polish-American Veterans of Massachusetts, Inc. and 1 copy of the volume relating to the Veterans
2793 of World War I of the U.S.A. to each barracks of the Veterans of World War I of the U.S.A., in the
2794 commonwealth. The state secretary shall cause the other copies of each to be distributed in the same
2795 manner as the annual report of the state secretary.

2796 Section 4F. The state secretary shall furnish to every city and town the reports of the decisions of the

2797 supreme judicial court from time to time, as published, and shall furnish to every town hereafter
2798 incorporated a full set of said decisions, the index-digest of those decisions, a copy of the General Laws,
2799 and copies of all such books and documents in the secretary's office as shall have been previously
2800 furnished to towns by the commonwealth; but the clerk of such town shall first file with the secretary a
2801 certificate that the town has made suitable provision for the preservation and convenient use of such
2802 books and documents.

2803 Section 4G. A city or town which has once been furnished with such books and documents shall not again
2804 be supplied with the same at the expense of the commonwealth. Towns may effect insurance on the books
2805 and documents for their own benefit.

2806 Section 4H. The state secretary shall, in the distribution of laws and documents to members of the general
2807 court, effect such exchanges among members as they shall direct; and the secretary may employ such
2808 additional clerical or other assistance as may be necessary for the purpose. Copies of the laws and
2809 documents apportioned to members of the general court which remain undisposed of for 3 months after
2810 the end of the year in which they were issued shall revert to the commonwealth and be subject to general
2811 distribution.

2812 SECTION 77. Section 5 of said chapter 9, as appearing in the 2010 Official Edition, is hereby amended
2813 by striking out, in line 4, the words "sixty-six as the governor and council may approve" and inserting in
2814 place thereof the following figure:- 66.

2815 SECTION 78. Section 19 of said chapter 9, as so appearing, is hereby amended by striking out, in lines 1
2816 and 2, the words " , having first obtained authority from the governor and council,".

2817 SECTION 79. Section 5 of chapter 10 of the General Laws, as so appearing, is hereby amended by
2818 striking out, in lines 1 and 2, the words " , with the consent of the governor and council, may appoint, and,
2819 with such consent, may for cause remove," and inserting in place thereof the following words:- may
2820 appoint and may for cause remove.

2821 SECTION 80. Section 5B of said chapter 10 is hereby repealed.

2822 SECTION 81. Section 5C of said chapter 10, as appearing in the 2010 Official Edition, is hereby

2823 amended by striking out, in lines 1 and 2, the words “with the advice of the council”.

2824 SECTION 82. Said section 5C of said chapter 10, as so appearing, is hereby further amended by striking
2825 out, in line 6, the words “, with the advice of the council,”.

2826 SECTION 83. Section 9 of said chapter 10, as so appearing, is hereby amended by inserting after the
2827 word “general”, in line 2, the following words:- and the house and senate committees on ways and means.

2828 SECTION 84. Said chapter 10 is hereby further amended by striking out section 9A, as so appearing, and
2829 inserting in place thereof the following section:-

2830 Section 9A. A debt statement shall be forwarded on a quarterly basis to the state treasurer, comptroller
2831 and the house and senate committees on ways and means by those agencies of the commonwealth and
2832 authorities identified by the comptroller under subsection (c) of section 12 of chapter 7A, having authority
2833 to issue notes or bonds. Said debt statement shall be certified by an authorized official of said agency or
2834 authority. Such debt statement shall include authorized, unissued and outstanding bonds and notes of the
2835 authority or agency as of the first day of each quarter. Said debt statement shall include the debt service
2836 requirements of both principal and interest for the subsequent 24 month period and an estimate of the date
2837 and principal amount of bonds and notes to be sold in the subsequent 12 month period. Said debt
2838 statement shall be filed under rules and regulations prescribed by the state treasurer.

2839 SECTION 85. Said chapter 10 is hereby further amended by striking out section 10, as so appearing, and
2840 inserting in place thereof the following section:-

2841 Section 10. The state treasurer shall annually, on the second Wednesday in September, report to the
2842 general court a statement of the transactions of the department of the state treasurer for the preceding
2843 fiscal year, including a specific statement of all warrants remaining unpaid and of the names of the
2844 persons in whose favor they are drawn.

2845 SECTION 86. Said chapter 10 is hereby further amended by inserting after section 10A the following
2846 section:-

2847 Section 10B. The state treasurer, in consultation with the secretary of administration and finance and the
2848 comptroller, shall prepare and submit to the house and senate committees on ways and means on or before

2849 the last day of August, November, February and May official cash flow projections for the current fiscal
2850 year and for the fiscal quarters beginning October 1, January 1, April 1 and July 1, respectively. Included
2851 in said projections shall be actual spending and revenue through the latest possible date for inclusion in
2852 the projections, estimated spending and revenue, along with assumptions used to derive those estimates, a
2853 comparison of actual spending and revenue with previous estimates of spending and revenue for those
2854 months, an analysis of the variances identified in that comparison and identification of any cash flow
2855 gaps.

2856 Variance reports, which compare actual revenues and spending with planned revenues and spending, shall
2857 be produced quarterly by the treasurer and distributed to the comptroller's division, the department of
2858 revenue and the executive office for administration and finance. All data required by the treasurer for
2859 production of annual and quarterly cash flow projections and quarterly variance reports shall be submitted
2860 by state agencies, including the state lottery, in a timely fashion, on or before deadlines established by the
2861 treasurer. To assist in the preparation of the quarterly variance reports, the department of revenue shall be
2862 responsible for providing to the state treasurer estimates of tax revenue receipts, by tax category as
2863 identified in section 1A of the general appropriation act and the office of the comptroller for providing
2864 estimates of agency spending and non-tax revenue receipts that will assist in the production of a quarterly
2865 report based on estimated daily revenues.

2866 Compilations of such variance reports shall be distributed quarterly to the comptroller's division, the
2867 department of revenue, the executive office for administration and finance and the house and senate
2868 committees on ways and means. The executive office for administration and finance and the treasurer
2869 shall jointly develop and approve annual and quarterly cash management plans to address gaps identified
2870 by cash flow projections and variance reports. Said management plans shall clearly identify the roles to be
2871 played by short-term borrowing, investment policy, expenditure controls and revenue management in
2872 providing necessary cash.

2873 The state treasurer shall semi-annually report to the house and senate committees on ways and means and
2874 the joint committee on revenue the lending and banking institutions into which the cash deposits of the

2875 commonwealth are being deposited.

2876 SECTION 87. Section 11 of said chapter 10 is hereby repealed.

2877 SECTION 88. Section 24 of said chapter 10, as appearing in the 2010 Official Edition, is hereby further
2878 amended by inserting after the word “advisable”, in line 38, the following words:- , which shall be made
2879 available electronically to the general public not later than the earliest date established for reports in
2880 section 12 of chapter 7A.

2881 SECTION 89. Said section 24 of said chapter 10, as so appearing, is hereby further amended by striking
2882 out the last paragraph.

2883 SECTION 90. Section 24A of said chapter 10, as so appearing, is hereby amended by striking out
2884 subsection (b) and inserting in place thereof the following subsection:-

2885 (b) The revenues derived from the sale of multi-jurisdictional tickets or shares shall be apportioned under
2886 section 25.

2887 SECTION 91. Section 25 of said chapter 10, as so appearing, is hereby amended by striking out clause (c)
2888 and inserting in place thereof the following clause:-

2889 (c) the balance shall be used to fund budgeted aid to cities and towns as provided in section 18C of
2890 chapter 58, subject to appropriation.

2891 SECTION 92. The second paragraph of section 35 of said chapter 10, as so appearing, is hereby amended
2892 by striking out clause (c) and inserting in place thereof the following clause:-

2893 (c) For budgeted aid to cities and towns as provided in section 18C of chapter 58, subject to
2894 appropriation; and

2895 SECTION 93. Section 37 of said chapter 10, as so appearing, is hereby amended by striking out, in lines
2896 31 and 32, the words “Local Aid Fund established under the provisions of section 2D of chapter 29” and
2897 inserting in place thereof the following words:- State Lottery and Gaming Fund.

2898 SECTION 94. Section 39 of said chapter 10 is hereby amended by striking out, in line 22 , as so
2899 appearing, the words “Local Aid Fund” and inserting in place thereof the following words:- General
2900 Fund.

2901 SECTION 95. Section 2 of chapter 11 of the General Laws, as so appearing, is hereby amended by
2902 striking out, in lines 1 and 2, the words “, with the consent of the governor and council,”.

2903 SECTION 96. Said section 2 of said chapter 11, as so appearing, is hereby further amended by striking
2904 out, in line 4, the words “, with the consent of the governor and council”.

2905 SECTION 97. Section 5 of said chapter 11, as so appearing, is hereby amended by striking out, in line 1,
2906 the words “He may, subject to confirmation by the governor,” and inserting in place thereof the following
2907 words:- The state auditor may.

2908 SECTION 98. Section 1 of chapter 14 of the General Laws, as so appearing, is hereby amended by
2909 inserting after the word “administration”, in line 4, the following words:- and finance.

2910 SECTION 99. Section 1A of said chapter 14, as so appearing, is hereby amended by inserting after the
2911 word “administration”, in line 6, the following words:- and finance.

2912 SECTION 100. Section 3 of said chapter 14, as so appearing, is hereby amended by inserting after the
2913 word “administration”, in line 26, the following words:- and finance.

2914 SECTION 101. Chapter 29 of the General Laws is hereby amended by striking out section 1, as so
2915 appearing, and inserting in place thereof the following section:-

2916 Section 1. All words and terms defined by section 1 of chapter 7C and appearing in this chapter, except for
2917 the words “state agency” and “state authority”, shall have the meaning defined in that section, unless the
2918 context shall indicate another meaning or intent.

2919 As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the
2920 following meanings:-

2921 “Account”, a separate 8-digit number designated in the state accounting system to separately record
2922 budgetary, bond, federal or trust funds.

2923 “Agency head” or “department head”, the administrative head of a state agency, department, board,
2924 bureau, office or division of the commonwealth who has been authorized through legislation to obligate
2925 and expend funds, comply with legislative mandates and make any certifications or approvals required
2926 under this chapter or other state or federal laws or regulations requiring an agency head certification or

2927 approval.

2928 “Allotment”, that portion of an appropriation that may be spent by a department for a specified period as
2929 determined by the governor or the secretary of administration and finance under section 9B.

2930 “Allowable growth”, the product of the percentage change in the personal income of Massachusetts
2931 residents as most recently reported by the federal Bureau of Economic Analysis, from the index so
2932 reported 12 months before, and a factor of -5.

2933

2934 “Appropriation”, the authorization by the general court with the approval of the governor, or by
2935 overriding the governor’s objection to the authorization, of the expenditure of budgeted revenues from a
2936 specified fund for a specified purpose up to a specified maximum amount for a specified period of time.

2937 “Balanced budget”, a condition of state finance in which the following requirements are met:

2938 (i) the consolidated net surplus at the end of the fiscal year is greater than or equal to one-half of 1 per
2939 cent of state tax revenues for such fiscal year; and

2940 (ii) the amount transferred to the stabilization fund under subsection (a) of section 5C is greater than or
2941 equal to 1/2 of 1 per cent of state tax revenue for such fiscal year.

2942 “Bond authorization”, authorization by the legislature under section 3 of article LXII of the Amendments
2943 to the Constitution to borrow money.

2944 “Bond fund”, a fund of the commonwealth into which bond revenues are deposited and from which
2945 spending may occur.

2946 “Bond revenues”, the proceeds of bonds issued by the commonwealth and the interest earned on those
2947 bonds.

2948 “Budget director”, the administrative head of the fiscal affairs division within the executive office for
2949 administration and finance.

2950 “Budgetary funds”, state funds which are subject to appropriation as provided in section 6.

2951 “Budgeted revenues”, all income in the budgetary funds from state taxes, departmental revenues,
2952 including retained revenues, federal reimbursements and transfers of such budgeted revenues among

2953 funds, but not including federal grants.

2954 “Capital appropriation”, an authorization by the general court of the expenditure of bond revenues, with
2955 the approval of the governor or by legislative override of a gubernatorial objection to such an
2956 authorization.

2957 “Consolidated net surplus”, the sum of the undesignated balances in the budgetary funds, except funds
2958 established by section 2H and section 2I and by section 35NN of chapter 10 and by section 2C of chapter
2959 131.

2960 “Deficiency”, a condition of state finance in which expenditures during a fiscal year are expected to
2961 exceed the appropriation that authorizes those expenditures.

2962 “Departmental revenues”, all income from state agency fees, lottery receipts, fines, assessments, charges
2963 or court judgments, including retained revenues and the earnings on all state revenues.

2964 “Direct appropriation”, a first-time appropriation of budgeted revenues, from sources other than retained
2965 revenues.

2966 “Direct debt”, the sum of the principal amounts of all direct debt issued by the commonwealth to finance
2967 state projects and purposes, including obligations for leases for capital projects, except debt issued on a
2968 short-term basis in anticipation of receipts from taxes and other sources.

2969 “Federal grant”, any financial assistance available to a state agency from the United States government,
2970 either directly or through an intermediary, including a project, formula, or block grant, a subvention, a
2971 subsidy, an augmentation or a state plan but excluding federal reimbursements.

2972 “Federal reimbursements”, financial assistance provided under Titles XVIII or XIX of the Social Security
2973 Act or other reimbursements received for state entitlement expenditures and credited to the General Fund,
2974 or other federal financial assistance from the United States government for direct payments to individuals,
2975 or for other purposes as provided for in section 2ZZZ, section 34 of chapter 90, chapter 92, and section 48
2976 of chapter 151A.

2977 “Fund”, an accounting entity established by general or special law to record all financial resources or
2978 revenues, together with all related expenditures or liabilities, that have been segregated for a particular

2979 purpose including, but not limited, to a grouping of related accounts into which resources have been
2980 further segregated for specific activities and purposes.

2981 “Line-item”, a separate unit of appropriation identified by an 8-digit number representing a specific
2982 spending account authorized for a specific purpose and a defined amount.

2983 “Prior appropriation continued” or “PAC”, the re-appropriation of unexpended and unencumbered monies
2984 from one fiscal year for the following fiscal year.

2985 “Retained revenue”, income of a state agency or other public instrumentality, derived from its operations
2986 and which, by law, such agency or instrumentality may expend for a particular purpose up to a specified
2987 limit, without further appropriation, which would otherwise be subject to direct appropriation.

2988 “Retained revenue line-item”, a line-item which allows a state agency or other public instrumentality to
2989 use retained revenue during the fiscal year in which such revenue is received to maintain all or a portion
2990 of its operations.

2991 “Revenue account”, an account established by the comptroller to record the collection of revenue by a
2992 state agency.

2993 “Secretary”, the officer in charge of each executive office established by chapter 6A or chapter 7 and the
2994 supreme judicial court.

2995 “State agency” or “state department”, a legal entity of state government established by the General Court
2996 as an agency, board, bureau, commission, department, office or division of the commonwealth with a
2997 specific mission, which may either report to cabinet-level units of government, known as executive
2998 offices or secretariats, or be independent divisions or departments.

2999 “State authority” a body politic and corporate constituted as a public instrumentality of the
3000 commonwealth and established by an act of the General Court to serve an essential governmental
3001 function; provided, however, that state authority shall not include: (1) a state agency; (2) a city or town;
3002 (3) a body controlled by a city or town; or (4) a separate body politic for which the governing body is
3003 elected, in whole or in part, by the general public or by representatives of member cities or towns.

3004 “State revenue”, inflows from tax and nontax sources that, by law, shall be accounted and reported to a

3005 fund.

3006 “State tax revenues”, the revenues of the commonwealth from every tax, surtax, receipt, penalty and other
3007 monetary exaction and interest in connection therewith including, but not limited to, taxes and surtaxes on
3008 personal income, excises and taxes on retail sales and use, meals, motor vehicle fuels, businesses and
3009 corporations, financial institutions, insurance companies, public utilities, alcoholic beverages, tobacco,
3010 inheritances, estates, deeds, room occupancy and pari-mutuel wagering, but excluding revenues collected
3011 by the state from local option taxes for further direct distribution to cities and towns.

3012 “Surplus”, a condition of state finance in which an appropriation is expected to exceed expenditures from
3013 that appropriation during a fiscal year.

3014 “Tax expenditures”, state tax revenue foregone as a direct result of any general or special law which
3015 allows exemptions, exclusions, deductions from or credits against taxes imposed on income, corporations,
3016 and sales.

3017 “Trust”, an account or fund into which are deposited monies held by the commonwealth or state agencies
3018 in a trustee capacity and which must be expended in accordance with the terms of the trust.

3019 SECTION 102. The second paragraph of section 2 of said chapter 29, as so appearing, is hereby amended
3020 by adding the following 2 sentences:- Every source of state revenue shall be classified according to a
3021 schedule of revenue accounts promulgated by the comptroller. The commonwealth’s receipt of such
3022 revenue shall be documented under rules and regulations promulgated by the comptroller.

3023 SECTION 103. Sections 2F and 2G of said chapter 29 are hereby repealed.

3024 SECTION 104. Said chapter 29 is hereby further amended by striking out section 2I, as appearing in the
3025 2010 Official Edition, and inserting in place thereof the following section-

3026 Section 2I. There shall be established and set up on the books of the commonwealth a separate fund to be
3027 known as the Tax Reduction Fund, consisting of amounts transferred to the fund under section 2H and
3028 income derived from the investment of amounts so transferred. The purpose of the fund shall be to
3029 maintain a reserve which shall be used only to reduce personal income taxes as provided in this section.

3030 On or before October 31, the comptroller shall certify to the governor the total amount in the Tax

3031 Reduction Fund as shown in the financial report of the comptroller for the preceding fiscal year. A
3032 temporary increase in the amounts of the personal exemption allowable on the income tax shall be
3033 provided, subject to appropriation, for the taxable year ending on the succeeding December 31 to the
3034 extent that the amount in the Tax Reduction Fund equals an integer multiple of 5 per cent of the amount
3035 of the personal income taxes which will not be collected for said taxable year on account of such personal
3036 exemptions. The commissioner of revenue shall calculate the amount of the temporary increase, if any, in
3037 such personal exemptions for said taxable year. The comptroller shall transfer the amount equal to such
3038 integer multiple of 5 per cent of the amounts not collected due to such personal exemptions from the Tax
3039 Reduction Fund to the General Fund.

3040 SECTION 105. Section 2X of said chapter 29 is hereby repealed.

3041 SECTION 106. Said chapter 29 is hereby further amended by striking out section 2TT, as appearing in
3042 the 2010 Official Edition, and inserting in place thereof the following section:-

3043 Section 2TT. There is hereby established and set up on the books of the commonwealth a separate fund to
3044 be known as the Liability Management and Reduction Fund. The fund shall provide: (1) insurance
3045 coverage to state agencies by charging premiums to such agencies for the payment of judgments and
3046 settlements and the commonwealth's investigation and litigation costs in connection with tort claims
3047 under chapter 258; (2) services to reduce the number and size of claims against agencies including, but
3048 not limited to, risk reduction training programs and incentive payments of not more than \$1,000 for
3049 effective risk reduction suggestions; and (3) such other services and activities as the comptroller shall
3050 determine are desirable to create financial and other incentives for agencies to reduce the
3051 commonwealth's tort and other monetary liability, including litigation costs. The fund shall consist of
3052 premiums charged to agencies, any amounts appropriated for the purposes of the fund and interest income
3053 from investments made by the state treasurer of amounts in the fund. Monies in the fund shall be
3054 expended by the comptroller under section 16 of chapter 7A, without further appropriation, for the
3055 purposes of the fund.

3056 The comptroller shall submit not later than December 31 of each year to the house and senate committees

3057 on ways and means, the secretary of administration and finance and the attorney general a report of the
3058 activities of the fund. The report shall include a financial statement which accounts for the revenues,
3059 expenditures and changes in fund balance for the preceding fiscal year. The comptroller shall also submit
3060 to said committees and officials, not later than October 1 of each fiscal year, a financial plan presenting
3061 all expected and proposed revenues and other financial sources, expenditures and other financial uses, net
3062 gain or loss from operations and changes in fund balance. All such reports shall also specify the number
3063 and duties of employees of the fund, if any, the amount of any direct appropriation requested or expected
3064 and any other information relevant to the achievement of the purposes of the fund. The comptroller may
3065 at any time recommend in such reports statutory changes necessary to expand the scope of said section 16
3066 of said chapter 7A and this section in order to cover claims other than those asserted under chapter 258.

3067 SECTION 107. Section 2FFF of said chapter 29, as so appearing, is hereby amended by striking out, in
3068 lines 4 and 5 and in line 9, the words “environmental management” and inserting in place thereof, in each
3069 instance, the following words:- conservation and recreation.

3070 SECTION 108. Section 2GGG of said chapter 29, as so appearing, is hereby amended by striking out, in
3071 line 2, the words “division of medical assistance” and inserting in place thereof the following words:-
3072 executive office of health and human services.

3073 SECTION 109. Section 2HHH of said chapter 29, as so appearing, is hereby amended by striking out, in
3074 line 7 the words “environmental management” and inserting in place thereof the following words:-
3075 conservation and recreation.

3076 SECTION 110. Section 2III of said chapter 29, as so appearing, is hereby amended by striking out, in
3077 lines 6 and 21, the words “food and agriculture” and inserting in place thereof, in each instance, the
3078 following words:- agricultural resources.

3079 SECTION 111. Section 2RRR of said chapter 29, as so appearing, is hereby amended by striking out the
3080 fourth sentence and inserting in place thereof the following sentence:-The comptroller shall transfer to the
3081 trust fund no later than the first business day of each quarter, the amounts indicated by the department of
3082 developmental services to provide the appropriate payment adjustments for operating the intermediate

3083 care facilities for persons with a developmental disability and the community residences serving
3084 individuals with a developmental disability.

3085 SECTION 112. Section 2UUU of said chapter 29, as so appearing, is hereby amended by striking out, in
3086 line 8 and 21, the word “chancellor” and inserting in place thereof, in each instance, the following word:-
3087 commissioner.

3088 SECTION 113. Said chapter 29 is hereby further amended by striking out section 3, as so appearing, and
3089 inserting in place thereof the following section:-

3090 Section 3. Every officer having charge of any state agency which receives a periodic appropriation from
3091 the commonwealth, including all periodic appropriations to be met from budgeted revenues shall
3092 annually, on or before a date set by the secretary of administration and finance submit to the budget
3093 director statements (1) showing in detail the amounts appropriated for the preceding and the current fiscal
3094 years; (2) the interchanges during the preceding fiscal year between the subsidiary accounts established
3095 pursuant to section 27; (3) the deficiencies and surpluses, if any, in appropriations for the latest complete
3096 fiscal year and for the current fiscal year; (4) estimates of the amounts required for the operations of state
3097 agencies and programs for the ensuing fiscal year, with an explanation of any increased appropriations
3098 recommended and with citations of the statutes relating thereto, a statement indicating the priorities
3099 assigned to each program by said officer; and (5) statements showing in detail the revenue of the state
3100 agency in the officer’s charge for the latest complete fiscal year, and the revenue and estimated revenue
3101 thereof for the current fiscal year, and the officer’s estimated revenue from the same or any additional
3102 sources for the ensuing fiscal year, with the officer’s recommendations as to any changes in the
3103 management, practices, rules, regulations or laws governing such state agency which would cause an
3104 increase or decrease in revenue from operations, fees, taxes or other sources, or which would facilitate the
3105 collection thereof; (6) together with such other information on the expenditures, revenues, activities,
3106 output or performance of any such state agency as may be required by rule or regulation of the secretary
3107 of administration and finance, and any other information, including the priorities assigned to each
3108 program by said officer, required at any time by the budget director. Every such officer shall also submit

3109 to the budget director a statement showing in detail the number of permanent, temporary and part-time
3110 positions authorized for the state agency in the officer's charge, categorized by whether those positions
3111 are funded by appropriation, bond authorizations, federal grants, trust funds or other funding sources and
3112 the volume of work performed in the latest complete fiscal year, and justifying the officer's request for
3113 permanent, temporary and part-time positions in the ensuing fiscal year in relation to the volume of work
3114 expected to be performed by the state agency.

3115 All such statements, recommendations and estimates shall, to the fullest possible extent, conform with the
3116 programs of the state agency as defined by the secretary of administration and finance, with the advice of
3117 the officers responsible for the administration thereof and the officer making the submission to the budget
3118 director. The estimates submitted shall not include any estimate for any new or special purpose or object
3119 not authorized by statute.

3120 Before any such statements, estimates, recommendations or other information relating to a state agency
3121 shall be so submitted, each state agency shall submit such statements, estimates, recommendations, and
3122 other information to the secretary having charge of such state agency, if any, who shall review the same
3123 and make such additions thereto, deletions therefrom and modifications therein as such secretary deems
3124 appropriate; provided, however, that prior to making any such additions, deletions or modifications, such
3125 secretary shall conduct public hearings, for which the secretary shall give five days' public notice prior
3126 thereto, on all items for which the secretary shall submit a recommendation for appropriations to the
3127 governor.

3128 SECTION 114. Section 3A of said chapter 29, as so appearing, is hereby amended by striking out the
3129 second sentence and inserting in place thereof the following sentence:- The information shall include, but
3130 not be limited to, historical, current or proposed operational costs funded through any appropriation, bond
3131 authorizations, federal grants, trust funds or other funding sources, the officer's estimate of the cost of
3132 proposed legislation affecting activities which are or would be under the officer's supervision, estimates
3133 of and reasons for any supplemental funding that is projected to be needed during the fiscal year,
3134 estimates of revenue collections, estimates of proposed changes in fees or taxes, and any other such

3135 information as may be required by the committee.

3136 SECTION 115. Said chapter 29 is hereby further amended by striking out sections 4 and 5B, as so
3137 appearing, and inserting in place thereof the following 2 sections:-

3138 Section 4. Every officer having charge of any state agency who, in the officer's annual reports or
3139 otherwise, recommends or petitions for the expenditure of money by the commonwealth from any source
3140 of revenue, including expenditures to be met by assessments or from bond revenues or trust funds, for any
3141 purpose not covered by the estimates required to be submitted under section 3, shall, annually, on or
3142 before a date set by the secretary of administration and finance, submit detailed estimates thereof to the
3143 budget director, together with any other information required by said budget director. Such estimates and
3144 other information relating to such state agency before being submitted to the budget director, shall first be
3145 submitted to the appropriate secretary, if any, on or before a date set by him; said secretary shall review
3146 the same and make such additions thereto, deletions therefrom and modifications therein as the secretary
3147 deems appropriate; provided, however, that prior to making any such additions, deletions or
3148 modifications, said secretary shall conduct public hearings, for which he shall give five days' public
3149 notice prior thereto, on all items for which he shall submit to the governor a recommendation for an
3150 appropriation of one million dollars or more.

3151 Section 5B. The secretary of administration and finance, with the approval of the governor, shall on or
3152 before October 15 of every year, prepare estimates of budgeted revenues which in the secretary's
3153 judgment will be available for both the current year and for the annual budget for the ensuing fiscal year.

3154 In making such estimates the secretary shall take into account existing taxes, the probable economic
3155 growth within the state, anticipated federal fund receipts, the anticipated growth in wages and salaries,
3156 departmental and other revenue based on existing laws, the transfers of capital gains income tax revenue
3157 required by section 5G and amounts available to be transferred into budgetary funds. Such estimates shall
3158 be delivered to the house and senate committees on ways and means and shall be made available to the
3159 general public in a conspicuous manner on the commonwealth's official website within 14 days of
3160 submission of such revisions to the governor. The secretary shall accompany any revision of previous

3161 estimates with explanations of any changes in the secretary's estimates for specific sources of revenue.

3162 In estimating revenues available for the current year, the secretary shall include the amount certified by

3163 the comptroller under section 5C as available from the consolidated net surplus in the operating funds at

3164 the close of the preceding fiscal year and not in excess of ½ of 1 per cent of the total state tax revenues in

3165 such fiscal year. In estimating revenues to be available for the annual budget for the ensuing fiscal year,

3166 the secretary shall include an amount of any anticipated consolidated net surplus in operating funds not in

3167 excess of ½ of 1 per cent of the estimated total state tax revenues for the current fiscal year.

3168 The commissioner of revenue shall annually prepare and present with the governor's proposed budget

3169 actual or updated estimates of tax expenditures which occurred during the preceding fiscal year and

3170 estimates of tax expenditures which will likely occur during the current fiscal year and the ensuing fiscal

3171 year. Such estimates of tax expenditures shall be prepared to facilitate a comparison of increases or

3172 decreases from actual or estimated tax expenditures of the preceding fiscal year to the estimates of tax

3173 expenditures for the current fiscal year and to the ensuing fiscal year. The commissioner shall identify and

3174 analyze reasons for updates in estimates or for significant discrepancies identified under the preceding

3175 sentence.

3176 On or before January 15, the secretary of administration and finance shall meet with the house and senate

3177 committees on ways and means and shall jointly develop a consensus tax revenue forecast for the budget

3178 for the ensuing fiscal year which shall be agreed to by the secretary and said committees. In developing

3179 such a consensus tax revenue forecast, the secretary and said committees, or subcommittees of said

3180 committees, may hold joint hearings on the economy of the commonwealth and its impact on tax revenue

3181 forecasts; provided, however, that in the first year of the term of office of a governor who has not served

3182 in the preceding year, said parties shall agree to the consensus tax revenue forecast not later than January

3183 31 of said year. Said consensus tax estimate shall be net of the amount necessary to transfer, from the

3184 General Fund to the Commonwealth's Pension Liability Fund, to amortize the unfunded liability of the

3185 system according to the schedule established under paragraph (1) of section 22C of chapter 32, and of the

3186 amounts transferred to the MBTA State and Local Contribution Fund under section 35T of chapter 10,

3187 and to the School Modernization and Reconstruction Trust Fund under section 35BB of said chapter 10.
3188 Said consensus tax estimate shall also include an estimate of taxes collected under chapter 62 for capital
3189 gains income, as defined therein, and shall be net of any transfers of capital gains income tax revenue
3190 projected to be required by section 5G. Said consensus tax revenue forecast shall be included in a joint
3191 resolution and placed before the members of the general court for their consideration within ten days of
3192 the agreement to the consensus tax estimate; provided, such consideration shall be taken by the yeas and
3193 nays of each house of the general court present and voting thereon. Such joint resolution, if passed by
3194 both branches of the general court, shall establish the maximum amount of tax revenue which may be
3195 considered for the general appropriation act for the ensuing fiscal year. If the general court fails to comply
3196 with the provisions of this paragraph, the consensus tax estimate for the ensuing fiscal year shall be equal
3197 to the consensus tax estimate of the previous fiscal year.

3198
3199 SECTION 116. Section 5D of said chapter 29, as so appearing, is hereby amended by striking out the first
3200 paragraph and inserting in place thereof the following paragraph:-

3201 The comptroller shall determine, based on procedures established by the secretary of administration and
3202 finance, the amount expended during the fiscal year from each fund, other than the General Fund, for
3203 indirect costs and for the compensation of state personnel. On the basis of said determination, the
3204 comptroller shall charge each fund an amount for indirect costs and for fringe benefit costs attributable to
3205 compensation paid from the other funds, based on an indirect costs rate and on a fringe benefit rate to be
3206 set annually by said secretary. The amount so charged shall be credited to the General Fund. Upon
3207 approval of the secretary, and subject to regulations established by the secretary, the amount of indirect
3208 costs, either in whole or in part, charged to an account may be waived. The costs of fringe benefits shall
3209 be recovered in cash.

3210 SECTION 117. Said chapter 29 is hereby further amended by striking out section 5F, as so appearing, and
3211 inserting in place thereof the following section:-

3212 Section 5F. Every officer having charge of any state agency which receives a periodic or other
3213 appropriation from the commonwealth, shall annually, on or before a date set by the secretary of
3214 administration and finance submit to the budget director a department financial plan for the current fiscal
3215 year and, at such times as specified by said secretary, revisions to said department financial plan;
3216 provided, however, that said officer shall also submit said financial plans to the chairmen of the house and
3217 senate committees on ways and means.

3218 The department financial plan shall include statements, in a form prescribed by the budget director,
3219 showing in detail (1) amounts proposed to be expended from each account for each month in the current
3220 fiscal year; (2) amounts projected to be received in each revenue account, other than revenue from state
3221 taxes, federal grants or proceeds of bonds issued by the commonwealth, for each month in the current
3222 fiscal year; and, (3) such other information on the expenditures, revenues, activities, output or
3223 performance of the state agency as required by the budget director.

3224 The budget director shall provide to the treasurer and comptroller information from department financial
3225 plans to develop estimates and projections of monthly, quarterly and annual cash flow required under
3226 section 10B of chapter 10, and to prepare monthly reports of planned and actual expenditure and planned
3227 and actual revenue for each major state program, department, and executive or other constitutional office.

3228 SECTION 118. Said chapter 29 is hereby further amended by striking out section 6B, as so appearing,
3229 and inserting in place thereof the following section:-

3230 Section 6B. (a) The comptroller, in consultation with the secretary of administration and finance, shall
3231 promulgate regulations which shall not be subject to chapter 30A to govern notice requirements for
3232 applications for federal grants by a state agency and the receipt and expenditure of federal funds. Such
3233 requirements shall, at a minimum, include:

3234 (1) reference to the federal statutory authority under which the action is proposed;

3235 (2) a description of the substance of the application; and

3236 (3) a fiscal statement setting forth:

3237 (i) the projected grant budget per year including the number of personnel to be funded with federal funds;

3238 (ii) the estimated amount of cash match, in kind match or other monies to be supplied by the state and any
3239 other source from which such match will be required, and a description of the federal allocation formula
3240 and matching requirements including whether the grant is distributed to the commonwealth on the basis
3241 of a federally specified formula or on the basis of the federal grantor's discretion and a description of the
3242 federal constraints placed on the agency's discretion to use the grant; and

3243 (iii) the duration of the grant, the number of fiscal years the agency has been receiving assistance and the
3244 number of fiscal years in which assistance can be expected to continue under the program, and a
3245 statement as to the priority of the program alongside other state or federally funded programs, including
3246 whether the agency would request that all or part of the program be funded out of the General Fund in the
3247 event federal funds are reduced or discontinued.

3248 To avoid any inconsistency or duplication in review, notices given under this section shall be coordinated
3249 with other notice requirements for project or plan proposals in connection with federal aid including those
3250 required under Circular A-95 of the United States Office of Management and Budget.

3251 (b) Upon official notification to a state agency from a federal department or agency of approval of a state
3252 plan or application for federal funds, the state agency shall notify the secretary of administration and
3253 finance and the comptroller promptly of the amount, duration, payment schedule and other attendant
3254 financial terms and conditions. Such notification shall be for the purposes of appropriate recording. The
3255 comptroller shall report to the house and senate committees on ways and means within 15 days after the
3256 last day of each quarter of the fiscal year detailing, by agency, the status of federal funds applied for,
3257 received and expended.

3258 (c) Under section 6 the budget director shall include all federal grants received or anticipated by state
3259 agencies as a part of the budget.

3260 (d) No state agency shall establish new, or expand existing programs involving federal or other non-state
3261 monies beyond the scope of those already established, recognized and approved by the general court, until
3262 the program and the projected or actual availability of money is submitted to the budget director for
3263 recommendation to the general court under section 6. No state agency may make expenditures from any

3264 federal grant unless such expenditures are made under specific appropriations of the general court and
3265 allotment thereof, said allotment to be made by the comptroller upon receipt of federal grant funds.
3266 Under section 2C, all such expenditures shall be charged to the General Federal Grants Fund.
3267 Notwithstanding the amount of the appropriation for a specific federal grant, the amount so expended
3268 from such federal grant shall not exceed the amount actually received and deposited in the General
3269 Federal Grants Fund for such federal grant. To the extent not precluded by the terms and conditions under
3270 which federal monies are made available by the United States government, a state agency shall use
3271 federal grants under any policies or priorities established by the general court for the activity being
3272 assisted.

3273 (e) If federal grant monies become available to the state for expenditure, under subsection (a), and the
3274 availability of such monies could not reasonably have been anticipated and included in the budget
3275 approved by the general court for the fiscal year in question, the treasurer may accept such monies on
3276 behalf of the state and the department head may make expenditures of such monies as are authorized by
3277 federal and state law. Upon application for, and receipt of, such monies, the department head shall submit
3278 to the house and senate committees on ways and means a statement:

3279 (1) describing the proposed federal expenditures in the same manner as described in the budget document;
3280 and

3281 (2) explaining why the availability of such federal grants and the necessity of their expenditure could not
3282 have been anticipated in time for such expenditures to have been approved as part of the budget enacted
3283 for that particular fiscal year.

3284 (f) Each spending agency in receipt of federal grant monies shall at the commencement of each fiscal
3285 year, and no later than July 31, and any agency which has not previously been in receipt of a federal grant
3286 shall, upon notification of grant approval, authorize the comptroller upon the comptroller's receipt of
3287 notice of a federal grant award to initiate such procedures as are established by the secretary of
3288 administration and finance to transfer from the federal grant account to the General Fund for the costs of
3289 fringe benefits, indirect costs and space use charges related to each federal grant received by that

3290 spending agency. Upon approval by the secretary, and subject to regulations established by the secretary,
3291 the amount of indirect costs, either in whole or in part, charged to a federal grant may be utilized to
3292 comply with federal requirements for in kind contributions. The costs of fringe benefits must, in all cases,
3293 be recovered in cash. The comptroller shall not allow expenditures for the payment of salaries to be made
3294 from any federal grant account for which the comptroller has not been authorized to charge the full
3295 amount of fringe benefits to the account. Notwithstanding any general or special law to the contrary, this
3296 paragraph shall apply to all state agencies; provided, however, that any institution of higher learning shall
3297 be exempt from those charges associated with indirect costs, as described in the following paragraph.

3298 (g) Any portion of a federal grant received by an institution of higher learning which, according to the
3299 conditions of said federal grant, is to be paid for or to cover any overhead expenses, indirect costs,
3300 supporting services or facilities, or for any purpose other than the direct object of the grant, may be
3301 transferred in whole or in part to separate accounts and expended without appropriation for the support of
3302 a computer or computers, of another research grant, or of publishing programs under the exclusive control
3303 of such institution, or for faculty research or research and scholarly work under the supervision of
3304 members of the faculty of such institution.

3305 (h) No individual, corporation or other organization utilizing grants shall be permitted to occupy or use
3306 land, buildings, equipment or facilities of the commonwealth or use the services of any officer or
3307 employee of the commonwealth during his regular working hours unless there is a written agreement,
3308 approved by the secretary, between said individual, corporation or other organization and said officer or
3309 employee, that the commonwealth will be reimbursed for such occupancy or use; provided, however, that
3310 upon recommendation of any department, institution, board, commission, agency or employee setting
3311 forth good and sufficient reasons, this requirement may be waived in whole or in part by the secretary on
3312 a particular project or projects. All such reimbursements shall be paid into the state treasury. Notice of
3313 such waiver shall be filed with the state auditor.

3314 (i) Federal grants shall not be used to supplement the regular salary or compensation of any officer or
3315 employee of the commonwealth for services performed during the officer or employee's regular working

3316 hours.

3317 (j) The following are excluded from subsections (a), (d) and (e):

3318 (1) federal grant funds coming to institutions of higher education, including research grants;

3319 (2) research grants to individuals, agencies or institutions not exceeding \$50,000 in annual amount and
3320 not creating new, or expanding existing, programs or commitments of state resources;

3321 (3) any federal grant funds not exceeding \$5,000 in annual amount; and

3322 (4) federal grant funds made available to the state for costs and damages resulting from natural disasters,
3323 civil disobedience or other occurrences of sufficient severity to have occasioned the declaration by the
3324 governor of a state of emergency.

3325 SECTION 119. Said chapter 29 is hereby further amended by striking out section 6D, as so appearing,
3326 and inserting in place thereof the following section:-

3327 Section 6D. Each appropriation contained in the general appropriations or any supplemental
3328 appropriations acts shall include the following information: (1) the line-item number of the appropriation;
3329 (2) the purpose of the appropriation and other restrictive language; and (3) the amount of the
3330 appropriation or the maximum expenditure allowed, set out in numeric figures. No appropriation
3331 otherwise set out in any act shall be valid and the comptroller shall not allow monies to be expended on
3332 any appropriation not conforming to the requirements herein established.

3333 The general appropriations act shall include the following sections: (1) section 1 which shall include the
3334 enacting clause and general appropriation language; (2) section 1B which shall set forth the budgeted
3335 revenues appropriated in the budget according to category, by department, and identifying by department,
3336 budgeted revenues that are restricted for the purpose of supporting retained revenue line-items; (3) section
3337 2 which shall include all direct appropriations and authorizations to retain revenue; (4) section 2B which
3338 shall include all appropriations from the Intragovernmental Service Fund; (5) section 2C which shall
3339 include any authorizations to continue a prior appropriation; (6) section 2D which shall include all
3340 appropriations of federal grants; and (7) section 2E, which shall set forth appropriations to support
3341 transfers to funds other than budgetary funds.

3342 Supplemental and deficiency appropriations acts shall include, if necessary, the following sections: (a)
3343 section 2 which shall include direct appropriations and authorizations to retain revenue which do not
3344 require changes to the purpose of the appropriation or other restrictive language; (b) section 2A which
3345 shall include direct appropriations and authorizations to retain revenue which require new language
3346 regarding the purpose of the appropriation or other restrictive language; (c) section 2B which shall
3347 include all appropriations from the Intragovernmental Service Fund; and (d) section 2C which shall
3348 include all authorizations to continue a prior appropriation.

3349 This section shall apply to all appropriations of commonwealth funds, including direct appropriations,
3350 retained revenue authorizations, federal grant appropriations, accounts with prior appropriations
3351 continued and appropriations from the Intragovernmental Service Fund.

3352 SECTION 120. Sections 7A to 7G, inclusive, of said chapter 29 are hereby repealed.

3353 SECTION 121. Said chapter 29 is hereby further amended by striking out sections 7H to 7K, inclusive, as
3354 appearing in the 2010 Official Edition, and inserting in place thereof the following 2 sections:-

3355 Section 7H. The governor shall submit to the general court annually within 3 weeks after the general court
3356 convenes in regular session a budget including an operating budget and a capital facility budget and long
3357 range capital facilities development plan. In the first year of the term of office of a governor who has not
3358 served in the preceding year, the governor shall recommend the budget within 8 weeks after the
3359 convening of the general court. The recommendations contained therein shall, to the fullest possible
3360 extent, conform with the programs of the several offices and departments as defined by the secretary of
3361 administration and finance with the advice of the agency heads or other officers responsible for the
3362 administration thereof and long range capital facilities development plans as defined by the commissioner
3363 of capital asset management and maintenance. The budget shall also include definite recommendations of
3364 the governor for financing the expenditures recommended.

3365 All appropriations based upon the budget to be paid from budgeted revenues shall be incorporated in a
3366 single bill to be designated the general appropriation bill, set out in conformity with section 6D. With the
3367 budget, the governor shall submit to the general court statements detailing and explaining the governor's

3368 reasons for recommending any increase in, decrease in, or deletion from the budgetary recommendations
3369 of any department office, commission, institution or other public agency or, in the case of a department,
3370 office, commission or institution within any executive office established by chapters 6A and 7 of the
3371 secretary of such executive office; of the general court; and of the judiciary.

3372 The governor shall also submit such other messages, statements of supplemental data relative to the
3373 budget as the governor deems expedient and, from time to time during the session of the general court
3374 may submit supplemental messages on recommendations relative to appropriations, revenues and loans.
3375 Such statements of supplemental data shall include, at a minimum, statements of projected health care
3376 cost trends, caseload eligibility and enrollment trends, anticipated debt service costs and future growth in
3377 payments to fund the commonwealth's liability for pensions and the commonwealth's liability for retiree
3378 health care over the next 5 fiscal years. Upon submission of the budget to the general court, the governor
3379 shall, through the executive office for administration and finance, make available to the public all material
3380 relevant to said budget, including all supporting documents pertinent thereto. This shall include at least
3381 the electronic or other distribution, at the time of submission of the governor's budget and subsequently
3382 the house and senate ways and means budgets, of (a) copies of these budgets to the state house library,
3383 and to the state office building in Springfield, (b) copies of all reports, statements, recommendations, or
3384 evaluations required by section 3, 4, 5B, 5D, 6, 7 or any related reports required by any chapter of the
3385 general laws to the state house library. They shall be placed on public display and made available for
3386 reproduction during business hours.

3387 Any information which is required to be filed under this section or section 6, either with the budget by the
3388 governor, or as a part thereof, and which is not contained within the budget as filed or within
3389 accompanying documents filed at the same time, shall be filed by the governor not later than 14 days
3390 following the required filing date; provided, however, that such information shall be accompanied by a
3391 detailed statement explaining the failure to provide the information at the time the budget was submitted.

3392 In the event that the governor determines from information supplied by the executive office for
3393 administration and finance, from the tax revenue resolution established under section 5B, or from any

3394 other competent source that the tax revenues or non-tax revenues supporting the general appropriation bill
3395 have materially decreased, or that appropriations or statutory amendments that would provide funding to
3396 support recommended levels of appropriations have materially changed from the time the general
3397 appropriation bill was originally submitted, the governor shall submit to the general court by message
3398 recommended corrective amendments to the governor's original budget submission to ensure that total
3399 appropriations recommended in the general appropriation bill do not exceed total revenues supporting
3400 said bill. Such message shall be submitted to the general court within 15 days from the date of such
3401 determination.

3402 Section 7I. All requests and recommendations for appropriations or authorizations for expenditures by the
3403 commonwealth, other than those submitted by the governor to the general court under section 2 of Article
3404 LXIII of the Amendments to the Constitution, shall be submitted by the governor to the general court;
3405 shall be classified to show the request of each officer having charge of an office, department or
3406 undertaking, including the priorities assigned to each program by said officer, the recommendation of the
3407 secretary of the executive office within which such office, department or undertaking shall be, the
3408 recommendation of the governor, and the prior year appropriation, if any; and shall indicate the number,
3409 if any, of permanent positions proposed to be authorized for an office, department or undertaking and the
3410 number of persons to be served or the number of actions to be taken by such office, department or
3411 undertaking. Requests and recommendations as they pertain to capital facilities projects shall be studied
3412 by the commissioner of capital asset management and maintenance pursuant to chapter 7C.

3413 SECTION 122. Sections 8B, 8C and 9 of said chapter 29 are hereby repealed.

3414 SECTION 123. Said chapter 29 is hereby further amended by striking out sections 9F and 9G, as
3415 appearing in the 2010 Official Edition, and inserting in place thereof the following 2 sections:-

3416 Section 9F. After the close of each monthly accounting period, the comptroller shall notify the secretary
3417 of administration and finance and each officer having charge of an office, department or undertaking
3418 which receives a periodic appropriation, of the amount and per cent of each such appropriation which had
3419 been expended at the close of the preceding month for that month and for the year-to-date, of the amount

3420 available for each such appropriation and of the amount and per cent of each appropriation, if any, for the
3421 same purpose expended during the corresponding period in the preceding fiscal year.

3422 Section 9G. Sums made available by appropriation or otherwise to offices, departments or undertakings
3423 for studies, plans, designs, construction, acquisition, purchase or repair of capital facilities, of highway
3424 improvement facilities, such as a highway, bridge or tunnel, and of transportation improvement facilities,
3425 such as a mass transportation or other public transit facility, shall be expended only in such amount as
3426 may be allotted for expenditure from time to time by the secretary of administration and finance or said
3427 secretary's approved designee. The officer in charge of each office, department or undertaking shall
3428 submit to the secretary, in such form and at such times as the secretary shall prescribe, such information
3429 as may be required by the secretary for making such allotments; provided that before any such
3430 information relating to an office, department or undertaking within any of the executive offices
3431 established by chapter 6A has been so submitted, it shall first be submitted to the secretary having charge
3432 of such executive office, who shall review the same and make such additions thereto, deletions therefrom
3433 and modifications therein as such secretary deems appropriate.

3434 The secretary of administration and finance shall issue directives governing expenditure from bond
3435 authorizations; such directives shall include, but not be limited to, the following: (1) such measures as
3436 determined by said secretary to be necessary to regulate the rate of expenditure from any or all bond
3437 authorizations, and (2) such measures as determined by said secretary to be necessary to ensure
3438 compliance with such directives, including requiring prior written approval of said secretary before the
3439 award of contract or grants.

3440 SECTION 124. Said chapter 29 is hereby further amended by striking out section 12A, as so appearing,
3441 and inserting in place thereof the following section:-

3442 Section 12A. Beginning June 1 of any year, obligations may be incurred against appropriations for items
3443 to be delivered or for services to be rendered on or after the beginning of the next fiscal year; provided,
3444 however, that said obligations are in accordance with law and the amounts of the obligations do not
3445 exceed one-twelfth of that appropriation for the current fiscal year.

3446 Where the allotment of an appropriation is a condition precedent to expenditure, the obligations shall not
3447 exceed the amount allotted for said appropriation; provided, however, that during the month of June the
3448 comptroller may prepare warrants and the state treasurer may advance funds to the department of
3449 transitional assistance for the purpose of making payments on and after July 1 as authorized by chapter
3450 658 of the acts of 1967; and provided further that said payments are in accordance with law and the
3451 amounts of said payments do not exceed the amount of the appropriation, provided, however, that no
3452 funds shall be expended until such funds have been appropriated. The certified copies of the schedules
3453 provided for in section 27 shall be filed with the comptroller and the budget director as of June 1. Where
3454 the allotment of an appropriation is required by law, such allotment shall be made as of June 1.
3455 Notwithstanding any general or special law to the contrary, in order to comply with the Social Security
3456 Act, the state treasurer may transfer to the United States Treasury before July funds necessary to make
3457 July 1 Supplemental Security Income payments to commonwealth benefit recipients.

3458 SECTION 125. Said chapter 29 is hereby further amended by striking out section 13, as so appearing, and
3459 inserting in place thereof the following section:-

3460 Section 13. Encumbrances outstanding on the records of the comptroller's office at the close of the fiscal
3461 year may be applied to the payment thereof in the 2 months immediately succeeding such fiscal year.

3462 SECTION 126. Said chapter 29 is hereby further amended by striking out section 16, as so appearing, and
3463 inserting in place thereof the following section:-

3464 Section 16. Payments authorized by appropriation acts shall be made from budgeted revenue, if no other
3465 provision is expressly made for such payment.

3466 SECTION 127. Section 18 of said chapter 29, as so appearing, is hereby amended by inserting adding the
3467 following sentence:-In lieu of paying bonds at maturity or redemption, the state treasurer may apply
3468 monies available for the payment of debt service to the purchase of such bonds through a tender offer or
3469 otherwise at a price not to exceed the par amount thereof whereupon the state treasurer shall declare the
3470 purchase bonds to be paid in full.

3471 SECTION 128. Section 20 of said chapter 29, as so appearing, is hereby amended by striking out, in lines

3472 5 and 6, the words “, except gratuities and special allowances by the general court.

3473 SECTION 129. Section 21 of said chapter 29 is hereby repealed.

3474 SECTION 130. Section 23 of said chapter 29, as appearing in the 2010 Official Edition, is hereby

3475 amended by striking out, in lines 11 and 12, the words “ the Massachusetts Department of

3476 Transportation”.

3477 SECTION 131. Sections 26A and 26B of said chapter 29 are hereby repealed.

3478 SECTION 132. Said chapter 29 is hereby further amended by striking out section 27, as appearing in the

3479 2010 Official Edition, and inserting in place thereof the following section:-

3480 Section 27. Notwithstanding any general or special law to the contrary, no department, office,

3481 commission and institution shall incur an expense, increase a salary or employ a new clerk, assistant or

3482 other subordinate, unless an appropriation by the general court and an allotment by the secretary of

3483 administration and finance, sufficient to cover the expense thereof, shall have been made. As soon as

3484 possible after the general appropriation bill or any other appropriation bill has the force of law

3485 conformably to the constitution, the budget director shall file with the house and senate committees on

3486 ways and means and the comptroller a schedule identifying the amount of each subsidiary account, if any,

3487 within every appropriation that shall be made available to departments, offices, commission or institutions

3488 within the state’s central accounting system.

3489 SECTION 133. Said chapter 29 is hereby amended by striking out sections 29 to 29B, inclusive, as so

3490 appearing, and inserting in place thereof the following section:-

3491 Section 29. Any subsidiary account set up as prescribed in a schedule referred to in section 27, on the

3492 books of any department, office, commission or institution, receiving an appropriation from the

3493 commonwealth, may be increased or decreased by the interchange with any other such subsidiary account

3494 within the same appropriation account by the officer in charge of such department, office, commission or

3495 institution upon his certification to the budget director that such interchange is required to incur

3496 obligations to meet statutory responsibilities under general or special law where funds are otherwise not

3497 available, unless otherwise provided by general or special act. For any certification requesting a transfer

3498 to a subsidiary account that has not been established within a schedule prescribed under said section 27,
3499 the officer must include the reasons for the new subsidiary account. Every such certification shall include
3500 a statement of the details of the necessity of the transfer and of the probable consequences if said
3501 interchange should not be made. An officer making any such certification shall file forthwith a copy
3502 thereof within the central accounting system under policies and procedures adopted by the secretary of
3503 administration and finance.

3504 The comptroller may accept affidavits that expenditures are in accordance with the purpose of such
3505 appropriation or subsidiary accounts and do not exceed the unencumbered balances of the amounts
3506 provided therefor. The comptroller shall refuse to permit a disbursement or the incurring of an obligation
3507 if funds or allotments of funds under an appropriation account or subsidiary account under an
3508 appropriation account, sufficient to cover such disbursement or obligation are not available and shall
3509 immediately give notice of such refusal to the department, office, commission or institution proposing the
3510 expenditure, and, in the case of a department, office, commission or institution within any of the
3511 executive offices established by chapters six A and seven to the secretary having charge of such executive
3512 office.

3513 The secretary of administration and finance may establish regulations or policies governing the
3514 interchange of funds under this section.

3515 Section 29A. The secretary of administration and finance shall make, and may from time to time amend,
3516 rules and regulations governing the use of consultants in all departments, offices, boards, agencies,
3517 commissions and institutions. Such rules and regulations shall be open to public inspection shall not be
3518 subject to chapter 30A. No person employed by the commonwealth as a consultant shall directly or
3519 indirectly supervise another temporary or permanent employee of the commonwealth. Consultant
3520 contracts, whether written with organizations or individuals, shall not be used as substitutes for state
3521 positions. The secretary shall submit quarterly to the house and senate committees on ways and means
3522 and the house and senate committees on post audit and oversight a report which identifies all existing
3523 consultant contracts by agency, for all accounts established or maintained by the comptroller, including

3524 but not limited to appropriations, for federal grants, bond authorizations, revolving accounts, retained
3525 revenue line-items and trust accounts. Said report shall identify each contract, its duration, its maximum
3526 dollar obligation, the name of the contractor and the services performed by the contractor.

3527 Section 29B. The secretary of administration and finance shall make, and may from time to time amend,
3528 rules and regulations governing the procurement and administration of contracts with organizations
3529 providing social, rehabilitative, health or special education services. Such rules and regulations shall not
3530 be subject to chapter 30A. No person employed by an organization providing social, rehabilitative, health
3531 or special education services as defined above shall directly or indirectly supervise a temporary or
3532 permanent employee of the commonwealth. Such contracts shall not be written or used by any
3533 department, office, agency, board, commission or institution of the commonwealth to procure full or part-
3534 time personal services or equipment to be used by such department, office, agency, board, commission or
3535 institution, or any goods or services not required in the direct provision by the contractor of social,
3536 rehabilitative, health, or special education services to populations being served by the contracting
3537 department, office, agency, board, commission or institution.

3538 SECTION 134. The second paragraph of section 29D of chapter 29, as so appearing, is hereby amended
3539 by striking out the first, second, third and fourth sentences and inserting in place thereof the following
3540 sentence:- The comptroller shall, from time to time, competitively procure agreements with 1 or more
3541 private persons, companies, associations or corporations for the provision of debt collection services on
3542 behalf of state agencies.

3543 SECTION 135. Section 29F of said chapter 29, as so appearing, is hereby amended by inserting after the
3544 word "administration" in lines 23 and 24, lines 41, 46, 50, 146, 195, 202 and 204, the following words:-
3545 and finance.

3546 SECTION 136. Section 29G of said chapter 29, as so appearing, is hereby amended by striking out the
3547 third sentence and inserting in place thereof the following sentence:-No such agreement shall be entered
3548 into unless proposals for the same have been invited by public notice published in such manner as the
3549 state purchasing agent shall direct to ensure the widest possible cost-effective dissemination of the notice,

3550 for at least 2 consecutive weeks prior to the time specified for the opening of said proposals.

3551 SECTION 137. Said chapter 29 is hereby further amended by striking out section 31, as so appearing, and
3552 inserting in place thereof the following section:-

3553 Section 31. The comptroller, in consultation with the personnel administrator and the secretary of
3554 administration and finance, may establish a centralized payroll system and may include salaries payable
3555 by the commonwealth in that system, for all classified services in any agency of the commonwealth and
3556 for teachers and supervisors employed in any school or college in any department of the commonwealth
3557 and any salary payable by the commonwealth to a person holding a statutory position.

3558 Such centralized payroll system shall conform to such rules and regulations as the secretary of
3559 administration and finance, with the approval of the state treasurer, the comptroller and the personnel
3560 administrator, may from time to time make. Such rules and regulations shall not be subject to chapter
3561 30A. Notwithstanding any other general or special law to the contrary, and under section 148 of chapter
3562 149, to ensure the timely payment of wages and related payroll charges for work authorized by a spending
3563 authority and performed by employees, the comptroller shall have full authority to mandate the payment
3564 of such wages and payroll charges and prescribe, regulate and direct any spending authority to take the
3565 appropriate actions necessary to properly account for payroll charges, to ensure that payroll accounts are
3566 not in deficit at the close of the fiscal year and any other actions necessary to support sound fiscal
3567 management including appropriation, allotment or other funding limits.

3568 The comptroller shall require certification from each spending authority that each employee receiving a
3569 salary under the warrant is being paid for duties performed directly for the employing agency and not for
3570 duties performed for another state agency or other legal entity.

3571 The state treasurer or other state official authorized to expend money on behalf of the commonwealth may
3572 pay any salary, wages or other compensation to any person in the service of the commonwealth by means
3573 of deposits to employee bank accounts, provided, employees have expressly authorized said deposits.

3574 The state treasurer or other state official authorized to expend money on behalf of the commonwealth may
3575 pay any retirement benefit due to any retired employee in the state system or retired teachers in the

3576 teachers retirement system by means of deposits to such retired person's bank account, provided, the
3577 retired persons have expressly authorized said deposits.

3578 The comptroller or other state official authorized to expend money on behalf of the commonwealth may
3579 comply with administrative wage garnishments for child support, student loans, state or federal tax liens,
3580 court order bankruptcy orders or other garnishments as determined by the comptroller which name the
3581 commonwealth as employer and mandating deductions under state or federal law for employees of the
3582 commonwealth in amounts not more than the percentage allowable under state or federal law or a greater
3583 amount as authorized by the employee, provided that the commonwealth shall not use state resources or
3584 be compelled to comply with voluntary private garnishments or trustee process orders. For the purposes
3585 of this section, the term "employee" shall mean "employee" as defined in section 1 of chapter 32.

3586 SECTION 138. Said chapter 29 is hereby further amended by striking out section 31D, as so appearing,
3587 and inserting in place thereof the following section:-

3588 Section 31D. Whenever an officer or employee or former officer or employee of the commonwealth dies,
3589 and the commonwealth owes that officer or employee any sum or sums, by reason of services rendered or
3590 by reason of the terms of the officer or employee's employment, the comptroller may issue such sums to
3591 the beneficiaries designated to the employee under section 31A. Payments made as provided in this
3592 section shall discharge the liability of the commonwealth to all persons with respect to such sum or sums.

3593 SECTION 139. Section 34 of said chapter 29, as so appearing, is hereby amended by striking out
3594 paragraph (a) and inserting in place thereof the following paragraph:-

3595 (a) State officers, departments, institutions and other agencies may, with the written consent of the state
3596 treasurer, deposit a portion of the public monies in their possession in national banks, federal savings
3597 banks and federal savings and loan associations, lawfully doing business within the commonwealth, and
3598 in trust companies, savings banks and cooperative banks chartered under the laws of the commonwealth.
3599 The state treasurer shall publish a list of qualified banks and shall transmit that list at least once every 6
3600 months to the governor. The state treasurer shall not include on the list a state-chartered bank having a
3601 descriptive rating as described in clauses (d) or (e) of the sixth paragraph under section 14 of chapter 167

3602 or any federally insured depository institution having an assigned rating of (C) or (D) under section
3603 807(b)(2) of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.

3604 SECTION 140. Said chapter 29 is hereby further amended by striking out section 38, as so appearing, and
3605 inserting in place thereof the following section:-

3606 Section 38. With the exception of funds used in connection with a deferred compensation program for
3607 state employees, and funds of the state employees' retirement system or the teachers' retirement system,
3608 all funds over which the commonwealth has exclusive control shall be invested by the state treasurer as
3609 follows:

3610 (a) In the public funds of the United States or of the District of Columbia or of this commonwealth, or in
3611 the legally authorized bonds of any other state of the United States, other than a territory or dependency
3612 of the United States, which has not within the 20 years prior to the making of such investment defaulted
3613 in the payment of any part of either principal or interest of any legal debt.

3614 (b) In repurchase agreements secured by United States Treasury obligations or United States Treasury
3615 obligations bearing a maturity date not later than 1 year.

3616 (c) In the bonds or notes of a county, city or town of this commonwealth.

3617 (d) In shares of beneficial interest issued by money market funds registered with the Securities and
3618 Exchange Commission under the Investment Company Act of 1940, as amended, operated under section
3619 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating
3620 from at least 1 nationally recognized statistical rating organization. The purchase price of shares of
3621 beneficial interest purchased under this section shall not include a commission charged by the money
3622 market funds.

3623 (e) In any other security that qualifies for inclusion in a fund operated under section 270.2a-7 of Title 17
3624 of the Code of Federal Regulations, as amended.

3625 (f) In investment agreements or guaranteed investment contracts rated, or with a financial institution
3626 whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior
3627 long-term debt obligations are rated, at the time the agreement or contract is entered into, in 1 of the 2

3628 highest rating classifications by a nationally recognized rating service if the agreements or contracts do
3629 not exceed 1 year in duration, or, in the case of bond proceeds, 3 years duration.

3630 (g) In investment agreements with a corporation whose principal business is to enter into the agreements
3631 if: the corporation and the investment agreements of the corporation are each rated in 1 of the 2 highest
3632 rating classifications by a nationally-recognized rating service; the commonwealth has an option to
3633 terminate each agreement in the event that the rating is downgraded below the 2 highest rating
3634 classifications; and the agreements or contracts do not exceed 1 year in duration, or, in the case of bond
3635 proceeds, 3 years duration.

3636 (h) In the promissory notes of an industrial, commercial, finance, banking, railroad or public utility
3637 corporation conducting business in this state when such notes mature not later than 1 year subsequent to
3638 their respective dates of issue; provided, however, that, at the time of any such investment, (1) such
3639 corporation has capital stock, premium thereon and surplus of at least \$25,000,000, (2) the securities of
3640 such corporation are eligible for investment by life insurance companies authorized to do business in the
3641 commonwealth, and (3) all outstanding debt obligations of such corporation which have any rating from 2
3642 or more standard rating services are rated within the 3 highest classifications established by at least 2 such
3643 rating services, or, if none of the outstanding debt obligations of such corporation has any rating from 2
3644 such rating services, that such outstanding debt obligations are rated at the time of investment within the 3
3645 highest classifications established by at least 2 such rating services, or the notes of such corporation at the
3646 time of investment are rated prime by the National Credit Office; provided, further, that the
3647 commonwealth' investment in the notes of any 1 company shall not exceed 20 per cent of the capital and
3648 surplus of such company.

3649 (i) In bankers acceptances and bills of exchange eligible for purchase by federal reserve banks and which
3650 have been accepted by a bank, a trust company, a private banker or an investment company, or by a
3651 banking corporation which is organized under the laws of the United States or of any state thereof and
3652 which is a member of the federal reserve system.

3653 The state treasurer may purchase with a portion of the State Lottery and Gaming Fund, as established and

3654 defined in section 35 of chapter 10, from insurance companies lawfully doing business in the
3655 commonwealth, annuities payable to the commonwealth to be used for payment of lottery prizes. Such
3656 annuities shall not be subject to section 118 of chapter 175 limiting payment of annuities to individuals,
3657 and shall, to the extent that such annuities are payable to the commonwealth, be exempt from taxation
3658 under section 20 of chapter 63. Contracts for the purchase of such annuities shall be subject to
3659 competitive bidding and shall be awarded to the lowest responsible bidder. All such bids and contracts
3660 shall be public records.

3661 The state treasurer may also purchase with a portion of the State Lottery and Gaming Fund, bonds, notes,
3662 shares in combined investment funds or other interest bearing obligations under the standards in
3663 subdivision (3) of section 23 of chapter 32.

3664 Funds in connection with a deferred compensation program for state employees may be invested by the
3665 treasurer under section 64; provided, however, that such funds, whether or not invested, shall remain in
3666 the sole control of the treasurer, and may be used by the commonwealth at any time and for any purpose.

3667 The treasurer may lend securities purchased from funds authorized by this section, provided that at the
3668 time of the execution of the loan at least 100 per cent of the market value of the security lent shall be
3669 secured by cash or securities guaranteed by the United States government or any agency of the United
3670 States government. At all times during the term of each such loan the collateral shall be equal to not less
3671 than 95 per cent of the full market value of the security and said collateral shall not be more than
3672 \$100,000 less than the full market value of the security.

3673 SECTION 141. The first paragraph of section 38A of said chapter 29, as so appearing, is hereby amended
3674 by adding the following sentence:-The management of any fund established under this paragraph shall be
3675 competitively procured not later than once every 7 years.

3676 SECTION 142. Section 38C of said chapter 29, as so appearing, is hereby amended by striking out, in
3677 line 17, the words "finance advisory board" and inserting in place thereof the following words:- state
3678 finance and governance board established under section 97 of chapter 6.

3679 SECTION 143. Said section 38C of said chapter 29, as so appearing, is hereby further amended by adding
3680 the following sentence:- The state treasurer may expend amounts received pursuant to this section without
3681 further appropriation to make payments pursuant to this section or to pay debt service on debt obligations
3682 of the commonwealth, including, without limitation, by funding escrow accounts for the payment of such
3683 debt service.

3684 SECTION 144. Section 42 of said chapter 29 is hereby repealed.

3685 SECTION 145. Section 47 of said chapter 29, as appearing in the 2010 Official Edition, is hereby
3686 amended by striking out, in lines 2 and 3, the words “other than assessments for the metropolitan
3687 districts,”.

3688 SECTION 146. Section 47A of said chapter 29 is hereby repealed.

3689 SECTION 147. The eighth paragraph of section 49 of said chapter 29, as appearing in the 2010 Official
3690 Edition, is hereby amended by striking out the last sentence.

3691 SECTION 148. The last paragraph of said section 49 of said chapter 29, added by section 42 of chapter
3692 68 of the acts of 2011, is hereby amended by adding the following sentence:- Bonds and notes issued by
3693 the commonwealth their transfer and income therefrom, including any profit made on the sale thereof,
3694 shall at all times be free from taxation within the commonwealth.

3695 SECTION 149. The second paragraph of section 49B of chapter 29, as appearing in the 2010 Official
3696 Edition, is hereby amended by adding the following sentence:- The state treasurer may enter into
3697 agreements with or for the benefit of the purchasers and subsequent and transferees of bonds or notes of
3698 the commonwealth to provide liquidity support for such bonds and such notes upon such terms as the
3699 state treasurer may deem appropriate and consistent with the liquidity needs of the state treasury from
3700 amounts in the Stabilization Fund, the General Fund and any other state fund over which the state
3701 treasurer has investment authority except sinking funds, trust funds, trust deposits and agency funds.

3702 SECTION 150. Said chapter 29 is hereby further amended by striking out sections 50 and 51, as so
3703 appearing, and inserting in place thereof the following section:-

3704 Section 50. The state treasurer shall annually in December certify to the budget director the amount
3705 necessary to provide for serial and sinking fund payments with respect to any bonds or notes of the
3706 commonwealth for the fiscal year beginning on July 1 following.

3707 SECTION 151. Section 53 of said chapter 29, as so appearing, is hereby amended by striking out, in lines
3708 10 and 11, the words "finance advisory board" and inserting in place thereof the following words:- state
3709 finance and governance board established under section 97 of chapter 6.

3710 SECTION 152. Section 55 of said chapter 29, as so appearing, is hereby amended by striking out the last
3711 sentence.

3712 SECTION 153. The second paragraph of section 60A of said chapter 29, as so appearing, is hereby
3713 amended by striking out the second sentence and inserting in place thereof the following sentence:- For
3714 the fiscal year starting July 1, 2012, such limit shall be \$17,070,000,000.

3715 SECTION 154. Said chapter 29 is hereby further amended by striking out section 60B, as so appearing,
3716 and inserting in place thereof the following section:-

3717 Section 60B. (a) In this section, the following words shall, unless the context clearly requires otherwise,
3718 have the following meanings.

3719 "Board", the state finance and governance board established pursuant to section 97 of chapter 6.

3720 "Tax supported debt", direct debt, as further described and limited in section 60A, and other forms of
3721 debt, including state agency capital leases supported in whole or part by state tax revenues and debt of the
3722 department of transportation, and other units of commonwealth government which, in the opinion of the
3723 board, are supported directly or indirectly by state tax revenues, including debt issued by the department
3724 of transportation under chapter 6C that is secured by a pledge of future federal aid from any source.

3725 (b) As part of its duties under section 98 of chapter 6, the board shall review on a continuing basis the size
3726 and condition of the commonwealth tax supported debt as well as other debt of any authority of the
3727 commonwealth that is determined to be a component unit of the commonwealth by the comptroller under
3728 subsection (c) of section 12 of chapter 7A. The estimate shall be made available electronically and
3729 prominently displayed on the official website of the commonwealth.

3730 (c) On or before September 10 of each year, the board shall submit to the governor and the general court
3731 the board's estimate of the total amount of new commonwealth debt that prudently may be authorized for
3732 the next fiscal year. In making its estimate, the board shall consider:

- 3733 (1) the amount of state bonds that, during the next fiscal year, will be outstanding and authorized but
3734 unissued;
- 3735 (2) the capital program prepared by the secretary of administration and finance;
- 3736 (4) projections of debt service requirements during the next 10 fiscal years;
- 3737 (5) the criteria that recognized bond rating agencies use to judge the quality of issues of state bonds;
- 3738 (6) any other factor that is relevant to the ability of the state to meet its projected debt service
3739 requirements for the next 5 fiscal years or the marketability of state bonds;
- 3740 (7) the effect of authorizations of new state debt on each of the factors in this subsection;
- 3741 (8) identification of pertinent debt ratios, such as debt service to General Fund revenues, debt to personal
3742 income, debt to estimated full-value of property, and debt per capita;
- 3743 (9) A comparison of the debt ratios prepared for paragraph (8) with the comparable debt ratios for other
3744 New England states, New York and other states that the board determines to offer a fair comparison to the
3745 commonwealth;
- 3746 (10) A description of the percentage of the state's outstanding general obligation bonds constituting fixed
3747 rate bonds, variable rate bonds, bonds that have an effective fixed interest rate through a hedging contract,
3748 and bonds that have an effective variable interest rate through a hedging contract. The report shall also
3749 include, for each outstanding hedging contract, a description of the hedging contract, the outstanding
3750 notional amount, the effective date, the expiration date, the name and ratings of the counterparty, the rate
3751 or floating index paid by the state and the rate or floating index paid by the counterparty, and a summary
3752 of the performance of the state's hedging contracts in comparison to the objectives for which the hedging
3753 contracts were executed; and
- 3754 (11) the amount of issuances, debt outstanding, and debt service requirement of other classes of
3755 commonwealth tax supported debt as well as other debt of commonwealth units.

3756 (f) The estimate of the board shall be advisory and non-binding.

3757 (g) On or before October 15 of each year, after considering the current estimate of the committee, the
3758 governor shall determine:

3759 (1) the total authorizations of new commonwealth debt that the governor considers advisable for the next
3760 fiscal year; and

3761 (2) the preliminary allocation of new commonwealth debt for capital facility projects.

3762 SECTION 155. Section 65 of said chapter 29, as so appearing, is hereby amended by striking out, in lines
3763 11, 16, 18 and in lines 20 and 21, the words “commissioner or administration” and inserting in place
3764 thereof, in each instance, the following words:- secretary of administration and finance.

3765 SECTION 156. Section 66 of said chapter 29, as so appearing, is hereby amended by striking out the last
3766 sentence.

3767 SECTION 157. Section 9 of chapter 29C of the General Laws, as so appearing, is hereby amended by
3768 striking out, in line 11, the words “finance advisory board” and inserting in place thereof the following
3769 words:- state finance and governance board established under section 97 of chapter 6.

3770 SECTION 158. Chapter 58 of the General Laws is hereby amended by striking out section 18C, as
3771 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

3772 Section 18C.(a) In this section, “budgeted aid” shall mean unrestricted aid to cities and towns, including
3773 proceeds from the state lottery established under chapter 10, payments in lieu of taxes from the
3774 commonwealth to cities and towns and education aid to cities and towns under chapter 70.

3775 (b) In fiscal year 2012 and each fiscal year thereafter, the state treasurer shall, subject to appropriation but
3776 not subject to allotment under section 9B of chapter 29, distribute budgeted aid to cities and towns. The
3777 distribution shall be made annually in 4 equal payments, to be made on or before September 30,
3778 December 31, March 31 and June 30.

3779 Notwithstanding clause Forty-first of section 7 of chapter 4 or any other general or special law to the
3780 contrary, the commissioner of revenue or any official responsible for a local reimbursement or assistance
3781 program reported by said commissioner pursuant to section 25A shall use, as appropriate, the most recent

3782 city and town population estimates of the United States Bureau of the Census in calculating distributions
3783 or assessments under local reimbursement or assistance programs. Such distribution programs shall
3784 include, but not be limited to, the chapter 70 school aid program, and aid to regional public libraries. Such
3785 assessments shall include, but not be limited to, air pollution control districts, the metropolitan area
3786 planning council, the old colony planning council, the Massachusetts Bay Transportation Authority and
3787 any other entity for which said commissioner is required to give notice pursuant to said section 25A.

3788 (c) This section shall not be construed to prohibit the distribution of other state government payments to
3789 cities and towns that are not budgeted aid nor shall this section be construed to prohibit the deduction
3790 from distributions to satisfy amounts owed to the state by cities and towns under section 20A or any other
3791 general or special law.

3792 SECTION 159. Section 2 of chapter 62F of the General Laws, as so appearing, is hereby amended by
3793 striking out the definitions of “Cumulative net state tax revenues” and “Cumulative permissible tax
3794 revenues,”.

3795 SECTION 160. Said section 2 of said chapter 62F, as so appearing, is hereby further amended by striking
3796 out the definition of “Permissible revenue growth rate” and “Permissible tax revenue,”.

3797 SECTION 161. Section 6A of said chapter 62F is hereby repealed.

3798 SECTION 162. Section 3B of chapter 70B of the General Laws, as appearing in the 2010 Official Edition,
3799 is hereby amended by striking out, in line 13, the words “finance advisory board” and inserting in place
3800 thereof the following words:- state finance and governance board established under section 97 of chapter
3801 6.

3802 SECTION 163. Chapter 81 of the General Laws is hereby amended by inserting after section 8A the
3803 following 2 sections:-

3804 Section 8B. The commissioner of highways or the commissioner of the department of conservation and
3805 recreation shall require that any person proposing to bid on any work, excepting the construction,
3806 reconstruction, repair or alteration of buildings, to be awarded by the division of highways or by the
3807 department of conservation and recreation, respectively, and the commissioner of highways shall require

3808 that any person proposing to bid on any such work to be awarded by a municipality under section 34 of
3809 chapter 90, submit a statement under the penalties of perjury setting forth the person's qualifications to
3810 perform such work. Such statement shall be in such detail and form and shall be submitted at such times
3811 as such commissioner may prescribe under rules promulgated by said division or commission,
3812 respectively, subject to the requirements of chapter 30A. Such rules may require such information as may
3813 be necessary to implement this section and may establish a basis for the classification and maximum
3814 capacity rating of bidders which shall determine the class and aggregate amount of work such bidders are
3815 qualified to perform. The statement shall set forth, among other matters that may be prescribed by the
3816 rules, the proposed bidders' financial resources, proposed bidders' current bonding capacity, proposed
3817 bidders' experience, the number and kinds of equipment which proposed bidder has for use on such work,
3818 and the number, size and completion dates of other construction jobs, whether in this state or another
3819 state, which proposed bidder has under contract. The information contained within such statement,
3820 together with other relevant available information and the proposed bidder's past performance on work of
3821 a similar nature, may be considered by said division or commission in determining whether or not the
3822 proposed bidder is qualified to perform any specific work for which proposals to bid are invited.
3823 Based on information received and available and on past performance of the proposed bidder on work of
3824 a similar nature, each such commissioner, acting through a prequalification committee consisting of
3825 engineering personnel of said division or commission, respectively, to be appointed by each such
3826 commissioner, shall determine the class and aggregate amount of work that a proposed bidder is qualified
3827 to perform, and shall limit a proposed bidder to such class and aggregate amount of work as the proposed
3828 bidder may be qualified to perform. Said aggregate amount of work shall not be less than the amount of
3829 the bidder's current bonding capacity, as verified to the commissioner's satisfaction, by a surety company
3830 incorporated under section 105 of chapter 175, or authorized to do business in the commonwealth under
3831 section 106 of said chapter 175, and satisfactory to the commissioner; provided, however, that if there is
3832 more than 1 surety company, the surety companies shall be jointly and severally liable. Said division or
3833 commission shall limit the bid proposals to be furnished to a proposed bidder to such bidders as are

3834 determined by its commissioner to have the classification and capacity rating to perform the work
3835 required.

3836 Any such statement filed with either such commissioner by a proposed bidder shall be confidential, and
3837 shall be used only by the division of highways or the department of conservation and recreation, as the
3838 case may be, in determining the qualifications of such proposed bidder to perform work for said division
3839 or commission, or for a municipality under section 34 of chapter 90. No information contained in such
3840 statement shall be imparted to any other person without the written consent of said bidder.

3841 If any proposed bidder fails to file the statement required by this section, or if, in the judgment of the
3842 commissioner, the proposed bidder is not qualified to carry out the work required under a contract which
3843 is proposed to be awarded, the commissioner shall refuse to furnish such proposed bidder with bid
3844 proposals for such work and shall reject any bid by such proposed bidder for such work.

3845 Only persons filing the statement required in this section shall be authorized as prime contractors and then
3846 only as to the class and aggregate amount of work which their qualifications warrant.

3847 Any bidder qualified as authorized in this section shall be promptly notified by the commissioner.

3848 Any proposed bidder who is aggrieved by any decision or determination of the prequalification committee
3849 or the commissioner which affects the bidder's right to bid may file a new application for qualification at
3850 any time, or within 15 days after receiving notice of such decision the applicant may request in writing a
3851 hearing before an appeal board to reconsider the bidder's application or qualifications. The appeal board
3852 in the division of highways shall consist of the commissioner, the associate commissioners and the chief
3853 engineer of highways, or their designees, and the appeal board in the department of conservation and
3854 recreation shall consist of the commissioner, the associate commissioners, and the director or chief
3855 engineer of the division involved, or their designees.

3856 Any bidder or proposed bidder who so requests shall be granted a hearing by such appeal board at which
3857 the bidder may submit any and all additional information or evidence bearing upon the bidder's finances,
3858 current bonding capacity, experience or other qualifications which may be relevant thereto. Such hearing
3859 shall be held without delay and the board shall promptly render its decision after taking into consideration

3860 all relevant information or evidence submitted relating to the bidder' qualifications. The appeal board
3861 may modify, amend or reverse any previous decision of the prequalification committee or the
3862 commissioner with respect to the qualification of the applicant or may sustain such previous decision.
3863 Such hearing shall be deemed to be an adjudicatory proceeding, and any bidder or proposed bidder who is
3864 aggrieved by the decision of the appeal board shall have a right to judicial review under said chapter 30A.
3865 The commissioner of highways or the commissioner of the department of conservation and recreation
3866 shall not consider any bid filed with such commissioner by any person for any contract to be awarded by
3867 said division or department, respectively, who has not been qualified as required by the rules promulgated
3868 by said division or department, and any such bid of any unqualified bidder may be rejected without being
3869 opened. No contract shall be awarded to any bidder not qualified to bid on the contract at the time fixed
3870 for receiving bids.

3871 Any person, firm or corporation who knowingly and willfully makes, or causes to be made, any false or
3872 fraudulent statement in any application for qualification filed with such division or department as required
3873 herein shall, upon final conviction, be disqualified from submitting bids on contracts advertised by the
3874 division or commission for a period of 1 year following the date of said conviction.

3875 This section shall not apply to any proposed bidder the aggregate amount of whose work with said
3876 division of highways, or with the department of conservation and recreation, including the amount of the
3877 bidder's proposal, is less than \$50,000.

3878 Section 8C. Any contract for the resurfacing, maintenance, minor reconstruction, or minor repair of any
3879 major state highway or numbered route within the city of Boston, between said city and state highway
3880 route 128, of state highway route 3 as far south as the junction of state highway route 139, on which the
3881 average daily traffic exceeds 70,000 vehicles per day, and any contract for the maintenance, minor
3882 reconstruction, or minor repair of state highway route 128 between its junction with state highway route 3
3883 in the town of Braintree and its junction with U.S. route 1 in the town of Lynnfield, to be awarded by the
3884 division of highways, the department of conservation and recreation, or by a municipality under section
3885 34 of chapter 90 shall, unless such contract involves the performance of emergency work as described in

3886 this section, provide that no work shall be performed between the hours of 6:30 and 9:00 a.m. on lanes
3887 inbound to the city of Boston or between the hours of 4:00 and 6:00 p.m. on lanes outbound from the city
3888 of Boston, Monday through Friday, except holidays. No such work, except emergency work, shall be
3889 performed on such a highway or route by a public employee during such hours. As used in this section
3890 emergency work shall include only those projects immediately necessary to insure the safety of persons
3891 using such highways or routes.

3892 SECTION 164. Section 12 of chapter 161A of the General Laws, as appearing in the 2010 Official
3893 Edition, is hereby amended by striking out, in lines 3 and 4, the words “finance advisory board” and
3894 inserting in place thereof the following words:- state finance and governance board established under
3895 section 97 of chapter 6.

3896 SECTION 165. Section 13 of said chapter 161A, as so appearing, is hereby amended by striking out, in
3897 line 24, the words “finance advisory board” and inserting in place thereof the following words:- state
3898 finance and governance board established under section 97 of chapter 6.

3899 SECTION 166. Section 29 of chapter 304 of the acts of 2008 is hereby amended by striking out the last
3900 sentence and inserting in place thereof the following sentence:- For purposes of this section, the term
3901 “derivative financial products” shall mean financial instruments with values derived from or based upon
3902 the value of other assets or on the level of an interest rate index including, but not limited to, detached call
3903 options, interest rate swaps or swaptions, caps, floors and collars, but not including bond insurance or
3904 other credit or liquidity enhancement of bonds or notes or agreements related to the lending or investment
3905 of the proceeds of bonds or notes.

3906 SECTION 167. The present members of the finance advisory board shall continue in office as members
3907 of the state finance and governance oversight board, established under section 97 of chapter 6 of the
3908 General Laws, until their terms expire and their successors are qualified.

3909 SECTION 168. The comptroller shall promulgate the schedule of revenue accounts, as required in section
3910 2 of chapter 29 of the General Laws, inserted by section 102, on or before January 1, 2012.

3911 SECTION 169. The state treasurer shall issue a request for the competitive procurement of any fund
3912 established under section 38A of chapter 29 of the General Laws on or before May 1, 2012.

3913 SECTION 169A. A Special Commission shall be established to study and make recommendations
3914 concerning functional overlaps and other redundancies among state agencies and opportunities to promote
3915 efficiency and accountability in state government.

3916 Section A. The Commission shall identify ways to eliminate such overlaps and redundancies and make
3917 such other recommendations as the commission deems appropriate, with the goal of reducing costs to the
3918 state and enhancing the quality and accessibility of state services to the public. The Commission shall
3919 consider merging or consolidating state agencies and programs if such action would reduce costs without
3920 adversely impacting the quality of services. The Commission shall also seek to identify opportunities to
3921 maximize revenues, such as federal grants and matching funds.

3922 Section B. Members of the Commission shall be determined as follows: (1) Three members to be
3923 appointed by the Speaker of the House; (2) Two members to be appointed by the House Minority Leader;
3924 (3) Three members to be appointed by the Senate President; (4) Two members to be appointed by the
3925 Senate Minority Leader; (5) One member to be appointed by the State Auditor; (6) One member to be
3926 appointed by the State Treasurer; (7) One member to be appointed by the State Comptroller; (8) Four
3927 members to be appointed by the Governor. The Commission shall be bipartisan and may include
3928 members of the General Court, members of the executive branch, members of the judicial branch, or
3929 outside experts. The Speaker of the House and the Senate President shall determine which two members
3930 of the Commission will serve as co-chairpersons.

3931 Section C. The Commission may hold hearings and invite testimony from experts and the public. The
3932 Commission shall review and identify best practices learned from undertaking similar efforts in other
3933 states, such as Connecticut's Commission on Enhancing Agency Outcomes which reported its findings
3934 and recommendations in December, 2010.

3935 Section D. The agency head and staff of each state agency under consideration by the Commission shall
3936 ensure that any data, information or materials that the Commission requests for purposes of its review and
3937 deliberations are provided to the Commission in a timely manner.

3938 Section E. Members of the Commission shall be named and the Commission shall commence its work
3939 within 60 days of the signing of this bill into law. The Commission shall submit its report and
3940 recommendations within 18 months following commencement of its work to the Speaker of the House,
3941 Senate President, and Governor. The report will also be made available online for public review.

3942 SECTION 169B. Tax expenditures are a form of taxpayer spending and should be subject to the same
3943 scrutiny by government policymakers required by direct expenditures and the same disclosure and
3944 transparency required for direct expenditures. In the interest of simplicity and equity, the total number of
3945 tax expenditures and the total amount of foregone revenues should be limited to those that are highly
3946 effective at achieving clearly-identified public policy purposes.

3947 There should be a comprehensive, rational, policy-driven and analytic approach to our tax expenditure
3948 budget. Each particular tax expenditure should:

- 3949 1. Have a clearly identified public policy purpose and desired outcome for clearly identified
3950 beneficiaries;
- 3951 2. Be subject to a periodic, data-based, cost-benefit analysis that measures success in achieving the
3952 public policy purpose and desired outcome for the intended beneficiaries;
- 3953 3. Be subject to a periodic review by the Legislature and the Governor for the purpose of
3954 determining the effectiveness of the tax expenditure and taking any action to eliminate, modify or
3955 preserve the tax expenditure that may be warranted based on such determination; and
- 3956 4. To the extent the tax expenditure is dependent on certain conduct of the tax beneficiary and/or is
3957 approved and awarded pursuant to the discretion of an administering agency, it should be subject

3958 to well-articulated standards of accountability with appropriate enforcement mechanisms, such as
3959 clawbacks.

3960 SECTION 169C. Chapter 29 of the General Laws, as appearing in the 2010 Official Edition, is hereby
3961 amended by striking section 5G and inserting in place thereof the following:

3962 Section 5G. After each quarter, the department of revenue shall certify to the state comptroller the
3963 amount of tax revenues estimated to have been collected during the preceding quarter from capital
3964 gains income. If the department of revenue certifies that the amount of tax revenues estimated to have
3965 been collected from capital gains income exceeds the product of \$1,000,000,000 and allowable
3966 growth in a fiscal year, the comptroller shall transfer quarterly any such amount to the
3967 Commonwealth Stabilization Fund established by section 2H.

3968 This transfer shall be made before the certification of the consolidated net surplus for the previous
3969 fiscal year under section 5C. The department of revenue shall report by November 30 to the state
3970 comptroller, the executive office for administration and finance and the house and senate committees
3971 on ways and means tax revenues estimated to have been collected during the preceding fiscal year
3972 from capital gains income.

3973 Five per cent of any amount transferred to the Commonwealth Stabilization Fund under this section
3974 shall then be transferred from the Commonwealth Stabilization Fund to the State Retiree Benefits
3975 Trust Fund established in section 24 of chapter 32A and 5 per cent of any amount transferred to the
3976 Commonwealth Stabilization Fund under this section shall then be transferred from the
3977 Commonwealth Stabilization Fund to the
3978 Commonwealth's Pension Liability Fund established in section 22 of chapter 32.

3979 SECTION 169D. Section 30 of Chapter 7 of the General Laws, as appearing in the 2006 Official
3980 Edition, is hereby amended in line 7, by inserting after the first paragraph the following paragraph:-

3981 Every agency and institution of the Commonwealth shall transmit to the human resources division all
3982 employment opportunities, notices, and postings, excluding positions subject to section 46D of
3983 chapter 30, chapter 31 and chapter 150E, including but not limited to notices of job opportunities,
3984 new positions and vacancies. The division shall immediately place all such information in the
3985 statewide employment computerized referral system. No position shall be filled without full
3986 compliance with this section.

3987 SECTION 169E. Subsection (a) of section 7 of chapter 150E of the General Laws, as appearing in the
3988 2010 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof
3989 the following:-

3990 The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be
3991 filed with the commission, the house and senate committees on ways and means, and the clerks of the
3992 house and senate forthwith by the employer. All agreements shall be conspicuous and accessible online in
3993 searchable format through the general court's website and there shall be an archive of all agreements
3994 available online in searchable format.

3995 SECTION 169F. Notwithstanding any general or special law to the contrary, there shall be a special
3996 commission to study and report on the feasibility of a two-year budget process for the Commonwealth.
3997 The commission shall consist of the treasurer, or his designee; the secretary for administration and
3998 finance, or his designee; the comptroller, or his designee; 3 members of the house of representatives, 2 of
3999 whom shall be appointed by the speaker of the house, and 1 of whom shall be appointed by the minority
4000 leader of the house; and 3 members of the senate, 2 of whom shall be appointed by the senate president,
4001 and 1 of whom shall be appointed by the senate minority leader. The commission shall prepare a report of
4002 the findings and recommendations together with recommendations for legislation to implement those
4003 recommendations by filing the same with the clerks of the senate and house not later than 60 days after
4004 the passage of this bill. The commission shall not receive compensation.

4005 SECTION 169G. (a) There shall be a special commission of the General Court to conduct a study and
4006 investigation of the feasibility, cost and benefit of establishing an independent, nonpartisan fiscal and
4007 policy research office within the General Court. The commission shall consist of the following members:
4008 2 members to be appointed by the president of the senate, 1 of whom shall serve as co-chair; 1 member
4009 appointed by the minority leader of the senate; 2 members to be appointed by the speaker of the house, 1
4010 of whom shall serve as co-chair; and 1 member appointed by the minority leader of the house of
4011 representatives. The study shall include, but not be limited to, the following topics: the organization and
4012 cost of independent research offices in operation in other legislative bodies; the technical and operational
4013 resources needed to complete the functions of such research office; an assessment of how existing human
4014 resources could integrate with a new research office; and the new services, if any, that could be provided
4015 to the membership and the public.

4016 (b) The commission may utilize staff as it deems necessary, including a staff person or persons
4017 designated by each the house committee of personnel and administration, the office of the senate
4018 president, the office of the senate minority leader, the office of the speaker of the house of representatives,
4019 and the office of the house minority leader.

4020 (c) The commission shall report the results of its investigation and study, together with any drafts of
4021 legislation necessary to carry its recommendations into effect, by filing the same with the clerks of the
4022 senate and house of representatives who shall forward the same to the house committee on personnel and
4023 administration, and the house and senate committees on ways and means on or before December 31,
4024 2012.

4025 SECTION 170. This act shall take effect on July 1, 2012.