











ACTS

RESOLVES

PASSED BY THE

General Court of Massachusetts
IN THE YEAR

2004

VOLUME II

PUBLISHED BY

William Francis Galvin SECRETARY OF THE COMMONWEALTH



Chapter 205. AN ACT ESTABLISHING A DEPARTMENT OF EARLY EDUCATION AND CARE.

Be it enacted, etc., as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 15C the following chapter:- CHAPTER 15D DEPARTMENT OF EARLY EDUCATION AND CARE

Section 1. It is hereby declared to be the policy of the commonwealth to assure every child a fair and full opportunity to reach his full potential by providing and encouraging services which maximize a child's capacity and opportunity to learn, which strengthen family life, and which support families in their essential function of nurture for a child's physical, social, educational, moral, and spiritual development.

Section 2. There shall be a department of early education and care, in this chapter called the department, which shall serve as the lead agency for the administration of all public and private early education and care programs and services. The department shall be the state agency responsible for compliance with early education and care services under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193), or any successor federal statute. The department shall be the state education agency for the purposes of early education and care services under federal law. The department shall seek, apply for and encourage the use of any federal funds for early education and care services, and shall facilitate the coordination of federal, state, and local policies concerning early education and care. The department shall be under the supervision and control of a board of early education and care.

Section 3. (a) There shall be a board of early education and care, hereinafter referred to as the board. The board shall set policies and establish regulations related to early education and care programs, and services. The Board shall oversee and supervise the administration of a high-quality system of public and private early education and care. The board shall oversee the development and implementation of a program of voluntary, universally accessible high-quality early childhood education to all preschool-aged children in the commonwealth, subject to appropriation. The board shall oversee the development and management of an educationally sound kindergarten readiness assessment for pre-school children and a comprehensive evaluation of early education and care programs, including the establishment of baseline data to inform the design and implementation of a universally accessible, high-quality early education and care program for all pre-school age children. The board shall oversee the development and implementation of a workforce development system designed to support the education, training and compensation of the early education and care workforce, including all center, family child care, infant, toddler, preschool and school-age providers.

(b) The board shall consist of 9 members, and shall include: the secretary of health and human services, ex-officio; the commissioner of the department of education, ex-officio; the chancellor of higher education, ex-officio; and 6 members appointed by the governor.

Of the members appointed by the governor, 1 shall be a representative of the business community with a demonstrated commitment to education; 1 shall be an early education and care teacher, selected from a list of 3 nominees jointly provided by the Massachusetts Teachers Association and the Massachusetts Federation of Teachers; 1 shall be a parent or guardian of a child receiving early education and care services or a family childcare provider; 1 shall be a provider of early education and care services with practical experience in the management and administration of early education and care programs; 1 shall be a person with expertise in the evaluation and assessment of successful pre-school education programs; and 1 shall be a pediatrician with a focus on child development or a person nationally recognized for research in the field of educational psychology.

In making the appointments, the governor shall seek to appoint persons who are from geographically diverse regions of the commonwealth, who are familiar with the differing interests, perspectives and needs of urban, rural and suburban regions, and who reflect the ethnic and racial diversity of the commonwealth's children. In appointing members from urban areas of the commonwealth, the governor shall seek to appoint people who are familiar with the particular issues of urban areas with high concentrations of low-income families. Each of the members chosen shall have a demonstrated interest in and commitment to early education and care and a commitment to maximizing family choice by preserving a mixed system of high-quality public and private programs.

Five members shall constitute a quorum, and the affirmative vote of 5 members shall be necessary for any action taken by the board.

Appointed members shall serve for terms of 5 years. No member shall be appointed to serve more than 2 consecutive full terms. Upon expiration of the term of office of an appointed member, a successor shall be appointed in like manner. If an appointed member is absent from any four regularly scheduled meetings, exclusive of July and August, in any calendar year, his office as a member of said board shall be deemed vacant. The chairperson of the board shall forthwith notify the governor that such vacancy exists.

No appointive member of said board shall be employed by or receive regular compensation from the department of early education and care. The governor shall appoint a chairperson to the board. Not more than 2 appointive members of the board shall be employed on a full-time basis by an agency of the commonwealth. The members of the board shall be reimbursed for their necessary expenses incurred in the performance of their duties. The board shall meet not fewer than 10 times annually at the call of the chairman.

No member of the board shall be found to be in violation of section 6 of chapter 268A for conduct which involves his participation, as a member of the board, in a particular matter before the board which may affect the financial interest of an early education and care program with which the member is affiliated; provided, however, that the member, his immediate family or partner has no personal and direct financial interest in the particular matter; and provided, further, that the affiliation is disclosed to the board and recorded in the minutes of the meeting of the board.

(c) The purposes of the board are as follows:

- (1) to consolidate and coordinate resources and public funding streams for early education and care in order to assure the sound and coordinated development of all early education and care services to children;
- (2) to encourage family choice by ensuring a mixed system of high-quality public and private programs, with local points of entry, staffed by well-qualified professionals;
- (3) to assure parents a decisive role in the planning, operation, and evaluation of programs which aid families in the care of children;
- (4) to provide consumer education and accessibility to early education and care resources;
- (5) to advance the quality of early education and care programs in order to support the healthy development of children and preparation for their success in school;
- (6) to develop a seamless service delivery system of early education and care programs administered by local, state and federal agencies, with local points of entry;
- (7) to develop and manage an effective data collection system to support the necessary functions of a coordinated system of early education and care in order to enable accurate evaluation of its impact;
 - (8) to respect and draw upon family values and cultural heritage;
- (9) to establish the administrative framework for and promote the development of early education and care services in order to provide that such services, staffed by well-qualified professionals, shall be available in every community for all families which express a need for them;
- (10) to assure that family foster care or other residential care is provided only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound development; and
- (11) to assure that every child shall in all circumstances be protected against all forms of neglect, cruelty, abuse, and exploitation.
- (d) The board shall review and approve federal grant applications for early education and care programs and may develop guidelines as needed for the disbursement of such funds in accordance with law. The board shall be the approving authority for all federal grants that are applied to public and private early education and care programs in the commonwealth.
- (e) The board shall submit an annual report to the governor, the clerks of the house of representatives and senate, and the joint committee on education, arts and humanities, describing its progress in achieving the goals and implementing the programs authorized in this chapter. The report shall evaluate the progress of the commonwealth in moving toward a system of universal early education and care for 3, 4 and 5-year-old pre-school children.

Section 4. The board of early education and care shall by a 2/3 vote of its members appoint a commissioner of early education and care, in this chapter called the commissioner, and may in its discretion by majority vote of its members remove the commissioner. The commissioner shall be the secretary to the board and its chief executive officer. The commissioner shall receive a salary to be determined by the board.

Subject to the approval of the board of early education and care, the commissioner may apply for and accept on behalf of the commonwealth, any federal, local, or private grants, bequests, gifts, or contributions to aid in the financing of any of the programs or policies of the department. Such funds shall be received by the state treasurer on behalf of the commonwealth and deposited in a separate account and shall be expended under the direction of the commissioner, with the approval of the board of early education and care. Federal funds paid as reimbursement to the commonwealth shall be deposited in the General Fund.

Section 5. The board shall develop and annually update an implementation plan for a workforce development system designed to support the education, training and compensation of the early education and care workforce, including all center, family child care, infant, toddler, preschool and school-age providers. The board shall solicit input from organizations and agencies that represent a diverse spectrum of expertise, knowledge and understanding of broader workforce development issues and of the professional development needs of the early childhood and care workforce. In order to inform the plan, the board shall conduct:

- (1) an inventory and assessment of the current resources and strategies available for workforce and professional development in the commonwealth, including but not limited to Head Start trainings, community-based trainings, higher education programs, child care resource and referral agency trainings, state and federally funded workforce development trainings/programs, public school system trainings/credentialing, and other trainings that address the needs of those who work with children and make recommendations for coordinating the use of those existing resources and strategies;
- (2) analyses using current data on the status of the early education and care workforce, including work experience, certifications, education, training opportunities, salaries, benefits and workplace standards; and
- (3) an assessment of the workforce capacity necessary to meet the state's early education and care needs in the future.

In the development of the plan, the board shall consider:

- (1) core competencies, a common and shared body of knowledge, for all those working in the early education and care fields;
- (2) streamlined and coordinated state certification, credentialing, and licensing within the early education and care fields including teacher and provider certification and licensing, the child development associate, public school teacher certification, and other program standards as appropriate for director, teacher and provider credentialing requirements;
- (3) a mandatory and regularly updated professional development and qualification registry;
- (4) agreements among higher education institutions for an articulated system of education, training, and professional development in early education and care;
 - (5) approval of early education and care training programs and academic coursework,

incentives for associates and bachelors programs to meet best practices and to modify curricula to reflect current child development research, and certification of trainers and teachers;

- (6) coordination of existing workforce resources among public agencies, including establishing regional workforce support resources in coordination with child care resource and referral agencies;
- (7) a range of professional development and educational opportunities that provide appropriate coursework and degree pathways for family child care as well as center-based providers at all levels of the career ladder that are available in locations, days, and times that are accessible;
- (8) credit for prior learning experiences, development of equivalencies to 2 and 4 year degrees, and the inclusion of strategies for multiple pathways for entry into the field of early education and care;
- (9) recruitment and retention of individuals into the early education and care workforce who reflect the ethnic, racial, linguistic, and cultural diversity of Massachusetts families based on the current census data;
- (10) incentives and supports for early education and care professionals to seek additional training and education, such as scholarships, stipends, loan forgiveness connected to a term of service in the field, career counseling and mentoring, release time and substitutes:
- (11) guidelines for a career ladder or career lattice representing salaries and benefits that suitably compensate professionals for increases in educational attainment and with incentives for advancement, including a salary enhancement program;
 - (12) public and private resources to support the workforce development system;
- (13) a data collection and evaluation system to determine whether the workforce and professional development activities established pursuant to this chapter are achieving recruitment, retention and quality of the workforce goals; and
- (14) ways to recognize and honor advancements in educational attainment among early education and care professionals.

SECTION 2. Sections 1, 3, 4, and 5 of chapter 15D of the General Laws, inserted by section 1 of this act, shall take effect on March 1, 2005. Section 2 of said chapter 15D, inserted by said section 1, shall take effect on July 1, 2005.

Approved July 23, 2004.

Chapter 206. AN ACT DESIGNATING CERTAIN LANDS IN THE TOWN OF TEWKSBURY FOR CONSERVATION, AGRICULTURE AND PASSIVE PUBLIC RECREATIONAL PURPOSES.

Be it enacted, etc., as follows:

SECTION 1. The parcels of land in the town of Tewksbury described in section 2 and under the care, custody and control of the department of public health, are hereby dedicated to the public for the purposes and uses of forest, agriculture and open space protection, management and conservation, environmental education and public access for passive recreation and enjoyment and shall be held solely for these purposes and uses. The department of public health, in consultation with the board of selectmen of the town of Tewksbury or its designee may develop reasonable rules or promulgate regulations for the appropriate conduct and manner of public access under this act that is consistent with the mission of the department and the purposes of this act. For purposes of this act, the phrase "passive recreation" shall include activities and uses related to the Tewksbury Hospital Equestrian FARM, Inc. and its therapeutic equestrian programs.

SECTION 2. The parcels hereby dedicated are identified as follows: All of the lands, including lands under water, in the town of Tewksbury, as described in town of Tewksbury's Assessor's Maps: Map 78 lot 16, Map 90 lot 1 and 2, Map 89 lot 1, Map 88 lot 24, Map 88 lot 21 and 32, Map 87 lot 1, Map 76 lot 27, approximately 19 acres on Map 74, Lot 2, further defined as Lot 74-2-1, as shown on map entitled "Plan of Land in Tewksbury, Massachusetts, Surveyed for Tewksbury Hospital, October 25, 2000", excluding parcels 11, 12, 13 and 14 necessary to protect the quality of the hospital's water supply as shown on map entitled "Tewksbury Hospital: Parcels for Current and Future Development or Protection Under Article 97 of the Massachusetts Constitution, March 2004" on file at the department of public health and excluding approximately 13 acres shown on Tewksbury's Assessor's Map 86, being a portion of Map 87, Lot 1, known as State Field, beginning at a point of intersection of land now or formerly of Olson and the easterly side of Livingston Street; thence North 09 degrees 02' west along the easterly side of Livingston Street a distance of nine hundred and twenty (920) feet + or - to a point; thence along land of town of Tewksbury south 89 degrees 04' 18" east a distance of four hundred and twenty (420) feet to a point; thence along land of said town of Tewksbury 69 degrees 07' 48" east a distance of two hundred and seventy two and 63/100 (272.63) feet to a point; thence southeast one hundred and fifty (150) feet + or - to a point; thence south 16 degrees 47' 08" west a distance of two hundred and twenty three and 74/100 (223.74) feet to a point; thence south 16 degrees 47' 08" west a distance of sixty nine and 30/100 (69.30) feet to a point; thence south 05 degrees 28' 41" east a distance of forty five and 54/100 (45.54) feet to a point; thence south 62 degrees 49' 59" east a distance of fifty two and 80/100 (52.80) feet to a point; thence south 00 degrees 46' 33" east a distance of fifty six and 77/100 (56.77) feet to a point; thence south 57 degrees 38' 47" west a distance of twenty five and 74/100 (25.74) feet to a point; thence south 68 degrees 18' 36" west a distance of seventy eight and 54/100 (78.54) feet to a point; thence south 23 degrees 06' 10" west a distance of two hundred six and 58/100 (206.58) feet to a point; thence south 67 degrees 13' 54" west a distance of ninety one and 99/100 (91.99)

feet to a point; thence along land of Olson a distance of approximately two hundred thirty (230) feet to the point of beginning.

Approved July 23, 2004.

Chapter 207. AN ACT AUTHORIZING THE TOWN OF CARLISLE TO GRANT CONSERVATION RESTRICTIONS FOR TOWN OWNED CONSERVATION LAND.

Be it enacted, etc., as follows:

SECTION 1. The board of selectmen of the town of Carlisle may impose permanent conservation restrictions, pursuant to chapter 184 of the General Laws, to be granted to The Trustees of reservations, upon the town-owned parcels known as and described as follows:

Sachs Greenway, Carlisle assessor's map 2, parcels 10-9 and 10X;

Carr Land, Carlisle assessor's map 2, parcel 12;

Deacon Land, Carlisle's assessor's map 2, parcel 13 and map 9, parcels 38A and 38B; Malcom Land, Carlisle assessor's map 9, parcels 25, 27 and 28;

Rockstrom Open-Space Parcel, Carlisle assessor's map 2, parcel 14-4; and

Buttrick WoodsOpen-Space Parcel, Carlisle assessor's map 4, parcel 20A.

SECTION 2. This act shall take effect upon its passage.

Approved July 23, 2004.

Chapter 208. AN ACT RELATIVE TO SCHOOL BUILDING ASSISTANCE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes to the school building assistance program, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 70B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 11 and 12, the words "within the department of education a school building assistance program" and inserting in place thereof the following:- a school building assistance program. It is in the best interests of the commonwealth and its citizens to create an authority to achieve the objectives of effective management and planning of the commonwealth's investments in school building assets, promoting positive educational outcomes, ensuring the health, safety, security and well-being of students, easing and preventing overcrowding, maintaining good repair, effi-

cient and economical construction and maintenance, financial sustainability of the school building assistance program, thoughtful community development, smart growth and accessibility.

SECTION 2. Said chapter 70B is hereby amended by inserting after section 1 the following section:-

Section 1A. (a) There is hereby created a body politic and corporate and a public instrumentality to be known as the Massachusetts School Building Authority, which shall be an independent public authority not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth except as specifically provided in any general or special law. The exercise by the authority of the powers conferred by this chapter shall be considered to be the performance of an essential public function.

- (b) The authority shall consist of the state treasurer, who shall serve as chairperson, the secretary of administration and finance, the commissioner of education, and 4 additional members appointed by the state treasurer, 2 of whom shall have practical experience in educational facilities planning, school building construction, or architecture and school design, and 2 of whom shall be persons in the field of education with demonstrated knowledge of Massachusetts curriculum frameworks and other relevant federal and state educational standards, each of whom shall serve a term of 2 years; but, a person appointed to fill a vacancy shall serve only for the unexpired term. An appointed member of the authority shall be eligible for reappointment. The authority shall annually elect 1 of its members to serve as vice-chairperson. Each member of the authority serving ex officio may appoint a designee pursuant to section 6A of chapter 30.
- (c) Four members of the authority shall constitute a quorum, and the affirmative vote of 4 members of the authority shall be necessary and sufficient for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and duties of the authority. Members shall serve without pay but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. The chairperson of the authority shall report to the governor and to the general court no less than annually, to assist the executive and legislative branches in coordinating educational, community development and fiscal policies of the commonwealth.
- (d) Any action of the authority may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the authority shall be subject to section 11A ½ of chapter 30A; but, said section 11A ½ shall not apply to any meeting of members of the authority serving ex officio in the exercise of their duties as officers of the commonwealth so long as no matters relating to the official business of the authority are discussed and decided at the meeting. The authority shall be subject to all other provisions of said chapter 30A, and records pertaining to the administration of the authority shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the authority shall be considered to be public funds for purposes of chapter 12A. The operations

of the authority shall be subject to chapter 268A and chapter 268B and all other operational or administrative standards or requirements to the same extent as the office of the state treasurer.

SECTION 3. Section 2 of said chapter 70B, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 7, the word "board", and inserting in place thereof the following word:- authority.

SECTION 4. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by striking out the definition of "Approved school project" and inserting in place thereof the following definition:-

"Approved school project", a school project approved by the authority.

SECTION 5. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by striking out the definition of "Board of education" or "board" and inserting in place thereof the following definition:-

"Authority", the Massachusetts School Building Authority.

SECTION 6. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by striking out the definition of "Commissioner".

SECTION 7. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by striking out, in lines 47 and 56, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 8. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by inserting after the definition of "Regional school district" the following definition:-

"School project", any capital construction or major reconstruction projects; the lease of buildings or modular facilities; arrangements with higher education facilities or other nonprofit or municipal entities; use of swing space between school buildings in the district; tuition arrangements with other school districts to prevent overcrowding; and other school facilities projects. The cost of tuition arrangements in existence prior to project application shall not be eligible for reimbursement as an approved school project.

SECTION 9. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by inserting after the word "to", in line 58, the following words:-, the retrofitting of a school for the purpose of providing wireless or other learning technologies.

SECTION 10. Said section 2 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 67 and 72, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 11. Said section 2 of said chapter 70B, as so appearing, is hereby further amended by adding the following definition:-

"Trust", the Massachusetts School Modernization and Reconstruction Trust, established by section 35BB of chapter 10.

SECTION 12. Section 3 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words ", within the department of education,".

SECTION 13. Said section 3 of said chapter 70B, as so appearing, is hereby further amended by striking out, in lines 9, 16, 20 and 54, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 14. Said section 3 of said chapter 70B, as so appearing, is hereby further amended by striking out clauses (m) and (n), and inserting in place thereof the following 11 subparagraphs:-

- (m) collect and maintain data on all the public school facilities in the commonwealth, including information on size, usage, enrollment, available facility space and maintenance;
- (n) perform or commission a needs survey to ascertain the capital construction, reconstruction, maintenance and other capital needs for schools in the commonwealth;
 - (o) develop a long term capital plan in accordance with needs and projected funding;
- (p) adopt and amend bylaws and such rules, regulations and procedures for the conduct of the business of the trust as the board shall deem necessary to carry out the provisions of this chapter;
 - (q) establish and maintain reserves;
- (r) disburse amounts due to cities, towns and regional school districts pursuant to grants approved by the board to finance or refinance costs of approved school projects and to provide for the payment of all costs of the trust, including professional and financial services incident to the conduct of its operations;
- (s) invest the funds of the trust in such investments as may be legal investments for funds of the commonwealth or any fiduciary in the commonwealth;
- (t) obtain insurance and enter into agreements of indemnification necessary or convenient to the exercise of the powers of the trust;
- (u) sue and be sued and to prosecute and defend actions relating to the affairs of the trust; but the trust shall not be authorized to become a debtor under the United States Bankruptcy Code;
- (v) engage accounting, management, legal, financial, consulting and other professional services necessary to the operations of the trust; and
 - (w) do all things necessary or convenient to carry out the purposes of this chapter.

SECTION 15. Said section 3 of said chapter 70B, as so appearing, is hereby further amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

The chairperson of the authority shall appoint an executive director, who shall supervise the administrative affairs and general management and operations of the authority and who shall also serve as secretary of the authority, ex officio. The executive director shall receive a salary commensurate with the duties of the office, and may be removed by the board for cause. The executive director may appoint other officers of the authority necessary to the functioning of the authority. The executive director shall designate no fewer than 1 employee to be a municipal liaison to assist cities and towns with concerns regarding the construction of schools. Sections 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not apply to the executive director or any other employees of the authority. The

executive director shall, with the approval of the authority: (i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the authority; (ii) employ professional and clerical staff as necessary; (iii) report to the authority on all operations under his control and supervision; (iv) prepare an annual budget and manage the administrative expenses of the authority; and (v) undertake any other activities necessary to implement the powers and duties set forth in this chapter.

SECTION 16. Said chapter 70B is hereby further amended by striking out section 3A, as so appearing, and inserting in place thereof the following section:-

Section 3A. (a) There shall be a school building advisory board comprised of the state auditor or his designee, the inspector general or his designee, and the executive director of the authority, who shall serve as the secretary to the advisory board and shall be a nonvoting member of the board, and 15 members to represent the following nongovernmental organizations, to be appointed by those organizations: the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Mayors Massachusetts Association, the Massachusetts Association of School Superintendents, the Massachusetts Association of Regional Schools, the Massachusetts Building Trades Council, the Massachusetts chapter of the Associated Builders and Contractors, the Massachusetts Alliance of Small Contractors, the American Council of Engineering Companies of Massachusetts, the Associated Subcontractors of Massachusetts, the American Institute of Architects-Massachusetts, the Massachusetts Smart Growth Alliance, the Massachusetts Taxpayers Foundation, Associated General Contractors of Massachusetts and acting jointly, the Massachusetts Teachers Association and Massachusetts Federation of Teachers. The advisory board shall assist the authority in the development of general policy regarding school building construction, renovation, reconstruction, maintenance and facility space, preservation of open space and minimization of loss of open space, thoughtful community development, cost management and shall provide technical advice and input to the authority. The advisory board shall meet at least quarterly.

SECTION 17. Said chapter 70B is hereby further amended by inserting after section 3A the following 3 sections:-

Section 3B. (a) The authority may provide by resolution for the issuance from time to time of bonds for any purpose of the trust, which bonds may be issued as general obligations of the authority or as special obligations payable solely from particular revenues or moneys of the authority. Bonds of the authority shall not be considered to be a debt of the commonwealth or of any of its political subdivisions. The bonds of each issue may be dated, may bear interest at such rate or rates, including rates variable from time to time, and may mature or otherwise be payable or redeemable at such times as the authority may determine. The authority shall determine the denominations of bonds, the details of their execution and authentication and their places of payment within or without the commonwealth. Before initial issuance of each series of bonds the authority shall advise the finance advisory board of the terms of the bonds and the timing of their issuance. In case any member or officer of the authority whose signature appears on any bonds shall cease to be such officer before their

delivery, the signature shall nevertheless be valid and sufficient as if the officer had remained in office until delivery. Bonds may be issued in certificated or uncertificated form, payable to bearer or registered owners, and, if notes, may be made payable to bearer or to order. The authority may sell the bonds of the authority at public or private sale, at par or for such premium or discount price as it may determine. The authority may by resolution delegate to any member or officer of the authority the power to determine any of the matters set forth in this section. The aggregate principal amount of all bonds issued under this chapter shall not exceed \$10,000,000,000 outstanding at any time. The principal amount of bonds for the payment or redemption of which, either at or before maturity, refunding bonds shall have been issued, shall be excluded from the aggregate principal amount of bonds issued under this chapter for purposes of computing the limit on outstanding bonds under this section.

- (b) Bonds of the authority may be secured by a trust agreement between the authority and the bond owners or a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement may pledge or assign, in whole or in part, any receipts, fees, revenues or other payments received or to be received by the authority, including without limitation amounts provided to the trust in accordance with section 35BB of chapter 10, grants, appropriations or other assistance from the commonwealth or the United States or any political subdivision or instrumentality of either, investment earnings on its funds and accounts and any other fees, charges or other income received or receivable by the authority and any contract or other rights to receive the same, whether then existing or thereafter coming into existence, and whether then held or thereafter acquired by the trust, and the proceeds thereof. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration and may also contain restrictions on remedies by individual bondholders. A trust agreement may also contain covenants of the trust concerning the custody, investment and application of moneys, the issuance of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. At the request of the authority, the state treasurer shall join in any trust agreement or to otherwise agree with the authority, any lender or any trustee for bondholders to hold the School Modernization and Reconstruction Trust Fund, established pursuant to said section 35BB of said chapter 10, in compliance with any covenants and provisions relating thereto in any trust agreement.
- (c) Bonds may be issued by the authority in the form of lines of credit or other banking arrangements under terms and conditions determined by the authority. In addition to other lawful security, bonds may be secured, in whole or in part, by financial guaranties, by insurance, by letters or lines of credit or by other credit enhancement issued to the authority or to a trustee or other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the commonwealth. The authority may pledge or assign, in whole or in part, revenues, funds or other assets or property held or to be received by the authority, and any contract or other rights to receive the same, whether

then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and the proceeds thereof, as security for any such guaranties or insurance or for the reimbursement to any issuer of a line or letter of credit.

- (d) The authority may by resolution provide for the issuance by the authority of interim receipts or temporary bonds, exchangeable for definitive bonds when the bonds are executed and are available for delivery. The authority may also provide for replacement of mutilated, destroyed or lost bonds. The authority may purchase and invite offers to tender for purchase any outstanding bonds; provided, however, that no purchase by the authority shall be made at a price, exclusive of accrued interest, if any, exceeding the principal amount of the bond or, if greater, the redemption price of the bond when next redeemable at the option of the authority. The authority may resell any bonds it purchases in such manner and for such price as it may determine.
- (e) The authority may also provide for issuance by the authority of temporary notes in anticipation of bonds, grants, revenues or appropriations. The issuance of the notes shall be governed by this chapter relating to the issuance of bonds. The authority may also issue refunding bonds of the authority for the purpose of paying any bonds at or before maturity. Refunding bonds may be issued at any time at or before the maturity or redemption or purchase of the refunded bonds. Refunding bonds may be issued in sufficient amounts to pay or provide for payment of the principal of the bonds being refunded, together with any redemption premium thereon, any interest or discount accrued or to accrue to the date of payment, costs of issuance and other expenses and reserves reasonably necessary to achieve the refunding.
- (f) Bonds of the authority are securities in which public officers and agencies, insurance companies, financial institutions, investment companies, executors, administrators, trustees and others may properly invest funds including capital within their control and securities which may be deposited with any public officer or any agency for any purpose for which the deposit of bonds is authorized by law.
- (g) Bonds of the authority shall be considered to be investment securities under chapter 106. Bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth. The authority shall not be required to pay any taxes, assessments or excises upon its income, existence, operation, assets, moneys or revenues.
- (h) It shall be lawful for any bank or trust company to act as a depository or trustee under a trust agreement, provided it furnishes such indemnification and reasonable security as the authority may require. Any assignment or pledge of revenues, funds or other assets or property made by the authority shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then held or thereafter acquired or received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or segregation or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any

kind in tort, contract or otherwise against the authority, whether or not the parties have notice thereof. The trust agreement by which a pledge is created need not be filed or recorded to perfect the pledge except in the records of the trustees and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the authority is an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment. Any holder of a bond and any trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may bring suit upon the bonds and may pursue any other legal action to protect and enforce its rights and compel performance of all duties required to be performed by the trust and the authority.

Section 3C. The authority and its existence shall continue until terminated by law, but no such law shall take effect so long as the authority shall have bonds outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the authority, the title to all properties of the authority that remain after provision for the payment or satisfaction of all bonds of the authority shall vest in the commonwealth. The obligations, debts and liabilities of the authority shall be assumed by and imposed upon the commonwealth and shall be transferred to the state treasurer or to such other successor as may be provided by law.

Section 3D. The authority, in cooperation with the state treasurer, shall at all times keep accounts of all receipts, expenditures and disbursements and all assets and liabilities of the authority, which shall be open to inspection by any officer or duly appointed agent of the commonwealth. The authority shall submit an annual report, in writing, to the governor and the clerks of the house of representatives and the senate, who shall forward the same to the president of the senate, the speaker of the house of representatives, the chairpersons of the house and senate committees on ways and means and the house and senate chairpersons of the joint committee on education, arts and humanities. The report shall include financial statements relating to the operations, assets and expenditures of the authority maintained in accordance with generally accepted accounting principles so far as applicable and audited by an independent certified public accountant firm.

SECTION 18. Section 4 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 6 and 7, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 19. Said section 4 of said chapter 70B, as so appearing, is hereby further amended by striking out the last sentence.

SECTION 20. Said chapter 70B is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

Section 5. Any eligible applicant may apply to the authority for a school facilities grant to meet in part the cost of a school project. The costs shall include all costs and legal fees to enforce rights on any contracts for the construction of a school project. The applica-

tion shall be in the form prescribed by the authority and shall be accompanied or supplemented by drawings, plans, estimates of cost and proposals for defraying the costs or any additional information the authority may require, before construction is undertaken. Notwithstanding any provision of this chapter to the contrary, in the event that an eligible applicant undertakes construction before approval is obtained, said eligible applicant shall remain subject to the authority's approval process as if the construction were not undertaken. Any eligible applicant who is eligible for aid under this chapter and establishes extended courses of instruction in a vocational school, as provided in section 37A of chapter 74, and wishes to enlarge or construct a school for the purpose of maintaining extended courses of instruction on a technical institute level shall be eligible for financial assistance in the construction or enlargement of such school in the manner and to the extent provided by this chapter. If a project application is not approved, and the sole reason for such disapproval is the limit on total facilities grants established by section 7, at the request of the eligible applicant, the application shall be retained by the authority and reviewed in the following fiscal year; provided, that in said review, the project shall be ranked and evaluated using the priorities established by section 8 of this chapter; provided, further, that the authority shall require a new application from any applicant seeking to make a substantial change in scope of the project which is the subject of the application subsequent to disapproval by the authority.

SECTION 21. Said chapter 70B is hereby further amended by striking out section 6, as amended by section 74 of chapter 46 of the acts of 2003, and inserting in place thereof the following section:-

Section 6. (a) Upon receipt of an application under section 5, from time to time, the authority may designate approved school projects. The authority shall examine forthwith the applications and any facts, estimates, or other information relative thereto, and shall make the following findings in order to designate a school project as an approved school project:

- (1) The school project is in the best interests of the commonwealth and the eligible applicant, with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, energy efficiency, and otherwise.
- (2) The school project is necessary to meet educational standards of the curriculum frameworks established by the board of education pursuant to section 1E of chapter 69 for anticipated enrollment levels.
- (3) The school project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the project.
- (4) The school project is not at a school that has been the site of an approved school project pursuant to this chapter or to chapter 645 of the acts of 1948 within the 10 years prior to the project application date, or the approved school project is unrelated to such previously approved project in the same school.
- (5) The school project is within the capacity of the authority to finance within revenues projected to be available to the trust, established pursuant to section 35BB of chapter 10.

(6) The commissioner of education has certified that adequate provisions have been made in the school project for children with disabilities, as defined in section 1 of chapter 71B, and, in the case of elementary facilities, that adequate provisions consistent with local policy have been made for all-day kindergarten, pre-kindergarten classes and for extended day programs; provided, however, that no district shall be required to adopt the classes or programs.

The authority shall also consider the availability of funds projected in the trust and other financial obligations of the authority, the authority's long term capital plan, the results of needs surveys, the order of priorities under section 8 and construction procedures and standards under section 9 and otherwise as prescribed by law and regulation. With respect to a regional school district, the authority shall also consider whether the school project represents an economy of scale that benefits the commonwealth and the municipalities of the region.

- (b) Within a reasonable time after receipt of the application the authority shall notify the applicant of its approval or rejection thereof, and, in the event of its rejection, of the reasons therefor. Notice of approval hereunder shall be accompanied by a statement of the estimated approved cost as determined by the authority, and an estimate of the amount of total facilities grant to which the eligible applicant may be entitled under section 10.
- (c) If the authority designates a school project to be an approved school project, the authority shall compute the estimated approved cost of the project, which cost may be equal to the estimated cost furnished by the eligible applicant or a lesser amount, and compute the amount estimated of facilities grant to which the applicant would be entitled under section 10, such computation being based on said approved cost. The final approved cost shall be determined by the authority within a reasonable time after the acceptance of the completed project by the local school committee. Final audits shall be conducted promptly by the authority. Final payments shall be determined based on the final approved cost.
- (d) Any city or town which has received, in accordance with subsection (b) and (c), notice of approval and an estimate of the amount of a school facilities grant to which such city or town may be entitled may borrow from time to time to finance that portion of the cost of the approved school project not being paid by such grant, in such amount approved by the board of selectmen or mayor or city manager of the city or town, and may issue bonds or notes therefor which shall bear on their face the words (name of city or town) School Project Loan, chapter 70B. Each authorized issue shall constitute a separate loan, and the loans shall be paid in not more than 25 years from their dates. Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant to which such city, town or regional school district may be entitled may issue and renew temporary notes. The authority shall issue regulations relative to issuance of temporary notes for school construction. Indebtedness incurred under this chapter shall be outside the statutory debt limit but shall, except as herein provided, be subject to chapter 44.

SECTION 22. Said chapter 70B is hereby further amended by striking out section 7, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 7. There shall be a limit on the aggregate estimated amount of total facilities grants approved by the authority during a fiscal year. For the 2008 fiscal year the limit shall be \$500,000,000. For each fiscal year thereafter the limit shall be the limit for the previous fiscal year plus 4.5 per cent.

SECTION 23. Section 8 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 1, 11, 13, 16, 20, 22, 26, 36, 39, 41 and 53, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 24. Said section 8 of said chapter 70B, as so appearing, is hereby further amended by striking out the second paragraph.

SECTION 25. Section 9 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 2, 13, 19 and 28, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 26. Said section 9 of said chapter 70B, as so appearing, is hereby further amended by striking out, in line 3, the words "the following standards and procedures" and inserting in place thereof the following words:- standards and procedures as the authority considers appropriate, including, but not limited to, the following.

SECTION 27. Subsection (c) of said section 9 of said chapter 70B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- On or before March 1 in each year, the authority shall adopt interim regulations, including minimum program standards and maximum cost standards, for the implementation of this section.

SECTION 28. Said section 9 of said chapter 70B, as so appearing, is hereby further amended by striking out, in line 48, the word "commission" and inserting in place thereof the following word:- authority.

SECTION 29. Section 10 of said chapter 70B, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The grant percentage for approved school projects shall be calculated based on the following formula, but no grant percentage shall be less than 50 per cent nor greater than 90 per cent.

SECTION 30. Section 10 of said chapter 70B is hereby amended by striking out the first paragraph, as amended by section 29 of this act, and inserting in place thereof the following paragraph:-

The grant percentage for approved school projects shall be calculated based on the following formula, but no grant percentage shall be less than 40 per cent nor greater than 80 per cent.

SECTION 31. Said section 10 of said chapter 70B, as appearing in the 2002 Official

Edition, is hereby further amended by striking out, in line 15, the figure "39" and inserting in place thereof the following figure:- 31.

SECTION 32. Paragraph (C) of subsection (a) of said section 10 of said chapter 70B, as so appearing, is hereby amended by striking out the line reading the words "Use of Construction/Project Manager 2."

SECTION 33. Said section 10 of said chapter 70B, as so appearing, is hereby further amended by striking out, in line 39, the word "board" and inserting in place thereof the following word:- authority.

SECTION 34. Said section 10 of said chapter 70B, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) For approved school projects in districts which have a racial desegregation plan approved by the board of education not later than June 30, 2000, the reimbursement percentage shall be the sum of: (a) the percentage calculated pursuant to subsections (a) and (b); and (b) for projects designated as approved school projects on or before June 30, 2006, 10 percentage points, or, for projects designated as approved school projects on or before June 30, 2012, 5 percentage points. Only new project applications which present clear and convincing evidence that the proposed school building project will promote the objectives of achieving racial balance expressed in sections 37C and 37D of chapter 71 for the students attending the new, renovated, or repaired school will be eligible for the added percentage points. The total reimbursement percentage shall in no circumstances exceed the maximum grant percentage under the first paragraph of this section.

SECTION 35. Said chapter 70B is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. Grants for approved school projects shall be paid in accordance with a disbursement schedule approved by the authority.

SECTION 36. Sections 12, 13 and 18 of said chapter 70B are hereby repealed.

SECTION 37. Section 14 of said chapter 70B, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 2 and 7, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 38. Section 15 of said chapter 70B, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) In the event that an eligible applicant sells or leases an assisted structure or facility on account of which it is receiving grant payments for an approved school project or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in the preceding 20 years, pursuant to this chapter or pursuant to chapter 645 of the acts of 1948, the net proceeds from the sale or lease shall be divided between the commonwealth and the general funds of the applicable eligible applicant in proportion to the commonwealth's prior investment in the assisted structure or facility under this chapter or said chapter 645, as applicable. In the case of an approved school project

approved prior to July 1, 2004, the commonwealth's share of the net proceeds shall reduce the balance of outstanding grant payments that would otherwise be payable except for this section and shall not exceed that amount. Any eligible applicant which sells, leases or otherwise removes from use by the eligible applicant as a schoolhouse any approved school project on account of which it is receiving grant payments or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in the preceding 20 years, pursuant to this chapter or pursuant to said chapter 645, shall report the sale, lease or removal to the authority in the form and manner and within the time prescribed by the authority. The authority may issue regulations to recapture commonwealth assistance for capital construction for any approved school facilities projects for school buildings that are removed from service.

SECTION 39. Said section 15 of said chapter 70B, as so appearing, is hereby further amended by striking out, in lines 27, 28, 32 and 33, and 46, the word "commissioner" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 40. Section 16 of said chapter 70B, as so appearing, is hereby amended by striking out, in lines 1 and 4, the word "board" and inserting in place thereof, in each instance, the following word:- authority.

SECTION 41. Said chapter 70B is hereby further amended by striking out section 17, as so appearing, and inserting in place thereof the following section:-

Section 17. (a) On or before June 30 of each year, the authority shall submit a report to the governor, the house and senate committees on ways and means, the joint committee on education, arts and humanities, the joint committee on natural resources, the house and senate committees on long-term debt and capital expenditures and the joint committee on local affairs which analyzes the anticipated financial needs for school facilities projects of the kind that qualify for assistance under this chapter. The report shall include a listing of each school building within the commonwealth, together with a description of its size, capacity, age and state of maintenance and whether it is likely to require construction, enlargement, reconstruction, rehabilitation or improvement due to such factors as deterioration, lack of adequate facilities to meet educational standards and anticipated increases in school-age population.

- (b) The authority shall also conduct periodic surveys of the cities, towns and regional school districts to determine the need for new school facility construction to meet demand.
- (c) The authority shall develop a long-term capital plan in accordance with needs and funding projected to be available in the trust under this chapter for purposes of planning and guiding the policies of the authority.
- (d) The capital plans, needs surveys and reports of the authority shall not give rise to any claim, legal or moral, or enforceable right in any party to benefits or funds from the trust or from other sources.

SECTION 42. Said chapter 70B is hereby amended by striking out section 19, as so appearing, and inserting in place thereof the following section:-

Section 19. Municipalities and school districts shall notify the authority within 30 days of refinancing any bond for which the municipality or district will receive state reimbursement under chapter 645 of the acts of 1948 or other law. The authority shall reimburse municipalities or districts at the actual interest rate obtained. The authority shall encourage municipalities and school districts to refinance any bond for which the municipality or district will receive state reimbursement where the refinancing would result in savings for the commonwealth or the municipality or school district and where the refinancing is otherwise in accordance with the law.

SECTION 43. Section 329 of chapter 159 of the acts of 2000 is hereby repealed. SECTION 44. Chapter 26 of the acts of 2003 is hereby amended by striking out section 668 and inserting in place thereof the following section:-

Section 668. Notwithstanding any general or special law to the contrary, the board of education and the school building authority established pursuant to section 1A of chapter 70B of the General Laws shall not accept an application for the school building assistance program established in said chapter 70B until after July 1, 2007.

SECTION 45. On or before August 1, 2004, the commissioner of education shall submit to the Massachusetts School Building Authority a list of school projects consisting of: (i) all projects approved in accordance with chapter 645 of the acts of 1948 for which the state has outstanding liability as of July 1, 2004; (ii) all approved school projects that were approved by the board of education in accordance with section 6 of chapter 70B of the General Laws on or before June 30, 2004, for which the state has outstanding liability as of July 1, 2004; (iii) all projects on the school building assistance priority waiting list maintained by the department of education as of July 1, 2004; and (iv) projects in Quincy and Swampscott which, prior to the effective date of this act, were eligible for funding under section 668 of chapter 26 of the acts of 2003. The list shall identify for each project: (i) total estimated construction costs; (ii) total estimated short-term and long-term interest costs; (iii) reimbursement rate pursuant to chapter 70B of the General Laws as in effect prior to the effective date of this act, section 329 of chapter 159 of the acts of 2000 as in effect prior to the effective date of this act, and section 668 of chapter 26 of the acts of 2003 as in effect prior to the effective date of this act; (iv) year of application; (v) year of approval, if approved; (vi) rank order on the waiting list; and (vii) other information as appropriate upon the request of the Massachusetts School Building Authority.

Projects included on the list submitted pursuant to this section shall not be counted toward the limit found in section 7 of chapter 70B of the General Laws on aggregate estimated amount of total facilities grants approved.

SECTION 46. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority may accept an application for an emergency situation capital school construction grant for the city of Springfield under chapter 70B of the General Laws and may add the project to the list submitted pursuant to section 45 of this act at the reimbursement rate in effect on June 30, 2003. For the purposes of this section, an emergency situation shall consist of: (i) a school that has been determined to be underper-

forming by the board of education and has lost or is at risk of losing its accreditation; and (ii) a determination by the commissioner that such project is needed to address significant deficiencies which cannot be cost-effectively addressed through major reconstruction or repair work. The application shall meet all requirements of said chapter 70B and the regulations promulgated therefor.

SECTION 47. (a) Upon the effective date of this act, the Massachusetts School Building Authority shall succeed to all powers theretofore granted to the board of education with respect to projects on the list submitted pursuant to section 45. As soon as practicable following the effective date of this act the commissioner of education shall transfer to the Authority all records and documents, or copies thereof, which immediately prior to such date are in the custody of the board of education or the department of education and which relate to or are maintained for the purpose of the school building assistance program.

(b) The amendments made in this act to chapter 70B of the General Laws shall not affect the terms of payment for any project on the list submitted pursuant to section 45, except as specifically provided in this section and sections 48 to 53, inclusive, of this act. The percentage of approved project costs paid by the commonwealth for projects on the list submitted pursuant to section 45 shall not be altered as a result of the amendments made by this act to said chapter 70B. Grants for projects on the list shall be payable by the Massachusetts School Building Authority rather than by legislative appropriations.

For projects which prior to July 1, 2004 were approved by the board of education pursuant to section 6 of chapter 70B of the General Laws, as in effect prior to the effective date of this act, approved costs shall include the entire interest payable on any indebtedness incurred to finance the projects, as well as any premiums, fees or charges for credit or liquidity enhancement facilities or services issued or rendered in connection with any such indebtedness.

For projects on the list submitted pursuant to section 45 with respect to which indebtedness shall have been incurred prior to July 1, 2004, the final approved cost of any such project shall include interest on such indebtedness and interest on any temporary notes issued on or after July 1, 2004 but prior to receipt of a grant and may, in the discretion of the board, include principal of any bonds issued prior to July 1, 2004.

For projects on the list submitted by the department of education pursuant to section 45 and not approved by the board of education pursuant to section 6 of chapter 70B of the General Laws, as in effect prior to the effective date of this act, for which no indebtedness has been incurred prior to July 1, 2004, grants shall include interest on temporary notes paid prior to the receipt of a grant, but shall not include interest on bonds.

Grants for approved projects shall be paid in accordance with a disbursement schedule approved by the authority.

SECTION 48. (a) The Massachusetts School Building Authority shall complete final audits on all projects on the list submitted pursuant to section 45 for which a final audit had not been completed as of the effective date of this act, and shall adjust payments in accordance with the result of those audits. For projects for which a final audit was complete

as of the effective date of this act and for which substantial new information has become available since the completion of the audit, the authority may, at the request of a city, town, regional school district or independent agricultural and technical school, review the audit and make adjustments to approved project costs.

- (b) For the purposes of expediting the payout of school building assistance grants, at the written request of a city, town, regional school district, or independent agricultural and technical school, the authority may in its discretion expedite the timing of a final audit. The requesting municipality shall assume responsibility for the cost of the expedited auditing services, if the services are authorized by the authority under this section.
- (c) Any additional amounts owed to the city of Lynn as a result of audits performed shall be paid to the city by the authority in 7 annual installments. The first such installment shall be made in fiscal year 2005.
- (d) For a project for which, prior to the effective date of this act, delays of 5 or more years between project completion and completion of the final audit resulted in a reduction in annual payments of greater than 35 per cent, at the request of a city, town, regional school district or independent agricultural and technical school, the authority shall return the level of annual payments to the level of annual payments for that project prior to the completion of the final audit and make payments over a shorter number of years; provided, however, that the total payment shall not exceed the amount identified in the final audit.

SECTION 49. Projects on the list submitted pursuant to section 45 shall be funded by the Massachusetts School Building Authority with no substantial changes in scope except: (i) those changes in scope which had received preliminary or final approval from the board of education prior to the effective date of this act; or (ii) those changes in scope which result in a total grant amount owed to the municipality or district equal to or less than the total grant amount owed as of the effective date of this act. The Massachusetts School Building Authority shall work with cities, towns, regional school districts and independent agricultural and technical schools to finalize modified applications for projects with preliminary approval for modification of the scope in a manner consistent with the preliminary approval granted by the commissioner of education prior to the effective date of this act.

SECTION 50. The School Building Assistance Authority shall provide financial assistance under this act for projects on the list submitted pursuant to section 45 and not yet approved by the board of education prior to the effective date of this act in the order in which they appear on the list; provided, however, that the authority may deviate from the order if it determines that it is necessary to do so in order to comply with federal income tax laws or regulations related to the tax exemption of indebtedness incurred by the authority or to provide grants to municipalities or districts whose short-term borrowing would otherwise terminate prior to the award of a grant. The authority shall notify the house and senate committees on ways and means and the joint committee on education, arts, and humanities within 30 days whenever changes in list order will result in a project getting funds more than a year earlier or later than would have been the case had the authority provided funds to districts in the order in which they appear on the list.

Projects with respect to which, in the reasonable judgment of the authority, no substantial progress has been made by July 1, 2009 may be removed by the authority from the list. Any project so removed from the list may be the subject of a new grant application to the authority under chapter 70B of the General Laws but shall have no specific entitlement to funding under this act.

SECTION 51. Notwithstanding section 17 of chapter 44 of the General Laws, the officers of a city, town or regional school district authorized to issue bonds, notes or certificates of indebtedness for a school construction project on the list submitted pursuant to section 48, may refund, by the issuance of refunding notes, a temporary loan issued in anticipation of money to be derived from the sale of the bonds, notes or certificates, but the period from the date of issue of the original temporary loan to the final maturity of any such refunding notes shall not exceed 7 years; but the period from the date of issue of the original temporary loan to the final maturity of all school construction project financing shall not exceed 30 years. The refunding notes shall not be required to be paid in part from revenue funds of the city, town or regional school district until the end of the fiscal year following the fiscal year in which the board of education or the Massachusetts School Building Authority as applicable approves the project for a school construction grant. The time within which the serial bonds, notes or certificates of indebtedness issued to pay refunding temporary notes issued hereunder shall be due and payable shall be extended by the period from the date of the original temporary loan to: (a) the date of issue of such serial bonds, notes or certificates; or (b) the end of the fiscal year in which the board of education or the Massachusetts School Building Authority as applicable approves the project for a school construction grant, whichever date is earlier.

SECTION 52. Subject to appropriation, cities and towns receiving reimbursement pursuant to section 12 of chapter 70B of the General Laws in fiscal year 2004 shall continue to be reimbursed in accordance with said section 12 of said chapter 70B, as in effect prior to the effective date of this act.

SECTION 53. Notwithstanding any general or special law to the contrary and except as specifically provided in this act, no city, town, regional school district or independent agricultural and technical school shall have any entitlement to funds under chapter 70B of the General Laws except at the discretion of the Massachusetts School Building Authority in accordance with said chapter 70B. If an eligible applicant undertakes construction for a project not included in the list submitted pursuant to section 45 or incurs indebtedness for such a project not yet designated as an approved school project, as defined in section 2 of said chapter 70B, the applicant shall remain subject to the authority's approval process as if the construction had not been undertaken or the indebtedness had not been incurred. Applications submitted subsequent to July 1, 2007, for projects which commence construction between July 1, 2004 and June 30, 2006, shall, if approved by the Massachusetts School Building Authority, be reimbursed at the rate in effect at the time of approval. In considering whether to designate such projects as approved school projects and in calculating approved costs, the Massachusetts School Building Authority may consider allowable cost

standards and other pertinent department of education regulations in effect on June 30, 2004. Applications submitted subsequent to July 1, 2007, for projects which commence construction between July 1, 2006 and June 30, 2007, shall, if approved by the Massachusetts School Building Authority, be reimbursed at the rate in effect at the time of approval. In calculating approved costs for such projects, the Massachusetts School Building Authority shall use regulations promulgated by the authority pursuant to section 55. The authority may refuse to designate a project as an approved school project.

SECTION 54. The Massachusetts School Building Authority, in consultation with the advisory board established pursuant to section 3A of chapter 70B of the General Laws, shall review matters including, but not be limited to, the appropriateness of existing regulations and laws governing the School Building Assistance program, the appropriate costand size standards, to be promulgated by the Massachusetts School Building Authority under section 9 of chapter 70B of the General Laws, the appropriate formula for facilities grants under section 10 of said chapter 70B, and all other standards and procedures established in sections 8, 9 and 10 of said chapter 70B, the best means to encourage energy-efficient schools, the advisability of allowing or requiring cities, towns and regional school districts to establish funds for building maintenance, the advisability of further changes to chapter 70B of the General Laws in accordance with construction reform, the feasibility of requiring prototype designs for school building projects, the feasibility of allowing public-private partnerships in constructing schools, or the use of lease-purchase in providing educational space, the best means to assist in meeting the building needs of charter schools and educational collaboratives, the feasibility of requiring future school buildings to be constructed so as to facilitate early education and care programs, full day kindergarten, proper tutorial space, services which may go beyond direct instructional services but which may be best provided to students in a school setting, uses that extend beyond the typical school day for extended hours, weekends and during the summer months for educational, recreational and other purposes which provide community uses, the introduction of wireless technology in the classroom, and the feasibility of providing financial incentives to communities that have adopted zoning policies or other initiatives that encourage increased affordable housing production in the commonwealth, including, but not limited to, inclusionary zoning, so-called. The authority shall file a progress report not later than December 31, 2004, and a final report, along with any regulatory and legislative proposals necessary to carry its recommendations into effect, not later than April 1, 2005, with the secretary of administration and finance, the house and senate clerks, the chairpersons of the house and senate committees on ways and means and the house and senate chairs of the joint committee on education, arts and humanities.

The secretary of administration and finance shall submit a report on recommended changes to section 10 of chapter 70B of the General Laws no later than May 1, 2005, with proposed legislation, to the clerks of the house and senate, the house and senate committees on ways and means, and the joint committee on education, arts, and humanities.

SECTION 55. Notwithstanding any general or special law to the contrary, the authority shall not issue maximum eligible cost standards nor size standards for school projects pursuant to section 9 of chapter 70B of the General Laws, nor shall it promulgate regulations pursuant to said chapter 70B prior to January 1, 2006. In drafting regulations, the authority shall review the needs analysis and capital plan required by section 17 of said chapter 70B to be completed by the board on June 30, 2005, and shall propose draft regulations based on the report, capital plan and needs analysis not later than January 1, 2006. The authority shall hold not less than 5 hearings on the draft regulations in locations reflective of the geographic diversity of the commonwealth, and shall submit the draft regulations to the joint committee on education, arts and humanities, which shall have 30 days to review and comment on the regulations. The authority shall promulgate final regulations no later than July 1, 2006.

SECTION 56. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority, with the advice of the school building advisory committee, shall conduct a comprehensive analysis of the needs of municipal and regional school districts for projects eligible for reimbursement under chapter 70B of the General Laws beginning July 1, 2007.

SECTION 57. Sections 30 to 32, inclusive, shall take effect on August 1, 2005. Approved July 26, 2004.

Chapter 209. AN ACT RELATIVE TO RESTRICTIVE COVENANTS.

Be it enacted, etc., as follows:

Chapter 112 of the General Laws is hereby amended by inserting after section 129A the following section:-

Section 129B. A contract or agreement which creates or establishes the terms of a partnership, employment, or any other form of professional relationship with a psychologist licensed under this chapter, which includes a restriction of the right of the psychologist to practice in any geographic area for any period of time after termination of the partnership, employment or professional relationship shall be void and unenforceable with respect to the restriction; but, nothing herein shall render void or unenforceable the remainder of the contract or agreement.

Approved July 26, 2004.

Chapter 210. AN ACT RELATIVE TO FUNDS FOR SCHOOL BUILDING ASSISTANCE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which

is forthwith to make certain changes to the school building assistance program, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after section 35AA, inserted by section 26 of chapter 149 of the acts of 2004, the following section:-

Section 35BB. (a) As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:-

"Authority", the Massachusetts School Building Authority, established under section 1A of chapter 70B.

"Dedicated sales tax revenue amount", all moneys received by the commonwealth equal to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b ½) of section 10 of chapter 152 of the acts of 1997 or within the meaning of subsection (b ½) of said section 10 of said chapter 152 or any portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of said chapter 64H.

"Receipts from sales", gross receipts from nonexempt sales, less amounts abated or reimbursed.

"Sales price of purchases", sales price of nonexempt purchases, less amounts abated or reimbursed.

- (b) There shall be established on the books of the commonwealth a separate fund, to be known as the School Modernization and Reconstruction Trust Fund. There shall be credited to the fund the dedicated sales tax revenue amount. Annual receipts into the fund on account of any fiscal year shall be considered to meet the full obligation of the commonwealth to the authority for such fiscal year.
- (c) Amounts in the fund shall be held by the state treasurer or his designee, as trustee and not on account of the commonwealth, exclusively for the purposes of the authority, and the state treasurer shall disburse amounts in the fund to the authority, without further appropriation, upon the request from time to time of the executive director of the authority. All amounts in the fund, including investment earnings, shall be available for expenditure by the authority for any lawful purpose, including without limitation payment of debt service on debt obligations issued by the authority, and may be pledged to secure debt of the authority in such manner and according to such priority as the authority may determine.

- (d) The authority shall certify annually to the treasurer as trustee with copies provided to the clerks of the house and senate and to the house and senate committees on ways and means that it has made provision in its annual budget and its capital plan under section 17 of chapter 70B for sufficient amounts to be available to meet debt service payments or other payments due under financing obligations, including, without limitation, leases or grant obligations.
- (e) Subject to applicable restrictions contained in any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority, including without limitation coverage requirements, if the authority shall determine that the balance of the fund exceeds the amount necessary to achieve the purposes of the authority, including, without limitation, to meet debt service payments, lease payments and grant obligations, the authority may transfer the excess amount to the commonwealth.
- (f) In order to increase the marketability of any bonds or notes of the trust which may be secured by or payable from amounts held in the fund, the sums to be credited to the fund are hereby impressed with a trust for the benefit of the trust and the holders from time to time of the bonds or notes, and in consideration of the acceptance of payment for the bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of the bonds or notes that while the bond or note shall remain outstanding, and so long as the principal of or interest on the bond or note shall remain unpaid, the sums to be credited to the fund shall not be diverted from the control of the trust and, so long as the sums are necessary, as determined by the authority in accordance with any applicable bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the trust, for the purposes for which they have been pledged, the rates of the excises imposed by said chapters 64H and 64I shall not be reduced below the rates prescribed by this section.

SECTION 2. Section 3 of chapter 70B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the first paragraph the following 2 paragraphs:-

The purposes of the program shall be the provision of financial assistance to cities, towns and regional school districts as beneficiaries of the trust to finance and refinance the costs of approved school projects as provided in, and as necessary to implement this chapter, including without limitation providing for the payment of grants approved pursuant to this chapter and the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations.

The authority shall establish general policy and review standards regarding school building construction, renovation, maintenance and facility space and administer the school building assistance program in accordance with this chapter. In carrying out its duties, the authority shall be guided by the following principles: preservation of open space and minimization of loss of such open space, emphasis on thoughtful community development, and project flexibility that addresses the needs of individual communities and municipalities.

In accordance with the terms of any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority secured by amounts provided to the trust in accordance with section 35BB of chapter 10, the holders of indebtedness and the providers of any credit enhancement, surety bond or insurance policy shall also be beneficiaries of the trust. The authority shall apply and disburse moneys and revenues of the trust without further appropriation or allotment.

SECTION 3. The third paragraph of said section 3 of said chapter 70B, as so appearing, is hereby further amended by striking out clauses (e), (f) and (g) and inserting in place thereof the following 3 clauses:-

- (e) to apply for, receive, administer and comply with the conditions and requirements respecting any grant, gift or appropriation of property, services or moneys;
- (f) to enter into contracts, arrangements and agreements with other persons and execute and deliver all trust agreements, grant agreements and other instruments necessary or convenient to the exercise of the powers of the trust;
- (g) to borrow and repay money by issuing bonds or notes of the trust, to apply the proceeds thereof as provided in this chapter and to pledge or assign or create security interests in any revenues, receipts or other assets or funds of the trust to secure bonds or notes;.

SECTION 4. Notwithstanding section 35BB of chapter 10 of the General Laws, in fiscal year 2005, there shall be credited to the School Modernization and Reconstruction Trust Fund, hereinafter referred to as the "fund", an amount equal to \$395,700,000; in fiscal year 2006, there shall be credited to the fund moneys equal to 70 per cent of the dedicated sales tax revenue amount but not less than \$488,700,000; in fiscal year 2007, there shall be credited to the fund moneys equal to 78 per cent of the dedicated sales tax revenue amount but not less than \$557,400,000; in fiscal year 2008, there shall be credited to the fund moneys equal to 85 per cent of the dedicated sales tax revenue amount but not less than \$634,700,000; in fiscal year 2009, there shall be credited to the fund moneys equal to 90 per cent of the dedicated sales tax revenue amount but not less than \$702,300,000; and in fiscal year 2010, there shall be credited to the fund moneys equal to 95 per cent of the dedicated sales tax revenue amount. The amounts credited to the fund under this section shall be considered to meet the full obligation of the commonwealth to the Massachusetts School Building Authority for those fiscal years, respectively.

SECTION 5. Notwithstanding any general or special law to the contrary, the state comptroller shall transfer \$150,000,000 from the General Fund to the School Modernization and Reconstruction Trust Fund on or before June 30, 2004.

Approved July 28, 2004.

Chapter 211. AN ACT AUTHORIZING CERTAIN BORROWING BY THE TOWN OF TEWKSBURY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Tewksbury may issue not more than \$10 million of general obligation bonds with a term of not more than 20 years to meet the town's share of liability for environmental remediation costs relating to the Sutton Brook Disposal Site.

SECTION 2. This act shall take effect upon its passage.

Approved July 28, 2004.

Chapter 212. AN ACT AUTHORIZING THE TOWN OF HAMILTON TO CONVEY CERTAIN LAND.

Be it enacted, etc., as follows:

The town of Hamilton may convey a certain parcel of land acquired for water supply purposes to James J. and Elizabeth Silva and the conservation restriction held by the Massachusetts Audubon Society on the parcel may be released. The parcel is shown as parcel A on a plan of land entitled "Plan of Land in Hamilton prepared for James J. & Elizabeth Silva" prepared by costal survey dated 11-6-00.

Approved July 28, 2004.

Chapter 213. AN ACT FURTHER REGULATING THE SETTING OF PRIVATE PASSENGER AUTOMOBILE INSURANCE RATES.

Be it enacted, etc., as follows:

SECTION 1. Chapter 175 of the General Laws is hereby amended by striking out section 113B, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 113B. The commissioner shall, annually on or before December 15, after due hearing and investigation, fix and establish fair and reasonable classifications of risks, including classifications of risks based on accident involvement and adequate, just, reasonable and nondiscriminatory premium charges including commission allowance to be used and charged by companies in connection with the issue or execution of motor vehicle liability policies or bonds, both as defined in section 34A of chapter 90, to become effective on April 1 of the ensuing year or any part thereof. The commissioner upon the basis of information which shall be filed by the Massachusetts Automobile Rating and Accident Pre-

vention Bureau or any successor organization thereto, shall determine whether insurance companies utilize adequate programs to control costs and expenses, in accordance with standards determined or approved by the commissioner. At a minimum, the programs shall be designed to have a material impact on premium charges by reducing costs and expenses incurred by insurance companies. In the event the Massachusetts Automobile Rating and Accident Prevention Bureau fails to make the filing, or if the commissioner determines that the filing is deficient or that the programs are inadequate, the commissioner shall limit in any manner he determines to be appropriate the amount of any adjustment in premium charges based upon changes in costs and expenses. The commissioner shall direct the plan created under section 113H to establish procedures for the implementation, monitoring and enforcement of programs to control costs and expenses identified by the commissioner in accordance with this paragraph, and shall report to the commissioner annually on the effectiveness of and the implementation by the various companies of the programs to control costs and expenses identified by the commissioner. In fixing and establishing premium charges in accordance with this section, if an insured having paid the premium on the insurance policy to the company or its agent, cancels his insurance policy within 30 days of the effective date or within 30 days of receipt of his insurance policy, whichever is later, the commissioner shall authorize that the insured receive a return premium prorated based on the actual calendar days of coverage; but if the insured cancels his insurance policy later than 30 days from its effective date or later than 30 days from receipt of the policy, whichever is later, the insured shall be entitled to a return premium after the monthly short rates, as determined by the commissioner, have been deducted from the time the policy shall have been in force. In fixing and establishing premium charges in accordance with this section, the deficit of the plan, established under section 113H, shall not be distributed to risks based on classification or territory. The effective dates of procurement or cancellation of insurance from insurance companies shall determine the cost to the insured for the coverage on an equal per diem basis established for the yearly cost of insurance policies. He shall, on or before that date, sign memoranda of the classifications and premium charges fixed and established by him in a form as he may prescribe and file the same in his office and cause a duly certified copy of the classifications and schedule of premium charges forthwith to be transmitted to each company authorized to issue the policies or to execute the bonds. During the year, the classifications and premium charges fixed and established by the commissioner for the policies shall be used by all companies issuing the policies, and the classifications and premium charges for the bonds shall be used by all companies acting as surety on the bonds, except that the company may make written application to the commissioner for permission to use, in place of the premium charges fixed and established by him as aforesaid, a percentage decrease from the premium charges which shall be uniform for all the classifications throughout the commonwealth. The deviations shall be allowed only if the commissioner finds that the premium charges the applicant desires to use are adequate, just, reasonable and nondiscriminatory and will not be used by the applicant as a means of attracting only the risks as are regarded as presenting less hazard of loss than other risks in

the same classification. Every application for permission to so deviate shall be filed with the commissioner subsequent to and within 25 calendar days of his having filed in his office the memoranda aforesaid and shall specify the basis therefore and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent by the company simultaneously to the Massachusetts Automobile Rating and Accident Prevention Bureau or any successor organization thereto. The commissioner may set the time and place for a hearing on the application if he determines that the application is significantly different from other such applications previously approved. At the hearing, the applicant and the Bureau or any member thereof may be heard. The time so established for the hearing shall not be later than 14 calendar days after the receipt by the commissioner of the application. If the commissioner finds that the deviation is justified and the resulting premium charges satisfy the requirements of this section, he shall issue an order permitting the deviation to be used by the applicant for the ensuing year beginning April 1; provided, however, that the approval of any deviation shall be issued within 10 calendar days of its filing if no hearing has been ordered for the application or within 10 calendar days of the date of a hearing on the application for which a hearing has been ordered.

In setting the claims frequency and cost trend and projection factors used to fix and establish classifications of risks and premium charges, the commissioner shall explicitly consider recent actual Massachusetts claims frequency, cost trend and loss data, and shall make express findings as to the claims frequency and cost trend and projection factors which such data would indicate for the respective coverages. He shall also consider such other evidence, argument and considerations as he finds credible and relevant. He shall justify the claims frequency and cost trend and projection factors which he uses with specific findings of fact and conclusions of law regarding all disputed material issues, and if the claims frequency, cost trend and projection factors which he uses materially deviate from the claims frequency, cost trend and projection factors derived from such recent Massachusetts data, he shall explicitly set forth the reasons therefore by making specific findings of fact and rulings, which shall justify the deviation and which shall be based on substantial evidence. For the purpose of evaluating any methodology proposed by a party to the rate hearing to be used for trending or projecting claims frequency or costs in setting the premium charges for the rate year in issue, if the commissioner makes specific findings that the same methodology was used in fixing and establishing premium charges in prior years in Massachusetts, a party may introduce into evidence the actual results caused by the use of that methodology in prior years.

In fixing and establishing classifications of risks, the commissioner shall establish rates for insureds age 65 or older, who otherwise qualify for the lowest rate classification applicable to drivers generally, which shall be 25 per cent less than the applicable rate for the classification.

In fixing and establishing classifications of risks, the commissioner shall establish rates for graduates of motorcycle rider training programs administered pursuant to section 35G of chapter 10 which shall be 10 per cent less than the applicable rate for the classification.

In fixing and establishing classifications of risks, the commissioner shall not group risks by sex or marital status, and shall not group risks by age except to provide the reduction in rates for insureds age 65 years or older required by this section.

All persons 65 years of age or older who are entitled to the reduction in rate, shall be notified annually of the reduction in rate. Those persons shall be reimbursed by the insurance carrier for all reductions in rate applicable to the driver from the time that they were 65 years of age which they did not receive. The percentage of the reduction for each coverage for an insured aged 65 or older shall be itemized on the motor vehicle liability policy. In the event that an insured reaches the age of 65 during the policy year, and is otherwise entitled to the reduction, the insured shall receive a reduction in premium on a pro rata basis for the remainder of the policy year.

In fixing and establishing classifications of risks, the commissioner may provide for appropriate reductions in the premium charges for the relevant coverages if he finds that vehicles are less damageable due to safety features incorporated into the vehicles or that the occupants of vehicles are less likely to suffer bodily injury due to safety features including, but not limited to, occupant crash protection devices, incorporated into the vehicles or that any optional policy provision will result in savings through reduced costs.

In fixing and establishing classifications of risks for comprehensive fire and theft coverage so-called to motor vehicles, the commissioner shall provide for appropriate reductions in the premium charges covering the vehicles if the vehicle is equipped with an anti-theft mechanism or device approved by the commissioner; but, the commissioner shall establish a specific reduction of a minimum of 25 per cent in said premium charges for vehicles equipped with both an anti-theft mechanism or device and an auto recovery system.

In fixing and establishing classifications of risks for personal injury protection, uninsured and underinsured motorist protection, and medical payments coverages so-called, the commissioner shall provide for appropriate reductions in premium charges covering vehicles equipped with 1 or more air bags or a passive restraint device approved by the commissioner.

In so fixing and establishing classifications of risks under this section, the commissioner shall establish a safe driver insurance plan to equitably reflect the driving records of insureds. The plan shall reflect an adjustment of insurance premium based on at-fault accidents, convictions of moving violations of motor vehicle laws, including payments pursuant to chapter 90C and assignments to driver alcohol education programs under section 24D of chapter 90, or any combination thereof; and based on 4 or more comprehensive claims totalling \$2,000 or more unless fire, theft, comprehensive and collision coverages are not purchased by the insured; as compiled and recorded by the motor vehicle insurance merit rating board established pursuant to section 183 of chapter 6. In establishing the 4 or more comprehensive claims totalling \$2,000 or more, claims for damages caused by acts of God shall be excluded. Upon receiving notification from said merit rating board that a person has received 7 at-fault accidents or convictions of moving violations of motor vehicle laws, including payments pursuant to chapter 90C and assignments to driver alcohol

education programs under section 24D of chapter 90 during any 3 year period, the registrar shall, after a hearing based solely on the accuracy of the merit rating board's records, suspend the license or right to operate a motor vehicle for 60 days. The cost of any hearings required by the provisions of this section shall be assumed by the merit rating board. The plan shall reflect an adjustment of insurance premium based on at-fault accidents, convictions of moving violations of motor vehicle laws, including payments pursuant to chapter 90C, assignment to a driver alcohol education program, or any combination thereof, and based on 4 or more comprehensive claims totalling \$2,000 or more unless fire, theft, comprehensive and collision coverages are not purchased by the insured, as compiled and recorded by the motor vehicle insurance merit rating board established pursuant to section 183 of chapter 6. The plan shall also reflect an adjustment for insurance premium based upon any motor vehicle violation reported to the registrar pursuant to the first paragraph of paragraph (c) of section 22.

Said plan shall also take into consideration convictions reported to the registry of motor vehicles as the result of any compact entered into by the secretary of public safety for the exchange of information between states.

The safe driver insurance plan shall provide for a series of driver classifications based upon driving record which shall reflect individual driving experience. The plan shall provide for upward premium adjustments for drivers who in the preceding 5 year period have accumulated 3 or more unsafe driver points based on 1 or more of the following surchargeable incidents: at-fault accidents, convictions of moving violations of motor vehicle laws, including payments pursuant to chapter 90C and assignments to driver alcohol education programs under the provisions of section 24D of chapter 90, or any combination thereof, or 4 or more comprehensive claims totalling \$2,000 or more unless fire, theft, comprehensive and collision coverages are not purchased by the insured. For the purposes of determining upward premium adjustments, the plans made effective on or after January 1, 1991, shall consider only those surchargeable incidents with surcharge dates in the 5 year period immediately preceding the effective date of the policy. Notwithstanding the foregoing, with respect to the plan made effective on January 1, 1991, the premium adjustment for any class of driver, some or all members of which received a surcharge in 1990 attributable in whole or in part to surchargeable incidents with surcharge dates before January 1, 1985, shall be reduced to reflect the approximate dollar amount of the increase in surcharges paid by that class of driver to the extent that the increase was attributable to surchargeable incidents with surcharge dates before January 1, 1985. Pursuant to the plan the commissioner may place drivers who have accumulated fewer than 3 unsafe driver points, so-called, into classifications for which an upward premium adjustment is provided. The registrar shall develop a system for separately reporting violations for driving a motor vehicle which has an expired registration sticker affixed to the license plate. When the registrar has implemented the system, driving a motor vehicle which has an expired registration sticker affixed to the license plate shall not be considered a surchargeable incident.

There shall be a downward premium adjustment called an excellent driver award. The adjustment shall apply to every driver with no surchargeable incidents within the 5 years immediately preceding the applicable rate year. There shall also be larger adjustments made for drivers with no surchargeable incidents over a longer period or periods as the commissioner shall determine, and there may be such smaller adjustments for drivers with no surchargeable incidents over a shorter period or periods as the commissioner shall determine. The commissioner shall establish both the number of classifications, the size of the premium adjustments and initial classification assignment; but the plan shall be designed so that the decrease in aggregate premiums attributable to the downward adjustments within the plan equals the increase in aggregate premiums attributable to the upward adjustments in the plan. Insureds who have accumulated 3 or more unsafe driver points within the 5 years immediately preceding the applicable rate year shall be placed in classifications for which the upward premium adjustment is actuarially sound. Nothing in this section shall preclude the commissioner from also placing drivers who have accumulated fewer than 3 unsafe driver points, so-called, into classifications for which the upward premium adjustment is actuarially sound. The commissioner and the merit rating board shall develop a system for considering the driving experience of drivers previously licensed in states other than Massachusetts in order to provide upward or downward premium adjustments to those drivers.

Upon receiving notification from the merit rating board that a driver has had 5 surchargeable incidents within the past 3 years, the registrar shall, after a hearing based solely on the accuracy of the merit rating board's records, require the driver to participate in and complete a driver education program satisfactory to the registrar. If the driver fails to provide to the registrar proof of completion of the driver education program within 90 days after the registrar mails to the driver notice of the requirement, the registrar shall suspend the driver's license or right to operate a motor vehicle until the registrar receives proof of completion of the driver education program.

The commissioner shall establish reasonable rules to assure that all insureds are informed of any premium adjustments, and the reasons therefore, made as the result of this safe driver insurance plan.

In fixing and establishing classifications of risks, the commissioner shall establish a separate rate for coverage provided in paragraph (2) of section 113L.

If the method of operation of any company other than those operating pursuant to the so-called American Agency System results in excessive profits above 9 per cent return on its earned premiums averaged over 3 years, the commissioner shall order a refund or dividend to current policyholders in the amount of the profit attributable to the difference between the amount allowed for expenses including acquisition costs in the rates for motor vehicle insurance and the company's actual expenses including acquisition costs incurred over the same 3 year period; if the profits have not been previously returned to the holders of policies issued by the company.

In so fixing and establishing premium charges to be used and charged in accordance with the provisions of this section, the commissioner shall consider, in establishing the rates, the reduction of fraud achieved through the entity created pursuant to section 113H.

The commissioner shall, annually on or before December 15, after due hearing and investigation, fix and establish adequate, just, reasonable and nondiscriminatory premium charges to be used and charged by companies in connection with the issue or execution of liability policies or bonds, for the ensuing year or any part thereof, which provide indemnity for or protection to the insured or to the obligor and any person responsible for the operation of the motor vehicle of the insured or of the obligor with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or for injury to or destruction of property of others, or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services in connection with or on account of the bodily injuries or death, sustained during the term of the policy or bonds by a guest occupant of the motor vehicle, as defined in section 34A of chapter 90, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of the motor vehicle; but, the parties to any such policy or bond may contract for the payment of a higher premium charge than that fixed and established as aforesaid. The provisions of this section applicable to motor vehicle liability policies or bonds, as defined in said section 34A, shall, so far as apt, apply to the premium charges fixed under this paragraph. He shall annually, at the time he fixes and establishes premium charges and classifications of risks, establish rules requiring companies to provide an information sheet of the provisions of the policies or bonds which outlines the various choices of coverage available to motorists and an approximation of the differences in cost between the various types of coverages. Every company, agent or broker shall forward this information sheet to every person it seeks to insure or renew at the time such person is provided with an application for the insurance. He shall promulgate a standard form of application to be used by companies for issuance and reissuance of the policies or bonds and all other coverages included within the policies or bonds, but any company issuing or reissuing the policies may do so without requiring the application. In fixing and establishing the charges, as provided in this paragraph, the commissioner shall take into account investment income from unearned premium and loss reserves.

The commissioner shall cause notice of every hearing to be given by advertising the date thereof once in at least 1 newspaper printed in each of the cities of Boston, Worcester, Springfield, Newburyport, Gloucester, Pittsfield, Fall River, New Bedford, Haverhill, Holyoke, Lawrence, Lowell and Lynn, and in the towns of Athol and Greenfield, at least 10 days before that date. The notice shall be in a form as the commissioner considers expedient.

The commissioner may make, and, at any time, alter or amend, reasonable rules and regulations to facilitate the operation of this section and enforce the application of the classifications and premium charges fixed and established by him, and to govern hearings and investigations under this section. He may at any time require any company to file with

him the data, statistics, schedules or information as he considers proper or necessary to enable him to fix and establish or secure and maintain fair and reasonable classifications of risks and adequate, just, reasonable and non-discriminatory premium charges for the policies or bonds. Every company selling automobile insurance coverage in the commonwealth shall file with the commissioner complete financial records showing the amount of profit made on every line of automobile insurance during the previous year, and shall also file records showing profits from investment income, including investment income on net realized capital gains. He may issue orders as he finds proper, expedient or necessary to enforce and administer this section, to secure compliance with any rules or regulations made thereunder, and to enforce adherence to the classifications and premium charges fixed and established by him. The supreme judicial court for the county of Suffolk shall have jurisdiction in equity upon the petition of the commissioner and upon a summary hearing, to enforce all lawful orders of the commissioner. Memoranda of all actions, orders, findings and decisions of the commissioner shall be signed by him and filed in his office as public records open to public inspection.

Any person or company aggrieved by any action, order, finding or decision of the commissioner under this section may, within 20 days from the filing of the memorandum thereof in his office, file a petition in the supreme judicial court for the county of Suffolk for a review of the action, order, finding or decision. An order of notice returnable not later than 7 days from the filing of the petition shall forthwith issue and be served upon the commissioner. Within 10 days after the return of the order of notice, the petition shall be assigned for a speedy and summary hearing on the merits. The action, order, finding or decision of the commissioner shall remain in full force and effect pending the final decision of the court unless the court or a justice thereof after notice to the commissioner shall by a special order otherwise direct. The court shall have jurisdiction in equity to modify, amend, annul, reverse or affirm the action, order, finding or decision, shall review all questions of fact and of law involved therein and may make any appropriate order or decree. The decision of the court shall be final and conclusive on the parties. The court may make an order as to costs as it considers equitable. The court shall make rules or orders as it considers proper governing proceedings under this section to secure prompt and speedy hearings and to expedite final decisions thereon.

If, for any reason, classifications of risks and premium charges fixed and established as aforesaid on or before December 15 in any year for the ensuing year are not effective for the year, the classifications of risks and premium charges in effect for the then year shall remain in full force and effect, and shall be used and charged in connection with the issue or execution of motor vehicle liability policies or bonds for the ensuing year until classifications of risks and premium charges for the ensuing year are finally fixed and established. Classifications of risks and premium charges when finally fixed and established for said ensuing year shall become effective as of April 1 of the year, and all premium charges affected by any change thereby made which have been paid or incurred prior to the time when the charges are finally fixed and established shall be adjusted in accordance with

the change, as of April 1.

The commissioner, his deputies or examiners shall at all times have access to the certificates defined in said section 34A filed with the registrar of motor vehicles.

Every mutual company issuing or executing motor vehicle liability policies or bonds, both as defined in said section 34A, shall constitute the policies or bonds as a separate class of business for the purpose of paying dividends. Any dividends on the policies or bonds shall be declared on the profits of the company from the class of business.

The original invoice rendered by an insurance company, insurance agent or broker to an insured for insurance in connection with a motor vehicle shall be so itemized as to separately indicate the premium charged for compulsory motor vehicle liability insurance.

This section shall not apply to classifications of risks and premium charges for policies and bonds issued to become effective January 1, 1977 and thereafter, except under circumstances described in section 5 of chapter 175E.

The safe driver insurance plan made effective on January 1, 1998, and all later plans shall provide that individuals that have been incarcerated pursuant to a criminal conviction shall not be considered to have experienced any incident-free period of driving during any period of incarceration of 1 year or more. In addition, the plans shall provide that, except as otherwise determined by the commissioner, any period of incarceration shall be excluded from the 5 year period within which surchargeable incidents may be considered. In implementing this paragraph, the commissioner, for the purposes of determining upward and downward premium adjustments, may adjust the surcharge date of any surchargeable incident in any manner considered appropriate, including adding any period of incarceration of 1 year or more to the surcharge date, and may consider surchargeable incidents with surcharge dates before the 5 year period immediately preceding the effective date of the policy. The commissioner of insurance and the secretary of public safety shall develop a system for providing the merit rating board the necessary information to adjust driving records for periods of incarceration in accordance with this paragraph and shall consider periods of incarceration in other jurisdictions to the extent practicable.

SECTION 2. This act shall apply to the fixing and establishing of classifications of risks and of premium charges for motor vehicle liability policies or bonds issued for the 1 year period commencing on April 1, 2007, and for the subsequent 1 year periods commencing April first of each year thereafter, if the commissioner makes the determination under section 5 of chapter 175E of the General Laws that classifications of risks and premium charges should be fixed and established for the period pursuant to section 113B of chapter 175 of the General Laws. If the commissioner determines under section 5 of chapter 175E of the General Laws that classifications of risks and premium charges are to be fixed and established pursuant to section 113B of chapter 175 of the General Laws for the period commencing January 1, 2006, the classifications of risks and premium charges so fixed and established shall apply to policies issued on and after January 1, 2006 to March 31, 2007, inclusive.

Approved July 28, 2004.

Chapter 214. AN ACT AUTHORIZING THE CITY OF SALEM TO GRANT 2 ADDITIONAL LICENSES FOR THE SALE OF WINES AND MALT BEVERAGES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Salem may grant a license for the sale of wines and malt beverages not to be drunk on the premises under section 15 of said chapter 138 to Pamplemousse, Inc., located at 185 to 189 Essex street in the city of Salem. The license shall be subject to all of said chapter 138 except said section 17. The licensing authority shall not approve the transfer of the license to any other person, organization, corporation or location separate from the sale of the entire business known as Pamplemousse, Inc.

SECTION 2. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Salem may grant a license for the sale of wines and malt beverages to be drunk on the premises under section 12 of said chapter 138 to Derby Fish and Lobster Corp., located at 215 Derby street in the city of Salem. The license shall be subject to all of said chapter 138 except said section 17. The licensing authority shall not approve the transfer of the license to any other person, organization corporation or location separate from the sale of the entire business known as Derby Fish and Lobster Corp.

SECTION 3. This act shall take effect upon its passage.

Approved July 28, 2004.

Chapter 215. AN ACT RELATIVE TO THE STANDARD FOR COMMERCIALLY USED WEIGHING AND MEASURING DEVICES.

Be it enacted, etc., as follows:

The first paragraph of section 29 of chapter 98 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following sentence:- All weighing and measuring devices used or intended to be used commercially shall meet all the applicable requirements contained in the most recent publication of National Institute of Standards and Technology Handbook 44 as adopted by the National Conference on Weights and Measures.

Approved July 28, 2004.

Chapter 216. AN ACT MERGING THE WOODLAND WATER DISTRICT OF AUBURN WITH THE AUBURN WATER DISTRICT.

Be it enacted, etc., as follows:

SECTION 1. Chapter 585 of the acts of 1947 is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. The inhabitants of the town of Auburn liable to taxation in said town and residing within the territory of said town not in the territory now included in the Elm Hill water district, as described in chapter 749 of the acts of 1979 shall constitute a water district, and are hereby made a body corporate by the name of the Auburn Water District, hereinafter called the district, for the purpose of supplying themselves with water for the extinguishment of fires and for domestic and other purposes, with power to establish fountains and hydrants and to relocate and discontinue the same, to regulate the use of water and to fix and collect rates to be paid therefore, and for the purposes of assessing and raising taxes as provided herein for the payment of the services, and for defraying the necessary expenses of carrying on the business of the district, subject to all general laws now or hereafter in force relating to water districts, except as otherwise provided herein. The district shall have power to prosecute and defend all actions.

SECTION 2. Said chapter 585 is hereby further amended by inserting after section 13 the following section:-

Section 13A. The Woodland Water District of Auburn, established under chapter 385 of the acts of 1935, is hereby dissolved and, without further conveyance or other action, all the assets, liabilities, obligations and indebtedness as well as all the power and duties of the Woodland Water District of Auburn are hereby merged and transferred to the Auburn Water District. The board of water commissioners of the Woodland Water District of Auburn is hereby abolished and the tenure of the incumbent members of the board shall terminate on the effective date of this act.

SECTION 3. This act shall take effect upon its passage.

Approved July 28, 2004.

Chapter 217. AN ACT AUTHORIZING THE SUPERINTENDENT OF STATE OFFICE BUILDINGS TO INSTALL A PLAQUE IN THE STATE HOUSE HONORING LIEUTENANT FRANCES Y. SLANGER.

Be it enacted, etc., as follows:

The superintendent of state office buildings shall subject to the approval of the art commission as to size and content, install and maintain in a suitable place in the state house a plaque honoring the memory of Lieutenant Frances Y. Slanger of the city of Boston, who was the first American nurse killed in action in the European Theater during World War II.

Approved July 28, 2004.

Chapter 218. AN ACT RELATIVE TO THE ESTATE OF HOMESTEAD.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 188 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 1, the figure "\$300,000" and inserting in place thereof the following figure:-\$500,000.

SECTION 2. Section 1A of said chapter 188, as so appearing, is hereby amended by striking out, in line 4, the figure "\$300,000" and inserting in place thereof the following figure:-\$500,000.

SECTION 3. This act shall apply to declarations of homestead recorded or filed for registration pursuant to section 1 or 1A of chapter 188 of the General Laws before, on, or after the effective date of this act, but the increase in the amount of homestead protection for declarations recorded or filed for registration before the effective date of this act shall not have priority over, and shall be subordinate to, any lien, right or interest recorded or filed for registration before the effective date of this act.

Approved July 28, 2004.

Chapter 219. AN ACT RELATIVE TO SEWER ASSESSMENTS IN THE TOWN OF MARION.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Marion may apportion sewer assessments over a maximum of 30 annual payments and may charge interest on sewer assessments at a rate equal to the rate of interest chargeable to the town.

SECTION 2. This act shall take effect upon its passage.

Approved July 28, 2004.

Chapter 220. ANACT RELATIVE TO CERTAIN DISTINCTIVE REGISTRATION PLATES.

Be it enacted, etc., as follows:

SECTION 1. Section 2 of chapter 90 of the General Laws is hereby amended by inserting after the word "Star", in line 396, as appearing in the 2002 Official Edition, the following words:- or Distinguished Flying Cross.

SECTION 2. Said section 2 of said chapter 90 is hereby amended by inserting after the word "star", in lines 402 and 403, as so appearing, the following words:- or Distinguished

Flying Cross.

SECTION 3. The eighteenth paragraph of said section 2 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- The surviving spouse of a deceased recipient may elect to retain the distinctive registration plate and distinctive emblem for personal use upon payment of the established registration fee and an additional \$20 fee until such time as the spouse remarries or fails to renew or cancels the registration.

SECTION 4. Section 2F of said chapter 90 is hereby amended by striking out the words "; and cities and towns for the purpose of supporting local programs as organized by a single city or town or a state-wide organization on behalf of all cities and towns", inserted by section 87 of chapter 46 of the acts of 2003, and inserting in place thereof the following words:- the Massachusetts Firefighters Academy Trust Fund; the Power Linemen Fund for the further training of apprentices; the Fallen Firefighter Memorial Fund to be coordinated by the Professional Firefighters of Massachusetts; the public school PTO/PTA Public School education fund; Massachusetts Firefighter Safety Fund; the University of Massachusetts Men's and Women's varsity gymnastic teams; the Old Colony Club for the purpose of restoring the Forefathers' monument; The Harvey Ball World Smile Foundation to benefit the fund for arts, culture and education; motorist safety as it pertains to bicyclists and sharing the road; the Juvenile Diabetes Research Foundation for research into treatment and prevention of juvenile diabetes, the Cape Cod Baseball League; and Mini-Fenway Park, Inc. and cities and towns for the purpose of supporting local programs as organized by a single city or town.

SECTION 5. Said section 2F of said chapter 90 is hereby further amended by adding the following subsection:-

(d) The registrar shall design, produce, issue and regulate the use of distinctive registration plates proposed by any agency, charity or nonprofit organization that has satisfactorily complied with the conditions and requirements set forth in subsection (a).

Approved July 28, 2004.

Chapter 221. AN ACT RELATIVE TO COMMUNITY BASED JUVENILE JUSTICE PROGRAMS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate forthwith community based juvenile justice programs, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, there shall be a pilot program in Essex and Hampshire counties, subject to appropriation, to establish

a community based juvenile/youthful justice program for the purposes of insuring the safety and security of the public and private schools of said counties, addressing the problems of juvenile and youthful violence, improving the services available to school-aged youth, insuring the effective use of resources by state and local law enforcement and social service agencies, and promoting collaboration among schools, local and state law enforcement agencies, private industry, municipalities, the probation department, and the departments of social services, youth services, mental health and public health. Said program shall assist in the development of school and community based programs that are designed to prevent violence and delinquency, develop techniques for the early identification of at-risk youth, divert non-violent youthful offenders from the juvenile or criminal justice system, and insure the availability of and access to community based rehabilitative services including, but not limited to, substance abuse services for youthful offenders when appropriate.

Notwithstanding any general or special law to the contrary, for the purpose of establishing, implementing, or carrying out said pilot program, employees and representatives of the following agencies and departments may discuss and exchange information concerning court records, investigations, court proceedings, and care, custody, education and treatment plans of juveniles and school-aged persons under the age of 21 who attend elementary, junior high, or high schools in Essex or Hampshire county, public or private school systems designated by the superintendent of schools including but not limited to registered nurses employed by the schools, the probation department, the office of the district attorney, state or local police departments, the office of the sheriff, the department of youth services, the department of social services, the department of mental health, the department of public health, and other social service providers. In no instance shall any aspect of an individual's confidential communications with a sexual assault counselor, as defined in section 20J of chapter 233 of the General Laws or otherwise, be shared among the aforementioned parties. Employees and representatives of the department of social services. the department of mental health, and the department of public health may share information regarding the existence of services, treatment plans, and the identity of providers; but said employees and representatives shall share privileged information only when authorized by order of the juvenile court in requests involving a child under the age of 17 and the district court for requests concerning adults. Finally, any privileged communication made to a psychotherapist, as defined in section 20B of said chapter 233, or the results of a courtordered psychiatric examination shall be shared only when authorized by order of the juvenile court in requests involving a child under the age of 17 and the district court for requests concerning adults. The appropriate court shall notify the parent or guardian of a person whose privileged information is requested of his right to appear at the hearing regarding the request for access to said privileged information. Any agency or employee or representative thereof who, without authority, discloses or disseminates such information or uses such information for purposes not described in this section shall be punished by a fine of not more than \$5000.

The district attorneys of Essex and Hampshire counties shall submit a report to the house and senate committees on ways and means and the joint committee on the judiciary every 6 months on the activities, procedures, performance, operation, implementation and cost of each community based juvenile/youthful justice program established pursuant to this pilot program. Said district attorneys, in preparing the reports, shall consult with the office of the chief justice of the juvenile court, office of the commissioner of probation and department of social services.

SECTION 2. This act shall take effect as of September 1, 2004.

Approved July 29, 2004.

Chapter 222. AN ACT RELATIVE TO CREDIT UNION DEPOSITS.

Be it enacted, etc., as follows:

SECTION 1. Section 29 of chapter 171 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

The board of directors shall determine the rate of interest to be paid on deposits which shall not exceed 6 per cent.

SECTION 2. Section 30 of said chapter 171, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Every member of a credit union shall hold 1 share and may hold shares or make deposits, or both, therein, in his own name to an amount not exceeding, in the aggregate, \$100,000 and he may jointly, with 1 or more persons, hold shares or make deposits, or both, to an amount not exceeding, in the aggregate, \$125,000 exclusive of club deposits. A member of a credit union having assets of \$4,000,000 or more may hold shares or make deposits, or both, in his own name, to an amount not exceeding, in the aggregate, \$500,000 and may jointly, with 1 or more persons, hold shares or make deposits or both to an amount not exceeding, in the aggregate, \$600,000 exclusive of club accounts. A member of a credit union having assets of \$30,000,000 or more may hold shares or make deposits or both, in his own name, to an amount not exceeding, in the aggregate, \$600,000 and may jointly, with 1 or more persons, hold shares or make deposits or both, to an amount not exceeding, in the aggregate, \$1,200,000. The limitations on deposits and shares provided herein shall be exclusive of accumulated interest or dividends.

SECTION 3. Said chapter 171 is hereby further amended by striking out section 33, as so appearing, and inserting in place thereof the following section:-

Section 33. A credit union may also contract, on terms to be agreed upon, with a person eligible for membership in the credit union or a member of such person's family, for the deposit at intervals within a period of 12 months, of sums of money, to be known as club deposits, in the aggregate not in excess of \$10,000, and may pay interest or dividends thereon

in the amount decided by its board of directors, but at no higher rate than that paid on its regular deposits or as regular dividends on shares.

Approved July 29, 2004.

Chapter 223. AN ACT AUTHORIZING THE TOWN OF WAREHAM TO CONSTRUCT A SEWER IN CERTAIN PARK LAND.

Be it enacted, etc., as follows:

The town of Wareham may lay, construct, maintain, operate, repair, change the size of, or replace a sewer in a certain parcel of park land located in and owned by the town, if the town provides appropriate mitigation for this sewer easement for the purposes of Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution. The area shall consist of a permanent strip of land 35 feet wide and a temporary strip of land 35 feet wide on either side of the permanent strip. The parcel is described in an instrument recorded at the Plymouth county registry of deeds, Book 3672, Page 258.

Approved July 29, 2004.

Chapter 224. AN ACT AUTHORIZING THE NANTUCKET ISLANDS LAND BANK TO GRANT A CONSERVATION RESTRICTION TO THE NANTUCKET CONSERVATION COMMISSION.

Be it enacted, etc., as follows:

SECTION 1. The Nantucket Islands land bank commission may grant a conservation restriction over 5 parcels of land in Nantucket county to the Nantucket conservation commission. Said parcels are described as follows:

Parcel 1 - a portion of the 138.6 acre parcel, consisting of 43.7 acres, more or less, and shown as parcel 67 of assessor's map 66 for the town of Nantucket and recorded as land court plan 28933-G, lot 11. Certificate of Title No. 11704, March 11, 1985.

Parcel 2 - a 16.68 acre parcel, more or less, abutting Mizzenmast road shown as parcel 66.4 on assessor's map 66 for the town of Nantucket and recorded as land court plan 13554-G, lot 113. Certificate of Title No. 15827, June 25, 1993.

Parcel 3 - a 4.9 acre parcel, more or less, shown as parcel 70 on assessor's map 81 for the town of Nantucket and recorded as land court plan 17368A, sheet 1, lot A5. Certificate of Title No. 11704, March 11, 1985.

Parcel 4 - a 1.7 acre parcel, more or less, shown as parcel 65 on assessor's map 81 for the town of Nantucket - assessor's book 226, page 178, March 11, 1985.

Parcel 5 - a .6 acre parcel, more or less, shown as parcel 64 on assessor's map 81 for the town of Nantucket - assessor's book 226, page 178, March 11, 1985.

SECTION 2. This act shall take effect upon its passage.

Approved July 29, 2004.

Chapter 225. AN ACT RELATIVE TO COURT ADVISEMENT.

Be it enacted, etc., as follows:

SECTION 1. Chapter 278 of the General Laws is hereby amended by striking out section 29D, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 29D. The court shall not accept a plea of guilty, a plea of nolo contendere, or an admission to sufficient facts from any defendant in any criminal proceeding unless the court advises such defendant of the following: "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States." The court shall advise such defendant during every plea colloquy at which the defendant is proffering a plea of guilty, a plea of nolo contendere, or an admission to sufficient facts. The defendant shall not be required at the time of the plea to disclose to the court his legal status in the United States.

If the court fails so to advise the defendant, and he later at any time shows that his plea and conviction may have or has had one of the enumerated consequences, even if the defendant has already been deported from the United States, the court, on the defendant's motion, shall vacate the judgment, and permit the defendant to withdraw the plea of guilty, plea of nolo contendere, or admission of sufficient facts, and enter a plea of not guilty. Absent an official record or a contemporaneously written record kept in the court file that the court provided the advisement as prescribed in this section, including but not limited to a docket sheet that accurately reflects that the warning was given as required by this section, the defendant shall be presumed not to have received advisement. An advisement previously or subsequently provided the defendant during another plea colloquy shall not satisfy the advisement required by this section, nor shall it be used to presume the defendant understood the plea of guilty, or admission to sufficient facts he seeks to vacate would have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization.

SECTION 2. Section 1 shall apply to pleas of guilty, pleas of nolo contendere and admissions to sufficient facts which occur on or after the effective date of this act. Former section 29D of chapter 278 of the General Laws shall continue to apply to pleas of guilty, pleas of nolo contendere and admissions to sufficient facts which occurred before the effec-

tive date of this act.

Approved July 29, 2004.

Chapter 226. AN ACT PROTECTING THE NASHUA RIVER BASIN.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the city of Worcester, acting by and through its city manager, may transfer to The Sisters of St. Ann an easement, for sewer purposes, in a parcel of land located partly in the town of Paxton and partly in the town of Holden and held by the city of Worcester for watershed protection purposes. The easement rights shall include the right to construct, reconstruct, repair, maintain, renew, replace, operate and patrol a sewer line, including manholes and all other equipment or appurtenances as is reasonably required.

SECTION 2. Notwithstanding any general or special law to the contrary, the department of conservation and recreation may enter into an agreement with The Sisters of St. Ann for the purpose of allowing the connection of a sewer line to the existing Holden-Rutland Sewer Interceptor located in the town of Holden. The capacity of the new connection shall not exceed 60,000 gallons per day and such additional capacity shall not impact or diminish the capacity dedicated to the town of Holden, the town of Rutland and the town of West Boylston pursuant to items 2420-7961, 2420-7962 and 2420-7963 in section 2 of chapter 15 of the acts of 1996, section 63 in said chapter 15 of said acts of 1996, item 1599-4994 in section 2F in chapter 55 in the acts of 1999 and any agreements entered pursuant thereto.

SECTION 3. In exchange for the right to connect the new sewer line to the existing Holden-Rutland Sewer Interceptor, The Sisters of St. Ann shall pay all sewer connection fees, user fees, transportation fees and any other applicable fees or charges as duly adopted by the city of Worcester, the department of conservation and recreation and the Upper Blackstone Water Pollution Abatement District.

SECTION 4. The department of conservation and recreation and the city of Worcester may, in accordance with chapter 79 of the General Laws and sections 31 and 32 of chapter 184 of the General Laws, complete all transfers of land and interests in land contemplated in the document signed by both parties entitled "Memorandum of Understanding for the Protection of the Nashua River Basin" dated July 2, 2001. The purpose of these land transfers is to enhance the protection and preservation of the Nashua River Basin for water supply, scenic, educational and other natural values by preventing development inconsistent with these values.

Approved July 29, 2004.

Chapter 227. AN ACT RELATIVE TO THE SAFE PLACEMENT OF NEWBORN INFANTS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 119 of the General Laws is hereby amended by inserting after section 39 the following section:-

Section 39½. Subject to appropriation, the department of social services shall accept for placement into foster care any newborn infant 7 days of age or less that is voluntarily placed with a hospital, police department or manned fire station, hereinafter "designated facility" by a parent of said newborn infant. Such a voluntary placement under this section shall not constitute, in an of itself, an automatic termination of parental rights or an abrogation of the parental rights or responsibilities but shall, for purposes of authorizing the department to initiate a petition to terminate parental rights under chapter 210, be presumed to be an abandonment of the newborn infant that has been so placed.

Voluntary abandonment of a newborn infant 7 days of age or younger to an appropriate person at a hospital, police department or manned fire station shall not by itself constitute either a finding of abuse or neglect or a violation of any criminal statue for child abuse or neglect or for abandonment. If child abuse or neglect, that is not based solely on the newborn infant having been left in the hospital, police department or manned fire station is suspected, hospital, police or fire department personnel who are mandated reporters under section 51A shall report the abuse or neglect.

The designated facility receiving a newborn infant shall immediately notify the department of the placement of the newborn infant at the facility. Upon receipt of such notice, the department shall take immediate custody of the newborn infant and shall initiate all actions authorized by law to achieve the safety and permanent placement of the newborn infant in a manner that is consistent with the best interests of the child.

The person accepting a newborn infant at a designated facility shall make every effort to solicit the following information from the parent placing the newborn infant: (1) the name of the newborn infant; (2) the name and address of the parent placing the newborn infant; (3) the location of the newborn infant's birthplace; (4) information relative to the newborn infant's medical history and his or her biological family's medical history, if available; and (5) and any other information that might reasonably assist the department or the court in current or future determinations of the best interests of the child, including whether the parent or guardian plans on returning to seek future custody of the child. The person receiving the newborn infant shall encourage the parent to provide the information but the parent shall not be required to provide such information.

The department shall develop and implement a public information program to inform the general public of the provisions of this section, teen pregnancy prevention programs and adoption information. The department shall also work in conjunction with other departments and agencies of the commonwealth and the Massachusetts Hospital Association relative to development of the program. The program may include, but not be limited to, educational and informational materials in print, audio video, electronic and other media, public service

announcements and advertisements and the establishment of a toll-free hotline.

For purposes of this section only, the following term shall be defined in the following manner unless the context shall clearly indicate a different meaning or intent:- "hospital", a hospital that is licensed under section 51 of chapter 111, or operated by the teaching hospital of the University of Massachusetts Medical School.

The department shall explore the possibility of expending funds received from the United States Department of Health and Human Services pursuant to the Promoting Safe and Stable Families Program, as most recently amended by the Promoting Safe and Stable Families of 2001, in order to implement the public information program required by this section and to alleviate the burden said information program may have on the department's appropriation from the commonwealth. When implementing its public information program, the department shall prioritize those areas of the commonwealth that have been identified by the department of public health as having the highest teen pregnancy rates.

SECTION 2. The department of social services, in conjunction with a designee of the juvenile court, the probate and family court, the center for adoption research at the University of Massachusetts, Massachusetts Families for Kids, Massachusetts Children's Trust Fund, Massachusetts Society for the Prevention of Cruelty to Children, Alliance on Teen Pregnancy and the office of child care services, shall submit a report analyzing the overall effectiveness of this act. The report shall include, but not be limited to, the following: (1) an analysis of the act's effectiveness in decreasing the number of newborns that are abandoned in an unsafe manner in the commonwealth; (2) the department's success or failure in permanently placing in the adoption process any newborn placed with a designated facility pursuant to this act; (3) the average length of time that newborns remain in foster care after being so placed; (4) any issues arising from the termination of parental rights following the placement of a newborn pursuant to this act; (5) the success or failure of any public information campaign implemented by the department pursuant to this act; (6) any increased administrative burdens that may be placed upon any department or agency of the commonwealth as a result of this section; (7) issues with regard to the eligibility of any newborn infant placed pursuant to this act for federal entitlements such as foster care or adoption subsidies under Title IV-E of the United State Social Security Act or any other applicable federal law; and (8) the frequency or infrequency with which a parent placing a newborn at a designated facility supplies the facility with the information sought by the facility pursuant to section 1 of this act and any negative effects the lack of medical or background information on the child or parents may have had on facilitating the temporary or permanent placement of the child through the foster care or adoption process. The report, including any legislative recommendations, shall be submitted to the joint committee on human services and elderly affairs and the house and senate committees on ways and means on or before June 30, 2007.

SECTION 3. This act shall expire on June 30, 2008.

Approved July 30, 2004.

Chapter 228. AN ACT RELATIVE TO MENINGITIS IMMUNIZATION AWARENESS.

Be it enacted, etc., as follows:

Chapter 111 of the General Laws is hereby amended by adding the following section:-

Section 219. The commissioner shall adopt regulations requiring a public or private secondary school, college, university, day care center or youth camp to distribute to the parent or guardian of a child in its care information regarding the risk of meningococcal disease and the availability, effectiveness and the risks of the meningitis vaccine.

Approved July 30, 2004.

Chapter 229. AN ACT REQUIRING COLLEGE STUDENTS IMMUNIZATION AGAINST MENINGOCOCCAL DISEASE.

Be it enacted, etc., as follows:

SECTION 1. Chapter 76 of the General Laws is hereby amended by inserting after section 15C the following section:-

Section 15D. No full-time or part-time undergraduate or graduate student shall, except as hereinafter provided, be registered at a private or public college or university or public or private secondary school, which provides housing or licenses housing such as fraternities and sororities, except upon presentation of a medical certificate at least 2 weeks before matriculation that the student has been immunized against meningococcal disease; but a student may be registered at the institution upon certification made, in writing, by a physician who has personally examined the student and in whose opinion the physical condition of the student is such that his health would be endangered by the immunization, or the student has signed a waiver stating that the student has received information provided by the school or the health department containing the information required by this section. A parent or guardian of a student less than 18 years of age shall sign the waiver. The department of public health shall promulgate rules and regulations for enforcement of this section and in developing the waiver forms, which shall contain information about the risks and dangers of meningococcal disease. In the absence of an emergency or epidemic of disease declared by the department of public health, no student who states in writing that immunization would conflict with his religious beliefs shall be required to present the medical certificate in order to be admitted to the institution. This section shall not require an institution to provide the vaccine or the expense for the vaccine against meningococcal disease.

SECTION 2. This act shall apply to a students' initial enrollment in an institution of higher education in or after August of 2005.

Approved July 30, 2004.

Chapter 230. AN ACT ESTABLISHING A SICK LEAVE BANK FOR CAROLE M. LEE, AN EMPLOYEE OF THE DEPARTMENT OF SOCIAL SERVICES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the department of social services, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the department of social services shall establish a sick leave bank for Carole M. Lee, an employee of said department. Any employee of said department may voluntarily contribute 1 or more of his sick, personal or vacation days to said sick leave bank for use by said Carole M. Lee. Whenever Carole M. Lee terminates employment with the department or requests to dissolve said sick leave bank established by this act, the balance of the sick leave time shall be transferred to the extended illness leave bank.

Approved July 30, 2004.

Chapter 231. AN ACT AUTHORIZING THE CITY OF WALTHAM TO CONTINUE THE USE OF CERTAIN PARK LAND FOR WATER PURPOSES.

Be it enacted, etc., as follows:

SECTION 1. The city

of Waltham, acting through its city council and mayor, may transfer from the parks and recreation board to the Waltham public works department, for the continued maintenance and operation of 2 water towers and the water lines connected thereto, the care, use and control of several portions of land located in Prospect Hill Park, identified on the plan entitled "Plan of Land, Prospect Hill Park, Waltham, Massachusetts" dated October 28, 1999, consisting of 5 sheets, and on file in the office of the city clerk and the city engineer, hereinafter the "plan". The property to be transferred to the care, use and control of the public works department is identified on the plan as "Proposed 25 Feet Wide Water Easement", "Proposed 20 Feet Wide Water Easement", and "Proposed Water Easement", hereafter collectively referred to as the "water easements".

The area shown on Sheet 2, roughly defined as the rectangular area 471.98' by 240', containing 2 water towers, shall continue to be surrounded by a chain link fence, the continued maintenance of which shall be the responsibility of the public works department. This area shall be subject to the exclusive care, use and control of the public works department for so long as the water towers, or any replacements thereof, remain necessary

for the operation of the city of Waltham water supply and distribution system. If the towers become unnecessary to the operation of the city of Waltham water supply and distribution system, as determined by the director of public works in writing and submitted to the mayor and city council, the care, use and control of the land located within said area shall revert to the parks and recreation board.

The surface of the water easements shall continue to be subject to the care, control and use of the parks and recreation board for park and recreation purposes subject, however, to the right of the public works department to enter the areas for the purpose of installing, operating, repairing, maintaining and replacing underground water lines necessary for the continued operation of the city of Waltham water supply and distribution system.

SECTION 2. This act shall take effect upon its passage.

Approved July 30, 2004.

Chapter 232. AN ACT AUTHORIZING THE TOWN OF YARMOUTH TO MAKE CERTAIN CONVEYANCES OF WELLFIELD LAND.

Be it enacted, etc., as follows:

SECTION 1. The town of Yarmouth may convey certain parcels of wellfield land to Gladstone Limited Partnership. The parcels are shown as Lot 8B, Lot 8E and Lot 9B on a plan of land entitled "Plan B of Land Swaps Higgins Crowell Road Extension and Recalculation of Lots to Accommodate Loss of Area Yarmouth Mass" dated October 9, 2003 and revised October 20, 2003 and drawn by Down Cape Engineering Inc.

SECTION 2. The town of Yarmouth may convey an easement in certain wellfield land to Commonwealth Electric Company for vehicles access. The easement is shown on a plan of land entitled "Access and Roadway Easement for the Commonwealth Electric Company 'NSTAR'", dated November 5, 2003 and drawn by the town of Yarmouth engineering division.

SECTION 3. The consideration for the conveyance authorized in section 1 shall be the conveyance by Gladstone Limited Partnership to the town of Yarmouth of Lots 14, 15 and 16 as shown on the plan described in section 1 and the payment of \$94,000 by Gladstone Limited Partnership. The town of Yarmouth shall appropriate the \$94,000 for wellfield protection purposes.

SECTION 4. The consideration for the conveyance authorized in section 2 shall be the conveyance by Commonwealth Electric Company to the town of Yarmouth of a parcel of land shown as Lot 1 on Land Court Plan 26415A.

SECTION 5. This act shall take effect upon its passage.

Approved July 30, 2004.

Chapter 233. AN ACT AUTHORIZING THE TOWN OF YARMOUTH TO LAY OUT A PUBLIC WAY OVER CERTAIN WELLFIELD LAND.

Be it enacted, etc., as follows:

SECTION 1. The town of Yarmouth may lay out a public way under chapter 82 of the General Laws over a certain parcel of wellfield land. The land is shown on a plan of land entitled "Town of Yarmouth a portion of Higgins Crowell Road as Altered, Relocated, Widened and Laid Out Anew", dated February 13, 2004 and drawn by the town of Yarmouth engineering division.

SECTION 2. This act shall take effect upon its passage.

Approved July 30, 2004.

Chapter 234. AN ACT RELATIVE TO THE BOARD OF EDUCATION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is relative to the board of education, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 1E of chapter 15 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There shall be in the department a board of education, in this section and in sections 1F and 1G called the board, which shall consist of the chairman of the student advisory council established under this section; the chancellor of higher education; the commissioner of early education and care; 1 representative of a labor organization selected by the governor from a list of 3 nominees provided by the Massachusetts State Labor Council, AFL-CIO; 1 representative of business or industry selected by the governor with a demonstrated commitment to education; 1 representative of parents of school children selected by the governor from a list of 3 nominees provided by the Massachusetts Parent Teachers Association; and 3 members selected by the governor.

SECTION 2. This act shall take effect as of July 1, 2005.

The foregoing was laid before the Governor on the Nineteenth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 235. AN ACT AUTHORIZING THE CITY OF TAUNTON TO RE-INSTITUTE AN EARLY RETIREMENT PROGRAM.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 32 of the General Laws or any other general law or special law to the contrary, the city of Taunton may institute an early retirement program on the same terms, conditions and eligibility requirements as those contained in section 116 of chapter 46 of the acts of 2003, except as otherwise provided herein.

SECTION 2. The authority granted to the city by this act may be exercised if a majority of the city council of the city votes to accept this act and then the mayor of the city formally approves this act, both of which must occur within 30 days of the effective date of this act.

SECTION 3. Any employee eligible under authority of this act shall file his application for retirement not later than a date determined by the mayor of the city, which shall be no later than September 1, 2004; provided, however, that the retirement date for eligible employees shall be determined by the mayor and shall not be earlier than the effective date of this act and shall be no later than September 30, 2004.

SECTION 4. Notwithstanding section 116 of chapter 46 of the acts of 2003, the executive authority, in consideration of the benefits conferred in this act, shall negotiate to agreement any payment due to the employees for accrued vacation time, unused sick leave, and other payments to employees usually made at the time of retirement in accordance with chapter 150E. Notwithstanding the negotiation referenced in this section, payments shall be made over a period of 5 years. Any payments due, as provided in this section, shall commence, at the earliest, on July 1, 2005.

SECTION 5. This act shall take effect upon its passage.

The foregoing was laid before the Governor on the Nineteenth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 236. AN ACT RELATIVE TO SPECIAL ELECTIONS TO FILL VACANCIES FOR SENATOR AND REPRESENTATIVE IN CONGRESS.

Be it enacted, etc., as follows:

SECTION 1. Section 7 of chapter 53 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "secretary", in line 43, the following words:-, except that, for special elections for senator or representative in congress, every nomination paper shall be submitted to the registrars of the city or town where the signers appear to be voters at or before 5:00 p.m. of the fourteenth day preceding the day on

which it must be filed with the state secretary, and certification of nomination papers of candidates shall be completed no later than the 72 weekday hours before the final hour for filing those papers with the state secretary.

SECTION 2. Section 10 of said chapter 53, as so appearing, is hereby amended by inserting after the words "office of", in line 10, the following words:- senator or.

SECTION 3. Section 28 of said chapter 53, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words "congressional elections shall be held on the fifth" and inserting in place thereof the following words:- elections for senator or representative in congress shall be held on the sixth.

SECTION 4. Section 46 of said chapter 53, as so appearing, is hereby amended by inserting after the word "secretary", in line 8, the following words:-, except that, for special elections for senator or representative in congress, every nomination paper shall be submitted to the registrars of the city or town where the signers appear to be voters at or before 5:00 p.m. of the fourteenth day preceding the day on which it must be filed with the state secretary, and certification of nomination papers of candidates shall be completed no later than the 72 weekday hours before the final hour for filing those papers with the state secretary.

SECTION 5. Section 139 of chapter 54 of the General Laws is hereby repealed. **SECTION 6**. Said chapter 54 is hereby further amended by striking out section 140 and inserting in place thereof the following section:-

Section 140. (a) Upon failure to choose a senator or representative in congress or upon creation of a vacancy in that office, the governor shall immediately cause precepts to be issued to the aldermen in every city and the selectmen in every town in the district, directing them to call an election on the day appointed in the precepts for the election of such senator or representative. The day so appointed shall not be more than 160 nor less than 145 days after the date that a vacancy is created or a failure to choose occurs. Filing a letter of resignation creates a vacancy under this section, even if the resignation is not effective until some later time, but the date of the election to fill a vacancy under this section shall be after the resignation is effective.

- (b) If a vacancy under this section is created after February 1 of an even-numbered year, the governor shall not issue the precepts required by subsection (a), except as subsection (c) provides for a vacancy for senator.
- (c) If a vacancy is created for senator in congress after April 10 of an even-numbered year, the governor shall issue precepts under this section, unless section 152 requires that office to appear on the biennial state election ballot in that year. If this section prevents issuance of precepts for senator, the office shall appear on the biennial state election ballot in that year. If a vacancy for senator is created after April 10 of an even-numbered year, but on or before the seventieth day preceding the regular state primary, the precepts shall appoint the day of the regular state primary and the biennial state election for holding the special primary and special election required by this section.

- (d) If at the time a senator or representative in congress is elected at the biennial state election, there exists a vacancy in that office, the senator or representative shall also be deemed to have been elected to serve out that vacancy.
- (e) A senator elected to fill a vacancy under this section shall serve for the remainder of the unexpired term.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on July 30, 2004, and in concurrence by the House of Representatives, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 237. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY A CERTAIN PARCEL OF LAND IN THE TOWN OF PLAINVILLE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the conveyance of a certain parcel of land in the town of Plainville, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance may, subject to the provisions of section 40E to 40J, inclusive, of chapter 7 of the General Laws, convey to Joseph J. Lorusso, by deed a certain parcel of state-owned land acquired for solid waste disposal purposes located in the town of Plainville. The parcel is shown as Parcel 4 on a plan dated February 25, 1977 by Norwood Engineering Co. Inc. recorded in Norfolk registry of deeds Book 258 Plan No. 124-1977.

SECTION 2. The grantee of the parcel described in section 1 shall pay the full and fair market value of the parcel based upon an independent professional appraisal as determined by the commissioner of capital asset management and maintenance.

The inspector general shall review and approve the appraisal. The inspector general shall prepare a report of his review of the methodology utilized for the appraisal. The inspector general shall prepare a report of his review and file the report with the commissioner of capital asset management and maintenance for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration in accordance with this act. The commissioner shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereto, submit the agreement or amendment and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15

days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments thereto, the reports and the comments of the inspector general to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to execution.

SECTION 3. The grantee of the parcel shall pay for all costs of the appraisal, survey and deed preparation for the conveyance authorized by this act as may be deemed necessary by the commissioner of capital asset management and maintenance.

The foregoing was laid before the Governor on the Twenty-second day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 238. AN ACT ESTABLISHING A SICK LEAVE BANK FOR MELISSA J. CORNELL, AN EMPLOYEE OF THE TRIAL COURT OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the trial court, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law, rule or regulation to the contrary, the trial court of the commonwealth shall establish a sick leave bank for Melissa J. Cornell, an employee of the Ayer division of the district court department. Any employee of the trial court may voluntarily contribute 1 or more of his sick, personal or vacation days to the sick leave bank for use by Melissa J. Cornell. Whenever Melissa J. Cornell terminates employment with the trial court or requests to dissolve the sick leave bank established by this act, the balance of the sick leave time shall be transferred to the trial court paid leave bank.

The foregoing was laid before the Governor on the Twenty-first day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 239. AN ACT PROVIDING FOR EXPENDITURE FOR THE UNCOMPENSATED CARE TRUST FUND.

Whereas, The deferred operation of this act would tend to defeat its purpose, which

is to provide forthwith expenditures for the Uncompensated Care Trust Fund, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, during fiscal year 2005 and including the accounts payable period for that fiscal year, the executive office of health and human services may expend from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund an amount not less than \$800,000,000 for a program of MassHealth supplemental payments to certain publicly-operated entities providing Title XIX reimbursable services, directly or through contracts with hospitals under an agreement with the office relating to such payments and transfers as established in accordance with Title XIX of the Social Security Act or federal waivers thereof, federal regulations promulgated thereunder, the terms of the waiver under section 1115 of the Social Security Act, state law, and the Medicaid state plan. The funds may be expended only for payment obligations arising during fiscal year 2005. Such expenditures shall reduce payments from the Uncompensated Care Trust Fund to such entities by an amount comparable to the net revenues received by such entities under this section. The office shall notify the house and senate committees on ways and means if such expenditures are rendered ineligible for federal reimbursement. Amounts so authorized for expenditure shall be funded in part through intergovernmental transfers to the commonwealth of municipal or other non-federal public funds. The Boston Public Health Commission and the Cambridge Public Health Commission shall transfer to the medical assistance intergovernmental transfer account an amount equal to 55 per cent of the gross amounts of supplemental payments made by the office under managed care contracts with the commissions. An amount equal to 1.94 per cent of the total amount that the Boston and Cambridge Public Health Commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from the medical assistance intergovernmental transfer account to revenues available for the administration of the uncompensated care pool, as established under subsection (d) of section 18 of chapter 118G of the General Laws. An amount equal to 7.16 per cent of the total amount that the Boston and Cambridge Public Health Commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from the medical assistance intergovernmental transfer account and credited to the Distressed Provider Expendable Trust Fund.

SECTION 2. This act shall take effect as of July 1, 2004.

The foregoing was laid before the Governor on the Twentieth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 240. AN ACT RELATIVE TO THE UNCOMPENSATED CARE TRUST FUND.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to administer forthwith the Uncompensated Care Trust Fund, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2005, the division of health care finance and policy may administer, as provided in this section, the Uncompensated Care Trust Fund established by section 18 of chapter 118G of the General Laws, to collect assessments as specified in section 1 of said chapter 118G for deposit to the fund, and make certain payments to acute hospitals and community health centers from the uncompensated care pool to offset the costs of services provided to uninsured or low income residents. The division and the executive office of health and human services may promulgate regulations to implement this section.

The division of health care finance and policy in consultation with the executive office of health and human services, shall ensure that assessment liability to the fund and payments from the uncompensated care pool are structured in a manner that would secure for the General Fund the maximum allowable federal reimbursement under Title XIX, XXI or any successor federal law.

In hospital fiscal year 2005, the total liability of all acute care hospitals to the fund shall be \$160,000,000 and the division of health care finance and policy shall calculate an assessment percentage rate by dividing \$160,000,000 by the projected annual aggregate private sector charges in the fiscal year for all acute care hospitals. Each acute care hospital's liability to the fund shall be equal to the product of the percentage rate and its private sector charges.

In hospital fiscal year 2005, the total surcharge liability of surcharge payers to the Uncompensated Care Trust Fund shall be \$160,000,000. The surcharge amount for each surcharge payer shall be equal to the product of: (a) the surcharge percentage; and (b) amounts paid for services of an acute hospital or ambulatory surgical center by each surcharge payer. The division of health care finance and policy shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate payments subject to surcharge, as defined in said section 1 of said chapter 118G.

All title XIX federal financial participation revenue generated by hospital payments funded by the Uncompensated Care Trust Fund, whether the payments are made by the division of health care finance and policy or the executive office of health and human services, shall be credited to the General Fund; provided however, that for fiscal year 2005, the comptroller shall transfer to the Uncompensated Care Trust Fund \$210,000,000 of the federal financial participation credited to the General Fund.

All hospital payments made pursuant to this section shall be subject to federal approval and conditioned on the receipt of full federal financial participation. All such payments shall be established in accordance with Title XIX of the Social Security Act, or any successor federal law, any regulations promulgated thereunder and the commonwealth's Title XIX state plan; provided, however, that the division of health care finance and policy, in consultation with the executive office of health and human services, the Massachusetts Hospital Association and representatives of acute care hospitals, shall ensure that all funding for hospital payments made pursuant to this section through disproportionate share payments or Title XIX services rate adjustment payments shall qualify for federal financial participation.

The division of health care finance and policy shall calculate an annual payment liability from the uncompensated care pool to each acute care hospital for fiscal year 2005. In determining the liability amount, the division shall (a): (1) calculate each hospital's actual free care cost for the 12-month period from May, 2003 to April, 2004 by using each hospital's actual submitted free care charges to the division on UC-03 and UC-04 times their ratio of cost to charge for pool fiscal year 2003 and pool fiscal year 2004; (2) project each hospital's free care costs above for the period from May, 2003 to September, 2003 to May, 2004 to September, 2004 using a 14 per cent cost and volume growth inflation factor; (3) project each hospital's total pool fiscal year 2004 free care costs by adding the actual hospital's free care cost for October, 2003 to April, 2004 from subclause (1) to the projected hospital's free care costs for May, 2004 to September, 2004 from subclause (2); (4) project each hospital's total free care costs for pool fiscal year 2005 by multiplying the hospital's pool fiscal year 2004 projected free care costs from subclause (3) by a cost and volume inflation factor of 8 per cent; and (5) take into account such factors as the financial burden of hospitals that provide proportionately the largest volume of free care and the situation of any free-standing pediatric hospital with a disproportionately low volume of Title XVIII payments; and (b) allocate the available funds in a manner that pays to each hospital a fixed percentage of its projected free care costs for hospital fiscal year 2005, as determined by the division using prior year data and considering the total funds available for the purpose; provided, however, that the fixed percentage shall not be less than 85 per cent of free care costs as defined in said section 1 of said chapter 118G for the 2 disproportionate share hospitals with the highest relative volume of free care costs in hospital fiscal year 2002, and not less than 88 per cent of free care costs, as defined in said section 1 of said chapter 118G, for the 14 acute hospitals with the next highest relative volume of free care costs in that year; provided further, that in order to identify said 16 hospitals, the division shall rank all hospitals based on the percentage of each hospital's free care costs divided by the total free care costs of all hospitals in the commonwealth. In addition to those 14 disproportionate share hospitals, a teaching hospital located in Hampden county with high Medicaid utilization shall receive not less than 88 per cent of its free care costs reimbursed and a community hospital located in Norfolk county with an affiliation with a disproportionate share, financially-distressed community hospital located in Suffolk county with a locked inpatient

adolescent psychiatric unit shall be reimbursed not less than 88 per cent of its free care costs. All other acute care hospitals shall receive the highest possible percentage of free care costs given available remaining funds. The hospital fiscal year 2005 annual liability amount to each hospital shall be funded by the trust fund; provided, however, that the liability may be satisfied through either a disproportionate share payment or adjustment to Title XIX service rate adjustment payment, or combination thereof, in accordance with the terms provided for in an agreement entered into by an acute care hospital and the executive office of health and human services. The comptroller shall transfer funds, without further appropriation, to the executive office of health and human services for the purpose of the Title XIX service rate adjustment payments.

The executive office of health and human services shall maximize the use of other federally-permissible funding mechanisms available for publicly-operated hospitals and hospitals with an affiliation with a publicly-operated health care entity to reimburse up to \$70,000,000 of uncompensated care costs at the hospitals using sources distinct from the funding made available to the trust fund under this section.

The executive office of health and human services shall make payments from the uncompensated care pool for services provided by community health centers to low income or uninsured residents; provided, however, that the office, in consultation with interested parties representing community health centers, shall develop a plan and take whatever steps necessary to adjust any payments made to community health centers for uncompensated care to be paid as Title XIX service rate adjustment payments, in accordance with Title XIX of the Social Security Act, or any successor federal law, any regulations promulgated thereunder. The comptroller shall transfer, without further appropriation, an amount of funds to be determined by the division of health care finance and policy to the executive office for the purpose of the Title XIX service rate adjustment payments under this section. The division of health care finance and policy shall submit a report by March 30, 2005 specifying the payments made to community health centers for uncompensated care paid as Title XIX service rate adjustment payments and the amount of federal reimbursement obtained and anticipated in hospital fiscal year 2005 from such payments. Such federal reimbursement shall be deposited to the Uncompensated Care Trust Fund and appropriated by September 30, 2005, to be used by community health centers as provided in this paragraph.

In hospital fiscal year 2005, not less than \$5,000,000 shall be expended from the Uncompensated Care Trust Fund to fund a pool audit unit within the office of the inspector general. The unit shall hire auditors to oversee and examine the practices in emergency rooms of all Massachusetts' hospitals. The practices shall include, but not be limited to: (1) enrollment of uninsured patients in MassHealth or other available programs; (2) free care charges hospitals are making to the free care pool and whether these charges accurately represent costs incurred by uninsured patients; (3) any cost diversion or shifting to the uncompensated care pool that might be occurring in hospital emergency rooms as the result of inadequate payment from public or private payers; and (4) reporting on whether current

assessments are fairly and evenly distributed per individual covered between all types of health plans, whether such plans are Massachusetts regulated, ERISA-exempted or self-insured plans. The office shall promulgate regulations to carry out this section. The inspector general shall submit a report to the house and senate committees on ways and means on the results of the audits not later than September 1, 2005. For the purposes of the audits, allowable free care services shall be as provided in chapter 118G of the General Laws.

In hospital fiscal year 2005, \$5,000,000 shall be transferred from the Uncompensated Care Trust Fund to the executive office of health and human services, in collaboration with the division of health care finance and policy, to fund the start-up costs associated with the design and implementation of a cost-neutral pilot program of primary and preventive care and disease management of chronic conditions that will reduce the costs of federally-mandated emergency care and the costs otherwise charged to the uncompensated care pool. Individuals eligible for the pilot program shall include, but not be limited to, recipients of emergency assistance for the elderly, disabled and children, elderly residents aged 65 or older and adults under age 65 who are disabled, blind or chronically ill. The division shall report back to the house and senate committees on ways and means on the cost neutrality of the pilot program and data on anticipated savings to the uncompensated care pool by December 1, 2004.

In hospital fiscal year 2005, \$500,000,000 from the trust fund shall be credited to the uncompensated care pool for payments to acute hospitals provided for herein and \$41,000,000 from the trust fund shall be credited to the pool for the state share of payments to community health centers provided for in this section; provided, however, that to the extent that any portion of payments to community health centers under this section can be made eligible for federal financial participation under Title XIX or waivers thereof, the amount of actual federal financial participation approved under the Title XIX state plan shall be deposited in the Uncompensated Care Trust Fund to be distributed for additional free care payments to hospitals and community health centers. The comptroller shall transfer, without further appropriation, \$160,000,000 from the trust fund to the executive office for the purposes of meeting payment obligations for services provided pursuant to section 265 of chapter 149 of the acts of 2004.

SECTION 2 This act shall take effect as of July 1, 2004.

The foregoing was laid before the Governor on the Twentieth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 241. AN ACT RELATIVE TO THE ABILITY OF ESSENTIAL COMMUNITY PROVIDERS TO FURNISH HUMAN SERVICES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which

is to furnish human services to community providers, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. There shall be established the Distressed Provider Expendable Trust Fund, which shall be administered by the secretary of health and human services. Notwithstanding any general or special law to the contrary, in fiscal year 2005, expenditures from the Distressed Providers Expendable Trust Fund shall be dedicated to efforts that are designed to improve and enhance the ability of the essential community providers to serve populations in need more efficiently and effectively, including, but not limited to, the ability to provide community-based care, clinical support and care coordination services, pharmacy management services, or other efforts to create effective coordination between hospital care and ambulatory care sites in the community. The secretary of health and human services shall develop emergency regulations governing the recommended uses of said fund in partnership with the Massachusetts League of Community Health Centers and the Massachusetts Hospital Association; provided, however, that the secretary shall provide a \$200,000 one-time grant from the fund for a community health center serving the full range of the underserved population in the town of Barnstable and further serving the dental needs of all of the underserved population throughout the mid-cape area; provided further, that the secretary shall provide a \$750,000 one-time grant from the fund for a sole community hospital under the Medicare program located in Barnstable county; provide further, that the secretary shall provide a \$250,000 one-time grant from the fund for an acute hospital serving the Melrose and Wakefield communities that operates a family health service clinic; provided further, that the secretary shall provide a \$750,000 one-time grant from the fund for a non-teaching, community, disproportionate share, acute care hospital located in southeastern Massachusetts that provides inpatient care to over 5,000 MassHealth or MassHealth HMO patients per year; provided further, that the secretary shall provide a \$750,000 one-time grant from the fund for a nonprofit visiting nurse association located in the city of Boston that delivers at least 30 per cent of all MassHealth reimbursed skilled nursing visits and at least 50 per cent of all MassHealth reimbursed home health aide services in Suffolk county; provided further, that the secretary shall provide a \$400,000 one-time grant from the fund for a community health center located in the South Boston section of the city of Boston which operates an urgent care center and which is affiliated with the disproportionate share teaching hospital in Suffolk county with the highest volume of free care; provided further, that the secretary shall provide a \$350,000 one-time grant from the fund for a community health center located in the Codman square neighborhood of the Dorchester section of the city of Boston providing health care to medically underserved patients in the Dorchester section of the city of Boston, that has formed an integrated health services network to provide access to primary and preventive public health services; provided further, that the secretary shall provide a \$350,000 one-time grant from the fund for a community health center located near

the Fields corner neighborhood of the Dorchester section of the city of Boston, on Dorchester avenue, providing health care to medically underserved patients in said Dorchester section of the city of Boston, that has formed an integrated health services network to provide access to primary and preventive public health services; provided further, that the secretary shall provide a \$400,000 one-time grant from the fund for a community health center with at least 3 sites serving the medically underserved areas of the Dorchester and South Boston sections of the city of Boston, including at least one public housing project; provided further, that the secretary shall provide a \$750,000 one-time grant from the fund to a disproportionate share hospital provider in the county formerly know as Essex county that has a family practice residency in partnership with a federally qualified community health center; provided further, that the secretary shall provide a \$750,000 one-time grant from the fund for a teaching hospital located in central Berkshire county; provided further, that the secretary shall provide a \$500,000 one-time grant from the fund for a hospital located in Hampden county, west of the Connecticut river with under 100 beds that participates in MassHealth; provided further, that the secretary shall provide a \$1,000,000 one-time grant from the fund for a hospital that is a member of the University of Massachusetts Memorial Health Care system located in Hampden county with less than 50 licensed beds; provided further, that the secretary shall provide a \$1,000,000 one-time grant from the fund for a community hospital located in Hampshire county with an affiliation with a teaching hospital located in Hampden county; provided further, that the secretary shall provide a \$500,000 one-time grant from the fund for a community health center that serves as a family practice residency training site for a commonwealth funded medical school and that assumed the primary care services of the former Worcester city hospital; provided further, that the secretary shall provide a \$250,000 one-time grant from the fund for a not-for-profit long term acute care hospital located in the Roxbury section of the city of Boston; provided further, that the secretary shall provide a \$950,000 one-time grant from the fund to a disproportionate share acute care hospital located in the southeastern Massachusetts division of the medical assistance psychiatric service area that operates an inpatient psychiatric unit within the city of Brockton; provided further, that the secretary shall provide a \$4,000,000 one-time grant from the fund for statewide providers with the service area of the Sisters of Providence Health System and Providence Behavioral Health Hospital; provided further, that the secretary shall provide a \$500,000 one-time grant from the fund for an acute care hospital located in the city of Gloucester that is part of a health care system; provided further, that the secretary shall provide a \$2,500,000 one-time grant from the fund for an acute care hospital located in the city of Holyoke that is affiliated with a commonwealth-owned university medical school and that provides clinical training programs for nurses, allied health professionals and technicians through affiliations with community colleges and private universities; provided further, that the secretary shall provide a \$500,000 one-time grant from the fund for Waltham community health center; provided further, that the secretary shall provide a \$3,000,000 one-time grant from the fund for a community health center located in Suffolk county that participates in the MassHealth program and operates a 24-hour urgent care facility and a 340B outpatient pharmacy program;

provided further, that the secretary shall provide a \$1,000,000 one-time grant from the fund for a disproportionate share teaching hospital located in Hampden county; provided further, that said secretary shall provide a \$300,000 one-time grant from the fund to inpatient behavioral health providers under contract with MassHealth's managed care contractors for mental health and substance abuse for costs associated with providing care to stuck kids; provided further, that the secretary shall provide a \$285,000 one-time grant from the fund for a community, nonprofit, acute care regional teaching hospital located in Worcester county affiliated with the University of Massachusetts Memorial Health Care System; provided further, that the secretary shall provide a \$250,000 one-time grant from the fund for a community health center located in the North End section of the city of Boston; provided further, that the secretary shall provide a \$500,000 one-time grant from the fund for a community hospital located in the city of Lynn; provided further, that the secretary shall provide a \$5,500,000 one-time grant from the fund for a disproportionate share financially distressed community hospital located in Suffolk county with a locked inpatient adolescent psychiatric unit that participates in the MassHealth program; provided further, that the secretary shall provide a \$1,000,000 one-time grant from the fund for a community hospital located in Norfolk county with an affiliation with a disproportionate share, financially-distressed community hospital located in Suffolk county with a locked inpatient adolescent psychiatric unit; provided further, that the secretary shall provide a \$1,200,000 one-time grant from the fund for a disproportionate share teaching hospital in Worcester county for emergency mental health services; provided further, that the secretary shall provide a \$1,000,000 one-time grant from the fund for a pediatric rehabilitation hospital located in Suffolk county. Nothing in this act shall preclude any hospital or community health center from receiving additional funds from this fund. All expenditures made from said fund shall be made eligible for federal reimbursement by the secretary and the executive office of health and human services. The secretary shall file a report not later than November 1, 2004 to the speaker of the house of representatives, the president of the senate and to the house and senate committees on ways and means outlining the providers to be funded during fiscal year 2005 from the fund, the amount expended or to be expended for each provider pursuant to this section and the amount of anticipated federal reimbursement. All federal reimbursements received by the commonwealth for expenditures made from the fund shall be deposited into the Uncompensated Care Trust Fund and made available for the administration of the uncompensated care pool in hospital fiscal year 2005.

SECTION 2. This act shall take effect as of July 1, 2004.

The foregoing was laid before the Governor on the Twentieth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 242. AN ACT PLACING CERTAIN MEMBERS OF THE FIRE DEPARTMENT OF THE TOWN OF HANOVER UNDER THE CIVIL SERVICE LAW.

Be it enacted, etc., as follows:

SECTION 1. The positions of full-time firefighter, full-time firefighter-EMT, full-time fire captain and deputy fire chief in the fire department of the town of Hanover shall be subject to chapter 31 of the General Laws and the tenure of any incumbent thereof shall be unlimited subject to the provisions of said chapter 31.

SECTION 2. Entrance and promotional examinations previously taken by the incumbents cited in section 1 shall serve as qualifying examinations for civil service status.

SECTION 3. Firefighter personnel hired during the 6 month period preceding the effective date of this act shall be included as civil service employees under chapter 31 of the General Laws, subject to any applicable probationary period.

SECTION 4. Notwithstanding section 58 of chapter 31 of the General Laws, the residency requirement for the positions of full-time firefighter, full-time firefighter - EMT and full-time captain - EMT in the fire department of the town of Hanover shall be determined by Article XXIV of the collective bargaining agreement between the town of Hanover and the Professional Firefighter of Hanover and shall remain a subject of collective bargaining.

SECTION 5. This act shall take effect upon its passage.

The foregoing was laid before the Governor on the Twenty-second day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 243. AN ACT RELATIVE TO CERTAIN CONSUMER TRANSACTIONS AND THE SATISFACTION OF SECURITY INTERESTS.

Be it enacted, etc., as follows:

SECTION 1. Section 24 of chapter 90D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

If the payment in satisfaction of the security interest is in cash or by certified check, cashier's check, teller's check, intra-bank or inter-bank transfer of funds, or an electronic transfer of funds, the payment shall be considered cleared immediately upon receipt by a lienholder.

SECTION 2. Said chapter 90D is hereby further amended by inserting after section 24 the following section:-

Section 24A. (a) If a lienholder fails to comply with section 24, an aggrieved party may file a complaint against the lienholder with the registrar. For the purposes of this section, an aggrieved party shall be the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate of title, to whom the lienholder failed to properly deliver the certificate in accordance with section 24.

- (b) Notwithstanding subsections (a) and (b) of section 32, the registrar may assess a civil administrative penalty on a lienholder who fails to comply with section 24 or any regulation issued by the registrar pursuant to this section or section 24, if the noncompliance occurred after the registrar had given the lienholder written notice of the noncompliance, and after a reasonable time, as determined by the registrar and stated in the notice, had elapsed for coming into compliance. The reasonable time to be determined by the registrar shall not exceed the time limits defined in section 24. The registrar may assess the penalty without providing the written notice if the failure to comply was (i) part of a pattern of noncompliance and not an isolated instance or (ii) was willful and not the result of error. A lienholder shall not be found liable for such noncompliance if the noncompliance occurred as a result of an action or inaction of the registry or the registrar.
- (c) For the purpose of determining whether the noncompliance was part of a pattern of noncompliance and not an isolated instance, the registrar shall consider, but not be limited to, the following: whether the registrar had previously notified the lienholder of noncompliance with section 24 on 2 or more occasions during the previous 90-day period or on at least 1 occasion during the previous 60-day period; whether the current and previous events of noncompliance involved the same owner or person who delivered to the lienholder authorization from the owner to receive a certificate of title, as prescribed in section 24, and whether the current and previous events of noncompliance, considered together, indicate willful disregard of the statute by the lienholder. If a lienholder who has been given notice of noncompliance with section 24 fails to come into compliance within the time period stated in the notice, the civil administrative penalty may be assessed by the registrar upon such lienholder from the date of the notice.
- (d) Whenever the registrar seeks to assess a civil administrative penalty pursuant to section 24, the registrar shall cause to be served upon the lienholder, either by service in hand, or by certified mail, return receipt requested, written notice of his intent to assess a civil administrative penalty, which shall include a concise statement of the alleged act or omission for which the civil administrative penalty is sought to be assessed, the law that has not been complied with as a result of the alleged act or omission, the amount that the registrar seeks to assess as a civil administrative penalty for each alleged act or omission, a statement of the lienholder's right to an adjudicatory hearing on the proposed assessment, the requirements the lienholder shall comply with to avoid being considered to have waived the right to an adjudicatory hearing, and the manner of payment thereof if the lienholder elects to pay the penalty and waive an adjudicatory hearing.
- (e) Whenever the registrar seeks to assess a civil administrative penalty on a lienholder, the lienholder shall have the right to an adjudicatory hearing under chapter 30A,

which shall apply except when inconsistent with this section. The lien holder shall be considered to have waived the right to an adjudicatory hearing unless, within 21 days of the date of the registrar's notice that he seeks to assess a civil administrative penalty, the lienholder files with the registrar a written statement denying the occurrence of any of the acts or omissions alleged by the registrar in the notice, or asserting that the money amount of the proposed civil administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter 30A, the registrar shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the registrar. If a lienholder waives his right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver. If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, the civil administrative penalty shall be final upon the expiration of 30 days if no action for judicial review of the decision is commenced pursuant to chapter 30A.

- (f) A lienholder who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk magistrate of the reviewing court. The establishment of the interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within 20 days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon the demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of the interest-bearing escrow account, the posting of a bond payable directly to the commonwealth in the amount of 125 per cent of the assessed penalty.
- (g) If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of the requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty, the registrar shall be paid the amount thereof together with interest at the rate set forth in section 6C of chapter 231. If, after the review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of the penalty, in whole or in part, the registrar shall be paid the amount thereof together with the accumulated interest thereon in the interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of the penalty has been deposited in an interest-bearing escrow account, the lienholder on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.
- (h) Each lienholder who fails to pay a civil administrative penalty on time, and each lienholder who issues a bond pursuant to this section and who fails to pay to the registrar on time the amount required hereunder, shall be liable to the registrar for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate

set forth in section 6C of chapter 231.

- (i) In determining the amount of each civil administrative penalty in accordance with subsection (c) of section 32, the registrar shall include, but not be limited to, the following in its considerations: the actual and potential impact on aggrieved parties and other affected parties of the failure to comply; the actual and potential damages suffered, and actual or potential costs incurred, by the commonwealth, including, but not limited to, the registrar, or by any other party; whether the lienholder being assessed the civil administrative penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of the noncompliance; whether the lienholder being assessed the civil administrative penalty has previously failed to comply with any regulation, order, license, or approval issued or adopted by the registrar, or any law which the registrar has the authority or responsibility to enforce; making compliance less costly than noncompliance; deterring future noncompliance; the financial condition of the lienholder being assessed the civil administrative penalty; and the public interest.
- (j) The registrar shall promulgate rules and regulations to carry out this section and section 24.

SECTION 3. Section 32 of said chapter 90D is hereby amended by adding the following subsection:-

(c) Notwithstanding subsections (a) and (b), a lienholder who is found to be in violation of section 24 in accordance with the procedures set forth in section 24A shall be punished by a fine of not less than \$500 for a first offense. For each successive violation, the fine shall not be less than \$1,000 nor more than \$2,000; but, if the lienholder has been cited and punished by the registrar for noncompliance 5 or more times in the preceding 12 month period, the penalty shall not be less than \$5,000 for each subsequent offense.

The foregoing was laid before the Governor on the Twenty-second day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 244. AN ACT RELATIVE TO CREDIT UNION BOARDS OF DIRECTORS.

Be it enacted, etc., as follows:

Chapter 171 of the General Laws is hereby amended by striking out section 25, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 25. A credit union may provide group life insurance, group accident and health insurance or group medical, surgical or hospital insurance or benefits or all or any combination thereof, for its employees, officers, and directors. Directors ineligible for the group benefit may be reimbursed up to the net dollar amount of the individual participant

cost of the group benefit. The commissioner may establish regulations necessary to provide reasonable restrictions in connection therewith. The commissioner may also make adjustments and exceptions as in his judgment are necessary to carry out or facilitate compliance with this section.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on July 13, 2004, and in concurrence by the House of Representatives on July 14, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 245. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN LAND IN THE TOWN OF BRIDGEWATER TO PATRICK DRISCOLL.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance may, notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, sell and convey by deed to Patrick Driscoll certain property, together with all structures thereon, if any, located on the northerly side of Winter street in the town of Bridgewater as described in 2 deeds recorded in the Plymouth county registry of deeds in Book 756, Page 322 and Book 930, Page 34, shown generally on the town of Bridgewater assessor's map 75 and map 76 and consisting of approximately 4.5 acres. The exact boundaries of the parcel shall be determined by the commissioner, in consultation with the department of correction, after completion of a survey.

SECTION 2. The consideration paid by Patrick Driscoll shall be the full and fair market value of the property determined by the commissioner of capital asset management and maintenance based upon an independent appraisal, for residential use. The inspector general shall review and approve the appraisal and the review shall include a review of methodology used for the appraisal. The inspector general shall prepare a report of his review and file the report with the commissioner for submission to the house and senate committees on ways and means and chairmen of the joint committee on state administration.

SECTION 3. Patrick Driscoll shall be responsible for any costs for appraisals, surveys and other expenses relating to the transfer of the land.

SECTION 4. The sale price paid as consideration under section 2 shall be deposited in the General Fund.

SECTION 5. The commissioner of capital asset management and maintenance shall,

30 days before the execution of any agreement authorized by this act, or any subsequent amendment of such an agreement, submit the agreement or amendment and a report on them to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments, the reports and the comments of the inspector general, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days before execution.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on March 4, 2004, and in concurrence by the House of Representatives on July 20, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 246. AN ACT DIRECTING THE RETIREMENT BOARD OF THE CITY OF QUINCY TO GRANT CREDITABLE SERVICE TO JAMES J. DENTREMONT.

Be it enacted, etc., as follows:

Notwithstanding any general or special law, rule or regulation to the contrary, the retirement board of the city of Quincy shall credit James J. Dentremont with creditable service for the period of October, 1995 to August, 1998, inclusive, for the purpose of determining his superannuation retirement allowance pursuant to paragraph (a) of subdivision (2) of section 5 of chapter 32 of the General Laws. Before the date that any retirement allowance becomes effective in the case of James J. Dentremont, he shall pay into the annuity savings fund of the retirement system of the city in 1 sum or installments, upon such terms and conditions as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous service, plus interest.

This bill was returned by the Lieutenant-Governor, Acting Governor, to the Senate, the branch in which it originated, with her objections thereto, was passed by the Senate on July 13, 2004, and in concurrence by the House of Representatives on July 14, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 247. AN ACT RELATIVE TO RETIREES' GROUP HEALTH INSURANCE PREMIUM CONTRIBUTIONS IN THE CITY OF WALTHAM.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 32B of the General Laws or any other general or special law to the contrary, the city of Waltham may provide to its former employees who have retired from the service of the city of Waltham before the passage of this act, and to their eligible dependents, the same health care benefit plan or its equivalent as now exists, or may exist in the future, for active city of Waltham employees. The retired employees and their eligible dependents shall continue to receive the same percentage of premium contributions provided by the city as is paid on the effective date of this act for so long as the retired employee or their eligible dependents remain continuously enrolled in the health care benefit plan or its equivalent, notwithstanding any alteration in health insurance plans or health plan premiums by the city. The retired employees and their eligible dependents shall continue to pay any deductible or coinsurance payments in the same amount and at the same rate as active city of Waltham employees.

All city of Waltham employees who retire from the city of Waltham after passage of this act, or their eligible dependents, shall continue to receive the same percentage of premium contribution provided by the city as of the date of the employee's retirement for so long as the retiree or their eligible dependents remain continuously enrolled in said health benefit plan or its equivalent as offered by the city of Waltham notwithstanding any alteration in health insurance plans or health plan premiums by said city.

SECTION 2. This act shall take effect upon its passage.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on July 13, 2004, and in concurrence by the House of Representatives on July 14, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 248. AN ACT RELATIVE TO THE POLICE DEPARTMENT IN THE TOWN OF BRIDGEWATER.

Be it enacted, etc., as follows:

Notwithstanding any general or special law, rule or regulation to the contrary, the town of Bridgewater may establish a separate account known as the Motor Vehicle Revolving Account for the Bridgewater police department. The chief of police of the town of Bridgewater shall maintain the account, shall keep the account separate and apart from all other monies of the town, and shall deposit into the account all monies received by the town under section 2 of chapter 280 of the General Laws for fines imposed under chapters 89 and

90 of the General Laws, but excluding fines assessed by a hearing officer of the town as defined in section 20A and 20A 1/2 of said chapter 90. The chief of police may expend the principal and income from the fund for the purpose of purchasing, equipping and maintaining police department motor vehicles.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on April 29, 2004, and in concurrence by the House of Representatives on May 6, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 249. AN ACT RELATIVE TO ELECTRIC TRANSMISSIONS.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 164 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the definition of "Electric company" and inserting in place thereof the following definition:-

"Electric company", a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and selling or transmitting and selling, or transmitting only, or distributing and selling, or only distributing, electricity within the commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that electric company shall not mean an alternative energy producer; and provided, further, that a distribution company shall not include any entity which owns or operates a plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986; and provided, further, that electric company shall not mean a corporation only transmitting and selling, or only transmitting, electricity unless such corporation is affiliated with an electric company organized under the laws of the commonwealth for the purpose of distributing and selling or distributing only, electricity within the commonwealth.

SECTION 2. Said hapter 164 is hereby further amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. In construing sections 69G to 69 O, inclusive, 70, 71, 74 to 83, inclusive, 92 to 95, inclusive, 103, 105, 106, 109, 112 to 114, inclusive, 116, 117, 119, 120, 121, 123 to 127, inclusive, unless the context otherwise requires, the terms "corporation", "gas company" and "electric company" shall include (i) all persons, firms, associations and private corporations which own or operate works or a distributing plant for the manufacture and sale, or distribution and sale of gas for heating and illuminating purposes, or of electricity, within

the commonwealth, or (ii) or a transmission company that is affiliated with an "electric company", but shall not include any alternative energy producer other than persons, firms, associations, and private corporations expressly excluded from the definition of "electric company" in section 1; and in construing sections 103, 105, 109, 112 to 114, inclusive, 116, 117, 120, 121, and 123 to 127, inclusive, the terms "corporation", "gas company" and "electric company" shall include municipal corporations which own or may acquire municipal lighting plants. Electric companies, which engage in generation and which are not part of a vertically integrated electric company or do not have a distribution affiliate in the commonwealth, shall be exempt from sections 3 to 33, inclusive, and section 93. Electric companies, which engage solely in the transmission or transmission and sale of electricity, shall be exempt from this chapter to the extent that they are preempted by federal law.

SECTION 3. Section 69J of said chapter 164, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

A petition to construct a facility shall include, in such form and detail as the board shall from time to time prescribe, the following information: (1) a description of the facility, site and surrounding areas; (2) an analysis of the need for the facility, either within or outside, or both within and outside the commonwealth; (3) a description of the alternatives to the facility, such as other methods of transmitting or storing energy, other site locations, other sources of electrical power or gas, or a reduction of requirements through load management; and (4) a description of the environmental impacts of the facility. The board shall be empowered to issue and revise filing guidelines after public notice and a period for comment. A minimum of data shall be required by these guidelines from the applicant for review concerning land use impact, water resource impact, air quality impact, solid waste impact, radiation impact and noise impact.

SECTION 4. Section 71 of said chapter 164, as so appearing, is hereby amended by adding the following sentence:- Nothing in this section shall prohibit a corporation that is not subject to this chapter from constructing lines for the transmission of electricity nor shall it authorize the corporation to construct lines for the transmission of electricity.

SECTION 5. Section 72 of said chapter 164, as so appearing, is hereby amended by striking out, in line 1, the words "An electric company" and inserting in place thereof the following words:- (a) Any electric company, distribution company, generation company, or transmission company or any other entity providing or seeking to provide transmission service.

SECTION 6. Said section 72 of said chapter 164, as so appearing, is hereby further amended by striking out the sixth sentence and inserting in place thereof the following 2 sentences:- If the electric company, distribution company, generation company or transmission company or any other entity providing or seeking to provide transmission service shall file with the department a map or plan of the transmission line showing the towns through which it will or does pass, the public ways, railroads, railways, navigable streams and tide waters in the town named in said petition which it will cross, and the extent to which it will be located upon private land or upon, under or along public ways and places,

the department, after such notice as it may direct, shall give a public hearing or hearings in 1 or more of the towns through which the line passes or is intended to pass. The department may by order authorize an electric company, distribution company, generation company, or transmission company or any other entity to take by eminent domain under chapter 79 such lands, or such rights of way or widening thereof; or other easements therein necessary for the construction and use or continued use as constructed or with altered construction of such line along the route prescribed in the order of the department.

SECTION 7. Said section 72 of said chapter 164, as so appearing, is hereby further amended by inserting after the word "company", in line 52, the following words:-, distribution company, generation company, or transmission company or any other entity.

SECTION 8. Said section 72 of said chapter 164, as so appearing, is hereby further amended by adding the following sentence:- No entity shall be authorized under this section or section 69R or section 24 of chapter 164A to take by eminent domain any lands or rights of way or other easements therein held by an electric company or transmission company to support an existing or proposed transmission line without the consent of the electric company or transmission company.

Approved August 2, 2004.

Chapter 250. AN ACT AUTHORIZING THE TOWN OF MIDDLETON TO GRANT CERTAIN EASEMENTS.

Be it enacted, etc., as follows:

SECTION 1. The town of Middleton may grant by grant of location and easement agreement to Maritimes & Northeast Pipeline, L.L.C., a Delaware limited liability company, a permanent easement not more than 50 feet wide over a parcel of land located in the town and under the management and control of the conservation commission of the town, together with temporary work space for construction purposes, 25 feet wide, immediately adjacent to the area of the proposed permanent easement, as shown on the plan of land described below. The right to use the temporary workspace shall expire 12 months after completion of construction. The land, presently being used for conservation purposes, is described on a plan of land entitled "Maritimes and Northeast Pipeline, Middleton, Essex County, Massachusetts, Dwg. No. ME-P-9167" on file with the town, which shall be recorded with the southern district registry of deeds in Essex county.

The easement shall be used for the installation and maintenance of an interstate natural gas transmission line, which shall be installed underground, together with appliances and appurtenances necessary thereto.

SECTION 2. The town of Middleton may grant by grant of location and easement agreement to Maritimes & Northeast Pipeline, L.L.C., a Delaware limited liability company, a 50 foot-wide permanent easement over a parcel of land located in the town and under the

management and control of the conservation commission of the town, together with temporary work space for construction purposes, 25 feet wide, immediately adjacent to the area of the proposed permanent easement, all as more particularly shown on the plan of land described below. The rights to use the temporary workspace and additional temporary workspace shall expire 12 months after completion of construction. The land, presently being used for conservation purposes, is described on a plan of land entitled, "Maritimes & Northeast Pipeline, Middleton, Essex County, Massachusetts, Dwg. No. ME-P-9168", on file with the town, which shall be recorded with the southern district of the registry of deeds in Essex county.

The easement shall be used for the installation and maintenance of an interstate natural gas transmission line which shall be installed underground, together with appliances and appurtenances necessary thereto.

SECTION 3. In consideration for the easements authorized in sections 1 and 2, Maritimes & Northeast Pipeline, L.L.C., shall pay or have paid to the town of Middleton, in the aggregate, \$60,507.44, which amount is equivalent to or in excess of the fair market value of the easements granted. The \$60,507.44 received in exchange for the easements shall be appropriated by the town of Middleton consistent with section 63 of chapter 44 of the General Laws.

SECTION 4. This act shall take effect upon its passage.

Approved August 2, 2004.

Chapter 251. AN ACT RELATIVE TO OIL SPILL PREVENTION AND RESPONSE IN BUZZARDS BAY AND OTHER HARBORS AND BAYS OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect the unique and sensitive waterways of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 42 of chapter 21 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 10, and in lines 11 and 12, the words "twenty-five thousand dollars" and inserting in place thereof, in each instance, the following figure:-\$50,000.

SECTION 2. Said chapter 21 is hereby further amended by striking out section 50B, as so appearing, and inserting in place thereof the following sections:-

Section 50B. As used in sections 50C to 50E, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meaning:-

"Area of special interest" any water of the commonwealth that is found by the secretary of environmental affairs to contain 1 or more immobile obstacles to navigation, abut or include areas of critical environmental concern, are designated as an estuary of national significance, abut or include habitat for endangered species, abut or include public recreation areas, support shell fishing, fin fishing or tourist industries or abut or include sensitive public safety areas. Such waters shall include, but not be limited to, Buzzards bay, Vineyard sound and Mount Hope bay.

"Department", the department of environmental protection.

"Discharge", any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, releasing, dumping or disposing into the environment.

"Hazardous material", material including, but not limited to, material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any other substance, constitutes a present or potential threat to human health, safety or welfare or to the environment. The term shall also include all those substances which are included under 42 USC Sec. 9601(14), but shall not be limited to those substances.

"Hazardous waste", a waste, or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety or welfare or to the environment.

"Oil", insoluble or partially soluble oil of any kind or origin or in any form including, but not limited to, crude or fuel oil, lube oil or sludge, asphalt and soluble or partially soluble derivatives of mineral, animal or vegetable oil.

"Vessel", every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Section 50C. (a) Any vessel, whether or not self-propelled, in or entering upon the waters of the commonwealth for the purpose of transporting, discharging or receiving a cargo of oil, hazardous material, or hazardous waste, shall be subject to the financial assurance requirements and penalty authority as provided in subsections (b) to (d), inclusive.

- (b) A certificate of financial assurance obtained individually or jointly by the vessel, its owner or agent, its charterer, or by the owner or operator of the terminal at which the vessel discharges or receives its cargo, shall be provided to the department in the amount of at least \$1,000,000,000. Vessels with a capacity of less than 6,000 barrels shall present a certificate of financial assurance to the department of environmental protection in the amount of \$5,000,000. A copy of the financial assurance shall be posted on the vessel.
- (c) For the purposes of this chapter, a certificate of financial assurance shall be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer or any combination thereof or other evidence of financial assurance approved by the commissioner.

(d) The department may allow financial assurance in a lower amount based upon criteria that includes, but is not limited to, the type and amount of the above cargo transported by the vessel; the size and construction of the vessel, including whether the vessel is double hulled; the safety record of the vessel or the vessel owner, the loss or accident history of the vessel or vessel owner involving maritime spills and the safety equipment used by the vessel. The financial assurance shall be in a form approved by the department.

Section 50D. For the purpose of investigating a maritime spill incident resulting in, or reasonably likely to result in, either directly or indirectly, a discharge of oil, hazardous material, or hazardous waste, to the waters of the commonwealth, the environmental police officers of the office of environmental law enforcement of the executive office of environmental affairs may board and inspect any vessel. Such inspection may include, but shall not be limited to, inspecting copies of the financial assurance and bond required pursuant to section 50C, and may require the operator of such vessel to give his true and correct name and address and present a current and valid form of identification. Whoever attempts to prevent an officer from boarding such vessel for the purpose of inspecting, or whoever attempts to prevent such officer from making an inspection of such vessel, or otherwise violates section 38 of chapter 90B shall be punished by a fine of \$5,000. The office of law enforcement within the executive office of environmental affairs, by regulation, may authorize other law enforcement officers to board and inspect a vessel, if the other law enforcement officers have relevant training, experience and equipment to conduct such activities. Such other law enforcement officers may include harbor masters and assistant harbor masters, police officers assigned to harbor patrol, fish and game wardens, members of the state police and city and town police officers assigned to patrol the waters of the commonwealth.

The superior court shall have jurisdiction to enforce this section and sections 50B and 50C.

The department may adopt rules and regulations to implement sections 50B and 50C. The office of law enforcement may adopt rules and regulations to implement this section 50D.

Section 50E. The secretary of environmental affairs or his designee shall identify specific "areas of special interest" within the waters of the commonwealth as defined in section 50B to include or exclude areas based on scientific research and observation regarding areas of critical environmental concern and endangered species habitat or based on economic dependence or public safety concerns. Such areas may be identified by geographic boundaries and may be mapped for use by mariners. The secretary may promulgate rules and regulations for the designation of areas of special interest within the waters of the commonwealth.

SECTION 3. Section 16 of chapter 21A of the General Laws, as so appearing, is hereby amended by inserting after the figure "21E", in line 27, the following words:- or consisted of knowingly making, or causing any person to make, a false, inaccurate, incom-

plete or misleading statement in a document submitted to or required to be kept by the department.

SECTION 4. The tenth paragraph of said section 16 of said chapter 21A, as so appearing, is hereby amended by adding the following sentence:- Notwithstanding any general or special law to the contrary, including the limitations and considerations set forth in this section, the department may require that the amount of a civil administrative penalty imposed pursuant to this section exceed the economic benefit realized by a person for noncompliance.

SECTION 5. Said section 16 of said chapter 21A, as so appearing, is hereby further amended by inserting after the word "dollars;", in lines 142 and 143, the following words: a failure to comply that is part of a pattern of noncompliance and not an isolated instance; knowingly making, or causing any person to make, any false, inaccurate, incomplete or misleading statement in any document submitted to or required to be kept by the department.

SECTION 6. The last paragraph of said section 16 of said chapter 21A, as so appearing, is hereby amended by inserting after the first sentence the following sentence: Any person who fails to comply with or otherwise violates chapter 21E or any regulation adopted thereunder shall be liable for a civil administrative penalty not to exceed \$25,000 for each day the violation continues.

SECTION 7. The first paragraph of section 6 of chapter 21E of the General Laws is hereby amended by inserting after the word "material", in lines 2, 4, 8, 11, 12 and 18, as so appearing, the following words:- or oil.

SECTION 8. Section 11 of said chapter 21E of the General Laws, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words "twenty-five thousand dollars" and inserting in place thereof, in each instance, the following figure:-\$50,000.

SECTION 9. Section 2 of chapter 21 L of the General Laws, as appearing in section 123 of chapter 26 of the acts of 2003, is hereby amended by adding the following 2 subsections:-

- (c) A person who negligently commits an environmental violation and thereby causes serious bodily injury to another human being or a substantial risk of damage to natural resources or to the property of another person in an amount exceeding \$25,000, shall be punished by a fine of not less than \$2,500 nor more than \$50,000 per day of violation, or by imprisonment for not more than 1 year, or by both such fine and imprisonment. For a second or subsequent conviction under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment for not more than 2 years, or by both such fine and imprisonment.
- (d) If a person derives pecuniary gain from an environmental violation that causes serious bodily injury to another human being or causes a substantial risk of damage to natural resources or to the property of another person, or if an environmental violation results in damage to natural resources or pecuniary loss to another person, such person who committed the violation may be fined not more than the greater of twice the gross gain or twice the gross

loss or damage, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

SECTION 10. Said chapter 21 L is hereby further amended by adding the following section:-

- Section 4. (a) A person who knowingly or recklessly commits an environmental violation and thereby causes serious bodily injury to another human being: (1) shall be subject to a civil penalty of not more than \$100,000 for each violation in the case of an individual; and (2) in the case of an organization, shall be subject to a civil penalty of not more than \$500,000 for the first violation and a civil penalty of not more than \$2,000,000 for any second or subsequent violation.
- (b) A person who knowingly or recklessly commits an environmental violation and thereby causes a substantial risk of damage to natural resources or to the property of another person in an amount exceeding \$25,000: (1) shall be subject to a penalty of not more than \$100,000 in the case of an individual; and (2) in the case of an organization, shall be subject to a civil penalty of not more than \$250,000 for the first violation and by a civil penalty of not more than \$500,000 for a second or subsequent violation.
- (c) A person who negligently commits an environmental violation and thereby causes serious bodily injury to another human being or a substantial risk of damage to natural resources or to the property of another person in an amount exceeding \$25,000, shall be subject to a civil penalty of not less than \$2,500 nor more than \$50,000 for the first violation and not less than \$2,500 nor more than \$100,000 for a second or subsequent violation.
- (d) Each day or part thereof that a violation occurs or continues shall be a separate violation.
- (e) The civil penalty may be assessed in an action brought on behalf of the commonwealth in the superior court.

SECTION 11. The General Laws are hereby amended by inserting after chapter 21L the following chapter:-

CHAPTER 21M.

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

"Area of special interest", any water of the commonwealth that is found by the secretary of environmental affairs to contain 1 or more immobile obstacles to navigation, abut or include areas of critical environmental concern, are designated as an estuary of national significance, abut or include habitat for endangered species, abut or include public recreation areas, support shell fishing, fin fishing or tourist industries or abut or include sensitive public safety areas. Such waters shall include, but not be limited to, Buzzards bay, Vineyard sound and Mount Hope bay.

"Buzzards bay", the waterway bounded and described as follows: from Sakonnet point southward to the north end of the Buzzards bay traffic separation zone, to the southwestern tip of Cuttyhunk Island thence through Buzzards bay to the eastern entrance

of the Cape Cod canal at the United States Coast Guard "CC" Buoy in Cape Cod Bay, including Woods Hole Passage and Quicks Hole.

"Chemical test", an analysis of a person's breath, blood, urine, hair, saliva, bodily fluids or tissues for evidence of illicit drug or alcohol use performed in a scientifically-recognized manner.

"Commissioner", the commissioner of environmental protection.

"Covered vessel", any of the following:

- (1) a power-driven vessel of 20 meters, approximately 65 feet or more in length, while navigating;
- (2) a towing vessel of 8 meters, approximately 26 feet or more in length, while navigating;
- (3) a vessel issued a certificate to carry 50 or more passengers for hire, when engaged in trade.

"Double hull" as defined in 33 CFR 157.03.

"Illicit drug", any substance listed as a controlled substance under 21 U.S.C. section 802.

"Tank barge", a tank vessel without a means of self-propulsion or a self-propelled tank vessel less than 40 meters, 130 feet, in overall length.

"Tank vessel", a ship that is constructed or adapted to carry, or that carries, oil or other petroleum product in bulk as cargo and that operates on the waters of the commonwealth or transfers oil or other petroleum products in a port or place subject to the jurisdiction of the commonwealth.

"Towing vessel", a commercial vessel engaged in towing another vessel astern or alongside or by pushing it ahead.

"Tugboat escort", (i) a tug with twin screws and a separate system for power to each screw, with an aggregate shaft horsepower equivalent to 4,000 horsepower or greater and a minimum bollard pull of 50 tons; or (ii) a tractor tug, having an aggregate horsepower equivalent to 4,000 horsepower or greater and a minimum bollard pull of 50 tons, which is propelled by blades or screws which may be manipulated or rotated to provide propulsive thrust to any part of a 360 degree arc relative to the keel or longitudinal axis of the tug. As of January 1, 2006, a tugboat escort shall be equipped with fire fighting equipment and, at a minimum, shall meet the requirements of the following American Bureau of Shipping (ABS) classifications: Fire Fighting Vessel Class 1 and Maltese Cross A1 (Towing Vessel).

"VTS system", a vessel traffic service system that provides real-time vessel tracking by satellite, radar or other means and supplies information regarding vessel locations and traffic to prevent collisions and groundings.

"VTS area", an area of the commonwealth's waters where a VTS system has been implemented and is in operation.

"VTS monitor", a person working for the United States Coast Guard, United States Army Corps of Engineers or other entity designated by the commissioner and responsible for operating any VTS system to monitor vessel traffic in the commonwealth's waters.

Section 2. (a)(1) The commissioner shall negotiate an agreement with the United States Coast Guard, United States Army Corps of Engineers and the Massachusetts pilot commissioner for any relevant district or districts, appropriate port agencies, or appropriate organizations by January 1, 2006, for a vessel traffic service system to protect Buzzards Bay and other bays and harbors of the state where establishing a VTS system is recommended by the Coast Guard or is recommended by the commissioner and approved by the Coast Guard. The purpose of the VTS system and the corresponding vessel traffic monitoring and communications systems shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.

(2) If the commissioner cannot negotiate an agreement on VTS systems pursuant to paragraph (1) by January 1, 2006 for Buzzards Bay, the commissioner shall, in consultation with the United States Coast Guard, United States Army Corps of Engineers and the Massachusetts pilot commissioner, develop a plan for implementing a VTS system pursuant

to said paragraph (1).

(3) The VTS system may be operated by the United States Coast Guard or United States Army Corps of Engineers, or by an entity that will have direct communication with a Coast Guard officer who has captain-of-the-port enforcement authority, or an Army Corps officer. The plan shall be amended periodically to reflect any changes in Coast Guard or Army Corps recommendations or operations, and any changes in the agreements entered into as provided above. The VTS system shall, to the extent allowable given federal requirements, provide for the best achievable protection of Buzzards Bay and the commonwealth's harbors and bays where any VTS system is implemented.

(b) The VTS system shall be advisory in nature. Nothing in this chapter relieves, or is intended to relieve, any vessel, its owners, agents, charterers or operators, of other responsibilities they would otherwise have with respect to the navigation and operation of

any vessel.

- (c) No owner or operator of a vessel subject to the requirements of this chapter, nor any passenger on any such vessel or owner of cargo transported on any covered vessel, shall assert a claim against a VTS monitor or an officer, director, employee or representative of a VTS monitor for any damage, loss or expense, including any rights of indemnity, sustained by the vessel or its owners, agents, charterers, operators, crew or third parties arising out of, or connected with, directly or indirectly, the VTS monitor's operation of the VTS system. Nothing in the section shall affect the liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the VTS monitor or an officer, director, employee or representative of the VTS monitor in the operation of the VTS system.
- (d) Prior to entering a VTS area, a covered vessel shall report to the VTS monitor the vessel's name, call sign, location, course, speed, destination, estimated time of arrival and any impairment to the operation or navigation of the vessel. While transiting a VTS area, a covered vessel shall do all of the following:
- (1) maintain continuous radio monitoring or communication with the VTS monitor on the radio channel dedicated to the VTS system;

- (2) respond promptly when hailed by the VTS monitor; and
- (3) comply with all VTS measures established by the commissioner and the VTS monitor so long as those measures are consistent with federal and state laws.
- (e) The commissioner shall implement the VTS systems and VTS monitors to the extent funds are appropriated for this purpose and a fee system is enacted, to the extent such systems and monitors are not funded by other entities, including the United States Army Corps of Engineers or the United States Coast Guard. In order to provide funding for VTS systems and vessel monitoring and communications systems, the commissioner may establish a fee system that reflects the commercial maritime activity of each of the respective bays or other areas for which a VTS system is established. The money collected pursuant to this subsection shall be deposited in the Vessel Safety Account, which shall be in the Oil Spill Prevention and Response Fund, established by section 8. The money in the Vessel Safety Account shall be continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems.
- (f) The commissioner shall adopt regulations to implement this section. Where a VTS system has been implemented, the commissioner may adopt regulations prohibiting covered vessels from: (i) accepting or unloading oil at marine terminals; (ii) entering a harbor or bay; and (iii) transiting Buzzards bay, if such barge or tank vessel is not in compliance with required VTS system or corresponding vessel traffic monitoring and communications systems equipment requirements.
- (g) Upon certification by the commissioner that the United States Coast Guard or the United States Army Corps of Engineers has commenced operation of a vessel traffic service system for a commonwealth waterway, the authorization contained in this section to operate a vessel traffic service system in that waterway shall be revoked.
- Section 3. Personnel employed by tank vessels operating within the waters of the commonwealth shall be subject to this section.

An owner or operator of a tank vessel shall have policies, procedures and practices for alcohol and drug testing that comply with 33 CFR Part 95 and 46 CFR Parts 4 and 16. The owner's and operator's policies, procedures, and practices shall ensure that:

- (i) a person neither consumes, nor is under the influence of, alcohol on a tank vessel while on the waters of the commonwealth unless that person is a passenger who does not perform, and will not perform, any duty on that tank vessel; and
- (ii) a person neither consumes, nor is under the influence of, illicit drugs on a tank vessel while in the waters of the commonwealth.

The policies, procedures and practices for alcohol and drug testing shall meet the following objectives:

(i) chemical tests for evidence of alcohol or drug use shall be taken from all persons directly involved in a serious marine incident as defined in 46 CFR 4.03-4 as soon as practicable, but not more than 2 hours, after any such incident occurs which involves the vessel, with such tests performed in such a manner as to ensure best achievable accuracy and a demonstrable connection between each tested person and the corresponding test results;

(ii) owners and operators of tank vessels shall be responsible for ensuring that each of their tank vessels operating in the waters of the commonwealth has adequate equipment on board to perform the chemical tests described in this section and to preserve evidence pertaining to those tests, including all test results and evidence of the timeliness of the tests; and that a person on a tank vessel shall be tested for drug and alcohol use when there is reasonable cause to believe the person is under the influence of alcohol or illicit drugs.

Any person who violates this section shall be subject to a civil penalty not to exceed \$10,000 for each such violation. The attorney general may institute a civil action for enforcement in the superior court of Suffolk county.

Section 4. (a) A tank vessel operating within the waters of the commonwealth shall be subject to this section.

The navigation watch on all tow vessels transiting Buzzards bay and carrying 6,000 or more barrels of oil shall consist of at least 1 licensed deck officer or tow vessel operator, who shall serve exclusively as a lookout with no other concurrent duties. This duty shall be carried out on a watch station in a safe location which allows sight and hearing of all navigational hazards and the tow vessel operator. The names of each navigation watch member shall be logged in the deck log as the member assumes duties.

Three licensed officers or tow vessel operators shall be on a tow vessel whenever the vessel is towing, whether by pushing or pulling, a tank barge carrying 6,000 or more barrels of oil in Buzzards Bay. Tow vessel operators shall maintain a list of crew members while towing a tank barge in Buzzards Bay.

- (b) Crew requirements for tank barges shall consist of 2 personnel, 1 of whom shall be a certified tanker-man under 46 CFR subpart 12.20 who shall be on the tank barge at all times when the tank barge is underway, anchored or moored in the waters of Buzzards bay, unless the tank barge is not equipped to accommodate personnel on board or is carrying less than 6,000 barrels of oil.
- (c) A tank barge which is underway, anchored or moored in the waters of Buzzards bay and which does not fulfill the minimum manning safety standards as stated in this section, shall be in violation of this chapter unless such tank barge has a double hull.

Section 5. When operating in the waters of the commonwealth, a tank vessel shall travel only within a recommended vessel route designated by the United States Coast Guard, unless no such recommended vessel route has been designated or unless special circumstances make travel outside a recommended vessel route necessary in order to avoid an imminent navigational hazard. Any person who violates this section, or an order or regulation issued or adopted hereunder, shall be subject to a civil penalty not to exceed \$25,000 for each such violation.

Section 6. (a) Effective January 1, 2005, no tank vessel carrying 6,000 or more barrels of oil shall enter or transit any area of special interest within the waters of the commonwealth unless the tank vessel is accompanied by a tugboat escort.

(b) This section shall not apply to a self-propelled tank vessel.

- (c) The commissioner may issue regulations to implement this section which shall include, but not be limited to, determining, in consultation with the relevant Massachusetts pilot commissioner, the specific needs for such required tugboat escorts in areas of special interest, and establishing minimum standards for equipment and training of personnel on tugboat escorts. The commissioner, after a competitive bidding process and in consultation with the relevant Massachusetts pilot commissioner, may evaluate such bids and may enter into a contract with a tugboat escort operator which meets or exceeds such standards. The contract shall provide for service at a regulated rate for a minimum period of 5 years.
- Section 7. A vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading or unloading at any marine terminal in the commonwealth.
- Section 8. (a) There shall be an Oil Spill Prevention and Response Trust Fund to provide emergency loans and to support the development, training and equipping of safety committees, response teams and other discreet units whose activities will directly benefit the commonwealth in the event of oil spill events. The fund shall be administered by the commissioner of environmental protection. Expenditures from the fund shall be only for the purposes set forth in subsection (f).
 - (b) Revenues credited to the fund shall be from the following sources:
 - (1) funds appropriated by the general court;
- (2) funds received from federal, state or other sources for the purpose of response, containment, abatement and rehabilitation costs from oil spills in marine or estuarine waters not already credited to an existing fund;
 - (3) funds received from private donors for the fund;
- (4) costs recovered or otherwise received from parties responsible for the containment and cleanup of oil at specific sites;
 - (5) fines, penalties and damages recovered under this chapter;
 - (6) fees imposed pursuant to subsection (c);
 - (7) the VTS system fee collected pursuant to section 2; and
 - (8) interest earned on any moneys in the fund.
- (c) (1) A uniform oil spill response and prevention fee in an amount not exceeding 2 cents for each barrel of petroleum product, as set by the commissioner pursuant to clause (4) shall be imposed upon a person owning petroleum products at the time the petroleum products are received at a marine terminal within the commonwealth by means of a vessel from a point of origin outside the commonwealth. The fee shall be remitted to the department of revenue on the thirtieth day of each month based upon the number of barrels of petroleum products received during the preceding month.
- (2) An owner of petroleum products shall be liable for the fee until it has been paid to the commonwealth, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

- (3) Whenever the commissioner, in consultation with the department of environmental protection and the department of revenue, estimates that the amount in the fund will reach the amount specified in clause (5) and the money in the fund is not required for the purposes specified in subsection (d), the commissioner shall instruct the department of revenue to cease collecting the fee.
- (4) The commissioner shall set the amount of the oil spill prevention and response fees which shall be not less than 2 cents for each barrel of petroleum products or crude oil, unless the commissioner finds that the assessment of a lesser fee will cause the fund to reach the designated amount within 6 months. The fees shall be imposed on all fee payers in the same amount.
- (5) For the purposes of this chapter, "designated amount" shall mean an amount equal to \$10,000,000, adjusted for inflation after January 1, 2005, according to an index which the commissioner may reasonably choose.
- (6) All fees collected pursuant to this section shall be deposited in the fund and shall be disbursed for the purposes set forth in subsection (f). The state treasurer shall not deposit or transfer revenues generated pursuant to subsection (b) to the General Fund or any other fund other than the Oil Spill Prevention and Response Trust Fund.
 - (d) The commissioner may use money from the fund:
- (1) to provide funds to cover promptly the costs of response, containment and cleanup of oil spills into marine or estuarine waters including, but not limited to, natural resource damage assessment costs and wildlife rehabilitation.
- (2) for site evaluation activities, including, but not limited to, site mapping, installation of wells and equipment, collection, monitoring and analysis of samples of air, soil and water and evaluation of the impacts of contamination of marine and terrestrial environments, production of reports and implementation and maintenance of necessary technology and equipment for complete remedial action;
- (3) to provide interest-free emergency loans and to cover response and cleanup costs and other damages suffered by the commonwealth or other persons or entities from oil spills or threatened oil spills, which cannot otherwise be compensated by responsible parties or the federal government;
 - (4) to pay for claims for damages pursuant to clause (8);
- (5) to provide interest-free emergency loans to workers including, but not limited to, commercial fishermen who are unable to work as a direct result of an oil spill and are ineligible for unemployment insurance;
 - (6) to pay for natural resource restoration, where necessary and appropriate;
- (7) to pay for response training and equipment for municipal oil spill response agencies and training and safety equipment for Massachusetts state pilots commissioned pursuant to chapter 103;
 - (8) to pay for large-scale personnel drills and exercises; and
 - (9) to pay for vessel navigational safety improvements including, but not limited to,

systems for supplying real-time navigation condition information using the Physical Oceanographic Real-Time Systems (PORTS) operated by the National Oceanic and Atmospheric Administration.

- (e) (1) The commissioner shall administer the fund in accordance with this chapter.
- (2) The department of environmental protection shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.
- (3) The commissioner shall ensure that there are adequate moneys available in the fund to carry out this chapter.
- (4) The department shall maintain accounting records showing the income and expenses of the fund.
- (f) (1) The commissioner may expend money from the fund for the purposes of oil spill prevention and response equipment or training, commonwealth response to a discharge or threat of a discharge of oil and assessment of natural resource damages if the following determinations have been made:
- (i) a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and pay for the damages resulting from the spill; provided, however, that the commissioner shall make a reasonable effort to have the responsible party timely remove the oil or agree to pay for any actions resulting from the spill that may be required by law, including attempting to access funds from the responsible party's insurer; provided further, that the efforts shall not be detrimental to fish, plant, animal or bird life in the affected waters: and
- (ii) federal oil spill funds are not available or will not be available in an adequate period of time; provided, however, that notwithstanding this paragraph, the commissioner may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.
 - (2) Disbursements may also be made for related purposes, including:
- (i) administrative expenses, personnel expenses and equipment costs of the commonwealth related to the administration of the fund and enforcement of this chapter;
- (ii) all costs including, without limitation, personnel undertaking oil spill response activities and equipment expenses involved in the removal of oil, the abatement of oil pollution and the implementation of remedial measures, including restoration of water supplies, related to the release of oil, petroleum products and their byproducts;
- (iii) sums allocated to research and development in accordance with this section, including the costs of assessing and evaluating the injury, destruction or loss of natural resources:
 - (iv) payment of damage claims and loans awarded in accordance with this section;
 - (v) the VTS system fee collected pursuant to section 2; and
 - (vi) payment of costs for the collection of overdue reimbursements.
- (g)(1) Any person may apply to the fund for reasonable compensation for damages and losses suffered as a result of an oil spill under any of the following conditions, to the extent monies are available in the fund for such claims:

- (i) the responsible parties cannot be ascertained.
- (ii) federal oil spill funds are not available or will not be available in an adequate period of time; provided, however, that notwithstanding this clause, the commissioner may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.
- (iii) emergency loans; provided, however, that in the event of an oil spill where more than 5,000 gallons of oil have been discharged in the marine or estuarine waters in any 1 day from a single event, the commissioner, after a properly noticed public hearing, may make an emergency secured interest-free loan to a private individual or entity who demonstrates that the individual or entity may suffer substantial financial hardship as a result of the oil spill without such loans; provided further, that loans under this section may be made only if the commissioner determines that a sufficient amount is available in the fund to cover costs incurred by the fund and local governments and entities in responding to and cleaning up the spill; and provided further, that the commissioner shall adopt any regulations and guidelines necessary regarding repayment terms, security and any other items the administrator deems appropriate.
- (2) Awards from the fund on damage claims shall not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or his representatives or by the judgment of a court of competent jurisdiction against the responsible party, to the extent these amounts are duplicative.
- (3) The commissioner shall pay only those claims that are approved pursuant to this section.
 - (4) A responsible party shall not be eligible for compensation under this section.
- (5) Damage claims shall not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees.
- (6) Nothing in this section shall be construed to confer a right on an eligible claimant to receive compensation from the fund.
- (h) The attorney general, in consultation with the commissioner, shall initiate actions to recover all costs to the fund from any responsible party for an oil spill into marine or estuarine waters for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the attorney general from any other actions allowed by law.
- (i) Recognizing the importance of the development of readiness and response programs, the general court may allocate up to \$150,000 per year of the amount then currently in the fund to be devoted to research and development regarding the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such funds may be disbursed, in whole or in part, to regional committees including, but not limited to, the Buzzards bay geographic response plan committee, for expenses consistent with these purposes. The remaining moneys in the fund which the general court may allocate to research and development shall be used for purposes approved by the commissioner. Such purposes may include, but shall not be limited to:

- (i) sensitive area data management and mapping;
- (ii) scientific research which is directly relevant to state legislation;
- (iii) development of more effective removal and containment technologies appropriate for the cleanup and containment of oil and petroleum products; and
- (iv) oil spill prevention or response equipment and funding to train personnel, for coastal municipalities and Massachusetts state pilots commissioned pursuant to chapter 103.

NO SECTION 12.

NO SECTION 13.

SECTION 14. Section 59 of chapter 91 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 8 and 9, the words "one thousand dollars" and inserting in place thereof the following words:- \$25,000 for each day such violation occurs or continues.

SECTION 15. Chapter 103 of the General Laws is hereby amended by inserting after section 1 the following section:-

Section 1A. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meaning:

"Area of special interest", any water of the commonwealth that is found by the secretary of environmental affairs to contain 1 or more immobile obstacles to navigation, abut or include areas of critical environmental concern, are designated as an estuary of national significance, abut or include habitat for endangered species, abut or include public recreation areas, support shell fishing, fin fishing or tourist industries, or abut or include sensitive public safety areas. Such waters include but are not limited to Buzzards Bay, Vineyard Sound, Mount Hope Bay.

SECTION 16. Section 21 of said chapter 103 is hereby amended by inserting after the word "over,", in line 2, as so appearing, the following words:-, every other United States vessel that is carrying oil, hazardous material or hazardous waste in bulk as cargo in or entering upon areas of special interest within the waters of the commonwealth.

SECTION 17. Section 28 of said chapter 103, as so appearing, is hereby amended by inserting after the word "register", in line 1, the following words:- and not carrying oil, hazardous material or hazardous waste in bulk as cargo in or entering upon areas of special interest within the waters of the commonwealth.

SECTION 18. Section 23 of chapter 130 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the words "one hundred and fifty" and inserting in placing thereof the following figure:- \$5,000.

SECTION 19. Said section 23 of said chapter 130, as so appearing, is hereby further amended by striking out, in line 14, the words "five thousand dollars" and inserting in place thereof the following figure:- \$25,000.

Approved August 4, 2004.

Chapter 252. AN ACT ESTABLISHING A ONE TRIAL SYSTEM FOR CIVIL CASES.

Be it enacted, etc., as follows:

SECTION 1. Paragraph 3A of section 9 of chapter 93A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the last sentence.

SECTION 2. Section 3 of chapter 212 of the General Laws, as so appearing, is hereby amended by adding the following 2 sentences:- Except as otherwise provided by law, the court shall have original jurisdiction of civil actions for money damages. The actions may proceed in the court only if there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to \$25,000, or an amount ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control.

SECTION 3. Said chapter 212 is hereby further amended by inserting after section 3 the following section:-

Section 3A. (a) A clerk-magistrate in the superior court shall not accept for filing a complaint or other pleading which commences a civil action for money damages, except as otherwise provided by law, unless it is accompanied by a statement signed by the attorney or pro se party. The statement shall specify the facts on which the plaintiff then relies to determine money damages. The defendant may file with his answer a statement specifying the potential damages which may result if the plaintiff prevails.

- (b) If it appears to the court, from the statement of damages by the plaintiff that there is no reasonable likelihood that the estimated damages will be consistent with the civil money damage limits of the court, as set forth in section 3, the judge, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case without prejudice for failure to comply with the requirements of said section 3 regarding the amount necessary for proceeding in the superior court. The filing fee in the dismissed actions shall be retained by the court; but the recommencement of the same action in the district court or Boston municipal court departments of the trial court shall not require the payment of a filing fee. If a civil action is dismissed in the district court or Boston municipal court departments pursuant to section 19A of chapter 218, and the action is recommenced in the superior court, the filing fee shall be reduced by the amount of the filing fee previously paid to attempt to commence the same action in the district court or Boston municipal court. The procedure provided herein for dismissal of an action for violation of the requirements regarding the amount necessary to proceed in the superior court under section 3 shall be the exclusive method by which the dismissal may be ordered. Violation of the requirements for proceeding in the superior court shall not deprive the court of jurisdiction and shall not be grounds for any post-judgment relief in any case.
- (c) In any case where the superior court dismisses the case as provided in this section, the plaintiff may take an appeal as hereinafter provided. The appeal shall be to a single justice of the appeals court at the next sitting thereof. Upon being notified of the dismissal,

the plaintiff shall have 7 days thereafter to file a notice of appeal with the clerk of the dismissing court. Upon receipt of notice of appeal timely filed, the clerk shall forthwith notify the judge who approved the dismissal. Within 3 days of receipt of the notice, the judge who approved the dismissal shall set forth written findings and reasons justifying the dismissal, which findings and rulings shall be part of the record on appeal. The clerk shall forward the pleading which commenced the civil action, all statements by the parties, specifying in detail the potential damages if the plaintiff prevails, the judge's written findings and reasons justifying the dismissal and any other documents on file relevant to the appeal to the clerk of the appeals court. Upon receipt thereof, the clerk of the appeals court shall set the matter down for a speedy hearing and send notice to the parties. The court dismissing the case may, with or without motion, issue an order or process to preserve the rights of the parties pending the appeal. The single justice of the appeals court may enter or revoke that order or process. The decision of the single justice of the appeals court as to the dismissal shall be final.

(d) Notwithstanding chapter 260 or any other applicable statutes of limitation, in a civil action under this section in which a plaintiff's case has been dismissed as provided in this section, the plaintiff shall be given 30 days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days after the date of receipt of the notice of the decision of the single justice of the appeals court to file the case in the appropriate court; if, the commencement of the dismissed case was within the applicable statute of limitations. The 30-day time limit in this section for recommencement of an action following dismissal of the action shall apply only when the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of the action to the end of the 30-day period.

SECTION 4. Section 12 of said chapter 212, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words "or proceeding from a judgment of a district court" and inserting in place thereof the following words:- authorized by law.

SECTION 5. Section 19 of chapter 218 of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 4 sentences:- Except as otherwise provided by law, the district court and Boston municipal court departments shall have original jurisdiction of civil actions for money damages. The actions may proceed in the courts only if there is no reasonable likelihood that recovery by the plaintiff will exceed \$25,000, or an amount ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control. Notwithstanding the limitation of \$25,000, or other amount ordered by the supreme judicial court, the district courts may proceed with actions for money damages in any amount in summary process actions.

SECTION 6. Said chapter 218 is hereby further amended by striking out section 19A, as so appearing, and inserting in place thereof the following section:-

Section 19A. (a) A clerk-magistrate in a district court or in the Boston municipal court shall not accept for filing any complaint or other pleading which commences a civil action for money damages, except as otherwise provided by law, unless it is accompanied by a statement signed by the attorney or pro se party. The statement shall specify the facts on which the plaintiff then relies to determine money damages. The defendant may file with his answer a statement specifying the potential damages which may result if the plaintiff prevails.

- (b) If it appears to the court from the statement of damages by the plaintiff that there is no reasonable likelihood that the estimated damages will be consistent with the civil money damage limits of the court, as set forth in section 19, the judge, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case without prejudice for failure to comply with the requirements of said section 19 regarding the amount necessary for proceeding in the district court or Boston municipal court departments. The filing fee in the dismissed actions shall be retained by the court. If a civil action is dismissed in the superior court pursuant to section 3A of chapter 212, and the action is recommenced in the district court or Boston municipal court, those courts shall not require the payment of a new filing fee. If an action commenced in the district court or Boston municipal court departments is dismissed as provided herein and is recommenced in the superior court, the filing fee shall be reduced by the amount of the filing fee previously paid to attempt to commence the same action in the district court or the Boston municipal court. The procedures provided herein for dismissal of an action for violation of the requirements regarding the amount necessary to proceed in the district court or Boston municipal court departments under section 19 shall be the exclusive method by which the dismissal may be ordered. Violation of the requirements for proceeding in the district court or Boston municipal court departments shall not deprive the court of jurisdiction and shall not be grounds for any post-judgment relief in any case.
- (c) In any case where a district court or the Boston municipal court dismisses the case as provided in this section, the plaintiff may take an appeal as hereinafter provided. The appeal shall be to a single justice of the appeals court at the next sitting thereof. Upon being notified of the dismissal, the plaintiff shall have 7 days thereafter to file a notice of appeal with the clerk of the dismissing court. Upon receipt of notice of appeal timely filed, the clerk shall forthwith notify the judge who ordered the dismissal. Within 3 days of receipt of the notice, the judge who ordered the dismissal shall set forth written findings and reasons justifying the dismissal, which findings and rulings shall be part of the record on appeal. The clerk shall forward the pleading which commenced the civil action, all statements by the parties, specifying in detail the potential damages if the plaintiff prevails, the judge's written findings and reasons justifying the dismissal and any other documents on file relevant to the appeal to the clerk of the appeals court. Upon receipt thereof, the clerk of the appeals court shall set the matter down for a speedy hearing and send notice to the parties. The court dismissing the case may, with or without motion, issue an order or process to preserve the rights of the parties pending the appeal. The single justice of the appeals court may enter or

revoke that order or process. The decision of the single justice of the appeals court as to the dismissal shall be final.

(d) Notwithstanding chapter 260 or any other applicable statutes of limitation, in a civil action under this section in which a plaintiff's case has been dismissed as provided in this section, the plaintiff shall be given 30 days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days after the date of receipt of notice of the decision of the single justice of the appeals court to file the case in the appropriate court; if the commencement of the dismissed case was within the applicable statute of limitations. The 30-day time limit in this section shall apply only when the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of the action to the end of the 30-day period.

SECTION 7. Said chapter 218 is hereby further amended by striking out section 19B, as so appearing, and inserting in place thereof the following section:-

Section 19B. (a) Except as otherwise provided by law, all civil actions for money damages, or summary process actions, filed in a district court or the Boston municipal court shall be subject to 1 trial, with or without a jury of 6, in the district court department or in the Boston municipal court department. Any party may demand a trial by jury of 6 of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing after the commencement of the action. The demand may be endorsed upon a pleading of the demanding party. The failure of a party to serve and file a demand for jury trial shall constitute a waiver by that party of trial by jury. In any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of the conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to the motions.

(b) The district court and Boston municipal court departments may hold jury of 6 sessions for the purpose of conducting jury trials of summary process cases and of civil actions for money damages proceeding in those courts pursuant to the provisions of section 19. The chief justice for the district court department shall designate at least 1 district court in each county for the purpose of conducting jury trials; but, with the approval of the chief justice for the superior court department, facilities of the superior court may be designated by the chief justice for administration and management of the trial court for the conduct of jury trials in cases commenced in the district courts or in the Boston municipal court. If necessary, facilities of any department of the trial court may be designated by the chief justice for administration and management for trial by jury of civil cases from the district court or the Boston municipal court. The chief justice for the district court department may also designate 1 or more district courts in any county for the purpose of conducting jury waived trials of cases commenced in any district court of the county consistent with the requirements of the proper administration of justice. Persons in district courts who waive their right to jury trial shall be provided a jury waived trial in the same district court if the jury waived trial session has been established in the court. If the jury waived trial session has

not been so established, the parties shall be provided a jury waived trial in a court as hereinbefore designated. Parties in the district courts who claim a jury trial shall be provided a jury trial in a jury of 6 session in the same court if a jury of 6 session has been established in that court. If a jury of 6 session has not been so established, the parties shall be provided jury trials in a jury of 6 session as hereinbefore designated. In cases where the parties claim a jury trial, the clerk shall, subject to subsection (a), forthwith transfer the case for trial in the appropriate jury session. The transfer shall be governed by procedures to be established by the chief justices of the district court and Boston municipal court departments.

- (c) The justice presiding over a jury of 6 session shall have and exercise all powers and duties which a justice sitting in the superior court department has and may exercise in the trial and disposition of civil cases including the power to report questions of law to the appeals court. Trials by juries of 6 shall proceed in accordance with the law applicable to trials by jury in the superior court; but the number of peremptory challenges shall be limited to 2 to each party. Jurors shall be provided for the jury of 6 session by the office of the jury commissioner in accordance with chapter 234A. If necessary, the superior court shall make available jurors from the pool of jurors for the jury sessions in either civil or criminal sessions in the superior court. The chief justices of the district court and Boston municipal court departments shall arrange for the sittings of the jury sessions and shall assign justices thereto, so that speedy trials may be provided. Review may be had by the appropriate appellate division pursuant to section 108 of chapter 231, and thereafter by the appeals court.
- (d) The justice presiding at the jury of 6 session may, upon the request of a party, appoint a stenographer; provided, however, that where the party claims indigency, the appointment is determined to be reasonably necessary in accordance with chapter 261; and provided, further, that the court electronic recording system is not available or not properly functioning. The stenographer shall be sworn, shall take stenographic notes of all the testimony given at the trial and shall provide the parties thereto with a transcript of the notes or any part thereof taken at the trial or hearing for which the stenographer shall be paid by the party requesting it at the rates fixed by the chief justices for the district court or Boston municipal court departments; but the rate shall not exceed the rate provided by section 88 of chapter 221. The chief justices may make regulations consistent with law relative to the assignments, duties and services of stenographers appointed for sessions in their respective departments and any other matter relative to stenographers. The compensation and expenses of the appointed stenographers shall be paid by the commonwealth. The request for the appointment of a stenographer to preserve the testimony at a trial shall be given to the clerk of the court by a party, in writing, no later than 48 hours before the proceeding for which the stenographer has been requested. The party may file with such request an affidavit of indigency and request for payment by the commonwealth of the cost of the transcript and the court shall hold a hearing on the request before appointing a stenographer in those cases where the party will be unable to pay the cost. The hearing shall be governed by chapter 261 and the cost of the transcript shall be considered an extra cost as provided therein. If the court is unable, for any reason, to provide a stenographer, the proceedings may be recorded

by electronic means. The original recording of proceedings in a district court or in the Boston municipal court made with a recording device under the exclusive control of the court shall be the official record of the proceedings. The record or a copy of all or a part thereof, certified by the appropriate chief justice or his designee, to be an accurate electronic reproduction of the record or part thereof, or a typewritten transcript of all or a part of the record or copy thereof, certified to be accurate by the court or by the preparer of the transcript, or stipulated to by the parties, shall be admissible in any court as evidence of testimony given whenever proof of the testimony is otherwise competent. A party may request payment by the commonwealth of the cost of the transcript subject to the same provisions regarding a transcript of a stenographer as hereinbefore provided.

(e) Any party who files in a district court or in the Boston municipal court an appeal to the appellate division, in a civil action subject to this section, within 10 days of the entry of judgment or within the further time as the justice orders for cause shown allows, shall also file a bond executed by the party or attorney of record on such party's behalf, payable to the appellee in a reasonable sum and with surety or sureties approved by the appellee or by the justice or clerk or assistant clerk of the district court or Boston municipal court, conditioned to satisfy any judgment for costs which may be entered against the appellant upon the appeal. Any party, in lieu of filing the bond required for an appeal to the appellate division, may deposit with the clerk, within the time required for filing a bond, a reasonable amount to be fixed by the clerk or justice, as security for the prosecution of the appeal and the payment of costs. A certificate of the deposit shall be issued to the depositor by the clerk of the court who shall hold the deposit until the final disposition of the case when the clerk shall apply the deposit to the satisfaction of any costs awarded against the depositor and pay the balance, if any, to the depositor or the depositor's legal representative. A bond or deposit shall not be required of the commonwealth or any officer or employee thereof represented by the attorney general, or of a county, city, town or other municipal corporation, or of a board, officer or employee thereof represented by the city solicitor, town counsel or other officer having similar duties, or of a political subdivision, or of a party who has given bond according to law to dissolve an attachment or of a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in section 1 of chapter 90 if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in section 34D of said chapter 90 and the court may, in any case, for cause shown, after notice to adverse parties, order that no bond be given.

SECTION 8. Section 19C of said chapter 218, as so appearing, is hereby amended by inserting before the first paragraph the following paragraph:-

The district court and Boston municipal court departments of the trial court shall have the same equitable powers and jurisdiction as is provided for the superior court pursuant to chapter 214 and the same authority with regard to declaratory judgments as is provided for the superior court pursuant to chapter 231A for the purpose of the hearing and disposition of summary process actions and of civil actions for money damages under section 19 of this

chapter.

SECTION 9. Section 54 of said chapter 218, as so appearing, is hereby amended by striking out, in line 3, the words "all civil actions in which money damages are sought" and inserting in place thereof the following words:- civil actions in which money damages are sought pursuant to sections 19 and 21.

SECTION 10. Section 10 of chapter 223 of the General Laws, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words ", or if the action is commenced in a district court and removed to the superior court, within 30 days after such removal".

SECTION 11. Section 19 of chapter 224 of the General Laws, as so appearing, is hereby amended by striking out, in lines 32 and 33, the words "in the same manner as from a judgment of a district court in civil actions".

SECTION 12. Section 59A of chapter 231 of the General Laws, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words "an action has been removed by the defendant from a district court and".

SECTION 13. Said chapter 231 is hereby further amended by striking out section 97, as so appearing, and inserting in place thereof the following section:-

Section 97. Unless a written waiver of the right of appeal has been filed by all the parties, a party aggrieved by the judgment of a district court in a civil action may appeal therefrom to the superior court within 6 days after the entry thereof. In that case no execution shall be issued on the judgment appealed from. The case shall be entered in the superior court pursuant to section 101 and shall there be tried and determined as if originally entered therein. This section shall not apply to civil actions for money damages and to summary process actions brought in the district court and Boston municipal court departments pursuant to section 19 of chapter 218 and chapter 239.

SECTION 14. Section 98 of said chapter 231, as so appearing, is hereby amended by inserting after the word "thirty-nine", in line 4, the following words:-, or a civil action for money damages in the district court and Boston municipal court departments pursuant to section 19 of chapter 218.

SECTION 15. Said chapter 231 is hereby further amended by striking out section 108, as so appearing, and inserting in place thereof the following section:-

Section 108. There shall be an appellate division of each district court for the rehearing of matters of law arising in civil cases, in claims of compensation of victims of violent crimes, and in civil motor vehicle infractions. The division of the Boston municipal court shall consist of 3 justices to be designated from time to time by the chief justice therefor. The appellate division of each other municipal court shall be holden by justices for the other divisions of the Boston municipal court department, included in the jurisdiction of the central division, East Boston court, Charlestown court, Brighton court, Dorchester court, Roxbury court, South Boston court, West Roxbury court, which shall be known as the appellate division of the Boston municipal court department. The appellate division of each other district court shall be holden by justices for those other district courts, not exceeding

3 in number out of 5 justices assigned to the performance of appellate duty by the chief justice for the district courts, subject to the approval of the chief justice of the supreme judicial court, as follows: The chief justice for the district courts shall assign 5 justices of districts within the counties of Essex and Middlesex and that part of Suffolk included in the jurisdiction of the district court of Chelsea to act in the appellate divisions of the district courts within those counties and that part of Suffolk county, which shall be known as the northern appellate division district; shall assign 5 justices of the district courts within the counties of Norfolk, Plymouth, Barnstable, Bristol, Dukes and Nantucket to act in the appellate divisions of the district courts within those counties, which shall be known as the southern appellate division district; and shall assign 5 justices of district courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to act in the appellate divisions of district courts within those counties, which shall be known as the western appellate division district. The assignment may be made for the period of time as the chief justice considers advisable. In each of the foregoing 3 districts, 1 of the justices so assigned shall be designated by the chief justice for the district courts, subject to the approval of the chief justice of the supreme judicial court, as presiding justice, who shall from time to time designate those of the appellate justices who shall act on appeals in each district court in that district and direct the times and places of sittings. The presiding justice of any appellate division may call upon a justice of any other appellate division to serve in his division, and when so requested that justice shall serve therein. Two justices shall constitute a quorum to decide all matters in an appellate division; but each appellate division justice may sit as a single justice of the appellate division for the purpose of hearing and deciding appeals of interlocutory orders, as provided in section 118A of chapter 231.

A justice acting in the appellate division of a district court shall be allowed, in addition to his salary and necessary traveling expenses, incidental expenses and clerical assistance while so acting, which shall be paid by the commonwealth.

Any party to a cause brought in the municipal court of the city of Boston, or in any district court, aggrieved by any ruling on a matter of law by a trial court justice, may as of right, appeal the ruling for determination by the appellate division pursuant to the applicable rules of court. The justice whose ruling is appealed shall not sit upon the review thereof. If the appellate division shall decide that there has been prejudicial error in the ruling complained of, it may reverse, vacate or modify the same or order a new trial in whole or part; otherwise it shall dismiss appeal and may impose double costs in the action if it finds the objection to such ruling to be frivolous or intended for delay. If the party claiming the appeal shall not duly prosecute the same, by preparing the necessary papers or otherwise, the appellate division may order the cause to proceed as though no appeal had been filed and may in like manner impose costs. A trial court justice may, after decision thereon, report for determination by the appellate division any case in which there is an agreed statement of facts or a finding of the facts or any other case involving questions of law only. If a trial justice is of opinion that an interlocutory finding or order made by him ought to be reviewed by the appellate division before any further proceedings in the trial court, he may report the

case for that purpose and stay all further proceedings except as necessary to preserve the rights of the parties. The municipal court of the city of Boston shall make rules regulating the procedure and sittings of the appellate division of the court, for appeal thereto, for the preparation and submission of reports and allowance of reports which a trial court justice shall disallow as not conformable to the facts or shall fail to allow by reason of physical or mental disability, death or resignation, for the reporting of cases reserved for report when a trial court justice shall fail to report the same by reason of physical or mental disability, death, resignation, removal or retirement, and for the granting of new trials.

SECTION 16. Said chapter 231 is hereby further amended by inserting after section 118, as so appearing, the following section:-

Section 118A. A party aggrieved by an interlocutory order of a trial court justice in the district court department or the Boston municipal court department issued pursuant to section 19C of chapter 218 in response to a request for equitable relief may file within 10 days of the entry of the order, a petition in the appropriate appellate division seeking relief from the order. A single justice of the appellate division may affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be just under the circumstances. A party aggrieved by an interlocutory order of a single justice of an appellate division granting a petition for relief from the order, may appeal therefrom to the appeals court or, subject to section 10 of chapter 211A, to the supreme judicial court, which shall affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of the appropriate order as may be just under the circumstances.

The filing of a petition hereunder shall not suspend the execution of the order which is the subject of the petition, except as otherwise ordered by a single justice of the appellate division.

SECTION 17. Chapter 239 of the General Laws is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. Such person may bring an action in the superior court in the county in which the land lies if the plaintiff seeks money damages and there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to \$25,000, or such other amount as is ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control. Such person may bring an action in the district court in the judicial district in which the land lies.

Such person may bring the action by a writ in the form of an original summons to the defendant to answer to the claim of the plaintiff that the defendant is in possession of the land or tenements in question, describing them, which he holds unlawfully against the right of the plaintiff, and, if rent and use and occupation is claimed, that the defendant owed rent and use and occupation in the amount stated; but, subject to the approval of the supreme judicial court, the judge of the housing court of the city of Boston shall determine the form of the writ in the actions brought in his court. Failure to claim rent and use and occupation in the action shall not bar a subsequent action therefor.

SECTION 18. Section 3 of said chapter 239, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

In case of appeal from the district court on either or both issues involved or on any counterclaim, the appeal shall be to the appellate division under section 5.

SECTION 19. Said chapter 239 is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

Section 5. (a) If either party appeals from a judgment of the superior court, a housing court, or a district court in an action under this chapter, including a judgment on a counterclaim, that party shall file a notice of appeal with the court within 10 days after the entry of the judgment. An execution upon a judgment rendered pursuant to section 3 shall not issue until the expiration of 10 days after the entry of the judgment.

- (b) In an appeal of a judgment of a district court, other than an appeal governed by subsection (c), the appellant shall, before any appeal under this section is allowed, file in the district court a bond payable to the appellee in the penal sum of \$100, with surety or sureties as approved by the court, or secured by cash or its equivalent deposited with the clerk, conditioned to satisfy any judgment for costs which may be entered against the appellant in the appellate division within 30 days after the entry thereof.
- (c) Except as provided in section 6, the defendant shall, before any appeal under this section is allowed from a judgment of the superior court, a housing court, or a district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court. In an appeal from a judgment of a district court the bond shall be conditioned to enter the action in the appellate division at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court the bond filed shall be conditioned to enter the action in the appeals court. Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff's favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.
- (d) In appeals from a judgment of the superior court, a housing court or a district court the deposit shall not be transmitted to the appeals court or the appellate division unless specifically requested by said appeals court or appellate division. The superior court, a housing court or a district court may give directions as to the manner of keeping the deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond provided for in the third paragraph of this section.

- (e) A party may make a motion to waive the appeal bond provided for in this section if the party is indigent as provided in section 27A of chapter 261. The motion shall, together with a notice of appeal and any supporting affidavits, be filed within the time limits set forth in this section. The court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261. The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits. The court shall forthwith make a decision on the motion. If the motion is made, no execution shall issue until the expiration of 6 days from the court's decision on the motion or until the expiration of the time specified in this section for the taking of appeals, whichever is later.
- (f) Any party aggrieved by the denial of a motion to waive the bond or who wishes to contest the amount of periodic payments required by the court may seek review of the decision as hereinafter provided. If the motion was made in the superior court or a housing court, the request for review shall be to the single justice of the appeals court at the next sitting thereof. If the motion was made in any district or municipal court, the request for review shall be to the appellate division then sitting pursuant to section 108 of chapter 231. The court receiving the request shall review the findings, the amount of bond or deposit, if any, and the amount of periodic payment required, if any, as if it were initially deciding the matter, and the court may withdraw or amend any finding or reduce or rescind any amount of bond, deposit or periodic payment when in its judgment the facts so warrant.
- (g) Any party to the action may file a request for the review with the clerk of the court originally hearing the request to waive bond within the time period provided in this section for filing notice of appeal, or within 6 days after receiving notice of the decision of the court on the motion to waive bond, whichever is the later. The court shall then forward the motion, the court's findings and any other documents relevant to the appeal to the clerk of the court reviewing the decision which, upon receipt thereof, shall schedule a speedy hearing thereon and send notice thereof to the parties. Any request for review filed pursuant to this section shall be heard upon statements of counsel, memoranda and affidavits submitted by the parties. Further testimony shall be taken if the reviewing court shall find that the taking of further testimony would aid the disposition of the review.
- (h) Upon the rendering of a decision on review, the reviewing court shall give notice of the decision to the parties and the defendant shall comply with the requirements of the decision within 5 days after receiving notice thereof. If the defendant fails to file with the clerk of the court rendering the judgment, the amount of bond, deposit or periodic payment required by the decision of the reviewing court within 5 days from receipt of notice of the decision, the appeal from the judgment shall be dismissed. Where a defendant seeks review pursuant to this section, no execution shall issue until the expiration of 5 days from the date defendant has received notice of the decision of the reviewing court.

SECTION 20. Section 27D of chapter 261 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 3 sentences:- If the matter arises in the superior, the land, the probate or the housing court departments, the appeal shall be to a single justice of the appeals court at the next sitting thereof. If the matter arises in the juvenile court department, the appeal shall be to the superior court sitting in the nearest county or in Suffolk county. If the matter arises in the district court or Boston municipal court departments, the appeal shall be to the appellate division.

SECTION 21. Chapter 262 of the General Laws is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. The fees of the clerks of the district and Boston municipal court departments of the trial court in civil actions, shall be as follows:

For the entry of a complaint, third-party complaint, petition or other action, and for the filing of a motion to intervene as plaintiff, \$150.

For the entry of supplementary proceedings under chapter 224, \$25, which, together with the fees of witnesses and officers in the proceedings, shall be allowed the creditor as costs.

For the entry of a claim of trial by the superior court under section 104 of chapter 231, \$150.

For approving or disapproving by the court of sureties on bonds or recognizances, \$50.

For the entry of a civil appeal in the appellate division of the district court department, \$100.

Notwithstanding the foregoing, for the entry of a complaint, petition, appeal or other action by the commonwealth, no fee shall be paid; but, if the commonwealth prevails in the action, the fee shall be taxed against the other party.

SECTION 22. Sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to civil actions commenced in the district court, Boston municipal court, and superior court departments on or after August 31, 2004, said commencement to be defined by Rule 3 of the Massachusetts Rules of Civil Procedure and Rule 2 of the Uniform Summary Process Rules. In Middlesex and Norfolk counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 358 of the acts of 1996, as extended by chapter 157 of the acts of 1998, chapter 142 of the acts of 2000, and chapter 70 of the acts of 2002. In Berkshire and Essex counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 142 of the acts of 2000 as extended by chapter 70 of the acts of 2002. In Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 70 of the acts of 2002.

SECTION 23. This act shall be implemented by the chief justice for administration and management of the trial court and the chief justices of the district court, Boston municipal court, and superior court departments and shall apply to civil actions, commenced on or after August 31, 2004, the commencement to be defined by Rule 3 of the Massachusetts Rules of Civil Procedure and Rule 2 of the Uniform Summary Process Rules. In Middlesex and Norfolk counties, this act shall govern in civil actions commenced under chapter 358 of the acts of 1996, as extended by chapter 157 of the acts of 1998, chapter 142 of the acts of 2000, and chapter 70 of the acts of 2002, and pending on August 31, 2004 regarding any procedures occurring on or after August 31, 2004. In Berkshire and Essex counties, this act shall govern in civil actions commenced under chapter 142 of the acts of 2000 as extended by chapter 70 of the acts of 2002 and pending on August 31, 2004 regarding any procedure occurring on or after August 31, 2004. In Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties this act shall govern in civil actions commenced under chapter 70 of the acts of 2002 and pending on August 31, 2004 regarding any procedure occurring on or after August 31, 2004.

Emergency Letter: August 9, 2004 @ 11:53 P.M.

Approved August 4, 2004.

Chapter 253. AN ACT RELATIVE TO PRIVATE ATTORNEYS PROVIDING PUBLIC COUNSEL SERVICES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide compensation to attorneys providing public counsel services, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Item 0321-1510 of section 2 of chapter 149 of the acts of 2004 is hereby amended by striking out the words "and provided further, that the rates of compensation paid for private counsel services from item shall be the same as the rates paid in fiscal year 2004" and inserting in place thereof the following:- and provided further, that the rates of compensation paid for private counsel services shall be \$7.50 per hour greater than the amount paid per hour in fiscal year 2004.

SECTION 2. There shall be a commission to study the provision of counsel to indigent persons who are entitled to the assistance of assigned counsel either by constitutional provision, or by statute, or by rule of court. The commission shall be composed of 9 persons, including 3 members to be appointed by the speaker of the house of representatives, 3 by the president of the senate, and 3 by the governor.

The commission shall examine all aspects of the provision of counsel in such cases,

including but not limited to (i) the frequency of the assignment of counsel to indigent persons, (ii) the feasibility of changes, consistent with chapter 211D of the General Laws, to control or reduce the frequency of case assignments, (iii) the cost of providing counsel in such cases; (iv) the adequacy of existing procedures for determining and verifying the eligibility of persons who request the assignment of counsel; (v) the adequacy of existing procedures for the assessment and collection of counsel fees from persons who have been determined to be eligible for assigned counsel; (vi) the existing balance, and the adequacy of that balance, in each practice area and county between the provision of legal representation by salaried staff counsel and certified private counsel; (vii) the frequency with which neither salaried staff counsel nor certified private counsel are available to represent a defendant entitled to publicly funded representation; (viii) the impact of the current hourly rate paid to certified private counsel on the availability or non-availability of such counsel to defendants entitled to publicly funded representation; and (ix) the feasibility and potential benefits of providing representation to indigent persons predominantly through the assignment of salaried staff counsel rather than certified private counsel. The commission shall report its findings and recommendations together with drafts of legislation as may be necessary to carry such recommendations into effect by filing the same with the clerks of the house and senate on or before February 1, 2005.

SECTION 3. Section 1 shall take effect as of August 1, 2004.

Approved August 4, 2004.

Chapter 254. AN ACT AUTHORIZING THE DEPARTMENT OF CONSERVATION AND RECREATION AND THE DEPARTMENT OF FISH AND GAME TO ACQUIRE CONSERVATION RESTRICTIONS IN AND TO LANDS OWNED BY THE CITIES OF NEW BEDFORD AND TAUNTON AND THE TOWNS OF FREETOWN, LAKEVILLE, MIDDLEBOROUGH AND ROCHESTER.

Whereas,, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the department of conservation and recreation and the department of fish and game to acquire conservation restrictions in and to lands in the cities of New Bedford and Taunton and the towns of Freetown, Lakeville, Middleborough and Rochester, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commonwealth, by and through the department of fish and game and the department of conservation and recreation, in consultation with the division of capital asset management and maintenance, may take, in accordance with chapter 79 of the General

Laws, or otherwise acquire, and the city of Taunton and the city of New Bedford may convey, easements or lesser interests through conservation restrictions under sections 31, 32 and 33 of chapter 184 of the General Laws, to ensure the protection of open space, for public recreation and preserve water supply and wildlife habitat, in and to all or a portion of certain parcels of land of the towns of Freetown, Lakeville, Middleborough and Rochester, identified in section 2. These parcels were taken or acquired by the city of New Bedford or the city of Taunton for water supply purposes. The conservation restrictions authorized herein shall allow for the continuation of water supply purposes on all or a portion of the parcels and may restrict or regulate, but not unreasonably limit, the acts or uses associated with conducting the water supply purposes. The conservation restrictions, if taken and not otherwise acquired, shall be subject to any easement or lesser interest in land held by any person or governmental agency, except for the city of New Bedford or the city of Taunton, that lawfully exists and that is recorded in the appropriate registry of deeds, unless the commonwealth, acting through the department of fish and game or the department of conservation and recreation, expressly takes the easement or lesser interest through eminent domain in accordance with the provisions of said chapter 79.

SECTION 2. The parcels are identified as follows:- (a) All of the lands, including lands under water, in the towns of Freetown, Lakeville, Middleborough and Rochester, as described in certain deeds recorded in the Bristol county North District registry of deeds, the Bristol county Fall River District registry of deeds, and the Plymouth County registry of deeds, and further described in Bristol county North registry book 60 page 73; book 60 page 74; book 105 page 295; book 105 page 296; book 105 page 297; book 105 page 298; book 105 page 300; book 105 page 301; book 110 page 11; book 137 page 185; book 137 page 186; book 137 page 187; book 137 page 189; book 137 page 190; book 137 page 191; book 137 page 193; book 137 page 194; book 137 page 196; book 137 page 197; book 137 page 199; book 137 page 200; book 137 page 201; book 137 page 202; book 137 page 204; book 137 page 206; book 137 page 207; book 137 page 209; book 137 page 212; book 137 page 218; book 137 page 219; book 137 page 221; book 138 page 399; book 142 page 116; and in Bristol County Fall River registry of deeds in book 38 page 110; book 93 page 491; book 93 page 492; book 93 page 494; book 93 page 495; book 28 page 465; book 28 page 467; book 30 page 358; book 31 page 143; book 31 page 144; book 31 page 145; book 31 page 146; book 32 page 168; book 38 page 63; book 38 page 64; book 38 page 66; book 38 page 67; book 38 page 69; book 38 page 70; book 38 page 482; book 38 page 486; book 38 page 487; book 38 page 489; book 38 page 490; book 38 page 492; book 38 page 493; book 38 page 494; book 38 page 496; book 38 page 497; book 38 page 501; book 40 page 1; book 40 page 3; book 40 page 5; book 40 page 7; book 40 page 8; book 40 page 10; book 42 page 154; book 42 page 273; book 43 page 255; book 43 page 350; book 43 page 352; book 43 page 353; book 43 page 377; book 43 page 379; book 43 page 474; book 43 page 475; book 45 page 270; book 45 page 272; book 52 page 352; book 52 page 354; book 56 page 214; book 56 page 215; book 57 page 65; book 57 page 66; book 57 page 311; book 59 page 225; book 59 page 226; book 59 page 227; book 59 page 228; book 59 page 229; book 62 page

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Approved August 9, 2004.

Chapter 255. AN ACT **AUTHORIZING** THE **COMMISSIONER OF THE** DIVISION **OF** CAPITAL ASSET MANAGEMENT AND **MAINTENANCE** TO CONVEY **EASEMENTS** THE TRANSMISSION OF NATURAL GAS OVER LANDS FORMERLY UNDER THE CONTROL OF THE COUNTY OF ESSEX IN THE TOWN OF MIDDLETON AND THE CITIES OF PEABODY AND SALEM TO MARITIMES & NORTHEAST PIPELINE, L.L.C.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to grant forthwith an easement to facilitate the construction of an interstate natural gas pipeline, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of the division of capital asset management and maintenance may, notwithstanding sections 40E through 40J, inclusive of chapter 7 of the General Laws, convey permanent and temporary easements, and any improvements located thereon over, under and through portions of certain parcels of land formerly owned by Essex county located in the town of Middleton and in the cities of Peabody and Salem which are currently under the control of the division and are used for electric transmission, bridge and conservation and recreational purposes, as the case may be, to Maritimes & Northeast Pipeline, L.L.C., a Delaware company, its successors and assigns, solely for the purposes of laying, constructing, maintaining, operating, replacing, repairing, abandoning and removing an interstate pipeline and appurtenant facilities for the transmission of natural gas, subject to sections 2 and 3, and to such reasonable additional terms and conditions consistent with this act as the commissioner may prescribe. The parcels are more particularly described in deeds recorded in the Southern District of the Essex county registry of deeds at Book 5935, Page 65 and Book 6066, Page 445 and in an Order of Taking recorded in said registry of deeds at Book 2340, Page 326 (which Order of Taking also refers to County of Essex Layout Plans of 1916 for Bridge Street, authorization under chapter 132 of the acts of 1916 and a county of Essex layout of 1788). The pipeline shall be situated on such land for 629 linear feet in the aggregate, more or less, and the permanent easement to be granted shall apply to .64 acres of land in the aggregate more or less, as more fully described on 3 plans each entitled "Owner-N/F Commonwealth of Massachusetts", prepared by Maritimes & Northeast Pipelines, L.L.C. and numbered respectively as Dwg. No. ME-P-9225, Dwg. No. ME-P-9226 and Dwg. No. ME-P-9305.2, which plans are on file with the division. Those portions of such plans that identify the temporary easement as "M&N Temporary Easement" shall expire and revert to the commonwealth upon completion of initial pipeline construction and restoration of permanent easement areas. Minor modifications to the easement description set forth in the plans described above may be made in order to conform with a final land survey, as accepted by the division, before any conveyance to carry out the purposes of this act.

SECTION 2. There shall be an independent appraisal, or appraisals, of the easements described in section 1 to be conveyed by this act to determine the diminution in the full and fair market value of the lands described in section 1 resulting from the easements, based upon 1 or more professional appraisals as commissioned by the commissioner of capital asset management and maintenance. To expedite the conveyance authorized by this act the commissioner may in establishing value, take into consideration any prior appraisal or appraisals of these easements which the commissioner determines are timely and relevant. The grantees of the easements shall compensate the commonwealth an amount greater than, or equal to, the diminution in the full and fair market value of the land described in section 1 resulting from the easements, or the value in use of the easements as proposed, whichever is greater, as determined by the independent appraisal or appraisals. The grantees of the easements shall assume all costs associated with any engineering, surveys, appraisals, deed

preparation and other expenses deemed necessary by the commissioner of capital asset management and maintenance to execute the conveyances authorized by this act. All money paid to the commonwealth by Maritimes & Northeast Pipeline, L.L.C. as a result of the conveyance of the easements authorized by this act at shall be deposited in the General Fund of the commonwealth.

The commissioner of capital asset management and maintenance shall submit the appraisal or appraisals and a report of his determination of value to the inspector general for his review and comment. The inspector general shall review and approve the appraisal or appraisals, and his review shall include an examination of the methodology utilized for the appraisal or appraisals. The inspector general shall prepare a report of his review and file the report with the commissioner for submission by the commissioner to the house and senate committees on ways and means and the chairmen of the joint committee on state administration. The commissioner shall submit copies of the appraisals, his report, and the inspector general review and approval and comments, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration before the execution of said conveyances.

SECTION 3. No instruments conveying, by or on behalf of the commonwealth, the easements described in section 1 of this act shall be valid unless such instruments provide that said easements shall be used solely for the purposes described in said section 1. The easement instruments shall include a clause which shall state that in the event that the easements cease to be used by Maritimes & Northeast Pipeline, L.L.C. for the purposes described in said section 1 at any time, the easement shall revert to the commonwealth under the control of and used by the division of capital asset management and maintenance upon such terms and conditions the commissioner may determine. Should the easements revert to the commonwealth, any further disposition of the easements shall be subject to sections 40E through 40J, inclusive, of chapter 7 of the General Laws, and the prior approval of the general court.

Approved August 9, 2004.

Chapter 256. AN ACT RELATIVE TO THE POWERS OF TRUST COMPANIES.

Be it enacted, etc., as follows:

Section 3 of chapter 167G of the General Laws, as appearing in the 2002 Official Edition is hereby amended by striking out, in line 249, the words "or custodian" and inserting in place thereof the following words:-, custodian, broker, dealer, or lender of money or securities.

Approved August 9, 2004.

Chapter 257. AN ACT AUTHORIZING THE TOWN OF SWANSEA TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES NOT TO BE DRUNK ON THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority in the town of Swansea may grant to the Buffington Mini Mart, Inc. located at 75 Buffington Street in said town, a license for the sale of all alcoholic beverages not to be drunk on the premises under section 15 of said chapter 138. The license shall be subject to all said chapter 138 except section 17.

SECTION 2. Notwithstanding any general or special law to the contrary, upon the granting of the license pursuant to section 1, the license for the sale of wines and malt beverages not to be drunk on the premises granted pursuant to said section 15 of said chapter 138 which is presently held by Buffington Mini Mart, shall revert back to the town of Swansea.

SECTION 3. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 258. AN ACT VALIDATING THE ACTS AND PROCEEDINGS AT A CERTAIN TOWN CAUCUS IN THE TOWN OF WESTHAMPTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law or by-law to the contrary, the acts and proceedings of the town of Westhampton at the town caucus held on April 22, 2002, and all actions taken pursuant thereto, are hereby ratified, validated and confirmed, notwithstanding any error in the date on which the caucus was held or any other defect or omission in the calling of the caucus.

SECTION 2. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 259. AN ACT PROVIDING FOR A STRONG TOWN MANAGER FORM OF GOVERNMENT IN THE TOWN OF ABINGTON.

Be it enacted, etc., as follows:

The following shall be the charter of the town of Abington:

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ARTICLE I INCORPORATION

Section 1-1 Incorporation

The inhabitants of the Town of Abington, within the corporate limits as now established, or as hereafter may be established in the manner provided by law, shall continue to be a body corporate and politic with perpetual succession under the name "Town of Abington".

Section 1-2 Short Title

This instrument may be cited and shall be known as the Abington Home Rule Charter.

Section 1-3 Form of Government

The administration of all the fiscal, prudential, and municipal affairs of the town, with the government thereof, shall be vested in a legislative branch, to consist of a town meeting open to all registered voters of the town, and an executive branch, to be headed by a board of selectmen and town manager.

Section 1-4 Powers of the Town

The form of government provided by this charter shall be known as the Abington Home Rule Charter Plan. Pursuant to this charter, and subject to only limitations as may be imposed by the constitution and statutes of the Commonwealth of Massachusetts, it is the intent and the purpose of this charter to confer on the Town of Abington all of the powers it is possible to confer under the constitution and statutes of said Commonwealth, as fully and as completely as though each such power was specifically and individually enumerated herein.

Section 1-5 Interpretation of Powers

The powers of the Town of Abington under this charter shall be construed liberally in favor of the Town, and the specific mention of particular powers is not intended, nor is it

to be construed, as limiting in any way the general powers of the town as stated in Section 1-4.

Section 1-6 Intergovernmental Relations

Subject to the applicable requirements of any provision of the constitution or statutes of the Commonwealth of Massachusetts, the Town of Abington may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States Government or any agency thereof.

ARTICLE II LEGISLATIVE BRANCH

Section 2-1 Open Town Meeting

The legislative powers of the town shall continue to be exercised by a town meeting open to all registered voters of the town.

Section 2-2 Presiding Officer

The moderator, as provided for in Section 3-3, shall preside at all sessions of the town meeting, but the moderator shall have no vote unless those voters present and voting are equally divided. He shall at the first session of the town meeting following each annual town election appoint a deputy moderator to serve in the event of his absence or disability, provided that the town meeting ratifies such appointment. In the event of the absence or disability of the moderator and deputy moderator the town meeting shall elect from those voters present at the town meeting a temporary moderator to act during such absences or disabilities. The moderator shall perform such duties as may from time to time be assigned to the office of moderator by by-law, rule or other vote of town meeting.

Section 2-3 Committees

- 2-3-1 Subject to the provisions of this charter and to such by-laws or other town meeting votes regarding committees as may be provided, the moderator shall appoint for fixed terms the members of such committees of the town meeting, special or standing, as may from time to time be established, other than those appointed by vote of the town meeting.
- 2-3-2 There shall be a finance committee, the members of which shall be appointed by the moderator. The number of members, the term of office and any other condition of appointment or service as may be deemed necessary or desirable shall be established by by-law. The finance committee shall report its recommendations on every article contained in a town meeting warrant, in writing, at least ten (10) days prior to a scheduled town meeting. Prior to preparing its recommendations, the finance committee shall hold one or more meetings to permit discussion of the subject matter of all articles contained in the warrant, except those articles subject to public hearings by other multiple member town bodies and not containing appropriations. The finance committee shall have such additional powers and duties as may be provided by Massachusetts General Laws, by this charter or by by-law.

Section 2-4 Annual Town Meeting

There shall yearly be held an annual town meeting, to transact business relating to the prudential affairs of the town, which shall be held on the date fixed in the by-laws of the town.

Section 2-5 Special Town Meetings

Special town meetings shall be held at the call of the board of selectmen at such times as it may deem appropriate and whenever a special town meeting is requested by the voters of the town in accordance with procedures made available by the laws of the Commonwealth of Massachusetts.

Section 2-6 Clerk of the Meeting

The town clerk shall serve as the clerk of the town meeting. In the event of unavoidable absence, the town clerk shall designate a substitute; otherwise, the moderator shall appoint a clerk pro tempore. The town clerk shall give notice of all meetings to the public, keep a journal of its proceedings and perform such other functions as may be provided by the laws of the Commonwealth of Massachusetts, by the charter, by by-law or by other town meeting vote.

Section 2-7 Warrant Articles

The board of selectmen shall at all times receive all petitions which are addressed to it and which request the insertion of subjects in a warrant for a town meeting and are filed by: (1) any individual elected town officer; (2) any appointed multiple member body, acting by a majority of its members; (3) any ten voters for a regular town meeting and any one hundred voters for a special town meeting; (4) any other person or entity who may be authorized by law. The original copy of each petition filed hereunder shall be retained by the board of selectmen until at least ninety days following the completion of the town meeting at which the said petition is acted upon.

Section 2-8 Warrants

Every town meeting shall be called by a warrant issued by the board of selectmen which shall state the date, time and place at which the meeting is to be convened and, by separate articles, the subject matter to be acted upon. In addition to any notice required by the laws of the Commonwealth of Massachusetts, the board of selectmen shall cause the annual and any special town meeting warrant to be mailed to each residence of one or more voters in the town. Such distribution shall occur at least fourteen days prior to the town meeting. Failure of a voter to receive such warrant shall not invalidate the action of the meeting.

The original copies of all warrants for town meeting shall be kept in the office of the town clerk in a record book maintained for that purpose.

Section 2-9 Availability of Town Officials at Town Meetings

Every town officer, or in the case of a multiple member body, a designated representative of such multiple member body, and every town department head shall attend all sessions of the annual town meeting and any and all special town meetings for the purpose

of providing the town meeting with information pertinent to matters appearing on the warrant, unless deterred for reasonable cause as determined by the Town Manager. If any person described above is so deterred, he/she shall designate a designee to attend the town meeting in his/her place, and shall notify the Town Manager of such designee.

If any person required to attend the sessions of the town meeting under this section is not a voter, he/she shall, notwithstanding, be entitled to speak in order to provide the town meeting with information on pertinent warrant articles.

ARTICLE III ELECTED OFFICIALS

Section 3-1 General Provisions

The offices to be filled by ballot of the voters of the entire town shall be a board of selectmen, moderator, town clerk, school committee, board of assessors, board of health, board of library trustees, board of sewer commissioners, board of water commissioners, housing authority, park and recreation commission, planning board and trustees of veterans memorials and such members of regional authorities or districts as may be established by statute, interlocal agreement or otherwise.

Any voter shall be eligible to hold any elective town office, but no elected town official shall simultaneously hold any other elected town office.

The regular annual election of town officers shall be held annually on such date as may from time to time be fixed in the by-laws of the town.

Notwithstanding their election by the voters, the town officers named in this section shall be subject to the call of the board of selectmen or of the town manager, at all reasonable times, for consultation, conference and discussion on any matter relating to their respective offices.

Section 3-2 Board of Selectmen

There shall be a board of selectmen consisting of five (5) members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year.

Vacancies in the office of selectmen shall be filled by a special election in accordance with the provisions of Massachusetts General Laws.

The executive powers of the town shall be vested in the board of selectmen which shall be deemed to be the chief executive office of the town. The board of selectmen shall have all of the executive powers it is possible for a board of selectmen to have and to exercise. The board of selectmen shall serve as the chief policy making agency of the town. The board of selectmen shall be responsible for the formulation and promulgation of policy directives and guidelines to be followed by all town agencies serving under it, and in conjunction with other elected town officers and multiple member bodies to develop and promulgate policy guidelines designed to bring the operation of all town agencies into harmony. Provided however, nothing in this section shall be construed to authorize any member of the board of selectmen, nor a majority of such members, to become involved in the day-to-day administration of any town agency. It is the intention of this provision that

the board of selectmen shall act only through the adoption of broad policy guidelines, which are to be implemented by officers and employees serving under it.

The board of selectmen shall cause the charter, by-laws, and rules and regulations for the government of the town to be enforced and shall cause an up-to-date record of all its official acts to be kept.

The board of selectmen shall appoint a town manager as provided for in Article IV of this charter and shall appoint a town counsel.

The board of selectmen may investigate the affairs of the town and the conduct of any town agency including any doubtful claims against the town, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. The report of the results of such investigation shall be placed on file in the office of the town manager, and a report summarizing the results of such investigation shall be printed in the next annual town report.

The board of selectmen shall be the licensing board of the town and shall have the power to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses, and to attach such conditions and restrictions thereto as it deems to be in the public interest. The board of selectmen shall enforce the laws relating to all businesses for which it issues such licenses. The board of selectmen may delegate such licensing authority unless specifically prohibited by the laws of the Commonwealth of Massachusetts.

In the event that the Commonwealth of Massachusetts fails in any fiscal year to provide for the independent audit of all records and accounts of the town, the board of selectmen shall provide for such audits. The audits shall be made by a certified public accountant, or firm of such accountants, who have no personal interests, direct or indirect, in the fiscal affairs of the town government or any of its officers.

Section 3-3 Moderator

There shall be a moderator elected for a term of three years. The moderator shall preside and regulate the procedure at all sessions of the town meeting, and shall have all of the powers and duties to which are given moderators under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-4 Town Clerk

There shall be a town clerk elected for a term of three years. The town clerk shall be the keeper of vital statistics of the town and the custodian of the town seal and all public records, shall administer the oaths of office to all town officers who apply to him/her therefore, be the clerk of the town meeting and perform such duties with regard to elections and other matters as may be provided by law. The town clerk shall have all of the powers and duties which are given to town clerks under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-5 School Committee

There shall be a school committee consisting of five (5) members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The school committee shall have general charge and superintendence of the public schools and for this purpose shall have all of the powers and duties which are given to school committees under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-6 Board of Assessors

There shall be a board of assessors which shall consist of three (3) members elected for terms of three years each, so arranged that one term shall expire each year. The board of assessors shall annually make a fair cash valuation of all property, both real and personal, within the town, and it shall have all of the powers and duties which are given to boards of assessors under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-7 Board of Health

There shall be a board of health which shall consist of five (5) members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The board of health shall be responsible for the formulation and enforcement of rules and regulations affecting the environment and the public health, and shall have all of the powers and duties which are given to boards of health under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-8 Board of Library Trustees

There shall be a board of library trustees which shall consist of nine (9) members elected for terms of three years each, so arranged that the term of office as nearly an equal number of members as is possible shall expire each year. The board of library trustees shall have general charge of the care and management of the town library, and of all property of the town relating thereto, in consultation with the Town Manager. The board of library trustees shall have all of the powers and duties which are given to library trustees under the constitution and laws of the Commonwealth of Massachusetts and shall have such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-9 Board of Sewer Commissioners

There shall be a board of sewer commissioners consisting of five (5) members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The board of sewer commissioners shall have general charge of the care and management of the municipal sewer system, and of all property of the town relating thereto. The board of sewer commissioners shall have all of

the powers and duties which are given to boards of sewer commissioners under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-10 Board of Water Commissioners

There shall be a board of water commissioners consisting of three (3) members elected for terms of three years each, so arranged that one term shall expire each year. The board of water commissioners shall have general charge of the care and management of the municipal water system, and of all property of the town relating thereto. The board of water commissioners shall have all of the powers and duties which are given to boards of water commissioners under the constitution and laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-11 Housing Authority

There shall be a housing authority consisting of five (5) members. Four of the members shall be elected for terms of five years, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The fifth member shall be a resident of the town appointed as provided by the laws of the Commonwealth. The housing authority shall have all of the powers and duties which are given to housing authorities under the constitution and laws of the Commonwealth of Massachusetts.

Section 3-12 Board of Park and Recreation Commissioners

There shall be a board of park and recreation commissioners consisting of five (5) members elected for terms of three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The board of park and recreation commissioners shall conduct and promote recreation, play, sport, physical education and other programs to meet the leisure time needs of the community. The board of park and recreation commissioners shall have general charge and management of the town playing fields, parks, public lawns and landscaped areas, and the town pool and of all property of the town relating thereto, in coordination with the Town Manager. The board of park and recreation commissioners shall have all of the powers and duties which are given to boards of park and recreation commissioners under the constitution and laws of the Commonwealth of Massachusetts, and shall have such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-13 Planning Board

There shall be a planning board consisting of five (5) members elected for terms of five years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The planning board shall make studies and prepare plans concerning the resources, possibilities and needs of the town. It shall prepare and may from time to time amend and perfect a comprehensive plan which shall set forth in graphic and textual form information concerning the present development of the town and parts thereof. Such comprehensive plan shall include recommendations of the planning board con-

cerning the future development (including physical, economic, and environmental aspects) of the entire town and parts thereof.

The planning board shall annually report to the town giving information regarding the condition of the town and any plans or proposals known to it affecting the resources, possibilities and needs of the town, and shall specify amendments that the planning board has made during the past year in the comprehensive plan.

The planning board shall have all of the other powers and duties which are given to planning boards under the constitution and laws of the Commonwealth of Massachusetts, and shall have such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

Section 3-14 Trustees of Veterans Memorials

There shall be a Trustees of Veterans Memorials consisting of five (5) members elected for terms of five years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The trustees of veterans memorials shall have general charge of and care of all veterans memorials in the town, and of all property of the town relating thereto. The trustees of veterans memorials shall have all of the other powers and duties which are given to trustees of veterans memorials under the constitution and laws of the Commonwealth of Massachusetts, and shall have such additional powers and duties as may be authorized by the charter, by by-law or by other vote of the town meeting.

7-12 Recall of Elected Officials

3-15-1 Who can be Recalled

Any holder of an elective office, as defined in Section 3-1, may be recalled therefrom by the voters as herein provided.

7-12-2 Recall Petition

7-12-3 Any twenty-five (25) registered voters of the town may file with the town clerk an affidavit bearing the name of the officer sought to be recalled and a statement of the grounds for the recall. Within three days following such filing the registrars of voters shall determine whether such filing is sufficient and valid. If said filing is determined to be sufficient and valid by the registrars of voters, the town clerk shall thereupon deliver to said voters making the affidavit copies of petition blanks demanding such recall, printed forms of which he/she shall keep available. The blanks shall be issued by the town clerk with his/her signature and official seal attached thereto.

They shall be dated, shall be addressed to the board of selectmen and shall contain the names of all the persons to whom they are issued, the name of the person whose recall is sought, the grounds of recall as stated in the affidavit, and shall demand the election of a successor in the said office. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk. The recall petition shall be returned and filed with the town clerk within twenty days after the filing of the affidavit, and shall have been signed by at least twenty per cent (20%) of the registered voters of the town, who shall add to their signatures the number and street, if any of their residences.

The town clerk shall within submit the petition to the registrars of voters in the town by the end of the next business day, and the registrars shall forthwith, but in no event more than seven days after receipt, certify thereon the number of signatures which are names of registered voters of the town.

3-15-3 Selectmen's Action on Receiving Petition

If the petition shall be found and certified by the registrars of voters to be sufficient they shall submit the same with their certificate to the board of selectmen without delay, and the board of selectmen shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does not resign within seven (7) days thereafter, order an election to be held on a dated fixed by them, in accordance with the minimum requirements of the election laws of the Commonwealth of Massachusetts, presently contained in section 53 of chapter 41 of the General Laws, provided however, that the recall election must be held no later than fourteen (14) days after adherence to the minimum statutory requirements. If a vacancy occurs in said office after a recall election has been ordered, the election shall nevertheless proceed as provided in this section.

3-15-4 Nomination of Candidates

The officer whose recall is sought may be a candidate in the recall election, and unless such officer requests otherwise in writing, the town clerk shall place his/her name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the recall election, and the conduct of the same, shall all be in accordance with the provisions of the law relating to elections, unless otherwise provided in this section.

3-15-5 Incumbent Holds Office Until Election

The officer whose recall is sought shall continue to perform the duties of his office until the recall election. If not then recalled, such person shall continue in office for the remainder of the unexpired term, subject to recall as before, except as provided for in this section. If recalled, such person shall be deemed removed.

3-15-6 Propositions on Ballot

Ballots used in a recall election shall submit the following propositions in the order indicated:

For the recall of (name of officer),

Against the recall of (name of officer).

Immediately at the right of each proposition there shall be a space in which the voter, by making a mark, may vote for either of said propositions. Under the propositions shall appear the word "Candidates", the directions to voters required by section 42 of chapter 54 of the General Laws, and beneath this the names of candidates nominated as herein before provided. If a majority of the votes cast upon the question of recall is in the affirmative, the candidate receiving the highest number of votes shall be declared elected, and shall upon qualification serve the balance of the unexpired term. If the successor shall fail to qualify within five days after receiving notification of election, the office shall be deemed vacant and shall be filled in the manner provided for in Article VII, Section 7-13. If a majority of the votes cast upon the question of recall is in the negative, the officer whose recall was sought

shall not be recalled and the ballots for candidates need not be counted.

3-15-7 Repeat of Recall Petition

No recall petition shall be filed against an officer within three (3) months after he/she takes office, nor in the case of an officer subjected to a recall election and not recalled thereby, until at least three (3) months after the election at which his/her recall was submitted to the voters of the town.

3-15-8 Appointment of Person Recalled

A person who has been recalled from an office, or who has resigned from office while recall proceedings were pending against him/her, shall not be appointed to any town office within two (2) years after such recall or resignation. Resignation at any time after a recall affidavit has been certified by the board of registrars of voters as being valid shall be deemed to be while recall proceedings were pending.

Section 3-16 Vacancy in Office

If there exists a vacancy in an elected office which does not consist of two or more members of a board or committee, the selectmen shall provide for notice of such vacancy as provided for in Article VII, section 7-13 by posting the vacancy on the town bulletin board. Any person who desires to be considered to fill such vacancy may, within ten days following the date the notice is posted file with the board of selectmen a statement which sets forth in clear and specific terms the qualifications which he/she holds for the position. The board of selectmen shall fill such vacancy no earlier than fourteen days and no later than thirty days after the notice was posted. The person appointed to fill such vacancy shall be the person who receives a majority of the votes cast at such meeting. The person appointed to fill such vacancy shall hold office until the next regularly scheduled annual town election at which time the vacant position shall be included on the ballot as provided for in Article III, section 3-1.

If there exists a vacancy in an elected board or committee consisting of two or more members, other than the board of selectmen, the remaining members shall forthwith give notice of the existence of any such vacancy to the board of selectmen. The selectmen shall then provide for notice of such vacancy as provided for in Article VII, Section 7-13 by posting the vacancy on the town bulletin board. Any person who desires to be considered to fill such vacancy may, within ten days following the date the notice is posted file with the board of selectmen and the board or committee which has experienced the vacancy a statement which sets forth in clear and specific terms the qualifications which he/she holds for the position. Not earlier than fourteen days nor later than thirty days after said notice is posted, the board of selectmen and the remaining members of the board or committee which has experienced the vacancy shall fill such vacancy at a joint meeting of the board of selectmen and such board or committee. The filling of such vacancy shall be by a joint vote of the board of selectmen and such board or committee. The person appointed to fill such vacancy shall be the person who receives a majority of the votes cast at such meeting. The person appointed to fill such vacancy shall hold office until the next regularly scheduled annual town

election at which time the vacant position shall be included on the ballot as provided for in Article III, section 3-1.

An elected official who is no longer a resident of the Town shall be deemed to have vacated the office to which he/she was elected. When a doubt exists as to the residency of an elected official, the Board of Registrars of Voters of the Town shall, by a majority vote, decide the issue of residency.

ARTICLE IV TOWN MANAGER

Section 4-1 Appointment, Qualification, Term of Office

The Town Manager shall be appointed by the Board of Selectmen for a three-year term. A committee consisting of the Town Moderator, one finance committee member, selected by vote of the Finance Committee, the Superintendent of Schools, with approval of the School Committee, one Selectmen and one citizen appointed by the Selectmen shall present to the Selectmen no less than three candidates chosen from the applicants after a background review and interview by the committee. The Town Manager shall be the chief administrative officer of the town and be responsible to the Board of Selectmen for the administration of all town affairs placed in his/her charge by or under the charter. The Town Manager shall be a person especially fitted by education which shall consist of at least a bachelor's degree from an accredited degree granting college or university, and his/her professional experience shall include at least five years of, full time, compensated service in a managerial capacity in public or business administration.

The Town Manager need not be a resident of the town or of the commonwealth but must be a United States citizen.

The Town Manager shall devote full time to the duties of the office and shall not hold any other elective of appointive town office, nor shall the Town Manager engage in any other business unless such action shall be approved in advance in writing by the Board of Selectmen.

The Town Manager shall not have served in an elected office in the town of Abington government for at least twenty-four months prior to his/her appointment.

The Town Manager shall be the primary officer responsible for the implementation of policy directives and guidelines adopted by the Board of Selectmen. The daily administration of the affairs of the town shall be the responsibility of the Town Manager.

The Town Manager shall execute a bond in favor of the town for the faithful performance of his/her duties in such sum and with such surety as shall be fixed or approved by the board of selectmen, who shall not waive the requirement of a performance bond.

Section 4-2 Powers of Appointment

4-2-1 The Town Manager shall appoint the police chief, fire chief, town treasurer-collector, town accountant, superintendent of highways, veterans agent, superintendent of wires, building inspector/zoning officer, plumbing and gas inspector, constables, assistant assessor, director of elder affairs, tree warden, park superintendent, and town planner; provided however, that the Town Manager shall consult with the appropriate

appointing authority prior to making such appointments.

Appointments to such positions shall become effective on the fifteenth day following the day notice of appointment is filed with said appointing authority, unless said appointing authority shall within that fifteen day period, by at least a two-thirds vote of the current elected members, vote to reject said appointment, or sooner, by at least a two-thirds vote of the current elected members, vote to affirm said appointment.

Copies of the notices of proposed appointments as filed with the appointing authority shall simultaneously be posted on the town bulletin board.

4-2-2 Except as otherwise provided by this charter, the Town Manager shall appoint and may remove all department heads, assistant department heads, officers, subordinates, and employees serving under elected and appointed boards, commissions, and committees for whom no other method of selection is provided in this charter, except employees of the school department, housing authority, water commission, sewer commission, board of health and board of library trustees.

Appointments by the Town Manager for all positions, except those stated in Article IV, section 4-2-1, shall become effective immediately.

Copies of notices of appointments and/or removals shall be posted on the town bulletin board.

4-2-3 All appointments by the Town Manager shall be based on merit and fitness alone.

Section 4-3 Administrative Powers and Duties

The Town Manager shall be the chief administrative officer of the Town and shall be responsible to the Board of Selectmen for the effective management of all town affairs placed in the manager's charge by this charter, said Board of Selectmen, by bylaw, or vote of the town meeting, and for the implementation of town policies placed in the Town Manager's charge by said Board of Selectmen.

The powers, duties and responsibilities of the Town Manager shall include, but are not intended to be limited to, the following

- a) To supervise, direct and be responsible for the efficient administration of all officers appointed by the Town Manager and their representative departments, and of all functions for which the Town Manager is given responsibility, authority or control by this charter, by bylaw, by town meeting vote, or by vote or the Board of Selectmen;
- b) To administer and enforce either directly or through a person or persons supervised by the Town Manager, in accordance with this charter, all provisions of the laws of the commonwealth or special laws applicable to the town, all bylaws, and all regulations established by the Board of Selectmen;
- c) To be responsible for coordination of operational and strategic planning for the town;
- d) To attend all meetings of said Board of Selectmen, except when excused, having the right to speak but not vote;

- e) To attend all sessions of the town meeting and answer all questions addressed to the Town Manager which are related to the warrant articles and to matters under the general supervision of the Town Manager;
- f) To keep said Board of Selectmen fully informed regarding all departmental operations, fiscal affairs, general problems, administrative actions, and the availability of federal and state funds and how such funds might relate to unmet long range needs and to this end shall submit quarterly reports to the Board of Selectmen;
- g) To assure the complete and full records of the financial and administrative activity of the town are maintained and to render reports to the Board of Selectmen as may be required, but not less frequently than quarterly, a full report of all town administrative operations during the period reported on, which report shall be made available to the public.
- h) To assure that a full and complete inventory of all property of the town, both real and personal, is kept, including all property under the jurisdiction of the school committee:
- i) To be responsible for the rental, use, maintenance, repair and the development of a comprehensive maintenance program for all town facilities, except those under the jurisdiction of the Housing Authority, School Committee, Sewer Commission or Water Commission, unless requested by those agencies;
- j) To be responsible for purchasing of all functions and departments, pursuant to chapter 30B of the General Laws, and all other applicable statutes, procedures and bylaws. Said Town Manager shall at the request of the School Committee, delegate such duties for school department purchasing to an employee of the School Committee as per the requirements of said chapter 30B;
- k) To administer the town's personnel system, personnel evaluation policies and practices, enforcement of labor contracts, labor relations, collective bargaining and state and federal equal employment opportunities law compliance function of the town, except for school department agreements, entered into by the town;
- l) To fix compensation of all town employees and officers appointed by the Town Manager within limits established by appointment, any applicable compensation plan, collective bargaining agreements, and or Town Meeting;
- m) To have the authority to sign payroll and accounts payable warrants concerning the everyday operations of the Town;
- n) To be responsible for the negotiation of all contracts with town employees over wage, and other terms and conditions of employment, except employees of the school department. The Town Manager may, subject to the approval of the Board of Selectmen, employ special counsel to assist in the performance of these duties.

Contracts shall be subject to the approval of the Board of Selectmen and funded by Town Meeting;

- o) To prepare and submit annual operating budgets and capital improvement programs as provided in Section VI of this charter;
- p) To keep the Board of Selectmen and finance committee fully informed as to the financial condition of the town and to make recommendations to the Board of Selectmen as

the Town Manager deems necessary;

- q) To coordinate the activities of all town agencies serving under the office of Town Manager and the office of the Board of Selectmen with those under the control of other officers and municipal member bodies elected directly by the voters. For the purposes of effecting coordination and cooperation among all agencies of the town, the Town Manager shall have the authority to require persons so elected, or their representatives, to meet with the Town Manager, at reasonable times, to submit such reports of their doings and summaries of action taken as may be deemed to be necessary or desirable to have available for the purposes of such coordination.
 - r) To investigate or inquire into the affairs of any town department or office;
- s) To prosecute, defend or compromise all litigation to which the Town is a party, upon request and with approval of said Board of Selectmen
- t) To delegate, authorize or direct any subordinate or employee of the town to exercise any power, duty, or responsibility which the office of Town Manager is authorized to excise, provided, that all acts that are performed under such delegation shall be deemed to be the acts of the Town Manager;
- u) To distribute copies of the warrants for the Annual Town Meeting to the residence of all registered voters of the Town
- v) To perform such other duties as necessary as may be assigned by this charter, bylaw, by town meeting vote, or by vote of the Board of Selectmen.

Section 4-4 Financial Powers and Duties

Section 4-4-1

The Town Manager shall be the chief financial officer of the Town, and shall be responsible for the design and preparation of the annual budget, filing grant applications, and controlling budget expenditures, including approval of the warrant and for the payment of funds prepared by the Town Accountant in accordance with the provisions of section 56 of chapter 41 of the General Laws.

Section 4-4-2

In accordance with Article VI of this Charter;

- a) The Town Manager shall submit to the Board of Selectmen and Finance Committee a written proposed budget for town government for the ensuing fiscal year, including the budget proposed by the School Committee. The proposed budget shall detail all estimated revenues from all sources, and all expenditures, including debt service for the previous, current and ensuing years. It shall include proposed expenditures for both current operations and capital during the ensuing year, detailed by agency, department, committee, purpose, and position, together with estimated revenues and free cash available at the close of the fiscal year, including estimated balances in special accounts. The Town may, by bylaw, establish additional financial reports to be provided by the Town Manager;
- b) The Town Manager shall report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the Town, together with an estimate of the tax rate necessary to raise such amount;

- c) The calendar dates on or before which the proposed budget, revenue statements, and tax rate are to be submitted to said Board of Selectmen shall be 30 days prior to the date the budget is required to be submitted to the Finance Committee as specified by bylaw, action of the Finance Committee, or powers of the Assessors;
- d) To assist said Town Manager in preparing the proposed annual budget of revenues and expenditures, all boards, officers, and committees of the town, including the School Committee shall furnish all relevant information in their possession and submit to the Town Manager, in writing and in such form as the Town Manager shall establish, a detailed estimate of the appropriations required and available funds.
- e) The Town Manager shall submit annually to the Board of Selectmen a five-year capital improvement plan.

Section 4-5 Temporary Absence

The Town Manager may designate by letter with the Board of Selectmen and Town Clerk a qualified officer of the town to perform the duties of the Town Manager during a temporary absence or disability. If such temporary absence or disability shall exceed thirty days, any designation made by the Town Manager shall be subject to the approval of the Board of Selectmen. In the event of the failure of the Town Manager to make such designation, or if the person so designated is for any reason unable to serve, the Board of Selectmen may designate some other qualified person to perform the duties of Town Manager until the Town Manager shall return.

Section 4-6 Vacancy in Office

Any permanent vacancy in the office of Town Manager shall be filled as soon as possible by the Board of Selectmen. The filling of such vacancy shall be done as provided for in Article IV, Section 4-1.

Section 4-7 Removal and Suspension

The Board of Selectmen by the affirmative vote of three or more of its members may terminate and remove, or suspend the Town Manager from office in accordance with the following procedure.

The Board of Selectmen shall adopt a preliminary resolution of removal by the affirmative vote of at least three of its members that must state the reason for removal. This preliminary resolution may suspend the Town Manager for a period not to exceed forty-five days. A copy of the resolution shall be delivered in hand or by certified mail, return receipt requested, to the Town Manager.

Within five days after receipt of the preliminary resolution the Town Manager may request a public hearing by filing a written request for such hearing with the Board of Selectmen. This hearing shall be held at a meeting of the board of selectmen not later than thirty days after the request is filed and not earlier than twenty days. The Town Manager may file a written statement responding to the reasons stated in the resolution of removal with the Board of Selectmen provided that said statement is received at the Board of Selectmen's office at least forty-eight hours in advance of the public hearing.

The Board of Selectmen may adopt a final resolution of removal, which may be made effective immediately, by affirmative votes of three of its members not less than ten nor more than twenty-one days following the date of delivery of a copy of the preliminary resolution to the Town Manager, if the Town Manager has not requested a public hearing, or, within ten days following the close of the public hearing if the Town Manager has requested one. Failure to adopt a final resolution of removal within the time periods as provided in this section shall nullify the preliminary resolution of removal and the Town Manager shall, at the expiration of said time, forthwith resume the duties of the office. The Town Manager shall continue to receive a salary until the effective date of a final resolution of removal. The action of the Board of Selectmen in suspending or removing the Town Manager shall be final, it being the intention of the provision to vest all authority and fix all responsibility for such suspension or removal on the Board of Selectmen.

ARTICLE V

ADMINISTRATIVE ORGANIZATION

Section 5-1 Organization of Town Agencies

The organization of the town into operating agencies for the provision of services and the administration of the government may be accomplished through either of the methods provided in this article.

(a) By-Laws

Subject only to express prohibitions in a general law of the Commonwealth of Massachusetts or the provisions of this charter, the town meeting may, by by-law, reorganize, consolidate, create, merge, divide or abolish any town agency, in whole or in part, establish such new town agencies as it deems necessary or advisable, determine the manner of selection, the term of office and prescribe the functions of all such entities; provided, however, no function assigned by this charter to a particular town agency may be discontinued, or assigned to any other town agency, unless this charter specifically so provides.

(b) Administrative Code

The town manager, after consultation with the board of selectmen, may from time to time prepare and submit to the annual town meeting, plans of organization or reorganization which establish operating divisions for the orderly, efficient or convenient conduct of the business of the town.

Whenever the town manager prepares such a plan, the board of selectmen shall hold one or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time and place at which the hearing will be held, not later than fourteen days following said publication. Following such public hearing, the proposal, which may have been amended subsequent to the public hearing, shall be submitted to the annual town meeting by an appropriate warrant article. An organization or reorganization plan shall become effective at the start of the next fiscal year following the date of adjournment of the annual town meeting at which the proposal is submitted unless the town meeting, shall by a majority vote, vote to disapprove

the plan. The town meeting may vote only to approve or disapprove the plan and may not vote to amend or alter it. If no vote is taken by town meeting for any reason, the plan shall be deemed NOT to have been approved and shall not take effect.

The Town Manager may, through the administrative code, and subject only to express prohibitions in a law of the commonwealth or this charter, reorganize, consolidate or abolish any town agency, in whole or in part, establish such new town agencies as is deemed necessary to the same extent as is provided in Section 5-1(a), above, for by-laws, and for such purposes transfer the duties and powers and, so far as is consistent with the use for which the funds were voted by the town, transfer the appropriation of one town agency to another; provided, however, that no function assigned by this charter to a particular town agency may be discontinued or assigned to any other town agency unless this charter specifically so provides.

This section shall not interfere with the town meeting's power and ability to implement by-laws outside the scope of this section.

Section 5-2 Publication of Administrative Code and Staffing Plan

For the convenience of the public, the administrative code and any amendments thereto shall be printed as an appendix to the by-laws of the town of Abington.

A personnel staffing plan, prepared in conformity with Article 6, shall be published annually in the town report. The school committee shall provide the Town Manager with copies of its personnel and staffing plans annually for publication in the town report.

Section 5-3 Merit Principle

All appointments and promotions of town officers and employees shall be made on the basis of merit and fitness, demonstrated by examination or by other evidence of competence and suitability.

Section 5-4 Treasurer-Collector

There shall be a treasurer-collector, appointed by the Town Manager, on the basis of his/her qualifications and fitness for service. For the purposes of this charter the treasurer-collector shall be considered a department head.

There shall be no defined term of office. In making an appointment to the office of treasurer-collector, the town manager shall establish specific goals and objectives to be met by the appointee at designated periods during the period of appointment. Failure to meet the stated goals and objectives shall constitute grounds for dismissal. A treasurer-collector may be removed from office in accordance with the procedures established in Article VII, Section 7-15 of this charter.

The treasurer-collector shall collect all accounts due, shall receive and take charge of all funds belonging to the town and shall have all of the powers and duties which treasurer-collectors may have under the constitution and laws of the Commonwealth of Massachusetts. The treasurer-collector may also exercise such additional powers and duties as may from time to time be assigned to that office by the charter, by by-law or by other vote of the town meeting.

Section 5-5 Police Department Organization

The police department in the Town of Abington shall be organized under the provisions of section 97A of chapter 51 of the General Laws. There shall be a Chief of Police, appointed by the Town Manager, for an indefinite term. The Chief of Police, once appointed may only be removed from office in accordance with the provisions of Article VII, section 7-14 of this charter. The Chief of Police, or his/her designee, shall serve as emergency management director for the Town of Abington.

The Town Manager may enter into a contract of employment with the Chief of Police, however, there shall be no defined term of office.

The Chief of Police and the Deputy Chief of Police shall be appointed on the basis of their qualifications and fitness for service. There shall be no defined term of office for either office and once appointed the Chief of Police and the Deputy Chief of Police can only be removed for just cause, as defined and after a hearing, as provided in Article VII, section 7-15; The Board of Selectmen shall determine the qualifications for appointment of the Office of Chief of police, provided however that the Town Manager shall use an assessment process using not less than three police professionals, not employed by the Town of Abington, in order to evaluate candidates for the position of Chief of police.

The Chief of Police shall appoint the Deputy Chief of Police. The Chief of Police shall determine the department's qualifications for appointment of Deputy Chief of Police, provided, however, that the Chief of Police shall use an assessment process, using not less than three police professionals, not employed by the Town of Abington, in order to evaluate candidates and select the Deputy Chief. The decision of the Chief of Police in the selection of the Deputy Chief of Police shall be final.

The Chief of Police shall appoint all other personnel and officers in accordance with the provisions of chapter 31 of the General Laws, provided however, that the Chief of Police shall use an assessment process to evaluate candidates and select superior officers above the rank of patrol officer.

Section 5-6 Fire Department Organization

There shall be a Fire Department organized under sections 42, 43 and 44 of chapter 48 of the General Laws. As provided in said chapter 48 there shall be a Fire Chief who shall be appointed by the Town Manager, in accordance with the provisions of chapter 31 of the General Laws and the rules made thereunder.

The Fire Chief shall be responsible for the appointment, management and supervision of personnel, shall be responsible for all operations of the Fire Department, shall serve as the Town's forest fire warden, and shall perform all fire related duties and tasks considered necessary by the Town Manager.

The Fire Chief shall be the appointing authority for all fire department personnel and shall have full authority to appoint, demote, suspend and terminate all employees, including firefighters, captains, superior officers and the Deputy Fire Chief. The officers and firefighters shall be appointed in accordance with the provisions of chapter 31 of the General Laws.

The Deputy Fire Chief shall work under the direction of the Fire Chief and shall serve as acting Fire Chief in the absence of the Fire Chief.

ARTICLE VI FINANCE AND FISCAL PROCEDURES

Section 6-1 Fiscal Year

The fiscal year of the town shall begin on the first day of July and shall end on the last day of June, unless another period is required by the General Laws of the Commonwealth of Massachusetts.

Section 6-2 Submission of Budget and Budget Message

Within the time fixed by by-law, before the annual town meeting is to convene, the town manager, after consultation with the Board of Selectmen, shall submit to the finance committee a proposed, balanced, operating budget for the ensuing fiscal year with an accompanying budget message and supporting documents. The town manager shall simultaneously provide for the publication of a general summary of the proposed budget in a local newspaper and via the town's website.

The summary shall specifically indicate any major variations from the current operating budget and the reason for such changes. The notice shall further indicate the times and places at which the complete copies of the proposed operating budget are available for examination by the public.

Section 6-3 Budget Message

The budget message of the Town Manager shall explain the budget for all town agencies, both in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the town for the ensuing fiscal year, describe important features of the budget, indicate any major variations from the current year in financial policies, expenditures and revenues, together with the reasons for such changes, summarize the town's debt position and include other material as the town manager deems desirable or the Board of Selectmen may reasonably require.

Section 6-4 The Budget

The proposed operating budget shall provide a complete financial plan for all town funds and activities for the ensuing fiscal year. Except as may be otherwise be required by the General Laws of the Commonwealth of Massachusetts, by this charter, or by by-law, it shall be in the form which the Town Manager deems desirable or the Board of Selectmen may require. In the presentation of the budget, the town manager shall utilize modern concepts of fiscal presentation so as to furnish maximum information and the best financial control. The budget shall show, in detail, all estimated income from the proposed property tax levy and other sources and all proposed expenditures, including debt service, for the following year. The budget shall be arranged to show the actual and estimated income and expenditures for the previous, current and ensuing fiscal years and shall indicate in separate sections:

(a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by town agency and position in terms of work programs, and the method of financing

such expenditures;

- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by town agency, and the proposed method of financing each such capital expenditure;
- (c) Estimated surplus revenue and free cash at the end of the current fiscal year, including estimated balances in any special accounts established for specific purposes.

Section 6-5 Action on the Budget

The finance committee shall, upon receipt of the budget from the Town Manager, consider in public meetings detailed expenditures for each town department and agency and may confer with representatives of each such agency in connection with its review and consideration. The finance committee may require the town manager, or any other town agency, to furnish it with such additional information as it may deem necessary to assist it in its review and consideration of the proposed budget. The finance committee shall file with the town clerk at least fourteen days prior to town meeting a report containing its recommendation for action to be taken on each line item in the proposed operating budget as submitted by the Town Manager. Said report shall also be made available to voters of the town by leaving copies of said report at three or more public places in the town and by publication via the town's website at least fourteen days prior to town meeting. Additionally, copies of said report shall be made available to voters of the town at town meeting. The budget shall be voted upon in accordance with the by-laws of the town.

Section 6-6 Capital Improvement Program The Town Manager shall submit a capital improvement program to the Board of Selectmen and the finance committee at least six (6) months before the start of the fiscal year. Said program shall be based on material prepared by the capital improvement committee established by by-law, if any, including:

- (a) A clear, concise general summary of its contents;
- (b) A list of all capital improvements proposed to be undertaken during the next ensuing five years, with supporting information as to the need or each capital improvement;
- (c) Cost estimates, methods of financing and recommended time schedules for each improvement; and
- (d) The estimated annual cost of operating and maintaining each facility and piece of major equipment involved.

This information is to be annually revised by the town manager with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

Section 6-7 Audits

The Board of Selectmen shall annually provide for an independent audit of all financial books and records of the town, or, whenever it deems an audit of the whole town or of any particular town agency, to be necessary.

Audits of the town's financial books and records shall be conducted by a certified public accountant, or firm of such accountants, having no interest, direct or indirect, in the affairs of the town.

Section 6-8 Warrant

The Town Manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared and signed by the town accountant in accordance with the provisions of the General Laws of the Commonwealth of Massachusetts shall be submitted to the town manager. The approval of any such warrant by the Town Manager and at least three members of the Board of Selectmen shall be sufficient authority to authorize payment by the town treasurer, but the Board of Selectmen shall alone approve all warrants prepared and signed by the town accountant in the event of the absence of the town manager or a vacancy in the office of Town Manager.

ARTICLE VII GENERAL PROVISIONS

Section 7-1 Charter Changes

This charter may be replaced, revised or amended in accordance with the procedures made available by Article LXXXIX of the Amendments to the Constitution of the Commonwealth of Massachusetts and any legislation to implement the said amendments.

Section 7-2 Severability

The provisions of the charter are severable. If any provision of the charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons and circumstances shall not be affected thereby.

Section 7-3 Specific Provisions Shall Prevail

To the extent that any specific provision of the charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.

Section 7-4 References to General Laws

All references to the General Laws contained in the charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to include any amendments or revisions to such chapters and sections or to the corresponding chapters and sections of any rearrangement of the General Laws enacted subsequent to the adoption of the charter.

Section 7-5 Computations of Time

In computing time under the charter, if seven days or less, "days" shall refer to secular days and shall not include Saturdays, Sundays or legal holidays. If more than seven days, every day shall be computed.

Section 7-6 Number and Gender

Words importing the singular number may extend and be applied to several persons or things, words importing the plural number may include the singular, and words importing the masculine gender shall include the feminine gender.

Section 7-7 Definitions

Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in the charter shall have the following meanings:

"Administrative Code", plans of organization or reorganization which establish operating divisions for the orderly, efficient or convenient conduct of the business of the town.

"Appointing authority", one of the following elected bodies, where appropriate, Board of Selectmen, Board of Assessors, Board of Park and Recreation Commissioners and Planning Board.

"Charter", this charter and any amendments to it made through any of the methods provided under article LXXXIX of the Amendments to the Constitution of the Commonwealth of Massachusetts.

"Majority vote", a majority of those present and voting, provided that a quorum of the body is present.

"Multiple member body", any board, commission or committee consisting of two or more persons, whether elected or appointed, but specifically excluding town meeting.

"Town", the Town of Abington.

"Town agency", any board, commission, committee, department or office of the town government.

"Town bulletin board", the bulletin board, on which official town notices are posted, located in the town office building. Whenever reasonably possible, official town notices shall be posted on the town's website.

"Voters", the registered voters of the Town of Abington.

Section 7-8 Rules and Regulations

A copy of all rules and regulations adopted by any town agency shall be filed in the office of the town clerk and made available for review by any person who requests such information. Such rules and regulations shall not become effective until ten days following the date they are so filed.

Section 7-9 Periodic Review, Charter and By-laws

7-12-2 Charter Review

At least once in every ten years, in each year ending in a four, beginning in the year 2014, a special committee shall be established for the purpose of reviewing this charter and to make a report, with recommendations, to the town meeting concerning any proposed amendments which said committee may determine to be necessary or desirable. The committee shall consist of five members who shall be chosen by the town moderator. The committee shall meet to organize forthwith following the final adjournment of the annual town meeting and shall report to the annual town meeting the following year with any recommendations.

7-12-3 By-Law Review and Recodification

At intervals of not more than five years from the date of adoption of this charter, proposed revisions or recodifications of the by-laws of the town shall be presented to the town meeting for re-enactment. Such revisions or recodifications shall be prepared by a special by-law review committee appointed by the board of selectmen for that purpose, which shall conduct its review under the supervision of the town counsel or, if the board of

selectmen shall so direct, by special counsel appointed for that purpose. Such committee shall be appointed immediately following the adjournment of the annual town meeting in the year preceding the year in which their report is to be filed.

Within eight months following their appointment, the committee shall cause to be published on the town's website in a newspaper having general circulation within the town (1) a report summarizing their recommendations and noting the times and places within the town where complete copies of their report are available for inspection by the public and (2) the date, time and place not less than two weeks following such publication when a public hearing will be held by the committee on the report.

Subsequent to their enactment by the town meeting, copies of all by-laws shall be forwarded to the Attorney General of the Commonwealth of Massachusetts for his/her review and approval, and they shall be otherwise published all as required by the General Laws of the Commonwealth of Massachusetts. Copies of the revised by-laws shall be made available for public distribution.

In each year between such re-enactments and publications there shall be published an annual supplement which contains all by-laws and amendments to by-laws which have been adopted in the previous year.

Section 7-10 Procedures

7-10-1 Meetings

All multiple member bodies of the town, whether elected or appointed or otherwise constituted, shall meet regularly at such times and places within the town as they may prescribe. Special meetings of any multiple member body shall be held on the call of the respective chairman, or by one-third of the members thereof by suitably written notice delivered to the residence or place of business of each member at least forty eight hours in advance of the time set. A copy of the said notice shall also be posted on the town bulletin board. Special meetings of any multiple member body shall also be called within one week following the date of the filing with the town clerk of a petition signed by at least fifty voters and which states the purpose or purposes for which the meeting is to be called. Except as otherwise authorized by law, all meetings of all multiple member bodies shall be open and public. However, the multiple member body may recess, for the purpose of meeting in executive session in accordance with the General Laws of the Commonwealth of Massachusetts.

7-10-2 Agendas

At least forty-eight hours before any meeting of a multiple member body is to be held, an agenda containing all items which are scheduled to come before it at the meeting shall be posted on the town bulletin board. No action taken on a matter not included in the posted agenda shall be effective unless the multiple member body first adopts by separate vote a resolution declaring that an emergency exist, and that the particular matter must be acted upon at that meeting for the immediate preservation of the peace, health, safety or convenience of the town.

7-10-3 Rules and Journal

Each multiple member body shall determine its own rules and order of business unless otherwise provided by the charter or by-law, and shall provide for keeping minutes of its proceedings. Such minutes shall be voted on and approved within sixty (60) days following the date of such proceedings. These rules and minutes shall be a public record kept available in a place convenient to the public at all reasonable times, and copies shall be kept available in the town library.

7-10-4 Voting

Except on procedural matters, all votes of all multiple member bodies shall be taken by voice or roll call vote, the result of which shall be recorded in the minutes; provided, however, that if the vote is unanimous only that fact need be recorded.

7-10-5 Quorum

A majority of the members of the multiple member body shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the multiple member body. No other action of the multiple member body shall be valid or binding unless ratified by the affirmative vote of the majority of the members of the multiple member body.

Section 7-11 Committees; Appointing Authority, In General

Whenever, whether under the provisions of a town meeting vote or by by-law, a multiple member body is established, the primary purpose of which is to perform an administrative or executive function, notwithstanding the provisions of any such vote to the contrary, the members of such committee shall be appointed by the Board of Selectmen. Whenever, whether under the provisions of a town meeting vote or a by-law, a multiple member body is to be established, the primary purpose of which is to perform a legislative function, notwithstanding any provision in such vote to the contrary, the member of such multiple member body shall be appointed by the moderator. Nothing in this section shall be construed to prevent the town meeting, by vote or by by-law, to provide that a multiple member body shall include, as a portion of its membership, certain persons to serve ex-officio, provided that such authority is not used to defeat the clear purpose of this section.

Section 7-12 Elections

7-12-1 Annual Town Election

The election of town officers and referenda questions shall be acted upon and determined by the voters on official ballots without party or other designation on the date fixed in the by-laws of the town.

7-12-2 Nomination of Candidates

The number of signatures of voters required to place the name of a candidate for any office on the official ballot for use at any town election shall be not less that fifty signatures of voters, unless a greater number is required by state law.

Section 7-13 Notice of Vacancies

Whenever a vacancy occurs in any town office or town employment, or as a member of any multiple member body, except for positions covered under the civil service law of the Commonwealth of Massachusetts, whether by reason of death, resignation, expiration of a fixed term for which a person has been appointed, or otherwise, the Board of Selectmen or other appointing authority shall cause public notice of the vacancy to be posted on the town bulletin board. No permanent appointment to fill such a position shall be effective until at least fourteen days have elapsed following such posting. Any person who desires to be considered for appointment to the position may, within ten days following the date the notice is posted, file with the Board of Selectmen or other appointing authority a statement which sets forth in clear and specific terms the qualifications which he/she holds for the position.

Section 7-14 Appointments and Removals

Except as otherwise provided in this charter, the Town Manager shall appoint, subject to the provisions of Article IV, section 4-2 of this charter all persons categorized as head of departments. Except as may otherwise be required by the civil service law, appointments made by the town manager shall be for periods not to exceed five years. The town manager may suspend or remove any person appointed by the town manager in accordance with the procedure established in Section 7-15. The decision of the town manager in suspending or removing a department head shall be final.

All persons categorized as department heads shall, subject to the consent of the town manager, appoint all assistants, subordinates and other employees of the department for which such person is responsible. The department head may suspend or remove any assistant, subordinate or other employee of the department for which such person is responsible in accordance with the procedures established in Section 7-15. The decision of the department head to suspend or remove any assistant, subordinate or other employee shall be subject to review by the town manager. A person for whom a department head has determined that suspension or removal is appropriate may seek review of such determination by the town manager by filing a petition for review in the office of the town manager, in writing, within ten days following receipt of notice of such determination. The review by the town manager shall follow the procedures established in Section 7-15. The decision of the town manager shall be final.

Section 7-15 Removals and Suspensions

Any appointed town officer, member of a multiple member body or employee of the town, not subject to the provisions of the state civil service law or covered by the terms of a collective bargaining agreement which provides a different method, and whether appointed for a fixed or an indefinite term, may be suspended or removed from office, without compensation, by the appointing authority for good cause. The term "good cause" shall include, but not be limited to incapacity other than temporary illness, inefficiency, insubordination and conduct unbecoming the office.

Any appointed officer, member of a multiple member body or employee of the town may be suspended from office by the appointing authority if such action is deemed, by said

appointing authority, to be necessary to protect the interests of the town. However, other than the Town Manager as provided in Section 4-7, no suspension shall be for more than fifteen days. Suspension may be coterminous with removal and shall not interfere with the rights of the officer or employee under the removal procedure provided.

The appointing authority when removing any such officer, member of a multiple member body or employee of the town shall act in accordance with the following procedure:

- (a) A written notice of the intent to remove and a statement of the cause or causes therefore shall be delivered in hand, or by certified mail, return receipt requested, to the last known address of the person sought to be removed.
- (b) Within five days following delivery of such notice, the officer, member of a multiple member body or employee of the town may request in writing that a public hearing be held, at which hearing such person may be represented by legal counsel and shall be entitled to present evidence, call witnesses and to question any witnesses appearing at the hearing. Said public hearing shall be held within ten days after the receipt of a written request for a public hearing.
- (c) Between one and ten days after the public hearing is adjourned, or if the officer, member of a multiple member body or employee of the town fails to request a public hearing between six and fifteen days after delivery of the notice of intent to remove, the appointing authority shall take final action, either removing the officer, member of a multiple member body or employee of the town or notifying such person that the notice is rescinded. Failure of the appointing authority to take any action within the time periods as stated in this section shall be deemed to be a rescission of the original notice and the officer, member or a multiple member body or employee shall, forthwith, be reinstated.

Nothing in this section shall be construed as granting a right to such a hearing when a person who has been appointed for a fixed term is not reappointed when the original term expires.

7-16 Loss of office, excessive absence

If any person appointed as a member of a multiple member committee shall fail to attend four or more consecutive meetings, or one-half of all of the meetings of such committee held in one calendar year, the remaining members of the multiple member committee may, by a majority vote of the remaining members of such committee, declare the office vacant, provided, however, that not less than ten days prior to the date said vote is scheduled to be taken the committee has given in hand, or mailed by registered or certified mail, return receipt requested, notice of such proposed or pending vote to the last know address of such person.

ARTICLE VIII TRANSITIONAL PROVISIONS

Section 8-1 Continuation of Existing Laws

All General Laws, special laws, town by-laws, votes, rules and regulations of or pertaining to the town which are in force when this charter takes effect and which are not specifically or by clear implication repealed hereby, shall continue in full force and effect un-

til amended or rescinded by due course of law or expire by their own limitation.

Section 8-2 Continuation of Government

All town agencies shall continue to perform their duties until re-appointed or re-elected, or until successors to their respective positions are duly appointed or elected or their duties have been transferred.

Section 8-3 Continuation of Personnel

Any person holding a town office or employment under the town shall retain such office or employment and shall continue to perform his/her duties until provision shall have been made in accordance with the charter for the performance of the said duties by another person or agency; provided, however, that no person in the permanent fulltime service or employment of the town shall forfeit his pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as it is practical to do so.

Section 8-4 Time of Taking Effect

The charter shall become fully effective upon its approval by the voters as provided for by the General Laws of the Commonwealth of Massachusetts, except as provided in this section:

- (a) Not more than forty-five days after the adoption of this charter, the moderator shall appoint a special committee of five members to review the existing by-laws of the town and to make a report with recommendations to the annual town meeting in the year following the year in which the charter is adopted, in accordance with the publication, hearing and reporting requirements established in Article VII, Section 7-9-2.
- (b) Except as otherwise provided above, all other provisions of Article II shall be effective upon the commencement of the annual town meeting for the transaction of business in the year following the year in which the charter is adopted.
- (c) As soon as possible following the adoption of this charter the board of selectmen shall appoint a town manager as provided for in Article IV of this charter, and such appointment shall be made no later than 6 months following the date on which this charter is adopted.
- (d) The incumbent in the office of treasurer/collector shall continue to serve in said position for the balance of the term for which the treasurer/collector was elected. Upon the expiration of the term of office of the incumbent treasurer/collector, or if a vacancy shall occur sooner, the treasurer/collector shall be appointed by the town manager, in accordance with Article V, Section 5-5.
- (e) The incumbent members of the golf course committee shall continue to serve in office until no later than two months following the appointment of a town manager by the board of selectmen. Within that two month period the town manager shall appoint the members of the golf course committee. The golf course committee shall consist of five (5) members appointed for three years each, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year. The golf course committee shall oversee the Strawberry Valley Golf Course, in coordination with the Town Manager.

Section 8-5 Transfer of Records and Property

All records, property and equipment whatsoever of any office, department, or agency or part thereof, the powers and duties of which are assigned in whole or in part to another office or agency shall be transferred forthwith to the office, department or agency to which such powers and duties are assigned.

Section 8-6 Abolition of Town Administrator Position

The position of town administrator shall be abolished upon the assumption of office by the Town Manager. Should the position become vacant prior to the town manager assuming the duties of the office, the board of selectmen may appoint an acting town administrator. The acting town administrator shall serve until the assumption of office by the Town Manager.

Approved August 9, 2004.

Chapter 260. AN ACT RELATIVE TO A CERTAIN PARCEL OF LAND IN THE TOWN OF HINSDALE.

Be it enacted, etc., as follows:

SECTION 1. The Central Berkshire Regional School District, acting by and through its school committee, may convey a certain parcel of land located in the town of Hinsdale. The parcel was conveyed to the district from Kelly Enterprises Inc., by deed dated March 29, 1974, and recorded in the Berkshire county registry of deeds in book 948, page 197.

SECTION 2. The consideration paid to the central Berkshire regional school district for the conveyance of the property described in section 1 of this act shall be the highest bid. The district may decide to require that the grantee shall be responsible for all costs associated with any appraisals, survey, or other expense incurred by the town or the district as determined by the school committee.

SECTION 3. Subsections (a), (b) and (g) of section 16 of chapter 30B of the General Laws shall apply to the conveyance authorized by this act.

SECTION 4. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 261. AN ACT RELATIVE TO THE HOME AND COMMUNITY-BASED SERVICE WAIVER.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to expand forthwith the home and community based service waiver, therefore it is hereby

declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the executive office of elder affairs, in collaboration with the executive office of health and human services, shall by December 1, 2004, apply for an expansion of the section 2176 home and community-based waiver. This application shall seek to expand the income eligibility of the section 2176 waiver to up to 300 per cent of the federal benefit rate under the supplemental security program provided this expansion can be limited to the waiver population. This expansion shall seek to maximize federal financial participation for expenditures authorized in item 9110-1500 of section 2 of chapter 149 of the acts of 2004. Benefits under the section 2176 waiver shall be available to individuals up to the maximum income level provided in the approved waiver amendment. The executive office of elder affairs shall prioritize eligible individuals currently receiving benefits through the enhanced community options program into placements made available through the expanded waiver, as allowed by law and regulation, and shall offer members under the waiver a choice of receiving benefits in their home, community-based setting or nursing home, whichever is the least restrictive once said waiver is granted and implemented. The executive office of elder affairs shall submit a report to the house and senate committees on ways and means and the secretary of administration and finance by March 1, 2005 on the status of the waiver application. The report shall detail, at a minimum, the progress of the waiver application and, if applicable, the number of individuals enrolled under this waiver for each month since the waiver was obtained, the number of individuals remaining in the enhanced community options program, and the amount of federal financial participation received or anticipated to be received as a result of approval of the waiver. Said expansion shall be at no net cost to the state.

SECTION 2. This act shall take effect as of July 1, 2004.

Approved August 9, 2004.

Chapter 262. AN ACT FURTHER REGULATING THE DEPARTMENT OF REVENUE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes in the tax laws and other laws relating to the department of revenue, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 10 of the General Laws is hereby amended by striking section 28A, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 28A. Prior to disbursement of a prize in excess of \$600, the commission shall review information furnished by the IV-D agency and by the department of revenue, as set forth in chapter 119A and in this section to ascertain whether the holder of a winning ticket owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and to ascertain whether the holder of a winning ticket owes any past-due tax liability to the commonwealth. If the holder owes past-due child support or a past-due tax liability, the commission shall notify the IV-D agency or the commonwealth, respectively, of the holder's name, address and social security number. Subsequent to statutory state and federal tax withholding, the commission shall first disburse to the IV-D agency the full amount of the prize or such portion of the prize that satisfies the holder's past-due child support obligation and, if funds remain available after that disbursement, the commission shall disburse to the department of revenue the full amount of the prize or such portion of the prize that satisfies the holder's past-due tax liability. The commission shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.

SECTION 2. Section 3F of chapter 23A of the General Laws, as so appearing, is hereby amended by striking out, in line 70, the words "and only" and inserting in place thereof the following words:- or by the commissioner of revenue upon denial of the application for the tax credit provided in section 38N of chapter 63, and.

SECTION 3. Said section 3F of said chapter 23A of the General Laws, as so appearing, is hereby further amended by striking out, in line 73, the word "and", the first time it appears, and inserting in place thereof the following word:- or.

SECTION 4. Subsection (2) of said section 3F of said chapter 23A, as so appearing, is hereby amended by adding the following sentence:- Annually, on or before the first Wednesday in December, the EACC shall file a report detailing its findings of the review of all certified projects that it evaluated in the prior fiscal year to the commissioner of revenue and to the joint committee on taxation and the joint committee on commerce and labor.

SECTION 5. The first paragraph of section 10C of chapter 58 of the General Laws, as so appearing, is hereby amended by striking out the fourth sentence.

SECTION 6. Said section 10C of said chapter 58, as so appearing, is hereby further amended by striking out the second paragraph.

SECTION 7. Section 13 of said chapter 58 is hereby amended by striking out, in line 1, as so appearing, the words "nineteen hundred and seventy-five and every fifth" and inserting in place thereof the following words:- 2005 and every fourth.

SECTION 8. Said chapter 58 is hereby further amended by striking out section 14, as so appearing, and inserting in place thereof the following section:-

Section 14. The commissioner, not later than June 1 of each year in which he makes such a determination, shall notify the assessors of each city or town where the commonwealth owns, or the county commissioners hold, land for the purposes stated in this section, of his determination of the value of such land in such city or town. He shall hold a public hearing on such valuation on or before June 10 next following and shall include notice of the public hearing in the notification of his determination to the assessors. commissioner may, on the basis of any new information furnished to him at the hearing or otherwise, change the valuation of any such land in a city or town. Notice of any such change shall be sent to the assessors of the city or town on or before July 20 next following. A board of assessors aggrieved by a determination of the value of any land as valued under section 13 or 15 may make a written application for a correction to the appellate tax board on or before August 10 next following, setting forth the grounds for correction. Not later than January 20 of the year next following the year in which it is filed, the board shall, upon the basis of such application or after the assessors' hearing, as the board may determine, make a finding whether the commissioner acted in accordance with section 13. If the board finds that the commissioner failed so to act, it shall thereupon make a determination of value in accordance with section 13 and shall notify the board of assessors and the commissioner of its determination, and its decision shall be conclusive.

With respect to the determination of the value of land held by the division of watershed management in the department of conservation and recreation for the purposes named in section 5G of chapter 59, the commissioner shall send the notice of such valuations required by this section to be sent to the assessors of each city or town where such land is held to the division and the division may, if aggrieved by a determination of the value of such land, also apply for a correction to the appellate tax board. Any application by the assessors and division for correction of the valuation of land held for the purposes named in said section 5G of said chapter 59 shall be made and acted upon in the manner provided in this section, except that every application shall name as appellees the commissioner of revenue and all parties, other than the appellant, to whom notice of valuation was required to be sent. Any notices issued by the appellate tax board shall be sent to the appellant and all named appellees.

SECTION 9. Section 15 of said chapter 58, as so appearing, is hereby amended by striking out, in line 3, the word "four" and inserting in place thereof the following figure:-3.

SECTION 10. Section 2 of chapter 60A of the General Laws, as so appearing, is hereby amended by striking out the tenth sentence and inserting in place thereof the following sentence:- The owner, if aggrieved by the excise assessed, may at any time within 3 years after the date the excise was due or 1 year after the date the excise was paid, whichever is later, apply for an abatement to the board of assessors, and from a decision of the board of assessors upon such application, an appeal may be taken to the county commissioners or to the appellate tax board, all in accordance with section 64 or 65 of chapter 59.

SECTION 11. Said chapter 60A is hereby further amended by adding the following section:-

Section 8. Notwithstanding the failure of the owner of a motor vehicle on which an excise was assessed under this chapter to apply for an abatement within the time set forth in section 2, the board of assessors may abate the whole, or any part of any such excise, or any interest thereon or costs relative thereto, that remains unpaid where, in the assessors' opinion it should be abated. No such abatements shall be granted unless they are in accordance with such rules, regulations and guidelines as the commissioner of revenue may prescribe and no interest shall be due in connection with any such abatement. Whenever an abatement is granted under this section, the assessors shall enter the same in their record of abatements. The assessors shall annually, not later than August 1, report to the commissioner, in the form and manner prescribed by him, the abatements granted during the prior fiscal year.

SECTION 12. Paragraph (a) of section 8 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The Massachusetts adjusted gross income of such corporate trust shall be redetermined as if it were a resident natural person; provided, however, that for purposes of any determination involving sections 311, 312, 332 to 338, inclusive or 346 to 368, inclusive, of the Code, any corporate trust shall be treated as a corporation. No deductions or exemptions allowable under Parts A, B or C of section 3 shall be allowed to a corporate trust. The taxable income of each Part shall be the Massachusetts adjusted gross income of such Part allocated or apportioned to Massachusetts in accordance with section 38 of chapter 63.

SECTION 13. Said section 8 of said chapter 62 is hereby further amended by striking out paragraph (b), as amended by section 8 of chapter 4 of the acts of 2003 and inserting in place thereof the following paragraph:-

(b) Paragraph (a) shall not apply to a corporate trust which: (i) is a regulated investment company under section 851 of the Code or a real estate investment trust under section 856 of the Code; (ii) is exempt under subdivision (1) or (2) of section 23 of chapter 32; (iii) has made a valid election for the taxable year to be treated as a real estate mortgage investment conduit, as defined in section 860D of the Code for federal income tax purposes; or (iv) would qualify as a holding company under this paragraph in effect on December 31, 2003 and on such date was a holding company under the Public Utility Holding Company Act of 1935.

SECTION 14. Section 10 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "code", in line 80, the following words:- or who is a beneficiary receiving income included in gross income under subsection (h).

SECTION 15. Said section 10 of said chapter 62, as so appearing, is hereby further amended by adding the following 3 subsections:-

(h) A trustee or other fiduciary receiving income included in the gross income of a

beneficiary by reason of section 652 or 662 of the Code shall be allowed a deduction in computing the taxable income of the trust for that portion of Part A, Part B or Part C income attributable to such beneficiary, and the income shall be included in the gross income of such beneficiary. The amount of the deduction for the trust and the amount of the income inclusion for the beneficiary shall be adjusted to account for the difference between the calculation of federal taxable income under the Code and the calculation of Massachusetts taxable income under this chapter.

- (i) A trustee or other fiduciary receiving income taxable to a beneficiary under subsection (h) shall file with his return of income a form, to be specified by the commissioner, indicating the items of income attributable to such beneficiary and the name and taxpayer identification number of the beneficiary and such other information as the commissioner deems necessary.
- (j) Upon determination by the commissioner of noncompliance by a beneficiary with the tax laws of the commonwealth including, but not limited to, the timely filing of accurate returns and payments of amounts due, subsections (h) and (i) shall not apply.

SECTION 16. Sections 12 and 12A of said chapter 62 are hereby repealed.

SECTION 17. Section 13 of said chapter 62, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 1, the words "ten to twelve A, inclusive," and inserting in place thereof the following words:- 10 and 11.

SECTION 18. Paragraph (b) of section 17 of said chapter 62, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- A nonresident of the commonwealth who is a member of a partnership that is engaged in the conduct of a trade or business in the commonwealth or that owns or leases real property in the commonwealth, except a nonresident limited partner of a limited partnership engaged exclusively in buying, selling, dealing in or holding securities on its own behalf and not as a broker, shall be subject to the taxes imposed by this chapter on his distributive share of the income received or earned by the partnership from sources taxable under this chapter.

SECTION 19. Section 63 of said chapter 62, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

- (a) For the purposes of this section, the term "installment transaction" shall mean a transaction which:
 - (1) is treated for federal income tax purposes under section 453 of the Code; and
- (2) would, but for the application of said section 453 of the Code, result in an item of Massachusetts gross income for the taxable year of the transaction that is equal to or greater than \$1,000,000.

SECTION 20. Subsection (d) of said section 63 of said chapter 62, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- The person making the election shall deposit with the commissioner security, in a form satisfactory to the commissioner, in an amount equal to such excess for

the payment of future taxes under this chapter.

SECTION 21. Section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

The commissioner may, if he deems such action necessary for the protection of the revenue of the commonwealth, require persons other than employers: (1) to deduct and withhold taxes from payments made by such persons to residents, nonresidents and part-year residents of the commonwealth; (2) to file withholding returns as prescribed by the commissioner; and (3) to pay over to the commissioner, or to a depositary designated by the commissioner, the taxes so required to be deducted and withheld; provided, however, that nothing in this paragraph shall authorize the commissioner to require any corporation, foundation, organization or institution that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, as amended and in effect for the taxable year, to withhold taxes from persons who are not employees, except where the payments made by the exempt person for a particular performance or other event exceed \$10,000.

SECTION 22. Said section 2 of said chapter 62B, as so appearing, is hereby further amended by inserting after the word "payment", in line 49, the following words:-, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provisions of the Internal Revenue Code, as amended from time to time.

SECTION 23. Section 13 of said chapter 62B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words "two hundred dollars" and inserting in place thereof the following figure:-\$400.

SECTION 24. Section 14 of said chapter 62B, as so appearing, is hereby amended by striking out, in lines 44 and 46, the figure "\$200" and inserting in place thereof, in each instance, the following figure:-\$400.

SECTION 25. Chapter 62C of the General Laws is hereby amended by striking out section 35, as so appearing, and inserting in place thereof the following section:-

Section 35. If a check or electronic funds transfer in payment of any tax, interest, penalty, fee or other charge is not duly paid, there shall, in addition to any other penalties provided by law, be paid as a penalty by the person who tendered such check or electronic funds transfer, upon notice and demand by the commissioner in the same manner as the tax or other amount to which the check or electronic funds transfer relates, an amount equal to 2 per cent of the amount of such check or electronic funds transfer; provided, however, that if the amount of such check or transfer is less than \$1,500, the penalty under this section shall be \$30 or the amount of such payment, whichever is less. This section shall not apply if the person tendered a check or authorized an electronic funds transfer in good faith and with reasonable cause to believe that it would be duly paid. The commissioner may, in his discretion, abate any such penalty in whole or in part.

SECTION 26. Subsection (a) of section 50 of said chapter 62C, as so appearing, is

hereby amended by striking out the last 2 sentences and inserting in place thereof the following 6 sentences:- The lien shall arise at the time the assessment is made or deemed to be made and shall continue until: (1) the liability for the amount assessed or deemed to be assessed is satisfied; (2) a judgment against the taxpayer arising out of such liability is satisfied; or (3) any such liability or judgment becomes unenforceable by reason of the lapse of time within the meaning of section 6322 of the Code. Notwithstanding section 65, the lien created in favor of the commonwealth for any unpaid tax shall remain in full force and effect for: (i) a period of 10 years after the date of assessment, deemed assessment or self-assessment of the tax; or (ii) for such longer period of time as permitted by section 6322 of the Code, in effect and as amended from time to time, and as construed or interpreted either by the regulations or other authorities promulgated under said section 6322 of the Code by the Internal Revenue Service or by any federal court or United States Tax Court decision. If, by operation of said section 6322 of the Code, a tax lien in favor of the commonwealth would extend beyond its initial or any subsequent 10-year period, the commissioner shall be authorized to refile his notice of lien. If any such refiled lien is filed within the "required refiling period", as that term is defined in section 6323(g)(3) of the Code, the lien in favor of the commonwealth shall relate back to the date of the first such lien filing. Otherwise, any such refiled lien shall be effective from the date of its filing. The commissioner of revenue shall promulgate such rulings and regulations as may be necessary for the implementation of this subsection.

SECTION 27. Section 53 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "tax", in line 7, the following words:- including, without limitation, any periodic or lump sum payments from any state or local agency or authority, including unemployment compensation and other benefits not otherwise exempt, judgments, settlements and lottery winnings.

SECTION 28. Said section 53 of said chapter 62C, as so appearing, is hereby further amended by adding the following subsection:-

(e) With respect to a levy on securities or a levy on shares of a mutual fund other than a money market mutual fund, the person or entity may sell or repurchase such securities or shares in the ordinary and usual course of investing, but may not receive funds resulting from such sale, for a time period of up to 45 days. If, during such time period, the commissioner has not rescinded the levy, extended the time period or notified the person or entity in possession of such securities or shares to remit funds, at the end of such time period such person shall forthwith liquidate sufficient securities or shares to satisfy the full amount of the lien and remit the liquidated funds to the commissioner.

SECTION 29. The first paragraph of section 65 of said chapter 62C, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Taxes shall be collected: (i) within 6 years after the assessment of the tax; (ii) within any further period after such 6-year period during which the taxes remain unpaid but only against any real or personal property of the taxpayer to which a tax lien has attached and for which a notice of lien has been filed or recorded under section 50 in favor

of the commonwealth in accordance with applicable state or federal law within 6 years after the assessment of the tax; (iii) prior to the expiration of any period of collection agreed upon in writing by the commissioner and the taxpayer before the expiration of such 6-year period; or, (iv) if there is a release of levy under section 64 after such 6-year period, then before such release.

SECTION 30. Section 2 of chapter 62E of the General Laws, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "and consistent with federal requirements or limitations".

SECTION 31. Said section 2 of said chapter 62E, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- The commissioner may require an employer of 50 employees or more, including a governmental entity or a labor organization, or a payor of income to submit such information using a form and means of electronic transmittal prescribed by the commissioner.

SECTION 32. Section 4 of said chapter 62E, as so appearing, is hereby amended by inserting after the word "companies", in lines 35 and 36, the following words:-, any mutual fund.

SECTION 33. Said section 4 of said chapter 62E, as so appearing, is hereby further amended by inserting after the word "account", in line 44, the first time it appears, the following words:-, brokerage account, mutual fund account.

SECTION 34. Section 5 of said chapter 62E, as so appearing, is hereby amended by inserting after the word "associations", in line 13, the first time it appears, the following words:-, mutual funds, brokers.

SECTION 35. Subsection (a) of section 2A of chapter 63, as so appearing, is hereby amended by adding the following sentence:- Notwithstanding any other provision of this section, the portion of the net income of a financial institution that a nondomiciliary state is prohibited from taxing under the Constitution of the United States shall be allocated in full to the commonwealth if the commercial domicile of the institution is in the commonwealth.

SECTION 36. Section 30 of said chapter 63 is hereby amended by striking out, in line 146, as so appearing, the word "thirty-two" and inserting in place thereof the following words:- 32 or of a foreign corporation taxable under clause (1) of subsection (a) of section 39.

SECTION 37. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out, in lines 151 and 152, the words "organized in the commonwealth".

SECTION 38. Said section 30 of said chapter 63, as so appearing, is hereby amended by striking out paragraph 9.

SECTION 39. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking out paragraphs 10 and 11 and inserting in place thereof the following 2 paragraphs:-

- 10. "Tangible property corporation", a corporation whose tangible property situated in the commonwealth on the last day of the taxable year and not subject to local taxation is 10 per cent or more of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on that date in subsidiary corporations which represent 80 per cent or more of the voting stock of those corporations, as shall be found by multiplying that amount by the corporation's income apportionment percentage, as determined under section 38, or a corporation which, in the judgment of the commissioner, should be so classified. For the purposes of this paragraph, the assets of the corporation shall be valued at their book value.
- 11. "Intangible property corporation", a corporation whose tangible property situated in the commonwealth on the last day of the taxable year and not subject to local taxation is less than 10 per cent of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on that date in subsidiary corporations which represent 80 per cent or more of the voting stock of those corporations, as shall be found by multiplying that amount by the corporation's income apportionment percentage, as determined under section 38, or a corporation which, in the judgment of the commissioner, should be so classified. For the purposes of this paragraph, the assets of the corporation shall be valued at their book value.

SECTION 40. The first paragraph of section 32B of said chapter 63, as so appearing, is hereby amended by adding the following sentence:- The commissioner may require corporations that have made such election to report the income measure and the nonincome measure of the excise, and the minimum excise if applicable, all as set forth in sections 32 and 39r, on a single form; provided, however, that nothing in this section shall be construed to eliminate the requirement that each corporation participating in a combined return compute its nonincome measure and the minimum excise if applicable in accordance with said sections 32 and 39.

SECTION 41. Subsection (b) of section 38 of said chapter 63, as so appearing, is hereby amended by adding the following sentence:- Notwithstanding any other provision of this section or of section 52A, the portion of the taxable net income of a corporation that a non-domiciliary state is prohibited from taxing under the Constitution of the United States shall be allocated in full to the commonwealth if the commercial domicile of the corporation is in the commonwealth.

SECTION 42. Subsection (f) of said section 38 of said chapter 63, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

For the purposes of this subsection: (1) in the case of the licensing of intangible property, the income-producing activity will be deemed to be performed in the commonwealth to the extent that the intangible property is used in the commonwealth; (2)

the corporation will be deemed to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; and (3) sales of tangible personal property to the United States government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in the commonwealth.

SECTION 43. Section 38 of said chapter 63, as so appearing, is hereby amended by adding the following subsection:-

(n) In any case in which a purchasing corporation makes an election under section 338 of the Code, the target corporation shall be treated as having sold its assets for purposes of this section.

SECTION 44. Section 38B of said chapter 63, as so appearing, is hereby amended by inserting after subsection (b) the following subsection:-

(b½) For the purposes of subsection (a), "securities" includes (1) equity or debt instruments and options, futures and other derivatives, that are traded on and were acquired through a public exchange or another arms length secondary market; (2) bond as defined in and issued pursuant to chapter 23G; (3) cash and cash equivalents, including savings and checking accounts and certificates of deposit, and foreign currencies; (4) interests in a real estate investment trust under section 856 of the Code or a regulated investment company under section 851 of the Code, or a real estate mortgage investment conduit under section 860D of the Code, so long as none of the mortgages owned by the conduit were originated by the holder thereof or by an affiliate of the holder; (5) mortgage-backed securities that are guaranteed by the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Bank or the Federal Home Loan Mortgage Corporation; (6) collateralized mortgage obligations, so long as none of the mortgages that underlie the obligation were originated by the holder thereof or by an affiliate of the holder; and (7) any other passive investment vehicles that, in the judgment of the commissioner, should be considered to constitute "securities" for the purposes of said subsection (a); "affiliate" means a member of an affiliated group as defined under section 1504 of the Code; and "debt instruments" shall be deemed to include, but not be limited to, debt obligations of the United States, its agencies or instrumentalities and of any state or political subdivision thereof, their agencies or instrumentalities. Nothing in this subsection shall be construed to limit the instruments that may be held by an investment partnership for purposes of the safe harbor set forth in subsection (b) of section 17 of chapter 62.

SECTION 45. Subsection (a) of section 38N of said chapter 63, as so appearing, is hereby amended by adding the following 3 paragraphs:-

A credit allowed under this section may be taken only after the taxpayer completes an annual application for the credit, signed under the pains and penalties of perjury by an authorized representative of the corporation, files it with the commissioner of revenue and the commissioner certifies that property eligible for the credit is used in a certified project within the economic opportunity area as defined in said section 3A of said chapter 23A and wholly within an area designated as an economic target area pursuant to section 3D of said

chapter 23A and the area conforms to the definition of a "blighted open area", "decadent area", or "sub-standard area" as set forth in section 1 of chapter 121A, and that the certified project satisfies the employment projections specified in the original project proposal. The commissioner of revenue shall notify the economic assistance coordinating council, of any application that is not certified.

The commissioner shall, not less than once every 2 years, review all projects certified by the economic assistance coordinating council on or after January 1, 2000 if the taxpayer participating in a certified project files an application for the tax credit allowed under this section.

Based upon the information provided in the application, the commissioner of revenue shall make a determination on whether the certified project is in compliance with the definition of certified project set forth in this section and whether the project has a reasonable chance of increasing employment opportunities for residents of the certified project as advanced in the initial proposal certified by the EACC. If the commissioner of revenue determines that the certified project is no longer in compliance, then he shall notify the economic assistance coordinating council of the determination, and certification of the project shall be revoked by the economic assistance coordinating council. If the project is considered decertified for reasons of fraud or material misrepresentation, as determined by the commissioner of revenue, the commissioner shall have a cause of action against the controlling business of the project for the value of any economic benefits received, including, but not limited to, the amount of the tax credit allowed under this section. Nothing in this section shall be deemed to limit the authority of the commissioner to make adjustments to a corporation's liability upon audit.

SECTION 46. Said chapter 63 is hereby further amended by striking out section 42A, as so appearing, and inserting in place thereof the following section:-

Section 42A. The taxable net income of a foreign corporation allocated or apportioned to this commonwealth under section 38 shall be its net income subject to the tax under this chapter.

SECTION 47. Subsection (c) of section 3 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking out clause (iii) and inserting in place thereof the following 2 clauses:

- (iii) 90 per cent of the tax for the taxable year, or
- (iv) 90 per cent of the tax that would be required to be shown on the return for the taxable year if the tax were determined by using the income apportionment percentage determined for the preceding taxable year under chapter 63.

SECTION 48. The definition of "Sale at retail" or "retail sale" of section 1 of chapter 64H of the General Laws, as amended by section 8 of chapter 9 of the acts of 2003, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- When tangible personal property is physically delivered by an owner, a former owner thereof, a factor, or an agent or representative of the owner, former

owner or factor, to the ultimate purchaser residing in or doing business in the commonwealth, or to any person for redelivery to the purchaser, pursuant to a retail sale made by a vendor not engaged in business in the commonwealth, the person making or effectuating the delivery shall be considered the vendor of that property, the transaction shall be a retail sale in the commonwealth by the person and that person, if engaged in business in the commonwealth, shall include the retail selling price in its gross receipts, regardless of any contrary statutory or contractual terms concerning the passage of title or risk of loss which may be expressly or impliedly applicable to any contract or other agreement or arrangement for the sale, transportation, shipment or delivery of that property.

SECTION 49. Section 6 of said chapter 64H, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 32, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 50. Said section 6 of said chapter 64H, as so appearing, is hereby further amended by striking out paragraph (ff) and inserting in place thereof the following paragraph:-

(ff) Sales of printed material which is manufactured in the commonwealth to the special order of a purchaser, to the extent the material is delivered to an interstate carrier, a mailing house or a United States Post Office for delivery or mailing to a purchaser located outside the commonwealth or a purchasers designee located outside the commonwealth, including sales of direct and cooperative direct mail promotional advertising materials which are manufactured both inside and outside the commonwealth and which are distributed to residents of the commonwealth from locations both inside and outside the commonwealth. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall mean individual discount coupons, or advertising leaflets incorporating the coupons within the promotional advertising materials no greater than 6 pages in length, and including any accompanying envelopes and labels. In order to be exempt hereunder, the promotional advertising materials shall be distributed as a part of a package of materials promoting 1 or more than 1 business, each operated at separate and distinct locations, and directed in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall not include mail order catalogs, department store catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater than 6 pages in total length.

SECTION 51. Section 2 of chapter 64I of the General Laws, as so appearing, is hereby amended by inserting after the word "vendor", in line 4, the following words:- or manufactured, fabricated or assembled from materials acquired either within or outside the commonwealth.

SECTION 52. Said chapter 64I is hereby amended by inserting after section 4 the following section:-

Section 4A. (a) An individual taxpayer subject to the excise under this chapter who has not paid over the excise due for a purchase of tangible personal property as provided for

under chapter 64H shall pay and account for that liability to the commissioner annually either by entering the amount of his liability upon the appropriate line item of the taxpayer's personal income tax return or by filing a separate use tax return in the form prescribed by the commissioner. If the taxpayer elects to report the use tax liability on his personal income tax return, irrespective of the filing status chosen, the taxpayer shall enter either: (i) the estimated liability as provided in subsection (b) based upon the taxpayer's Massachusetts adjusted gross income as determined under section 2 of chapter 62; or (ii) the exact amount of the liability based upon actual taxable purchases for the calendar year. Taxpayers opting to pay an estimated use tax liability for any period in accordance with the subsection (b) shall not be subject to any additional assessment of use tax for the period even if the taxpayer's estimated liability is lower than the actual liability. A taxpayer having no use tax liability for a tax period may enter a zero on the appropriate line of his personal income tax return.

(b) A taxpayer electing to satisfy a use tax liability by estimating it shall calculate the liability in accordance with the following table and provisions. The estimated liability shall only be applicable to purchases of any individual items each having a total sales price of less than \$1,000. For each taxable item purchased at a sales price of \$1,000 or greater, the actual use tax liability for each purchase shall be added to the amount of the estimated liability derived from the below table.

MA AGI Per Return	Use Tax Liability
\$0 - \$ 25,000	\$ 0.00
\$25,001 - \$ 40,000	\$15.00
\$40,001 - \$ 60,000	\$25.00
\$60,001 - \$ 80,000	\$35.00
\$80,001 - \$100,000	\$45.00
Above \$100,000	(Multiply MA AGI by .0005)

SECTION 53. Subsection (c) of section 2 of chapter 119A of the General Laws, as appearing in section 364 of chapter 26 of the acts of 2003, is hereby further amended by striking out the third and fourth sentence and inserting in place thereof the following 2 sentences:- Upon collection, a penalty or fee shall be retained by the IV-D agency; but, the penalty or fee shall be placed in the child support trust fund established pursuant to section 9. Upon collection, interest shall be distributed to the individual obligee on whose behalf the collection was made.

SECTION 54. Section 9 of said chapter 119A, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "services", in line 8, the following words:-, all penalties assessed and collected by the IV-D agency.

SECTION 55. Said section 9 of said chapter 119A, as so appearing, is hereby further amended by inserting after the word "chapter", in line 12, the following words:-; but, the federal incentive payments shall be expended only as authorized by Title IV, Part D of the Social Security Act.

SECTION 56. Section 10 of said chapter 119A, as so appearing, is hereby amended by striking out, in line 3, the word "two" and inserting in place thereof the following figure:-

SECTION 57. Said section 10 of said chapter 119A, as so appearing, is hereby further amended by inserting after the word "fund", in line 12, the following words:-attributed to federal incentive payments.

SECTION 58. Said section 10 of said chapter 119A, as so appearing, is hereby further amended by adding the following paragraph:-

(3) A child support penalties account to be expended, without appropriation, pursuant to subsections (b) and (c) of section 10A. To this account shall be credited all penalties collected by the IV-D agency, all amounts designated for this account pursuant to subsection (a) of said section 10A, all interest collected by the IV-D agency on the state share of arrears assigned to the commonwealth pursuant to Title IV, Parts A and E, and Title XIX of the Social Security Act, and all interest and earnings of the fund, except as provided in paragraph (2) of this section. The state treasurer shall report annually, on or before October 15, to the secretary of administration and finance and to the house and senate chairs of ways and means on the total expenditures from the child support penalties account in the prior fiscal year.

SECTION 59. Said chapter 119A is hereby further amended by inserting after section 10 the following section:-

Section 10A. (a) If a case receiving IV-D services is otherwise eligible for case closure and the commissioner of revenue determines that (1) an obligor has made an overpayment of \$10 or less of the amount of any child support owed by the obligor, or (2) child support in the amount of \$10 or less is due to an individual obligee, the commissioner shall disburse the amounts to the obligor or obligee. If the obligor or obligee fails to negotiate the check issued by the commonwealth within 180 days of its issuance, the funds shall be placed in the account established pursuant to paragraph (3) of section 10, to be expended as provided in subsections (b) and (c) of this section.

- (b) If the commissioner determines that the IV-D agency has distributed a payment to an individual obligee that was not a child support collection on behalf of the obligee, or that the obligee was otherwise not entitled to the payment, the IV-D agency shall make diligent efforts to recover the payment from the obligee, including deducting the amount, or a portion thereof, from future collections of child support made on behalf of the obligee. Recovered amounts shall be placed in the account established pursuant to paragraph (1) of section 10. Where the IV-D agency does not recover the payment, the IV-D agency may issue a refund of an overpayment to an obligor, or a replacement payment to an individual obligee on whose behalf the child support collection was made, from the account established pursuant to paragraph (3) of said section 10.
- (c) If the commissioner determines that an individual obligee or obligor has incurred bank or similar fees as a direct result of administrative error by the IV-D agency, the IV-D agency may, at the discretion of the commissioner, reimburse the obligee or obligor for the fees from the account established pursuant to paragraph (3) of section 10.

SECTION 60. Chapter 175 of the General Laws is hereby amended by inserting after section 24E, inserted by section 445 of chapter 26 of the acts of 2003, the following section:-

Section 24F. (a) Subject to the requirements of sections 24D and 24E, which shall take precedence over this section, before making any nonrecurring payment equal to or in excess of \$500 to a claimant under a contract of insurance, every company authorized to issue policies of insurance pursuant to this chapter shall exchange information with the department of revenue to ascertain whether that claimant owes taxes to the commonwealth. The company shall either provide the department of revenue with information about the claimant or examine information made available by the department of revenue and updated not more than once a month. If the company elects to provide the department of revenue with information about a claimant, the company shall provide, not less than 10 business days before making payment to the claimant, the claimant's name, address, date of birth and social security number as appearing in the company's files and other information appearing in the company's files as the commissioner of revenue, in consultation with the commissioner of insurance, may require by regulation. The company shall use a method and format prescribed by the commissioner of revenue but if the company is unable to use a method and format prescribed by the commissioner, the company shall cooperate with the department of revenue to identify another method or format, including submission of written materials. If the company elects to examine information made available by the department of revenue and the claimant owes taxes to the commonwealth, the company shall notify the department of revenue, not less than 10 business days before making payment to the claimant, of the claimant's name, address, date of birth and social security number as appearing in the company's files and other information appearing in the company's files as the commissioner of revenue, in consultation with the commissioner of insurance, may require by regulation, using a method and format prescribed by the commissioner of revenue. The insurer may remit to the department of revenue the full amount of taxes owed to the commonwealth at the time it so notifies the department of revenue or at any time before making payment to the claimant, without regard to the 10-day business period. A company shall not share information with the department of revenue if doing so would require the companies to violate the claimant's right to privacy under state or federal law.

For the purpose of this section, the word "claimant" shall mean an individual who brings a claim against an insured party under a liability insurance policy issued in the commonwealth or under the liability coverage portion of a multi-peril policy issued in the commonwealth, a beneficiary 13 years of age or older under a life insurance contract issued in the commonwealth, or a beneficiary 13 years of age or older living in the commonwealth who is designated to receive payment under a life insurance contract issued by a company licensed in the commonwealth. For the purposes of this section, the term "non-recurring payment" shall not include fines paid by companies to claimants pursuant to subsection (e). The department of revenue shall not consider a person to owe taxes to the commonwealth: (1) if the person has filed in good faith an application for abatement of the tax, which is still

pending; (2) if the person has filed in good faith a petition before the appellate tax board contesting the tax, which is still pending; (3) if the person has filed in good faith an appeal from an adverse decision of the appellate tax board, which is still pending; or (4) if the statute of limitations for filing an application for abatement, petition or appeal has not yet expired.

- (b) This section shall not apply to that portion of a claim resulting in payments on behalf of the claimant issued to a third party where there is documentation showing that the third party has provided or agreed to provide the claimant with a benefit or service related to the claim including, but not limited to, the services of an attorney or a medical doctor, or to any portion of a claim based on damage to or a loss of real property. The commissioner of revenue, in consultation with the commissioner of insurance, shall promulgate regulations setting forth procedures for making payment to the department of revenue when a third party has either provided or agreed to provide goods or services to the claimant, and the insurance company cannot reasonably determine the remaining amount payable to the claimant.
- (c) An individual making a claim governed by this section shall provide his current address, date of birth and social security number to the insurance company, upon the request of the company. The company may inform the claimant that the request is being made in accordance with this section for the purpose of assisting the department of revenue in collecting taxes owed to the commonwealth. An individual who refuses to provide the information required by this section shall not receive payment on the claim, and the company that declines payment on this basis shall be exempt from suit and immune from liability under this chapter or any other chapter or in any common law action in law or equity.
- (d) Pursuant to regulations issued by the commissioner of revenue in consultation with the commissioner of insurance, a company that knowingly fails to accurately exchange information regarding a claim to which this section applies shall be subject to a penalty assessed by the department of revenue. A company that makes a payment to the department of revenue pursuant to this section and an insured individual on whose behalf the company makes a payment shall be immune from any obligation or liability to the claimant or other interested party arising from the payment, notwithstanding the provisions of this chapter or any other law.
- (e) Information provided by the department of revenue to a company under this section may only be used for the purpose of assisting the department in collecting taxes owed to the commonwealth. An individual or company who uses the information for any other purpose shall be liable in a civil action to both the department of revenue and the claimant in the amount of \$1,000 each, for each violation.
- (f) In the event of a state of emergency declared by the governor or the president of the United States, the commissioner of insurance may temporarily suspend the application of this section to claims made due to the conditions resulting in the state of emergency.

SECTION 61. Chapter 96 of the acts of 2002 is hereby amended by striking out section 10, as amended by section 14 of chapter 364 of the acts of 2002, and inserting in place thereof the following section:-

Section 10. Section 3 shall take effect for returns filed on or after January 1, 2002 and shall cease to be effective for returns filed on or after January 1, 2006.

SECTION 62. In the event that 1 or more states characterize as subject to apportionment income that the commissioner considers to be allocable in full to the commonwealth under this act, the commissioner shall use his best efforts in consultation with the state or states to avoid subjecting the income to multiple taxation.

SECTION 63. Notwithstanding any general or special law to the contrary, for tax years beginning on or after January 1, 2005 and before January 1, 2006, a trustee or other fiduciary receiving Part A income, Part B income or Part C income taxable to a beneficiary under subsection (h) of section 10 of chapter 62 of the General Laws, as added by section 15 of this act, shall deduct and withhold from distributions of the income a tax at the rate applicable to income of that class. The tax so withheld shall not reduce the amount of income taxable to the beneficiary but shall be included in his return of income and shall be credited against the amount of income tax as computed in the return.

SECTION 64. The commissioner of revenue shall issue rules and regulations necessary to implement this act.

SECTION 65. (a) There shall be a special commission to investigate and study the effectiveness of requiring combined reporting for all corporate excise tax filers in the commonwealth. Combined reporting would require corporations, when filing their tax returns, to list all of the profits they have earned, including the profits earned by any subsidiary with which they are engaged in a unitary business, and to calculate their profits subject to apportionment based on that total.

- (b) The commission shall include the following members: the house and senate chairpersons of the joint committee on taxation, who shall serve as the co-chairpersons of the commission, the house and senate chairpersons of the joint committee on commerce and labor, house and senate vice chairpersons of the joint committee on taxation, the ranking minority house and senate members of the joint committee on taxation, the commissioner of revenue, and 1 member appointed by each of the following organizations: the Federal Reserve Bank of Boston, the Multistate Tax Commission, the Massachusetts Taxpayers' Foundation, the Massachusetts Budget and Policy Center, the Associated Industries of Massachusetts, the Massachusetts AFL-CIO, and the Massachusetts Municipal Association.
- (c) The scope of the commission's inquiry shall include, but shall not be limited to an examination of the following: the decline in corporate excise tax revenue relative to personal income in Massachusetts, whether corporate excise tax revenue is lost due to tax avoidance strategies, whether combined reporting would be effective in combating and minimizing such strategies, the long-term revenue implications for the commonwealth of adopting combined reporting, the contribution that combined reporting would make in improving the commonwealth's ability to enforce the corporate excise tax, the economic impact of adopting combined reporting, and the experiences of other states that currently use combined reporting. The commission shall examine related aspects of apportionment under

section 38 of chapter 63 of the General Laws, including but not limited to whether the Legislature should amend the sales factor defined in subsection (f) of said section 38 to include as sales of tangible personal property in the commonwealth any property that is shipped from an office, store, warehouse, factory, or other place of storage in this commonwealth for which the taxpayer is not taxable in the state of the purchaser. The commission shall also examine whether single sales factor provisions available under subsections (k), (l), and (m) of section 38 of chapter 63 of the General Laws should apply only to the apportionment of income in section 30 of chapter 63 of the General Laws, and not to the net worth calculation in paragraph 8 of section 30 of said chapter 63.

- (d) The commission shall conduct 3 public hearings in 3 different municipalities in the commonwealth.
- (e) The commission shall report to the house and senate committees on ways and means and the joint committee on taxation the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry the recommendations into effect, by filing the same with the clerk of the senate on or before May 1, 2005.

SECTION 66. There shall be a special commission to study the impact and collection of the hotel occupancy excise tax authorized in chapter 64G of the General Laws. The commission shall consist of the house and senate chairpersons of the joint committee on taxation, who shall serve as chairpersons of the commission, 2 members appointed by the senate president, 1 member appointed by the minority leader of the senate, 2 members appointed by the speaker of the house of representatives, 1 member appointed by the minority leader of the house of representatives, the commissioner of revenue or his designee, the director of the Massachusetts office of travel and tourism or his designee, a representative of the Massachusetts Municipal Association and 4 members appointed by the governor, 1 of whom shall represent the hotel industry and 1 of whom shall represent internet intermediaries. The commission shall hold at least 3 public hearings, 1 of which shall occur in Berkshire county and 1 of which shall occur on Cape Cod, Martha's Vineyard or Nantucket. The commission shall report on the revenue and economic impacts of the hotel occupancy excise tax and enforcement and collection efforts by the department of revenue and local governments. The commission shall report the results of its study and make recommendations for legislative changes, if any, resulting from its study to the clerks of the house and senate and the house and senate committees on ways and means on or before December 1, 2004.

SECTION 67. Sections 12 and 13 shall apply to taxable years beginning on or after January 1, 2004.

SECTION 68. Section 25 shall apply to payments received by the commissioner of revenue on or after January 1, 2005.

SECTION 69. Section 52 shall apply to purchases made on or after January 1, 2004. **SECTION 70.** Sections 26 and 29 shall take effect on January 1, 2005, and shall be applicable to any tax liability, inclusive of penalties, interest, costs, forfeitures, or additions

to tax, which remains due and unpaid as of January 1, 2005, or which is assessed on or after January 1, 2005. Any notice of tax lien in favor of the commonwealth recorded on a date making it less than 6 years old as of January 1, 2005 shall, if not sooner discharged as a result of payment of the tax, continue in full force and effect for a period of 10 years from the date of assessment of the tax without the need for any notice of lien re-filing by the commissioner. Thereafter, any further extension of the lien and any lien re-filing requirements shall be governed by section 50 of chapter 62C as amended by this act.

SECTION 71. Sections 1, 22, 27 and 60 shall take effect on December 1, 2004.

SECTION 72. Sections 14 to 20, inclusive, and sections 23, 24, 43, and 47 shall apply to tax years beginning on or after January 1, 2005.

SECTION 73. Sections 35, 41, 46, and 62 shall apply with respect to income that is recognized on or after July 1, 2004.

SECTION 74. Section 44 shall take effect on October 1, 2004, and shall apply to taxable years ending on or after that date; but, a corporation shall not lose its status as a securities corporation for a taxable year that begins before October 1, 2004 if: (1) the instruments that it holds for the portion of the taxable year ending on September 30, 2004 qualify as securities under section 38B of chapter 63 of the General Laws as it read before the effective date of this act; and (2) the instruments that it holds for the portion of the taxable year beginning on October 1, 2004 qualify as securities under section 38B of chapter 63.

Approved August 9, 2004.

Chapter 263. AN ACT FURTHER REGULATING THE RATES OF PILOTAGE FOR THE PORT OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. Section 31 of chapter 103 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 20, the figure "\$200" and inserting in place thereof the following figure:- \$400.

SECTION 2. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in lines 21 and 45, the figure "\$150" and inserting in place thereof, in each instance, the following figure:- \$400.

SECTION 3. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in lines 26 and 27, the words "one and one-half full pilotage" and inserting in place thereof the following words:- full pilotage from Boston, full pilotage into Quincy.

SECTION 4. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in lines 29 and 35, the figure "\$300" and inserting in place thereof,

in each instance, the following figure: \$400.

SECTION 5. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in lines 38, 40 and 62, the figure "\$50" and inserting in place thereof, in each instance, the following figure:-\$100.

SECTION 6. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in lines 41, 42 and 43, the figure "\$100" and inserting in place thereof, in each instance, the following figure:-\$400.

SECTION 7. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in line 46, the words "one hour" and inserting in place thereof the following words:- 3 hours.

SECTION 8. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in line 47, the word "two" and inserting in place thereof the following figure:- 3.

SECTION 9. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in line 52, the figure "\$100" and inserting in place thereof the following figure:- \$200.

SECTION 10. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in line 55, the figure "\$100" and inserting in place thereof the following figure:-\$350.

SECTION 11. Said section 31 of said chapter 103, as so appearing, is hereby further amended, by striking out, in line 62, the figure "\$25" and inserting in place thereof the following figure:-\$50.

Approved August 9, 2004.

Chapter 264. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN LAND IN THE TOWN OF HOLDEN.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize the division of capital asset management and maintenance to convey certain land in the town of Holden, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance, in consultation with the department of conservation and recreation, is hereby authorized, notwithstanding the provisions of the section 40F and section 40F½ of chapter 7 of the General Laws and any other general or special law or any rule or regulation to the contrary,

to convey, by deed, a certain parcel of land located in the town of Holden to John P. and Janet Foley. The parcel is shown as Parcel A on a plan of land entitled "Plan of Land located on 54 Harris Street, Holden, Massachusetts owned by John and Janet Foley, dated August 19, 2003 drawn by Land Planning, Inc. The plan shall be filed with the registry of deeds before such conveyance is valid. The parcel was originally acquired by the commonwealth for water supply purposes.

SECTION 2. The consideration for the conveyance authorized by this act shall be the full and fair market value of said property based upon an independent professional appraisal as determined by the commissioner of the division of capital asset management and maintenance, but the recipients may convey a watershed preservation restriction and conservation easement on land owned by them located in the town of Holden to the commonwealth to be under the care and control of the department of conservation and recreation in the event that such restriction and easement is of equal or greater value to the parcel received in section 1. The inspector general shall review and approve the appraisal. The inspector general shall prepare a report of his review of the methodology utilized for the appraisal. The inspector general shall prepare a report of his review and file the report with said commissioner for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration in accordance with this act. The commissioner shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereto, submit the agreement or amendment and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments thereto, the reports, and the comments of the inspector general, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to execution. Nothing in this act shall prevent a submission of an appraisal conducted in the 2 years prior to the effective date of this act from being submitted to said commissioner for his approval or the inspector general for his review and comment.

SECTION 3. John P. and Janet Foley shall pay for all costs of the appraisal, survey and deed preparation for the conveyance of the property and buildings thereon authorized by this act and shall acquire the property in its present condition without warranty.

Approved August 9, 2004.

Chapter 265. AN ACT AUTHORIZING THE UNIVERSITY OF MASSACHUSETTS TO CONVEY A CERTAIN PARCEL OF LAND AND BUILDINGS IN THE TOWN OF NANTUCKET TO THE NANTUCKET CONSERVATION FOUNDATION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which

is to authorize forthwith the conveyance of certain real property in the town of Nantucket, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 40F and section 40F ½20f chapter 7 of the General Laws or any other general or special law or rule or regulation to the contrary, the board of trustees of the University of Massachusetts, or any officer designated by the board, may convey to the Nantucket Conservation Foundation, with conditions, a certain parcel of land in the town of Nantucket together with the buildings thereon, now known and numbered as 180 Polpis road, bounded and described below, for conservation purposes.

Parcel I

SOUTHERLY by Polpis Road about twenty-one hundred twenty-five (2125) feet: WESTERLY by Lot F-2 as shown on a plan hereinafter mentioned, being a line in part the middle of a pond; in part the middle line of Fulling Mill Brook; and in part a line between said Brook and low water mark in Nantucket Harbor;

NORTHWESTERLY by said Harbor; and

EASTERLY by land now or formerly of Harriet E. Hollister measuring on the upland about twenty-six hundred forty six (2646) feet.

All of said boundaries, except the water lines, are determined by the land court to be located as shown on plan No. 14311-F, filed with Certificate of Title No. 2689, the same being compiled from a plan drawn by Josiah S. Barrett, Engineer, dated November 2, 1944, and additional information on file in the land registration office, all as modified and approved by the court, and said land is shown as parcel F-1 on said plan.

Said Parcel I is subject to:

- (a) The flow of natural water course running through said land as approximately shown on the aforesaid plan No. 14311-F along said westerly boundary line on said lot F-2;
- (b) Any encumbrance mentioned in Section forty-six of Chapter 185 of the General Laws of the Commonwealth of Massachusetts, and any amendments thereto, which may be subsisting;
- (c) Any and all public rights legally existing in and over said land below mean high water mark.

For grantor's title see certificate of title No. 4808 at the Nantucket registry district.

Parcel II (Vacant Land)

SOUTHERLY AND SOUTHWESTERLY by old Polpis Road about two hundred fifteen (215) feet;

WESTERLY by Lots 5, 4 and 2 as shown on the plan hereinafter mentioned and land now or formerly of Katharine Coe Folger about twelve hundred eighty (1280) feet;

SOUTHERLY, SOUTHWESTERLY, and WESTERLY by the thread of the stream of Fulling Mill Brook;

NORTHERLY by Nantucket Harbor;

EASTERLY by Lot F-1 as shown on said plan about three hundred eighty two (382) feet;

NORTHERLY, NORTHEASTERLY, and EASTERLY by the thread of the stream of Fulling Mill Brook.

All of said boundaries, except the water lines, are determined by the Court to be located as shown on plan numbered 14311-Q drawn by Schofield Brothers, Surveyors, dated January 13, 1965 and filed with the certificate of title No. 5055 at the Nantucket registry district. Said land is shown thereon as Lot 16.

Said Parcel II is subject to:

The easement and right of George Arthur Folger and Katharine Coe Folger, or either of them or of their son, Charles Wesley Folger, also of said Nantucket, for and during their lives and until the death of the last survivor of them, to enter upon and to use all or any part of the granted premises for the purpose of swimming, boating, fishing and gathering quahogs.

For grantor's Title see Certificate of Title No. 5055 at the Nantucket registry district. **SECTION 2**. The consideration for the conveyance authorized by this act shall be the full and fair market value of the property and buildings thereon based upon an independent professional appraisal. The inspector general shall review the appraisal. The inspector general shall prepare a report of his review of the methodology used for the appraisal and file the report with the house and senate committees on ways and means and the chairmen of the joint committee on state administration in accordance with this act. The university shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereof, submit the agreement or amendment and a report thereon to the inspector general for his review and comment. Nothing in this act shall prevent a submission of an appraisal conducted in the 2 years before the effective date of this act from being submitted to the inspector general for his review and comment.

The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. The university shall submit the agreement and any subsequent amendments thereof, the reports, and the comments of the inspector general, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days before execution.

SECTION 3. The proceeds of the conveyance shall be deposited in a trust fund established by the board of trustees of the University of Massachusetts and may be used for endowment purposes and managed as such. The proceeds shall be used to benefit university

programs of study, including but not limited to the establishment of academic chairs and research programs, of benefit to the environment.

SECTION 4. The Nantucket Conservation Foundation shall pay for all costs of the appraisal, survey and deed preparation for the conveyance of the property and buildings thereon authorized by this act and shall acquire the property and buildings thereon in its as is condition without warranty.

SECTION 5. The property described in section 1 shall be held in its predominantly open and natural condition for and in support of educational, research and conservation purposes and for the purposes set forth in the documents conveying the property from the University of Massachusetts to the Nantucket Conservation Foundation. If the property described in section 1 ceases to be used for such purposes, upon notice of the commissioner of capital asset management and maintenance, in consultation with the University of Massachusetts and following 90 days' notice of reversion to the owner of the property, the property shall revert to the University of Massachusetts if such use is not cured within the 90 day notice period.

Approved August 9, 2004.

Chapter 266. AN ACT RELATIVE TO AGRICULTURAL LAND AT DANVERS STATE HOSPITAL.

Be it enacted, etc., as follows:

Chapter 686 of the acts of 1981 is hereby amended by adding the following paragraph:-

Any portion of the agricultural land not being used for farming or agricultural purposes may be leased for recreational purposes to a private person or organization. The lease may not exceed a term of 2 years and shall be approved by the commissioner of the department of agricultural resources. The lease shall provide that the lease shall expire if the land ceases to be used for recreational purposes as specified in the lease.

Approved August 9, 2004.

Chapter 267. AN ACT RELATIVE TO CONSUMER AND MERCHANT PROTECTION.

Be it enacted, etc., as follows:

Section 115A of chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

This section shall not apply to a retail establishment that has a sales volume of less than \$5,000,000 per year of in-store sales.

Approved August 9, 2004.

Chapter 268. AN ACT PROHIBITING CERTAIN PRACTICES IN HOME MORTGAGE LENDING.

Be it enacted, etc., as follows:

SECTION 1. Chapter 183 of the General Laws is hereby amended by inserting after section 28B the following section:-

Section 28C. (a) A lender shall not knowingly make a home loan if the home loan pays off all or part of an existing home loan that was consummated within the prior 60 months or other debt of the borrower, unless the refinancing is in the borrower's interest. The "borrower's interest" standard shall be narrowly construed, and the burden is upon the lender to determine and to demonstrate that the refinancing is in the borrower's interest.

Factors to be considered in determining if the refinancing is in the borrower's interest include but are not limited to:-

- (1) the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;
 - (2) there is a change in the amortization period of the new loan;
 - (3) the borrower receives cash in excess of the costs and fees of refinancing;
 - (4) the borrower's note rate of interest is reduced;
- (5) there is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or
- (6) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.
- (b) Notwithstanding any provision to the contrary contained in this chapter regarding costs and attorneys' fees, in any action instituted by a borrower who alleges that the defendant violated subsection (a), the borrower shall not be entitled to costs and attorneys' fees if the presiding judge, in the judge's discretion, finds that, before the institution of the action by the borrower, the lender made a reasonable offer to cure and that offer was rejected by the borrower.
- (c) The commissioner of banks may prescribe from time to time such rules and regulations as may be necessary or proper in carrying out this section. Such rules and regulations may contain such factors, classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions as, in the judgment of the commissioner, are necessary or proper to carry out this section, to prevent circumvention or evasion thereof or to facilitate compliance therewith.

SECTION 2. Said chapter 183 is hereby further amended by striking out section 56, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 56. Any mortgage note secured by a first lien or second or subsequent lien on a dwelling house of 4 or less separate households or on a residential condominium unit occupied or to be occupied in whole or in part by the mortgagor shall be subject to the condition that if said note is paid before the date fixed for payment, any additional amount required to be paid in that event shall be an amount which shall be the balance of the first year's interest or 3 months' interest whichever is less; except, that if anticipatory payment is made within 36 months from the date of the note for the purpose of refinancing such loan in another financial institution, an additional payment not in excess of 3 months' interest may be required; provided, however, that, with respect to the mortgage loan insured by the Federal Housing Commissioner, the mortgagor may be required to reimburse the mortgagee to the full amount of any charges, premiums, or fees required by any statute or by any regulation of the Federal Housing Administration to be paid by the mortgagee upon payment of the note before the date fixed for payment.

No prepayment fee or additional penalty shall be payable by a mortgagor if the mortgage note is paid in full after 36 months from the date of the note. A mortgagor shall not be required to pay a prepayment fee or penalty for making additional payments toward the principal balance for the term of the loan.

SECTION 3. Said chapter 183 is hereby further amended by striking out section 59, as so appearing, and inserting in place thereof the following section:-

Section 59. A mortgagee, assignee or holder of a mortgage note secured by a first or subordinate lien on a dwelling house of 4 or less separate households or on a residential condominium unit occupied or to be occupied in whole or in part by the mortgagor shall not require the mortgagor to pay a late charge or late payment penalty unless the penalty is specifically authorized in the loan documents.

A mortgagee, assignee or holder of a mortgage note secured by a first or subordinate lien on a dwelling house of 4 or less separate households or on a residential condominium unit occupied or to be occupied in whole or in part by the mortgagor shall not require the mortgagor to pay a penalty or late charge for any payment paid within 15 days or in the case of a bi-weekly mortgage payment, paid within 10 days, from the date the payment is due.

In no event, in assessing a penalty because of the delinquency in making all or any part of a periodic payment under a mortgage note, shall the penalty or late charge exceed 3 per cent of the amount of principal and interest overdue, and in calculating the penalty or late charge, any amount of the periodic payment representing estimated tax payments required by the terms of the mortgage note or deed shall not be included.

A late payment penalty or late charge may not be charged more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for the default. If a late payment fee has been once imposed

with respect to a particular late payment, a fee shall not be imposed with respect to any future payment which would have been timely and sufficient, but for the previous default.

SECTION 4. Section 66 of said chapter 183, as so appearing, is hereby amended by adding the following paragraph:-

A lender shall not finance, directly or indirectly, any credit life, credit disability, credit unemployment insurance, credit property insurance, including debt cancellation or suspension agreements, or any other life or health insurance premium through a home mortgage loan. Premiums on insurance calculated and payable on a monthly basis by the borrower shall not be considered financed by the lender.

NO SECTION 5.

SECTION 6. The General Laws are hereby amended by inserting after chapter 183B the following chapter:-

CHAPTER 183C. PREDATORY HOME LOAN PRACTICES.

Section 1. This chapter may be known and cited as the Predatory Home Loan Practices Act.

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

"Annual percentage rate", the annual percentage rate for a loan calculated according to the Federal Truth In Lending Act (15 U.S.C. 1601 et seq.) and the regulations promulgated thereunder by the Federal Reserve Board or chapter 140D and the regulations promulgated thereunder by the commissioner of banks.

"Benchmark rate", the interest rate which the borrower can reduce by paying bona fide discount points; this rate shall not exceed the weekly average yield of United States Treasury securities having a maturity of 5 years, on the fifteenth day of the month immediately preceding the month in which the loan is made, plus 4 percentage points.

"Bona fide loan discount points", loan discount points which are: (1) knowingly paid by the borrower; (2) paid for the express purpose of lowering the benchmark rate; and (3) in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the benchmark rate.

"Broker", any person who for compensation directly or indirectly solicits, processes, places or negotiates home mortgage loans for others or who closes home mortgage loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of the loans; provided, that broker shall not include a person who is an attorney providing legal services in association with the closing of a home mortgage loan who is not also funding the home loan and is not an affiliate of the lender.

"Commissioner", the commissioner of banks.

"Conventional mortgage rate", the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System,

as published in statistical release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)(1)(i).

"Conventional prepayment penalty", any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law other than this chapter, provided the home loan (1) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than 2 percentage points; and (2) does not permit any prepayment fees or penalties that exceed 2 per cent of the amount prepaid.

"High cost home mortgage loan", a consumer credit transaction that is secured by the borrower's principal dwelling, other than a reverse mortgage transaction, a home mortgage loan that meets 1 of the following conditions:-

- (i) the annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 9 percentage points for subordinate-lien loans, the yield on United States Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; and when calculating the annual percentage rate for adjustable rate loans, the lender shall use the interest rate that would be effective once the introductory rate has expired.
- (ii) Excluding either a conventional prepayment penalty or up to 2 bona fide discount points, the total points and fees exceed the greater of 5 per cent of the total loan amount or \$400; the \$400 figure shall be adjusted annually by the commissioner of banks on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

"Lender", an entity that originated 5 or more home mortgage loans within the past 12 month period or acted as an intermediary between originators and borrowers on 5 or more home mortgage loans within the past 12 month period, provided that lender shall not include a person who is an attorney providing legal services in association with the closing of a home loan who is not also funding the home loan and is not an affiliate of the lender. For the purposes of this chapter, lender shall also mean a broker.

"Obligor", a borrower, co-borrower, cosigner, or guarantor obligated to repay a home mortgage loan.

"Points and fees", (i) items required to be disclosed pursuant to sections 226.4 (a) and 226.4 (b) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(1) and 209 CMR 32.04(2) of the Code of Massachusetts Regulations, as amended from time to time, except interest or the time-price differential; (ii) charges for items listed under sections 226.4 (c) (7) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(3)(g) of the Code of Massachusetts Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge, otherwise, the charges are not included within the meaning of the term "points and fees"; (iii) the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; (iv) all prepayment fees of penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same lender; (v) all compensation paid directly

or indirectly to a mortgage broker, including a broker that originates a home loan in its own name in a table-funded transaction, not otherwise included in clauses (i) or (ii); (vi) the cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor. Points and fees shall not include the following: (1) taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and, (2) fees paid to a person other than a lender or to the mortgage broker for the following: fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed before closing; credit reports; surveys; notary fees; escrow charges so long as not otherwise included under clause (i); title insurance premiums; and fire insurance and flood insurance premiums, if the conditions in sections 226.4 (d) (2) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(4)(b) of the Code of Massachusetts Regulations, as amended from time to time, are met. For open-end loans, the points and fees shall be calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

"Total loan amount", the total amount the consumer will borrow, as reflected by the face amount of the note.

Section 3. A creditor may not make a high-cost home mortgage loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this state, or the regulatory agency which has jurisdiction over the creditor, that the borrower has received counseling on the advisability of the loan transaction. Counseling shall be allowed in whole or in part by telephonic means. The commissioner shall maintain a list of approved counseling programs. A high cost home mortgage loan originated by a lender in violation of this section shall not be enforceable. At or before closing a high cost home mortgage loan, the lender shall obtain evidence that the borrower has completed an approved counseling program.

Section 4. A lender shall not make a high-cost home mortgage loan unless the lender reasonably believes at the time the loan is consummated that 1 or more of the obligors, will be able to make the scheduled payments to repay the home loan based upon a consideration of the obligor's current and expected income, current and expected obligations, employment status, and other financial resources other than the borrower's equity in the dwelling which secures repayment of the loan.

There shall be a presumption that the borrower is able to make the scheduled payments if, at the time the loan is made, and based on the monthly payments as calculated

based on the index plus the margin at the time the loan is made, in the case of loans with lower introductory rates: (1) the borrower's scheduled monthly payments on the loan, including principal, interest, taxes, insurance, and assessments, combined with the scheduled payments for all other debt, do not exceed 50 per cent of the borrowers documented and verified monthly gross income, if the borrower has sufficient residual income as defined in the guidelines established in 38 CFR 36.4337(e) and VA form 26-6393 to pay essential monthly expenses after paying the scheduled monthly payments and any additional debt.

Section 5. A high-cost home mortgage loan shall not contain any provision for prepayment fees or penalties.

Section 6. A high-cost home mortgage loan shall not include the financing of points and fees greater than 5 per cent of the total loan amount or \$800, whichever is greater.

Section 7. A high-cost home mortgage loan shall not contain a provision that increases the interest rate after default. This section shall not apply to interest rate changes in a variable rate loan otherwise consistent with the home loan documents provided that the change in the interest rate is not triggered by the event of default or the acceleration of indebtedness.

Section 8. A high-cost home mortgage loan shall not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

Section 9. A high-cost home mortgage loan shall not contain a demand feature that permits the lender to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

- (1) there is fraud or material misrepresentation by the consumer in connection with the loan that is not induced by the lender, its employees, or agents;
- (2) the consumer fails to meet the repayment terms of the agreement for any outstanding balance and after the consumer has been contacted in writing and afforded a reasonable opportunity to pay the outstanding balance as outlined within the repayment terms of the agreement; or
- (3) there is any bona fide action or inaction by the consumer that adversely and materially affects the lender's security for the loan, or any right of the lender in such security as provided in the loan agreement.

Section 10. A high-cost home mortgage loan shall not contain a payment schedule with regular periodic payments such that the result is an increase in the principal amount.

Section 11. A lender shall not charge a borrower a fee or other charge to modify, renew, extend or amend a high-cost home mortgage loan or to defer a payment due under the terms of a high-cost home mortgage loan.

Section 12. A high-cost home mortgage loan shall not include terms pursuant to which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

Section 13. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high cost home mortgage loan that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in the commonwealth where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

Section 14. A lender shall not pay a contractor under a home improvement contract from the proceeds of a high cost home mortgage loan other than (i) by an instrument payable to the borrower or jointly to the borrower and contractor, or (ii) at the election of the borrower, through a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor before the disbursement of funds.

Section 15. (a) Any person who purchases or is otherwise assigned a high-cost home mortgage loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original lender or broker of the loan; provided that this subsection shall not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

- (1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit its purchase or acceptance of assignment of any high-cost home mortgage loans;
- (2) requires by contract that a seller or assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either (i) the seller or assignor will not sell or assign any high-cost home mortgage loans to the purchaser or assignee or (ii) that the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and
- (3) exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time after the purchase or assignment of the home loans, intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home mortgage loans; provided, however, that reasonable due diligence shall provide for sampling and shall not require loan by loan review.
- (b) Limited to amounts required to reduce or extinguish the borrower's liability under the high-cost home mortgage loan plus amounts required to recover costs, including reasonable attorneys' fees, a borrower acting only in an individual capacity may assert claims that the borrower could assert against a lender of the home loan against any subsequent holder or assignee of the home loan as follows:
- (1) A borrower may bring an original action for a violation of this chapter in connection with the loan within 5 years of the closing of a high-cost home mortgage loan;
- (2) A borrower may, at any time during the term of a high-cost home mortgage loan, employ any defense, claim, counterclaim, including a claim for a violation of this chapter, after an action to collect on the home loan or foreclose on the collateral securing the home

loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default, or in any action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan.

(c) This section shall be effective notwithstanding any other provision of law; provided, that nothing in this section shall be construed to limit the substantive rights, remedies or procedural rights available to a borrower against any lender, assignee or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

Section 16. A lender shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home mortgage loan that refinances all or any portion of the existing loan or debt.

Section 17. (a) This chapter shall apply to any lender who attempts to avoid its application by dividing any loan transaction into separate parts for the purpose of evading this chapter.

(b) A lender making a high-cost home mortgage loan who, when acting in good faith, fails to comply with this chapter, shall not be considered to have violated this chapter if the lender establishes that either: (1) Within 30 days of the loan closing and prior to the institution of any action under this chapter, the lender notifies the borrower of the compliance failure and makes appropriate restitution and whatever adjustments are necessary are made to the loan, at the choice of the borrower, to either: (i) make the high-cost home mortgage loan satisfy the requirements of this chapter or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home mortgage loan; or, (2) the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance procedures reasonably adapted to avoid the errors, and within 60 days after the discovery of the compliance failure and before the institution of any action under this chapter or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made and whatever adjustments are necessary are made to the loan, at the choice of the borrower, to either (i) make the high-cost home mortgage loan satisfy the requirements of this chapter or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home mortgage loan. Examples of a bona fide error may include clerical errors, errors in calculation, computer malfunction and programming, and printing errors. An error in legal judgment with respect to a person's obligation under this chapter shall not be considered a bona fide error.

Section 18. (a) A violation of this chapter shall constitute a violation of chapter 93A.

- (b) An aggrieved borrower or borrowers may bring a civil action for injunctive relief or damages in a court of competent jurisdiction for any violation of this chapter.
- (c) In addition the court shall, as the court may consider appropriate: (1) issue an order or injunction rescinding a home mortgage loan contract which violates this chapter, or barring the lender from collecting under any home mortgage loan which violates this chapter;

- (2) issue an order or injunction barring any judicial or non judicial foreclosure or other lender action under the mortgage or deed of trust securing any home mortgage loan which violates this chapter; (3) issue an order or injunction reforming the terms of the home mortgage loan to conform to this chapter; (4) issue an order or injunction enjoining a lender from engaging in any prohibited conduct; or (5) impose such other relief, including injunctive relief, as the court may consider just and equitable.
- (d) In addition, any lender found to be in violation of this chapter shall be subject to sections 2A and 2D of chapter 167.
- (e) Originating or brokering a home loan that violates a provision of this section shall constitute a violation of this chapter.

Section 19. The commissioner shall promulgate regulations necessary to carry out the provisions of this chapter.

SECTION 7. Section 2 of chapter 255D of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Any person who sells or agrees to sell goods or services or both or merchandise certificates where the sale is secured by a mortgage on real property located in the commonwealth having thereon a dwelling house with accommodations for 4 or less separate households and occupied or to be occupied, in whole or in part, by the obligor on the mortgage debt shall first obtain from the commissioner a license under chapter 255E.

SECTION 8. The third paragraph of section 8 of chapter 255E of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- During the course of such inspection a mortgage lender that has made 50 or more home mortgage loans in the last calendar year shall be examined for its compliance with fair lending laws including but not limited to the requirements of the federal Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and the Predatory Home Loan Practices Act.

SECTION 9. Section 10 of said chapter 255E, as so appearing, is hereby amended by striking out, in line 3, the words "five hundred dollars" and inserting in place thereof the following figure:-\$1,000,- and by adding the following sentence:- The penalty provision of this section shall be in addition to, and not in lieu of, any other law applicable to a licensee or other person for violating section 2 or any rule or regulation made thereunder.

SECTION 10. Said chapter 255E is hereby further amended by adding the following 2 sections:-

Section 11. (a) Whenever the commissioner finds that any licensee or exempt person under section 2 has violated this chapter or any rule or regulation adopted thereunder, or any other law of the commonwealth applicable to the conduct of the business of making or brokering mortgage loans on residential property in the commonwealth, the commissioner may, by order, in addition to any other action authorized under this chapter or any rule or regulation made thereunder, impose a penalty upon the person which shall not exceed \$5,000 for each violation, up to a maximum of \$100,000 for such violation plus the costs of investigation. The commissioner may impose a penalty which shall not exceed \$5,000 for

each violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a licensee or exempt person under section 2, plus the costs of investigation.

- (b) Nothing in this section shall limit the right of any individual or entity who has been injured as a result of any violation of this chapter by a licensee, or any person other than a licensee or exempt person under section 2, to bring an action to recover damages or restitution in a court of competent jurisdiction.
- (c) Any findings or order issued by the commissioner pursuant to this section shall be subject to review as provided in chapter 30A.

Section 12. (a) Whenever the commissioner determines that any person has, directly or indirectly, violated any section of this chapter or any rule or regulation adopted thereunder, applicable to the conduct of the business of making or brokering mortgage loans on residential property in the commonwealth, or any order issued by the commissioner under this chapter or any written agreement entered between the licensee and the commissioner, the commissioner may serve upon that person a written notice of intention:

- (1) to prohibit the person from performing in the capacity of a principal employee on behalf of any licensee for a period of time that the commissioner considers necessary;
- (2) to prohibit the person from applying for or obtaining a license from the commissioner for a period up to 36 months following the effective date of an order issued under subsection (b) or (c); or
- (3) to prohibit the person from any further participation, in any manner, in the conduct of the affairs of a mortgage lender or mortgage broker in Massachusetts or to prohibit the person from being employed by, an agent of, or operating on behalf of a licensee under this chapter or any other business which requires a license from the commissioner.
- (b) A written notice issued under subsection (a) shall contain a written statement of the facts that support the prohibition and shall give notice of an opportunity for a hearing to be held thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon the commissioner of the request for a hearing. If the person fails to submit a request for a hearing within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or by a duly authorized representative, the party shall be considered to have consented to the issuance of an order of prohibition in accordance with the notice.
- (c) In the event of the consent under subsection (b), or if after a hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of prohibition in accordance with subsection (a) as the commissioner finds appropriate.
- (d) An order issued under subsection (b) or (c) shall be effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee or on whose behalf the person is performing. The order shall remain in effect and enforceable until it is modified, terminated, suspended, or set aside by the commissioner or a court of competent jurisdiction.
 - (e) Except as consented to in writing by the commissioner, any person who, pursuant

to an order issued under subsection (b) or (c), has been prohibited from participating in whole or in part in the conduct of the affairs of a mortgage lender or mortgage broker in Massachusetts may not, while the order is in effect, continue or commence to perform in the capacity of a principal employee, or otherwise participate in any manner, if so prohibited by order of the commissioner, in the conduct of the affairs of:-

- (1) any licensee under this chapter;
- (2) any other business which requires a license from the commissioner; or
- (3) any bank, as defined under section 1 of chapter 167 or any subsidiary thereof.

 Approved August 9, 2004.

Chapter 269. AN ACT RELATIVE TO MUNICIPAL LIGHTING PLANT COOPERATIVES.

Be it enacted, etc., as follows:

SECTION 1. Section 47C of chapter 164 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "services", in line 4, the following words:- and cable television services as provided in this section.

SECTION 2. Said section 47C of said chapter 164, as so appearing, is hereby further amended by inserting after the word "regulations", in line 17, the following words:- or the provision of cable television services subject to the same federal and state laws and regulations applicable to municipal lighting plants or other public entities that provide those services.

Approved August 9, 2004.

Chapter 270. AN ACT RELATIVE TO PEDESTRIAN SAFETY AT CROSSWALKS.

Be it enacted, etc., as follows:

SECTION 1. Section 11 of chapter 89 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 8, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 2. Said section 11 of said chapter 89, as so appearing, is hereby further amended by inserting after the word "crosswalk", in line 12, the following words:- while a pedestrian is crossing or.

SECTION 3. Said section 11 of said chapter 89, as amended by section 86 of chapter 46 of the acts of 2003, is hereby further amended by striking out the third paragraph and inserting in place thereof the following 2 paragraphs:-

Whoever violates any provision of this section shall be punished by a fine of not more than \$200.

Whenever a pedestrian is injured by a motor vehicle in a marked crosswalk, the department of state police or the municipal police department with jurisdiction of the street, in consultation with department of state police if deemed appropriate, shall conduct an investigation into the cause of the injury and any violation of this section or other law or ordinance and shall issue the appropriate civil or criminal citation or file an application for the appropriate criminal complaint, if any. This section shall not limit the ability of a district attorney or the attorney general to seek an indictment in connection with the operation of a motor vehicle which causes injury or death and which violates this section.

Approved August 9, 2004.

Chapter 271. AN ACT RELATIVE TO STORAGE OF PERSONAL PROPERTY UPON EXECUTION OF A SUMMARY PROCESS JUDGMENT.

Be it enacted, etc., as follows:

SECTION 1. Section 4 of chapter 105 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

This section shall not apply to property stored pursuant to section 4 of chapter 239. **SECTION 2**. Section 3 of chapter 239 of the General Laws, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The notice shall contain (1) the signature, full name, full business address and business telephone number of the officer; (2) the name of the court and the docket number of the action; (3) a statement that the officer will place any personal property remaining on the premises at the time the execution is levied in storage at a licensed public warehouse, and the full name, full business address, and business telephone number of the warehouse to be used; (4) a statement that the warehouser's storage rates may be ascertained by contacting the commissioner of public safety and the address and telephone number of such agency; (5) a statement that the warehouser may sell at auction any property that is unclaimed after 6 months and may retain that portion of the proceeds necessary to compensate him for any unpaid storage fees accrued as of the date of the auction, except as provided in section 4; and (6) a statement that the defendant should notify the warehouser in writing at the business address listed in the notice of any change in the defendant's mailing address. The notice referred to in this section shall be served in the same manner as the summary process summons and complaint and shall be filed in the court that issued the execution.

The officer shall select the public warehouser identified in the notice described in the preceding paragraph in a manner calculated to ensure that the defendant's personal property will be stored within a reasonable distance of the premises at issue in the summary process

action. The officer shall not select pursuant to this section a warehouser whom the officer knows or reasonably believes to be in violation of any provision of section 4.

SECTION 3. Said chapter 239 is hereby further amended by striking out section 4, as so appearing, and inserting in place thereof the following section:-

Section 4. (a) If an officer, serving an execution issued on a judgment for the plaintiff for possession of land or tenements, removes personal property, belonging to a person other than the plaintiff, from the land or tenements, he shall forthwith cause it to be stored for the benefit of the owners thereof. Such property shall be stored with the licensed public warehouser identified in the notice provided to the defendant pursuant to section 3, except that the officer shall store the property with a warehouser or other storage facility of the defendant's choosing if the defendant notifies the officer of his choice in writing at or before the time of removal of the property. The officer shall file with the court that issued the summary process judgment and provide to the defendant in hand, or if the defendant is not present at the time of execution by receipted mail to the defendant's last and best known address, a receipt containing a description of the goods removed or of the packages containing them, as well as name and signature of the officer.

(b) Any public warehouser who accepts property for storage pursuant to this section: (1) shall be licensed and bonded pursuant to section 1 of chapter 105; (2) shall file its current storage rates with the commissioner of public safety and shall not change such rates more than once annually, unless the commissioner of public safety or his designee gives prior written approval upon a showing of extraordinary circumstances; (3) shall not impose charges for storage under this section in excess of the rates filed with and not rejected by the commissioner of public safety at the time of service of the notice provided for in section 3; (4) shall not impose charges for storage under this section in excess of the fair market rates for storage facilities of similar quality in the warehouse's general locale; (5) shall not impose charges other than those for the actual storage of goods pursuant to this section, including, but not limited to, docking fees, warehouse labor fees, administrative fees, or other similar fees imposed in addition to the storage rates listed with the commissioner of public safety; (6) shall not impose minimum fees or otherwise charge storage fees for any period other than the period of actual storage; (7) shall credit toward the defendant's costs of storage any amount paid by the plaintiff or other third party in connection with the storage of the property in question; (8) shall send by first class mail to the defendant's last and best known address monthly statements of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest pursuant to this section; and (9) shall insure the defendant's property against fire and theft in the amount of no less than \$10,000. A warehouser who accepts goods under this section is liable for any loss or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed or provided in this section, the warehouser is not liable for damages which could not have been avoided by the exercise of such care. No person shall be required to release a warehouser from liability as a condition of release of any stored property.

- (c) The plaintiff in the summary process action shall pay the costs of removing the property to the place of storage. The plaintiff shall be entitled to reimbursement by the defendant for any costs and fees so advanced.
- (d) Upon receipt of personal property under this section, a public warehouser shall forthwith, but no later than 7 days after the removal of the property from the land or tenements at issue in the summary process action, issue a warehouse receipt that complies with the requirements of section 7-202 of chapter 106. Such receipt shall contain as additional terms: (1) a statement that the warehouser may sell any property unclaimed after six months and retain that portion of the proceeds necessary to compensate the warehouser for lawful storage fees actually accrued as of the date of the auction, except as provided in this section; (2) a list of the warehouser's storage rates and a statement that such rates may be verified by contacting the commissioner of public safety, as well as the address and telephone number of such agency; (3) a conspicuous statement that the defendant should notify the warehouser in writing at the business address listed in the notice of any change in the defendant's mailing address; (4) a description of the applicable procedures for reclaiming the stored property, including, but not limited to, a statement that the defendant is entitled to reclaim items of personal or sentimental value but limited auction value once during the period of storage without payment of any fee and that the defendant shall be entitled to purchase individual items at any auction held to enforce the warehouser's lien created under this section and an identification of the publication in which any such auction will be advertised pursuant to subsection (f) of section 7-210 of said chapter 106. A duplicate copy of the warehouse receipt shall be kept on file at the place of storage and the original shall be served by receipted mail or hand delivery to the defendant at his last and best known address. The warehouser shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. A warehouser who fails to comply with the requirements of this subsection shall be liable for damages caused by the omission to a person injured thereby.
- (e) Any warehouser who accepts personal property pursuant to this section shall have a lien thereon for charges for storage, insofar as such charges are imposed in accordance with this section. The lien shall not be enforced by sale or disposal of the property until it has been kept in storage for at least 6 months. Thereafter, the warehouser may enforce the lien in the manner provided for in subsection (2) of section 7-210 of chapter 106, except as otherwise provided in this section. The defendant shall be entitled to postpone the sale or disposal of his property for 3 months upon payment of one half of all storage fees incurred plus costs reasonably incurred in preparation for their sale pursuant to law. The warehouser may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. A warehouser's failure to comply with any of the requirements of this section shall result in the forfeiture of his lien.
 - (f) The defendant may access his stored property once, without charge or payment of

storage fees, either to inspect the property or to remove items having primarily personal or sentimental value, or both. Items having primarily personal or sentimental value, shall include but not be limited to photographs, passports, documents, funeral urns, and the like. All personal property stored under this section may be reclaimed at any time upon payment of all storage fees lawfully owed by the defendant. If the property is sold at auction, the defendant shall be entitled to purchase the property in bloc or in parcels, regardless of the terms of the public sale. The failure of any third party to pay monies owed by him to the warehouser shall not affect the rights of the property owner to reclaim property under this subsection.

- (g) A warehouser who violates this section shall pay a civil penalty of not more than \$5,000, in an amount to be determined by the commissioner of public safety after notice and an opportunity for an adjudicatory hearing under chapter 30A. The commissioner or his or her designee may at any time conduct an inspection of a public warehouse storing goods under this section for the purpose of assessing compliance with applicable health and safety codes and the requirements of this section. The commissioner may reject the rates filed by a warehouser for storage pursuant to this section if the commissioner determines that such rates are not commercially reasonable or otherwise violate this section. The failure of the commissioner to reject a warehouser's rates shall not create a presumption that such rates are commercially reasonable for purposes of liability under chapter 93A or this section.
- (h) Notwithstanding any civil penalty imposed pursuant to subsection (g), the defendant may petition the court in which the summary process action was heard for damages or injunctive relief in connection with any violation of this section. A violation of this section shall also be a violation of section 2 of chapter 93A.

Approved August 9, 2004.

Chapter 272. AN ACT RELEASING CERTAIN LAND IN DEERFIELD FROM THE OPERATION OF AN AGRICULTURAL PRESERVATION RESTRICTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to release certain land from the operation of an agricultural preservation restriction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Under section 40E of chapter 7 and section 32 of chapter 184 of the General Laws, but notwithstanding any other general or special law to the contrary, the commissioner of capital asset management and maintenance, in consultation with the commissioner of agricultural resources may execute a certificate of release of a portion of

the land subject to an agricultural preservation restriction granted by Stephen D. Melnik and William W. Melnik, to the commonwealth covering approximately 12.39 acres in total, dated March 25, 1986, recorded at Book 2049, Page 301, Franklin county registry of deeds, the portion being more particularly described as follows:

A certain parcel of land, with no structures or other improvements thereon, located on the northerly side of Childs Cross road in Deerfield, Franklin county, Massachusetts, shown as "Proposed APR Release 5.59 Acres" on a plan of land entitled: "Plan of Land in Deerfield, Mass., surveyed for William W. and Sharon M. Melnik"; the plan, dated 20 September 2001, to be recorded in the Franklin county registry of deeds.

SECTION 2. The above-described land to be released from the agricultural preservation restriction, a parcel of approximately 5.59 acres, is currently owned by William W. Melnik and Sharon M. Melnik, who have agreed, in consideration of the release of the land, to execute new, current agricultural preservation restrictions and options to purchase at agricultural value running to the commonwealth, to be recorded at the Franklin county registry of deeds. The agricultural preservation restrictions and options shall cover the remaining agricultural preservation restriction land of approximately 6.8 acres and also a 27.8-acre, more or less, parcel of land, as shown on Deerfield Assessor's Plan 3, Lot 71, owned by William W. Melnik and Sharon M. Melnik located off Greenfield Road in Deerfield as described in a deed recorded in the Franklin county registry of deeds, in Book 2321, Page 029 and shall prohibit the construction of future dwellings and grant the commonwealth an option to purchase at agricultural value. In the event that the owner does not execute the new, current agricultural preservation restrictions and options to purchase at agricultural value, the existing agricultural preservation restriction shall be reimposed on the released parcel, unless the said restriction is released or discharged by the commonwealth in its entirety in the interim.

SECTION 3. Except as partially released by this act, the referenced agricultural preservation restriction shall remain in full force and effect.

Approved August 9, 2004.

Chapter 273. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN LAND TO THE CITY OF NORTH ADAMS.

Be it enacted, etc., as follows:

The commissioner of capital asset management and maintenance shall convey, by deed, for nominal consideration, certain parcels of land, located in the city of North Adams that were taken by the commonwealth in connection with a flood control project, to the city of North Adams. The parcels are recorded in the northern district of the Berkshire county registry of deeds as follows:-

Book 491, page 66
Book 511, page 404
Book 524, page 139
Book 526, page 504
Book 538, page 523
Book 518, page 251
Book 532, page 516
Book 541, page 292
Book 535, page 367
Book 528, page 330
Book 539, page 110
Book 541, page 294
Book 529, page 240
Book 527, page 293
Book 529, page 221.

Approved August 9, 2004.

Chapter 274. AN ACT AUTHORIZING THE TOWN OF EDGARTOWN TO ENTER INTO A CERTAIN LEASE.

Be it enacted, etc., as follows:

The town of Edgartown, acting by and through its board of selectmen, may enter into a 99-year lease with a developer of affordable rental housing for town-owned land. The land is shown on a plan of land entitled "Proposed Affordable Rental Housing Site and Access", dated November 17, 2003 and prepared by Vineyard Land Surveying Inc.

Approved August 9, 2004.

Chapter 275. AN ACT AUTHORIZING THE TOWN OF NORTH ANDOVER TO GRANT CERTAIN UTILITY EASEMENTS.

Be it enacted, etc., as follows:

The town of North Andover may grant an easement on 2 parcels of park land to the Massachusetts Electric Company for utility purposes on such terms as the board of selectmen deem to be in the best interest of the town. The parcels are shown on Assessor's Map 59 as Lot 19 and Assessor's Map 96 as Lot 32. The easement is shown on a plan entitled "North Andover OH to UG Commons Project" which is on file in the town clerk's office.

Approved August 9, 2004.

Chapter 276. AN ACT ESTABLISHING A SPINAL CORD INJURY TRUST FUND.

Be it enacted, etc., as follows:

SECTION 1. Section 59 of chapter 10 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "monies", in line 5, the following words:-, except for monies deposited in the Spinal Cord Injury Trust Fund under section 59A.

SECTION 2. Said chapter 10 is hereby amended by inserting after section 59 the following section:-

Section 59A. (a) There is hereby established on the books of the commonwealth a separate trust fund known as the Spinal Cord Injury Trust Fund. The trust fund shall consist of monies paid to the commonwealth on a surcharge of \$50 assessed against any person who seeks reinstatement of his license to operate after the license has been suspended as a result of receiving 3 speeding convictions under section 17 of chapter 90 within any 1-year period or as a result of receiving 5 or more moving violations or surchargeable offenses within any 3-year period. The first \$25 of each surcharge shall be transferred by the registrar of motor vehicles to the state treasurer for deposit into the Spinal Cord Injury Trust Fund. The remaining amount shall be transferred by the registrar to the state treasurer for deposit in the General Fund.

- (b) The state treasurer shall be the custodian of the Spinal Cord Injury Trust Fund and shall receive, deposit, and invest all monies transmitted to him under this section and shall credit interest and earnings on the trust fund to the trust fund. The monies shall be expended for the purpose of medical cure research services for spinal cord injured persons in such manner as the commissioner of public health may direct.
- (c) The commissioner of public health shall appoint an advisory board, consisting of 2 physicians and 1 member of the spinal cord community for the purpose of reviewing proposals for funding research in spinal cord injury and making related recommendations.

SECTION 3. The fifth paragraph of section 20 of chapter 90 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following sentence:- In addition to any reinstatement fee, there shall be a surcharge of \$50, assessed against a person who seeks to have his license reinstated following a revocation or suspension under this paragraph. The first \$25 of each surcharge shall be transferred by the registrar of motor vehicles to the state treasurer for deposit into the Spinal Cord Injury Trust Fund. The remaining amount shall be transferred by the registrar to the state treasurer for deposit in the General Fund.

Approved August 9, 2004.

Chapter 277. AN ACT AUTHORIZING THE TOWN OF SUTTON TO LEASE CERTAIN CONSERVATION LAND.

Be it enacted, etc., as follows:

The town of Sutton may, acting by and through its conservation commission, lease certain conservation land to Waters Farm Preservation, Inc. with improvements thereon and contents thereon for conservation purposes. The lease shall be for a term of 99 years upon such terms and conditions as the commission shall determine to be appropriate. The land was conveyed to the town by deed of Dorothea W. Moran, recorded with the Worcester south district registry of deeds in Book 5619, Page 298 and by deed of Henry G. Van Veen, Executor under the will of Dorothea W. Moran, by power conferred by the Worcester probate court, Docket No. 88P2178EFI, recorded with the Worcester south district registry of deeds in Book 12764, Page 7.

Approved August 9, 2004.

Chapter 278. AN ACT AUTHORIZING THE CITY OF NORTHAMPTON TO CONVEY CERTAIN PARK LAND.

Be it enacted, etc., as follows:

SECTION 1. The city of Northampton may convey a certain parcel of park land located in said city to the commonwealth for the installation of highways. The parcel consist of approximately 172 square feet and is located at the intersection of Bridge road and North Maple street in said city. Consideration paid by the commonwealth to said city for the parcel, shall not be more than the fair market value of the parcel as determined by an independent appraisal.

SECTION 2. The commonwealth shall pay all costs of the conveyance including, but not limited to, preparation of plans and documents recording fees and tax stamps.

SECTION 3. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 279. AN ACT RELATIVE TO THE BUYBACK OF CREDITABLE SERVICE.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of "Board" the following definition:-

"Buyback interest", one-half of actuarial assumed interest.

SECTION 2. Section 3 of said chapter 32, as so appearing, is hereby amended by

inserting after the word "him", in line 93, the following words:- together with buyback interest to the date of reemployment.

SECTION 3. Said section 3 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 334, 342, 344, 406, 472 and 473, 533, 576 and 577, 580, 591, 601, 609 and 610, 612, 768, 781, 790, and 792 and 793, the words "regular interest" and inserting in place thereof the following words:- buyback interest.

SECTION 4. This act shall take effect on July 1, 2005.

Approved August 9, 2004.

Chapter 280. AN ACT RELATIVE TO INTEREST FROM CERTAIN RETIREMENT SYSTEMS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to change interest rates on certain retirement systems, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of "Accumulated additional deductions" the following definition:-

"Accumulated buyback deductions", the sum of the amount of the regular deductions and the buyback interest thereon that would have been credited to a member's account in the annuity savings fund of a system had buyback interest been credited rather than regular interest.

SECTION 2. Section 3 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 408, 474 and 475, and 535, the words "accumulated regular deductions" and inserting in place thereof, in each instance, the following words:- accumulated buyback deductions.

SECTION 3. This act shall take effect on July 1, 2005.

Approved August 9, 2004.

Chapter 281. AN ACT AUTHORIZING THE CITY OF CHICOPEE TO CONVEY CERTAIN PARK LAND LOCATED IN THE CITY OF CHICOPEE.

Be it enacted, etc., as follows:

SECTION 1. The city of Chicopee, acting by and through the city council and with

the approval of the mayor, may convey 2 parcels of land, located in the city, to William L. and Mary Couture and Paul M. and Kathleen Olbrych. Parcel A shall be conveyed to William L. and Mary Couture and Parcel B shall be conveyed to Paul M. and Kathleen Olbrych and their successors.

The parcels are recorded in book 1634, Pages 371 and book 1635, pages 329 through 331 with the Hampden county registry of deeds and are shown as Parcel A and Parcel B on the plan of land entitled "Proposed Partial Abandonment of Szot Park Property 57 & 67 Academy Street" dated May 20, 2003.

The consideration for the conveyances authorized by this act shall be the full and fair market value of the property based upon an independent professional appraisal and shall be paid by the recipients to the city of Chicopee. The proceeds of the conveyances shall be used for conservation or recreation purposes.

SECTION 3. The recipients of the parcels shall pay for all expenses associated with any land survey, appraisal, title examinations, recording fees and any other expenses relating to the conveyances of the parcel, and shall be responsible for all costs, liabilities and expenses of any nature and kind of its ownership. The recipients shall acquire the property in their present condition without warranty.

SECTION 4. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 282. AN ACT AUTHORIZING THE COMMISSIONER OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN LAND TO THE SHREWSBURY HOUSING AUTHORITY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize a conveyance of certain land by the commissioner of capital asset management and maintenance to the Shrewsbury Housing Authority, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance may, notwithstanding section 40F and section 40F ½ of chapter 7 of the General Laws and any other general or special law or rule or regulation to the contrary, convey by deed a certain parcel of conservation land in 3 lots to the Shrewsbury Housing Authority for the purpose of the development of affordable housing for persons eligible for services of the department of mental retardation. The parcels, consisting of 4.32 acres, are shown on a surveying map prepared by Bruce Saluk and Associates of Marlborough and dated May 14, 2004. The plan shall be filed and recorded with the registry of deeds before the conveyance is valid.

SECTION 2. The consideration for the conveyance authorized by this act shall be the full and fair market value of the parcel based upon an independent professional appraisal, taking into consideration the intended use of the land for affordable housing for persons eligible for services of the department of mental retardation as determined by the commissioner of capital asset management and maintenance. The inspector general shall review and approve the appraisal. The inspector general shall prepare a report of his review of the methodology utilized for the appraisal. The inspector general shall prepare a report of his review and file the report with said commissioner for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration.

Said commissioner shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereto, submit the agreement or amendment and a report thereon to the inspector general for his review and comment.

The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. Said commissioner shall submit the agreement and any subsequent amendments thereto, the reports, and the comments of the inspector general to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to execution.

SECTION 3. The Shrewsbury Housing Authority shall pay for all costs of the appraisal, survey and deed preparation for the conveyance of the parcel authorized by this act and shall acquire the property in its present condition without warranty. The deed or other instrument conveying the parcel to the Shrewsbury Housing Authority and any subsequent deed or deeds of all or a portion of the parcel shall, without limitation, provide that if the parcel ceases to be used for the express purposes set forth in section 1, title to the parcel or to the portions of the parcel that are used in violation shall, at the election of the commonwealth, revert to the commonwealth.

Approved August 9, 2004.

Chapter 283. AN ACT AUTHORIZING THE TOWN OF WESTON TO APPROPRIATE MONEY FROM THE COMMUNITY PRESERVATION FUND.

Be it enacted, etc., as follows:

SECTION 1. The general court finds that the town of Weston adopted the Community Preservation Act, in this act called the Act, chapter 44B of the General Laws, sections 3 through 7, inclusive, before November 25, 2002, and could have authorized creation of community housing at the Brook School Apartments pursuant to the Act; however, the town approved the creation of community housing under Article 11 at the November 25, 2002, special town meeting to be funded using federal subsidies which the

town of Weston will not receive as expected due to unanticipated, unusual circumstances resulting from federal budget matters entirely outside the control of the town of Weston.

SECTION 2. Notwithstanding section 6 of chapter 44B of the General Laws or of any other general or special law to the contrary, the town of Weston may, upon recommendation by the Weston Community Preservation Committee, and pursuant to a 2/3 vote of the Weston town meeting, amend the vote under Article 11 of the November 25, 2002 special town meeting, authorizing the construction of affordable housing at the Brook School Apartments, approve the creation of community housing in accordance with the act, and provide that the portion of the appropriation and borrowing authorization attributable to the creation of community housing at the Brook School Apartments be funded through the town's community preservation fund, established pursuant to section 7 of chapter 44B of the General Laws, including the affordable housing reserve. The Weston town meeting may further, upon recommendation by the Weston Community Preservation Committee, appropriate funds for the purpose of paying the debt service on the portion of the bonds issued pursuant to this vote and the vote of the Weston town meeting authorized under this act, for the purpose of creating community housing at the Brook School Apartments. Such funds may be so appropriated and expended only if the town votes to place a permanent deed restriction for affordable housing purposes on 13 units at the Brook School Apartments created for community housing under this act and the vote of the Weston town meeting authorized hereby, which restriction complies with the requirements of chapter 184 of the General Laws. The deed restriction must run to the benefit of a nonprofit, charitable corporation or foundation selected by the town with the right to enforce the restriction.

SECTION 3. If the Weston town meeting votes as authorized herein to approve under the act the creation of affordable housing at the Brook School Apartments, that portion of the unexpended amount of the temporary borrowing incurred pursuant to the vote under Article 11 of the November 25, 2002, Weston special town meeting attributable to the creation of affordable housing at the Brook School Apartments shall be transferred without further appropriation to the Weston community preservation fund, and that portion of any interest earned on the amounts temporarily borrowed under Article 11 of the November 25, 2002, special town meeting, net of interest expense, attributable to the creation of affordable housing at the Brook School Apartments shall be similarly transferred without further appropriation.

SECTION 4. Except as otherwise provided in this act, if the town votes to approve the creation of community housing at the Brook School Apartments under the act as so authorized herein, the community housing created at the Brook School Apartments shall be deemed to be community preservation property, subject to all requirements of the Act; further, any future expenditures from the community preservation fund for the purposes set forth herein shall be subject to the provisions of the Act.

SECTION 5. If this act is not in effect on May 10, 2004, any vote taken under Article 19 of the Weston 2004 Annual Town Meeting warrant to authorize the creation of community housing at the Brook School Apartments, as authorized by section 2 of this act,

shall be ratified, validated and confirmed as if this act had been in effect on the date of the vote.

SECTION 6. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 284. AN ACT AUTHORIZING THE TOWN OF SHARON TO CONVEY CERTAIN CONSERVATION LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Sharon may sell and convey a certain parcel of conservation land located in said town to Sharon Plaza Associates for the consideration of \$30,000 to be used in connection with an existing shopping plaza and parking purposes. The parcel is shown as "Parcel S" on a plan entitled "Quail Ridge, A Cluster Subdivision in Sharon, Mass.," prepared by Norwood Engineering Co., Inc., dated July 1, 1987 and Revised Nov. 16, 1987, Scale 1" = 100', and recorded at the Norfolk registry of deeds as Plan No. 1549 of 1987 in Plan Book No. 363.

SECTION 2. The town of Sharon shall use the proceeds from the conveyance authorized in section 1 for the purchase of a certain parcel land to be used for conservation purposes. The parcel is shown as Lot 1 on a plan entitled "Subdivision Plan of Land in Sharon, Massachusetts," dated August 19, 1983, filed with the Norfolk County, Registry of Deeds on October 25, 1983 as plan no. 872 of 1983 in plan book 305.

SECTION 3. The votes taken at the town meetings held on May 20, 2003 and May 3, 2004 authorizing the conveyance of land authorized in section 1 are hereby ratified, validated and confirmed as if this act had been in effect on the dates of such votes.

SECTION 4. This act shall take effect upon its passage.

Approved August 9, 2004.

Chapter 285. AN ACT DIRECTING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN PARCELS OF LAND IN THE TOWNS OF HOPKINTON AND WESTBOROUGH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to direct the division of capital asset management and maintenance to convey certain parcels of land to the towns of Hopkinton and Westborough, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 40H of chapter 7 of the General Laws to the contrary, the commissioner of capital asset management and maintenance may convey, in consultation with the commissioner of the department of conservation and recreation, to Westborough Hopkinton Street Trust, in this act known as the trust, 2 parcels of state-owned land in the towns of Hopkinton and Westborough and described as follows:-

a certain parcel of land containing 3.67 acres, more or less, located off of Wood street (Route 135) in the town of Hopkinton, which consists of a portion of the land described in a Order of Taking by the Metropolitan Water Supply Board, recorded January 1, 1898, in the Middlesex south district registry of deeds at book 2635, page 1; and

a certain parcel of land containing 2.83 acres, more or less, located off Hopkinton road (Route 135) in the town of Westborough, which consists of a portion of the land described in a Order of Taking by the Metropolitan Water Supply Board, recorded January 1, 1898, in the Worcester district registry of deeds at book 1568, page 3.

These parcels of land are also shown on a plan of land recorded in the Middlesex south district registry of deed at plan book 4, plan 13, sheet 3 and are presently under the care and control of the department of conservation and recreation for conservation and recreational purposes. The parcels of land are shown on a recordable plan of land entitled "Plan of DCR Land for Exchange with the Westborough Hopkinton Street Trust", dated July 1, 2003, and prepared by Guerard Survey & Associates, Inc. at the expense of the trust. The exact boundaries of the parcels shall be determined by the commissioner in consultation with the department of conservation and recreation after completion of a survey.

The 3.67 acre parcel conveyance shall be subject to the establishment of a permanent environmental buffer zone, located and approved by the department of conservation and recreation, by the trust subject to such reasonable terms and conditions as the commissioner of department of conservation and recreation may recommend to the commissioner of capital asset management and maintenance.

The conveyance of any state-owned land shall be subject to annual groundwater and surface water testing within the parcels for a period of time as determined necessary by the department of environmental protection. The department of environmental protection shall make the results of the annual groundwater and surface water testing available to the board of health of the town of Hopkinton or the town of Westborough upon request.

SECTION 2. As consideration for the conveyance of the parcels of land described in section 1, the commissioner of capital asset management and maintenance, on behalf of the department of conservation and recreation, shall receive title to the following parcels of land to be held as conservation land and described as follows:-

Parcel 1 containing 3 acres of land, more or less, located in the town of Westborough, and recorded with the Worcester registry of deeds at book 22343 page 350; and

Parcel 2 containing 18 acres of land, more or less, located in the town of Westborough, and now or formerly recorded with the Worcester registry of deeds at book

5543, page 230.

As further consideration for the conveyance of the parcels of land described in section 1, said commissioner shall receive a conservation restriction on the following parcels of land:-

Parcel A containing 3.07 acres of land, more or less, located in the town of Westborough, which consists of a portion of the land recorded with the Worcester registry of deeds at book 12523, page 190; and

Parcel B containing 8.30 acres of land, more or less, located in the town of Hopkinton, and consists of a portion of the land recorded with the Middlesex South registry of deeds at book 27881, page 219 and shown on a plan of land recorded at plan book 4, plan 13, sheet 3.

The exact boundaries of the parcels shall be determined by the commissioner of capital asset management and maintenance, if required, in consultation with the department of conservation and recreation after completion of a survey.

Said commissioner shall also receive as additional consideration, including, but not limited to, additional interests in such land which have been established and approved by said commissioner to be the difference between the full and fair market value of the parcels of land described in section 1 minus the full and fair market value of the parcels described herein. Notwithstanding any general or special law to the contrary, should the appraised value of parcels described in section 2 be determined to be greater than the appraised value of the parcels described in section 1 the commonwealth shall not be obligated to pay the difference as additional consideration to the trust. The full and fair market value of the parcels described in section 1 and the full and fair market value of the parcels received by commonwealth shall be as determined by an independent appraisal prepared in accordance with the usual and customary professional appraisal practice by a qualified appraiser commissioned by said commissioner.

Said commissioner shall submit said appraisal or appraisals to the inspector general for his review and comment. Said inspector general shall review and approve said appraisal or appraisals, and said review shall include an examination of the methodology utilized for said appraisal or appraisals. Said inspector general shall prepare a report of his review and file said report with said commissioner for submission by said commissioner to the house and senate committees on ways and means and the chairmen of the joint committee on state administration. Said commissioner shall submit copies of said appraisals, and the inspector general's review and approval and comments, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to the execution of said conveyance.

SECTION 3. The trust shall be responsible for all costs associated with any appraisal, survey, deed preparation and plan preparation, or other expenses incurred by the commonwealth relating to the conveyance authorized by section 1 which the commissioner of capital asset management and maintenance deems necessary and appropriate.

SECTION 4. The department of conservation and recreation, the trust, and the towns of Hopkinton and Westborough shall enter into a management and use agreement, which agreement shall, without limitation, specify requirements for annual monitoring, field visits and inspections for environmental impact upon the properties and the area designated by the department of conservation and recreation as an area of critical environmental concern. The management and use agreement shall require an annual report of all field visits, inspections and violations of state and local laws, if any, and recommendations to mitigate such findings and the report shall be filed with the chairmen of the joint committee on state administration and the joint committee on natural resources.

SECTION 5. The conveyances authorized by this act shall in no way interfere with the rights of the commonwealth to enter upon, use, repair, maintain or care for state-owned lands under the care and control of the department of conservation and recreation or any other state agency, nor shall commonwealth or its officers, agents or staff in any event be held liable or responsible for any damage or inconvenience caused thereby.

SECTION 6. Notwithstanding any general or special law to the contrary, the trust shall agree to hold the commonwealth, its agents and staff harmless and indemnified against all claims and demands for injuries or damages to persons, or property arising out of the conveyances authorized by this act.

SECTION 7. At the option of the commissioner of the division of capital asset management and maintenance, in consultation with the commissioner of the department of conservation and recreation, any additional consideration to be paid by the trust may be provided by in-kind contribution, so-called, as may be set forth in a license or management and use agreement between the trust and the department of conservation and recreation. Any monetary consideration paid to the commonwealth for the conveyances authorized by this act shall be deposited into the General Fund.

Approved August 9, 2004.

Chapter 286. AN ACT RELEASING CERTAIN LAND IN THE TOWN OF PLYMOUTH FROM THE OPERATION OF CERTAIN AGRICULTURAL PRESERVATION RESTRICTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to release certain land in the town of Plymouth from the operation of certain agricultural preservation restrictions, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Pursuant to section 40E of chapter 7 and section 32 of chapter 184 of the General Laws, but notwithstanding any other general or special law to the contrary, the commissioner of capital asset management and maintenance, in consultation with the commissioner of agricultural resources may execute certificates of release of 2 agricultural restrictions in the town of Plymouth. The restrictions are as follows:-

- (1) an agricultural preservation restriction held by the department of agricultural resources, recorded with the Plymouth county registry of deeds in Book 5905, Page 150, and encumbering land on Clifford road in the town of Plymouth owned by Nathan N. Withington, Trustee of Whip's Farm Trust, said land being described in a deed recorded with said registry of deeds in Book 19405, Page 272; and
- (2) an agricultural preservation restriction held by the department of agricultural resources, recorded with said registry of deeds in Book 5905, Page 150, and amended by instrument recorded in Book 21466, Page 262, encumbering land on Clifford Road owned by Eel River Watershed Association, Ltd., said land being described in a deed recorded with said registry of deeds in Book 21466, Page 259;

The portions of land to be released for the agricultural preservation restriction being shown as temporary and permanent easement areas on a plan entitled: "Right of Way Plan Clifford Road, Plymouth, Massachusetts," dated October 29, 2001, revised August 20, 2003, and prepared by the department of public works engineering Division of the town of Plymouth, so that the town may acquire permanent and temporary easements for highway and drainage purposes in such easement areas.

Approved August 9, 2004.

Chapter 287. AN ACT RELATIVE TO CERTAIN CONSERVATION LAND IN THE TOWN OF AMHERST.

Be it enacted, etc., as follows:

A certain parcel of land located in the town of Amherst, recorded in the Hampshire county registry of deeds in Book 3018, Page 309 and designated as parcel B, may be used for affordable housing or general municipal purposes.

Approved August 9, 2004.

Chapter 288. AN ACT AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO GRANT A CERTAIN SEWER EASEMENT ALONG ROUTE 1 IN THE TOWNS OF LYNNFIELD AND SAUGUS.

Be it enacted, etc., as follows:

The department of highways shall grant a permit or other type of authorization necessary to allow a landowner in the town of Lynnfield to access land owned by the commonwealth under the control of the department in the area of Route 1 to install a private sewer line connecting the landowner's land to the town of Saugus municipal sewer system; if the town of Saugus board of selectmen have voted to allow the connection. The landowner shall pay all fees and costs associated with the allowed sewer line, including reimbursement to the town of Saugus, the town of Lynnfield and the commonwealth for their directly related costs. The department of highways shall, as part of the permit granting process, specify the conditions for construction, maintenance, repair, including without limitation emergency repair, and replacement of the allowed sewer line.

Approved August 9, 2004.

Chapter 289. AN ACT AUTHORIZING THE DIVISION OF FISHERIES AND WILDLIFE TO TAKE OR ACQUIRE CONSERVATION RESTRICTIONS IN AND TO LANDS OF THE TOWN OF CLINTON.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize the division of fisheries and wildlife to take or acquire conservation restrictions in and to lands of the town of Clinton, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The division of fisheries and wildlife may take, under chapter 79 of the General Laws, 2 parcels of land located in the town of Clinton. The taking shall not be made without the prior written approval of the town of Clinton. The parcels are of vacant land at Mossy Pond in the town of Clinton, as described in a 1980 deed from the trustees of JJMD Realty Trust to John J. Gannon, Jr., David P. Gannon, Jean McNally, and Mary C. Naughton, recorded in the Worcester district registry of deeds in book 7144, page 21 and described in a 1969 deed from Jean McNally to JJMD Realty Trust recorded in Worcester county registry of deeds in Book 5002, Page 567, containing approximately 17 acres.

Following the conveyance of the conservation restrictions described in section 2, the division of fisheries and wildlife, in consultation with the division of capital asset management and maintenance, may convey, for no additional consideration, the fee interest in the above-described parcels to the town of Clinton, under the care and control of its conservation commission, if the division of fisheries and wildlife retains an acceptable and appropriate perpetual conservation restriction in and to the parcels in furtherance of the purposes described in section 3.

SECTION 2. The town of Clinton may convey fee interests, easements or lesser interests in land through conservation restrictions under sections 31 and 32 of chapter 184

of the General Laws in certain lands it owns in the towns of Sterling and Leominster. The land is identified as follows:-

- (a) All of the lands, including lands under water, in the town of Sterling, as described in certain deeds recorded in the Worcester district registry of deeds in book 1129, page 400; book 1129, page 401; book 1123, page 510; book 1123, page 512; book 1134, page 255; book 1138, page 557; book 1157, page 408; book 1158, page 372; book 1165, page 85; book 1199, page 606; book 1208, page 248; book 1209, page 117; book 1209, page 119; book 1209, page 121; book 1209, page 122; book 1260, page 244; book 1269, page 285; book 1269, page 287; book 1275, page 31; book 1275, page 460; book 1285, page 251; book 1285, page 479; book 1630, page 362; book 1397, page 297; book 1399, page 27; book 1424, page 586; book 1424, page 589; book 1437, page 92; book 1480, page 457; book 1480, page 459; book 1481, page 460; book 1589, page 222; book 1684, page 131; book 1684, page 132; book 1771, page 64; book 1887, page 445; book 2013, page 525; book 2026, page 452; book 2078, page 37; book 2277, page 572; book 2416, page 173; book 2450, page 191; book 2517, page 352; book 2587, page 467; book 2644, page 551; book 2644, page 553; meaning to include, although not necessarily covered in its entirety by the above-referenced deeds, Heywood Reservoir, Fitch Reservoir, Lower and Upper Lynde's Reservoir and Spring Reservoir, so-called, and the surrounding watershed lands collectively known as the Wekepeke Watershed Lands.
- (b) All of the lands, including lands under water, in the town of Leominster, as described in certain deeds recorded in the Worcester north district registry of deeds in book 283, page 269; book 436, page 630; book 281, page 7; book 440, page 57; book 440, page 60; meaning to include, although not necessarily covered in its entirety by the above-referenced deeds, Heywood Reservoir, so-called, and the surrounding watershed lands collectively known as the Wekepeke Watershed lands.

SECTION 3. The purpose of these land transfers is to ensure the preservation and protection of wildlife and habitat, and for passive recreation and consistent purposes. The parcels known as the Wekepeke Watershed Lands were taken or acquired by the town of Clinton and used for watershed and water supply purposes. The conservation restrictions authorized herein shall allow for the continuation of such purposes on all or a portion of the parcels, however the conservation restrictions may restrict or regulate, but not unreasonably limit, the acts or uses associated with conducting such purposes. The conservation restrictions, if taken and not otherwise acquired, shall be subject to any easement or lesser interest in land held by any person or governmental agency, except for the town of Clinton, that lawfully exists and that is recorded in the appropriate registry of deeds, unless the division of fisheries and wildlife expressly takes the easement or lesser interest through eminent domain in accordance with said chapter 79.

SECTION 4. The town of Clinton retains the rights to use water in the Wekepeke watershed lands as a potential water supply for the town.

Approved August 9, 2004.

Chapter 290. AN ACT RELATIVE TO LOW INCOME HOUSING TAX CREDITS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith tax credits for certain low income housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The sums set forth in section 2A shall provide for planning and studies, acquisition of land and buildings, and interests therein, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, repair, furnishings and equipment, and related administrative expenses, for the acquisition, construction, renovation, and repair of court facilities owned or to be owned by the commonwealth and said sums shall be in addition to previous appropriations made for the improvement of court facilities, including any amounts appropriated by chapter 203 of the acts of 1988, chapter 227 of the acts of 1995, chapter 88 of the acts of 1997 and chapter 189 of the acts of 1998; provided, however, that priority shall be given to those projects necessary to improve life safety, security, handicapped accessibility and structural integrity of court facilities owned, or to be owned, by the commonwealth; and provided, further, that an amount not to exceed 1 per cent of the funds authorized herein may be expended for the costs of personnel and related administrative expenses which are solely and exclusively related to the projects funded by this authorization and any previous authorizations made for similar purposes.

NO SECTION 2. SECTION 2A.

JUDICIARY.

Trial Court.

0330-2210 For planning, design, development, land acquisition, renovation, repairs and construction of court facilities in the city of Quincy, the city of Salem, the city of Taunton, and the city of Lowell; provided further, that not less than \$20,000,000 be expended on said court facilities in the city of Quincy; provided further that said court facility in Salem shall be known as the J. Michael Ruane Judicial Center, so-called; provided further, that such funds are expended for the construction of a new Taunton District, Probate and Family Court Facility on the site agreed upon, on Court Street directly behind the existing District and Probate Courts, by the Division of Capital Assets Management and the Taunton Courthouse Task Force; provided further, that said court facility in the city of Lowell may be constructed as a design,

build, finance and operate project, so-called, which the Commonwealth may lease from the developer of the project, pursuant to the provisions of section 19 of this act; provided further, that if said Lowell court house project is built as a design, build, finance and operate project, so-called, the division of capital asset management and maintenance shall issue and complete a request for proposals in connection with such project no later than December 31, 2004; provided further, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazard shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to such other alternative means of construction as may be provided for in this item \$220,000,000

SECTION 2E. To provide for a capital outlay program to support housing production for people with disabilities and the modification and preservation of housing for the elderly, the homeless, moderate income citizens of the commonwealth, and people with disabilities, the sums set forth in section 2E for the several purposes and subject to the conditions specified in this act, are hereby made available subject to the laws regulating the disbursement of public funds.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Office of the Secretary.

4000-7997 For a program of loan guarantees or interest subsidies to assist homeowners with blindness or severe physical disabilities in making modifications to their primary residence for the purpose of improved accessibility or to allow such homeowners to live independently in the community; provided, that said secretary shall take all steps necessary to minimize such program's administrative costs; provided further, that such loan guarantees shall be available on the basis of a sliding scale that relates homeowner's income and assets to the cost of home modifications; provided further, that interest subsidies shall be means-tested and may be for zero interest loans pursuant to income standards developed by

said secretary; provided further, that the repayment of any such loans may be delayed until the sale of the principal residence by any such homeowner; provided further, that persons residing in any development covered by section four of chapter 151B of the General Laws shall not be eligible for said program unless the owner can show that the modification is an undue financial burden; provided further, that said secretary shall consult with the Massachusetts commission for the blind and the Massachusetts rehabilitation commission in developing the rules, regulations and guidelines for such program; provided further, that nothing herein shall give rise to enforceable legal rights in any party or an enforceable entitlement to services; provided further, that nothing stated herein shall be construed as giving rise to enforceable legal rights or enforceable entitlement to any services; and provided further, that said secretary shall submit quarterly reports to the house and senate committees on ways and means detailing the status of the program herein established\$25,000,000

4000-8200 For state financial assistance in the form of loans for the development of community-based housing for the mentally ill and mentally retarded; provided, that said loan program shall be administered by the department of housing and community development through contracts with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998; provided, that said loan issuing authorities may develop or finance said community-based housing, or may enter into subcontracts with non-profit organizations established pursuant to chapter 180 of the General Laws or organizations in which such non-profit corporations have a controlling financial or managerial interest; provided, however, that said department shall take due consideration of a balanced geographic plan for such community-based housing when issuing said loans; provided further, that said department shall take due consideration of development of a

balanced range of housing models by prioritizing funds for integrated housing as defined by the appropriate state housing and service agencies including but not limited to; the department of housing and community development, the department of mental health, and the department of mental retardation in consultation with relevant and interested clients. their families, advocates, and other parties as necessary; provided further, that loans issued pursuant to this item shall be subject to the following provisions: (1) said loans shall be limited to not more than 50 per cent of the financing of the total development costs: (2) said loans shall be issued only when any contract or agreement for the use of said property for the purposes of such housing provides for repayment to the commonwealth at the time of disposition of the property an amount equal to the commonwealth's proportional contribution from the Facilities Consolidation Fund to the cost of the development through payments made by the state agency making the contract; (3) said loans shall only be issued when any contract or agreement for the use of said property for the purposes of such community-based housing provides for the recording of a restriction in the registry of deeds or the registry district of the land court of the county in which the affected real property is located, for the benefit of the said departments, running with the land, that the land be used for the purpose of providing community-based housing for eligible individuals as determined by the departments of mental health and mental retardation; provided, that the property shall not be released from such restrictions until the balance of the principal and interest for the loan is repaid in full or until a mortgage foreclosure deed is recorded; (4) said loans shall be issued for a term of up to 30 years during which time repayment may be deferred by the loan issuing authority unless at the end of any fiscal year, cash collections from all sources in connection with a community-based housing project, except for contributions, donations, or grant moneys, exceed 105 per cent of cash expenditures on behalf of said project, including debt service, operating expenses, and capital reserves, in which event such excess cash shall be paid to the commonwealth within 45 days of the end of said fiscal year, payable first to interest due hereunder and thereafter to principal advanced pursuant to said loan, provided, that if on

the date said loans become due and payable to the commonwealth an outstanding balance exists, and if, on such date, the department of housing and community development, in consultation with the executive office of health and human services, determines that there still exists a need for such housing and that there is continued funding available for the provision of services to such development, said department may, by agreement with the owner of the development, extend the loans for such periods, each period not to extend beyond 10 years, as the department determines; provided, however, that the project shall continue to remain affordable housing for the duration of the loan term, as extended, as set forth in the contract or agreement entered into by the department; and provided further, that, in the event that the terms of repayment detailed in this item would cause a project authorized by this item to become ineligible to receive federal funds which would otherwise assist in the development of that project, that commissioner may waive the terms of repayment which would cause the project to become ineligible; (5) interest rates for said loans shall be fixed at a rate, to be determined by the director of the department of housing and community development in consultation with the treasurer of the commonwealth; (6) expenditures from this item shall not be made for the purpose of refinancing outstanding mortgage loans for community-based housing in existence prior to the effective date of this act; (7) community-based housing projects developed pursuant to this act shall not be refinanced during the term of any loan issued pursuant to this item unless and until the balance of the principal and interest for such loan is repaid in full at the time of such refinancing; provided, that said community-based housing projects may be refinanced if such financing would result in a reduction of costs paid by the commonwealth; provided further, that any such refinanced loan shall be due and payable on a date no later than the date on which the original loan was due and payable, except in accordance with subsection (4) of this item, or is necessary to effect extraordinary repairs or maintenance to be approved by the commissioners of mental retardation, or mental health, as appropriate, and the director of the department of housing and community development; (8) not-

withstanding any other general or special law to the contrary, within 120 days after the expiration of affordability restrictions on housing assisted under this section, the department or its assignee, who is a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase any such property at its current appraised value reduced by any remaining obligation of the owner; provided further, that 2 impartial appraisers shall determine, within 60 days after the expiration of said affordability restrictions, the current appraised value in accordance with recognized professional standards; provided further, that 2 professionals in the field of multi-unit residential housing shall select each such appraiser; provided further, that the owner and the department, respectively, shall designate such professionals within 30 days after the expiration of said affordability restrictions; provided further, that if there exists a difference in the valuations provided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property; provided further, that prior to any sale or transfer or other disposition of any such housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase said property; provided further, that the owner shall provide to the department or its assignee written notice by regular and certified mail, return receipt requested, of the owner's intention to sell, transfer or otherwise dispose of the property; provided further, that the department or its assignee shall hold such first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property; provided further, that failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt thereof shall constitute a waiver of such right of first refusal by the department; provided further, that no sale, transfer or other disposition of such land shall be consummated unless and until either said first refusal option

period shall have expired or the owner shall have been notified in writing by the department or assignee in question that said option will not be exercised; provided further, that such option may be exercised only by written notice signed by a designated representative of the department or its assignee. mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period; provided further, that if the first refusal option has been assigned to a qualified developer selected pursuant to the terms of this section under guidelines issued by the department, such written notice shall state the name and address of such developer and the terms and conditions of such assignment; provided further, that an affidavit before a notary public that he has so mailed such notice of intent on behalf of a owner shall conclusively establish the manner and time of the giving of such notice and such an affidavit, and such a notice that the option will not be exercised, shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof and each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates: provided further, that such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of "the keeper of records" for the party in question; provided further, that upon notifying the owner in writing of its intention to pursue its first refusal option during such 120-day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property; provided further, that such time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the

county in which the affected real property is located; provided further, that within a reasonable time after request, the owner shall make available to the department or its assignee any information that is reasonably necessary for the department to exercise its rights; provided further, that the department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided further, that such housing shall remain affordable for not less than 40 years; (9) said loans shall be provided only for projects conforming to the provisions of this act; and (10) said loans shall be issued in accordance with a facilities consolidation plan prepared by the secretary of health and human services, reviewed and approved by the director of housing and community development and filed with the secretary for administration and finance and the house and senate committees on ways and means; provided further, that no expenditures shall be made pursuant to this item without the prior approval of the secretary for administration and finance; provided further, that not more than \$10,000,000 may be expended from this item for a pilot program of community-based housing loans to serve mentally ill homeless individuals in the current or former care of said department of mental health; provided further, that in implementing said pilot program, said department shall take due consideration of a balanced geographic plan when establishing community-based residences; provided further, that said housing services made available pursuant to such loans shall not be construed as a right or an entitlement for any individual or class of persons to the benefits of said pilot program; provided further, that eligibility for said pilot program shall be established by regulations promulgated by the said department; provided further, that the department of housing and community development is hereby authorized and directed to promulgate emergency regulations pursuant to section 2 of chapter 30A of the General Laws for the implementation of this item, consistent with the facilities consolidation plan prepared by the secretary of health and human services and after consultation with said secretary and the commissioner of the division of capital asset management

4000-8201 For state financial assistance in the form of loans for the

development and redevelopment of community-based housing for persons with disabilities who are institutionalized or at risk of being institutionalized, who are not eligible for housing developed pursuant to item 4000-8200 of this act: provided, that said loan program shall be administered by the department of housing and community development through contracts with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998; provided, that said loan issuing authorities may develop or finance said community-based housing, or may enter into subcontracts with non-profit organizations established pursuant to chapter 180 of the General Laws or organizations in which such non-profit corporations have a controlling financial or managerial interest; provided, however, that said department shall take due consideration of a balanced geographic plan for such community-based housing when issuing said loans; provided further, that all housing developed with these funds shall be integrated housing as defined by the appropriate state housing and service agencies including, but not limited to, the department of housing and community development, the department of mental health, and the department of mental retardation in consultation with relevant and interested clients, their families, advocates, and other parties as necessary; provided further, that loans issued pursuant to this item shall be subject to the following provisions: (1) said loans shall be limited to not more than 50 per cent of the financing of the total development costs; (2) said loans shall be issued only when any contract or agreement for the use of said property for the purposes of such housing provides for repayment to the commonwealth at the time of disposition of the property an amount equal to the commonwealth's proportional contribution from this item to the cost of the development through payments made by the state agency making the contract; (3) said loans shall only be

issued when any contract or agreement for the use of said property for the purposes of such community-based housing. provides for the recording of a restriction in the registry of deeds or the registry district of the land court of the county in which the affected real property is located, for the benefit of the said departments, running with the land, that the land be used for the purpose of providing community-based housing for eligible individuals as determined by the Massachusetts rehabilitation commission or other agency of the executive office of health and human services; provided further, that the property shall not be released from such restrictions until the balance of the principal and interest for the loan is repaid in full or until a mortgage foreclosure deed is recorded; (4) said loans shall be issued for a term of up to 30 years during which time repayment may be deferred by the loan issuing authority unless at the end of any fiscal year, cash collections from all sources in connection with a community-based housing project, except for contributions, donations, or grant moneys, exceed 105 per cent of cash expenditures on behalf of said project, including debt service, operating expenses, and capital reserves, in which event such excess cash shall be paid to the commonwealth within 45 days of the end of said fiscal year, payable first to interest due hereunder and thereafter to principal advanced pursuant to said loan; provided further, that if on the date said loans become due and payable to the commonwealth an outstanding balance exists, and if, on such date, the department of housing and community development, in consultation with the executive office of health and human services, determines that there still exists a need for such housing, said department may, by agreement with the owner of the development, extend the loans for such periods, each period not to extend beyond 10 years, as the department determines; provided, however, that the project shall continue to remain affordable housing for the duration of the loan term, as extended, as set forth in the contract or agreement entered into by the department; and provided further, that, in the event that the terms of repayment detailed in this item would cause a project authorized by this item to become ineligible to receive federal funds which would otherwise assist in the development of that project, that commissioner may waive the terms of repayment which would cause the project to become

ineligible; (5) interest rates for said loans shall be fixed at a rate, to be determined by the director of the department of housing and community development in consultation with the treasurer of the commonwealth; (6) expenditures from this item shall not be made for the purpose of refinancing outstanding mortgage loans for community-based housing in existence prior to the effective date of this act; (7) community-based housing projects developed pursuant to this act shall not be refinanced during the term of any loan issued pursuant to this item unless and until the balance of the principal and interest for such loan is repaid in full at the time of such refinancing; provided further, that said communitybased housing projects may be refinanced if such financing would result in a reduction of costs paid by the commonwealth; provided further, that any such refinanced loan shall be due and payable on a date no later than the date on which the original loan was due and payable, except in accordance with subsection (4) of this item, or is necessary to effect extraordinary repairs or maintenance to be approved by the commissioners of the Massachusetts rehabilitation commission or other agency of the executive office of health and human services, as appropriate, and the director of the department of housing and community development; (8) notwithstanding any other general or special law to the contrary, within 120 days after the expiration of affordability restrictions on housing assisted under this section, the department or its assignee, who is a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase any such property at its current appraised value reduced by any remaining obligation of the owner; provided further, that 2 impartial appraisers shall determine, within 60 days after the expiration of said affordability restrictions, the current appraised value in accordance with recognized professional standards; provided further, that 2 professionals in the field of multi-unit residential housing shall select each such appraiser; provided further, that the owner and the department, respectively, shall designate such professionals within 30 days after the expiration of said affordability restrictions; provided further, that if there exists a difference in the valuations pro-

vided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property; provided further, that prior to any sale or transfer or other disposition of any such housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase said property; provided further, that the owner shall provide to the department or its assignee written notice by regular and certified mail, return receipt requested, of the owner's intention to sell, transfer or otherwise dispose of the property; provided further, that the department or its assignee shall hold such first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property; provided further, that failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt thereof shall constitute a waiver of such right of first refusal by the department; provided further, that no sale, transfer or other disposition of such land shall be consummated unless and until either said first refusal option period shall have expired or the owner shall have been notified in writing by the department or assignee in question that said option will not be exercised; provided further, that such option may be exercised only by written notice signed by a designated representative of the department or its assignee. mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period; provided further, that if the first refusal option has been assigned to a qualified developer selected pursuant to the terms of this section under guidelines issued by the department, such written notice shall state the name and address of such developer and the terms and conditions of such assignment; provided further, that an affidavit before a notary public that he has so mailed such notice of intent on behalf of a owner shall conclusively establish the manner and time of the giving of such notice; and such an affidavit, and

such a notice that the option will not be exercised, shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof and each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates; provided further, that such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of "the keeper of records" for the party in question; provided further, that upon notifying the owner in writing of its intention to pursue its first refusal option during such 120-day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property; provided further, that such time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that within a reasonable time after request, the owner shall make available to the department or its assignee any information that is reasonably necessary for the department to exercise its rights; provided further, that the department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided further, that such housing shall remain affordable for not less than 40 years; (9) said loans shall be provided only for projects conforming to the provisions of this act; and (10) said loans shall be issued in accordance with an enhancing community-based services plan prepared by the secretary of health and human services, in consultation with the director of housing and community development and filed with the secretary for administration and finance and the house and senate committees on ways and means; provided, that no expenditures shall be made pursuant to this item without the prior approval of the secretary for administration and finance;

provided further, that the department of housing and community development is hereby authorized and directed to promulgate emergency regulations pursuant to section 2 of chapter 30A of the General Laws for the implementation of this item, consistent with the enhancing community-based services plan prepared by the secretary of health and human services and after consultation with said secretary and the commissioner of the division of capital asset management and maintenance

\$25,000,000

Department of Housing and Community Development.

7004-7013 For the purpose of state financial assistance in the form of grants or loans for the Housing Innovations Fund Program established pursuant to section 5 of chapter 244 of the acts of 2002; provided, that not less than 25 per cent of the amount appropriated in this item shall be used to fund projects which preserve and produce housing for families and individuals with incomes of not more than 30 per cent of the area median income, as defined by the United States Department of Housing and Urban Development; and provided further, that funds from this program may be used to support joint projects proposed by municipalities or housing development agencies and Massachusetts colleges and universities\$50,000,000

SECTION 3. To meet the expenditures necessary to carry out the provisions of section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an amount to be specified by the governor from time to time, not exceeding in the aggregate, the sum of \$220,000,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, Court Improvement Loan, Act of 2004, and shall be issued for such maximum terms of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Bonds and interest thereon issued under the authority of this section shall, notwithstanding any other provision of this act, be general obligations of the commonwealth.

SECTION 4. To meet the expenditures necessary to carry out the provisions of section 2E the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an amount to be specified by the governor from time to time, not exceeding in the aggregate, the sum of \$200,000,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, Housing Production and Modification

Loan, Act of 2004, and shall be issued for such maximum terms of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Bonds and interest thereon issued under the authority of this section shall, notwithstanding any other provision of this act, be general obligations of the commonwealth.

SECTION 5. Section 6I of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 53, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 6. Said section 6I of said chapter 62, as so appearing, is hereby further amended by striking out, in line 54, the figure "2005" and inserting in place thereof the following figure:- 2010.

SECTION 7. Said section 6I of said chapter 62, as so appearing, is hereby further amended by inserting after the word "project", in line 79, the following words:-; provided further, that no credit shall be authorized related to a project that receives state financial assistance authorized under section 7A of chapter 244 of the acts of 2002.

SECTION 8. Said section 6I of chapter 62 is hereby amended by inserting after subsection (h) the following 2 subsections:-

- (i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.
- (j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to:- pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines; by reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity; and any other such methods.

SECTION 9. Section 31H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 55, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 10. Said section 31H of said chapter 63, as so appearing, is hereby further amended by striking out, in line 56, the figure "2005" and inserting in place thereof the following figure:- 2010.

SECTION 11. Said section 31H of said chapter 63, as so appearing, is hereby further amended by inserting after the word "project", in line 81, the following words:-; pro-

vided further, that no credit shall be authorized related to a project that receives state financial assistance authorized under section 7A of chapter 244 of the acts of 2002.

SECTION 12. Said section 31H of chapter 63 is hereby amended by inserting after subsection (h) the following 2 subsections:-

- (i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.
- (j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to; pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines and reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.

SECTION 13. Section 2 of chapter 244 of the acts of 2002 is amended by striking out item 7004-7012 and inserting the following item:-

7004-7012 For the purpose of state financial assistance in the form of community development action grants to be awarded pursuant to section 57A of chapter 121B of the General Laws; provided, that notwithstanding the provisions of section 57A of chapter 121B, any eligible city or town may designate a community development corporation organized in accordance with the provisions of chapter 40F of the General Laws to act on their behalf; provided, further, that not less than \$2,000,000 of the amount authorized for expenditure in this item shall be used for projects in seriously distressed areas having a significant amount of vacant land or buildings, as defined by the department; provided, further, that the projects funded from this item shall be consistent with the principles of smart growth, so-called, as defined by the department \$25,000,000

SECTION 14. Said section 2 of said chapter 244 is hereby further amended by inserting after item 7004-7016 the following item:-

7004-7017 For the purpose of financing construction and preservation of affordable housing in the commonwealth in projects eligible for funding under the state low-income housing tax credit program established by section 6I of chapter 62 and section 31H of chapter 63 of the General Laws, as provided in section 7A of this act; provided, that the department of housing and

community development may expend an amount not to exceed 2 per cent of these authorizations for administrative costs directly attributable to the purposes of this section, including costs of clerical and support personnel; provided the director of the department shall file an annual spending plan with the fiscal affairs division and the house and senate committees on ways and means detailing, by subsidiary, all personnel costs and administrative costs charged to expenditures made pursuant to this section; provided further, that bonds or notes issued to meet expenditures authorized by this item shall, notwithstanding other provisions of this act, be

for a term not to exceed 5 years\$100,000,000

SECTION 15. Section 3 of said chapter 244 is hereby amended by striking out the figure "\$508,500,000" and inserting in place thereof the following figure: \$608,500,000.

SECTION 16. The second sentence of section 4 of said chapter 244 is hereby amended by inserting after the words "June 30, 2008" the following words:-, except for notes issued to meet expenditures authorized by item 7004-7017 in section 2, which notes shall have final maturities not later than June 30, 2011.

SECTION 17. Section 6 of said chapter 244 is amended by inserting after the seventh paragraph the following paragraph:-

Notwithstanding the restrictions described in this section, funds provided for the Housing Stabilization and Investment Program may be used for the purposes of the Soft Second Mortgage program described in item 3322-8880 of section 2 of chapter 110 of the acts of 1993.

SECTION 18. Said chapter 244 is hereby further amended by inserting after section 7 thereof the following 2 sections:-

Section 7A. The department of housing and community development may enter into contracts for state financial assistance in the form of grants or deferred payment, below market interest rate loans, from the commonwealth, acting by and through the department of housing and community development for projects eligible for funding through the state low-income housing tax credit established by section 6I of chapter 62 and section 31H of chapter 63 of the General Laws. Assistance provided under this section shall not exceed assistance that is otherwise available pursuant to the state low-income housing tax credit program. Assistance for a project shall be in an amount not to exceed the amount that the department determines is equivalent to the equity yield of the maximum state low-income housing tax credit allocable to the project under department guidelines. The proportion of housing units to be subject to affordability restrictions, the term of affordability, and the eligibility of occupants in the affordable units shall, to the extent practicable, be consistent with the requirements for projects assisted through the state low-income housing tax credit program pursuant to section 6I of chapter 62 or section 31H of chapter 63 of the General Laws. The department shall use such instruments as are necessary to enforce the require-

ments of this section, including, but not limited to affordability restrictions, mortgages, and regulatory agreements. If, on the date such loans become due and payable to the commonwealth, an outstanding balance exists, such loans may be extended for such periods, each period not to extend beyond 10 years, as the department determines, provided that the project continues to remain affordable housing as set forth in the contract or agreement entered into for the duration of the project by the department. In the event that the terms of repayment detailed in this section would cause a project authorized by this section to become ineligible to receive federal funds that would otherwise assist in the development of that project, the department may waive the terms of repayment that would cause the project to become ineligible. On or before January 1, 2005 the department shall promulgate regulations and guidelines in consultation with the advisory committee established in section 7B necessary to effectuate the purposes of this section. The initial contracts for state financial assistance shall be announced on or before June 1, 2005.

Section 7B. There shall be an advisory committee to make policy recommendations to the department regarding the programs, funding activities and assistance provided for in section 7A and to make recommendations regarding the cost effectiveness of the Massachusetts state low income housing tax credit program to maximize the number of affordable housing units financed through such program including but not limited to:attracting new investors to such program; seeking favorable internal revenue opinions regarding such program; and making recommendations for improvements to such program, including an alternative of a taxpayer electing to receive the credit in the form of a loan generated by transferring the credit to a designated state entity. The committee shall be composed of the following 7 members:- the director of the department of housing and community development or his designee; the commissioner of the department of revenue or his designee; the secretary of the executive office for administration and finance or his designee; the executive director of the Massachusetts Housing Finance Agency or his designee; the executive director of the Massachusetts Housing Partnership Fund or his designee; and a representative appointed by each of the following organizations: the Citizens' Housing and Planning Association, Inc. and the Massachusetts Housing Investment Corporation. Committee members shall serve at the pleasure of the appointing authorities. Chapter 268A of the General Laws shall apply to committee members as special state employees. The department may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any person in which any committee member is in any way interested or involved, if the interest or involvement is disclosed in advance to the members of the committee and recorded in the minutes of the committee meeting. A committee member having an interest or involvement shall not participate in an action of the committee relating to that person. Employment by the commonwealth or service in any agency thereof shall not be considered to be such an interest or involvement. Such advisory committee shall report its findings and recommendations to the department on or before January 1, 2006.

SECTION 19. (1) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Division", the division of capital asset management and maintenance.

"Developer", the private entity selected to design, build, maintain, and operate the new Lowell district court facility in the city of Lowell.

"Development Agreement", the agreement entered into between the developer and the Division, pursuant to subsection (4).

"Project", the study, planning, design, construction, reconstruction, operation, and maintenance, including capital maintenance, of a new Lowell district court facility in the city of Lowell in accordance with the terms of the agreement described in subsection (4).

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

- (2) Notwithstanding chapters 30, 30B and 149 of the General Laws or any other general or special law to the contrary, the commissioner may solicit proposals from, and negotiate and authorize the division to enter into a development agreement with, a developer to undertake, as appropriate, all or a portion of the project using, in whole or in part, private sources of financing.
- (3)(a) The commissioner shall develop and publicly advertise a request for qualifications setting forth criteria for pre-qualification of developers, including minimum levels of experience, financial capability, bonding capacity and such other criteria as are deemed appropriate by the commissioner. The commissioner or his designee may consult with legal, financial, technical and other experts within and outside state government in the pre-qualification of developers. The commissioner shall also consult with the secretary of administration and finance in the development of a request for qualifications and with respect to the financial capacity of the respondents to such request for qualifications before determining which respondents are qualified. The commissioner shall, within 45 days after the effective date of this section, select a minimum of 3 developers, those which he has determined to be the most qualified, based on their abilities to finance, design, and construct the project.

Any selection made in response to a request for qualifications issued by the commissioner before the effective date of this act is hereby authorized and ratified if the request for qualifications is in a form that is consistent with the provisions of this section.

(b) The commissioner shall develop and publicly advertise a request for proposals setting forth criteria of the qualified developers to undertake the project. The commissioner or his designee may consult with legal, financial, technical and other experts within and outside state government in the development of the request for proposals, the selection of a developer and the negotiation of a development agreement. The commissioner shall not select a developer in accordance with the provisions of this section without the written concurrence of the secretary of administration and finance that the selected developer and its proposal have appropriate financial characteristics and provisions.

The commissioner shall, within 30 days after the designation of the selected qualified developers, furnish each qualified developer, as determined in paragraph (a), with a request

for proposals setting forth the minimum criteria for the project. Each such developer may then submit to the commissioner, on or before the time and date specified in the request for proposals which shall be within 90 days of the issuance of the requests, a proposal in the format specified by the commissioner. The commissioner may waive any informalities in such proposals and reject any or all proposals if, in his sole discretion, such a rejection would be in the public interest. All proposals shall be reviewed in private and no proposal or any information contained therein shall be released to a third party other than as specified herein nor to execution of the development agreement in accordance with the provisions of this section, nor shall any such proposal be deemed to be a public record until such development agreement is executed.

Each proposal shall be evaluated by criteria determined by the commissioner and set forth in the request for proposals including, but not limited to, the proposed cost of the project and the financial benefit to the commonwealth, the reputation, industry experience and financial capacity of the developer, the proposed design of the facility, the time schedule proposed for completion of the project, local citizen and government concerns, environmental concerns relative to the project, benefits to the traveling public, the developer's ability to ensure labor harmony during the length of the project and such other criteria as the commissioner deems appropriate. The commissioner may request oral presentations by such developers, as he deems necessary for understanding, clarifying and improving the terms contained in any such proposals. An oral presentation shall include a written component, including minutes of the meeting in which the presentation took place, which shall be made public after the execution of the development agreement. commissioner shall, within 60 days of the receipt of proposals from the qualified developers; select the developer that he determines best meets the selection criteria for the benefit of the commonwealth. Within 5 days of the selection of the developer, the commissioner shall notify the joint committee on state administration of his choice. Within 15 days of that notification, the commissioner and the selected developer shall make a presentation of the details of the development agreement to the joint committee on state administration. Any of the deadlines contained in this section may be extended up to 60 days, in 15-day increments, upon the provision of written notice by the commissioner to the joint committee on state administration.

If the commissioner selects a developer that did not submit the proposal offering the lowest overall cost, the commissioner shall explain the reason for the selection in writing to the joint committee on state administration not later than 5 days before the execution of the development agreement.

- (4) The commissioner may enter into a binding development agreement with the selected developer, which development agreement shall:-
 - (a) provide for the design and construction of the project;
- (b) specify a design and construction schedule with project milestones and an enforceable project completion date, subject to delays beyond the control of the developer;

- (c) specify the cost of the project, as an aggregate total and separated into cost for each identified project segment, with maintenance costs annualized and separated from the cost of construction;
- (d) provide for a lease of the facility to the developer or a lease of the facility back to the division for a term not to exceed 30 years upon the completion and final acceptance of the project, but the developer shall retain the primary responsibility for all reconstruction, capital maintenance and operational maintenance work, if any, to be performed during the lease period. If the developer proposes that a third party perform any such work on its behalf, then the third party shall be approved in advance by the commissioner;
- (e) establish a schedule for annualized, periodic or other payments by the division to reimburse the developer's capital outlay costs for the project, including interest expense, the costs associated with operations, maintenance and administration of the facility, payments made to the division for the costs of project oversight, technical and other services and establishment of a fund to assure the adequacy of maintenance expenditures but all payments made shall be in accordance with obligations established in the development agreement;
- (f) describe the procedures to be utilized in the completion of design and construction of the project;
- (g) outline the responsibilities of the division and the developer in obtaining any remaining environmental permits or approvals;
- (h) require that the developer secure and maintain bonding and liability insurance coverage in amounts appropriate to protect the project's viability in accordance with subsection 7;
- (i) describe the method of financing for the project, including the developer's plans for issuing bonds on a tax-exempt basis;
- (j) set forth the commitments of the commonwealth necessary to secure the project's financing consistent with paragraph (b) of subsection (10);
- (k) set forth the guarantee of performance and security to be provided by the developer;
- (l) specify the claims process to be utilized in the event of unforeseen circumstances during project design or construction and provide for the reimbursement to the developer for reasonable costs and expenses incurred in developing the design of the project and the construction cost estimate and in the financing of the project should the commonwealth, for any reason, determine to terminate the agreement;
- (m) clarify the responsibilities of the division and developer in responding to hazardous materials on the development site;
- (n) designate responsibility for operation and maintenance of the facility before, during and after project construction;
- (o) provide that the division's construction inspections shall be conducted by personnel employed directly and on a full-time basis by the division; and
- (5) The division may enter into the development agreement. If 1 or more of the following conditions are met, the commissioner shall submit detailed project information and

analysis to the joint committee on state administration, which will hold a public meeting to discuss the information provided by the commissioner. The committee may call before it any party to the development agreement. The information provided by the commissioner shall contain a detailed explanation for the occurrence of such condition or conditions and identifying terms and conditions for inclusion in the development agreement to address such condition or conditions:

- (i) the total cost of the project, as anticipated in clause (c) of subsection 4, excluding ongoing maintenance expenses and interest payments, shall not be more than \$85 million, and the developer shall be responsible for any costs in excess of such amount;
 - (ii) the selected developer plans to issue non-tax-exempt bonds;
- (6) Agreements with the developer shall contain minority and women business enterprise or disadvantaged business enterprise goals and minority and women work force goals as specified by the commissioner in accordance with state and federal law.
- (7) An agreement with a developer shall require the developer's prime contractor to obtain a labor and material payment bond, in accordance with section 29 of chapter 149 of the General Laws, covering all construction, reconstruction, or maintenance, including capital maintenance, work of the project and shall require the payment of prevailing wages for labor performed on the project in accordance with sections 26 to 27H, inclusive, of said chapter 149.
- (8) Notwithstanding chapters 7, 30, and 149 of the General Laws or any other general or special law to the contrary regarding procurement practices, the developer shall, in its sole discretion and in accordance with its own procurement practices and sound business judgment, determine the qualifications and selection of its own consultants, engineers, designers, architects, lawyers, contractors, investment bankers, materials suppliers and other persons or entities employed in connection with the project. The developer shall remain subject to all applicable anti-discrimination laws including, but not limited to, chapter 151B of the General Laws.
- (9)(a) The plans and specifications for the project shall be approved by the commissioner and the chief justice for administration and management of the trial court.
- (b) The development agreement shall provide that, upon return of operation and control of the facility to the division, the facility shall be in good repair in accordance with appropriate division standards as shall be set forth by the division in writing and incorporated by reference in the development agreement prior to the commencement of the construction of the project. The division shall also set forth the guidelines and standards to which the developer shall periodically maintain the facility and shall require the developer to repair the facility if the facility is found not to be in accordance with such maintenance standards, as shall be indicated by the commissioner in writing.
- (c) The division may exercise, on its own behalf and on behalf of the developer, any power possessed by it to facilitate the development, construction, financing, operation and maintenance of the facility. For the purpose of facilitating the project or to assist the developer in the financing, development, construction, maintenance or operation of the facility,

the development agreement may include provisions for the division to lease the facility to the developer or back from the developer or both; to exercise the power of eminent domain; to grant development rights and opportunities to the developer and third parties; to grant necessary easements and rights of access to the developer and third parties; to issue permits and other authorizations; to provide remedies in the event of default of either of the parties; to grant contractual and real property rights to the developer and third parties and to exercise any other power deemed necessary by the parties. Any person damaged in his property by the exercise of any of the powers granted by this section may recover damages under chapter 79 of the General Laws against the commonwealth with respect to said powers exercised by the division. Nothing in this section shall be construed in a manner that would allow the division or the developer the ability to override any local zoning or land use law, ordinance or regulation.

- (10)(a) In order to facilitate project financing, the selected developer may form a special purpose entity and the commissioner may enter into agreements with such entity to effectuate the purposes described in this section.
- (b) Revenue bonds, interim receipts, temporary bonds, revenue refunding bonds or other types of indebtedness necessary to finance the design, construction, maintenance and operation of the facility shall not be deemed to constitute a debt of the commonwealth or any political subdivision thereof or a pledge of the faith and credit of the commonwealth or any such political subdivision. All bonds and interim receipts shall contain on the face thereof a statement to the effect that neither the commonwealth nor any political subdivision thereof shall be obligated to pay the same or the interest thereon except from revenues generated by the facility, or from other federal, state or local resources specifically made available therefore, and that neither the faith and credit nor the taxing power of the commonwealth or any political subdivision thereof is pledged to the payment of the principal of or interest on the bonds and interim receipts.
- (11)(a) While the developer has operation and control of the facility in accordance with the terms of the development agreement, the developer shall be liable to the same extent and with the same limitations as would be the commonwealth to any person sustaining bodily injury or damage to his property by reason of a defect or want of repair therein or thereupon as though the facility were a facility operated by the commonwealth, and the developer shall be liable for the death of any person caused by such defect or want of repair to the same extent and with the same limitations as would be the commonwealth in accordance with the provisions of chapter 258 of the General Laws. The commonwealth shall not be liable for injury, damage or death sustained by any person due to defect or want of repair therein or thereupon sustained during the operation of the facility by the developer. Any notice of such injury, damage or death required by law shall be given to the registered agent of the developer and to the commissioner, but claims instituted pursuant to section 4 of said chapter 258 shall be presented to the commissioner. Upon receipt by the commissioner of any such notice, the commissioner shall promptly notify the registered agent of the registered agent.

- (b) While the developer has operation and control of the facility in accordance with the terms of the development agreement, the developer shall be liable to the same extent and with the same limitations as would be the commonwealth in accordance with the provisions of chapter 258 of the General Laws, as if the facility were a facility operated by the commonwealth. The commonwealth shall not be liable for injury, damage or death sustained by any person during the operation of the facility by the developer, nor for any injury, damage or death caused by the negligence of the developer. Any notice of such injury, damage or death required by law shall be given to the registered agent of the developer and to the commissioner, but claims instituted pursuant to section 4 of said chapter 258 shall be presented to the commissioner. Upon receipt by the commissioner of any such notice, the commissioner shall promptly notify the registered agent of the notice and shall promptly notify the person giving notice of the name and address of the registered agent.
- (12) This section shall be specific to the Lowell trial court facility. Within 3 months of completion of construction of the project, the commissioner shall file a report with the house and senate committees on ways and means, the joint committee on state administration and the clerks of the house and senate. Said report shall detail the actual costs incurred by the developer in the design and construction stages of the project and the aggregate cost expected to be incurred by the division, broken down into annual amounts for each year covered under the development agreement, including any anticipated costs for annual maintenance. If actual yearly costs differ from those contained in the report, the commissioner shall submit a written explanation for the difference in his annual budget request to the house and senate committees on ways and means. The report shall also include an analysis comparing the aggregate cost with the expenses the division would have incurred under a traditional design-bid-build approach.

The commissioner shall include in the report a recommendation of whether it would be beneficial for the commonwealth to utilize the construction approach authorized in this section in conjunction with other large construction projects. If the recommendation is positive, the report shall include a comprehensive list of criteria that other projects should meet in order to access this method, and a detailed list of lessons learned on this project that can be incorporated into future projects. No further projects may be undertaken utilizing the method authorized in this section unless and until the commissioner has filed the report required by this section and has received legislative authorization to expand this approach to other projects.

Throughout the duration of the project, from the execution of the development agreement to the completion of the lease, the joint committee on state administration may call, at its discretion and upon a 14-day notice, a public hearing on the status of the project and at that time request the attendance of such witnesses as are appropriate to the subject of said hearing.

SECTION 20. Any funds expended by the Trial Court for the construction of a permanent or temporary courthouse in Hampshire county shall be for the construction or rent of that courthouse in the town of Belchertown, and no funds shall be expended by the Trial

Court for the construction or rent of a courthouse in Hampshire county unless the site for the courthouse is located in the town of Belchertown.

This bill was returned on August 10, 2004, by the Governor to the House of Representatives, the branch in which said bill originated, with His objections in writing to the following items therein:

Items Disapproved: SECTION 20.

SECTION 2E *Items disapproved by striking the wording:*

Item Wording Stricken

"with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts

of 1998"

"with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998"

The remainder of this bill was approved by the Governor on August 10, 2004 at five o'clock and zero minutes, P.M.

Chapter 291. AN ACT MODERNIZING THE TRANSPORTATION SYSTEM OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an accelerated transportation development and improvement program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. To provide for a program of transportation development and improvements, the sums set forth in sections 2 to 2K, inclusive, for the several purposes and

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subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds and approval thereof. **SECTION 2.**

EXECUTIVE OFFICE OF TRANSPORTATION

Department of Highways.

6033-0415 For projects on the interstate federal aid highway system; provided, that funds may be expended for the costs of such projects including, but not limited to, the nonparticipating portions of such projects and the costs of engineering and other services essential to such projects rendered by department of highways' employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of such employees to the extent that they work on or in support of such projects; provided further, that, notwithstanding any general or special law to the contrary, including any other provision of this act, to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds pursuant to the authority granted under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the federal commitment to fund such obligation; and provided further, that the department shall only enter into obligations for those projects pursuant to this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for such use by the general court for the class and category of project for which

6033-0416 For federal aid projects and for nonparticipating portions of such projects; provided, that notwithstanding any general or special law to the contrary, including other provisions of this act, the department of highways shall not enter into any obligations for projects which are eligible to receive federal funds pursuant to this act unless state matching funds exist which have been specifically authorized and are sufficient to fund the corresponding state portion of the federal commitment to fund such obligation; provided further, the department shall only enter into obligations for those projects pursuant to this act based upon the prior or anticipated future commitment of fed-

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eral funds and the availability of corresponding state funding authorized and appropriated for such use by the general court for the class and category of project for which such obligation applies; provided further, that notwithstanding any general or special law or administrative bulletin to the contrary, the department shall not pay any fees charged for the leasing or maintenance of vehicles to the operational services division within the executive office for administration and finance: provided further, that expenditures from this item may include the costs of engineering and other services essential to such projects rendered by department employees or by consultants: and provided further, that amounts expended for department employees may include salary and salary-related expenses of such a employees to the extent that they work on or in support of such projects\$325,000,000

SECTION 2A.

EXECUTIVE OFFICE OF TRANSPORTATION.

Department of Highways.

6033-0417 For the design, construction, and repair of or improvements to non-federally-aided roadway projects and for the nonparticipating portion of federally aided projects; provided, that the costs of professional personnel directly and exclusively involved in the construction, planning, engineering and design of the projects funded herein may be charged to this item; provided further, that said costs shall not be classified as administrative costs; and provided further, that an amount not to exceed 2 per cent of the amount authorized herein may be expended for the administrative costs directly attributable to the programs funded herein; provided further, that the department of highways shall be instructed to erect new signage for exit 24C on I-495 north and south and said new signage shall read "Exit 24C Simarano Dr. via the Joseph A. Ferrechia Connector Road"; provided further, that the department shall construct a sound barrier in the Glen Avenue neighborhood in Fitchburg; provided further, that funds shall be expended for the design and reconstruction costs of Elm Street from Union Square to route 101 in Gardner; provided further, that funds shall be expended for the purpose of repaving the parking lot of the Gardner Area Association of Mental Health Association located at 208 Coleman Street in Gardner; provided further, that funds shall be expended for the instal-

lation of a blinking light at the intersection of route 140 and Matthews Street in Gardner; provided further, that funds shall be expended for the development of a master traffic study plan in the city of Leominster; provided further, that funds shall be expended for the reconstruction and repaving of route 12 from Union Street in Leominster to the Sterling line; provided further, that funds shall be expended to study the transportation needs of the north central Massachusetts region and for the production of a formal presentation of those needs; provided further, that the bicycle program within the executive office of transportation, in collaboration with the official sponsor of the event, state, regional and local agencies and cities and towns, shall so accept the established bicycle route of the Pan Mass Chal-lenge, so-called, and shall so designate and mark the bicycle route by means of signs bearing the official logo of the event; provided further, that funds shall be expended for the design and reconstruction of the Main Street Bridge over the Powow River in the town of Amesbury; provided further, that \$5,000,000 shall be expended for the relocation of the Amesbury department of public works barn in the town of Amesbury to the site formerly known as Microfab; provided further, that \$800,000 shall be expended for the Riverwalk connection to downtown Main Street in the town of Amesbury; provided further, that not less than \$1,700,000 shall be expended for the completion of the south pier project on central wharf in the city of Boston, including the construction of a pile-supported structure for water vessels in order to enhance intermodal public transportation in Boston Harbor; provided further, that the secretary shall grant funds for purposes of public works economic development of not less than \$500,000 to enable the Cambridge Redevelopment Authority to conduct an urban design and planning study for the Volpe Center site in the city of Cambridge and that not less than \$650,000 shall be expended for the same purposes for the Cambridge Redevelopment Authority to construct sidewalk upgrades and pedestrian access at Parcel 1 of the Kendall Square Urban Renewal area; provided further, that funds shall be expended for the acquisition of land for increased parking in Groveland Square; provided further, that funds shall be expended for the installation of jersey barriers or guard rails on route 110 at Northern Essex Community College (exit 52) in Haverhill, on

route 110 at Amesbury Line Road on way to Whittier Vocational School in the city of Haverhill, and on Middle Road at interstate 495 crossing in the city of Haverhill; provided further, that not less than \$1,200,000 shall be provided for the construction of an intermodal transportation center at Washington Square in the city of Haverhill; provided further, that \$750,000 shall be expended for the Upper Main Street corridor signalization/synchronization project; provided further, that not less than \$250,000 shall be expended to study the feasibility of constructing a commuter rail stop at 1600 Osgood Street in the town of North Andover on the Haverhill/ Reading commuter rail line, and such study shall also include the feasibility of relocating the Bradford Station commuter rail layover facility to said location; provided further, that not more than \$2,500,000 shall be expended for renovations and improvements to roadways and abutting properties including any former works program administration projects on route 97 and Lincoln Avenue in Haverhill; provided further, that funds shall be expended for the installation of handicapped accessible sidewalks on route 110 in the town square in the town of Merrimac; provided further, that \$1,000,000 shall be expended for the purchase of new vans for elderly and disabled for use by the Merrimack Valley Regional Transit Authority; provided further, that the secretary shall grant funds for public works economic development for the necessary improvements to Danton Drive in Methuen; provided further, that \$3,000,000 shall be expended on the reconstruction and widening of Howe Street Bridge in Methuen; provided further, that \$5,000,000 shall be expended on improvements to route 113 and route 110 in the city of Methuen; provided further, that \$26,000,000 shall be expended for the design, construction and engineering of traffic flow improvements at the routes 110 and 113 rotary at interstate 93; provided further, that \$1,800,000 shall be expended for the construction of a ramp on route 213 to the transfer station in the city of Methuen; provided further, that not more than \$2,600,000 be expended on Lorenzo Circle/Bloody Brook drainage improvements; provided further, that funds shall be expended to install jersey barriers at the junction of route 213 and interstate 495 in the city of Methuen; provided further, that not less than \$5,000,000 shall be expended for the repair and replacement of the Parker River Bridge on route 1A in New-

bury; provided further, that \$5,000,000 shall be expended for the engineering, design and construction of a parking facility in downtown Newburyport; provided further, that funds shall be expended for the design and construction of Harborwalk, from the Coast Guard Station north to Cashman Park in Newburyport; provided further, that funds shall be expended for the installation of a traffic light for the intersection of route 114 and Hillside Road in North Andover; provided further, that funds shall be expended to replace sidewalks and install granite curbs on North End Boulevard in the town of Salisbury; provided further, that \$2,400,000 shall be expended on the reconstruction of route 110, from interstate 495 to Merrill Street in Salisbury; provided further, that \$3,600,000 shall be expended on the reconstruction of route 1 from Salisbury Square to the New Hampshire state line; provided further, that \$525,000 shall be expended on the construction of the Salisbury rail trail; provided further, that funds shall be expended for the final repairs and reconstruction of Rocks Village Bridge between Haverhill and West Newbury; provided further, that not less than \$1,100,000 shall be expended for the construction of sidewalks on route 113 in West Newbury to provide safe pedestrian access between the town center and the Page School and Pentucket High and Middle Schools; provided further, that not less than \$6,000,000 shall be expended for the design, construction and engineering of a parking facility at Gateway Park in the city of Worcester; provided further, that funds shall be expended for the installation of a traffic signal at the intersection of route 125 and Salem Street in the town of Andover; provided further, that \$3,000,000 shall be expended for the Massachusetts bay transit authority-Americans with Disabilities Act compliance elevator study, and for related design and installation, construction, reconstruction or improvement of elevators in order to meet or exceed the minimum requirements of applicable state and federal laws, regulations and guidelines; provided further, that not less than \$70,000 shall be spent for the planning, design and construction of a bicycle path on the Saugus Branch Rail line from Main Street in Malden to the Tileston Street Bridge in Everett and on-road improvements connecting such path to Wellington Station; provided further, that funds shall be expended for the development of a renovation design plan for Lower Broadway of route 99 from Santilli

Circle in Everett to Sullivan Square in Charlestown; provided further, that funds shall be expended for the construction of a pedestrian and bicycle crossing across the Mystic River in the vicinity of the Amelia Earhart Dam, located in Everett and Somerville; provided further, that \$11,000,000 be expended for the construction of a parking garage near the Massachusetts bay transportation authority commuter rail station in the city of Beverly; provided further, that \$15,000,000 shall be expended for the construction of an overpass over route 128 in the city of Beverly; provided further, that \$1,000,000 shall be expended for sound barriers on Conant Street in the town of Danvers; provided further, that \$100,000 shall be expended for sound barriers on Maple Street in the town of Danvers; provided further, that \$500,000 shall be expended for repairs on route 114 in Peabody; provided further, that \$24,000,000 shall be expended for the construction of a parking garage near the Massachusetts bay transportation authority commuter rail station in the city of Salem; provided further, that funds shall be expended for the reconstruction and rehabilitation of route 101 in the town of Ashburnham; provided further, that funds shall be expended to study traffic safety and engineering at the intersection of routes 122, 32, and 62 in the town of Barre; provided further, that funds shall be expended for transportation improvement at the intersection of route 122, 32, and 62 in the town of Barre; provided further, that funds shall be expended for the resurfacing and reconstruction of route 122 in the town of Barre; provided further, that funds shall be expended for the reconstruction of sidewalks and pedestrian walkways on route 9 in the town of Brookfield; provided further, that funds shall be expended for the historical reconstruction of the Gilbertville covered bridge; provided further, that \$250,000 shall be expended for a grant to Community Transit Services, Incorporated, for their capital projects program; provided further, that \$100,000 shall be expended for the emergency repairs and reconstruction for the covered bridge in Hardwick; provided further, that funds shall be expended for the resurfacing and related work on route 62 in the town of Hubbardston; provided further, that funds shall be expended for resurfacing and minor box widening on route 31 from Bemis Street to the Charlton town line in the town of Spencer; provided further, that funds shall be expended for the purpose of conducting a feasibility study for the construc-

tion of a municipal parking lot at the site of the former Massassoit Hotel in the town of Spencer; provided further; that funds shall be expended to study traffic safety at the intersection of routes 9 and 49 in the town of Spencer; provided further, that \$100,000 shall be expended for the study and plan design for improvement of the traffic usage of route 9 in the town of Spencer; provided further, that funds shall be expended for resurfacing and related work to route 202 in the town of Templeton; provided further, that funds shall be expended for reconstruction of Hubbardston Road in the town of Templeton; provided further, that funds shall be expended for overlay, curbing and sidewalk reconstruction on South Street and Chestnut Street in the vicinity of the industrial complex in the town of Ware; provided further, that funds shall be expended for the Wendell Road project in Warwick; provided further, that funds shall be expended for the resurfacing and related work on route 9 in the town of West Brookfield; provided further, that a barrier or fence be constructed along route 135/Dedham Avenue under the Massachusetts bay transportation authority bridge near the intersection of Glen Terrace to provide for pedestrian safety; provided further, that funds shall be expended to design and build handicap access and platform improvements at the downtown Natick commuter rail station owned by the Massachusetts bay transportation authority; provided further, that funds shall be expended for design, reconstruction and improvements at the Middlesex Avenue parking garage to provide parking for the Massachusetts bay transportation authority commuter rail line in Natick; provided further, that funds shall be expended for the design and reconstruction of the route 27 bridge over route 9 in Natick; provided further, that funds shall be expended on repairs and improvements to the intersection of Chestnut Street and High Rock Street in the town of Needham; provided further, that funds shall be expended for the installation of traffic signals and to resurface the intersection of Charles River Street and Central Avenue in Needham; provided further, that \$600,000 shall be expended on intersection improvements at East Washington Street and Chestnut Street in the town of North Attleborough; provided further, that \$750,000 shall be expended for intersection improvements at North Washington Street and Park Street and Elmwood Street in the town of North Attleborough; pro-

vided further, that funds shall be expended on improvements to the intersection of route 1 and route 120 in the town of North Attleborough; provided further, that funds shall be expended for the construction of the Holliston Upper Charles Rail Trail: provided further, that funds shall be expended for the acquisition of property for the Holliston Upper Charles Rail Trail; provided further, that funds shall be expended on repaying, sidewalk construction and curbing route 27 from Natick Center to the Wayland town line; provided further, that funds shall be expended to widen Church Street and replace the Church Street bridge, and realign the intersection of Whitney and Church Streets, all in the town of Northborough; provided further, that funds shall be expended for the reconstruction of a portion of Mirick Road in the town of Princeton; provided further, that funds shall be provided to the city of Worcester to complete the intermodal projects associated with Union Station, to include bus ports, parking facilities, bicycle and pedestrian connections as well as access roadway relocation and reconstruction, engineering and construction relative to the historic Blackstone Canal and appurtenances and other transportation and economic development projects; provided further, that \$17,500,000 shall be expended for the Blackstone Canal; provided further, that funds shall be expended for a traffic light near the Webster Square Fire Station in the city of Worcester; provided further, that funds shall be expended for a noise study along route 290 in the city of Worcester adjacent to Trinity, Colby and Laselle Avenues; provided further that funds shall be expended for the construction of sound barriers in the town of Chelmsford as follows: designated area number 21, Waterford Place in Chelmsford as defined by HMMH report number 298280; provided further, that funds shall be expended for the construction of sound barriers in the town of Bedford as follows: designated area 1, Ledgewood/Lido lane as defined by HMMH report number 298280; provided further, that \$1,500,000 shall be expended on the widening of the route 53 bridge in Hanover; provided further, that \$500,000 shall be expended for a traffic light at the exit 13 ramp of route 3 northbound where it intersects with route 53 in Hanover; provided further, that \$150,000 shall be expended for the East Bridgewater segment of the Bay Circuit Trail, a linked trail system that extends from Newburyport to Duxbury; provided

further, that \$200,000 shall be expended for the development of a comprehensive transportation, design, open space and land use plan for the route 9 corridor in Brookline and adjacent neighborhoods; provided further, the Massachusetts turnpike authority is authorized and directed to study the cost-effectiveness of sound barriers at locations in the city of Newton studied for the authority's Barrier Priority Results; provided further, that the Massachusetts turnpike authority is authorized and directed to study the feasibility of utilizing sound-reducing surface material on interstate 90 in the city of Newton; provided further, that funds shall be expended on the repair of the Heywood Street Culvert, spanning Mill Brook, connecting Walden Street with Lexington Road in the town of Concord; provided further, that funds shall be expended on the repair of the Westford River Culvert, spanning the Spenser Brook, connecting West Street and route 225 in Carlisle with Westford Road and Lowell Road in the town of Concord; provided further, that \$800,000 shall be expended for the construction of the Pine Street Bridge, spanning Assabet River in the town of Concord; provided further, that \$1,000,000 shall be expended for the repair of Heath's Bridge, spanning the Sudbury River on Sudbury Road in the town of Concord; provided further, that funds shall be expended for the repair of South Bridge, spanning the Sudbury River on route 62 in the town of Concord; provided further, that funds \$1,200,000 be expended on the repair of Flint's Bridge, spanning the Concord River on Monument Street in the town of Concord; provided further, that funds shall be expended for the repair of Nashawtuc Road Bridge, spanning the Sudbury River at Nashawtuc Road in the town of Concord; provided further, that \$900,000 shall be expended for the design, engineering and construction of a pedestrian bridge across Gallivan Boulevard in the city of Boston; provided further, that \$300,000 shall be expended for the design, engineering and construction of a sound barrier along interstate 93, on the northbound side, from Savin Hill Avenue to Andrew Square; provided further, that \$2,500,000 shall be allocated for the Kenmore Square Surface Improvement Project; provided further, that the following amounts be allocated for the Sales Creek Emergency Flood Control Repairs: \$500,000 for repair of the pair of culverts located under the east portion of Suffolk Downs Race Track, \$1,100,000 for the repair of the

culverts located under the west portion of Suffolk Downs Race Track, \$600,000 for the repair of the pair of culverts located under the access road to Suffolk Downs Race Track, \$600,000 for the dredging of the basin including testing and disposal of potentially contaminated sediment, \$650,000 for the dredging of the creek in areas to be determined including testing and disposal of potentially contaminated sediment, and \$150,000 for improvements to pump station automation, telemetry, and alarm system; provided further, that \$200,000 shall be expended for the review and re-design of the Alewife Massachusetts bay transportation authority station pedestrian crossing connecting to the Minuteman Trail; provided further, that funds shall be expended for the repair of the Border Street Bridge in Cohasset; provided further, that a grant program shall be established to provide up to 3 months mitigation to businesses affected by the construction of the Greenbush commuter rail line in the Downtown Hingham Business District; provided further, that \$1,000,000 shall be expended for improvements to roadway facilities in the Hingham Shipyard; provided further, that \$1,000,000 shall be expended to repair and replace the West Corner Bridge and Culvert located at the intersection of Hingham, Hull and Cohasset; provided further, that the department shall publish a timetable for the route 3 south Add-A-Lane construction project from Pembroke to Weymouth not later than December 1, 2004; provided further, that \$5,000,000 shall be expended for the planning, design and construction for improvement and beautification of the route 3A corridor in Weymouth, including, but not limited to road and sidewalk repair or replacement, planting of trees and landscape along roadway and the placement of utility lines below grade; provided further, that funds shall be expended for improvements to route 28 in Avon; provided further, that funds shall be expended for the reconstruction of Union Street from the route 3 rotary to Commercial Street in Braintree; provided further, that funds shall be expended to provide for the design, acquisition and construction of sound barriers and other improvements and mitigation measures in the towns of Canton, Easton and Stoughton; provided further, that \$1,700,000 shall be expended for the Central Avenue Footprint Road Bikeway project in Milton; provided further, that funds shall be expended for improvements to Adams Street, including the intersections of

Canton Avenue and Randolph Avenue, and Eliot Street in Milton; provided further, that funds shall be expended for repairs, renovations and improvements to the Capen Street, Valley Road, Central Avenue and Milton trolley stations along the Mattapan highspeed trolley lane in the town of Milton; provided further, that funds shall be expended for signalization and road reconstruction at the intersection of Unquity Road and Blue Hills Parkway in Milton; provided further, that funds shall be expended for the design, rehabilitation and reconstruction of route 138 in the towns of Milton. Canton, Stoughton and Easton; provided further, that funds shall be expended for the signalization and road reconstruction of Brook Road and Blue Hills Parkway in Milton; provided further, that \$500,000 shall be expended for signalization at Sudbury Farm Plaza on route 28 on North Main Street in Randolph; provided further, that funds shall be expended for the design, rehabilitation and reconstruction at the intersection of route 28 in Randolph from Union Street to Chickatawbut Road in Milton; provided further, that funds shall be expended for signalization at the intersections of Norwood Street, High Plain Street and Edgehill Road in Sharon; provided further, that funds shall be expended for repairs, renovations and improvements to the Stoughton Rail Station; provided further, that funds shall expended for the installation of a three mile sewer line from the Brockton line down Manley Street during the road reconstruction/rehabilitation of that street in West Bridge-water; provided further, that funds shall be expended for major renovations to the stonewalls and water channels in the historic town park in West Bridgewater; provided further, that funds shall be expended for the Old Springfield Road Bridge project in Easthampton; provided further, that funds shall be expended for the replacement of the Lyman Street Second Level Canal Bridge in Holyoke; provided further, that funds shall be expended for the purchase of a railroad line in the town of Southampton for the purpose of connecting the Manhan Rail Trail with the Columbia Greenway Rail Trail; provided further, that funds shall be expended for the downtown enhancements including lighting, curbing, limited sidewalks, and associated improvements for routes 10 and 202 in Southwick; provided further, that funds shall be expended for the reconstruction of route 187 and construction of sidewalks in

Westfield; provided further, that \$3,000,000 shall be expended for the reconstruction of Cowles Bridge in Westfield; provided further, that \$6,000,000 shall be expended for roadway reconstruction, sidewalk enhancements and curbing of Main Street/Broad Street in the town of Westfield: provided further, that \$1,000,000 shall be expended to repair a bridge in Belchertown on River Street; provided further, that \$500,000 shall be expended for the construction of sidewalks near Birchland Park Middle School on Hanward Hill and Meadowbrook Elementary School on Parker street in East Longmeadow; provided further, that \$500,000 shall be expended for the construction of sidewalks near Green Meadows Elementary School on North Road and Thorton Burgess Middle School on Wilbraham Road in Hampden: provided further, that \$890,000 shall be expended for trails and bikeways at Blunt Park in Springfield; provided further, that \$1,500,000 shall be expended to construct an intersection to allow westbound traffic on Bicentennial Highway to turn southbound in order to travel eastbound on Allen Street in Springfield; provided further, that \$1,000,000 shall be expended for the improvement of the ingress and egress for the Sabis Charter School in Springfield; provided further, that \$500,000 shall be expended for the costs of design and improvement of the Main Street/Front Street/Myrtle Street intersection in the Indian Orchard section of the city of Springfield; provided further, that funds shall be expended for Marathon Park in Ashland; provided further, that funds shall be expended for the repair and reconstruction of the route 126 corridor in the town of Ashland; provided further, that \$5,000,000 shall be expended for the construction of sound barriers along interstate 90 between route 128 and interstate 495, including Gina Circle in the town of Framingham; provided further, that funds shall be expended for the roadway and signalization improvements at the intersection of Edgell Road, Water Street and Edmunds Road in the town of Framingham; provided further, that funds shall be expended for the construction of the route 126 underpass at the railroad crossing and route 135 in Framingham; provided further, that funds shall be expended for the reconstruction of the railroad crossing on route 9 at Framingham Center; provided further, that funds shall be expended for the acquisition of property for a rail trail or trails in the town of Holliston; provided fur-

ther, that funds shall be expended on the completion of improvements in the town of Southborough and Hopkinton to the Massachusetts bay transportation authority train station, located in Southborough, and the completion of all improvements and outstanding items to have been completed by the authority in Southborough and the construction of sidewalks from the station to the Hopkinton State Park in the town of Hopkinton; provided further, that \$474,949 shall be expended for the continuation of LIFT bus service 5 and 6 in South Framingham, Ashland, Holliston, Hopkinton and Milford; provided further, that funds shall be expended on an emergency basis for repairs to sidewalks, the widening and reconstruction of route 126 in the town of Medway; provided further, that funds shall be expended for the design and construction of the route 27 bridge over route 9 in the town of Natick; provided further, that funds shall be expended on the necessary resurfacing, construction of sidewalks, and curbing of route 27 from Natick Center to the Wayland town line; provided further, that \$14,150,000 shall be expended for the relocation of two 115kV electric power lines underground along the Lynnway in Lynn; provided further, that funds shall be expended for the design and reconstruction improvements to the Broad Street/Lewis Street intersection in the city of Lynn, including signalization upgrades and geometric improvements; provided further, that funds shall be expended for a study of the feasibility to create viable reverse flow lanes on Lynn Shore Drive from Nahant Circle to the Swampscott town line, incorporating the study of rush hour traffic flows from Atlantic Avenue on the Swampscott/Lynn line to the Nahant Circle and encompassing all roads and considering all traffic patterns between Lynn Shore Drive and Broad Street/ North Shore Community College; provided further, that the department shall study possible improvements to the existing sequencing of traffic lights at Red Rock and Nahant Street during rush hour in Lynn; provided further, that funds shall be expended on the necessary infrastructure improvements associated with the creation of a landside terminal for a commuter water shuttle from the city of Lynn to the city of Boston; provided further, that funds shall be expended for the construction of a seawall along Ocean Avenue Causeway in

Marblehead; provided further, that the department, in conjunction with the town of Saugus, Lynn Water and Sewer Commission, and the Massachusetts water resource authority. shall conduct a feasibility study and cost assessment for moving and replacing water mains under route 1 in the town of Saugus; provided further, that \$360,000 shall be expended for the repaying of Paradise Road in Swampscott from the Lynn city line to Vinnin Square; provided further, that funds shall be expended for design, permitting and construction of a new flyover ramp at the route 5/route 57 rotary in Agawam; provided further, that funds shall be expended for the Agawam portion of the Connecticut Riverwalk; provided further, that \$28,000,000 shall be expended for Phase II of the route 57 construction project in Agawam; provided further, that funds shall be expended for recreational trails, bikeway and walkway improvements for Forest Park; provided further, that funds shall be expended for bikeway, walkway, and parking improvements for Van Horn Park; provided further, that \$500,000 shall be expended on the design, reconstruction and improvements to the intersection of route 6 at Sanford Road in the town of Westport; provided further, that the department shall expend funds to design and install full signal lighting at the intersection of interstate 95 and route 6; provided further, that funds shall be expended for the reconstruction of the Western Fall River expressway; provided further, that \$800,000 shall be expended for the upgrade of traffic signals and reconstruction of the intersection of Church Street and Tarkiln Hill Road and for the widening of King's Highway at the connector to Tarkiln Hill Road in the city of New Bedford; provided further, that not less than \$100,000 shall be expended for improvements to the Brooklawn Park Bike path in the city of New Bedford; provided further, that funds shall be authorized for final design and restoration/preservation of a portion of the historic Blackstone Canal on state property between Plummer's Landing in Northbridge and Stanley Woolen Mill in Uxbridge including the restoration of three canal gates, restoration/preservation of the tow path and canal, Goat Hill Lock and gates, and the canal lock and gates on state-owned land in Millville; provided further, that funds shall be authorized for the construction of a bridge over route

146A in Uxbridge to connect portions of the Southern New England Trunk Trail which runs between Willimantic. Connecticut and Franklin, Massachusetts: provided further. that \$3,500,000, including matching federal funds, shall be authorized for the design and construction, including any necessary property and right-of-way acquisitions, for the completion of the Blackstone River Bikeway as a Class 1 bikeway following wherever possible the route of the Blackstone River from Worcester to the Rhode Island state line to be connected with the bikeway in Rhode Island; provided further, that \$12,500,000 shall be authorized and expended for the final design, land acquisition and construction of the bikeway from Uxbridge through Northbridge; provided further, that \$100,000 shall be expended for a pedestrian crosswalk and pedestrian signalization which shall be designed and installed between Wildwood Avenue and South Street in the town of Braintree: provided further, that funds shall be expended on the construction of a sound barrier for the purpose of abating noise from the Greenbush commuter rail line along Front Street in Braintree: provided further, that funds shall be expended for the reconstruction and repair of the interstate 93 and the route 128 arterial road Middle Street, between Union Street and Liberty Street in Braintree; provided further, that funds shall be expended for the design and construction of full signalization at the public safety complex at the intersection of King and South Franklin Streets in the town of Holbrook; provided further, that not less than \$300,000 shall be expended to conduct a feasibility and engineering study for the design and construction of improvements to the Massachusetts bay transportation authority Wollaston station to ensure that the station is accessible, functional, and safe for use by persons with disabilities; provided further, that funds shall be expended for the design, construction and engineering of a public access boat ramp at the department of conservation and recreation's Squantum Point Park in Quincy and funds shall be expended for the design, construction and engineering of a public boat ramp at the department's property located at Houghs Neck/Hurley Property in Quincy: provided further, that funds shall be expended for the construction of noise mitigation devices, either sound barriers or home insula-

tion, for abating noise along the Massachusetts bay transportation authority's Red Line and Old Colony Commuter Line along Newport Avenue between South Central Avenue and Adams Street in Ouincy: provided further, that not less than \$4,511,000 shall be expended for the purpose of roadway improvements to route 28 in the town of Barnstable; provided further, that not less than \$650,000 shall be expended for an environmental and traffic impact study on the proposed exit 6B exit/entrance ramp between exits 6 and 7 of route 6 in the town of Barnstable; provided further, that not less than \$700,000 shall be expended for the purposes of sidewalk and Street improvements on Main Street, Buzzards Bay, in the town of Bourne; provided further, that not less than \$3,500,000 shall be expended for the design and construction of the extension of the Shining Sea Bike Path located in the town of Falmouth; provided further, that not less than \$2,600,000 be expended for the upgrade of route 28 from the Sandwich Road intersection in Falmouth to the Mashpee town line; provided further, that not less than \$650,000 shall be expended for the widening of the intersection of route 28 (Palmer Avenue) and the Ter Heun Drive in the town of Falmouth; provided further, that not less than \$3,150,000 shall be expended for the purpose of roadway improvements to Main Street, Hyannis, in the town of Barnstable; provided further, that not less than \$2,400,000 shall be expended to install sidewalks along route 3A in Kingston; provided further, that not less than \$5,042,000 shall be expended to install sidewalks along route 14 in Pembroke; provided further, that the secretary shall grant funds associated with public works economic development of not less than \$1,050,000 for Obery Street in the town of Plymouth; provided further, that not less than \$1,087,000 shall be expended for the design, engineering, and construction costs associated with a public works economic development grant in the town of Plympton; provided further, that not less than \$2,000,000 shall be expended to make safety improvements at the exit 2 interchange of state route 6 in the town of Sandwich; provided further, that not less than \$350,000 shall be spent to reconstruct portions of Brodie Mountain Road in the towns of Lanesborough and Hancock;

provided further, that funds shall be expended to provide a detailed analysis of current conditions and development of engineering designs and cost estimates for the upgrade to the utility and infrastructure elements along the route 102 corridor in Lee; provided further, that funds shall be expended to resurface a portion of West Street in the town of Mt. Washington leading to the Bash Bish Falls State Park; provided further, that funds shall be expended to reconstruct Bash Bish Falls Road in the town of Mt. Washington; provided further, that funds shall be expended for preliminary design for a multi-use pathway south extension of the Ashuwillticook Trail from Williams Street in Pittsfield through Lenox and into Lee center; provided further, that \$600,000 shall be expended for the village green transportation enhancement project, including underground utilities in the town of Sheffield; provided further, that \$80,000 shall be expended for detailed marketing analysis, site appraisal and conceptual design for redevelopment of the former truck plaza site located on route 102 adjacent to interstate 90 in the town of West Stockbridge; provided further, that funds shall be expended for the town of Barnstable Unified Transportation and Parking System, including signalization and widening of the intersection of Yarmouth Road and the proposed bypass road, bypass road construction and access road to the intermodal parking area, grade crossing controls, and property acquisition; provided further, that \$250,000 be expended for the construction of crossing gates at Hyannis Road in Barnstable; provided further, that funds shall be expended for the reconstruction of Swan River Rd (southerly extension of route 134) in Dennis; provided further, that funds shall be expended for the Cape Cod Regional Transit Authority bus maintenance facility to meet local match requirements for federal funding; provided further, that \$350,000 shall be expended for the acquisition of property, building demolition and construction of a new park as part of the Hyannis Downtown Improvement Project; provided further, that funds shall be expended for the planning and construction of a mini-intermodal center in Provincetown; provided further, that funds shall be expended for the resurfacing of Shore Rd - route 6A in North Truro; provided

further, that funds shall be expended for the resurfacing of South Highland Road in Truro from route 6 to the junction of Highland Road; provided further, that funds shall be expended for the resurfacing of Truro Center Road from route 6 through Truro Center and back to route 6; provided further, that funds shall be expended for roadway surface improvement and sidewalk improvements and additions to Station Avenue in Yarmouth; provided further, that \$10,000,000 shall be expended for the extension of the Middleboro rail line to Wareham; provided further, \$1,000,000 shall be expended for the construction of sound barriers at designated area number 15, Waverely Avenue in Lowell, as defined by HMMH report number 298280 as prepared for said document; provided further, that the secretary shall grant funds associated with public works economic development of not less than \$4,000,000 for traffic improvements, the reconstruction of the historic cobblestone infrastructure and additional reconstruction of the street, sidewalks, ramps and lighting in the downtown and Jackson/Appleton/Middlesex Street corridor in Lowell; provided further, that funds shall be expended for the installation of signal lights at the intersection of Great Road and Concord Road in Acton and to complete a sidewalk network and appurtenant traffic calming features between Concord Road and the Concord town line; provided further, that funds shall be expended for the design of the Bruce Freeman Trail in Acton; provided further, that \$2,000,000 shall be expended as a 20 per cent match of federal dollars to build a three hundred space parking garage and make rail improvements at the Ayer Massachusetts bay transportation authority station; provided further, that funds shall be expended to design safety improvements and signals for the intersection of Littleton Road (route 2A) and Willow Street in the town of Littleton; provided further, that funds shall be expended to improve or install sidewalks from Littleton Common to Shake Lane along the eastbound side of route 2A in the town of Littleton; provided further, that the department shall replace any shade tree that dies over the next five years as a result of the widening of route 20 that are located west of Marlborough Center; provided further, that funds shall be expended for the construction of additional commuter parking

on land owned by the Massachusetts bay transportation authority adjacent to the Westborough commuter rail station; provided further, that not less than \$500,000 shall be expended to support a curb cut and construction of a queuing lane on the western side of route 20 heading eastbound in Marlborough near the Marlborough/Northborough line in close proximity to the Best Western Royal Plaza Hotel and that adequate signage be installed to inform eastbound motorists how to access businesses on the westbound side; provided further, that funds shall be expended to reconstruct State Street in Buckland; provided further, that route 47 in the towns of Hadley and South Hadley shall be designated as a scenic byway and be included in the state-designated Connecticut River Scenic Byway; provided further, that funds shall be expended to replace the Arthur A. Smith covered bridge in Colrain; provided further, that funds shall be expended to reconstruct the McClellan Farm Road bridge over the B&M railroad in Deerfield; provided further, that funds shall be expended to rehabilitate the Eunice Williams covered bridge in Greenfield; provided further, that \$100,000 shall be expended to develop an intermodal transit facility plan in Greenfield; provided further, that funds shall be directed to the town of Montague Trustees of the Soldier's Memorial for costs associated with the removal, relocation, and improvements of the soldier's memorial in conjunction with the reconstruction of the Gill-Montague Bridge; provided further, that \$300,000 shall be expended for the completion of the Nielson Road relocation project in the town of New Salem; provided further, that funds shall be expended for the reconstruction of Earle Street in Northampton; provided further, that funds shall be expended for three traffic signals at the intersections of route 66 and Maine Entrance, route 66 and Earle Street, and route 10 and Earle Street; provided further, that funds shall be expended on the reconstruction of the route 47 bridge in South Hadley; provided further, that \$1,900,000 shall be expended for the construction of a sound barrier along interstate route 93 from the intersection of Brookside Parkway and Valley Street extending south to Medford Square in the city of Medford; provided further, that funds shall be expended for the design

and construction of a new parking garage in Medford Square in the city of Medford; provided further, that funds shall be provided for the city of Medford to begin implementing the recommendations of the Medford Vision Task Force, including the reconfiguration of Clippership Drive, new traffic signalization, pedestrian crossings and traffic calming measures in Medford Square, and the construction of structural and on-street parking at Medford City Hall; provided further, that funds shall be expended for the construction of a sound barrier along interstate 93 at Rhode Island Avenue and Vermont Avenue in the city of Somerville: provided further, that funds shall be expended for the design and construction of a pedestrian underpass at the Mystic Wellington Bridge on route 28 in Somerville; provided further, that funds shall be expended for the city of Somerville to implement traffic calming measures by installing raised crosswalk speed bumps at designated sites directly in front of, or adjacent to, its public schools; provided further, that funds shall be expended for the study, design and construction of a bi-level parking garage in downtown Winchester adjacent to the town's commuter rail station; provided further, that \$450,000 shall be expended for the completion of Phase II of the Mystic Valley Parkway Rehabilitation Project encompassing South Border Road and Roosevelt Circle in the town of Winchester and city of Medford; provided further, that \$250,000 shall be expended for the study and design of a southbound ramp off of interstate 495 for the towns of Mansfield and Norton; provided further, that the department shall include the proposed intersection improvements of the route 1A/Main Street-Winter Street-Jean Road intersection in Walpole on the transportation improvement program project list covering fiscal years 2003-2007 and shall commence such improvements during fiscal year 2005; provided further, that funds shall be expended for improvements to exit and access ramps on route 128 between Beverly and Gloucester; provided further, that funds shall be expended for construction of a storm water drainage system along interstate 95 in the town of Boxford; provided further, that funds shall be expended for the installation of sidewalks from the Essex town line to the West Gloucester commuter rail station; provided further, that funds shall be expended for the transfer

of land and the planning design and construction of a park-and-ride facility off of National Avenue in Georgetown; provided further, that funds shall be expended for the installation of a traffic advisory signalization between Grant Circle and Raynard Street on Washington Street in Gloucester; provided further, that \$1,775,000 shall be expended for the reconstruction of Washington Street in the city of Gloucester; provided further, that funds shall be expended for the acquisition and construction of parking in the town center of Groveland, appurtenant to the Elm Park restoration project; provided further, that funds shall be expended for the planning, design and construction of possible traffic flow and safety improvements in the Market Square area in Ipswich; provided further, that \$3,400,000 shall be expended for the planning, design and construction of a parking garage and improved access appurtenant to the commuter rail facility in Rockport; provided further, that funds shall be expended for the installation of sidewalks along the Main Street and Upper Main Street area along route 127 in Rockport; provided further, that funds shall be expended for traffic signalization at the intersection of route 97, Cherry Street and Maple Street in Wenham; provided further, that funds shall be expended for the construction of traffic improvements at the intersection of route 62 and Glenn Road in Wilmington; provided further, that \$1,800,000 shall be expended for the replacement and modernization of traffic signals on route 60 from the intersection with route 28 in the city of Medford to the intersection with route 99 in the city of Malden, and for traffic signalization of Medford Street from Highland Avenue to Main Street in the city of Malden; provided further, that funds shall be expended for improvements to Wyoming Street in the city of Melrose from the Stoneham town line to Lebanon Street; provided further, that funds shall be expended for the construction of sound barriers on the northbound side of interstate route 93 in the town of Stoneham; provided further, that \$355,000 shall be expended for improvements to Farm Street and Old Nahant Road in the town of Wakefield; provided further, that \$2,000,000 be expended for the completion of the route 60/Pleasant Street project in the town of Belmont, of which not less than \$500,000 shall be expended for the completion

of a bicycle path from Belmont to Alewife and Davis Square in Somerville; provided further, that funds shall be expended for the Pleasant Street Redevelopment Project in Watertown; provided further, that funds shall be expended for the department of conservation and recreation Landing Improvements Project in Watertown Square; provided further, that funds shall be expended for the design and construction of a traffic signal at the intersection of Grove Street and Greenough Boulevard in Watertown; provided further, that \$400,000 shall be expended for the Traffic Signal for Hawthorne Street Extension Project in Cambridge; provided further, that not less than \$500,000 shall be expended to cover the ramp located at Parcel 12 along the proposed Rose Kennedy Greenway; provided further, that the secretary shall grant funds associated with public works economic development for the purposes of reconstruction of Shirley Avenue in the city of Revere; provided further, that not less than \$30,000,000 shall be expended for the engineering, design, permitting, and construction of traffic improvements along route 1 A in East Boston and Revere between Boardman Street and the Revere Beach Parkway and along route 16 between route 1 and route 1A, including, but not limited to, the costs of the engineering and construction of a bypass road at the intersection of Boardman Road and route 1A, the costs of engineering and construction of a bypass overpass at the intersection of so-called Tomasello Boulevard and route 1A. the costs of engineering and construction of a connection between route 1A and route 16, and the costs of signalization and ramp widening at the intersection of Revere Beach Parkway and route 1, including the costs of related traffic management and other services essential to such projects rendered by consultants; provided further, that \$4,750,000 shall be expended for the reconstruction of Arlington Street from Broadway Road to Methuen Street in the town of Dracut; provided further, that funds shall be expended on the reconstruction and signalization of Lakeview Avenue from Phineas Street to Tennis Plaza Road in Dracut; provided further, that \$500,000 shall be expended for the reconstruction, realignment, and improvements of route 113 at the Arlington/Montaup Street intersection in the town of Dracut; provided further, that funds shall be expended for the

reconstruction of Nashua Road from Forest Avenue to Oak Terrace with signalization installed at the intersection of Lakeview Avenue and Nashua Road in Dracut; provided further, that funds shall be expended for upgrading route 113 and the study, design and construction of new access from route 113 to route 110 in Dracut; provided further, that funds shall be expended for the reconstruction and replacement of the Pleasant Street bridge spanning Beaver Brook in Dracut; provided further, that funds shall be expended to conduct road repairs and a road study to alleviate traffic flow on route 110, Hampshire Street, Lawrence Street, Prospect Street and Essex Street in the city of Lawrence; provided further, that funds shall be expended to research the right-of-way and for the design, engineering and construction of a new bridge from East Island over the canal onto Canal Street in Lawrence; provided further, that funds shall be expended to redesign and remodel the Union Street Bridge between Canal Street and Island Street; provided further, that funds shall be expended for the signalization of North Street and East Street, and left turn lanes in Tewksbury; provided further, that funds shall be expended for the signalization and geometric improvements at the intersection of Chandler Street and Whipple Road in Tewksbury; provided further, that funds shall be expended for the design and installation of sidewalks along East Street and Livingston Street in the vicinity of Tewksbury Hospital in Tewksbury; provided further, that funds shall be expended for the design and installation of signalization at the intersection of Main Street, Old Main Street, and Old Boston Road in Tewksbury; provided further, that \$1,045,000 shall be expended for the reconstruction and improvements to the intersection of Centre and Walter Streets in Roslindale; provided further, that \$1,000,000 shall be expended to fund the Central Artery Oversight Commission; provided further, that funds shall be expended for the repair of sidewalks located along the Veterans of Foreign Wars and West Roxbury Parkways and along Centre Street in the West Roxbury neighborhood in the city of Boston; provided further, that the department shall construct a sound barrier along Farm Lane in Westwood during the route 128 project; provided further, that funds shall be expended to provide equipment to the department of conservation and recreation

for road maintenance; provided further, that an amount not to exceed \$8,500,000 shall be expended for improvements to primary and secondary roadways located in the interstate highway route 91 corridor between interchanges 10 and 11 in the city of Springfield; provided further, that the department shall expend funds on the widening of Route 114 in the town of North Andover; provided further, that the department shall cause all exit signs displayed on route 1A northbound and southbound and on Interstate 90 northbound and southbound which carry the designation of Route 145 Bennington Street/ Chelsea to be modified to include the word Winthrop; provided further, that \$6,600,000 shall be expended for the design, resurfacing, and reconstruction of Route 106 in West Bridgewater; provided further the department shall expend funds on resurfacing Route 225 in Carlisle; provided further, that \$750,000 shall be expended for the construction of roads in Van Horn Park to access Van Horn Pond in Springfield; provided further, that the department shall expend funds on the development and implementation for traffic signal improvement plans on Route 129 at Gold Cove Road; provided further, that \$4,000,000 shall be expended on the design and construction of Route 27 bridge over Route 9; provided further, that \$500,000 shall be expended for roadway and signalization improvements at the intersections of Edgell Road, Water street, and Edmunds Road in the town of Framingham; provided further, that the department shall expend funds for the construction of temporary and permanent bridges spanning Lagoon Pond on Martha's Vineyard; provided further, that not more than \$750,000 shall be expended for the renovation of the MBTA station at Porter Square; provided further, that \$500,000 shall be expended for the implementation of historic lighting for the neighborhoods of Pine Point, East Springfield, and Indian Orchard in Springfield; provided further, that the department shall expend the necessary funds to maintain the existing level of Night Owl service; provided further the department shall expend funds on an engineering evaluation for the design and construction of a Route 126 underpass of the railroad crossing and Route 135; provided further, that \$650,000 shall be expended for the widening of Route 28 at Ter Heun Drive; provided further, that \$25,000,000 shall be expended for the

construction of interchanges on Route 24 for access to the Fall River and the Freetown Industrial Parks; provided further, that \$400,000 shall be expended for the reconstruction of the railroad crossing on Route 9 at Framingham Center; provided further, that \$18,000,000 shall be expended for the reconstruction of Western Fall River Expressway; provided further, that \$900,000 shall be expended for the completion of entrance and exit ramps for I-291 in East Springfield; provided further, that \$675,000 shall be expended for the reconstruction and resurfacing of Route 125 in North Andover; provided further, that \$2,700,000 shall be expended for the purpose of funding Winthrop Commuter Ferry Project; provided further, that \$1,000,000 shall be expended on the construction of a sound barrier for the purpose of abating noise from the Greenbush Commuter rail line along Front street in Braintree; provided further, that the department shall expend funds on the design and construction of handicap access and platform improvements to the Downtown Natick Commuter Rail Station: Provided further, that \$1,800,000 shall be expended for the repairs and improvements to North Main Street in the town of Winchester; provided further, that \$120,000 be expended for pedestrian safety initiative on Everett Avenue, Cross Street and Pond Street in the town of Winchester; provided further, that not less than \$600,000 shall be expended on the repair and reconstruction of Faunce Corner Road from Route 6 to Interstate 195; provided further, that \$1,000,000 be expended for the construction and installation of sound barriers along the northbound side of interstate 93 from exit 33 to exit 35: provided further, that \$200,000 shall be expended to make improvements including, but not limited to, the necessary removal of paint and repainting of the Greendale Bridge in Worcester; provided further, that the department shall expend funds on improvements and reconstruction of Route 18/John F. Kennedy Highway; provided further, that the department shall expend funds on the resurfacing and reconstruction of the Interstate 495 access road Massachusetts Avenue from Interstate 495 to Osgood Street; provided further, that \$100,000 shall be expended to replace the culvert on Westford road in the town of Concord; provided further, that

\$750,000 shall be expended on the installation of traffic signalization systems at the intersections of Route 66 and Main Street, Route 66 and Earle Street, and at Route 10 and Earle Street; provided further, that \$500,000 shall be expended for repairs to the Craddock bridge spanning the Mystic river in the city of Medford; provided further, that \$1,500,000 shall be expended for the improvement of the roadway to Mount Vernon Street in the town of Winchester; provided further, that \$500,000 be expended for repair and maintenance of bridges on Canal Street and Sylvester in the town of Winchester; provided further, that \$40,000 shall be expended for the removal, relocation and improvement of the soldier's memorial associated with the Gill-Montague bridge reconstruction project; Provided further, that \$2,000,000 shall be expended on the Route 66 to Route 10 connector road in the town of Northampton; provided further, that \$250,000 shall be expended for the repair and reconstruction of a portion of Dingle road and to repair a box culvert over the Bronson brook, all in the town of Worthington; provided further, that said department shall expend all funds necessary to erect a highway wall on Interstate 95 South from exit 10 and extending not less than one half a mile northwardly from said exit; provided further that \$1,800,000 shall be expended to improve traffic signalization in the town of Northborough town center, and to install a signalized traffic control device at the intersection of route 20 and Hudson street, and to widen route 20 eastbound, all in the town of Northborough; provided further, that \$650,000 shall be expended for the design, right-of-way acquisition and reconstruction costs of the East street/Chapin street intersection improvements project in the town of Ludlow; Provided further, that not less than \$500,000 shall be expended for the re-design, repair, and reconstruction of the intersection of route 177 an route 6 on the Dartmouth and Westport town line; provided further, that \$15,000 shall be expended for the installation of opticom equipment on state highway route 2 at the intersection Piper and Taylor roads in the town of Acton; provided further, that \$800,000 shall be expended to widen Church street, and to replace the Church street bridge, and to realign the intersection of Whitney and Church streets, all in the town of Northborough;

provided further, that the department shall expend funds on the improvement of the West Natick Commuter Rail Station; provided further, that the department shall expend funds on the synchronization of traffic signals on Upper Main Street in Haverhill; provided further, that the department shall expend funds on the improvements of Broad Street in Merrimac as an I-495 access road; provided further, that \$3,500,000 shall be expended for the design and construction of the Shining Sea Bike Path in Falmouth: provided further, that \$1,000,000 shall be expended on the improvement, widening, and necessary traffic signal installation on Route 97 in Haverhill: provided further, that \$200,000 shall be expended on the study for the necessary installation of sound barriers on Route 290 adjacent to Melrose and Millbrook streets in the town of Worchester; provided further, that \$750,000 shall be expended on the necessary resurfacing, construction of sidewalks, and curbing of Route 27 from Natick Center to Wayland town line; provided further, that \$1,200,000 shall be expended for the reconstruction and repair of the I-93 and Route 128 arterial road Middle Street, between Union Street and Liberty Street in Braintree; provided further, that \$250,000 shall be expended for the study and plan design for improvement of the traffic usage of Route 28 at Harrison Boulevard in Avon; provided further, that \$200,000 shall be expended of traffic study impacts of the intersections of Pearl Street and Central Street: Island Street and Central Street: Canton Street and Central Street; Chemung Street and Central Street; School Street and Route 138; School Street and Canton Street in Stoughton; provided further, that \$200,000 shall be expended for the Canton Junction Commuter Rail Station; provided further, that the department direct the Turnpike Authority to remove all billboard structures from areas in and adjacent to East Boston parks; provided further. that the department shall expend the \$150,000 for the completion of the project ongoing for the intersection improvements at the intersection of Canton Avenue, Highland Avenue, and Thatcher Street in Milton as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002; provided further that funds may be expended from this item to fund the state share of the interstate highway route 91 corridor telecommunications project, so-called; provided that \$1,200,000 shall be ex-

pended for the reconstruction of that portion of route 143 located in the town of Chesterfield; provided further, that \$100,000 shall be expended for emergency repairs to the Julian street bridge spanning the South river between the towns of Scituate and Marshfield; The department of highways shall include the proposed intersection improvements of the Route 1 A/Main Street-Winter Street -Jean Road intersection in Walpole on the transportation improvement program project list covering fiscal years 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that \$1,000,000 shall be expended for repairs to the Bullard Street bridge and culvert at Willet Pond; provided further, that \$4,000,000 shall be expended for reconstruction of the northbound side of state route 1A at Kendall Street; provided further, that the Route 27 project from the Medfield Town Line to Washington Street in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal years 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that the Main Street project from Front Street to the Norfolk Town Line in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that Washington Street from High Plain Street to Water street in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that the Main Street (Route 1A) from Route 27 to the Norwood Town Line in the town of Walpole shall be placed on transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that \$2,500,000 shall be expended for improvements to that portion of state highway route 181 located in the town of Belchertown; provided further, that the department shall expend the \$175,000 for the completion of the project ongoing for a study of signalization at Blue Hills Parkway, Canton Avenue, and Uniquity Road in the town of Milton as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002;

provided further, that \$200,000 shall be expended for the design and installation of handicap and pedestrian ramp at Canton Junction Commuter Rail Station; provided further, that the department shall expend funds on the construction of a commuter rail parking garage near the Beverly Depot; provided further, that \$600,000 shall be expended for the resurfacing and repair of Route 39 from the Brewster town line to Oak Street in Harwich; provided further, that \$100,000 shall be expended on the necessary installation of traffic safety signals along Route 12 in Worcester; provided further, that \$350,000 shall be expended for the resurfacing and repair of Route 137 from the Brewster town line to Oueen Anne Road in Harwich; provided further, that department shall expend funds on the construction of an interchange on Route 128 between the exits of 18 and 19; provided further that the department shall expend funds on the improvement of interchange ramps on Route 128 between exits 20 and 22; provided further, that the department shall conduct an update to the study on the abatement of noise from I-90 in Newton, and implement such necessary mitigating strategy as the department determines necessary; provided further, that the department shall expend the \$300,000 for the completion of the project ongoing for signalization at the intersection of Adams Street, Randolph Avenue, and Canton Avenue in the town of Milton as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002; provided further, that \$100,000 shall be expended for the improvement of Route 225 in Westford; provided further, that \$65,000 shall be expended for the resurfacing and repair of Route 6A in North Truro from Highland Road to Provincetown town line; provided further, that \$360,000 shall be expended on the resurfacing and repair of Route 1A in the town of Swampscott; provided further, that the department shall coordinate with the commissioner of the department of conservation and recreation to expend not more than \$250,000 for the Cape Cod Rail Trail; provided further, that the department shall expend the \$125,000 for the completion of the project ongoing for signalization on High Street at Canton Street and Reed Street in the town of Randolph as expressly permitted in Section 19 of Chapter 246 of the Acts

of 2002; provided further, that the executive office of transportation and construction shall expend no less than \$5,000,000 to establish and administer a Safe Routes to School program, so-called, to distribute grants to cities and towns for safety enhancement projects in and around school areas; provided further, that \$3,500,000 shall be expended for improvements to route 68 in the town of Rutland; provided further, that the department shall expend the \$292,000 for the completion of the project ongoing for signalization and reconstruction on Oak Street from North Street to McDevitt Road in the town of Randolph as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002; provided further, that \$450,000 shall be expended for reconstruction of the Bernhardt road bridge in the town of Ashby; provided further, that not less than \$200,000 shall be expended for public safety improvements on Common Street at the entrance of Watertown High School in the city of Watertown; provided further, that an amount not to exceed \$17,500,000 shall be expended for the design, engineering and construction of the Blackstone canal in the city of Worcester: provided further, that \$450,000 shall be expended for the costs of design and improvement of the Main street/Front street/Myrtle street intersection in the Indian Orchard section of the city of Springfield; provided further, that no less than \$1,800,000 shall be expended for the replacement and modernization of traffic signals on state highway route 60 from the intersection with state highway route 28 in the city of Medford to the intersection with state highway route 99 in the city of Malden, and for traffic signalization of Medford street from Highland avenue to Main street in the city of Malden; provided further, that no more than \$50,000 shall be expended to clean and reconstruct catch basins situated on state highway route 16 from Nipmuc Drive to Hartford Avenue West in the town of Mendon; provided further, that no more than \$500,000 shall be expended for the repair or reconstruction of the Mellon Street Bridge in Hopedale; provided further, that no more than \$500,000 shall be expended for sound barriers in Milford, including 1,000 linear feet of sound barrier along interstate route 495 near Hillcrest Drive along the southbound right of way beginning about 0.6

mile south of the Hopkinton town line, 2,200 linear feet of sound barrier near Eben Street along the southbound right of way beginning about 1.4 miles south of the Hopkinton town line and 1,500 linear feet of sound barrier near Bodio, Attilio and Eugene Circles along the northbound right of way beginning about 1 mile north of the Bellingham town line; provided further, that the department shall expend the \$785,000 for the completion of the project ongoing for signalization and reconstruction of a bridge and an intersection on North Main Street at Pond Street, Pond Street, West Street, Liberty Street and Grove Street in the town of Randolph as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002; provided further, that \$5,000,000 shall be expended on the reconstruction and improvement of the Worchester Vocational High School bus Route on Route 9, Lake Avenue, and Lincoln Street in the town of Worcester; provided further, that \$100,000 shall be expended on the study of the feasibility to Create viable reverse flow lanes on Lynn Shore Drive from Nahant Circle to the Swampscott town line; provided further, that \$250,000 shall be expended on the necessary study and design of an egress ramp from the southbound direction of interstate 495 in the town of Mansfield and Norton; provided further, that no more than \$10,000,000 shall be expended for the improvement of and any bridge reconstruction to the acceleration and deceleration lanes on Route 128 in Danvers and Beverly; provided further, that the department shall expend funds to improve the signage, plantings, lighting and sidewalk reconstruction along Route 9 in Shrewsbury; provided further, that \$60,000 shall be expended for the emergency response preemptor signalization at the intersection of North Main Street at Depot Street and at the intersection of Route 28 and Route 139 in Randolph; provided further, that \$30,000 shall be expended on school zone warning signalization on Brook Road in Milton; provided further, that not less than \$1,000,000 shall be expended to improve upon the pedestrian access at the West Roxbury Parkway Rotary; provided further, that \$5,000,000 shall be expended for the construction of sound barriers along I-90 between Route 128 and Interstate 495; provided further, that \$1,000,000 shall be expended for improve-

ments to the intersection of Sprague street, Louise road, Hooper road, and Durham road in the town of Dedham; provided further, that \$3,500,000 shall be expended for the reconstruction of the Route 20 bridge, so-called, near the Wayland-Sudbury line in the town of Wayland; provided further, that no more than \$200,000 shall be expended for the construction of sidewalks in the town of Merrimac on Route 110 between the town center and the new town library; provided further, that no more than \$183,000 shall be expended for reconstruction of sidewalks in Rowley on Route 1A from the Ipswich town line to Railroad Avenue; provided further, that no more than \$2,500,000 shall be expended for design, acquisition and improvements associated with the Gateway I/Route 146 connector project in the city of Worcester; and provided further, that the department shall expend, at a minimum, \$450,000,000 per year, through fiscal year 2012, pursuant to section 1.1.A. of the balanced statewide road and bridge program memorandum of understanding entered into in June 2000 by the executive office of transportation and construction, the department of highways and the metropolitan planning organizations; provided, that said \$450,000,000 shall be adjusted annually pursuant to the construction cost index published by the Engineering News Record and shall be funded by the authorizations made available in this act and by previous authorizations for such federally aided and non-federally aided road and bridge projects as provided in chapter 33 of the acts of 1991, chapter 102 of the acts of 1994, chapter 273 of the acts of 1994, chapter 113 of the acts of 1996, chapter 205 of the acts of 1996, chapter 11 of the acts of 1997, chapter 235 of the acts of 2000 and chapter 40 of the acts of 2003 and any other appropriations made available for said projects; provided further, that said expenditures shall not include costs attributable to municipal reimbursements owed pursuant to the chapter 90 program, so-called, the public works economic development projects, the small town road program projects, or the administrative, engineering, design, maintenance or operations of said department; provided further, that the department of highway shall submit quarterly reports detailing the overall spending

pursuant to section 1.1.A. of said memorandum and shall include the specific projects being funded and the level of expenditure by project; and provided further, that said quarterly reports shall be filed with the house clerk, the senate clerk and the joint committee on transportation and said reports shall be posted on the web site of the department of highways; provided further, that no less than \$150,000 shall be expended for an environmental and traffic impact study on the proposed Exit 6B exit/entrance ramp between Exits 6 and 7 of Route 6 in the town of Barnstable; provided further, that not less than \$650,000 shall be expended for the restoration of Main and South Water streets located in the town of Nantucket: provided further, that not less than \$1 million shall be expended for the design and construction of the Old South Road Bicycle Path and Connector located in the town of Nantucket; provided further, that \$3,400,000 shall be expended for widening of Montvale Avenue in the city of Woburn; provided further, that \$200,000 shall be expended to repaint and de-lead the bridge formerly known as ST 12 over the Providence & Worcester and Boston & Maine Railroad tracks; provided further, that \$100,000 shall be expended for traffic signalization on Route 12 in the city of Worcester, in the vicinity of the Greendale Fire Station; provided further, that \$200,000 shall be expended for a study regarding the installation of sound barriers along Route 290 in the city of Worcester, adjacent to Melrose Street and Millbrook Street; provided further, that not less than \$325,000 shall be expended for the construction of safety improvements to the Winter Street/Route 53 intersection in the town of Duxbury, provided further, that not less than \$400,000 shall be expended for the design and construction of safety improvements to the Route 3A/Tobey Garden Street Intersection in the town of Duxbury; provided further, that \$3,600,000 shall be expended for reconstruction of the New Boston Street Bridge in the city of Woburn connecting with the town of Wilmington; provided further, that \$249,000 shall be expended for the design and construction of traffic lights at the intersection of Salem Street and South Street in the town of Tewksbury; provided further, that \$500,000 shall be expended for the repair and maintenance of South Main Street in the town of Stoneham; provided, further, that not less than

\$150,000 shall be expended for improvements in the form of signage, plantings and lighting along the Boston Turnpike Business Corridor located in Shrewsbury; provided further, that not less than \$300,000 be expended for repairs to the Pleasant Street Bridge over the Charles River in South Natick; provided further, that an \$3,200,000 be expended on the Cook Street/Alexander Road project in the town of Billerica; provided further, that \$305,000 be expended for the resurfacing of Old County Road in Truro from Truro Center to the Wellfleet line; provided further, that \$42,000 be expended for the resurfacing of South Highland Road in Truro from Route 6 to the junction of Highland Road; provided further, that \$29,000 be expended for the resurfacing of Truro Center Road from Route 6 through Truro Center and back to Route 6; provided further, that said department shall expend all funds necessary to resurface and reconstruct Old Bridge Street in Salem; provided further, that \$500,000 shall be expended for the synchronization of lights on Route 107 at Highland Avenue in the city of Salem; provided further, that not less than \$4,000,000 shall be expended for the study, design, engineering and construction of Canal Street in the city of Salem; provided further, that not less than \$500,000 shall be expended to assure the Ferry Service from Salem to Boston shall continue to operate; provided further, that not less than \$1,500,000 shall be expended for the study of traffic and implementation of intersection improvements on Derby Street in the city of Salem; provided further, that said department shall expend all funds necessary to make renovations and upgrades to Boston Street in the city of Salem; provided further, that not less than \$1,000,000 shall be expended for engineering, design and construction of Appleton Street at North and Orne Street; provided further, that the department shall expend all funds necessary to design, construct and complete North Street Overpass in the city of Salem; provided further, that \$500,000 shall be expended for the reconstruction, realignment and improvements of Route 113, at the Arlington Street/Montaup Street intersection in the town of Dracut; provided further, that not less than \$500,000 shall be expended for the improvement of pedestrian safety along Route 9 in Brookline, specifically the area between Hammond Street and Hammond Pond Parkway;

provided further, that \$200,000 shall be expended to install a full traffic signal at the intersection of South Main St. and Narrows Road in the village of Assonet located in the town of Freetown: provided further, that \$2,210,000 shall be expended for the resurfacing and repair of Essex Street in the town of Swampscott from the Lynn line to the Salem line; provided further, that not less than \$90,625 shall be expended for the Agawam portion of the Connecticut River Walk and Bike way; provided further, that funds shall be expended for Phase II of the Route 57 construction project in the city known as the town of Agawam; provided further, that \$1,000,000 shall be expended for the design, engineering and construction of an access road to Pemberton State Park on West Island, in Lawrence, connecting Broadway and the Casey Bridge; provided further, that sixty thousand dollars shall be expended for a feasibility study for the engineering, design and construction of an access road on the Clark Street, Charles Street. Sutton Street connector in North Andover: provided further, that not less than one million six hundred thousand dollars shall be expended for the reconstruction of Sutton Street in the town of North Andover; provided further, that up to \$100,000 must be expended by MassHighway to complete the collaborative effort among EOEA, DCR, MassHighway and the Massachusetts Historic Commission to complete and publish the final document "Historic Parkways Preservation Treatment Guidelines"; provided further, that no less than \$500,000 be expended for a final environmental impact study and full design of a new bridge to replace the existing Dighton-Berkley Bridge; provided further, that no more than \$954,000 shall be expended for the replacement of the Rockland Street Bridge in the town of Wellesley; provided further, that \$1,000,000 shall be expended for the design and reconstruction of state highway route 32 from Stimson street in Palmer to the Ware town line; provided further, that not more than \$250,000 shall be expended on the installation of traffic signalization and roadway improvements at the intersection of Rockdale Avenue and Bolton Street in the city of New Bedford; provided further, that the Department shall be obligated to spend up to \$100,000 to construct traffic signals and roadway improvements at the intersection

of Court Street and Rockdale Avenue in the city of New Bedford: provided further, that no less than \$500,000 shall be expended to improve and renovate the harbor walk on central wharf in the city of Boston; provided further, that not less than \$500,000 be expended to cover the ramp located at Parcel 12 along the proposed Rose Kennedy Greenway; provided further, that the department shall expend funds for the widening of Route 123 East/Belmont Street in the city of Brockton; provided further, that not less than \$100,000 shall be expended for the design and construction of full signalization at the public safety complex at the intersection of King and South Franklin Streets in the town of Holbrook; provided further, that not less than \$1,500,000 be expended for the design and construction of a storm water drainage system along interstate 95 in the town of Boxford; provided further, that not less than \$3,000,000 be expended for the rehabilitation and reconstruction of the Northern Avenue Bridge in the city of Boston; provided further, that not less than \$2,400,000 shall be expended for the reconstruction and enhancement of that portion of the state road known as "Somerville Avenue" in the city of Somerville; provided further, that \$900,000 shall be expended for construction of sidewalks in the city of Peabody. along Route 114, to provide safe access for school children; provided further that \$500,000 be expended for road repair of Route 114 in the city of Peabody, from Andover Street to Margin Street; provided further, that no less than \$100,000 shall be expended for Marathon Park in Ashland; provided further, that no less than \$600,000 shall be expended for the repair and reconstruction for the 126 corridor in the town of Ashland; provided further, that an amount not to exceed \$1,500,000 shall be expended on an emergency basis for repairs, sidewalks, widening and reconstruction of Route 126 in the town of Medway; provided further, that not less than \$99,000 shall be expended to the city of Waltham and the town of Lincoln for the purpose of resurfacing and other improvements to Old County road from Winter street in Lincoln to Lincoln Woods rd in Waltham; provided further, that no less than \$300,000 be expended for the repair of the Border Street Bridge in Cohasset; provided further, that no less than \$250,000 be expended to fund a grant program to provide up to three months mitigation to businesses affected

by the construction of Greenbush Commuter Rail Line in the Downtown Hingham Business District; provided further, that no less than \$1,000,000 be expended to repair and replace the West Corner Bridge and Culvert located at the intersection of Hingham, Hull and Cohasset; provided further, that \$500,000 be expended for a traffic light at the exit 13 ramp of Route 3 northbound where it intersects with Route 53 in Hanover; provided further, that \$1,500,000 be expended on the widening of the Route 53 bridge in Hanover; provided further, that not less than \$100,000 shall be expended for reconstruction of sidewalks, along Route 9 in the town of Brookfield; provided further, that not less than \$65,000 shall be expended for acquisition of land and construction of sidewalks on West Brookfield Road in the town of New Braintree; provided further, that \$375,000 shall be expended to reconfigure the intersection of Warren Street, School Street and Dedham Avenue in the town of Needham; provided further, that \$300,000 shall be expended to install traffic signals and to resurface the intersection of Charles River Street and Central Avenue in Needham; provided further, that \$450,000 be allotted for rehabilitation and repair of Main Street/Routes 70 and 110 in the town of Clinton; provided further, the the Massachusetts Highway Department shall allocate the necessary funding to conduct a feasibility study regarding the addition of an exit ramp along Route 190 in the Flanagan Hill Road area of the town of Sterling; provided further, that no less than \$2,600,000 be expended for the upgrade of Route 28 from the Sandwich Road intersection in Falmouth to the Mashpee Town Line; provided further, that the department shall expend funds to erect a barrier or fence along Route 135/Dedham Avenue under the MBTA bridge near the intersection of Glenn Terrace to provide for pedestrian safety; provided further, that funds be expended for the installation of a traffic signal at the intersection of Rt. 125 and Salem St. in the town of Andover; provided further, that no less than \$1,800,000 be expended to conduct road repairs and a road study to alleviate traffic flow on Rt. 110 (East Haverhill Street), Hampshire Street, Lawrence Street, Prospect Street and Essex Street in the city of Lawrence; provided further, that \$900,000 shall be expended to widen Pelham Street and construct a travel lane leading on Interstate 93

in Methuen; provided further, that \$3,000,000 shall be expended on the reconstruction and widening of Howe Street bridge in Methuen; provided further, that \$5,000,000 shall be expended on improvements to Route 113 to Route 110 in the city of Methuen; provided further, that not less than \$3,000,000 be expended for the reconstruction resurfacing of Essex Street in the city of Lynn; provided further, that \$300,000 shall be expended on the improvement to department signage in and around the city of Salem; provided further, that \$650,000 be used for total reconstruction on Main Street from route 6 to Center Street: provided further, that not less than \$1,087,000 shall be expended for the design, engineering, and construction costs associated with public works economic development in the town of Plympton; and provided further, that not less than \$18,000 shall be expended for improvement, upgrading and repair of the traffic signals at the intersection of state route 16 and Hopedale street in Hopedale; provided further, that an additional \$2,000,000 be expended on the Concord Road Phase II project in the town of Billerica; provided further, that up to \$200,000 shall be expended for additional sidewalks from Vaughn Street to Commercial Drive in the town of Lakeville as part of the resurfacing project of Route 105; provided further, that \$250,000 shall be expended to restore and replace the ironwork railings on the pathway on Echo Bridge in Newton and Needham, a structure listed on the National Register of Historic Places and part of the Sudbury Aqueduct transporting water from the Sudbury Reservoir to the Chestnut Hill Reservoir and currently used as a pedestrian pathway from Needham to Newton crossing Hemlock Gorge where the deteriorated rails represents a threat to the public safety as well as a threatened loss to our parks and historic properties; provided further, that not more than \$150,000 be expended by the Massachusetts Highway Department for a traffic noise survey to be conducted in the area of Interstate 495 between exits 26 and 28; provided further, that monies shall be expended to conduct a study to determine the costeffectiveness of camera surveillance at problem signalized intersections throughout the commonwealth for the potential of issuing traffic citations for red light violations; provided further, that not more than \$10,000 be allotted to conduct a noise

study along Route 290 in the town of Northborough; provided further, that said department shall expend funds to construct a parking structure near I-290 at the Union Station in Worcester; provided further, that \$1,250,000 shall be expended for the funding of the acquisition of property for a so-called rail trail or trains in the town of Holliston; provided further, that said department shall expend such funds necessary to make the safety and structural improvements necessary at the Route 146 intersection of Quinsigamond Village Gateway in Worcester; provided further, that funds may be expended for the Worcester Department of Public Works and Transportation relocation; provided further, that the not less than \$200,000 shall be expended for the Webster Square Fire Station Traffic Signal in the city of Worcester; provided further not less than \$400,000 shall be expended for the Worcester Airport Industrial Park Expansion Road; and provided further not less than \$4 million shall be expended for Goddard Memorial Drive reconstruction in the city of Worcester; provided further, that an amount not to exceed \$2,300,000 for the design, construction and necessary land taking for the Mattapoisett portion of the bike path on the existing Old Colony Railroad right of way; provided further, that not less than \$500,000 shall be expended for the redesign of the New Bedford Regional Airport access road; provided further, that not less than \$1,000,000 shall be expended for the extension of the Joseph Saulnier bike path in the city of New Bedford; provided further, that not less than \$1,000,000 shall be expended for the re-design of South Main Street in the town of Acushnet; provided further, that the department shall expend funds on improvements and reconstruction of state highway route 18/John F. Kennedy Highway; provided further, that not more than \$125,000 be spent for preliminary design for a multi-use pathway south extension of the Ashuwillticook Trail from Williams Street in Pittsfield through Lenox and into Lee center; provided further, that not more than \$165,000 be spent to resurface a portion of West Street in the town of Mt. Washington leading to the Bash Bish Falls State Park; provided further, that not more than \$1,250,000 be spent to reconstruct Bash Bish Falls Road in the town of Mt. Washington; provided further, that not more than \$1,000,000 be spent to resurface route 20 at Main, West

Center and West Park Streets in the town of Lee; provided further, that not more than \$100,000 be spent to provide a detailed analysis of current conditions and development of engineering designs and cost estimates for upgrade to the utility and infrastructure elements along the route 102 corridor in Lee; provided further, that the amount of \$600,000 shall be used to fund the completion of improvements in the towns of Southborough and Hopkinton relating to the so-called MBTA train station located in the towns of Southborough, including but not limited to the completion of all improvements and other outstanding items to have been completed by the MBTA in the town of Southborough and the construction of sidewalks from said station to the Hopkinton State Park in the town of Hopkinton; provided further, that \$20,000 shall be expended for the department of conservation and recreation to conduct a study of the feasibility on developing a multi use pathway to connect the Alewife intermodal transportation terminal in the city of Cambridge to the existing department paths along the Charles River in Watertown; provided further, that Mass Highway shall design and install full signal lighting at the intersection of interstate 195 and Route 6 and that no less than \$350,000 shall be expended on said project; provided further, that the Massachusetts highway department shall expend no more than \$150,000 for a traffic noise survey to be conducted in the area between exits 26 and 28 on interstate route 495; provided further that \$7,000,000 shall be expended for the design, construction and engineering for a parking garage in downtown Haverhill; provided further, that the secretary shall grant funds for the purposes for the completion of the project ongoing in Stoughton at the intersections of Route 138, Route 139 and Route 27; and provided further, that not less than \$1,550,000 shall be expended to reconstruct Baldwinville Road from its intersection with Route 202 to its intersection with Routes 101/2A in the town of Templeton; provided further, that the department of highways shall allocate the necessary funding to complete and environmental impact review for the reconfiguration of Rutherford avenue and Sullivan Square in the Charlestown section of the city of Boston\$582,087,574

6033-0418 For the development of a parking garage in the downtown area of the city of Pittsfield; provided, however, that notwithstanding

any general or special law to the contrary, no funds shall be expended from this item for the development of a parking garage in the city of Pittsfield until the community development board of said city certifies to the executive office of transportation that 150 additional hotel rooms shall be made available in the downtown area of the city of

SECTION 2B.

EXECUTIVE OFFICE OF TRANSPORTATION

Department of Highways.

6033-0428 For the purpose of implementing section 32 of chapter 637 of the acts of 1983, which authorizes the commissioner of highways to establish a program to assist towns with populations of 3,500 or less undertaking projects to design, construct, reconstruct, widen, resurface, rehabilitate and otherwise improve roads and bridges and pursuant to section 38; provided, that the commissioner shall establish rules and regulations which shall govern the application distribution of grant funds under this item; provided further, that the required repayment amount shall not be less than 30 per cent of the amount of any such grant and the time period allowed for such repayment shall not exceed 10 years; provided further, that upon approval, the commissioner shall notify the town as to the total amount of state aid for such project and the provisions for repayment; and provided further, that towns shall be eligible to receive 1 grant every 5 years and the amount of such grant shall not exceed \$500,000

.. \$3,600,000

6033-0498 For the construction and reconstruction of town and county ways as described in paragraph (a) of clause (2) of section 34 of the first paragraph of chapter 90 of the General Laws; provided that a city or town shall comply with the procedures established by the department of highways; provided further, that any such city or town may appropriate for such projects amounts not in excess of the amount provided to the city or town under this item preliminary notice of which shall be provided by the department to such city or town no later than April 1 of each year; provided further, that said appropriation shall be considered as an available fund upon approval of the

commissioner of revenue pursuant to section 23 of chapter 59 of the General Laws; provided further, that the commonwealth shall reimburse any such city or town under this item within 30 days of receipt by the department of a request for reimbursement from the city or town, which request shall include certification by the city or town that actual expenses have been incurred on projects eligible for reimbursement under this item, and that the work has been completed to the satisfaction of such city or town according to the specifications of the project and in compliance with applicable laws and procedures established by the department; and provided further, that the funds shall be used to support a \$150,000,000 annual apportionment program \$450,000,000

6033-0499 For the design and construction of roads, roadways and other transportation related projects deemed necessary for economic development by the secretary of transportation upon the petition of the local executive government body and pursuant to section 38, provided, that funds authorized in this item shall be expended in accordance with chapter 19 of the acts of 1983; provided further, that all projects funded through this item, subsection (f) of section 3 of chapter 15 of the acts of 1988, item 6033-9501 of section 2A of chapter 273 of the acts of 1994, item 6033-9603 of section 2B of chapter 205 of the acts of 1996, item 6033-9703 of section 2B of chapter 11 of the acts of 1997, item 6033-9903 of section 2B of chapter 235 of the acts of 2000, and item 6033-9013 of chapter 246 of the acts of 2002 shall be in accordance with 701 CMR 5.00 to CMR 5.10, inclusive; provided further, that the secretary of transportation shall notify cities and towns of the availability of funds through this program and shall inform municipalities of the application process prior to the expenditure of any

SECTION 2C.

EXECUTIVE OFFICE OF TRANSPORTATION

Department of Highways.

6003-0462 For the purchase, long-term leasing and rehabilitation of necessary durable equipment, including highway maintenance fleet equipment, in addition to parts for such durable \$7,500,000

6033-0464 For the purchase and implementation of networking and intelligent transportation systems for the department \$3,000,000 SECTION 2D.

EXECUTIVE OFFICE OF TRANSPORTATION.

Department of Highways.

6033-0473 For the purchase of cameras, barriers, fencing and other safety-related equipment to facilitate the safety and security of the department's critical infrastructure assets\$3,000,000 SECTION 2E.

EXECUTIVE OFFICE OF TRANSPORTATION

Office of the Secretary.

6001-0405 For the purposes of chapter 161B of the General Laws, including the purchase, long-term lease and rehabilitation of rolling stock, implementation of networking and intelligent transportation systems to provide for interoperability communications, and the construction, reconstruction and rehabilitation of regional transit authority facilities and related appurtenances; provided further, that not less than \$900,000 shall be made available to the Cape Ann Regional Transit Authority for reimbursement for expenses associated with the purchase, construction and rehabilitation of the Cape Ann maintenance facility; provided further that not less than \$1,500,000 shall be expended to contract with the Massachusetts Alliance for Small Contractors to provide technical assistance to minority-owned and women-owned small businesses as well as other small business concerns in participating in public construction projects\$25,000,000

SECTION 2F.

EXECUTIVE OFFICE OF TRANSPORTATION.

Office of the Secretary.

6001-0445 For the purpose of implementing the mobility assistance program, pursuant to section 13 of chapter 637 of the acts of 1983; provided, that any grant funds awarded under this item shall be for not more than 80 per cent of the total purchase cost of the vehicles or equipment purchased under the program; and provided further, that the secretary of transportation may waive the foregoing limitation on a determination that a

recipient is in critical financial need\$8,000,000 SECTION 2G.

EXECUTIVE OFFICE OF TRANSPORTATION

Office of the Secretary.

6001-0456 For the purpose of planning, engineering, design and construction of transportation infrastructure investments to be called regional intermodal transportation centers, strategically located to maximize passenger connections between road, air. water, rail and other transportation modes; provided, that in carrying out this item, the secretary of transportation may set service standards to aid in identifying population hubs where intermodal centers would optimally affect passenger

SECTION 2H.

EXECUTIVE OFFICE OF TRANSPORTATION.

Office of the Secretary.

6001-0420 For the purpose of implementing rail improvements pursuant to chapter 161C of the General Laws and for the purposes provided herein; provided, that not less than \$9,000,000 shall be expended for costs associated with environmental permitting for the restoration of the New Bedford-Fall River

SECTION 21.

EXECUTIVE OFFICE OF TRANSPORTATION

6001-0421 For a program to provide financial assistance to promote transit-oriented development; provided, that the assistance may be in the form of grants or loans and may be used to design, construct, reconstruct or enhance parking facilities and related pedestrian and bicycle access serving mixed use developments adjacent to existing or planned transit stations. to build or rehabilitate housing, at least 25 per cent of which shall be affordable to households earning no more than 80 per cent of the area median income; provided, however that all projects funded under this item shall be located within .25 miles of a commuter rail station, subway station, ferry terminal or bus station; provided further, that the executive office of transportation is authorized to enter into agreements, request proposals and applications, and issue regulations and

guidelines as necessary to carry out the purposes of this item; provided further, that the secretary of transportation shall make reasonable efforts to coordinate with and utilize existing programs and resources including but not limited to, the executive office for administration and finance off-streets parking program, the Massachusetts Bay Transportation Authority Parking Enterprise Fund, Massachusetts Bay Transportation Authority station air rights development agreements, other Massachusetts Bay Transportation Authority investments in station access or commuter parking enhancements, similar types of parking investments by any other regional transit authority, or existing programs of the department of housing and community development, the executive office of environment affairs, the Massachusetts Housing Finance Agency or the Massachusetts Development Authority; provided further, that to be eligible to receive assistance under this item, a project shall also receive financial or technical assistance from 1 or more of the following: the department of housing and community development, the executive office of environment affairs, the Massachusetts Bay Transportation Authority. Massachusetts Housing Finance Agency or the Massachusetts Development Authority; provided further, the annually, on or before December 31, the executive office of transportation shall issue a written report to the clerks of the house of representatives and the senate, which shall include detailed descriptions of any agreements, loans or grants and a list indicating the allocation of all committed and expended funds

EXECUTIVE OFFICE OF PUBLIC SAFETY

Department of State Police.

8100-0400 For the acquisition of 1 replacement light twin turbine powered fixed-wing aircraft for joint use by the state police and the Massachusetts aeronautics commission; provided, that such acquisition shall replace current aircraft assets of the state

. . . . \$6,000,000

8100-0461 For the acquisition of 2 replacement helicopters; provided that not less than \$400,000 shall be expended for the purchase and

installation of electronic vulnerable target inventory management and integrated hazardous materials tracking, alert notification and response deployment systems \$9,800,000 **SECTION 2.J.**

EXECUTIVE OFFICE OF TRANSPORTATION

Office of the Secretary.

6001-2040 For matching funds to the Massachusetts Bay Transportation Authority for costs associated with the design, acquisition, renovation, construction, reconstruction and other improvements to the Fairmount commuter rail line; provided, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with such design, acquisition, renovation, construction, reconstruction and other improvements to such

6001-2041 For matching funds to the Massachusetts Bay Transportation Authority for costs associated with the design, acquisition, renovation, construction, reconstruction, other improvements for the extension of the blue line station from its present terminus at Wonderland station, so-called, to the city of Lynn; provided, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to said authority for the costs associated with said extension project including design, acquisition, renovation, construction, reconstruction and other improvements to said projects; provided, however, that the commonwealth may expend up to 100 per cent of the costs associated with the commonwealth's share of the project only if necessary to obtain federal funding for the project ... \$246,500,000

For matching funds to the Massachusetts Bay Transportation 6001-2042 Authority for costs associated with the design, acquisition, renovation, construction, reconstruction, and other improvements for the extension of commuter rail service to the cities of New Bedford and Fall River; provided, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with such extension, design, acquisition, renovation, construction, reconstruction and other

6001-2043 For matching funds to the Massachusetts Bay Transportation Au-

thority for costs associated with the design, acquisition, renovation, construction, reconstruction, and other improvements for the improvement and extension of commuter rail service on the Haverhill rail commuter line, provided, that such improvements shall include, but not be limited to, the installation of double-track and signaling upgrades: provided further, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with such extension, design, acquisition, renovation, construction, reconstruction and other improvements to such projects \$43,750,000

6001-2044 For matching funds to the Massachusetts Bay Transportation Authority for costs associated with the design, acquisition, renovation, construction, reconstruction, and other improvements for the improvement and extension of commuter rail service on the Worcester rail commuter line, provided, that such improvements shall include, but not be limited to, the purchase of additional rolling stock and track and signal improvements; provided further, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with such extension, design, acquisition, renovation, construction, reconstruction and other improvements to said

6001-2045 For matching funds to the Massachusetts Bay Transportation Authority for costs associated with the design, acquisition, renovation, construction, reconstruction, and other improvements for the improvement and extension of commuter rail service on the Fitchburg rail commuter line, provided, that such improvements shall include, but not be limited to, the installation of double-track and signaling upgrades; provided further, that the amounts authorized herein shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with such extension, design, acquisition, renovation, construction, reconstruction and other improvements to such projects \$9,500,000

6001-2046 For matching funds to the Massachusetts Bay Transportation Authority for costs associated with the design, acquisition, renovation, construction, reconstruction and other improvements to the Ashmont red line station; provided, that the amounts authorized herein shall be used as a 50 per cent

match from the commonwealth to said authority for the costs associated with said design, acquisition, renovation,
construction, reconstruction and other improvements to said projects
6001-2047 For matching funds to the Massachusetts Bay Transportation
Authority for costs associated with the design, acquisition,
renovation, construction, reconstruction and other improvements to the Mattapan station; provided, that the
amounts authorized herein shall be used as a 50 per cent
match from the commonwealth to said authority for the costs
associated with said design, acquisition, renovation,
construction, reconstruction and other improvements to said projects
6001-2048 For matching funds to the Massachusetts Bay Transportation
Authority for costs associated with the design, acquisition,
renovation, construction, reconstruction and other
improvements to the Uphams Corner and Morton Street stations; provided, that the amounts authorized herein shall be
used as a 50 per cent match from the commonwealth to said
authority for the costs associated with said design,
acquisition, renovation, construction, reconstruction and other
improvements to said projects
Authority for costs associated with the extension, design,
acquisition, renovation, construction, reconstruction and other
improvements to the commuter rail station in Salem at the intersection of Bridge and North streets; provided, that such
improvements shall include, but not be limited to, the
construction of a station house for customers and a parking
garage; provided further, that the amounts authorized herein
shall be used as a 50 per cent match from the commonwealth to the authority for the costs associated with said design,
acquisition, renovation, construction, reconstruction and other
improvements to such projects \$24,000,000

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Massachusetts Rehabilitation Commission

4120-1017 For the purposes of a competitive grant program to provide funding for the regional transit authorities to purchase buses, vans

SECTION 2K.

and other vehicles as determined necessary to provide increased transportation services for the disabled and the elderly; provided, that the Massachusetts rehabilitation commission shall first conduct regional hearings to identify the need for increased service by geographic areas; provided further, that such hearings shall be held in conjunction with agencies and advocacy organizations for the elderly and the disabled, including but not limited to Mass Senior Action Committee and the disabled persons protection commission; provided further, that the determination of the grant shall first consider as a priority for award those areas with limited current public transportation services for the disabled and the elderly; and provided further, that the Massachusetts rehabilitation commission shall provide annually a report to the legislature detailing the awarding of such grants \$10,000,000

SECTION 3. To meet a portion of the expenditures necessary in carrying out section 2, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$425,000,000, to be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Highway Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal of such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer pursuant to this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2 O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2 O of said chapter 29. All special obligation revenue bonds issued pursuant to this section shall be designated on their face, Special Obligation Revenue Highway Improvement Loan Act of 2004 and shall be issued for a maximum term of years,

not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the Infrastructure Fund established in said section 2 O of said chapter 29. Special obligation bonds issued pursuant to this section shall be special obligations of the commonwealth payable solely in accordance with said section 2 O of said chapter 29.

SECTION 4. To meet a portion of the expenditures necessary in carrying out section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$589,087,574, to be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Highway Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal of such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer pursuant to this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2 O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2 O of said chapter 29. All special obligation revenue bonds issued pursuant to this section shall be designated on their face, Special Obligation Revenue Highway Improvement Loan Act of 2004 and shall be issued for a maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the Infrastructure Fund established in said section 2 O of said chapter 29. Special obligation bonds issued pursuant to this section shall be special obligations of the commonwealth payable solely in accordance with said section 2 O of said chapter 29.

SECTION 5. To meet a portion of the expenditures necessary in carrying out section

2B, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$478,600,000, to be in addition to those bonds previously authorized and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Highway Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal of such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer pursuant to this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2 O of chapter 29 of the General Laws; provided, however, that in deciding whether to request the issuance of particular bonds as special obligations, the governor shall take into account (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2 O of said chapter 29. All special obligation bonds issued pursuant to this section shall be designated on their face, Special Obligation Revenue Highway Improvement Loan Act of 2004 and shall be issued for a maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued pursuant to this section shall be special obligations of the commonwealth payable solely in accordance with said section 20 of said chapter 29.

SECTION 6. To meet the expenditures necessary in carrying out section 2C, the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth in an amount specified by the governor from time to time, but not exceeding in the aggregate the sum of \$10,500,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face Highway Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 7 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2016. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund.

SECTION 7. To meet the expenditures necessary in carrying out section 2D, the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$3,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Highway Security Improvement Program Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 5 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2014. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 8. To meet the expenditures necessary in carrying out section 2E, the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth, in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$25,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Regional Transportation Authority Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 5 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2014. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 9. To meet the expenditures necessary in carrying out section 2F, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$8,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Mobility Assistance Program Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 5 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2014. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 10. To meet the expenditures necessary in carrying out section 2G, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$27,400,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Intermodal Transportation Improvement Loan Act of 2004, and

shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable, from the General Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 11. To meet the expenditures necessary in carrying out section 2H, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$59,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Rail Transportation Assistance Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 12. To meet the expenditures necessary in carrying out section 2I, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate, the sum of \$45,800,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Capital Outlay Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 10 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2019. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 13. To meet a portion of the expenditures necessary in carrying out section 2J, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$873,250,000, to be in addition to those bonds previously authorized and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Commonwealth of Massachusetts and the Massachusetts Bay Transportation Authority Subway and Commuter Rail Improvement Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments

to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. Any bonds issued by the commonwealth pursuant to section 2J shall be for no more than 50 per cent of the costs associated with any of the projects listed in said section 2J, with the remaining 50 per cent to be provided for by the Massachusetts Bay Transportation Authority pursuant to an agreement entered into by the secretary of administration and finance and the Massachusetts Bay Transportation Authority. All interest and payments on account of principal of such obligations shall be payable from the General Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 14. To meet the expenditures necessary in carrying out section 2K, the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of \$10,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Elderly and Disabled Transportation Quality Improvement Program Loan Act of 2004, and shall be issued for such maximum term of years, not exceeding 5 years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2014. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Notwithstanding any previous act or special law, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 15. Bonds issued as special obligation bonds pursuant to this act shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section 60A of chapter 29 of the General Laws, nor shall debt service with respect to such bonds be included in any computation of the limit imposed by section 60B of said chapter 29.

SECTION 16. In carrying out sections 2 to 2K, inclusive, the department of highways may enter into such contracts or agreements as may be appropriate with other state, local or regional public agencies or authorities. The agreements may relate to such matters as the department shall determine including, without limitation, the design, layout, construction, reconstruction or management of construction of all or any portion of such projects. In relation to any such agreements between the department and other state agencies or authorities, the department may advance monies to the agencies or authorities, without prior expenditure by the agencies or authorities, and the agencies and authorities may accept monies necessary to carry out such agreements; provided, however, that the department shall certify to the comptroller the amounts so advanced; provided further, that such agreements shall contain provisions satisfactory to the department for the accounting of such monies as expended by the agency or authority; and, provided further, that all monies not expended under any such agreement shall be credited to the account of the department from which they were advanced. The department of highways shall report to the house and senate committees on ways and means any transfers completed pursuant to this section.

SECTION 17. The department of highways shall expend the sums authorized in sections 2 to 2D, inclusive, for the following purposes: projects for the laying out, construction, reconstruction, resurfacing, relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or facilities, on and off-street bicycle projects, sidewalks, telecommunications, parking facilities, auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other crossings, traffic safety devices on state highways and on roads constructed under section 34 of chapter 90 of the General Laws, highway or mass transportation studies, including, but not limited to, traffic, environmental or parking studies, the establishment of school zones in accordance with section 2 of chapter 85 of the General Laws, improvements on routes not designated as state highways without assumption of maintenance responsibilities and, notwithstanding any general or special law to the contrary, projects to alleviate contamination of public and private water supplies cause by the department's storage and use of snow removal chemicals which are necessary for the purposes of highway safety and for the relocation of persons or businesses or for the replacement of dwellings or structures including, but not limited to, providing last resort housing under federal law and such functional replacement of structures in public ownership as may be necessary for the foregoing purposes and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act, 42 USC 4601 et seq., PL 90-6464, and to sell any structure the title to which has been acquired for highway purposes. When dwellings or other structures are removed, in furtherance of any of the foregoing projects, the excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after such removal. In planning projects funded by sections 2 to 2D, inclusive, consideration shall be made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of bicycles and walking as a means of transportation; provided, however, that nothing herein shall be construed to give rise to enforceable legal rights in any party or a cause of action or an enforceable entitlement as to the projects provided herein.

Funds authorized in sections 2 to 2D, inclusive, shall, except as otherwise specifically provided in this act, shall be subject to the first paragraph of section 6 and sections 7 and 9 of chapter 718 of the acts of 1956 and, notwithstanding any general or special law to the contrary, may be used for the purposes stated in this act in conjunction with funds of cities, towns and political subdivisions of the commonwealth.

Notwithstanding sections 40A and 40B of chapter 7 of the General Laws, the department shall have jurisdiction over the selection of designers performing design services in connection with the ventilation of buildings, utility facilities and toll booths to be constructed as part of the central artery/tunnel project and shall construct, control, supervise or contract such structures; provided, however, that no such construction or contractual agreement for construction shall begin before the review and approval of the inspector general. The inspector general shall file with the house and senate committee on ways and means and the joint committee on transportation all notices of approval for projects undertaken pursuant to this paragraph.

In addition to the foregoing, the department may: expend funds made available by this act to acquire from any person, land or rights in land by lease, purchase or eminent domain under chapter 79 of the General Laws, or otherwise, for parking facilities adjacent to any public way to be operated by the department or under contract with an individual; expend funds made available by this act for the acquisition of van-type vehicles used for multi-passenger, commuter-driven carpools and high occupancy vehicles including, but not limited to, water shuttles and water taxis; and in accordance with all applicable state and federal laws and regulations, exercise all powers and do all things necessary and convenient to carry out the purposes of this act.

In carrying out this section, the department may enter into contracts or agreements with cities to mitigate the effects of projects undertaken pursuant to this act and to undertake additional transportation measures within the city and may enter into such contracts or agreements with other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions as may be necessary to implement such city agreements. Cities and other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions may enter into such contracts or agreements with the department. In relation to such agreements, the department may advance to such agencies, organizations or authorities, without prior expenditure by such agencies, organizations or authorities, monies necessary to carry out such agreements; provided however, that the department shall certify to the comptroller the amount so advanced; provided further, that all monies not expended under such agreement shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed pursuant to this paragraph.

SECTION 18. Notwithstanding any general or special law to the contrary, the department of highways shall take all necessary actions to secure federal highway or mass transportation assistance which is or may become available to the department including, but not limited to, actions authorized under or in compliance with the provision of title 23 U.S.C. and section 145 of the Surface Transportation and Uniform Relocation Assistance Act of 1982, PL 97-424, the Surface Transportation and Uniform Relocation Act of 1987, PL 100-17, the Intermodal Surface Transportation Efficiency Act of 1991, PL 102-240, Transportation Equity Act for the 21st Century, PL 105-178, and any successor acts or reauthorizations of those acts, and actions such as filing applications for federal assistance, supervising the expenditure of funds under federal grants or other assistance agreements and making any determinations and certifications necessary or appropriate to the foregoing. If any federal law, administrative regulation or practice requires any action relating to such federal assistance to be taken by a department, agency or other instrumentality of the commonwealth other than the department of highways, such other department, agency or instrumentality shall take such action.

In furtherance of the foregoing purposes, the department of highways, as appropriate, shall apply for and may accept any federal funds available for projects authorized in section 2, and such federal funds when received shall be credited to the Federal Highway

Construction Program Fund. To meet a portion of the expenditures authorized by section 2, there shall be appropriated to the Federal Highway Construction Program Fund a sum of \$331,500,000 which shall be expended, subject to the limitations contained in Article LXXVII of the Amendments to the Constitution and which shall be in addition to the amounts appropriated in section 1 of chapter 33 of the acts of 1991, section 2 of chapter 102 of the acts of 1994, section 2 of chapter 273 of the acts of 1994, section 2 of chapter 113 of the acts of 1996, section 2 of chapter 205 of the acts of 1996, section 2 of chapter 11 of the acts of 1997, section 2 and 2A of chapter 235 of the acts of 2000 and section 2 of chapter 40 of the acts of 2003.

SECTION 19. Section 18 of chapter 6A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 3, the words "; the registry of motor vehicles".

SECTION 20. Section 19 of said chapter 6A, as amended by section 3 of chapter 196 of the acts of 2004, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The following state agencies shall be within the executive office of transportation: the department of highways, including the government center commission established by section 1 of chapter 635 of the acts of 1960, the registry of motor vehicles and all other state agencies within the department, except the division of motorboats and the division of waterways; and the Massachusetts aeronautics commission. The Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority and any regional transportation authorities established under chapter 161 or 161B shall also be within the executive office of transportation.

SECTION 21. Section 35U of chapter 10 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the last sentence.

SECTION 22. Section 63 of chapter 10 of the General Laws, as so appearing, is hereby amended by striking out, in lines 4 to 6, inclusive, the words "the estimated additional costs associated with the Central Artery/Ted Williams Tunnel Project and for costs of the statewide road and bridge program" and inserting in place thereof the following words:- (i) the estimated additional costs associated with the Central Artery/Ted Williams Tunnel Project; (ii) the costs of the statewide road and bridge program; and (iii) for the period covering July 1, 2005 to June 30, 2008, excess registry fees not required for the purposes of clauses (i) and (ii), for the costs of transferring the regional transit authorities from funding in arrears to current year funding, in an aggregate amount not to exceed \$50,000,000 total for said period.

SECTION 23. Said section 63 of said chapter 10, as so appearing, is hereby further amended by inserting after the fourth paragraph the following paragraph:-

The state treasurer shall, with the approval of the executive office of administration and finance, transfer the excess registry fees to the Regional Transit Authority Forward Funding Trust Fund on or before June 30 of each fiscal year, provided that the amount so trans-

ferred shall not exceed an aggregate amount of \$50,000,000 for the period of July 1, 2005 to June 30, 2008. The state treasurer shall report excess registry fees identified and actual balance transfers to the senate and house committees on ways and means, the joint committee on transportation, the executive office of administration and finance and the executive office of transportation by August 15 of each year.

SECTION 24. Sections 4 and 5 of chapter 16 of the General Laws is hereby repealed.

SECTION 25. Said chapter 16 is hereby amended by inserting after section 5 the following 2 sections:-

Section 5A. (a) The department of highways may provide functional replacement of real property in public ownership whenever the department has acquired such property in whole or in part under this act or when such property is significantly and adversely affected as a result of the acquisition of property for a highway or highway-related project and whenever the department determines such functional replacement is necessary and in the public interest. For the purposes of this section, the words "functional replacement" shall mean the replacement, pursuant to chapter 7, including sections 40F and 40F 1/2, requiring authorization of the general court prior to disposition of real property, including either land or facilities thereon, or both, which will provide equivalent utility, and the words, "real property in public ownership" shall mean any present and future interest in land, including rights of use, now existing or hereafter arising, held by an agency, authority, board, bureau, commission, department, division or other unit, body, instrumentality or political subdivision of the commonwealth. This section shall not constitute authorization by the general court as required by said chapter 7.

- (b) Whenever the department determines it is necessary that a utility or utility facility, as defined under federal law, be relocated because of construction of a project which is to be reimbursed federally in whole or in part, then such facility shall be relocated by the department or by the owner thereof in accordance with an order from the department; provided, however, that the commonwealth shall reimburse the owner of such utility or utility facility for the cost of relocation subject to the limitations in subsections (f) and (g) and in accordance with the following formula: (1) for any utility facility that is to be reimbursed federally in whole or in part, the department shall reimburse the utility to the extent that the cost of relocating the utility facility is reimbursed by the federal government; and (2) for the relocation of any utility facility over \$50,000 that does not qualify for federal reimbursement, the department shall reimburse the utility in accordance with the utility's performance in meeting the following schedule: if the utility completes the relocation in a manner consistent with the department's policies and on or before the target date established by the department for the project, the department shall reimburse the utility at least 50 per cent and not more than 80 per cent of the costs of relocating the utility facility.
- (c) The department shall promulgate policies for the calculation of reimbursable expenditures, determination of target dates and requirements for notice to utilities, extent of consultation with utilities regarding design criteria for a relocation, calculation of completion

times, and to implement this section. The department shall consult with the utilities, construction industry representatives, labor representatives, consumer representatives and other relevant and appropriate parties in the development of such policies, and shall forward such policies to the chairs of the house and senate committees on ways and means, the joint committee on transportation and the joint committee on government regulations.

- (d) Any relocation of facilities carried out under this section which is not performed by employees of the owner shall be subject to section 27 of chapter 149 of the General Laws.
- (e) Notwithstanding any general or special law to the contrary, any utility facility that is required to be relocated because of the construction of a project federally funded under the Federal-Aid Highway Act of 1982 and the Federal-Aid Highway Act of 1987 may be relocated temporarily above ground during the construction of the project.
- (f) The total cost to the commonwealth for reimbursements for utility relocations under this section that are not reimbursed federally in whole or in part, shall not exceed \$10,000,000 annually, and shall not be credited toward meeting the requirements of a \$400,000,000 annual statewide road and bridge program as defined in chapter 87 of the acts of 2000.
- (g) A utility relocation shall be eligible for reimbursement under this section only if it is completed to the satisfaction of the department within target dates established by the department and in accordance with design criteria set forth by the department for the relocation in a manner that facilitates the timely completion of the affected project.

Section 5B. Notwithstanding section 6 of chapter 33 of the acts of 1991 or any other general or special law to the contrary, the commonwealth, through the department of highways, may reimburse the owner of an underground utility or utility facility whenever such underground utility or utility facility has been relocated because of construction of a project which is to be reimbursed federally in whole or in part. This section shall apply to an underground utility or utility location project eligible for federal reimbursement having commenced on or after January 1, 2004, and the reimbursement authorized herein shall be to the extent that the cost of relocating the facility is reimbursed by the federal government.

The department of highways shall, in consultation with utility representatives, construction industry representatives, labor representatives, consumer representatives and other interested and appropriate parties, formulate recommendations for the general court on the feasibility of reimbursement for underground utility relocation projects that are not eligible for federal reimbursement on construction projects that are to be reimbursed federally in whole or in part. The recommendations shall be forwarded to the chairs of the house and senate committees on ways and means, the joint committee on transportation and the joint committee on government regulations on or before December 31, 2004.

SECTION 26. Chapter 21A of the General Laws, is hereby amended by striking out section 11A and inserting in place thereof the following section:-

Section 11A. There is hereby established within the executive office of transportation a bicycle and pedestrian advisory board. The board shall oversee the state's bicycle and pedestrian activities and advise the bicycle and pedestrian program office. The board shall

consist of the secretary of transportation or his designee; the secretary of environmental affairs or his designee; the commissioner of highways or his designee; the commissioner of environmental management or his designee; the commissioner of the department of conservation and recreation or his designee; the general manager of the Massachusetts Bay Transportation Authority or his designee; the colonel of state police or his designee; the commissioner of public health or his designee; the executive director of travel and tourism or his designee; 1 representative of a regional planning agency; 7 non-governmental members who shall be appointed by the governor upon recommendation of the co-chairmen of the board; 3 of whom shall be experts in bicycle safety; 1 of whom shall be a representative of the commercial bicycle industry; 3 of whom shall be representatives of bicycle organizations; and 7 members who are experts in pedestrian transportation. The bicycle and pedestrian program manager shall serve ex-officio. Each appointee shall serve without compensation for a term of 2 years and may be reappointed to serve for not more than 3 consecutive terms. Two chairmen shall be selected by a majority vote of the board members but at least one of the chairman shall not be an employee of the commonwealth. The advisory board shall meet at least 4 times each year. The board shall monitor the implementation of the Massachusetts statewide bicycle transportation plan and the Massachusetts statewide pedestrian transportation plan and assist the bicycle and pedestrian program office in preparing future plan updates. Initially, the non-governmental members shall be appointed by the governor, chosen from a list of qualified applicants fairly representing the various geographical regions of the Commonwealth, as provided by the Bicycle Coalition, also known as MassBike, a state-wide bicycle advocacy organization and by WalkBoston, a metropolitan area pedestrian organization.

SECTION 27. Section 8B of chapter 29 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the words "a surety company", in line 37, and inserting in place thereof the following words:- 1 or more surety companies.

SECTION 28. Section 5G of chapter 40 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 3, the words "two of chapter sixty B", in line 3, and inserting in place thereof the following words:- 2 of chapter 60B and under section 10A of chapter 91.

SECTION 29. Chapter 82 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after section 35 the following section:-

Section 35A. The board or officers authorized to lay out highways or town ways may lay out, construct and maintain rail trails under the laws relative to the laying out, construction and maintenance of public ways. For purposes of this section, a rail trail shall mean property converted from the former use as a railroad right-of-way to a use as a publicly-owned, improved and maintained corridor for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes. Rail trails may be laid out on property a city or town has acquired by fee, easement, lease, license or otherwise and may be subject to a reversion allowing the railroad company or authority to reclaim the property for rail purposes upon written notice. The owner of such reversion shall be exempt

from liability for any claims associated with use of any such rail trail including claims for damages that may arise under section 15 of chapter 84 and section 38 of chapter 161A.

SECTION 30. Section 20 of chapter 90 of the General Laws, as amended by section 226 of chapter 26 of the acts of 2003, is hereby further amended by inserting after the figure "17", in line 82 as so appearing, the following words:- or section 17A.

SECTION 31. Section 20A 1/2 of said chapter 90, as appearing in the 2002 Official Edition, is hereby amended by striking out lines 74 to 77, inclusive, the words "dollars, if paid within twenty-one days, twenty dollars if paid thereafter but before the parking clerk reports to the registrar as provided below, and thirty-five dollars" and inserting in place thereof the following:-\$50, if paid within 21 days, nor shall it exceed \$55, if paid thereafter, but before the parking clerk reports to the registrar, as provided below and shall not exceed \$75.

SECTION 32. Said chapter 90 is hereby further amended by inserting after section 20G the following section:-

Section 20H. If a person fails to appear in accordance with a notice to appear issued for a failure to pay or prepay the required toll on the Tobin Bridge, pursuant to a Massachusetts Port Authority regulation or fails to pay in a timely manner a fine issued pursuant to such regulations after having received notice thereof, the authority shall notify the registrar, who shall place the matter on the record and shall not renew a license to operate a motor vehicle or the registration of any vehicle owned by the person until the matter has been disposed of in accordance with applicable law or regulation. If a person is found to be a resident of another state or jurisdiction, the registrar shall revoke the violator's right to operate in the commonwealth until the matters have been disposed of in accordance with applicable law or regulation. The registrar shall prescribe the manner, form and content of any notice received from the authority to take such action.

SECTION 33. Section 10A of chapter 91 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the first paragraph thereof the following paragraph:-

A reasonable fee for such mooring, proportionate to the city or town's cost of overseeing mooring permits, may be imposed by the city or town or whoever is so authorized by the city or town, provided, however, that no such mooring fees may discriminate on the basis of residence; and provided further, that any mooring fee collected shall be deposited into and used in accordance with the purposes of the Municipal Waterways Improvement and Maintenance Fund, pursuant section 5G of chapter 40.

SECTION 34. Subsection (h) of section 46 of chapter 121B of the General Laws is hereby amended by striking out, in lines 39 and 40, the words "In any city whose population exceeds one hundred and fifty thousand," and inserting in place thereof the following words:consistent with smart growth principles.

SECTION 35. Chapter 149 of the General Laws is hereby amended by inserting after section 29C the following section:-

Section 29D. Every bid bond, every performance bond and every payment bond issued for any construction work in the commonwealth shall be the bond of a surety company organized pursuant to section 105 of chapter 175 or of a surety company authorized to do business in the commonwealth under the provisions of section 106 of said chapter 175 and be approved by the U.S. Department of Treasury and are acceptable as sureties and reinsurers on federal bonds under Title 31 of the United States Code, sections 9304 to 9308.

SECTION 36. Section 101 of chapter 159 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Passengers who fail to pay or prepay the required fare in violation of this section shall be subject to a noncriminal citation, and may be requested to provide identification to Massachusetts Bay Transportation Authority police for the purpose of issuing a noncriminal citation.

A person who is issued a noncriminal citation shall be assessed a fine as follows: \$15 for a first offense; \$100 for a second offense; or \$250 for a third or subsequent offense. If the person fails to pay the fine within 1 year of the date of the issuance of a noncriminal citation under this section, the authority shall provide notice of nonpayment of a fine indicating that the person's license or right to operate a motor vehicle will be suspended until the fine is paid and informing the person of an opportunity for a hearing by the authority. The authority shall provide reasonable opportunity for a hearing and may waive or reduce a fine imposed under this section within its discretion.

At least 90 days following notice to a violator of nonpayment of a fine under this section, if the violator has not requested a hearing, the authority shall report the person to the registrar of motor vehicles. Upon the report of the authority of nonpayment of a fine under this section, the registrar shall not renew that person's license or right to operate a motor vehicle under chapter 90 until the registrar receives a report from the authority indicating that the fine has been satisfied. Fines imposed under this section shall be paid to the general fund of the Massachusetts Bay Transportation Authority.

SECTION 37. Section 7A of chapter 161A, as so appearing, is hereby amended in the last paragraph by striking the number "0.25" and inserting in place thereof the number "0.5." and inserting at the end thereof the following sentence:- provided that any increase in the assessment provided herein shall not violate provisions of the forward funding law, so-called.

SECTION 38. The first paragraph of section 46B of chapter 33 of the acts of 1991 is hereby amended by inserting after the word "first", in line 21, the following words:-; or upon any extension or restructuring of such loan, at such rate and on such terms and conditions as the Massachusetts Bay Transportation Authority may agree upon.

SECTION 39. Section 103 of chapter 205 of the acts of 1996 is hereby amended by striking out, in lines 18 and 19, the words "two thousand and one" and inserting in place thereof the following figure:- 2008.

SECTION 40. Section 113 of chapter 205 of the acts of 1996 is hereby amended by striking out the last sentence and inserting in place thereof the following paragraph:-

In fulfillment of the certificate by the secretary of environmental affairs on January 2, 1991 on the final supplemental environmental impact report on the Central Artery/Third Harbor Tunnel Project, and in order to mitigate the ongoing impact of the operation of the General Edward Lawrence Logan International Airport on the residents of East Boston, and notwithstanding any general or special law to the contrary, upon the completion of construction of the Bremen street park in the East Boston section of the city of Boston, the Massachusetts Turnpike Authority or the commonwealth, acting by and through its department of highways, shall transfer title to said Bremen street park to the Massachusetts Port Authority for \$1, and the Massachusetts Port Authority shall thereafter undertake the operation, maintenance and management of the park. For the purposes of this section, the Massachusetts Turnpike Authority or the commonwealth, acting by and through its department of highways, shall transfer that title of land to be leased to the YMCA of Greater Boston, Inc. pursuant to a Development Agreement between the Massachusetts Turnpike Authority and the YMCA of Greater Boston, Inc. dated November 5, 2002, to the Massachusetts Port Authority, upon the completion of the development of the YMCA facility within the Bremen street park. Any lease between the Massachusetts Turnpike Authority and the YMCA of Greater Boston Inc. regarding such YMCA facility within the Bremen street park shall include provision requiring assignment of the lease to the Massachusetts Port Authority upon the completion of said facility.

The Massachusetts Port Authority shall enter into a contract with the East Boston Project Advisory Committee "PAC", established pursuant to chapter 349 of the acts of 1986, to specify and detail the operational and maintenance requirements of the authority with respect to the Bremen street park; provided, however, that because the land on which the Bremen street park will be built was acquired for the purpose of satisfying the certificate of the secretary of environmental affairs to create a significant open space public amenity in East Boston and to thereafter operate and maintain such open space as a publicly-accessible park and open space area, the Bremen street park, once completed, shall be afforded the protections of Article 97 of the Amendments to the Constitution in all respects. The contract between the Massachusetts Port Authority and the PAC shall be entered into not later than December 31, 2005.

SECTION 41. Item 1100-7985 of section 1B of chapter 152 of the acts of 1997 is hereby amended by inserting after the word "project", the following:- and for the acquisition of adjacent properties on South street in said city of Pittsfield need to bring the theater into compliance with the state building code and the Americans with Disabilities Act.

SECTION 42. Section 12 of chapter 87 of the acts of 2000 is hereby amended by inserting after the word "Project", as it appears in line 5, the following words:- and at a minimum amount of \$450,000,000 in each fiscal year for the years 2006 to 2012, inclusive, during the years for which the Central Artery/Ted Williams Tunnel Project is receiving federal reimbursements.

SECTION 43. Item 6033-9917 of section 2B of chapter 235 of the acts of 2000 is hereby amended by striking out in lines 124 and 125, as appearing in section 19 of chapter

246 of the acts of 2002, the words "provided further, that \$2,500,000 shall be expended for improvements to Front Street in the city of Chicopee" and inserting in place thereof the following words:- provided further, that \$6,500,000 shall be expended for improvements to Front street in the city of Chicopee.

SECTION 44. Said item 6033-9917 of said section 2B of said chapter 235 is hereby further amended by striking out, in line 151 to 153, inclusive, as so appearing, the words "provided further, that \$1,600,000 shall be expended for road infrastructure improvements to Center street from the city of Springfield boundary line to interstate highway route 391 in the city of Chicopee" and inserting in place thereof the following words:- provided further, that \$2,600,000 shall be expended for road infrastructure improvements to Center street from the city of Springfield boundary line to interstate highway route 391 in the city of Chicopee.

SECTION 45. Said item 6033-9917 of said section 2B of said chapter 235 of the acts of 2000 is hereby amended by striking out the figure "\$799,295,608", inserted by section 21 of chapter 246 of the acts of 2002, and inserting in place thereof the following figure:-\$804,295,608.

SECTION 46. Section 5 of said chapter 235 is hereby amended by striking out the figure "\$1,256,145,608", as inserted by section 24 of said chapter 246, and inserting in place thereof the following figure:-\$1,261,145,608.

SECTION 47. The sixth paragraph of section 63 of said chapter 235 is hereby amended by striking out, in line 5, the figure "39,440" and inserting in place thereof the following figure: - 36,060.

SECTION 48. The seventh paragraph of said section 63 of said chapter 235 is hereby amended by striking out, in line 5, the figure "3,270" and inserting in place thereof the following figure:- 2,905.

SECTION 49. The eighth paragraph of said section 63 of said chapter 235 is hereby amended by striking out, in line 5, the figure "940" and inserting in place thereof the following figure:- 1,420.

SECTION 50. The ninth paragraph of said section 63 of said chapter 235 is hereby amended by striking out, in line 5, the figure "8,490" and inserting in place thereof the following figure:- 12,250.

SECTION 51. The eleventh paragraph of said section 63 of said chapter 235 is hereby amended by striking out, in line 5, the figure "70" and inserting in place thereof the following figure:- 35.

SECTION 52. Said section 63 is hereby further amended by striking out the sixteenth paragraph and inserting in place thereof the following 6 paragraphs:-

Parcel No. 87-WM-2-BWSC, shown on plan sheet no. 2 owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land located between Lowell and Nashua streets in the city of Boston formerly occupied by the registry of motor vehicles' building. The parcel of land contains approximately 2,260 square feet in area and is now or

was formerly used for the purposes, including subsurface utilities, associated with the operation of the registry of motor vehicles and other state agency office operations. The parcel is intended for the purposes of installation, operation, maintenance and repair of a Boston water and sewer commission water main and related appurtenances.

Parcel No. 87-PE-1, shown on plan sheet no. 16 Revised April 27, 2004, owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land on Nashua street in the city of Boston formerly occupied by the registry of motor vehicles. The parcel of land contains approximately 1,650 square feet in area and is now or was formerly used for purposes, including subsurface utilities, associated with the operation of the registry of motor vehicles and for ongoing central artery/tunnel project activities. The parcel is intended to be utilized for access purposes to state highway facilities.

Parcel No. 87-PE-3, shown on plan sheet no. 16 Revised April 27, 2004, owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land located adjacent to the southwesterly street line of Nashua street formerly occupied by the registry of motor vehicles' building. The parcel of land contains approximately 1,590 square feet in area and is now or was formerly used for purposes, including parking and subsurface utilities, associated with state agency office operations and is intended to be utilized for highway purposes associated with the construction, use, operation and maintenance of a vehicular emergency response platform.

Parcel No. 87-DSS-6-BWSC, shown on plan sheet no. 16 Revised June 1, 2004, and owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land located adjacent to the southwesterly street line of Nashua street formerly occupied by the registry of motor vehicles building. The parcel of land contains approximately 1,140 square feet in area and is now or was formerly used for purposes, including subsurface utilities, associated with the operation of the registry of motor vehicles and other state agency office operations. The parcel is intended for the purposes of installation, operation, maintenance and repair of a Boston water and sewer commission combined sewer and water main, associated structures and related appurtenances.

Parcel No. 87-WM-1, shown on plan sheet no. 16 Revised June 1, 2004, and owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land located adjacent to the southwesterly street line of Nashua street formerly occupied by the registry of motor vehicles building. The parcel of land contains approximately 1,120 square feet in area and is now or was formerly used for the purposes, including subsurface utilities, associated with the operation of the registry of motor vehicles and other state agency office operations. The parcel is intended for the purposes of installation, operation, maintenance and repair of a water main and related appurtenances.

Parcel No. 87-U-1, shown on plan sheet no. 16 Revised June 1, 2004, and owned by the commonwealth under the care, custody and control of the division of capital asset management and maintenance and comprises a portion of land located adjacent to the southwesterly street line of Nashua street formerly occupied by the registry of motor vehicles building. The parcel of land contains approximately 390 square feet in area and is now or was formerly used for the purposes, including subsurface utilities, associated with the operation of the registry of motor vehicles and other state agency office operations. The parcel is intended for the purposes of installation, operation, maintenance and repair of an underground electrical conduit, associated structures and related appurtenances.

SECTION 53. The twenty-second paragraph of said section 63 is hereby amended by inserting after the figure "13", in line 1, the following words:-, as revised April 27, 2004,.

SECTION 54. Said twenty-second paragraph of said section 63 is hereby further amended by striking out, in line 4, the figure "1,860" and inserting in place thereof the following figure:- 1,480.

SECTION 55. Chapter 236 of the acts of 2002, is hereby amended in line 72, on page 845, by striking the following:-;"provided further, that not less than \$1,500,000 shall be expended for the purchase of open space in the city of New Bedford;" And inserting in place thereof,; "provided further, that \$1,500,000 or fair market value, as determined by an independent appraisal or the price negotiated by the Secretary of the Executive Office of Environmental Affairs, whichever is the least, shall be provided for the acquisition for open space and general recreation purposes on certain property located in the City of New Bedford known as the Goodyear Tire Plant site; provided further that City of New Bedford may purchase or enter into a long term lease for a period of up to ninety-nine years, with provision for renewal periods of an additional twenty-year term or less, for the purpose of building, maintaining and continuing the existence of open space and related general recreational operations at such property;".

SECTION 56. Item 6000-0100 of section 2 of chapter 26 of the acts of 2003 is hereby amended by striking out the words "provided, that notwithstanding any general or special law to the contrary, the secretary is hereby authorized and directed to proceed forthwith on the route 128 add-a-lane project, so-called, in a manner consistent with the design-build provisions pursuant to section six of chapter 53 of the acts of 1999 in order to expedite said project and to effectuate the immediate preservation of the public convenience" and inserting in place thereof the following words:- provided, that notwithstanding sections 38A ½ to 38 O, inclusive, of chapter 7, section 39M of chapter 30, chapter 30B and sections 44A to 44M, inclusive, of chapter 149 of the General Laws or any other general or special law to the contrary, the secretary and the department of highways are hereby authorized and directed to proceed on the route I-95/I-93 (route 128) transportation improvement project including the route I-95/I-93 interchange located in the towns of Canton, Dedham and Westwood by using the design/build method of public construction procurement and delivery, provided, however, that the general contractor and designer selected to perform the project shall be selected through a competitive process, and provided further, that the general

contractor and the designer shall be pre-qualified by the department of highways to perform the work required.

SECTION 57. The commissioner of the division of capital asset management and maintenance, acting in consultation with the commissioner of the department of conservation and recreation, may, notwithstanding sections 40E to 40J, inclusive, of chapter 7 of the General Laws, to transfer the care and control of a certain parcel of land, hereafter described, to the department of highways. The parcel shall be diverted from its present use as conservation and recreation land to a highway use. A certain parcel of land in the town of Erving, supposed to be owned by the commonwealth under the supervision and control of the department of conservation and recreation and presently used for natural resource purposes described as Parcel 6-6, containing 25,194 s.f. +/- as shown in a preliminary right of way plan entitled "Plan and Profile of highways relocation of route 2 in the town of Erving, Franklin county", prepared by Parsons Transportation Group, dated December 7, 2001, to be kept on file with the chief engineer of the department of highways.

Modifications to the plan described above may be made before conveyance to carry out the purposes of this section. No deed conveying, by or on behalf of the commonwealth, the title to the property described in the first paragraph shall be valid unless the deed provides that the property shall be used solely for the purposes described in said first paragraph. The deed shall include a reversionary clause that stipulates that the property shall revert back to the commonwealth and assigned to the care, custody and control of the department of conservation and recreation if the property ceases to be utilized for the express purposes for which it was conveyed.

SECTION 58. The commissioner of the division of capital asset management and maintenance may, notwithstanding sections 40E to 40J, inclusive, of chapter 7 of the General Laws, to transfer the control of a certain parcel of land hereafter described to the department of conservation and recreation. The parcel shall be diverted from its present highway use to natural resource, conservation and recreation uses. A certain parcel of land in the town of Erving, supposed to be owned by the commonwealth under the supervision and control of the department of highways and presently used for highway purposes, containing described as "area to be potentially deeded to D.E.M." in a preliminary right of way plan entitled "Plan and Profile of Highways Relocation of Route 2 in the Town of Erving, Franklin County", prepared by Parsons Transportation Group, dated December 7, 2001, to be kept on file with the chief engineer of the department of highways.

SECTION 59. The commissioner capital asset management and maintenance may, subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws, acquire by eminent domain, purchase or otherwise, a certain parcel of land as hereinafter described from the town of Billerica. The parcel shall be diverted from its present use as a park and recreation area to a highway use. A certain parcel of land supposed to be owned by the town of Billerica known as parcel 13-D-1. The parcel is bounded and described as follows: starting along the 1953 state highway layout, northerly along the 1953 state highway layout by a line of about 40 feet (S30° 27'55"E); easterly by two lines, the first line is a line of about

42 feet (N84° 30'20"W) and the second line is a line of about 125 feet (N64° 30'40"W); southerly by a line of about 32 feet (S25° 29'20"W); and westerly by two lines, the first line is a line of about 120 feet (NW64° 30'40"W) and the second line is a line of about 12 feet (N84° 30'20"W) by land now or formerly of the town of Billerica. The parcel contains about 4,920 square feet. The parcel of land, hereinbefore described, is shown on a plan entitled "Plan of land in the Town of Billerica, Parcel 13-D-1", prepared by URS Corporation, dated December 12, 2002. Said plan shall be kept on file with the chief engineer of the department of highways.

SECTION 60. The commissioner of the division of capital asset management and maintenance, acting for and on behalf of the commonwealth, may, subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws, convey or transfer certain parcels of land located in the city of Cambridge, hereinafter described, to the city of Cambridge. The following parcels are located in the city of Cambridge and are shown on the plan entitled: "The Commonwealth of Massachusetts, Plan of Land, in the City of Cambridge, Middlesex County, owned by the department of conservation and recreation, to be transferred to the city of Cambridge by, the department of highways for highway purposes, dated: April 3, 2003, Scale: 80 Feet to the Inch" and prepared by Bechtel/Parsons Brinckerhoff. The plan shall be filed with the chief engineer of the department of highways.

The following parcels are currently used as an access road and are intended to be transferred to the city of Cambridge for roadway purposes as part of a joint department of conservation and recreation, or successor agency, parks and city streets development program in conjunction with the on-going central artery/tunnel project.

Parcel No. 2-7-C. A parcel of land owned by the commonwealth under the care, custody and control of its department of conservation and recreation, and comprises a portion of land in the city of Cambridge located southeasterly from Education street. The parcel of land contains approximately 23,780 square feet.

Parcel No. 2-8-C. A parcel of land owned by the commonwealth under the care, custody and control of its department of conservation and recreation, and comprises a portion of land in the city of Cambridge located southeasterly from Museum way, and southwesterly from Education street. The parcel of land contains approximately 2,240 square feet.

Parcel No. 2-9-C. A parcel of land owned by the commonwealth under the care, custody and control of its department of conservation and recreation, and comprises a portion of land in the city of Cambridge located southeasterly from Museum way. The parcel of land contains approximately 1,205 square feet.

SECTION 61. The department of conservation and recreation or its successor agency may to enter into certain temporary construction agreements with the Massachusetts Bay Transportation Authority to facilitate the reconstruction and relocation of the authority's green line light rail rapid transit system, so-called, from North station to Science Park station in the city of Boston. Upon satisfactory completion of the relocation of the green line light rail rapid transit system and the satisfactory completion of all MEPA reviews, historic commission reviews and the securing of any necessary permits, the department or its successor

agency may convey to the authority the following interest in real property. Beginning at a point southeasterly comer of the parcel; said point being on the westerly line of State Highway Layout No. 3847, said point being N18-02'-23"F, a distance of 38 and 71/100 feet (38.71') from an angle point on said State Highway Layout line which has a total length of one hundred three and 98/100 feet (103.98'); thence along the southerly line of the parcel running along a curve to the right with a radius of eight hundred sixteen and 00/100 feet (816.00') a distance of twenty-two and 97/100 feet (22.97') to a point of tangency; thence N55-47'-48"W a distance of fifteen and 25/100 feet (15.25'); thence along the westerly line of the parcel N33-48'-52"E a distance of eight and 04/100 feet (8.04'); thence N56-08'-51"W a distance of five and 12/100 feet (5.12'); thence N33-51'-09"E a distance of twenty-eight and 00/100 feet (28.00'); thence S56-08'-51"E a distance of five and 10/100 feet (5.10'); thence N33-48'-52"E a distance of seven and 96/100 feet (7.96'); thence along the northerly line of the parcel S55-47'-48"E a distance of ten and 39/100 feet (10.39') to a point of tangency; thence along a curve to the left with a radius of seven hundred eighty-four and 00/100 feet (784.00) a distance of fifteen and .43/100 feet,(15.43'); thence along the easterly line of the parcel S-18-02'23"W a distance of forty-five and 63/100 feet (45.63') to the point of beginning; containing approximately one thousand five hundred fifty-three square feet (1553 + sq. ft.).

This permanent easement as described above is bounded vertically at the lowest elevation by: (i) elevation 35.00 feet Project Datum (105.62 feet below National Geodetic Vertical Datum of 1929): (ii) the bottommost portion of any foundation of pier footing; or (iii) the bottommost portion of the viaduct structure and appurtenances, whichever applies, and at the highest elevation by: (i) elevation 178.9+ Project Datum; or (ii) the topmost portion of a plane located five feet (5) above the top of the catenary structures, whichever applies. The vertical limits exclude the area occupied by the central artery/tunnel project and utility easements owned by others.

SECTION 62. Notwithstanding any general or special law to the contrary, the Massachusetts Bay Transportation Authority may acquire land of the commonwealth or of a city or town by transfer or by eminent domain and such additional land as the authority may determine to be necessary for the design, construction, equipment, and operation of a commuter rail line from South station extending on the authority's existing Stoughton line right-of-way in part and along a new alignment in part through the communities of Canton, Stoughton, Easton, Raynham, Taunton, Berkley, Freetown, Lakeville, Fall River and New Bedford, all as substantially described in the Draft Environmental Impact Report filed with the Massachusetts Environmental Policy Act unit, or any final environmental impact report related thereto. The authority may propose a mitigation plan to address adverse effects of the construction of this commuter rail line extension and shall submit the plan within 90 days of completion of the design for the project to the joint committee on transportation. The Massachusetts Bay Transportation Authority shall develop a proposed mitigation plan to maintain the same per cent valuation of the average property value of like properties in the municipalities of Easton, Taunton and Raynham for property owners in said municipalities

whose property abuts the commuter rail line extension and is taken for such purpose or is not taken but is adversely affected by the commuter rail line extension and shall submit the same within 90 days after the effective date of this act to the house and senate committees on ways and means and the joint committee on transportation.

SECTION 63. The commissioner of capital asset management and maintenance may discontinue that portion of Cobble Mountain road, between the town of Blandford and the town of Granville, which is currently under the control of the division pursuant to the abolition of the county of Hampden by chapter 48 of the acts of 1997.

The commissioner may convey, notwithstanding sections 40E to 40J, inclusive, of chapter 7 of the General Laws, certain parcels of land located in the towns of Blandford, Russell and Granville, which formerly served as a portion of Cobble Mountain road, to the Springfield water and sewer commission to be used for related water supply purposes and to provide protection of the Cobble Mountain dam and reservoir, subject to such other terms and conditions as the commissioner considers appropriate and consistent with this section.

The parcels of land consist of:

- (a) That certain parcel of land shown on a plan entitled "Plan and Profile the new highway from a point near Pomeroy Farm on Granville-Blandford Road to Cobble Mountain Dam July 1929", recorded in Hampden County registry of deeds in book 1461, page 132; and
- (b) That certain parcel of land shown on a plan entitled "Plan and Profile the section in the town of Russell of the new highway behind between Blandford and Granville November 23, 1931", recorded in the Hampden County registry of deeds in book 1513, page 330.

No consideration shall be paid by the Springfield water and sewer commission for conveyance of the property as described herein as said property was conveyed to the county commissioners of Hampden county from the city of Springfield as predecessor to the Springfield water and sewer commission, as set forth in the Hampden County registry of deeds in book 1513, page 330, and the building of said way thereon was borne by said city.

Any deed conveying the parcels as described herein in the towns of Blandford, Russell and Granville shall provide that the use of the parcels shall be primarily for water supply and water protection purposes and such deed shall further provide that the parcels shall revert to the commonwealth without further consideration if they are not used for the purposes described in this section or if they cease at any time to be used for these purposes. Any further disposition of the land shall be subject to sections 40E to 40J, inclusive, of chapter 7 and shall have the prior approval of the general court.

SECTION 64. The department of highways and the central transportation planning staff shall make an investigation and study relative to the widening of state highway route 139 in the towns of Marshfield and Pembroke. The department and the central transportation planning staff shall report the results of said study, including any recommendations and drafts of legislation necessary to carry out said recommendations to the clerks of the house

of representatives and senate and to the joint committee on transportation on or before the last Wednesday in December, 2004.

SECTION 65. Notwithstanding section 15C of chapter 40 of the General Laws, that portion of state highway route 112 in the towns of Colrain, Buckland, Ashfield, Goshen, Cummington, Worthington and Huntington, hereinafter called the route 112 scenic byway, are hereby designated a scenic byway. The Route 112 scenic byway corridor shall begin at the town line of Worcester and Paxton and end at the town line of Barre and Petersham.

The overall purpose of the route 112 scenic byway designation shall be to recognize, interpret, preserve, and promote the unique scenic, cultural, archeological, natural and recreational resources of route 112 in said Franklin and Hampshire counties through the development of a corridor management plan and accompanying public participation process.

SECTION 66. Notwithstanding any general or special law to the contrary, the department of highways is hereby authorized and directed to assume administration of the portion of state highway route 140 located in the city of Gardner.

SECTION 67. Notwithstanding any general or special law to the contrary, the department of highways, in meeting its obligation to provide for the maintenance of the commonwealth's roads and bridges, shall conduct demonstration programs on cost-effective road and bridge maintenance techniques for use in the commonwealth. In providing for those techniques, the department shall utilize available federal research funds and state matching grants to conduct demonstration projects throughout the commonwealth. The department shall conduct not less than 10 demonstration projects of at least 1 mile of roadway each throughout the commonwealth utilizing the techniques. demonstration project shall be conducted on gravel roads in Berkshire, Franklin, Hampshire and Hampden counties to test the efficiency and cost effectiveness of using recycled asphalt, brick and concrete as a substitute for quarried gravel. The department shall report the findings and results of the projects and identified technologies, including any resulting cost savings, to the joint committee on transportation and the house and senate committees on ways and means on or before December 31, 2005. For the purposes of this section, efficient and cost-effective road and bridge maintenance techniques shall mean any technology that will provide longer lasting application and cost savings to the commonwealth, including, but not limited to, paver placed road maintenance technologies, heavily modified emulsion and hot mix asphalt techniques or rubberized asphalt road and bridge surface maintenance technology and performance enhanced polymer latex acrylic emulsions where polymer performance of dust palliatives and soil stabilizers are enhanced with polymax and flexmax respectively.

SECTION 68. Notwithstanding any general or special law to the contrary, the department highways shall maintain the motorist emergency call system on interstate highway routes 91, 93, 95, 195 and 495, in an operational condition for use in emergencies by the public. The department shall expend not less than \$1,300,000 to replace all nonfunctioning call boxes or communications equipment necessary for maintaining the motorist aid system. The department shall submit a report on the operational readiness and

reliability of the motorist aid system to the joint committee on transportation and the house and senate committees on ways and means on or before December 31, 2005.

SECTION 69. Notwithstanding any general or special law to the contrary, the department of highways shall develop and implement a noise mitigation plan to reduce the impact of traffic-related noise for cities and towns impacted by highway vehicular traffic noise or noise related to transportation construction, repair, and maintenance. In preparing the plan, the department shall identify measures that it will take to construct noise barriers and implement other sound reducing techniques for locations identified in the 1988 Massachusetts Type II Noise Attenuation Study, including but not limited to the towns of Billerica, Lexington, Chelmsford, Bedford, Lowell, Framingham, Natick, Ashland, Hopkinton, Southborough, Stoneham, Weston, Wayland, Shrewsbury, Danvers, Newton, and Charlton. The department shall file the plan with the joint committee on transportation and the house and senate committees on ways and means on or before December 31, 2004.

SECTION 70. Notwithstanding any general or special law to the contrary, a proposal issued for a publicly-funded construction project involving multiple payers shall contain the identification of all parties who have financial responsibility for the project, including, but not limited to, change orders, modifications, and overruns. In addition to the identification, the proposals shall include the extent of financial responsibility, by either a dollar amount or percentage share, and, if applicable, the specific bid item for which each payer is responsible.

SECTION 71. Notwithstanding any general or special law to the contrary, the construction of North Point Park along the New Charles River Basin shall be required to accommodate bicycle and pedestrian access.

SECTION 72. The department of highways may construct an entrance and exit ramp from interstate highway route 495 to provide access to and egress from the industrial areas of Milford, Bellingham and Franklin. The department shall obtain any state and federal approvals that may be required in connection with such project.

SECTION 73. The Massachusetts Turnpike Authority shall study the cost-effectiveness of sound barriers at locations in the city of Newton studied for the authority's Barrier Priority Results.

SECTION 74. The Massachusetts Turnpike Authority shall study the feasibility of utilizing sound-reducing surface material on interstate highway route 90 in the city of Newton.

SECTION 75. Notwithstanding any general or special law to the contrary, the department of highways and the Massachusetts Turnpike Authority shall, before July 31, 2005, take all steps required by applicable federal and state law, and consistent with the terms of a memorandum of understanding executed by the department of highways, the executive office of transportation, the city of Boston and others and dated June 7, 1991, to remove and relocate outdoor advertising structures currently within or adjacent to the East Boston parks.

SECTION 76. The bicycle program office in the executive office of transportation, in collaboration with state agencies and cities and towns, shall designate and mark long-distance bicycle touring routes on public ways. These routes shall be marked by means of signs depicting a bicycle logo and indicating destination, direction, and distance. At least 3 routes running north to south and 2 routes running east to west across the commonwealth shall be created in this manner. The selection of the routes shall take into consideration the qualities desired by bicycle tourists and shall be approved by the bicycle advisory board.

SECTION 77. Notwithstanding any other general or special law, ordinance or regulation to the contrary, pursuant to subsection (d) of section 9 of chapter 372 of the acts of 1984, the Massachusetts Water Resources Authority may convey to the Massachusetts Bay Transportation Authority, for full and fair consideration, a parcel of land and water owned by the Massachusetts Water Resources Authority in the city of Quincy, consisting of approximately 7.5 acres of land and 3.8 acres of water. The parcel, generally located on Washington street, is part of a larger parcel commonly known as the Fore River Shipyard, and is more precisely described in a plan entitled "Subdivision Plan of Land, Lot 7A and Parcel 15, Washington street, in Quincy, Massachusetts, Fore River Shipyard", dated May 24, 2004, prepared by BSC Group. The plan is on file at the Massachusetts Water Resources Authority and shall be recorded with the Norfolk registry of deeds together with the grant described herein.

SECTION 78. The secretary of transportation, in conjunction with the Massachusetts Port Authority, shall expend not more than \$20,000,000, including funds authorized for such purpose in item 6033-9717 of section 2B of chapter 11 of the acts of 1997, for the design and construction of a truck bypass road in the East Boston section of the city of Boston, including costs associated with the acquisition of all necessary surface rights and environmental remediation. The roadway shall be approximately 1/2 mile in length and running along the route of the northern portion of a dormant railroad right of way, between the foot of the Chelsea street bridge and a point opposite the Day Square section of the East Boston section of the city of Boston; thence, running under the Route 1A overpass and connecting to the north service area of Logan International Airport.

SECTION 79. The executive office of transportation, in consultation with the regional transit authority council, shall prepare a report delineating the amount of funding required to move all regional transportation authorities from the current reimbursement form of funding to forward funding beginning in fiscal year 2006. The secretary of transportation shall also make recommendations on the restoration of services to the level in place prior to fiscal year 2002 and shall identify and make recommendations for the expansion of services to meet the unmet needs for fixed route, elderly and paratransit services in the various regional transit authority districts, including determining the amount of additional funding required to meet this objective. The secretary shall also study the need and feasibility of allowing a city or town or group of cities or towns, other than a city or town included in the Massachusetts bay transportation authority in which the authority operates fixed bus service,

to join an existing regional transit authority or form a new regional transit authority. The secretary shall make revenue proposals for financing the implementation of those recommendations. The report shall be submitted no later than December 15, 2004 to the joint committee on transportation, the senate and house ways and means committees and the secretary of administration and finance.

SECTION 80. The bicycle program office within the executive office of transportation shall accept, in collaboration with the official sponsor of the Pan Massachusetts Challenge and state, regional and local agencies and cities and towns, the established bicycle route of the Pan Massachusetts Challenge and shall designate and mark the bicycle route with signs.

SECTION 81. There shall be a special commission known as the West Roxbury master plan commission for the purpose of making an investigation and study relative to the development of a master plan for West Roxbury section of the city of Boston. The commission shall consist of the senator from the Suffolk and Norfolk district, the representative from the tenth Suffolk district, the representative in congress from the ninth congressional district of Massachusetts, the director of the Boston Redevelopment Authority, who shall serve as chairman, the secretary of transportation, the secretary of environmental affairs, the secretary of economic development, and 2 persons to be appointed by the mayor of Boston who shall be residents of the West Roxbury section of the city of Boston.

The investigation and study shall include: (1) an evaluation of the nexus between economic development, housing and transportation in the West Roxbury section of the city of Boston; (2) an evaluation of the pedestrian, public transit and automobile transportation network in West Roxbury, including department of conservation and recreation controlled parkways and boulevards; (3) an evaluation of existing open space in West Roxbury, both private and publicly-owned, including land used for active and passive recreational use, and land adjacent to department of conservation and recreation parks, parkways and boulevards; (4) an evaluation of policy mechanisms to generate and keep wealth in West Roxbury; (5) an evaluation of mechanisms to increase opportunities for existing small businesses in the community to better serve West Roxbury, including, but not limited to an analysis of all existing federal, state, and city of Boston financial programs, including grants and loans, the purpose of which is to assist existing businesses or business development; and (6) an evaluation of public infrastructure investments in West Roxbury as a tool for economic development.

No member of the commission shall receive any compensation for his services, nor shall a member be reimbursed for any travel expenses or actual expenses incurred in carrying out his duties as a member of the commission.

The commission shall report the results of its investigation and study, including a minority report, if any, together with its recommendations and drafts of the master plan, by filing the same with the clerk of the Boston city council on or before June 30, 2007 and with the clerks of the house of representatives and the senate, who shall forward the same to their respective committee on ways and means.

SECTION 82. There shall be a special commission to study and report on the equity of fares between modes of transportation. The commission shall consist of 8 members, 1 of whom shall be appointed by the senate president, 1 of whom shall be appointed by the speaker of the house of representatives, the secretary of transportation or his designee, the general manager of the Massachusetts Bay Transportation Authority or his designee, 1 member to be appointed by the town of Hingham by vote of the board of selectmen, and 3 members to be appointed by the secretary of transportation, 1 of whom shall be a representative of the south shore business community and 2 of whom shall be representatives of the service area who regularly utilize the Rowes Wharf commuter boat. The commission shall review commuter boat service between the town of Hingham and Rowes Wharf in the city of Boston. The commission shall, in the course of its investigation and study, consider service improvements, fare structure, parking fees and ridership. The special commission shall submit its initial report to the Massachusetts Bay Transportation Authority with recommendations relative to the current fare structure, parking fees and service schedule, not later than 60 days after the effective date of this section. The special commission shall submit a second report to the Massachusetts Bay Transportation Authority with recommendations relative to the long-term recommendations for utilization of the commuter boat between Hingham and Rowes Wharf, including the equity of zones and fares among varying commuting modes, parking fee and capacity issues, and ongoing service subsidies by December 31, 2004. The special commission shall dissolve upon completion of its duties and obligations, as indicated by submission of its findings and recommendations.

SECTION 83. (a) Notwithstanding the provision of any general or special law to the contrary the commissioner of capital asset management and maintenance may, subject to section 40J of chapter 7 of the General Laws, release to the town of North Andover all right, title and interest of the commonwealth in and to a portion of that way known as Dale street formerly owned by Essex county and located in said town between Winter street and Russett lane containing approximately 0.50 acres, as shown on Plan of Land entitled "Plan of Land, 922 Dale street, Prepared for Joseph McCarthy," which is on file with the North Andover town clerk, and which abuts the property numbered 922 Dale street, North Andover, Massachusetts, now or formerly owned by Joseph W. McCarthy and Sharon McCarthy.

- (b) The purpose of the release shall be to facilitate the annexation of the portion of Dale street to be discontinued to the property numbered 922 Dale street for the purpose of classifying the property at 922 Dale street as agricultural land pursuant to chapter 61A of the General Laws. For this purpose, any discontinuance or abandonment or conveyance of that portion of the public way shall be subject to the condition that the portion of Dale street which is to be discontinued and the abutting property numbered 922 Dale street, North Andover, Massachusetts, be classified as agricultural land in accordance with the terms of said chapter 61A.
- (c) The owner of the property numbered 922 Dale street shall be responsible for all costs and expenses of the transaction authorized by this section, including but not limited to

the cost of any surveys and other expenses relating to the conveyance, discontinuance or abandonment of said portion of Dale street.

(d) Notwithstanding the provision of any general or special law to the contrary, the town of North Andover may, by a majority vote at an annual or special town meeting abandon or discontinue the portion of Dale street subject to this section as a public way and may, upon such terms and conditions as the selectmen consider to be appropriate and in the best interests of the town, retain any interest in the way, make any conveyances, and grant or accept any easements or other interests in the way, and in the property numbered 922 Dale street as the selectmen consider to be in the best interest of the town, and take such other action with respect to the land as the selectmen consider to be in the best interest of the town, but the town shall not abandon or otherwise discontinue public use of any other portion of Dale street in which the commonwealth has any right, title, or interest.

SECTION 84. The Worcester Regional Transit Authority shall conduct a study of the need for bus service between the town of Southbridge and the city of Worcester including an analysis of the cost and feasibility of expanding the routes to include the town of Webster and including such routes within the loop to include the municipalities Southbridge and Worcester. The study shall include an estimate of potential ridership and an estimate of the advertising costs to maximize such ridership.

SECTION 85. Notwithstanding any general or special law to the contrary, all future aircraft acquisitions by an executive office, agency, commission, department or authority, including the acquisition authorized in section 2I, shall be in conformance with the federal Homeland Security Act. In order to comply with the intent and higher alert codes established in that act, such aircraft acquisitions shall be at least 90 per cent manufactured and assembled in North America, inclusive of aircraft parts and product support. All executive offices, agencies, commissions, departments or authorities shall pursue to the greatest extent possible offsetting grants pursuant to the act to reimburse state expenditures for such aircraft acquisitions.

SECTION 86. Notwithstanding the provisions of any general or special law to the contrary, the executive office of transportation and the executive office for administration and finance shall take all steps necessary than to fulfill the directives of section 71 of chapter 235 of the acts of 2000 and section 19 of chapter 246 of the acts of 2002, by granting the Pioneer Valley Transit Authority, not later than December 31, 2004, \$11,000,000 for the design and construction of the Springfield Union Station intermodal transportation project.

SECTION 87. The intersection of Herring Pond road and State road, known as state route 3A, in the town of Plymouth, shall hereby be known as the Lance Corporal Jeffrey C. Burgess, U.S.M.C. Memorial Square. The department of highways shall erect and maintain a memorial consisting of a granite marker with Lance Corporal Burgess' name, rank and the dates of his birth and death while serving his country in Operation Iraqi Freedom. The department may accept funds, including gifts, donations, grants or bequests available for the purposes of this section.

(f).

- **SECTION 88**. (a) Notwithstanding any general or special law to the contrary, the city of Revere may promulgate rules and regulations regarding the rental of motor vehicles to require the assessment and payment of a surcharge of not more than \$10 on each motor vehicle rental contract in said city. The surcharges collected shall be paid monthly to the city not later than the twentieth of the month following the collection of the surcharge and may be added to the cost of the rental agreement. Amounts received by the city pursuant to this section shall not be considered in the determination of the amount of any distribution of state assistance to the city.
- (b) For the purpose of determining compliance with this section, the city of Revere may examine all relevant books, records and documents of a person or entity engaged in the business of renting motor vehicles. The auditor or the treasurer of the city or a designee of the auditor or the treasurer shall conduct any such examination. If the surcharge collected is less than the amount required pursuant to this section, the city may file a claim, within 2 years after the date on which the surcharge is due, for such underpayment or undercollection, together with interest permitted by law.
- (c) This section shall provide an exclusive, additional, alternative and complete method for the imposition and collection of a surcharge on a motor vehicle rental agreement. This section shall be supplemental and additional to, and not in derogation of, powers conferred upon the city of Revere. If this section is inconsistent with any general or special law or administrative order or regulation or any limitation imposed by the charter of the city of Revere, this section shall control.
- **SECTION 89**. (a) Notwithstanding any general or special law to the contrary, the executive office of environmental affairs shall establish a pilot wetlands mitigation bank in the Taunton river watershed for the purposes of off-site mitigation of projects funded through this act, other public works projects and projects requiring wetlands variances or orders of conditions within the Taunton river watershed.
- (b) For the purpose of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Credit", a unit of trade representing the increase in the ecological value of the site, as measured by acreage, functions or some other assessment method.

"Pilot wetlands mitigation bank" or "bank", the development of a single wetlands bank through a public/private partnership in a single designated watershed for the purpose of assessing the effectiveness of wetlands banking as a regulatory tool to mitigate environmental impacts associated with construction activities.

"Team", the Wetlands Mitigation Banking Review Team established in subsection

(c) Credits from the pilot wetlands mitigation bank for off-site mitigation shall only be available for project mitigation after all regulatory requirements for avoiding, minimizing and mitigating impacts on site to the greatest extent practicable have been met. Off-site mitigation sites in the Taunton River watershed shall be located on lands and easements taken or acquired under Article XCVII of the Amendments to the Constitution. Restoration

of previously filled or drained wetlands shall be a priority for off-site mitigation.

- (d) Within 30 days after the effective date of this act, the executive office of environmental affairs, in consultation with executive office of transportation, shall issue a request for proposals for the selection of a contractor with experience in wetlands banking in New England to assist in the identification of a wetlands banking site and to undertake the design, approval, creation, ownership and management and long-term ecological monitoring of a wetlands restoration bank within the Taunton river watershed. Within 90 days of issuing the request for proposals, the executive office of environmental affairs in consultation with the executive office of transportation, shall select a banking contractor. This request for proposals and selection of a contractor shall not be subject to chapter 30B of the General Laws.
- (e) Bank financing and sale of bank credits shall be subject to an agreement developed between the executive office of environmental affairs and the executive office of transportation and the selected contractor, subject to the review and approval of the inspector general. A portion of the credits from the bank shall be available for banking and trading purposes upon an approval of a restoration plan by appropriate regulatory agencies.
- (f) Within 30 days of the effective date of this act, the secretary of environmental affairs shall convene a wetlands mitigation banking review team for the purpose of reviewing and approving a pilot mitigation bank with the Taunton River watershed. The Team shall include 1 representative of the department of environmental protection, 1 representative of the executive office of transportation, 1 representative of an environmental advocacy organization, who shall be selected from a list of 3 candidates submitted jointly by the Massachusetts Audubon Society, the Massachusetts chapter of the Sierra Club, the Massachusetts chapter of the Nature Conservancy, the Trust for Public Land, the Environmental League of Massachusetts and the Taunton River Watershed Alliance, 1 representative of cities and towns within the Taunton river watershed, and 1 representative of each of the following agencies: department of fisheries, wildlife and environmental law enforcement, United States environmental protection agency, United States army corps of engineers and United States department of fish and wildlife. The team shall seek and consider public input in the development of the pilot mitigation bank, hold at least 1 public hearing in the Taunton river watershed and make draft plans available for a public review and comment period through notice in the Environmental Monitor.
- (g) Within 30 days of the effective date of this act, the executive office of transportation shall inventory anticipated wetland impacts in the Taunton river watershed associated with future transportation, construction, repair and maintenance projects funded under this bond and other public works projects.
- (h) The executive office of transportation and the executive office of environmental affairs shall file a joint report assessing the process of establishing the pilot wetlands mitigation bank, describing transactions and projects affected by the bank, and the effectiveness of the bank in protecting wetlands while enabling projects requiring off-site mitigation to progress with the joint committee on transportation and the joint committee on

natural resources and agriculture within 1 year of the creation of the pilot wetlands bank and for each year thereafter, for 5 years. The report shall include information on the amount, acreage, location and types of wetlands restored and credits issued or traded, and a list of all projects utilizing bank credits at the time the report is prepared.

SECTION 90. The commissioner of capital asset management and maintenance, in consultation with the commissioner of conservation and recreation, may, notwithstanding sections 40F to 40I, inclusive, of chapter 7 of the General Laws, transfer the care and control of a certain parcel of land, including the storm drain thereunder, to the city of Boston. The parcel shall be diverted from its present use as conservation and recreation land to general municipal purposes, including, but not limited to, drainage, roadway, or storm drain purposes.

The parcel of land is more fully described as follows: a certain parcel of land and the storm drain sited thereunder, located in the Forest Hills section of the City of Boston, Suffolk County, bound on the north by a portion of the southern boundary of the Massachusetts Bay Transportation Authority property known as the Arborway between the Washington Street and Forest Hills Street, and bound on the south by the curb on the south side of a portion of the surface way known as the Arborway Frontage Road West, and bound on the east side by a line extending southward from the above mentioned southern boundary of the Massachusetts Bay Transportation Authority property to the above mentioned curb on the south side of the surface way known as the Arborway Frontage Road West, approximately 500 feet east of the intersection of Washington Street and Arborway Frontage Road West.

SECTION 91. The Massachusetts Bay Transportation Authority shall study the level of assessment of the General Laws and the fairness and the feasibility of exempting the town of Ashburnham from assessment under chapter 161A. The authority shall report its findings to the joint committee on transportation on or before December 31, 2004.

SECTION 92. (a) Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and legal obligations of the following functions of state government from the transferor agency to the transferee agency, defined as follows:

- (1) the functions of the executive office of transportation and construction, as the transferor agency, to the executive office of transportation, as the transferee agency;
- (2) the functions of the bureau of transportation and planning in the department of highways, as the transferor agency, to the office of transportation planning in the executive office of transportation, as the transferee agency; and
- (3) the functions of the registry of motor vehicles in the executive office of public safety, as the transferor agency, to the registry of motor vehicles in the department of highways, as the transferee agency;
- (b) Subject to appropriation, the employees of each transferor agency, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions

as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, shall be transferred to the respective transferee agency, without interruption of service and without a reduction in compensation or salary grade. Notwithstanding any general or special law to the contrary, all such employees shall retain their rights to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

- (c) All petitions, requests, investigations and other proceedings appropriately and duly brought before each transferor agency or duly begun by each transferor agency and pending before a transferor agency before the effective date of this act shall continue unabated and remain in force but shall be assumed and completed by the respective transferee agency.
- (d) All orders, rules and regulations duly made and all approvals duly granted by each transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law, by the respective transferee agency.
- (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both real and personal, including all property held in trust, which immediately before the effective date of this act are in the custody of each transferor agency shall be transferred to the respective transferee agency.
- (f) All duly existing contracts, leases and obligations of each transferor agency shall continue in effect but shall be assumed by the respective transferee agency. No existing right or remedy of any character shall be lost, impaired or affected by this section.

SECTION 93. Notwithstanding any general or special law to the contrary the commissioner of the department of conservation and recreation shall enter into a license agreement with the town of Randolph for the purposes of allowing said town to utilize the Nike site in Randolph in the High street area of said town for active and passive recreational opportunities for a term of 10 years, with an option of renewal for addition term of 10 years. Said agreement shall include the improvements of said property by the town of Randolph including, but not limited to, the construction, by the town of Randolph, of ball fields or multipurpose recreational fields on the said property. The terms of said agreement shall be reported to the joint committee on the state administration on or before December 31, 2004.

SECTION 94. Notwithstanding the provisions of any general or special law to the contrary, the department of conservation and recreation shall alter the current traffic flow on the street known as Cambridge parkway in the city of Cambridge from a north, northeasterly direction to a south, southwesterly direction, and shall maintain said street as a one way street in its altered traffic flow.

SECTION 95. The department of highways shall complete a study on the inclusion of the Greenfield Montague Transportation Area in the calculation of motor fuel tax exemptions pursuant to chapter 161 of the General Laws. Said study shall be submitted to the joint committee on transportation and the house and senate committees on ways and means on or before December 31, 2004.

SECTION 96. Notwithstanding the provisions of any general or special law to the contrary, the provisions of section 61 and sections 62A to 62H, inclusive, of chapter 30, chapter 91, and section 40 of chapter 131 of the General Laws shall not apply to bridge projects of the department authorized under this act for the repair, reconstruction, replacement or demolition of existing state highway bridges and other bridges, including the immediate roadway approaches necessary to connect the bridges to the existing adjacent highway system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced; provided, that in the case of any state highway or other bridge crossing over a railroad right-of-way or railroad tracks, the department shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the state highway bridge; provided, further, that the department, its agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for such purposes as the department may deem necessary or convenient to carry out the provisions of this act; the railroad company, railway company or its assigns shall provide such flagman. For the purposes of this section, the word "bridge" shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility, or other area.

SECTION 97. Notwithstanding any general or special law to the contrary the secretary of transportation in consultation with the general manager of the Massachusetts Bay Transportation Authority, shall include the city of Lynn in any plans for the expansion, creation or adaption when considering regional intermodal modal transportation centers.

SECTION 98. Notwithstanding any general or special law to the contrary, funds shall be expended for the continuation of LIFT bus service 5 and 6 in South Framingham, Ashland, Holliston, Hopkinton and Milford.

SECTION 99. Notwithstanding any general or special law to the contrary, the department of highways shall study the cost impact of adjusting the unit prices for steel required in order to complete performance of highway and bridge construction contracts awarded on or before July 1, 2004. The department shall study the cost to compensate contractors for the difference between: (1) the cost of steel at the date the bids were opened; and (2) the cost of steel at the date of purchase with no allowance for overhead or profits on the construction contract. The department shall submit its findings to the joint committee on transportation and the senate and house committee on ways and means within 30 days after the effective date of this act.

SECTION 100. The Massachusetts Aeronautics Commission shall make funds available for costs associated with the construction and improvement of ramps and hangars as part of Phase I improvements at Westover Metropolitan Airport.

SECTION 101. Notwithstanding any general or special law to the contrary, the secretary of the executive office of transportation and construction shall establish a priority

list for projects to be completed by the Massachusetts bay transportation authority which gives first priority to those projects which serve cities and towns not presently served by commuter rail or rapid transit.

SECTION 102. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Regional Transit Authority Forward Funding Trust Fund under the control of the secretary of transportation. The fund shall consist of amounts of excess registry fees specified in section 63 of chapter 10, and shall not exceed an aggregate amount of \$50,000,000. The state treasurer shall deposit these amounts into the fund, which shall be expended only for the purpose of transferring the regional transit authorities from funding in arrears to current year funding. Each regional transit authority shall submit a proposed budget for each state fiscal year beginning with fiscal year 2005 to fiscal year 2008, inclusive, to the secretary of transportation for approval prior to the disbursement of any monies from this fund. Regional transit authorities in receipt of an allocation from this fund shall expend the monies in accordance with policies, rules and regulations established by the executive office of transportation for the purposes of this section.

(b) The Regional Transit Authority Forward Funding Trust Fund shall expire on June 30, 2010 and any remaining fund balance shall be transferred to the Highway Capital Projects Fund and shall be used exclusively to supplement the statewide road and bridge program.

SECTION 103. The comptroller shall transfer as of June 30, 2004 the amount of \$40,000,000 from the Central Artery and Statewide Infrastructure and Bridge Fund, established pursuant to section 63 of chapter 10 of the General Laws, to the MBTA Infrastructure Renovation Fund, established pursuant to section 35U of chapter 10 of the General Laws.

SECTION 104. Sections 98 and 103 of chapter 236 of the acts of 2000 are hereby repealed

This bill was returned on August 10, 2004, by the Governor to the House of Representatives, the branch in which said bill originated, with His objections in writing to the following items therein:

Items Disapproved:

SECTION 2I: 8100-0400 8100-0461

SECTION 2K: 4120-1017

SECTIONS: 14, 25, 27, 34, 37, 55, 56, 66, 67, 69, 72, 73, 74, 75, 80, 81, 84, 86, 88, 90, 91,

94, 95, 97, 98, 99 and 101.

SECTION 2E Item reduced in amount and by striking the wording

Item Reduce by Reduce to Wording Stricken

6001-0405 \$1,500,000 \$23,500,000 "; provided further that not less \$1,500,000 shall

be expended to contract with the Massachusetts Alliance for Small Contractors to provide technical assistance to minority-owned and women-owned small businesses as well as other small business concerns in participating in public

construction project"

SECTION 2H: Item reduced in amount and by striking the wording and inserting in place thereof the following:

 Item
 Reduce by
 Reduce to
 Wording Stricken

 6001-0420
 \$2,400,000
 \$56,600,000
 "\$9,000,000"

 Wording Inserted

 "\$6,600,000"

Sections reduced in amount and by striking the wording and inserting in place thereof the following:

SECTION	Reduce by	Reduce to	Wording Stricken
8	\$1,500,000	\$23,500,000	"\$25,000,000"
			Wording Inserted "\$23,500,000"
11	\$2,400,000	\$56,600,000	Wording Stricken "\$59,000,000"
		•	Wording Inserted "\$56,600,000"
12	\$15,800,00	\$30,000,000	Wording Stricken "\$45,800,000"
			Wording Inserted "\$30,000,000"

SECTION 2A Items disapproved by striking the wording:

Item Wording Stricken

"; provided further, that the bicycle program within the executive office of transportation, in collaboration with the official sponsor of

Item

Wording Stricken

the event, state, regional and local agencies and cities and towns, shall so accept the established bicycle route of the Pan Mass Challenge, so-called, and shall so designate and mark the bicycle route by means of signs bearing the official logo of the event"

and

"; provided further, the Massachusetts turnpike authority is authorized and directed to study the cost-effectiveness of sound barriers at locations in the city of Newton studied for the authority's Barrier Priority Results; provided further, that the Massachusetts turnpike authority is authorized and directed to study the feasibility of utilizing sound-reducing surface material on interstate 90 in the city of Newton"

and

"; provided further, that a grant program shall be established to provide up to 3 months mitigation to businesses affected by the construction of the Greenbush commuter rail line in the Downtown Hingham Business District"

and

"; provided further, that the department shall publish a timetable for the route 3 south Add-A-Lane construction project from Pembroke to Weymouth not later than December 1, 2004"

and

"; provided further, that the department shall include the proposed intersection improvements of the route 1A/Main Street-Winter Street-Jean Road intersection in Walpole on the transportation improvement program project list covering fiscal years 2003-2007 and shall commence such improvements during fiscal year 2005"

and

"; provided further, that the department direct the Turnpike Authority to remove all billboard structures from areas in and adjacent to East Boston parks"

and

Item

Wording Stricken

"; provided further, that the Route 27 project from the Medfield Town Line to Washington Street in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal years 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that the Main Street project from Front Street to the Norfolk Town Line in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that Washington Street from High Plain Street to Water street in the town of Walpole shall be placed on the transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005; provided further, that the Main Street (Route 1A) from Route 27 to the Norwood Town Line in the town of Walpole shall be placed on transportation improvement program project list covering fiscal year 2003-2007 and shall commence said improvements during fiscal year 2005"

and

"; provided further, that the department shall conduct an update to the study on the abatement of noise from I-90 in Newton, and implement such necessary mitigating strategy as the department determines necessary"

and

"; and provided further, that the department shall expend, at a minimum, \$450,000,000 per year, through fiscal year 2012, pursuant to section 1.1.A. of the balanced statewide road and bridge program memorandum of understanding entered into in June 2000 by the executive office of transportation and construction, the department of highways and the metropolitan planning organizations; provided, that said \$450,000,000 shall be adjusted annually pursuant to the construction cost index published by the Engineering News Record and shall be funded by the authorizations made available in this act and by previous authorizations for such federally aided and nonfederally aided road and bridge projects as provided in chapter 33 of the acts of 1991, chapter 102 of the acts of 1994, chapter 273 of the acts of 1994, chapter 113 of the acts of 1996, chapter 205 of the acts

Item

Wording Stricken

of 1996, chapter 11 of the acts of 1997, chapter 235 of the acts of 2000 and chapter 40 of the acts of 2003 and any other appropriations made available for said projects; provided further, that said expenditures shall not include costs attributable to municipal reimbursements owed pursuant to the chapter 90 program, so-called, the public works economic development projects, the small town road assistance program projects, or the administrative, engineering, design, maintenance or operations of said department; provided further, that the department of highway shall submit quarterly reports detailing the overall spending pursuant to section 1.1.A. of said memorandum and shall include the specific projects being funded and the level of expenditure by project; and provided further, that said quarterly reports shall be filed with the house clerk, the senate clerk and the joint committee on transportation and said reports shall be posted on the web site of the department of highways"

Pursuant to Article 56 as amended by Article 90, Section 3, of the Amendments to the Constitution, the Governor sent a separate letter to the Senate and the House of Representatives setting forth recommended amendments to SECTION 104.

The remainder of the bill was approved by the Governor on August 10, 2004 at five o'clock and fifty minutes, P.M.

Chapter 292. AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO FIX REASONABLE FEES FOR PERMITS GRANTED BY THE CHIEF OF ITS FIRE DEPARTMENT.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the chief of the fire department in the town of Brookline may, with the approval of the board of selectmen, establish reasonable fees, to be charged for permits granted in excess of those authorized in section 10A of chapter 148 of the General Laws.

SECTION 2. This act shall take effect upon its passage.

The foregoing was laid before the Governor on the Thirtieth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 293. AN ACT DIRECTING THE DEPARTMENT OF REVENUE TO ACCEPT CERTAIN APPLICATIONS FOR ABATEMENT.

Be it enacted, etc., as follows:

Notwithstanding section 37 of chapter 62C of the General Laws or any other general or special law to the contrary, the commissioner of revenue shall accept applications for abatement of tax on behalf of Emilio J. and Gloria A. Nardozza for tax years 1990 to 1996, inclusive. The applications shall be considered timely if filed with the commissioner within 90 days from the effective date of this act. An abatement paid pursuant to these applications shall not include payment of interest or of costs related to the filing of the applications.

The foregoing was laid before the Governor on the Thirtieth day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 294. AN ACT AUTHORIZING THE TOWN OF LANCASTER TO LEASE CERTAIN LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 3 of chapter 40 of the General Laws or any other general or special law to the contrary, the town of Lancaster, acting by and through its board of selectmen, may lease a certain parcel of town land with portions of buildings and air rights, for a term not to exceed 20 years to wireless communications companies for the erection of wireless antennas and related structures. The parcel is a portion of land presently

dedicated to water utilization located on Winsor Lane in said town. All proceeds from any lease or leases executed hereunder shall be deposited into the General Fund of the town and shall be available for appropriation for any purposes.

SECTION 2. This act shall take effect upon its passage:

The foregoing was laid before the Governor on the Thirty-first day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 295. AN ACT RELATIVE TO THE SALE OF MUNICIPAL TAX RECEIVABLES.

Be it enacted, etc., as follows:

SECTION 1. Section 2C of chapter 60 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The appropriate financial official of a municipality may arrange for and assign or transfer to a purchaser the municipality's right to receive payments owed by a taxpayer on tax receivables after the date upon which the amounts so owed may be paid without interest or penalty. If any taxes owed to a municipality include taxes assessed by a district located wholly or in part within the limits of such municipality, then such district may assign or transfer the right to receive payment of such taxes pursuant to this section in accordance with guidelines or regulations that the commissioner may issue. The assignment or transfer of individual taxpayer receivables by a municipality may be made either individually or in bulk. Prior to the assignment or transfer of individual taxpayer receivables, the appropriate financial official shall publish, in accordance with section 1, a list of all receivables that will be offered for assignment or transfer hereunder at least 60 days prior to the offer of such parcel for assignment or transfer and a municipality may not offer for assignment or transfer any parcel upon which a taxpayer has entered into and is in compliance with the terms of a payment agreement with the appropriate financial official. If the taxpayer fails to comply with such agreement, the appropriate financial official may assign or transfer such parcel in accordance with the provisions established hereunder. The appropriate financial official may assign or transfer any receivables either individually or in groups without regard to class, except for: (1) parcels with respect to which the taxpayer has entered into a payment agreement in accordance with the provisions of this section; (2) parcels which are part of the estate of a bankrupt; (3) parcels which the appropriate financial official has determined are or may be subject to a lien under the provisions of chapter 21E; and (4) such other categories of parcels as the commissioner may by guideline define or as the municipality, with the approval of the commissioner, may authorize by vote of its selectmen, town council, or city council and mayor. Two or more collectors, or 2 or more treasurers, may jointly assign their

respective municipalities' receivables in accordance with guidelines issued by the commissioner.

SECTION 2. Subsection (c) of said section 2C of said chapter 60, as so appearing, is hereby amended by striking out paragraphs (1) and (2) and inserting in place thereof the following 2 paragraphs:-

- (1) The sale of tax receivables shall be by public sale to the most responsible and responsive offeror taking into consideration the following evaluation criteria: (i) the price proposed by the offeror; (ii) the offeror's qualifications and experience; (iii) the offeror's plan for communicating with the taxpayers; (iv) whether the offeror has a regular place of business in the commonwealth; (v) whether the offeror is in good standing with the department of revenue; and (vi) other criteria determined by the commissioner and the municipality. The sale shall provide for the option to purchase subsequent tax receivables subject to subsection (h) and any regulations that may be promulgated by the commissioner pursuant thereto.
- (2) The sale price shall be equal to not less than (i) the amount assessed and due from the face value of the tax receivables sold hereunder and (ii) any unpaid accrued interest, statutory fees, penalties and charges owed to the municipality as of the date of sale of the tax receivables. Tax receivables may, with the approval of the town meeting, town council or city council and mayor, be sold either at a discount of not more than 50 per cent of the interest on the receivable or at a premium, under such terms as the commissioner may determine by regulations that shall be promulgated pursuant to this section. Such sale price or discounted sale price may reflect any interest accrued on any individual taxpayer receivable or related tax to the date of the sale of the right to receive payment of such tax. Any unpaid statutory fees and charges as of the date of the sale with respect to such individual taxpayer receivable or related tax shall continue to be payable to the municipality and shall be paid to it by the purchaser from the first amounts collected by the purchaser on such tax receivable unless otherwise received by such municipality.

SECTION 3. Said section 2C of said chapter 60, as so appearing, is hereby further amended by striking out, in lines 151, 154 and 157, the word "seven", each time it appears, and inserting in place thereof, in each instance, the following figure: 12.

SECTION 4. Said section 2C of said chapter 60, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

- (d) The sale of tax receivables shall be without recourse to the municipality selling the same except as otherwise provided in this subsection.
- (1) The agreement between a municipality and a purchaser for the sale of tax receivables may provide for the repurchase of such tax receivables that do not conform to the terms and conditions of such agreement for the amount paid by the purchaser plus actual costs incurred by the purchaser from the date of sale.
 - (2) The agreement between a municipality and a purchaser for the sale of tax receiv-

ables may provide for the repurchase at the election of the municipality of tax receivables inadvertently included in the sale that were excludable under the definition of the class to be assigned that was approved by the commissioner under subsection (b). Such repurchases at the option of the municipality shall take place not later than 6 months immediately following the assignment.

- (3) If any individual taxpayer receivable (i) shall be abated or (ii) is less than the amount for which the tax receivable in respect thereof was purchased by the purchaser at the time of sale, then, in each case, the purchaser shall be reimbursed by the amount of such abatement or other reduction in the amount of the tax receivable. If such tax receivable was purchased for a discount as provided in paragraph (2) of subsection (c), the repurchase price or reimbursement shall be reduced by the same percentage by which the purchase price of the tax receivable was discounted. In lieu of any such repurchase or reimbursement, the municipality may provide a replacement tax receivable of the same fiscal year as the tax receivable to be replaced that, together with any cash provided by the municipality or the purchaser, shall equal such purchase price or reimbursement amount; provided, however, that a replacement tax receivable shall be of similar market value as the tax receivable that is being replaced. The replacement tax receivable shall be provided only after compliance with subsection (b).
- (4) The reimbursement amount, pursuant to paragraph (3), shall include, in the case of abatement, interest accrued on such amount from the date of purchase by the purchaser to the date of repurchase or reimbursement by the municipality, calculated in accordance with the rate provided in section 69 of chapter 59.
- (5) The obligation of the municipality to repurchase any tax receivable pursuant to paragraphs (1) and (2), or to reimburse the purchaser pursuant to paragraph (3), including any replacement tax receivable in lieu of such repurchase or reimbursement, shall be set forth in an agreement between the municipality and the purchaser thereof, and (i) such obligation shall not exceed 10 per cent of the aggregate purchase price received by the municipality from the purchaser, inclusive of any interest and statutory fees paid by such purchaser to the municipality; but in the case of any reimbursement pursuant to said paragraph (3), such reimbursement amount shall not be charged to such percentage limitation; and (ii) the maximum period of time during which a municipality shall remain obligated to repurchase any tax receivable shall not exceed the lesser of: (a) 3 years from the date a tax receivable was purchased from the municipality, and (b) the period ending on the date 6 months prior to the date on which the lien securing the individual tax liability would terminate pursuant to section 37.
- (6) The limitations set forth in this subsection shall not apply in any case involving fraud or misrepresentation.

SECTION 5. Said section 2C of said chapter 60, as so appearing, is hereby further amended by striking out subsection (h) and inserting in place thereof the following subsection:-

(h) The purchaser of an individual tax receivable on any parcel of real estate shall have the right to purchase any subsequent delinquent individual tax receivable on the same parcel in accordance with the terms of sale of the original agreement, except that there shall be no discount or premium; the price of such subsequent receivable shall be the amount assessed together with any accrued interest, charges and fees. There shall be no requirement of notice or publication with respect to the transfer of such subsequent receivables, notwithstanding the provisions of subsection (b).

SECTION 6. Said chapter 60 is hereby further amended by striking out section 52, as so appearing, and inserting in place thereof the following section:-

Section 52. Cities and towns may make regulations for the possession, management and sale of land purchased or taken for taxes, not inconsistent with law, regulations promulgated by the department of revenue or the right of redemption. The treasurer of any city or town holding 1 or more tax titles may assign and transfer such tax title or titles, individually or bundled, to the highest bidder after a public auction, after having given 14 days' notice of the time and place of such public auction by publication, which shall conform to the requirements of section 40, and having posted such notice in 2 or more convenient and public places in said city or town, provided that the sum so paid for such assignment is not less than the amount necessary for redemption, and may execute and deliver on behalf of the city or town any instrument necessary therefor. The treasurer shall send notice of the intended assignment to the owner of record of each parcel at his last known address not less than 10 days prior to the assignment, but failure to receive such notice shall not affect the validity of the assignment. The instrument of assignment shall be in a form approved by the commissioner and shall be recorded within 60 days from its date and if so recorded shall be prima facie evidence of all facts essential to its validity. The instrument of assignment shall, for each parcel assigned thereunder, state the amount for which the tax title on the parcel could have been redeemed on the date of the assignment, separately stating for each parcel the principal amount and the total interest accrued until the date of assignment. The principal amount shall be the sum of the amounts for which the parcel was taken and amounts subsequently certified under section 61. Except as hereinafter otherwise provided, all provisions of law applicable in cases where the original purchaser at a tax sale is another than the city or town shall thereafter apply in the case of such an assignment, as if the assignee had been a purchaser for the original sum at the original sale or at a sale made at the time of the taking and had paid to the city or town the subsequent taxes and charges included in the sum paid for the assignment. Any extension of the time within which foreclosure proceedings may not be instituted granted by a city or town treasurer prior to assignment shall be binding upon the assignee.

SECTION 7. Section 62 of said chapter 60, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Any such person may so redeem by paying or tendering to a purchaser, other than the town, his legal representatives or assigns, or to the person to whom an assignment of a tax

title has been made by the town, at any time prior to the filing of such petition for foreclosure, in the case of a purchaser the original sum and intervening taxes and costs paid by him and interest on the whole at said rate, or in the case of an assignee of a tax title from a town the amount stated in the instrument of assignment with additional interest on the principal amount at said rate from the date of said assignment. In each case he shall also pay or tender, for examination of title and a deed of release, not more than \$3 in the aggregate, and in addition thereto the actual cost of recording the tax deed or evidence of taking and the instrument of assignment, if any. He may also redeem the land by paying or tendering to the treasurer the sum which he would be required to pay to the purchaser or to the assignee of a tax title, with \$10 additional. When land is redeemed from a tax title held by a city or town, the city treasurer, or acting city treasurer, notwithstanding the provisions of the charter of his city, or the town treasurer, as the case may be, shall, in the name and on behalf of the city or town, execute, acknowledge and deliver an instrument, which need not be under seal, containing a reference to the record of the tax deed or instrument of taking sufficient to identify it and reciting that the city or town acknowledges satisfaction of the tax title account secured thereby. The instrument provided for herein shall specify the year for which, and the name of the person to whom, the tax for which the land was sold or taken was assessed, and shall also specify the land on which such tax was assessed. If a person other than the owner of the fee rightfully redeems, requesting that he be named in the instrument, the instrument shall include his name and, when duly recorded in the registry of deeds of the county or district where the land is situated, shall be notice to all persons of such payment. If the amount so paid for redemption is paid by a holder of a mortgage on the premises, the amount so paid may be added to the mortgage debt. Any person redeeming land from a tax title held by a city or town may, as a condition of redemption, be required by the city or town treasurer to pay to him the expense of recording the instrument of redemption; and, when such expense has been so paid, such treasurer shall be deemed to be authorized to record such instrument and shall forthwith cause the same to be filed for record in the proper registry of deeds. No person shall knowingly collect or attempt to collect for the redemption of any such land a sum of money greater than that authorized by this section.

SECTION 8. Said chapter 60 is hereby further amended by striking out section 63, as so appearing, and inserting in place thereof the following 2 sections:-

Section 62A. Municipalities may by bylaw or ordinance authorize payment agreements between the treasurer and persons entitled to redeem parcels in tax title. Such agreements shall be for a maximum term of no more than 5 years or such lesser period as the ordinance or bylaw may specify and may waive not more than 50 per cent of the interest that has accrued on the amount of the tax title account, subject to such lower limit as the ordinance or bylaw may specify. An ordinance or bylaw under this section shall provide for such agreements and waivers uniformly for classes of tax titles defined in the ordinance or bylaw.

Any such agreement must require a minimum payment at the inception of the agreement of 25 per cent of the amount needed to redeem the parcel. During the term of the

agreement the treasurer may not bring an action to foreclose the tax title unless payments are not made in accordance with the schedule set out in the agreement or timely payments are not made on other amounts due to the municipality that are a lien on the same parcel.

Section 63. The treasurer shall receive money paid to him instead of the purchaser or assignee of a tax title, if the amount tendered equals the amount stated in the instrument of assignment or collector's deed plus additional interest at the rate stated in section 62 from the date of sale or assignment to the date the treasurer receives such payment, and give to the person paying it a certificate specifying the amount paid, the name of the person to whom and the real estate on which the tax was originally assessed, and the registry of deeds and the book and page of the records therein where the collector's deed or evidence of taking and the instrument of assignment, if any, is recorded; and the recording of the certificate in said registry shall extinguish all right and title acquired under the collector's deed or evidence of taking. The treasurer shall forthwith pay over all money so paid, to the person entitled thereto as determined by him, except that he shall retain \$10 for the use of the town and shall account to it therefor.

Approved August 13, 2004.

Chapter 296. AN ACT RELATIVE TO THE PROTECTION OF DISABLED PERSONS.

Be it enacted, etc., as follows:

Chapter 19C of the General Laws is hereby amended by striking out section 11, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 11. No person shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against or thereafter take any other retaliatory action against any employee, client or other person for filing a report with the commission or testifying in any commission proceeding or providing information to the commission, the general counsel or the secretary of health and human services or any department, office, commission or other agency within the executive office of health and human services in the course of an investigation of alleged abuse of a disabled person. Any person who willfully violates this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both. In addition, any person who takes such prohibited action against an employee, client or other person may be liable to that employee, client or other person for treble damages, costs and attorney's fees.

A violation of an employee's rights under this section shall constitute a prohibited retaliatory action under subsection (b) of section 185 of chapter 149 if the employee is an employee for purposes of said section 185. The institution of a private action in accordance with this section by any such employee shall be deemed a waiver by the employee of the rights and remedies available to that employee under said section 185, and the institution of

such an action under said section 185 shall be deemed a waiver of the rights and remedies available to that employee under this section. A person who willfully files a false report of abuse with the commission or willfully testifies falsely or willfully provides the commission or any designated investigating agency with false information in the course of an investigation or any other commission proceeding shall not be afforded the protections of this section.

Upon receiving a report or other information pursuant to this section, the commission shall inform the person providing the report, testifying or providing information of that person's rights under this section and under section 185 of chapter 149 in writing. The commission may seek enforcement of the criminal provisions of this section.

Approved August 13, 2004.

Chapter 297. AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF BLANDFORD.

Be it enacted, etc., as follows:

SECTION 1. Any holder of an elective office in the town of Blandford may be recalled therefrom by the registered voters of said town as herein provided.

SECTION 2. One hundred or more qualified voters may make and file with the town clerk an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall. The town clerk shall thereupon deliver to the 10 persons first named on the affidavit a sufficient number of petition blanks demanding the recall, copies of which printed forms he shall keep available. The petition blanks may be completed by printing or typewriter and they shall contain the names of the 10 persons to whom they are issued, the name of the person sought to be recalled, the office from which recall is sought, and the grounds for recall as stated in the affidavit. They shall demand the election of a successor to the office and they shall be dated, signed and sealed by the town clerk. The recall petition shall be returned to the office of the town clerk not later than 3 o'clock in the afternoon on or before the first work day following 20 days after the date they are issued, signed by at least 25 per cent of the total number of qualified persons registered to vote in the town as of the date the affidavit was filed with the town clerk. To every signature shall be added the place of residence of the signer, giving the street and number, if any. One of the 10 persons to whom the recall petition forms is issued shall make an affidavit on each page that statements therein contained are true, and that each signature appended to the petition is the genuine signature of the person whose name it purports to be.

The town clerk shall, within 72 hours following the day of the filing with the office of the town clerk, submit the recall petition forms to the board of registrars of voters which shall, within 5 work days after the day of receipt, certify in writing thereon the number of signatures which are those of qualified persons registered to vote in the town as of the date

such affidavit was filed with the town clerk. The board of registrars of voters, upon the completion of their certification, shall return the recall petition forms to the town clerk.

SECTION 3. If the recall petition forms shall be certified by the board of registrars of voters to contain at least 25 per cent of the qualified persons registered to vote and if the petition shall be found and certified by the town clerk to be sufficient, the town clerk shall give notice without delay, in writing, to the elected officer whose recall is sought by sending to that officer a copy of the affidavit and the recall petition form together with notice of the number of qualified voters certified by the board of registrars of voters who signed the recall petition forms and the total number of qualified voters in the town as of the most recent town election.

If the officer to whom notice is directed by the town clerk does not resign the office within 5 days following receipt of the aforesaid notice from the town clerk, the town clerk shall give notice in writing to the board of selectmen not later than 1 work day following the expiration of the foregoing 5 days. The board of selectmen shall order a special election to be held not less than 64 nor more than 90 days after the receipt of notice from the town clerk as aforesaid. If, however, any other town election is to be held within 100 days of receipt by the board of selectmen of notice from the town clerk, the recall election shall be postponed and shall be held at the time and in conjunction with the other election. If a vacancy occurs in the office for any reason after a recall election has been ordered by the board of selectmen, the recall election shall nevertheless proceed as provided for herein.

SECTION 4. Any officer sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the town clerk shall place his name on the ballot without nomination. The number of signatures of qualified voters required to place the name of a candidate on the official ballot for use at a recall election shall not be less than 25. The publication of the warrant for the recall election and the conduct of the recall election shall be in accordance with the General Laws relative to elections, unless otherwise provided in this act.

SECTION 5. The incumbent shall continue to perform the duties of this office until the recall election. If then recalled and reelected pursuant to section 6, he shall continue in office for the remainder of his unexpired term subject to recall as before, except as provided in this section. If recalled and not reelected in the recall election held pursuant to section 6, he shall be considered removed upon the qualification of his successor, who shall hold office during the unexpired term. If the successor fails to qualify within 5 days after receiving notification of his election, the office shall be considered vacant.

SECTION 6. The ballots used at the recall election shall submit the following proposition in the order indicated:

For the recall of (name of officer)

Against the recall of (name of officer)

Immediately at the right of each proposition there shall be a square in which the voter, by making a cross mark (x) may vote for either of such propositions. Under the propositions

shall appear the word "Candidates" and the directions for the voters required by law, and beneath the word "Candidates" shall be the names of candidates nominated as hereinabove provided.

If a majority of the votes cast is against the recall, the votes for the candidates need not be counted. If a majority of the votes cast is in favor of the recall, the officer shall be considered to be recalled and the ballots for candidates shall then be counted. The candidate receiving the highest number of votes shall be declared elected. If the officer is recalled, he shall be considered removed upon certification of the election results by the town clerk. The candidate receiving the highest vote and therefore elected, shall serve for the balance of the unexpired term of the officer removed.

SECTION 7. A recall petition shall not be filed against an officer within 6 months after he takes office nor, in the case of an officer elected in a recall election, until 6 months after that election. A recall shall not be filed against an officer subjected to a recall election, and not recalled thereby, until at least 6 months after the election at which his recall was submitted to the voters.

SECTION 8. A person who has been recalled from an office, or who has resigned from office while recall proceedings were pending against him, shall not be appointed to any town office within 1 year after the recall or the resignation.

SECTION 9. This act shall take effect upon its passage.

Approved August 13, 2004.

Chapter 298. AN ACT REQUIRING CONTINUING EDUCATION FOR LICENSED PLUMBERS AND GAS FITTERS.

Be it enacted, etc., as follows:

SECTION 1. Section 4 of chapter 142 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The examiners may make rules as they consider proper for the performance of their duties and shall promulgate rules and regulations governing the qualifications of applicants for examination.

SECTION 2. Said chapter 142 is hereby further amended by inserting after section 6 the following section:-

Section 6A. Notwithstanding any general or special law to the contrary, a licensed plumber or gas fitter shall complete a course of continuing education as determined by the examiners. The examiners shall promulgate rules and regulations necessary to carry out this section.

Approved August 13, 2004.

Chapter 299. AN ACT RELATIVE TO THE UNCOMPENSATED CARE TRUST FUND.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to transferring money to the uncompensated care trust fund, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the comptroller, in consultation with the division of health care finance and policy and the secretary of health and human services, shall transfer \$75,000,000 in unexpended amounts from account number 4000-0896 in MMARS to revenues available for the administration of the uncompensated pool, as established under subsection (d) of section 18 of chapter 118G of the General Laws, on or before October 1, 2004.

SECTION 2. This act shall take effect as of July 1, 2004.

Approved August 13, 2004.

Chapter 300. AN ACT DESIGNATING A CERTAIN PORTION OF LAND AT DRAW 7 PARK IN THE CITY OF SOMERVILLE AS THE PATRICK SULLIVAN FISHING HOLE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to designate forthwith a certain portion of land at Draw 7 Park in the city of Somerville as the Patrick Sullivan Memorial Fishing Hole, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

A certain portion of the land located at Draw 7 Park in the city of Somerville shall be designated and known as the Patrick Sullivan Memorial Fishing Hole in memory of Patrick L. Sullivan who served in the United States Army during the Vietnam War. The department of conservation and recreation shall erect and maintain a suitable marker bearing the designation in compliance with the standards of the department.

Approved August 13, 2004.

Chapter 301. AN ACT RELATIVE TO JOSEPH FERNANDES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary, the town of Norwood shall provide Joseph Fernandes, a police officer who sustained catastrophic and permanently disabling injuries in the line of duty, with a pension benefit that is equal to the amount he would have received as compensation if he had continued his duties as a Norwood police officer. The benefit shall be retroactive to the last date on which he received his regular compensation from the town of Norwood. Upon his retirement, the Norwood retirement system shall forthwith pay to Joseph Fernandes the amount of his accumulated total deductions in annuity savings and he shall be indemnified for all hospital, medical and related expenses incurred as a result of the injuries that caused his disability.

SECTION 2. Upon the death of Joseph Fernandes, if his wife shall survive him, she shall, so long as she remains unmarried, receive a surviving spouse pension benefit that is equal to ³4 of the pension that was payable to Joseph Fernandes at his death. If his wife shall remarry or die, then the surviving spouse pension benefit shall be paid for the benefit of Joseph Fernandes' surviving child or children until they shall reach the age of 18 years.

Approved August 13, 2004.

Chapter 302. AN ACT AUTHORIZING THE STATE SECRETARY TO PLACE AN ELECTION IN THE TOWN OF DRACUT ON THE STATE BALLOT.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the state secretary to place a certain local election on the state ballot, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The state secretary shall print on the official state election ballot for the town of Dracut the office of selectmen to fill a vacancy.

SECTION 2. Notwithstanding section 7 of chapter 53 of the General Laws or any other general or special law to the contrary, nomination papers for the office of selectmen to fill the vacancy shall be filed with the board of registrars of the town of Dracut for certification of signatures on or before 5:00 P.M. on August 17, 2004.

SECTION 3. Notwithstanding any general or special law to the contrary; the registrars shall complete certification of signatures on such nomination on or before 5:00 P.M. on August 20, 2004.

SECTION 4. Notwithstanding section 10 of chapter 53 of the General Laws or any other general or special law to the contrary, certified nomination papers shall be filed with the town clerk on or before 5:00 P.M. on August 24, 2004.

SECTION 5. Notwithstanding section 11 of chapter 53 of the General Laws or any other general or special law to the contrary, candidates who have filed nomination papers to fill the vacancy in the office of board of selectmen may withdraw their nomination by filing a notarized withdraw no later than 5:00 P.M. on August 27, 2004.

SECTION 6. The town clerk shall certify a list of candidates, with addresses in the order in which they are to appear on the ballot, to fill the vacancy in the board of selectmen to the state secretary on or before 5:00 P.M. on September 3, 2004.

Approved August 13, 2004.

Chapter 303. AN ACT AUTHORIZING THE TOWN OF LUNENBURG TO CONVEY A CERTAIN PARCEL OF LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Lunenburg, acting by and through its board of selectmen, may convey a certain parcel of land located in said town to Erling Hanson and Lucy H. Hanson. The land consists of approximately 1.7 acres, more or less, and is identified on the town assessor's Map 64, Lot 404.

SECTION 2. In consideration for the conveyance authorized in section 1, Erling Hanson and Lucy H. Hanson shall convey to the town of Lunenburg a certain parcel of land located in the town consisting of approximately 38 acres, more or less, and described and recorded in the Worcester north registry of deeds Book 706, Page 79 and the town assessor's Map 22 as Lot 1.

Approved August 13, 2004.

Chapter 304. AN ACT RELATIVE TO FIRE SAFETY IN THE COMMON-WEALTH.

Be it enacted, etc., as follows:

SECTION 1. Section 201 of chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the words "twenty-six A $\frac{1}{2}$ ", in lines 6, 50, 54, 57, 60 and 68, the following words:- and twenty-six G $\frac{1}{2}$.

SECTION 2. Chapter 10 of the General Laws is hereby amended by adding the following section:-

Section 74. The commission shall require all applicants for alcoholic beverages licenses to submit a valid certificate of inspection, as provided in the state building code, is-

sued by a local inspector, as defined in chapter 143, and signed by the head of the fire department, as defined in chapter 148, for the city, town or district in which the applicant intends to sell alcoholic beverages to be consumed on the premises. The certificate of inspection shall attest to the safety of the building or structure in which the applicant intends to sell alcoholic beverages to be consumed on the premises and that the building or structure meets or exceeds the requirements of the state building code.

The commission shall require that every license holder submit, annually, a valid certificate of inspection, as provided in the state building code, issued by a local inspector and signed by the head of the fire department for the city, town or district in which the premises is located and from which alcoholic beverages intended to be consumed on the premises are to be sold. The issuance of such certificate shall be a precondition for the issuance or renewal of such a license and the commission may summarily revoke any license upon notice of noncompliance or expiration of such certificate, by operation of law and without a hearing. The commission may presume that such premises conform with the inspectional safety requirements for the premises as provided for in the state building code based upon such certificate, however such presumption may be rebutted.

Failure by the inspector to issue an annual certificate of inspection, signed by the head of the fire department, may be appealed in accordance with the inspectional safety requirement procedures for appeal as provided in the state building code.

The commission may authorize the issuance of a temporary license to any applicant or license holder who has been issued a temporary certificate of inspection by a local inspector and signed by the head of the fire department, as provided in the state building code, if the applicant or license holder has complied with the terms therein and the temporary certificate of inspection has not expired. Such temporary license may be revoked by the commission, without a hearing, if the licensee has failed to comply with the terms of such temporary certificate.

Failure by the inspector to issue an annual certificate of inspection signed by the head of the fire department, may be appealed in accordance with the inspectional safety requirement procedures for appeal as provided for in the state building code.

The commission shall promulgate rules and regulations to effectuate the purposes of this section.

SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2004, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items.

EXECUTIVE OFFICE OF PUBLIC SAFETY

Fire and Building Inspector Education and Training

8000-0018 For the administration of a Fire and Building Inspector Education and Training Program to educate and certify all municipal fire and building inspectors in the commonwealth \$450,000

Firefighting Equipment Grant Program

8000-0050 For the firefighting equipment grant program for fire departments of every city, town, fire district and authority of the commonwealth to be administered by the executive office of public safety, provided that grants shall be distributed to municipalities according to a formula giving equal weight to each municipality's population; provided further that a municipality shall not receive less than \$15,000; provided further, that eligible fire safety equipment under this program shall include, but shall not be limited to, turnout gear, hand-held power lights, communication devices, telephones, personal alert safety systems, air packs, tanks, compressors, thermal imaging devices and computerized personnel accountability systems, but shall exclude firefighter apparatus and vehicles; provided further that grants awarded by said executive office to a municipality under the program shall not be utilized for the purpose of personnel costs unless such costs constitute 50 per cent or less of the total grant award; provided further that no grant shall be awarded to the department of fire services; provided further that not later than February 1, 2005, the executive office of public safety shall submit a report to the house and senate committees on ways and means and to the secretary for administration and finance detailing the amount of grants awarded to such grant recipients and descriptions of the grants and each municipality shall provide the executive office of public safety with a comprehensive list of the best-practices that have been instituted as a result of these grants\$10,000,000

SAFE Program

8000-0619 For the distribution of grants for city and town student awareness of fire education programs, to be known as S.A.F.E programs, which shall include information about the fire risks caused by

smoking; and provided further that grants awarded by the executive office of public safety to a municipality under the program shall, when applicable, be in an amount not less than the amount of the grant or grants each such municipality

SECTION 3. Subsection (d) of section 2 of chapter 62 of the General Laws is hereby amended by adding the following paragraph:-

- (3)(a) For purposes of the depreciation deduction allowed under sections 62(a)(1) and 168 of the Federal Internal Revenue Code, as amended and in effect for the taxable year, a taxpayer that is required to comply with section 26G ½ of chapter 148 of the General Laws and that has so complied, may classify an automatic sprinkler system having a situs in the commonwealth, and used exclusively in the trade or business of such taxpayer, as 5-year property as defined under section 168(e)(3) of the Federal Internal Revenue Code. The term "automatic sprinkler system" means the system installed pursuant to the provisions of said section 26G ½ and in accordance with the state building code.
- (b) Such depreciation deduction for the automatic sprinkler system shall be allowed only upon the condition that the net income for the taxable year and all succeeding taxable years be computed without any depreciation deduction upon the property other than the deduction allowed by this section.

SECTION 4. Chapter 63 of the General Laws is hereby amended by inserting after section 38R the following section:-

Section 38S. (a) In determining the net income subject to tax under this chapter, a domestic or foreign business corporation required to comply with section 26G 1/2 of chapter 148 and that has so complied, may, for the purposes of the depreciation deduction allowed under section 168 of the Federal Internal Revenue Code, classify an automatic sprinkler system having a situs in the commonwealth, and used exclusively in the trade or business of such corporation, as 5-year property as defined under 168(e)(3) of the Federal Internal Revenue Code. The term "automatic sprinkler system" means the system installed pursuant to section 26G ½ of said chapter 148 and in accordance with the state building code.

(b) Such depreciation deduction for the automatic sprinkler system shall be allowed only upon the condition that the net income for the taxable year and all succeeding taxable years be computed without any depreciation deduction upon the property other than the deduction allowed by this section.

SECTION 4A. Chapter 143 of the General Laws is hereby amended by inserting after section 97 the following section:-

Section 97A. (a) The board of building regulations and standards shall require the owner of any building or structure or portion thereof, that includes a place of business designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes, with a capacity of 100 persons or more, and which includes 1 or more residential dwellings, to install an adequate system of automatic sprinklers throughout

the building including, but not limited to, residential dwellings and in any common areas connected thereto, in accordance with the state building code. This section shall apply to the construction or substantial alteration of buildings or structures, approved by building permit on or after December 1, 2004. This paragraph shall not preclude the board of building regulations and standards from prescribing more stringent sprinkler requirements.

(b) Whoever is aggrieved by an interpretation, order, requirement, or direction of the building official under this section, or whoever is aggrieved by a failure of the building official to take action under this section, may, within 45 days after the service of notice of such interpretation, order, requirement, or direction, or after 45 days of such failure to act, appeal from such interpretation, order, requirement, direction, or failure to act to the building code appeals board as provided in section 100 of chapter 143.

SECTION 5. Chapter 148 of the General Laws is hereby amended by inserting after section 26G the following section:-

Section 26G ½. For the purpose of this section the term "adequate system of automatic sprinklers" shall include: (1) a working automatic sprinkler system; (2) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (3) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

Every building or structure, or portions thereof, of public assembly, with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes, including all rooms, lobbies, and other spaces connected thereto and all means of egress and entrances, including any such public assembly located within a mixed use building or structure, including a building or structure owned or controlled by the commonwealth or a political subdivision thereof, (a) which is existing, or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers, in accordance with the state building code.

Any owner of a business designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes to which the second paragraph does not apply shall install a system of automatic sprinklers within the building or structure in accordance with the state building code if the business: (1) violates the maximum capacity for such building or structure, as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143, 2 or more times during a 12-month period; or (2) violates the maximum capacity of such building or structure by a number greater than ½ of such maximum capacity as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143. Any owner of a building or structure required to install automatic sprinklers as a result of a violation of this paragraph shall do so within 1 year of being cited for such violation, and shall be responsible for the full

costs of installation. Notwithstanding any general or special law to the contrary, any business owner cited for violating the maximum capacity for his place of business shall be subject to a \$10,000 fine for a first or second offense. A third such offense shall result in the business owner losing his license to operate in the commonwealth, and all food, entertainment and other licenses associated with his business. This paragraph shall be enforced by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector as provided in chapter 143, or any state official with concurrent jurisdiction.

This section shall not apply to a place of assembly within a building, structure or portions thereof used principally as a house of worship, restaurant, lecture hall, auditorium, state or local government building, educational function facility, or other similar place of assembly. Temporary use of such a building or structure or portions thereof as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes, may be allowed if a permit is issued for such use by the head of the fire department in consultation with the local building inspector or inspector who may set the terms and conditions to protect against fire and preserve public safety.

Whoever is aggrieved by an interpretation, order, requirement or direction of the head of the fire department under this section, or, whoever is aggrieved by a failure of the head of the fire department to take action under this section, may, within 45 days after the service of notice of such interpretation, order, requirement or direction, or, after 45 days of such failure to act, appeal from such interpretation, order, requirement, direction or failure to act to the automatic sprinkler appeals board as provided in section 201 of chapter 6.

The cost of installing an adequate system of automatic sprinklers pursuant to this section shall be borne in its entirety by the owner of the building or structure.

Except as provided in the third paragraph, the head of the fire department shall enforce this section.

SECTION 6. Said chapter 148 is hereby further amended by inserting after section 34 the following 4 sections:-

Section 34A. (a) Any owner, occupant, lessee or other person having control or supervision of any assembly use group building, as defined by the state building code, and who causes or permits a dangerous condition to exist on the premises at anytime shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than 2 ½ years, or both.

For the purposes of this section, "dangerous condition" shall mean:-

- (1) any blocked or impeded ingress or egress;
- (2) the failure to maintain or the shutting off of any fire protection or fire warning system required by law;
- (3) the storage of any flammable or explosive without a properly issued permit in quantities in excess of allowable limits of any permit to store;
- (4) the use of any firework or pyrotechnic device, as defined by the board of fire prevention regulations, without a properly issued permit; or

(5) exceeding the occupancy limit established by the local building inspector pursuant to chapter 143.

Nothing in this section shall preclude the issuance of a citation for a code violation, as provided for by chapter 148A.

(b) Whoever is convicted of a second or subsequent violation of paragraph (a) shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than $2\frac{1}{2}$ years, or both such fine and imprisonment.

Section 34B. Any person who wantonly or recklessly violates the state building code or state fire code and thereby causes serious bodily injury or death to any person shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than 2 ½ years, or both.

For purposes of this section, "serious bodily injury" shall mean bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

Section 34C. Whoever (1) commits a second or subsequent violation of the state building code or state fire code, including any incorporated specialized codes, or any lawful order of the marshal, the head of the fire department or a state or local building inspector or (2) continues to violate any such code or order after receipt of actual notice of such violation or order, shall be punished by a fine of not more than \$1,000 or by imprisonment for 1 year in the house of correction or by both such fine and imprisonment. Notice may be provided by in-hand service, by posting the same in a conspicuous place on the premises in violation, or by the lawful issuance of a citation pursuant to chapter 148A. This section shall not apply to such violations which are under appeal pursuant to section 100 of chapter 143, if such appeal was timely filed.

Section 34D. Notwithstanding any other general or special law to the contrary, the housing court, the district court or the superior court shall have jurisdiction and equitable powers to enforce the lawful orders of the marshal or head of the fire department pursuant to this chapter.

SECTION 7. The General Laws are hereby further amended by inserting after chapter 148 the following chapter:-

CHAPTER 148A.

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

"Code violation", a violation of the state building code, 780 CMR or the State Fire Code, 527 CMR.

"Housing court", the housing court within the county in which an alleged code violation has occurred, or, if there is no housing court in the county, the district court with jurisdiction of the location in which the alleged code violation occurred.

"Local code enforcement officer", the head of the fire department as defined in section 1 of chapter 148, or a designee of the head of the fire department who is empowered to enforce the state fire code, or the local building inspector empowered to enforce the building code pursuant to section 3A of chapter 143.

"Municipal hearing officer", a person appointed by the appointing authority of a municipality to conduct requested hearings of code violations pursuant to this chapter.

"Scheduled assessment", the amount of the civil assessment for a particular code violation as determined jointly by the state fire marshal, commissioner of public safety, and the chief justices of the district and housing court departments, respectively. A scheduled assessment shall not exceed the maximum assessment or fine established by law for each such violation.

"State code enforcement officer", in cases involving the state fire code, the marshal as defined in section 1 of chapter 148, or in the case of state building code violations, the state building inspector empowered to enforce the building code pursuant to section 3A of chapter 143.

Section 2. (a) Notwithstanding any general or special law to the contrary, any local code enforcement officer, empowered to enforce violations of the state building code or the state fire code may, as an alternative to initiating criminal proceedings, give to the offender a written notice of a code violation. Such notice shall contain the name and address, if known, of the offender, the specific offense charged and the time and place of the violation. The notice shall be signed by the local code enforcement officer and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The local code enforcement officer shall, if possible, deliver to the offender a copy of the notice at the time and place of the violation. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, the copy shall be mailed or delivered by the local code enforcement officer, or by the head of his department or by any person authorized by such department head, to the offender's last known address, within 15 days after the violation or discovery thereof. Such notice as so mailed shall be deemed a sufficient notice. A certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof. The notice shall be executed in triplicate.

Whoever, upon request of any local code enforcement officer, refuses to state his name and address, or if he states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not more than \$200.

(b) The local code enforcement officer shall indicate on the notice of violation that the violation is either: (1) a written warning; or (2) a code violation. If the notice is for 1 or more code violations, the code enforcement officer shall indicate on the notice the scheduled assessment for each violation alleged. If the notice of violation is for a continuing condition, the code enforcement officer shall indicate that the condition must be corrected within 24 hours of receipt of such notice. Failure to correct the condition within 24 hours may serve as grounds for criminal prosecution pursuant to section 34C of chapter 148.

- (c) If the notice is for 1 or more code violations, the alleged violator shall return the notice of violation by mail, personally or by authorized person to the municipal hearing officer and shall, within 21 days, either: (1) pay in full the scheduled assessment; or (2) request a hearing before the municipal hearing officer. Any amounts paid shall be payable to the city or town, as the case may be. If the alleged violator requests, in a timely manner, a hearing before the municipal hearing officer, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving such hearing request. The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing. In no case shall the hearing officer, so designated, be an employee or officer of the fire department or building department associated with the code enforcement officer who issued the notice of violation. The hearing by the municipal hearing officer shall be informal and the formal rules of evidence shall not apply.
- (d) Any person aggrieved by a decision of the municipal hearing officer, after a hearing, may appeal to the housing court within the county in which the violation occurred and shall be entitled to a hearing before a clerk magistrate of the court. The appeal shall be filed by the aggrieved person within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.
- (e) Any person who has received a notice of violation issued in accordance with this section who, within the prescribed time, fails to pay the scheduled assessment or fails to exercise his right to request a hearing before the municipal hearing officer or who fails to appear at the time and place of the hearing, shall be deemed responsible for the code violations as stated in the notice of violation and such finding of responsibility shall be considered *prima facie* evidence of a finding of responsibility for the code violation in any civil proceeding regarding said violation and shall be admissible as evidence in a subsequent criminal proceeding. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by the city or town as *prima facie* evidence of the existence of a code violation in any proceeding to suspend or revoke any license, permit or certificate issued by such municipality, the state fire marshal or commissioner of public safety relative to said building, structure or premises pending the correction of the condition.

Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary, any state code enforcement officer empowered to enforce violations of the state building code or state fire code may, as an alternative to initiating criminal proceedings, give to the offender a written notice of a code violation. The notice shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place of the violation. The notice shall be signed by the state code enforcement officer and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The state code enforcement officer shall, if possible, deliver to the offender a copy of the notice at the time and place of the violation. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, the copy shall be mailed or delivered by the state code enforcement officer, or by the head of his department or by any

person authorized by such department head, to the offender's last known address, within 15 days after the violation. The notice as so mailed shall be deemed sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be *prima facie* evidence thereof. The notice shall be executed in triplicate. Whoever, upon request of any state code enforcement officer, refuses to state his name and address, or if he states a false name and address, or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not more than \$200.

- (b) The state code enforcement officer shall indicate on the notice of violation that the violation is either: (1) a written warning; or (2) a code violation. If the notice is for 1 or more code violations, the state code enforcement officer shall indicate on the notice the scheduled assessment for each violation alleged. If the notice of violation is for a continuing condition, the state code enforcement officer shall indicate that the condition must be corrected within 24 hours of receipt of such notice. Failure to correct the condition within 24 hours may serve as grounds for criminal prosecution pursuant to section 34C of chapter 148.
- (c) If the notice is for 1 or more code violations, the alleged violator shall, within 21 days of the receipt of the notice either: (1) pay in full the scheduled assessment in accordance with the instructions on the notice of violation; or (2) request a hearing before a clerk magistrate of the housing court within the county in which the alleged violation occurred, by submitting the notice by mail, personally or by authorized person to the housing court. If the alleged violator requests a hearing before the clerk magistrate as prescribed, the clerk magistrate shall schedule a hearing not later than 45 days after receiving such hearing request. The clerk magistrate shall duly notify the alleged violator and the state code enforcement officer of the date, time and location of the hearing. The code enforcement officer who issued the notice of violation may appear personally at said hearing or may designate another person from his department or district to prosecute the case who is also empowered to enforce such building or fire code, as the case may be. Such hearing by the clerk magistrate shall be informal and the formal rules of evidence shall not apply.
- (d) Any person aggrieved by a decision of the clerk magistrate, after a hearing, may appeal to a single justice of the housing court and shall be entitled to a hearing before a single justice of the court. The aggrieved person shall file such appeal within 10 days after receiving notice of the decision from the clerk magistrate who conducted the hearing. The decision of the single justice shall be final.
- (e) Any person who has received a notice of violation issued in accordance with this section who, within the prescribed time fails to pay the scheduled assessment or fails to exercise his right to request a hearing before the clerk magistrate or who fails to appear at the time and place of the hearing, shall be deemed responsible for the code violations, as stated in the notice of violation and such finding of responsibility shall be considered *prima facie* evidence of a finding of responsibility for such code violation in any civil proceeding regarding the violation and shall be admissible as evidence in a subsequent criminal proceeding. If the condition which caused the notice of violation to issue continues, the finding

of responsibility, accompanied by a sworn affidavit of the issuing state code enforcement officer relating the relevant details of the violation, may be used as *prima facie* evidence in any proceeding to suspend or revoke any license, permit or certificate issued by the city, town or the commonwealth, including the state fire marshal or the commissioner of public safety relative to the building, structure or premises pending the correction of the condition.

Section 4. The state fire marshal, commissioner of public safety, the chief administrative justices of the district and housing court departments, respectively, and the president of the Massachusetts Municipal Association board of directors shall jointly prescribe standardized notice of violation forms provided for in sections 2 and 3 of this chapter which shall be uniform throughout the commonwealth. The forms, which may be modified periodically, shall clearly state the procedures, rights and obligations of alleged violators who receive such notices. The commissioner of public safety shall provide such forms to be used by local code enforcement officers to each municipality throughout the commonwealth. The charge for each such form shall be no greater than the actual cost incurred by the commissioner to produce such form.

Section 5. All fines, penalties or assessments in actions under this chapter, brought by a local code enforcement officer, shall be paid to the general fund of the city or town in which the violation occurred. Such city or town shall earmark such fines, penalties or assessments collected for enforcement, training and education of fire prevention officers, building inspectors, and the stipend for municipal hearing officers, which shall be not less than \$2,500 a year. All fines, penalties or assessments in actions brought under this chapter by a state code enforcement officers shall be paid to the commonwealth and shall be forwarded to the department of fire services as revenue to the General Fund and shall be assigned to the department's retained revenue account for the purposes of enforcement, training and education of state code enforcement officers.

SECTION 8. Notwithstanding any general or special law to the contrary, there is hereby established a special committee for the purposes of making an investigation and study of the feasibility of creating a mandatory municipal fire inspector certification program. The committee shall consist of the members of the Massachusetts Fire Training Council, established under the provisions of section 165 of chapter 6 of the General Laws, the Massachusetts Fire Service commission, established under the provision of section 165B of said chapter 6 and the state fire marshal or his designee.

SECTION 9. The secretary of public safety, or, as directed by the secretary, the head of a department, division or agency within the executive office of public safety, shall promulgate rules and regulations to effectuate the following:-

(1) establishing a nightclub fire safety training program and training materials for employees of every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes;

(2) establishing and promoting education relative to the proper use and storage of all

forms of fire extinguishers and other similar fire suppressant apparatus for the owners, lessees or mortgagees of all buildings certified under the state building code;

- (3) establishing methods for the proper tracking and certification of pyrotechnic displays, usage of fog, hazing or other fog producing apparatus in all places of public assembly, improving luminescence of egress routes and the widening or upgrading of main exit doors in places of public assembly, establishing requirements that "balanced design" be employed in future construction of larger entertainment venues, such as theatres, convention centers and arenas and establishing standards, based on current technology and science, on the proper use of fire resistant acoustic materials in all places of public assembly.
- (4) establishing an advisory council on fire safety building materials for the purpose of incorporating comprehensive flame-retardant material standards into state building codes and to recommend to the state board of building regulations and standards flame-retardant material standards to be incorporated as emergency amendments into the state building code. Such standards may incorporate the use of fire resistant coating. For the purposes of this section, "fire resistant coating" is defined as a coating that has attained both the room corner test FM 4880 or UL1715 or NFPA 286 on plywood and ASTM E-119 on numerous substrates found in general building construction.

The secretary of public safety shall establish, in conjunction with the executive office of economic affairs, methods for owners, lessees, or mortgagees in possession of a building or structure, or portions thereof of public assembly with a capacity of 100 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes to install automatic sprinklers at discounted rates including, but not limited to, no-interest or low-interest loans and insurance cost containment measures.

SECTION 10. On or before June 1, 2005, the secretary of the executive office of economic affairs shall file with the house and senate committees on ways and means and with the clerks of the house of representatives and the senate a plan to reduce for owners the costs associated with implementing section 5 including, but not limited to, programs utilized by the Title V program and low-interest loans and tax credits.

SECTION 11. Any owner of a building, structure or portions thereof subject to the provisions of the second paragraph of section 26G ½ of chapter 148 of the General Laws shall submit plans and specifications for the installation of an adequate system of automatic sprinklers to the head of the fire department and the local building inspector or inspector within 18 months of the effective date of this act and shall install an adequate system of automatic sprinklers within 3 years of such effective date. The head of the fire department may allow a reasonable extension of time, not to exceed 1 year, to comply with said section 5 if the owner has timely submitted the required plans and specifications, has entered into an existing contract for the installation and clearly documents or shows that he did not cause the delay of installation.

For the purpose of this section the words "adequate system of automatic sprinklers" shall include: (i) a working automatic sprinkler system; (ii) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (iii) adequate

monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

SECTION 12. Section 7 of this act shall take effect on March 1, 2005.

Approved August 17, 2004.

Chapter 305. AN ACT RELATIVE TO THE TOWN OF LENOX AND THE REIMBURSEMENT OF LOCAL ROOM OCCUPANCY TAXES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 64G of the General Laws or any other general or special law, rule or regulation to the contrary, the town of Lenox shall be required to reimburse the commonwealth the sum of \$600,000 in connection with the settlement in the matter of Canyon Ranch Bellefontaine Associations, L.P. v. Commissioner of Revenue, ATB Docket Nos. F252702 & 260821 Canyon Ranch Management, LLC as Agent for Vintage Resorts, LLC - Abatement Claims. The town shall not be responsible for interest in excess of that which is included in the \$600,000 figure, in connection with the settlement.

SECTION 2. This act shall take effect as of July 1, 2004.

This bill was returned by the Governor to the Senate, the branch in which it originated, with his objections thereto, was passed by the Senate on July 31, 2004, and in concurrence by the House of Representatives on July 31, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 306. AN ACT RELATIVE TO THE HEALTH AND SAFETY ON PUBLIC CONSTRUCTION PROJECTS.

Be it enacted, etc., as follows:

SECTION 1. Section 39M of Chapter 30 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) The term "lowest responsible and eligible bidder" shall mean the bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have suc-

cessfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority.

SECTION 2. Said chapter 30 is hereby amended by inserting after section 39R the following section:-

Section 39S. (a) As used in this section the word "person" shall mean any natural person, joint venture, partnership corporation or other business or legal entity. Any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any public work by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than \$10,000, and any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, estimated to cost more than \$10,000, shall certify on the bid, or contract, under penalties of perjury, as follows:

- (1) that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.
- (b) Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.
- (c) The attorney general, or his designee, shall have the power to enforce this section including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts in all cases where, after investigation of the facts, he has made a finding that the award or performance has resulted in violation, directly or indirectly, of subsection (b), and he shall not be required to pay to the clerk of the court an entry fee in connection with the institution of the proceeding.

SECTION 3. Paragraph E of subdivision (2) of section 44E of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and

inserting in place thereof the following paragraph:-

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

SECTION 4. Paragraph I of subdivision (2) of section 44F of said chapter 149, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section 44F.

SECTION 5. This act shall take effect on July 1, 2006.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 30, 2004, and in concurrence by the Senate on July 31, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 307. AN ACT ESTABLISHING A SPEED LIMIT FOR SASSAQUIN AVENUE IN THE CITY OF NEW BEDFORD.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the city of New Bedford may establish a speed limit of 20 miles per hour on the way known as Sassaquin avenue in that city.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on May 25, 2004, and in concurrence by the Senate on July 30, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 308. AN ACT RELATIVE TO CERTAIN RETIREMENTS IN THE CITY OF HOLYOKE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding clause (i) of subsection (1) of paragraph (a) of section 116 of chapter 46 of the acts of 2003 or any general or special law to the contrary, James C. Shea, Rosalee T. Williams, Celia Hanechak and Franklin A. Morris, former employees of the city of Holyoke separated from employment with the city due to a reduction in workforce prior to the city of Holyoke's acceptance of said section 116 of said chapter 46, shall be eligible to retire under said section 116 of said chapter 46 subject to all other requirements, except the city employee and active member in service requirement.

SECTION 2. This act shall take effect upon its passage.

This bill was returned by the Lieutenant-Governor, Acting Governor, to the House of Representatives, the branch in which it originated, with her objections thereto, was passed by the House on July 21, 2004, and in concurrence by the Senate on July 22, 2004, the objections of the Lieutenant-Governor, Acting Governor, notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 309. AN ACT RELATIVE TO CERTAIN COURT FEES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to regulate further certain court fees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 2A of chapter 262 of the General Laws is hereby repealed. **SECTION 2**. This act shall take effect as of July 1, 2004.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 30, 2004, and in concurrence by the Senate on July 30, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 310. AN ACT RELATIVE TO THE FEES OF CERTAIN SUPERIOR COURT CASES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to regulate further certain fees for superior court cases, therefore it is hereby

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declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 4D of chapter 262 of the General Laws is hereby repealed. **SECTION 2**. This act shall take effect as of July 1, 2004.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 30, 2004, and in concurrence by the Senate on July 30, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 311. AN ACT DIRECTING THE DEPARTMENT OF CONSERVATION AND RECREATION TO REPAIR CERTAIN CULVERTS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to repair forthwith certain culverts, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the department of conservation and recreation shall expend or reimburse necessary funds to repair and replace failed, failing and damaged culverts in the Sales Creek drainage channel of the cities of Revere and Boston, which are owned by said department and which pose potential public health emergencies by preventing adequate drainage of a major watershed, and to repair and restore the damaged surfaces in the area surrounding the collapsed or undermined culverts that pose potential public safety emergencies due to unstable ground and surface areas under Tomasello Road and other areas, roadways and drives.

SECTION 2. This act shall take effect as of July 1, 2004.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 30, 2004, and in concurrence by the Senate on July 30, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 312. AN ACT AUTHORIZING THE TOWN OF ROCKPORT TO BORROW A CERTAIN AMOUNT OF MONEY.

Be it enacted, etc., as follows:

Notwithstanding sections 7 and 8 of chapter 44 of the General Laws or any other general or special law to the contrary, the town of Rockport may incur debt in an amount up to \$200,000 for the purposes of funding the environmental site clean-up costs for the town property located at 30 Pleasant street in the town. The debt shall be payable within 20 years.

Approved August 18, 2004.

Chapter 313. AN ACT REPLACING THE EXISTING HARBOR LINE AND TO ESTABLISH A NEW HARBOR LINE IN GLOUCESTER HARBOR.

Be it enacted, etc., as follows:

SECTION 1. The following described line is hereby established as a harbor line beyond which no wharf, pier, other structure or fill shall be extended or placed in or over the tidewaters of Gloucester harbor from that point of the city of Gloucester at the Fisherman's Memorial Cenotaph and to include in an easterly direction, those areas around Fort Point, Harbor Cove and beyond the United States Coast Guard Station to include the North Channel around the State Pier and South Channel and westerly to and including Smith Cove, around Rocky Neck to past Wonson's Cove.

This line is established as follows:

Commencing at a point in Gloucester Harbor. Said point of beginning being located at Latitude N42°36'34.017", Longitude W70°40'11.037" as referenced to the North American Datum of 1983, thence

S84°28'36"E A distance of one hundred ten and 00/100 (110.00') feet, thence

Southeasterly A distance of eight hundred four and 73/100 (804.73') feet along a curve to the right with a radius of one thousand one hundred and 00/100 (1100.00') feet, thence

S42°33'38"E A distance of four hundred fifty seven and 21/100 (457.21') feet, thence Easterly A distance of one hundred seventy nine and 20/100 (179.20') feet along a curve to the left with a radius of one hundred forty and 00/100 (140.00') feet, thence

N64°06'02"E A distance of two hundred twelve and 76/100 (212.76') feet to a point ten (10') feet from the Federal Anchorage line defining the 18' channel, thence

 $N52^{\circ}12'47"E~A~distance~of~seven~hundred~fifty~seven~and~01/100~(757.01')~feet~along~a~line~ten~(10')~northwesterly~from~and~parallel~to~the~18'~channel~line~of~the~Federal~Anchorage,~thence$

 $N18^{\circ}59'49"E~A$ distance of one hundred twenty three and 14/100~(123.14') feet along a line ten (10') northwesterly from and parallel to the 18' channel line of the Federal Anchorage, thence

N23°23'14"W A distance of two hundred thirty two and 21/100 (232.21') feet along a line ten (10') southwesterly from and parallel to the 18' channel line of the Federal Anchorage, thence

N66°15'22"W A distance of six hundred twenty six and 08/100 (626.08') feet along a line ten (10') southwesterly from and parallel to the 18' channel line of the Federal Anchorage, thence

N23°44'30"E A distance of one hundred twenty and 00/100 (120.00') feet along a line ten (10') northwesterly from and parallel to the 18' channel line of the Federal Anchorage, thence

\$66°15'27"E A distance of two hundred fifty five and 78/100 (255.78') feet along a line ten (10') northeasterly from and parallel to the 18' channel line of the Federal Anchorage, thence

N67°57'25"E A distance of two hundred five and 38/100 (205.38') feet along a line ten (10') northwesterly from and parallel to the 18' channel line of the Federal Anchorage, thence

S66°32'46"E A distance of five hundred fifty seven and 00/100 (557.00') feet along a line ten (10') northeasterly from and parallel to the 18' channel line of the Federal Anchorage, thence

S65°36'25"E A distance of two hundred forty three and 39/100 (243.39') feet along a line ten (10') northeasterly from and parallel to the 15' anchorage line of the Federal Anchorage, thence

N75°38'56"E A distance of two hundred ninety seven and 91/100 (297.91') feet along a line ten (10') northwesterly from and parallel to the 15' anchorage line of the Federal Anchorage, thence

N55°55'19"E A distance of two hundred and 11/00 (200.11') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

N18°26'02"E A distance of six hundred ninety three and 54/100 (693.54') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

N32°31'52"E A distance of five hundred seventy nine and 04/100 (579.04') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

N47°57'45"E A distance of one thousand thirty eight and 58/100 (1038.58') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

 $N34^{\circ}49'37''E$ A distance of one hundred fifty five and 63/100 (155.63') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

N65°36'51"E A distance of one hundred one and 77/100 (101.77') feet along a line

ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

N58°10'04"E A distance of two hundred fifty one and 84/100 (251.84') feet, thence N54°27'12"E A distance of three hundred five and 71/100 (305.71') feet, thence

\$15°32'47"W A distance of three hundred sixty four and 38/100 (364.38') feet, thence \$47°57'46"W A distance of one thousand one hundred thirty nine and 71/100 (1139.71'), thence

S39°32'17"E A distance of three hundred fifty one and 78/100 (351.78') feet, thence S54°19'19"E A distance of four hundred twenty and 68/100 (420.68') feet to a point ten (10') feet northwesterly of the 20' south channel line of the Federal Anchorage, thence

 $\rm N44^{\circ}02'40''E~A~distance$ of three hundred sixty five and 10/100~(365.10') feet along a line ten (10') feet northwesterly from and parallel to the 20' south channel line of the Federal Anchorage, thence

 $N00^{\circ}46'51"W$ A distance of two hundred twenty six and 27/100 (226.27') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

 $N44^{\circ}05'51''E$ A distance of three hundred ninety nine and 24/100 (399.24') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

 $$\rm S46^{\circ}25'09''E\ A\ distance\ of\ two\ hundred\ thirty\ nine\ and\ 43/100\ (239.43')\ feet\ along\ a\ line\ ten\ (10')\ northeasterly\ from\ and\ parallel\ to\ the\ 20'\ north\ channel\ line\ of\ the\ Federal\ Anchorage,\ thence$

S27°47'24"W A distance of five hundred and 79/100 (500.79') feet along a line ten (10') southeasterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

S44°04'02"W A distance of one thousand one hundred eighty seven and 85/100 (1187.85') feet along a line ten (10') southeasterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

S25°55'38"E A distance of seven hundred fifty six and 50/100 (756.50') feet along a line ten (10') northwesterly from and parallel to the 20' north channel line of the Federal Anchorage, thence

Southerly A distance of ninety and 84/100 (90.84') feet along a curve to the right (non-tangent with the last course) with a radius of two hundred seventy three and 61/100 (273.61') feet. The chord bearing being S29°29'33"W, a distance of ninety and 42/100 (90.42'), thence

S39°34'11"W A distance of two hundred ninety three and 32/100 (293.32') feet, thence

S35°02'39"W A distance of seven hundred twenty nine and 40/100 (729.40') feet, thence

Northwesterly A distance of six hundred forty and 16/100 (640.16') feet along a curve to the right with a radius of two hundred five and 00/100 (205.00') feet, thence

N33°57'48"E A distance of eight hundred thirty two and 27/100 (832.27') feet, thence N02°10'56"E A distance of one hundred ten and 00/100 (110.00') feet, thence N79°21'36"W A distance of three hundred twenty five and 94/100 (325.94') feet, thence

S78°32'55"W A distance of four hundred thirty two and 75/100 (432.75') feet, thence Southwesterly A distance of two hundred twenty seven and 94/100 (227.94') feet along a curve to the left with a radius of three hundred fifty and 00/100 (350.00') feet, thence S41°13'43"W A distance of four hundred eighty three and 95/100 (483.95') feet, thence

Southwesterly A distance of three hundred seventy eight and 00/100 (378.00') feet along a curve to the right with a radius of one thousand one hundred twenty five and 00/100 (1125.00') feet, thence

S60°28'48"W A distance of five hundred sixty three and 57/100 (563.57') feet, thence Southerly A distance of eighty and 14/100 (80.14') feet along a curve to the left with a radius of thirty four and 00/100 (34.00') feet, thence

S74°34'12"E A distance of two hundred seventy two and 10/100 (272.10') feet, thence Southeasterly A distance of two hundred five and 00/100 (205.00') feet along a curve to the right with a radius of one hundred fifty five and 00/100 (155.00') feet, thence

S01°12'29"W A distance of five hundred seventy and 00/100 (570.00') feet, thence Southwesterly A distance of two hundred nine and 00/100 (209.00') feet along a curve to the right with a radius of one hundred fifty eight and 00/100 (158.00') feet, thence

\$76°59'53"W A distance of seven hundred ninety seven and 00/100 (797.00') feet, thence

Southwesterly A distance of eight hundred fifty and 00/100 (850.00') feet along a curve to the left with a radius of one thousand two hundred fifty and 00/100 (1250.00') feet to the terminus of the harbor line revision.

Said terminus being located at Latitude N42°36'05.876", Longitude W70°39'59.857" as referenced to the North American Datum of 1983.

All of the aforementioned bearings and distances being related to the Massachusetts State Plane Coordinate System, North American Datum 1983 (Massachusetts Mainland Zone). All units are United States Survey Feet.

The revised harbor line being more particularly depicted on a plan, filed in the office of the division of waterways of the department of environmental protection, which is entitled. "Gloucester Harbor in Gloucester, Massachusetts (Essex County), Revised Gloucester Harborline" prepared by The BSC Group, Inc. and dated November 19, 2002, and which by this reference is incorporated herein.

SECTION 2. The harbor line heretofore established by chapter 124 of the acts of 1866, and chapter 245 of the acts of 1867, and chapter 116 of the acts of 1876, and chapter 82 of the acts of 1875, and chapter 109 of the acts of 1883, and chapter 285 of the acts of 1874, and chapter 1024 of the acts of 1973, and chapter 103 of the acts of 1882, and chapter 230 of the acts of 1920, and chapter 501 of the acts of 1908, respectively, upon the part of

the harbor frontage covered by this act are superseded by the harbor line established in this act.

SECTION 3. This act shall not be construed to affect or acknowledge the legal rights of any person or corporation to set up any structure in said part of the harbor nor to continue any grant heretofore made.

SECTION 4. This act shall take effect upon its passage.

Approved August 18, 2004.

Chapter 314. AN ACT DESIGNATING A CERTAIN TRAFFIC ISLAND IN THE CITY OF GLOUCESTER AS THE PAUL BERGMANN MEMORIAL TRAFFIC ISLAND.

Be it enacted, etc., as follows:

The traffic island located on state highway route 133 at the entrance to the Beechbrook cemetery in the city of Gloucester shall be designated and known as the Paul Bergmann memorial traffic island, in memory of Paul Bergmann who dedicated 25 years of service to improving the city of Gloucester. The department of highways shall erect a sign bearing that designation in compliance with the standards of said department.

Approved August 18, 2004.

Chapter 315. AN ACT RELATIVE TO THE WINCHENDON DISTRICT COURT.

Be it enacted, etc., as follows:

Notwithstanding any general or special law or rule, regulation or policy to the contrary, the Winchendon division of the district court department of the trial court may deposit its daily funds in a local bank that is not a commercial bank.

Approved August 18, 2004.

Chapter 316. AN ACT PLACING THE HEALTH INSPECTOR UNDER THE SUPERVISION OF THE DIVISION OF INSPECTIONAL SERVICES IN THE CITY OF SOMERVILLE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 111 of the General Laws, the city of Somerville may place the city's health inspectors under the supervision of the city's division of inspectional services, under the direction and control of the director of the health department. The health inspectors shall have all such authority provided to them under said chapter 111 and any other statute, regulation or other authority pertaining to public health.

SECTION 2. This act shall expire on September 1, 2005.

SECTION 3. This act shall take effect upon its passage.

Approved August 18, 2004.

Chapter 317. AN ACT RELATIVE TO SCHOOL BUILDING CUSTODIANS IN THE CITY OF SOMERVILLE.

Be it enacted, etc., as follows:

SECTION 1. Chapter 644 of the acts of 1977 is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. The employees of the school committee of the city of Somerville, who are assigned to the custodial service of the school buildings, and who, immediately prior to the effective date of this section held positions classified under chapter 31 of the General Laws are hereby transferred to the department of public works of the city of Somerville; every such transfer shall be without impairment of civil service status, seniority, retirement, and other rights of the employee, without interruption of his service within the meaning of said chapter 31, and without reduction in his compensation and salary grade, notwithstanding any change in his title or duties made as a result of such transfer.

SECTION 2. This act shall take effect upon its passage.

Approved August 18, 2004.

Chapter 318. AN ACT RELATIVE TO MUNICIPAL LIGHT PLANT DEPARTMENTS SECURITY DEPOSITS.

Be it enacted, etc., as follows:

Section 58A of chapter 164 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- A sufficient deposit to secure the payment for gas or electricity for 3 months may be required in advance from any consumer, and if the advance deposit is retained for a longer period than 6 months, the interest rate shall be paid annually to said consumer or credited to his account. The rate of interest shall be revised annually and shall

be equal to yields on Treasury securities at constant, fixed maturity 1-year rate as published by the Federal Reserve System and as established 12 months ending December of the prior year.

Approved August 18, 2004.

Chapter 319. AN ACT RELATIVE TO THE PENALTIES FOR KILLING, MAIMING OR POISONING AN ANIMAL.

Be it enacted, etc., as follows:

SECTION 1. Chapter 119 of the General Laws is hereby amended by adding the following section:-

Section 85. (a) During any investigation or evaluation reported under section 51A, any employee of the department or person employed pursuant to a contract with the department, when acting in his professional capacity or within the scope of his or her employment, who has knowledge of or observes an animal whom he knows or reasonably suspects has been the victim of animal cruelty, abuse or neglect, may report the known or suspected animal cruelty, abuse or neglect to the entities that investigate reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any local animal control authority.

- (b) The report may be made within 2 working days of receiving the information concerning the animal, by facsimile transmission or a written report or by telephone. In cases where an immediate response may be necessary in order to protect the health and safety of the animal, the report should be made by telephone as soon as possible.
- (c) When 2 or more employees of the department are present and jointly have knowledge of known or reasonably suspected animal cruelty, abuse or neglect, and where there is agreement among them, a report may be made by 1 person by mutual agreement. Any reporter who has knowledge that the person designated to report has failed to do so may thereafter make the report.
- (d) No person making such report shall be liable in any civil or criminal action by reason of such report if it was made in good faith. Any privilege established by sections 135A and 135B of chapter 112 or by section 20B of chapter 233, relating to confidential communications, shall not prohibit the filing of a report pursuant to this section.
- (e) Nothing in this section shall impose a duty on the department to investigate known or reasonably suspected animal cruelty, abuse or neglect.
- (f) Nothing in this section shall prevent the department, area office or subdivision from entering into an agreement, contract or memorandum of understanding with the entities that investigate reports of animal cruelty, abuse or neglect as described in section 57 of chapter 22C, to require such reports or to engage in training in identification and reporting of animal abuse, cruelty and neglect.

SECTION 2. Section 47 of chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second sentence.

SECTION 3. Section 112 of said chapter 266, as so appearing, is hereby amended by striking out, in lines 5 to 7, inclusive, the words "a fine of not more than one thousand dollars and imprisonment in jail for not more than one year" and inserting in place thereof the following words:- imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

SECTION 4. Section 77 of chapter 272 of the General Laws, as so appearing, is hereby amended by striking out, in lines 18 to 20, inclusive, the words "a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both" and inserting in place thereof the following words:- imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

Approved August 19, 2004.

Chapter 320. AN ACT RELATIVE TO THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF WAYLAND.

Be it enacted, etc., as follows:

SECTION 1. There shall be a town administrator in the town of Wayland. Notwithstanding any general or special law to the contrary, the town administrator shall be the chief operating and administrative officer of the town and shall be accountable to the board of selectmen. The town administrator shall be responsible and accountable for ensuring there is appropriate administration and coordination, in the implementation of and adherence to town policies affecting town departments and in the development and execution of programs affecting various town departments.

SECTION 2. Notwithstanding any general or special law to the contrary, subject to ratification by majority vote of the full membership of the board of selectmen, the town administrator may appoint solely on the basis of merit and fitness: (i) a police chief (ii) a fire chief, and (iii) a finance director, who shall have the authority and responsibilities of a town accountant; and, without ratification by the board of selectmen (iv) a building commissioner, (v) 1 or 2 directors of the council on aging, (vi) a conservation administrator, (vii) a town treasurer and collector; and (viii) such other town officers, department heads and employees under the jurisdiction of the board of selectmen, except for members of appointed boards or committees, as authorized by order of the board of selectmen or by-law of the town. The town administrator shall have the power and authority to evaluate, discipline and, for cause, remove the appointees from all of those positions. The town administrator shall consult with

relevant primary boards and committees working with the department heads before implementing personnel related actions.

SECTION 3. Notwithstanding any general or special law to the contrary, with respect to a department head working for an elected board other than the board of selectmen, the town administrator shall report to the elected board on the employee's job performance, at a minimum as part of the annual evaluation process, and advise to the elected board on personnel hiring and removal. Evaluation reports shall address under the code of the town of Wayland, chapter 60, section 2.2 (a) to (h), inclusive, thereof, and other similar interactions. Final authority over hiring, evaluating, disciplining and removal will remain with the elected boards, with input provided by the town administrator.

SECTION 4. Section 2 of chapter 307 of the acts of 1972 is hereby amended by striking out, in line 1, the word "selectmen" and inserting in place thereof the following words:- town administrator.

SECTION 5. Section 3 of said chapter 307 is hereby amended by striking out, in line 1, the word "selectmen" and inserting in place thereof the following words:- town administrator.

SECTION 6. This act shall take effect upon its passage.

Approved August 19, 2004.

Chapter 321. AN ACT INCREASING THE TIME IN WHICH REAL PROPERTY OWNED BY THE CENTRAL BERKSHIRE COUNTY DEVELOPMENT CORPORATION MAY BE EXEMPT FROM TAXATION.

Be it enacted, etc., as follows:

SECTION 1. Chapter 712 of the acts of 1963 is hereby amended by striking out section 6, as most recently amended by section 233 of chapter 110 of the acts of 1993, and inserting in place thereof the following section:-

Section 6. The corporation shall not be subject to the provisions of chapter 63 of the General Laws, nor to any taxes based upon or measured by income. The securities and evidences of indebtedness issued by the corporation, and income therefrom, shall at all times be free from taxation by the commonwealth. Real property owned by the corporation shall not be subject to taxation by the city or town in which it is located until 50 years from the date of its acquisition or until such property is leased, rented, or otherwise disposed of, whichever is first.

SECTION 2. Section 6A of said chapter 712 is hereby repealed.

SECTION 3. The provisions of section 6 of chapter 712 of the acts of 1963 shall take effect as of January 1, 2003.

Approved August 19, 2004.

Chapter 322. AN ACT EXEMPTING FROZEN FOODS FROM ITEM PRICING REQUIREMENTS.

Be it enacted, etc., as follows:

The second paragraph of section 184C of chapter 94 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 56, the word "items." and inserting in place thereof the following words:- items;

(11) frozen food products.

Approved August 19, 2004.

Chapter 323. AN ACT AUTHORIZING THE TOWN OF MARION TO DEVELOP AND MAINTAIN A SUBSIDIZED HOUSING PLAN FOR LOW AND MODERATE INCOME HOUSING.

Be it enacted, etc., as follows:

SECTION 1. There is hereby established in the town of Marion a subsidized housing plan for the development and maintenance of low and moderate income housing.

SECTION 2. For the purposes of this act, the term "property" shall mean property for which a covenant has been granted pursuant to this section. For the purposes of this act, the term "grantor" shall mean the person or persons who is the original grantor or grantors of the covenant pursuant to this section. The covenant shall be in a form prescribed by the town and, notwithstanding any general law to the contrary, shall be granted to the town in perpetuity by the owner of the property. The covenant shall incorporate sections 4 and 5 in their entirety.

For the time in which the grantor owns the property, the town shall fully exempt property taxes due on residential real estate for which a covenant has been granted to the town pursuant to this section; provided however, that in no event shall the town exempt property taxes due on property for which a covenant has been granted to the town pursuant to this section unless: (1) the covenant has been first recorded in the Plymouth county registry of deeds; (2) the grantor has submitted to the assessors a certification by the building inspector for the town that the property complies with the state sanitary code, and to the extent applicable, state and local building and fire safety codes; (3) the property is not otherwise subsidized low or moderate income housing, or built or developed, pursuant to sections 20 to 23, inclusive, of chapter 40B of the General Laws; (4) the grantor occupies the property as a principal residence and domicile; and (5) the household income of the occupants of the property, at the time the covenant is recorded, is at or below 80 per cent of the area median income adjusted for household size and the number of bedrooms in the housing unit as determined by the U.S. Department of Housing and Urban Development or successor agency. The property owner shall comply with all reasonable requests by the town

to ensure compliance with this section. Compliance with the state sanitary code, or other codes, may be waived by vote of the board of selectmen for the town of Marion. The board of selectmen may grant the property owner all or part of the necessary funds to bring the property into compliance with all or part of the state sanitary code, and to the extent applicable, state and local building and fire safety codes. In the alternative, the board of selectmen may enter into an agreement with the property owner, which shall provide that the town will provide the property owner all or part of the necessary funds to bring the property into compliance with all or part of the state sanitary code, and to the extent applicable, state and local building and fire safety codes. The property owner who enters into such an agreement shall be responsible for reimbursing the town in an amount equal to the funds provided plus interest, which shall be at a rate determined by the parties.

SECTION 3. Any subsequent owner of the property for which a covenant has been recorded pursuant to section 2, including a child grantee pursuant to paragraph (a) of section 4, shall be entitled to an abatement. The abatement shall be equal to the difference in taxes otherwise due between (i) the maximum low or moderate income selling price as determined by the department of housing and community development, and (ii) the full and fair market value of the property without a restrictive covenant pursuant to said section 2. For the purposes of this act, the term "subsequent owner" shall mean an owner or owners of the property other than the grantor.

In no event, shall an abatement be granted pursuant to this section unless: (1) the property is not otherwise subsidized low or moderate income housing, or built or developed, pursuant to sections 20 to 23, inclusive, of chapter 40B of the General Laws; and (2) the owner of the property occupies the property as a principal residence and domicile. The property owner shall comply with all reasonable requests by the town to ensure compliance with this section.

SECTION 4. (A) A grantor may convey property for which a covenant has been recorded pursuant to section 2 to a child or children of the grantor, with or without consideration.

(B) Except for a conveyance to a child grantee pursuant to paragraph (A), no property, or any portion thereof, subject to a covenant under this act shall be conveyed except pursuant to the following provisions: the property owner shall notify the board of selectmen of his intent to convey the property and shall submit to the board of selectmen a certification by the building inspector for the town that the property complies with the state sanitary code, and to the extent applicable, state and local building and fire safety codes. The certification shall be dated no earlier than 4 months prior to submission. Compliance, for purposes of this act, with the state sanitary code, or other codes, may be waived by vote of the board of selectmen for the town of Marion. The board of selectmen may grant the property owner all or part of the necessary funds to bring the property into compliance with all or part of the state sanitary code, and to the extent applicable, state and local building and fire safety codes. In the alternative, the board of selectmen may enter into an agreement with the property owner, which shall provide that the town will provide the property owner all or part of the

necessary funds to bring the property into compliance with all or part of the state sanitary code, and to the extent applicable, state and local building and fire safety codes. The property owner who enters into such an agreement shall be responsible for reimbursing the town in an amount equal to the funds provided plus interest, which shall be at a rate determined by the parties. For a period of 120 days subsequent to the notification of intent to convey, the town shall have a first refusal option to purchase the property for the maximum affordable price for that property as would be determined by the department of housing and community development for households at or below 80 per cent of the area median income. No conveyance of the property shall be consummated unless and until either the said option period shall have expired or the grantor shall have been notified in writing by the board of selectmen that said option will not be exercised. Said option may be exercised only by certified mail at such address as may be specified in the owner's notice of intention and by recording notice of the exercise of said option in the registry of deeds within said option period. Notices of intention shall be deemed to have been duly mailed to the board of selectmen if addressed to them or in care of the town clerk.

Each such notice of intent, notice of exercise of the option, and notice that the option will not be exercised, shall contain the name of the record owner of the property, the record owner's mailing address, and a description of the premises adequate for identification thereof.

If the town does not exercise its option to purchase the property, there shall be a lottery conducted by the town clerk. The lottery shall consist of 2 eligibility pools:-

- (i) town residents, and town employees regardless of residence with a minimum 2 years consecutive employment with the town immediately prior to the sale of the property; and (ii) all other persons, provided that no person shall be eligible for inclusion in the lottery pools whose income, along with the income of other household members, in the last full year exceeded 80 per cent of the area median income adjusted for household size and number of bedrooms in the housing unit as determined by the United States Department of Housing and Urban Development or successor agency. A sequential rotation shall be maintained by the town to ensure that lottery selections from the local preference pool will never exceed 70 per cent of the combined lottery selections. The property shall not be sold for a price in excess of the maximum affordable price for that property as would be determined by the department of housing and community development for households at or below 80 per cent of the area median income. Except for good cause, the seller and the selected buyer must enter into a written agreement for the purchase and sale of the property, subject to standard rights of inspection and mortgage contingency provisions, within 10 days of his selection. If the buyer fails to do so, the seller may request a new selection from the lottery.
- (C) Notwithstanding the provisions of paragraphs (A) and (B), or any conditions of the covenant pursuant to section 2, the grant of a mortgage or the imposition of a betterment, lien, attachment, or levy upon execution, or other form of statutory security shall not be considered a conveyance in violation of the covenant pursuant to section 2, provided that foreclosure upon title pursuant to any such instrument, or a forced sale pursuant to such instrument or other proceeding, shall be considered a conveyance subject to the provisions

of this act, and shall be subject to the procedures set forth in paragraph (B).

SECTION 5. (A) In the event that the owner and the town reach an agreement pursuant to section 2 or subsection (B) of section 4, which provides that the town shall provide all or part of the necessary funds to the owner to bring the property into compliance with the state sanitary code, and to the extent applicable, state and local building and fire safety codes the owner who enters into such an agreement shall reimburse the town in the amount equal to the funds provided plus interest, which shall be at a rate determined by the parties. A notice of such agreement shall be recorded as a betterment and constitute a lien, subject to the provisions of chapter 80 of the General Laws relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, such lien shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment and such assessment shall bear interest at rate agreed to by town and the owner. In addition to remedies available under said chapter 80, the owner shall be personally liable for the repayment of the amount due the town under this section; provided, however, that upon assumption of such personal obligation by a purchaser or other transferee of all of the original owners interest in the property at the time of conveyance and the recording of such assumption, the owner shall be relieved of such personal liability.

Any costs incurred under the provisions of this section may be funded by an appropriation or issuance of debt, provided that any debt incurred shall be subject to the provisions of chapter 44 of the General Laws and shall not exceed 20 years.

Any appropriation or borrowing by the town for purposes contained within this section shall not be included for the purpose of computation of the levy or borrowing limits otherwise imposed upon such town by the General Laws.

An agreement between an owner and the town pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in property.

(B) If a conveyance of property for which a covenant has been recorded pursuant to section 2 is not in compliance with the terms of this act, there shall be a penalty imposed. The penalty shall be the greater of either: (i) 150 per cent of the amount by which the total sale price exceeds the maximum affordable price for that property as would be determined by the department of housing and community development for households at or below 80 per cent of the area median income, or (ii) 150 per cent of the total amount of all taxes on the property which were exempted or abated, plus interest from the date or dates those taxes would otherwise have been due. A covenant which has been recorded pursuant to section 2 shall constitute a lien on the property for the purpose of securing the payment of the penalty imposed pursuant to this section. This lien shall take priority over all other liens, voluntary or involuntary, which were perfected after the covenant was first recorded. All penalties and interest imposed by this section shall also constitute a personal debt of the person who violated the provisions of this act, and may be recovered in an action of contract or in any

other appropriate action, suit or proceeding brought by the town.

(C) A breach or violation of the covenant shall not affect the validity or enforceability of any of the covenant's provisions by the town.

SECTION 6. Property on which the taxes due are exempted or abated pursuant to this act shall be included in the department of housing and community development's subsidized housing inventory.

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 21, 2004, and in concurrence by the Senate on July 22, 2004, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

Chapter 324. AN ACT RELATIVE TO THE ADMINISTRATIVE JUDGES OF THE DIVISION OF INDUSTRIAL ACCIDENTS.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 4 of chapter 23E of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- The initial appointment of a member shall be for a term of 6 years; subsequent reappointment of a member shall be for a term of 6 years which shall commence on the date of expiration of the initial or subsequent term. The appointment or reappointment of a member shall be made by the governor with the advice and consent of the council.

SECTION 2. Said section 4 of said chapter 23E, as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph:-

Notwithstanding any general or special law to the contrary, an appointed member, who has not previously served on the industrial accident board, shall be reviewed for performance by the senior judge between the 21st and the 24th month of the member's initial term. The performance review shall be subject to criteria established by the senior judge. If the performance review supports continuation of the appointed term, that member shall continue to serve the remainder of the appointed term. If the performance review recommends against a continuation of the appointed term, the performance review shall be submitted to the governor for appropriate action pursuant to section 8.

SECTION 3. The first paragraph of section 5 of said chapter 23E, as so appearing, is hereby amended by striking out the fourth sentence and inserting in place thereof the following two sentences:- The initial appointment of all members shall be for a term of 6 years; subsequent reappointments of sitting members shall be for an additional term of 6 years which shall commence on the date of expiration of the initial or subsequent term. The appointment or reappointment of members shall be made by the governor with the advice and

consent of the council.

SECTION 4. Said section 5 of said chapter 23E, as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph:-

Notwithstanding any general or special law to the contrary, a newly appointed member who has never previously served on the reviewing board, shall be reviewed for performance by the senior judge during his initial term between the twenty-first and the twenty-fourth month of the term. The performance review shall be subject to criteria established by the senior judge. If the performance review supports continuation of the term, said administrative law judge shall continue to serve the remainder of the appointed term. If the performance review recommends against a continuation of the appointed term, the performance review shall be submitted to the governor for appropriate action pursuant to section 8.

SECTION 5. Section 8 of said chapter 23E, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

The senior judge, board members and reviewing board members in the performance of their official duties shall be subject to the Model Code of Judicial Conduct for State Administrative Law Judges as promulgated by the American Bar Association. A complaint alleging grounds for removal under this section or alleging a violation of the code of judicial conduct may be initiated by a person affected by the exercise of official duties by the member. The commissioner shall establish a procedure for the fair disposition of the complaint, and may recommend appropriate action by the governor with respect thereto.

Approved August 25, 2004.

Chapter 325. AN ACT AUTHORIZING THE TOWN OF LEOMINSTER TO GRANT A CERTAIN ABATEMENT.

Be it enacted, etc., as follows:

The board of assessors of the city of Leominster may abate all real property taxes and interest and charges thereon due and owing on the parcel of land known as the John B. McLaughlin Field owned by the Babe Ruth League of Leominster for the fiscal years 2002 and 2003.

Approved August 25, 2004.

Chapter 326. AN ACT PLACING CERTAIN SCHOOL DEPARTMENT POSITIONS IN THE CITY OF GARDNER UNDER THE CIVIL SERVICE LAW.

Be it enacted, etc., as follows:

The positions of clerical paraprofessional, guidance clerical paraprofessional and Title I clerical paraprofessional in the public school department of the city of Gardner shall be subject to chapter 31 of the General Laws, and any person in those positions shall be granted civil service status from their date of initial employment. The human resources division within the executive office for administration and finance shall reclassify such positions as clerk or typist or senior clerk and typists.

Approved August 25, 2004.

Chapter 327. AN ACT RELATIVE TO PUBLIC SAFETY IN THE CITY OF SOMERVILLE.

Be it enacted, etc., as follows:

SECTION 1. (a) Whenever a police officer observes members of a criminal street gang engaged in gang loitering in any public place designated for the enforcement of this section under subsection (b), the police officer shall, subject to all applicable procedures promulgated by the chief of police: (i) inform such criminal street gang members that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited; (ii) order all such criminal street gang members to disperse and remove themselves from within sight and hearing of the place at which the order was issued; (iii) inform those criminal street gang members engaged in gang loitering that they will be subject to arrest if they fail to promptly obey the order or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next 3 hours.

- (b) The chief of police shall by written directive designate areas of the city in which the chief of police has determined that enforcement of this section is necessary because gang loitering has enabled criminal street gangs to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities. Prior to making a determination under this subsection, the chief of police shall consult with persons who are knowledgeable about the effects of gang activity in areas in which the ordinance may be enforced, as he deems appropriate. Such persons may include, but need not be limited to, members of the department of police with special training or experience related to criminal street gangs; other personnel of that department with particular knowledge of gang activities in the proposed designated area; elected and appointed officials of the area; and community-based organizations. The chief of police shall develop and implement procedures for the periodic review and updating of designations made under this subsection.
- (c) (1) The chief of police shall, by written directive, promulgate procedures to prevent the enforcement of this section against persons who are engaged in activities that are protected by the Constitution of the United States or of the commonwealth.

- (2) There shall be a gang advisory board which shall consist of a representative of the Somerville human right's commission to be chosen by such commission, a member of the professional standards office of the Somerville police department to be chosen by the chief of police, the city solicitor or his designee, an alderman selected by the board of aldermen, and 3 representatives of the community, at least 2 of whom shall be minority representatives, selected by the mayor and confirmed by the board of aldermen to serve for a 2 year term. The board shall confer with the chief in the chief's establishment of the written procedures set forth in paragraph (1) of subsection (c) and shall provide recommendations on training of police personnel to implement this act, including issues raised as a result of complaints, if any. The board may also make recommendations to the mayor on policies and procedures to address gang issues in the city.
- (3) The chief of police shall, by written directive, promulgate procedures to identify current members of criminal street gangs for updating criminal street gang records regularly including, but not limited to, removing former members of criminal street gangs from such lists and shall promulgate regulations to ensure that any required notices under this act are provided in a language reasonably calculated to be understood by the alleged violator.
- (d) As used in this section, the following words shall have the following meanings:
 "Gang loitering", one who, with the intent to further the common purpose or
 existence of a criminal street gang: (i) engages in conduct with the intent to control
 identifiable areas which renders such areas impassable without unreasonable inconvenience
 or hazard; (ii) threatens to commit a crime; (iii) defaces real or personal property in violation
 of section 126A of chapter 266 of the General Laws; (iv) intimidates another; or (v) engages
 in disorderly behavior or a breach of the peace.

"Criminal street gangs", any ongoing organization, association in fact or group of 3 or more persons, whether formal or informal, having as 1 of its substantial activities the commission of 1 or more of the criminal acts enumerated in the definition of "criminal gang activity", and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Criminal gang activity", an adjudication by reason of or a conviction for the following offenses, if the offenses were committed by 2 or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members: murder; manslaughter; assault; assault and battery; indecent assault and battery on a child under 14 years of age; assault and battery to collect a loan; assault and battery upon a public employee; indecent assault and battery on a mentally retarded person; commission of a felony for hire; indecent assault and battery on a person 14 years of age or older; assault or assault and battery on an emergency medical technician, ambulance operator or ambulance attendant; assault and battery upon a child; assault and battery upon an elderly or disabled person; mayhem; assault with the intent to murder or maim; assault and battery with a dangerous weapon; assault and battery with a dangerous weapon; assault and battery with a dangerous weapon on a victim 60 years of age or older;

assault with dangerous weapon on a victim 60 years of age or older; attempt to murder; armed robbery; assault with intent to rob or murder; assault with a dangerous weapon in a dwelling house; use of firearms while committing a felony; entry of a dwelling place with persons present within; robbery by unarmed person; assault with intent to rob; stealing by confining or putting in fear; assault or confinement of a person for the purpose of stealing a motor vehicle; rape; rape of a child; rape or abuse of a child; assault with the intent to commit rape; assault of a child with the intent to commit rape; attempted extortion; kidnapping; kidnapping of a minor or incompetent by a relative; drugging persons by kidnapping; use of poison with intent to injure; assault with intent to commit a felony; assault or battery for purpose of intimidation by using weapons; coercion of child under 18 years of age into criminal conspiracy; burning or aiding in burning of a dwelling house; burning or aiding in burning of a meeting house; burglary; armed burglary; assaulting occupants while committing burglary or armed burglary; unarmed burglary; breaking and entering; breaking and entering at night; breaking and entering in the day time; breaking and entering with the use of or possession of weapons; breaking and entering into a dwelling house; larceny by stealing from a victim 65 years of age or older; larceny; carrying dangerous weapons; possession of a machine gun or sawed-off shotgun; possession of a large capacity weapon or large capacity feeding device or; possession or carrying of a firearm in violation of the General Laws or any violation of chapter 94C of the General Laws or an offense similar to an offense included in this definition in violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

"Intimidate", putting in fear for the purpose of compelling or detering conduct.

"Pattern of criminal gang activity", 2 or more acts of criminal gang activity, of which at least 2 such acts were committed within 5 years of each other.

"Public place", a public way or any other location open to the public, whether publicly or privately owned.

(e) Any person who fails to promptly obey an order issued under subsection (a), or who engages in further gang loitering within sight or hearing of the place at which such order was issued during the 3 hour period following the time an order to disperse was issued, shall be punished by a fine of not less than \$100 and not more than \$500 or imprisonment in the house of correction for not more than 6 months, or by both such fine and imprisonment. A second or subsequent offense shall be punished by a minimum mandatory sentence of not less than 5 days imprisonment in the house of correction.

SECTION 2. Any property subject to forfeiture pursuant to section 47 of chapter 94C of the General Laws shall be subject to civil forfeiture if used in any manner or part, to commit or to facilitate a violation of this act. Civil forfeiture proceedings shall be governed by the procedures contained in said section 47 of said chapter 94C, except that the final order of the court shall provide that the proceeds of the sale of any conveyance, real property, moneys, or other things of value forfeited under a court order shall be used to pay the reasonable expenses of forfeiture proceedings, including the cost of storage and custody and the balance shall be distributed to the city of Somerville police department.

SECTION 3. This act shall take effect upon its passage.

Approved August 26, 2004.

Chapter 328. AN ACT RELATIVE TO THE CHARTER OF THE CITY OF GLOUCESTER.

Be it enacted, etc., as follows:

SECTION 1. Section 2-7 of the charter of the city of Gloucester, which is on file in the office of the archivist of the commonwealth, as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out, in line 1, the words "forty-five nor more than sixty" and inserting in place thereof the following words:- 90 days and no more than 120.

SECTION 2. Section 2-8 of said charter is hereby amended by striking out, in line 1, the letter "(a)".

SECTION 3. Section 2-9 of said charter is hereby amended by striking out the words "two thirds (2/3's)", each time it appears, and inserting in place thereof, in each instance, the following words:- simple majority.

SECTION 4. Section 2-13 of said charter is hereby amended by inserting after the word "occur", each time it appears, the following words:-, or is declared,.

SECTION 5. The second sentence of section 3-6 of said charter is hereby amended by striking out the words "appointment, but no" and inserting in place thereof the following words:- appointment. No.

SECTION 6. The second paragraph of section 3-7 of said charter is hereby amended by striking out clause (g) and inserting in place thereof the following clause:-

(g) Maintenance of a central purchasing system covering all city agencies.

SECTION 7. Section 3-11 of said charter is hereby amended by inserting after the word "occurs", each time it appears, the following words:-, or is declared,.

SECTION 8. The second paragraph of section 4-3 of said charter is hereby amended by striking out, in line 1, the word "The" and inserting in place thereof the following words:-To the extent permitted by state law the.

SECTION 9. Section 5-5 of said charter is hereby amended by inserting after the word "designer", in line 1, the following words:- or others subject to the pertinent authority of the mayor or chief procurement officer, as provided elsewhere in the charter and statutes.

Approved August 26, 2004.

Chapter 329. AN ACT RELATIVE TO PENSION BENEFITS FOR SERGEANT CHARLES L. BYRNE, JR.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law or rule or regulation to the contrary, and in order to promote the public good, the state-Boston retirement board shall retire Sergeant Charles L. Byrne, Jr. of the city of Boston, who, as a result of injuries sustained while in the performance of his duties on January 1, 2003, for accidental disability pursuant to section 7 of chapter 32 of the General Laws as he is unable to perform the essential duties of his job and the inability is likely to be permanent and he should be so retired.

SECTION 2. The annual amount of pension payable to said Charles L. Byrne, Jr. shall be equal to the regular annual rate of compensation which would have been paid had he continued in service as a sergeant of the department at the grade held by him at the time of his retirement.

The retirement shall become effective commencing on the date immediately following the final day for which he received regular compensation for such employment.

Upon such retirement, the state-Boston retirement board shall forthwith pay to said Charles L. Byrne, Jr. the amount credited to him as accumulated total deductions in the Annuity Savings Fund of the state-Boston retirement board.

Charles L. Byrne, Jr. shall be entitled to receive indemnification for all hospital, medical and related expenses that have been or may be incurred after the date of his retirement as a result of said injuries, pursuant to the provisions of chapter 41 of the General Laws.

SECTION 3. Upon the death of Charles L. Byrne, Jr. should his wife survive him, the state-Boston retirement board shall pay to her, so long as she remains unmarried, an annuity in the amount of ¾ of the amount of the pension payable to him, per month, at the time of his death. If his wife remarries, the city shall pay, in lieu of the aforesaid annuity to her, an annuity of \$550 per month to her. If Charles L. Byrne, Jr.'s wife does not survive him, then the city of Boston shall pay an annual amount equal to ¾ of the amount of the pension payable to him at the time of his death for the benefit of the children of Charles L. Byrne, Jr. for such time as such child is either under 18 years of age or totally or mentally incapacitated from working.

SECTION 4. This act shall take effect upon its passage.

Approved August 26, 2004.

Chapter 330. AN ACT RELATIVE TO THE USE OF SAFETY HELMETS FOR PERSONS 16 YEARS OF AGE AND UNDER WHILE OPERATING OR RIDING AS A PASSENGER ON BICYCLES, IN-LINE SKATES, SCOOTERS AND SKATEBOARDS.

Be it enacted, etc., as follows:

SECTION 1. Section 11B of chapter 85 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 31, the word "twelve" and inserting in place thereof the following figure:- 16.

SECTION 2. Said chapter 85 is hereby further amended by inserting after section 11B the following section:-

Section 11B ½. Any person 16 years of age or younger operating in line skates, a skate board, a scooter or other manually-propelled wheeled vehicle or riding as a passenger on any such manually-propelled vehicle on a public way, bicycle path or on any other public right-of-way shall wear a helmet. Such helmet shall fit the person's head and be secured by straps at all times while operating in line skates, scooters, skate board or other manually-propelled wheeled vehicle and shall meet the standards for helmets established by the American National Standards Institute (ANSI Z 90.4) or subsequent standards or the Snell Memorial Foundation's 1984 standard for use in bicycling or subsequent standards. A violation of this section shall not be used as evidence of contributory negligence in a civil action.

A city or town shall not adopt any by-laws or ordinances to change the standards required by this section.

SECTION 3. Section 11D of said chapter 85, as appearing in the 2002 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Every person engaged in the retail business of selling or renting bicycles, in line skates, scooters, skate boards or other manually-propelled wheeled vehicles shall display in an area conspicuous to customers of the business a sign containing the following statement: Massachusetts law requires that a bicycle helmet be worn by a person 16 years of age or under who is riding as an operator or passenger on a bicycle, in line skates, a scooter, or a skate board.

Approved August 27, 2004.

Chapter 331. AN ACT RELATIVE TO THE CHARTER OF THE TOWN OF DUDLEY.

Be it enacted, etc., as follows:

SECTION 1. Chapter 73 of the acts of 2004 is hereby amended by striking out section 2 and inserting in place thereof the following section:-

Section 2. The state secretary shall cause the following question to be placed on the ballot to be used in the town of Dudley at the state general election to be held on November 2, 2004:

"Shall an act passed by the general court in the year 2004 entitled 'An Act providing for a charter for the Town of Dudley' be accepted?"

If a majority of votes cast in answer to this question is in the affirmative, this act shall take effect, but not otherwise.

The ballot question shall be followed by a summary as required by section 58A of chapter 54 of the General Laws, prepared by the town counsel and delivered to the state secretary on or before 5:00 P.M. on September 3, 2004.

SECTION 2. This act shall take effect upon its passage.

Approved August 27, 2004.

Chapter 332. AN ACT RELATIVE TO CERTAIN BENEFITS FOR THE SURVIVING SPOUSES OF CERTAIN STATE POLICE OFFICERS.

Be it enacted, etc., as follows:

For any retired state police officer who would have been eligible for the increased retirement allowance under section 90C ¾ of chapter 32 of the General Laws but did not realize the increased allowance because the retired state police officer died before July 1, 2000 and who has a surviving spouse currently receiving a retirement allowance, the surviving spouse shall be entitled to a recalculated retirement allowance. The recalculated allowance shall be determined by applying the retirement allowance that the member would have first received, if the member had been living on July 1, 2000 to the formula for calculating the surviving spouse's retirement allowance under chapter 32 of the General Laws. The recalculation shall also include any cost of living adjustments that would have been granted since July 1, 2000. The recalculated retirement allowance shall apply prospectively from the effective date of this act.

Approved August 27, 2004.

Chapter 333. AN ACT AUTHORIZING THE SECRETARY OF STATE TO PLACE QUESTIONS OF RECALL ON THE STATE ELECTION BALLOT IN THE TOWN OF STOUGHTON.

Be it enacted, etc., as follows:

SECTION 1. The state secretary shall print on the official state election ballot for

the town of Stoughton 2 questions of recall, in accordance with the relevant provision of section 9 of the Stoughton town charter. Such questions shall appear on the official state election ballot below all other candidates and questions required by law to be included on such ballot, and shall take the following form:-

For the recall of (name of officer)
Against the recall of (name of officer)
(Under the proposition shall appear the word "Candidates" and the direction "Vote for one") and beneath this the names of the candidate(s).)

SECTION 2. Notwithstanding section 7 of chapter 53 of the General Laws or any other general or special law or charter provision to the contrary, nomination papers for the offices sought to be recalled pursuant to section 1 shall be filed with the board of registrars of the town of Stoughton not later than 5:00 P.M. on September 7, 2004, for certification of signatures.

SECTION 3. Notwithstanding any general or special law or charter provision to the contrary, the registrars of the town of Stoughton shall complete certification of signatures on such nomination papers not later than 4:00 P.M. on September 8, 2004.

SECTION 4. Notwithstanding section 10 of chapter 53 of the General Laws, or any other general or special law or charter provision to the contrary, certified nomination papers shall be filed with the town clerk not later than 5:00 P.M. on September 8, 2004.

SECTION 5. Notwithstanding section 11 of chapter 53 of the General Laws, or any other general or special law or charter provision to the contrary, candidates who have filed nomination papers to fill the vacancy in the office of board of selectmen may withdraw their nomination by filing a notarized withdrawal not later than 5:00 P.M. on September 10, 2004.

SECTION 6. The Stoughton town clerk shall certify to the state secretary not later than 5:00 P.M. on September 13, 2004 a list of candidates for the offices sought to be recalled for each question of recall, with addresses, in the order in which such candidates are to appear on the ballot.

SECTION 7. If this act is not in effect on September 3, 2004, sections 1 to 6, inclusive, shall not apply; instead, a special recall election shall be held in the town of Stoughton on November 2, 2004, separate from the state election, or on a later date if the selectmen specify such later date by vote at a special meeting of the board held forthwith after the effective date of this act:-

If a special recall election is held on November 2, 2004, all nomination papers for the special recall election filed with the board of registrars prior to or after September 3, 2004, and prior to September 14, 2004 at 5:00 P.M., shall be deemed validly submitted for such election;

If the election is held on a later date specified by the board of selectmen in accordance with this section, all nomination papers filed with the board of registrars prior

to or after September 3, 2004, and prior to 5:00 P.M. on the 49th day preceding such later special election, shall be deemed validly submitted for such election;

The certification of signatures on nomination papers and the holding of the special recall election as authorized by this section shall be in accordance with laws relating to elections, except as otherwise provided in this act.

SECTION 8. This act shall take effect upon its passage.

Approved August 27, 2004.

Chapter 334. AN ACT ESTABLISHING REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith establish requirements for voters who register by mail, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 36 of chapter 51 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- The state secretary shall prepare in sufficient quantity blank forms for affidavits of voter registration and shall supply those forms to all registration agencies. The forms shall include the contents required by federal law, including section 6 of the National Voter Registration Act of 1973, 42 U.S.C. section 1973gg-4, and section 303(b)(4)(A) of the Help America Vote Act of 2002, 42 U.S.C. section 15483(b)(4)(A).

SECTION 2. Section 59A of chapter 51 of the General Laws is hereby repealed.

SECTION 3. Section 67 of chapter 54 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "fifty-one", in lines 12 and 13, the following words:-, or unless he is voting by provisional ballot under section 76C.

SECTION 4. Said chapter 54 is hereby further amended by striking out section 76B, as so appearing, and inserting in place thereof the following 2 sections:-

Section 76B. (a) Except as provided in subsection (b), a person desiring to vote, who fails to present suitable written identification when so requested by an election officer, shall be permitted to vote, but that person's right to vote may be challenged under section 85.

- (b)(1) Subject to paragraph (3), a person asserting a right to vote in an election for federal office shall present identification under paragraph (2) if:
 - (a) the person registered to vote in the city or town by mail after January 1, 2003; and

- (b) the person has not previously voted in an election for federal office in the commonwealth.
 - (2)(A) A person meets the requirements of this paragraph if the person:
 - (a) in the case of a person who votes in person:
- (i) presents to the appropriate election officer a current and valid photo identification; or
- (ii) presents to the appropriate election officer a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
 - (b) in the case of a person who votes by absentee ballot, submits with the ballot:
 - (i) a copy of a current and valid photo identification; or
- (ii) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.
- (B)(i) A person who desires to vote in person but does not satisfy clause (a) of subparagraph (A) may cast a provisional ballot under section 76C.
- (ii) A person who desires to vote by absentee ballot but who does not meet the requirements of subclause (ii) of said clause (a) of said subparagraph (A) may return the absentee ballot by mail, and the ballot shall be treated as a provisional ballot under section 76C.
 - (3) Paragraph (1) shall not apply to a person:
 - (a) who registers to vote by mail and submits as part of that registration either:
 - (i) a copy of a current and valid photo identification; or
- (ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;
 - (b) who registers to vote by mail and submits with that registration either:
 - (i) a driver's license number;
 - (ii) at least the last 4 digits of the individual's social security number; and
- (iii) with respect to whom the city or town clerk matches the information submitted under clause (i) with an existing state identification record bearing the same number, name and date of birth as provided in that registration; or
 - (c) who:
- (i) is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. sections 1973ff-1 et seq.;
- (ii) is provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. section 1973ee-1(b)(2); or
 - (iii) is otherwise entitled by federal law to vote otherwise than in person.

Section 76C. (a) Whenever a person asserting a right to vote in a primary, caucus, preliminary, or other election appears at the polling place for the precinct in which that person resides, but that person is not permitted to vote, that person shall be allowed to deposit a provisional ballot as provided in this section. A precinct election officer who cannot

confirm a potential voter's eligibility to vote on election day shall notify the individual of the option of appearing before the city or town clerk to dispute eligibility or vote a provisional ballot in that precinct pursuant to the procedures set forth in this section. An election officer who believes that the individual may be eligible instead to vote in a different precinct shall direct the individual to the polling place for that precinct.

- (b) To cast a provisional ballot, an individual shall execute a provisional ballot affirmation before a precinct officer at the polling place declaring that the individual is a registered voter in the city or town and resides within the geographical boundaries of the precinct.
- (c) A provisional voter shall be requested to present identification when completing a provisional ballot. Failure to present identification shall not prevent the voter from completing a provisional ballot.
- (d) A provisional ballot shall be counted if the city or town clerk determines that the individual is eligible to vote in the precinct in the election under the law of the commonwealth. A provisional ballot shall not be counted if the city or town clerk determines that the individual is ineligible to vote in the precinct in the election under the law of the commonwealth. A provisional ballot cast by a person whose name is not on the voting list for the city or town in which they are claiming the right to vote, but whom the city or town clerk determines to be eligible to vote in another precinct of the same city or town, shall be counted in the precinct in which the person cast the provisional ballot for all offices for which the person is eligible to vote.
- (e) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot. A provisional ballot cast during an extension of the time for closing the polls required by orders described in this subsection shall be separated and held apart from other provisional ballots cast by those not affected by the order.
- (f) The city or town clerk shall count all eligible provisional ballots. A provisional ballot cast by an individual whose voter information is verified before 5:00 p.m. on the third day after a presidential or state primary or the twelfth day after a state election shall be removed from its provisional ballot envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.
- (g) The city or town clerk must determine persons to be entitled to vote a provisional ballot whenever those persons have registered to vote in that city or town in the past and affirm in writing, signed under the penalties of perjury, that they have continuously resided in the city or town, unless the city or town clerk affirmatively establish, by evidence other than failure to respond to the street listing under section 4 of chapter 51, or failure to respond to a notice under section 37 of said chapter 51, that the person has not in fact continuously resided in that city or town.

- (h) The city or town clerk shall report the disposition of all provisional ballots to the state secretary on or before the fourth day following a presidential or state primary and on or before the fifteenth day following a state election.
- (i) Instructions shall be posted in each precinct on how to cast a provisional ballot. Each polling place shall have instructional sheets, as provided by the state secretary, instructing individuals on the process of casting a provisional ballot and determining whether the ballot was counted and if not, why.
- (j) The state secretary shall make a toll-free telephone number available to individuals for the purpose of determining the status of provisional ballots. Provisional voters wishing to determine the disposition of their ballot may call the office of the state secretary 7 days or more after a presidential or state primary and 20 days or more after an election. The state secretary, before providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and provisional voter number. The state secretary shall not discuss the disposition of any provisional ballot with any person other than that provisional voter.
- (k) The state secretary shall promulgate regulations to achieve and maintain accuracy, uniformity and security from forgery and fraud in the procedures for casting provisional ballots.
- **SECTION 5**. Section 135 of said chapter 54, as so appearing, is hereby amended by striking out the words "escrow ballots received in accordance with the provisions of section fifty-nine A of chapter fifty-one", in lines 53 and 54, and inserting in place thereof the following words:- provisional ballots received under section 76C.

Approved August 31, 2004.

Chapter 335. AN ACT AUTHORIZING THE COMMISSIONER OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY CERTAIN LAND TO THE FOXBOROUGH HOUSING AUTHORITY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize a conveyance of land from the commissioner of capital asset management and maintenance to the Foxborough Housing Authority, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance may, notwithstanding section 40E to section 40J, inclusive, of chapter 7 of the General Laws and any other general or special law or rule or regulation to the contrary, convey by deed a certain parcel of property of commonwealth land, including the improvements thereon, located in

the town of Foxborough, generally shown as Lot 2 on a plan "Approval Not Required Subdivision Plan Prepared For Foxborough State Hospital, Foxborough, Massachusetts", dated December 10, 1998, prepared by Rizzo Associates, Inc, and recorded with the Norfolk registry of deeds in Plan No. 256 in book 465, to the Foxborough Housing Authority for affordable housing purposes. The use of the parcel shall be restricted to the development of affordable housing.

The parcel shall be conveyed by release deed in its existing condition without warranties or representations by the commonwealth.

SECTION 2. The consideration for the conveyance authorized by this act shall be the full and fair market value of the property and buildings thereon as restricted to the development of affordable housing, based upon an independent professional appraisal as determined by the commissioner of the division.

The inspector general shall review and approve the appraisal and prepare a report of his review of the methodology utilized for the appraisal. The inspector general shall prepare a report of his review and file the report with the commissioner of the division for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration. The commissioner shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereto, submit the agreement or amendment and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments thereto, the reports, and the comments of the inspector general, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to execution.

SECTION 3. The Foxborough Housing Authority shall pay for all expenses associated with any land survey, appraisal, title examinations, recording fees and any other expenses relating to the conveyance of the parcel, and shall be responsible for all costs, liabilities and expenses of any nature and kind of its ownership. The Foxborough Housing Authority shall acquire the property and buildings thereon in their present condition without warranty.

Approved September 3, 2004.

Chapter 336. AN ACT RELATIVE TO THE SALE OF ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES OF CLUBS OR VETERANS' ORGANIZATIONS IN THE TOWN OF NATICK.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 12 of chapter 138 of the General Laws or any

other general or special law to the contrary, with respect to a club which is licensed under said section 12 of said chapter 138 to sell alcoholic beverages in the town of Natick, the local licensing authority of said town may, subject to the approval of the alcoholic beverages control commission, grant a permit to the holder of a club license to allow functions or fundraising activities held at the licensed premises or any part thereof to serve food and sell or dispense alcoholic beverages lawfully possessed by such licensee under that license to persons other than members of the club, to be consumed on the licensed premises, if such functions or fundraising activities are sponsored by a member of the club, who shall be present at the functions or fundraising activities, and subject to such conditions as the licensing authority may impose and to regulations made by the licensing authority. All proceeds from any sales pursuant to a permit granted under this act shall be used solely for the license holder's charitable purposes. The application procedures under section 15A of said chapter 138 shall apply to permits for the sale of alcoholic beverages issued under this act. A permit issued under this act shall expire not later than December 31 of the year of issue, but shall be subject to revocation or cancellation within its term.

SECTION 2. This act shall take effect upon its passage.

Approved September 3, 2004.

Chapter 337. AN ACT DESIGNATING A CERTAIN BRIDGE IN THE CITY OF WORCESTER AS THE REPRESENTATIVE ROBERT J. BOHIGIAN BRIDGE.

Be it enacted, etc., as follows:

The bridge located on Burncoat street spanning interstate highway route 290 in the city of Worcester shall be designated and known as the Representative Robert J. Bohigian bridge, in honor of former state representative Robert J. Bohigian. The department of highways shall erect suitable markers bearing said designation in compliance with the standards of said department.

Approved September 3, 2004.

Chapter 338. AN ACT RELATIVE TO THE AUTHORITY OF THE BUREAU OF SPECIAL INVESTIGATIONS.

Be it enacted, etc., as follows:

SECTION 1. Section 17 of chapter 11 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "assistance", in lines 11, 29

and 36, the following words:-, the executive office of health and human services, in its capacity as the single state agency for the purposes of Title XIX of the Social Security Act.

SECTION 2. Said section 17 of said chapter 11, as so appearing, is hereby further amended by inserting after the word "tax", in line 22, the following word:- returns,- and by inserting after the word "returns", in line 30, the following word:-, reports.

SECTION 3. Said section 17 of said chapter 11, as so appearing, is hereby further amended by striking out clause (8) and inserting in place thereof the following clause:-

(8) report in writing to the governor and the general court the nature and extent of his activities for each calendar year, the report to be made not later than 90 days after the expiration of the calendar year, which report shall be made available to the public.

SECTION 4. Said section 17 of said chapter 11, as so appearing, is hereby further amended by adding the following clause:-

(13) be authorized, in any investigation conducted pursuant to this section, to utilize the lien provisions set forth in section 29 of chapter 18.

SECTION 5. Section 9 of chapter 14 of the General Laws is hereby repealed.

SECTION 6. Section 29 of chapter 18 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 2, the words "section 11 of chapter 14" and inserting in place thereof the following words:- section 17 of chapter 11.

SECTION 7. Sections 15A, 15B and 15C of chapter 22 of the General Laws are hereby repealed.

SECTION 8. Section 21 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "assistance", in line 31, the following words:-, the executive office of health and human services, in its capacity as the single state agency for the purposes of Title XIX of the Social Security Act.

Approved September 3, 2004.

Chapter 339. AN ACT RELATIVE TO THE MEMBERSHIP OF THE CONSERVATION COMMISSION OF THE TOWN OF BOURNE.

Be it enacted, etc., as follows:

Notwithstanding section 8C of chapter 40 of the General Laws, the board of selectmen of the town of Bourne may appoint 3 associate members to the conservation commission of the town for terms not to exceed 1 year. The chairman of the commission may designate an associate member to sit on the commission in the case of absence, inability to act or conflict of interest on the part of a member of the commission or in the event of a vacancy on the commission, until the vacancy is filled in accordance with this section 8C of said chapter 40.

Approved September 3, 2004.

Chapter 340. AN ACT DIRECTING THE COMMISSIONER OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO PLACE A CONSERVATION RESTRICTION ON AND TRANSFER A CERTAIN PARCEL OF LAND TO THE KUZEJA REAL ESTATE TRUST.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of the division of capital asset management and maintenance may, subject to sections 40F ½ and 40J of chapter 7 of the General Laws, convey by deed a certain parcel of land located in the city of Holyoke to the following parties: Anna K. Block, Mildred M. Dube, Bertha K. Fournier, Edward Kuzeja, John Kuzeja and Doris E. Kuzeja, trustees of Kuzeja Real Estate Trust. The parcel, being a portion of the n/f "Bassett Road" a 1798 county layout between the City of Holyoke City Line to a point in Bassett Road opposite the northwesterly corner of a parcel of land belonging now or formerly of Evadin C. O'Connor & Evadine K. Lennon, as is shown on a plan entitled "Plan of Land in Easthampton, Hampshire County, Southampton, Hampshire County and Holyoke, Hampden County Massachusetts" prepared for the heirs of Anna J. Kuzeja, dated February 4, 1999 and revised March 22, 1999, prepared by Almer Huntley Jr., & Associates Inc., Northampton, MA and recorded in the Hampshire county registry of deeds in Plan Book 185, Page 87 and the Hampden county registry of deeds in Plan Book 312, Page 3.

The parcel shall be used for conservation purposes to enhance and connect adjacent property or properties under the ownership of the Kuzeja Real Estate Trust, which also contains conservation restrictions thereon, and a conservation restriction, shall be placed upon all land conveyed by this act pursuant to section 31 of chapter 184 of the General Laws. The exact boundaries of the parcel shall be determined by the commissioner after completion of a survey.

SECTION 2. The consideration for the conveyance of the parcel described in section 1 shall be the full and fair market value of the land based upon 1 or more professional appraisals commissioned by the commissioner of capital asset management and maintenance, taking into consideration and account the land use restrictions described in section 1. The commissioner shall, 30 days prior to the conveyance described in said section 1, submit the appraisal or appraisals, and a report thereon to the inspector general. The inspector general shall review and approve the appraisal or appraisals, and the review and approval shall include an examination of the methodology utilized for the appraisal or appraisals. The inspector general shall prepare a report of his review and approval and file the report with the commissioner for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days prior to the conveyance.

SECTION 3. The grantees shall be responsible for all costs associated with any appraisal or appraisals, survey or other expense incurred by the commonwealth relative to the conveyance authorized by section 1.

SECTION 4. If the parcel described in section 1, or any portion thereof, ceases to

be used at any time for the purpose and use required by this act, upon notice by the commissioner of capital asset management and maintenance, the parcel shall revert to the commonwealth upon such terms and conditions as the commissioner may determine.

Approved September 3, 2004.

Chapter 341. AN ACT RELOCATING CERTAIN HARBOR LINES IN THE FAIRHAVEN AND NEW BEDFORD HARBORS.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 80 of the acts of 1929 is hereby amended by striking out the second paragraph, as appearing in section 1 of chapter 134 of the acts of 1990, and inserting in place thereof the following paragraph:-

Beginning at a point A in latitude six hundred fifty-one and seventy-one hundredths feet north and longitude eight hundred sixty and thirty-seven hundredths feet west, said point A being north fifty-two degrees, fifty-one minutes, twenty-five seconds west, true bearing, one thousand seventy-nine and thirty-three hundredths feet from above described mark 1; thence north one degree, fifty minutes, seven seconds west, true bearing, one thousand, eight hundred twenty feet to point B in latitude, two thousand, four hundred seventy and seventy-seven hundredths feet north and longitude nine hundred eighteen and sixty-five hundredths feet west, said point B being located north twenty-two degrees, thirty-four minutes, thirty seconds west, true bearing, six hundred and fifty-one hundredths feet from mark 2 on the southwesterly corner of Atlas Tack Company's wharf in Fairhaven; thence north thirty-six degrees, forty-four minutes, nineteen seconds west, true bearing, one thousand four hundred forty-four and ninety-three hundredths feet to point C1, in latitude three thousand, six hundred twenty-eight and seven tenths feet north and longitude one thousand, seven hundred eighty-two and ninety-six hundredths feet west, said point C1, being located north forty-nine degrees, fifty-four minutes, twelve seconds west, true bearing, three hundred seventy-two and eleven hundredths feet from mark 3 on the northwesterly corner of Central Wharf in Fairhaven; thence north three degrees, fifty-three seconds west, true bearing, six hundred thirty feet to point D in latitude four thousand, two hundred fifty-seven and eighty-three hundredths feet north and longitude one thousand eight hundred sixteen and one tenth feet west, said point D being located north twenty degrees, fifteen minutes, ten seconds west, true bearing, one hundred fifty-one and thirteen one hundredths feet from Mark 4 on the southwesterly corner of Old South wharf in Fairhaven; thence north, thirty-six degrees, thirty minutes, thirty seconds east, true bearing, six hundred thirty-five and eight one hundredths feet to point E in latitude four thousand seven hundred sixty-eight and twenty-nine one hundredths feet north and longitude one thousand four hundred thirty-eight and twenty-six one hundredths feet west, said point E being located north seventy-five degrees, forty-one minutes, forty-six seconds west, true bearing, three hundred sixty-eight

and sixty-one one hundredths feet from a stone monument at the southeast corner of Washington street and Water street in Fairhaven; thence north twelve degrees, ten minutes, fifty-seven seconds west, true bearing, two hundred seventy-five feet to a point "E1", in latitude five thousand thirty-seven and one tenth feet north and longitude one thousand four hundred ninety-six and twenty-nine one hundredths feet west; thence south seventy-nine degrees, thirty-four minutes, fifteen seconds west, true bearing, two hundred seventy-five and thirteen one hundredths feet to point "E2" in latitude four thousand nine hundred eighty-seven and twenty-nine one hundredths feet north and longitude one thousand seven hundred sixty-six and eighty-eight one hundredths feet west; thence north twelve degrees, ten minutes, fifty-seven seconds west, true bearing, seven hundred twenty-four and twenty-six one hundredths feet to a point "E4" in latitude five thousand six hundred ninety-five and twenty-four one hundredths feet north and longitude one thousand nine hundred nineteen and seventy-one one hundredths feet west; thence south sixty-four degrees, twenty-four minutes, forty seconds west, true bearing, one thousand five hundred fourteen and twenty-three one hundredths feet to a point "PG1" in latitude five thousand forty-one and ten one hundredths feet north and longitude three thousand two hundred eighty-five and sixty-nine one hundredths feet west; thence north eighty-one degrees, twenty-one minutes, seven seconds west, true bearing, four hundred thirty-two and fifty-two one hundredths feet to a point "PG2" in latitude five thousand one hundred six and thirteen one hundredths feet north and longitude three thousand seven hundred thirteen and twenty-nine one hundredths feet west; thence north thirty-nine degrees, nineteen minutes, one second west, true bearing, six hundred two and ninety-seven one hundredths feet to a point "PE2" in latitude five thousand five hundred seventy-two and sixty-two one hundredths feet north and longitude four thousand ninety-five and thirty-four one hundredths feet west; thence north twenty-four degrees, fifty-six minutes, twelve seconds west, true bearing, two hundred ninety-six and seventy-six one hundredths feet to a point "PE1" in latitude five thousand eight hundred forty-one and seventy-one one hundredths feet north and longitude four thousand two hundred twenty and forty-six one hundredths feet west; thence north seventeen degrees, eleven minutes, twenty-three seconds west, true bearing, four hundred three and seventy one hundredths feet to a point "PE4" in latitude six thousand two hundred twenty-seven and thirty-eight one hundredths feet north and longitude four thousand three hundred thirty-nine and seventy-seven one hundredths feet west; thence north fifteen degrees, thirty-four minutes, eight seconds east, true bearing, one thousand twenty-two and thirty one hundredths feet to a point "PD1" in latitude seven thousand two hundred twelve and seventeen one hundredths feet north and longitude four thousand sixty-five and thirty-nine one hundredths feet west; thence north eighty-three degrees, forty-three minutes, nineteen seconds east, true bearing, five hundred eighty and eighty-six one hundredths feet to a point "PC" in latitude seven thousand two hundred seventy-five and sixty-nine one hundredths feet north and longitude three thousand four hundred eighty-eight and one one hundredth feet west, said point "PC" being north forty degrees, twenty-five minutes, five seconds east, true bearing, nine hundred two and thirty-five one hundredths feet from "Mark 20"; thence south forty-six

degrees, sixteen minutes, forty-one seconds east, true bearing, one thousand four hundred thirty-four and sixty-six one hundredths feet to point "PB" in latitude six thousand two hundred eighty-four and eleven one hundredths feet north and longitude two thousand four hundred fifty-one and eighteen one hundredths feet west, said point "PB" being located north fourteen degrees, fifty-one minutes, fifty-five seconds west, true bearing, seventy and four tenths feet from "Mark 19" on the southerly side of the New Bedford and Fairhaven bridge near the east end of Popes Island; thence north seventy-three degrees, twenty-three minutes nineteen seconds east, true bearing, three hundred ninety-six and forty-two one hundredths feet to a point "F2" in latitude six thousand three hundred ninety-seven and forty-three feet north and longitude two thousand seventy-one and thirty-one one hundredths feet west; thence north twelve degrees, ten minutes, fifty-seven seconds west, true bearing, three hundred ninety-nine and nine one hundredths feet to point "F1" in latitude six thousand seven hundred eighty-seven and fifty-four one hundredths feet north and longitude two thousand one hundred fifty-five and fifty-three one hundredths feet west; thence north forty-six degrees, sixteen minutes, forty-one seconds west, true bearing, two thousand nine hundred fifteen and eight tenths feet to point G in latitude eight thousand eight hundred two and eighty-two one hundredths feet north and longitude four thousand two hundred sixty-two and seventy-eight one hundredths feet west, said point G being located south twelve degrees, twenty minutes, forty-one seconds west, true bearing, one thousand and five one hundredths feet from Mark 6 on Marsh island so-called in Fairhaven; thence north ten degrees, twenty-three minutes, fifty-three seconds west, true bearing, one thousand two hundred sixteen and ninety-two one hundredths feet to point H in latitude nine thousand nine hundred ninety-nine and seventy-six one hundredths feet north and longitude four thousand four hundred eighty-two and forty-two one hundredths feet west, said point H being located north sixty-three degrees, five minutes, sixteen seconds west, true bearing, four hundred eighty-six and eight one hundredths feet from Mark 6 on Marsh island in Fairhaven; thence north twenty-four degrees east, true bearing, eighteen hundred feet to point I in latitude eleven thousand six hundred forty-four and fourteen one hundredths feet north and longitude three thousand seven hundred fifty and twenty-nine one hundredths feet west, said point I being located south fourteen degrees, seven minutes, twenty-nine seconds west, true bearing, nine and ninety-eight one hundredths feet from Mark 7 on the southerly side of Coggeshall street bridge near the Fairhaven end; thence north two degrees, four minutes, thirty-nine seconds east, true bearing, two thousand seventy-seven and twenty-eight one hundredths feet to point J in latitude thirteen thousand seven hundred twenty and five one hundredths feet north and longitude three thousand six hundred seventy-four and ninety-nine one hundredths feet west, said point J being located north fifty-four degrees, thirty-nine minutes, seventeen seconds west, true bearing, eight hundred sixty-four and twenty-eight one hundredths feet from Mark 8 near the westerly end of Veranda street in Fairhaven; thence north eleven degrees, thirty-two minutes, twenty seconds west, true bearing, two thousand eight hundred twenty-five and twenty-two hundredths feet to point K in latitude sixteen thousand four hundred eighty-eight and seventeen one hundredths feet north and longitude four thousand

two hundred forty and thirteen one hundredths feet west, said point K being located north seventy degrees, thirty-six minutes, twenty-two seconds west, true bearing, five hundred ninety-two and thirty-three one hundredths feet from Mark 9, the above described point K being the northerly end of the harbor line hereby established in the easterly side of Acushnet river.

SECTION 2. The metes and bounds inserted by section 1, being relocation of the harbor lines encompassing Popes Island in the Fairhaven and New Bedford Harbors between harbor line points "E2" and "PC" as shown on a plan dated April 21, 2003, drafted by Prime Engineering, Inc., P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347, shall be filed with the division of waterways within the department of environmental management, the division of wetlands and waterways within the department of environmental protection and with the engineer of the city of New Bedford.

SECTION 3. This act shall take effect upon its passage.

Approved September 3, 2004.

Chapter 342. AN ACT VALIDATING THE PROCEEDINGS OF THE ANNUAL TOWN MEETING IN THE TOWN OF BROOKFIELD.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 10 of chapter 39 of the General Laws or any other general or special law to the contrary, all acts and proceedings taken by the town of Brookfield at its May 3, 2004 annual town meeting, including its town election and all adjourned sessions thereof, and all actions taken pursuant thereto, are hereby ratified, validated and confirmed, notwithstanding any defect or omission in the calling of the meeting and election.

SECTION 2. This act shall take effect upon its passage.

Approved September 10, 2004.

Chapter 343. AN ACT PROVIDING FOR A SPECIAL ELECTION IN THE CITY OF LAWRENCE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law, rule or regulation to the contrary, the vacancy on the school committee in the city of Lawrence caused by the resignation of 1 of its members, shall be filled at a special election to be held on September 14,

2004. The election shall be for the purpose of filling the vacancy for the balance of the unexpired term.

SECTION 2. This act shall take effect upon its passage.

Emergency Letter: 9/14/04 @ 12:31 P.M.

Approved September 14, 2004.

Chapter 344. AN ACT RELATIVE TO THE DISPOSITION OF CERTAIN LAND IN THE CITY OF LOWELL.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to dispose of certain land in the city of Lowell, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. As used in this act the following words shall have the following meanings:-

"Board of trustees", the board of trustees of the University of Massachusetts.

"Building authority", the University of Massachusetts Building Authority.

"Campus", the campus of the University of Massachusetts Lowell.

"Chancellor", the chancellor of the University of Massachusetts Lowell.

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

"Owner of parcel 2", John F. Power, doing business in the commonwealth as Farley White Interests, who, on the effective date of this act, either has contracted to purchase parcel 2 or owns parcel 2.

"Parcel 1", the remaining state-owned portion of the Wannalancit property at 600 Suffolk street in the city of Lowell.

"Parcel 2", the St. Joseph's hospital located at 220 Pawtucket street in the city of Lowell.

"President", the president of the University of Massachusetts.

"Trust fund", the University of Massachusetts Lowell Development Assistance Trust Fund.

"University", the University of Massachusetts.

SECTION 2. Notwithstanding sections 40F to 40J, inclusive, of chapter 7 of the General Laws, or any other general or special law or any rule or regulation to the contrary, the commissioner may convey to the owner of parcel 2 a parcel of state-owned land, hereinafter known as parcel 1, located at 600 Suffolk street in the city of Lowell and more fully described as follows:

The land, with all buildings thereon, commonly known as 600 Suffolk Street and located on the northerly side of Suffolk Street in Lowell, Middlesex County, Massachusetts,

being shown as Phase I as shown on a "Compiled Plan of Land In Lowell, Mass. For Wannalancit office and Technology Center Realty Trust", Scale 1"=20', dated March 25, 1983, by Robert M. Gill Associates, Inc., Civil Engineers & Surveyors, Lowell, Mass. (the "Plan"), which Plan is recorded with the Middlesex North District Registry of Deeds at Plan Book 140, Plan 1, containing 43,369 square feet of land, more or less; and Lot C on Plan entitled "Compiled Plan of Land In Lowell, Mass.", dated September 13, 1982, Scale 111=40', prepared by Robert M. Gill & Associates, Inc., Lowell, Massachusetts, which Plan is recorded with the Middlesex north district registry of deeds at Plan Book 137, Plan 121, containing 90,487 square feet of land, more or less, in exchange for a certain parcel of land, herein designated parcel 2, and known as the Saint Joseph's Hospital and more fully described as follows:-

The St. Joseph's hospital is a certain parcel of land with the buildings and improvements therein, containing approximately 2.15 acres, more or less, located at 220 Pawtucket Street in the city of Lowell, Middlesex County, and more fully described as situated on the southwesterly side of Merrimack Street, the southwesterly side of Pawtucket Street and the northeasterly side of Salem Street in said city.

The exact boundaries of the parcels shall be determined by the commissioner in consultation with the campus and the university.

SECTION 3. In order to determine the full and fair market values of parcel 1 and parcel 2, and as a condition precedent to the conveyance of the parcels, the commissioner shall require that an independent professional appraisal be performed on each parcel. The commissioner may accept for the purposes of this section existing appraisals of parcels 1 and 2, submitted to him by the owner of parcel 2, if the appraisals were completed no longer than 1 year before the effective date of this act and were conducted by an appraiser approved by the commissioner. Such appraisals shall review any environmental issues associated with each parcel, including an assessment of hazardous materials which may be present at each parcel in accordance with chapter 21E of the General Laws, and an analysis of the impact on the value of the parcels based on such assessment.

The owner of parcel 2 shall pay for all costs associated with any appraisal, assessment, analysis, survey or deed preparation related to the conveyances of the properties authorized by sections 2 to 4, inclusive, as may be deemed necessary by the commissioner.

SECTION 4. The consideration to be paid to the commonwealth by the owner of parcel 2 for the conveyance of parcel 1 shall be the conveyance of parcel 2. In addition, should the full and fair market value of parcel 1 be determined by the commissioner to be greater than the full and fair market value of parcel 2, then the commissioner shall require the owner of parcel 2 to pay to the commonwealth the difference of the value of parcel 1 minus the value of parcel 2.

If however, the full and fair market value of parcel 2 is determined by said commissioner to be greater than the full and fair market value of parcel 1, then nothing in this act, or in any general or special law or any rule or regulation to the contrary, shall require

the commissioner, on behalf of the commonwealth, to pay to the owner of parcel 2 the difference of the value of parcel 2 minus the value of parcel 1.

The inspector general shall review and approve all aspects of this transaction between the commonwealth and the owner of parcel 2, and shall prepare a report of his review of the transaction and of the methodology utilized for determining the appraisals. The inspector general shall prepare a report of his review and file the report with the commissioner for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration. The commissioner shall, 30 days before the execution of the conveyance and any agreement authorized by this act, or any subsequent amendment thereto, submit the agreement or amendment and a report thereon to the inspector general for his review and comment.

The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments thereto, the reports, and the comments of the inspector general to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days before the execution thereof.

SECTION 5. Notwithstanding the provisions of sections 40F to 40J, inclusive, of chapter 7 of the General Laws, or any other general or special law or rule or regulation to the contrary, the commissioner, after acquiring title to parcel 2, as described in sections 2 to 4, inclusive, may transfer parcel 2 to the building authority for nominal consideration and upon such terms and conditions as may be agreed to by the commissioner, the chancellor, the president, and the building authority. The building authority shall contract with the board of trustees, with the approval of the president and the concurrence of the chancellor, to allow the campus to use the parcel 2 property for the purposes of the trust fund established by section 6. All expenditures for the operation and maintenance of the parcel 2 property shall be the responsibility of the campus and shall be paid first from the trust fund and then from other sources, if necessary.

In addition to the requirements of section 18B of chapter 773 of the acts of 1960, the building authority shall not sell parcel 2 or any part thereof without the prior approval of the general court. The proceeds of any sale of parcel 2 or any part thereof by the building authority shall be paid to the treasurer and receiver-general of the commonwealth and shall be credited on the books of the commonwealth to the General Fund.

SECTION 6. The board of trustees shall establish and maintain a trust fund to be known as the University of Massachusetts Lowell Development Assistance Trust Fund. The purposes of the trust fund shall include, but not be limited to, the promotion of a sound and stable economy and a highly trained workforce, the encouragement of interdisciplinary research and partnerships with community and industry, the support and improvement of the health of individuals and communities, and the spurring of the job creation necessary for the maintenance and growth of the technology and manufacturing sectors of the Massachusetts economy. All revenues and expenditures relative to the development, operation, repair, and maintenance of property in parcel 2 shall be deposited in and expended from the trust fund.

The chancellor shall produce a report annually on the activities supported by the trust fund and shall submit copies of the report to the president, the office of the inspector general, the chairmen of the house and senate committees on ways and means, and the chairmen of the joint committee on state administration.

Approved September 15, 2004.

Chapter 345. AN ACT AUTHORIZING THE TOWN OF HINGHAM TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK OF THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Hingham may grant to Linden Ponds, Inc. a license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138. The license shall be subject to all of said chapter 138 except said section 17.

SECTION 2. This act shall take effect upon its passage.

Approved September 16, 2004.

Chapter 346. AN ACT RELATIVE TO THE DEVELOPMENT AND INDUSTRIAL COMMISSION OF THE TOWN OF OXFORD.

Be it enacted, etc., as follows:

SECTION 1. The charter of the town of Oxford, which is on file in the office of the archivist of the commonwealth as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out section 9-6-1 and inserting in place thereof the following section:-

Section 9-6-1. A development and industrial commission of 5 members shall be appointed by the town manager for 5 year overlapping terms in accordance with section 8A of chapter 40 of the General Laws.

SECTION 2. Notwithstanding section 1, the incumbent members of the development and industrial commission on the effective date of this act shall continue to hold office and to perform the duties thereof until the expiration of the term for which they were appointed.

Approved September 16, 2004.

Chapter 347. AN ACT RELATIVE TO THE RESIDENCY OF THE TOWN MANAGER OF THE TOWN OF CONCORD.

Be it enacted, etc., as follows:

SECTION 1. Section 5 of chapter 280 of the acts of 1952 is hereby amended by striking out the third sentence.

SECTION 2. This act shall take effect upon its passage.

Approved September 16, 2004.

Chapter 348. AN ACT RELATIVE TO THE POLICE POWERS OF THE UNIVERSITY OF MASSACHUSETTS AT AMHERST.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 269 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following sentence:- For the purposes of this section, the University of Massachusetts at Amherst shall be considered to be a town.

SECTION 2. Notwithstanding any general or special law to the contrary, the University of Massachusetts at Amherst may enter into an agreement with the town of Amherst, another town, or a city, or other towns and cities, including towns and cities in states contiguous to the commonwealth, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. The agreement may include the furnishing of personal services, supplies, materials, contractual services, and equipment when the resources normally available to the University or any municipality in the agreement are not sufficient to cope with a situation which requires police action. When providing such mutual aid, police officers shall have all the immunities and powers granted to them by the University or the municipalities that employs them including, but not limited to, powers of arrest.

Approved September 16, 2004.

Chapter 349. AN ACT RELATIVE TO THE DEFINITION OF KOREAN WAR VETERAN.

Be it enacted, etc., as follows:

Section 7 of chapter 4 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "inclusive", in line 278, the following words:-

, and any person who has received the Korea Defense Service Medal as established in the Bob Stump National Defense Authorization Act for fiscal year 2003.

Approved September 16, 2004.

Chapter 350. AN ACT RELATIVE TO THE APPOINTMENT OF MEMBERS TO CERTAIN COMMISSIONS IN THE TOWN OF FRAMINGHAM.

Be it enacted, etc., as follows:

SECTION 1. Section 3 of chapter 27 of the acts of 1996 is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

Said board of selectmen shall establish all boards, committees, and commissions and appoint their members, except as otherwise provided by this act, or by bylaw or other vote of the town meeting, including but not limited to the conservation commission, disability commission and historic commission, and shall appoint members of such other regional authorities, districts or committees in accordance with any applicable laws or interlocal agreements.

SECTION 2. This act shall take effect upon its passage.

Approved September 16, 2004.

Chapter 351. AN ACT ALLOWING STUDENTS WITH CYSTIC FIBROSIS TO SELF ADMINISTER ENZYME SUPPLEMENTS.

Be it enacted, etc., as follows:

Section 54B of chapter 71 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law or regulation to the contrary, no school district shall prohibit students with cystic fibrosis from possessing and administering prescription enzyme supplements in accordance with department of public health regulations concerning students' self-administration of prescription medications.

Emergency Letter: 9/17/04 @ 3:45 P.M.

Approved September 17, 2004.

Chapter 352. AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2004 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make supplemental appropriations for the fiscal year beginning July 1, 2004, and to make certain changes in the law, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2004, the sums set forth in section 2 are hereby appropriated from the Stabilization Fund unless specifically designated otherwise herein or in said appropriation acts, for the several purposes and subject to the conditions specified herein or in said appropriation acts, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2004, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items; and provided further, that all funds appropriated in this section shall not revert and shall be available for expenditure until June 30, 2005.

SECTION 2.

JUDICIARY.

Committee for Public Counsel Services.

0321-2000 .	\$52,204
	Trial Court.
0330-0300 . 0331-3400 .	\$1,600,000 \$10,000
	Office of the Commissioner of Probation.
0339-1001 . 0339-1004 .	\$1,000,000 \$300,000
	DISTRICT ATTORNEYS. Suffolk District Attorney.
0340-0100 .	\$122,000
	District Attorneys' Association.
0340-2101 .	\$281,033

EXECUTIVE.

Secretary of th	e Commonwealth.
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0540-2000
TREASURER AND RECEIVER GENERAL.
Office of the Treasurer and Receiver General.
0611-5510
ATTORNEY GENERAL.
0810-0000 \$260,000
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.
Office of the Secretary.
1100-1100
Bureau of State Office Buildings.
· ·
1102-3301
OFFICE OF THE COMPTROLLER. Office of the State Comptroller.
1599-3384\$2,514,671
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS.
Department of Environmental Protection.
2200-0100\$1,525,000
2310-0200 \$500,000
Department of Conservation and Recreation.
2800-0200\$1,000,000
2810-0100
2810-2000
2820-0100
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.
4000-0300
4000-0600
4000-0870\$2,390,268
4000-0896

Chap. 352	
	Division of Health Care Finance and Policy.
4100-0060	\$2,238,916
	Department of Public Health.
4512-0106 4512-0200	\$1,700,000 \$700,000 \$11,913,766 \$50,000
	Department of Social Services.
4800-0041	\$3,500,000
	Department of Mental Retardation.
5920-3000	
	EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT. Department of Labor.
7002-0200	\$110,000
	Department of Workforce Development.
7003-0702	\$950,000
	Department of Housing and Community Development.
7004-9005	\$1,650,000
	Division of Professional Licensure.
7006-0040	
	Department of Business and Technology.
7007-0209 7007-0515 7007-0900	\$1,500,000 \$25,000 \$890,000
	Department of Education.
7035-0007 7061-9400 7061-9604 7066-0000	

Chap. 352
University of Massachusetts.
7100-0200
State Colleges.
7114-0100
Community Colleges.
7507-0100 \$500,000 7512-0100 \$15,000 7515-0120 \$110,000
EXECUTIVE OFFICE OF PUBLIC SAFETY AND HOMELAND SECURITY.
State Police.
8100-0000 \$200,000
Criminal Justice Training Council.
8200-0200
Department of Correction.
8900-0001 \$2,620,000
County Corrections.

SHERIFFS.

Franklin Sheriff's Department.

8910-0108 \$81,600

Berkshire Sheriff's Department.

8910-0145 \$52,150

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Department of Elder Services.

SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from Stabilization Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating

the disbursement of public funds for the fiscal year ending June 30, 2004, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items; and provided further, that all funds appropriated in this section shall not revert and shall be available for expenditure until June 30, 2005.

JUDICIARY.

Committee for Public Counsel Services.

0321-1521 For the purposes of hourly rate increases to private criminal and private non-criminal counsel\$16,791,600

EXECUTIVE.

State Auditor.

0710-0250 For the purposes of homeland security audits \$400,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Office of the Secretary.

1100-1125 For the Executive Department Legal Administration, provided that the Governor's Chief Legal Counsel shall appoint and oversee a Legal Administrator and further provided that not less than \$100,000 shall be expended for continuing legal education and training as directed by a joint labormanagement committee consisting of 4 representatives of management selected by the Governor's Chief Legal Counsel and 4 representatives of labor selected by the President of the National Association of Government Employees \$300,000

Department of Revenue.

1201-0111 For costs associated with the indemnification of certain employee legal fees and costs associated with Suffolk County superior court case David S. Porter et al v. Andrew Zakis et al, civil docket no. SUCV2002- 03578; provided that funds appropriated herein shall be expended solely for legal fees and other related costs directly related to said superior court case; and provided further, that the commissioner of revenue shall file with the house and senate committees on ways and means quarterly reports on expenditures from this item

\$450,000

Reserves.

1599-3333 For costs associated with the implementation of the new Massachusetts management accounting and reporting system and the conversion of the classic Massachusetts management

accounting and reporting system; provided, that the funds appropriated herein shall be expended by the state comptroller .. \$3,600,000

1599-4123 For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of trustees of the University of Massachusetts and: the Society of Professors/Faulty Staff Massachusetts Union/MTA/NEA; the Professional Staff Union, Local 509, Service Employees International Union, AFL-CIO/CLC; the University Staff Association/Massachusetts Teachers Association/NEA: the International Brotherhood of Police Officer, Local 432, Units A and B; the International Brotherhood of Teamsters, Local 25 (two units); the University of Massachusetts and the International Brotherhood of Police Officers, Local 399; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 507; the National Association of Government Employees, Local 245; the American Federation of Teachers, Local 1895, AFL-CIO, Faculty Federation; the American Federation of Teachers, Local 1895, AFL-CIO, Educational Services; International Association of Police Officers, Local 399; the Massachusetts Society of Professors/Lowell; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 1776; the Graduate Employee Organization, Local 2322, UAW; the Service Employees' International Union, Local 509, Unit B; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Clerical-Technical Unit; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Professional/Mid-Management Unit; the National Association of Government Employees; the Graduate Employee Organization, Local 1596, UAW; and the Graduate Employee Organization Boston, Local 1596, UAW; provided, that said payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in such collective bargaining agreements; provided further, that, no later than November nineteenth, two thousand and four employees covered by the terms of the collective bargaining agreements listed in this item shall be paid a lump sum amount equal to the difference between (a) the salary specified in the relevant agreement and

(b) the salary each received, for the period July first, two thousand and three through December thirty-first two thousand and three; provided, further, that employees covered by the terms of the collective bargaining agreements listed in this item shall, subject to appropriation in fiscal year two thousand and five and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to said collective bargaining agreements reach agreement or lawful impasse in negotiations for successor agreements; provided, further, that the president of the University of Massachusetts is authorized and directed to expend these funds for such salary adjustments and other economic items in accordance with the provisions herein and the terms of the collective bargaining agreements listed in this item; provided further, that funds appropriated herein shall be transferred by the comptroller to the University based upon a schedule submitted by the president of the University of Massachusetts; provided further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments and other economic items set forth in this item for the collective bargaining agreements listed in this item, notwithstanding the provisions of chapter one hundred and fifty E of the General Laws, including subsection (c) of section seven of said chapter one hundred and fifty E or any other general or special law or collective bargaining agreement to the contrary and any contractual requirement relative to allocation of appropriations which would interfere with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the provisions of any collective bargaining agreement to the contrary; provided further, notwithstanding the provisions of chapter 150E of the General Laws or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create an obligation for the commonwealth or any institutions of public higher education to provide any other salary adjustments or economic benefits associated with

any fiscal year prior to other than fiscal year 2004, as otherwise provided in such collective bargaining agreements \$19,975,010

1599-4124 For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of higher education and: the Association of Professional Administrators: and the American Federation of State, County and Municipal Employees, Council 93, Local 1067, AFL-CIO; provided, that said payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in such collective bargaining agreements; provided, further, that, no later than November nineteenth two thousand and four, employees covered by the terms of the collective bargaining agreements listed in this item shall be paid a lump sum amount equal to the difference between (a) the salary specified in the relevant agreement and (b) the salary each received, for the period July first, two thousand and three through December thirty-first two thousand and three; provided, further, that employees covered by the terms of the collective bargaining agreements listed in this item shall, subject to appropriation in fiscal year two thousand and five and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to said collective bargaining agreements reach agreement or lawful impasse in negotiations for successor agreements; provided, further, that the chancellor of the board of higher education is authorized and directed to expend these funds for such salary adjustments and other economic items in accordance with the provisions herein and the terms of the collective bargaining agreements listed in this item; provided further, that funds appropriated herein shall be transferred by the comptroller to the board of higher education based upon a schedule submitted by the chancellor of the board of higher education; provided, further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments set forth in this item for the collective bargaining agreements listed in this item, notwithstanding the provisions of chapter one hundred and fifty E of the General Laws, including subsection (c) of section seven of said chapter one

hundred and fifty E or any other general or special law or collective bargaining agreement to the contrary and any contractual requirement relative to allocation of appropriations which would interfere with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the provisions of any collective bargaining agreement to the contrary; provided further, that notwithstanding the provisions of chapter 150E of the General Laws or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create an obligation for the commonwealth or any institutions of public higher education to provide any other salary adjustments or economic benefits associated with any fiscal year prior to other than fiscal year 2004, as otherwise provided in such collective bargaining agreement

.. \$8,291,573

1599-4125 For a reserve to pay the collective bargaining costs for the Massachusetts Community College Council; provided, that the funds appropriated herein shall be distributed by the board of higher education; provided further, that not less than \$156,684 shall be transferred to Berkshire community college; provided further, that \$248,275 shall be transferred to Bristol community college; provided further, that not less than \$309,007 shall be transferred to Bunker Hill Community College; provided further, that not less than \$160,889 shall be transferred to Cape Cod Community College; provided further, that not less than \$121,859 shall be transferred to Greenfield Community College; provided further, that not less than \$311,425 shall be transferred to Holyoke Community College; provided further, that not less than \$174,409 shall be transferred to Massbay Community College; provided further, that not less than \$345,378 shall be transferred to Massasoit Community College; provided further, that not less than \$293,827 shall be transferred to Middlesex Community College; provided further, that not less than \$190,158 shall be transferred to Mount Wachusett Community College; provided further, that not less than \$323,938 shall be transferred to North Shore Community College; provided further, that not less than \$272,575 shall be

transferred to Northern Essex Community College; provided further, that not less than \$251,979 shall be transferred to Quinsigimond Community College; provided further, that not less than \$142,587 shall be transferred to Roxbury Community College; and provided further, that not less than \$479,857 shall be transferred to Springfield Community 1599-4575 For the implementation of a one-time teacher home loan program to be administered by the Massachusetts housing finance agency; provided, that the state comptroller shall transfer the funds appropriated herein to said authority; provided, that said authority shall establish a program that shall distribute zero interest loans for down payment and closing costs assistance to teachers who are first-time homebuyers on a first-come, first-served basis; provided further, that no loan shall be for more than 5.5 percent of the total amount to be borrowed for said first-time home purchase; provided further, that in order to be eligible for said one-time loan assistance, any teacher applying must meet the following criteria: (i) be a state certified classroom teacher employed by a public school district that has been working as a teacher for the 3-year period preceding the date of application; (ii) have no ownership interest in any principal residence during the 3-year period preceding the date of application; (iii) show proof of residence in Massachusetts for the 5-year period preceding the date of application; (iv) meet income and purchase price eligibility limits for the program to be determined by the Massachusetts housing finance agency; (v) meet standard mortgage underwriting requirements which demonstrate credit worthiness; and (vi) must occupy the purchased home as their primary residence; and provided further, that said authority shall file a report with the house and senate committees on ways and means that shall include, but not be limited to, the following: the number of loans awarded, a list all loans awarded, including the city or town in which the first time home purchase occurred, the average and median loan award amount, and the repayment compliance rate\$5,000,000 1599-8092 For a reserve to study and test a new administrative records list as a potential substitute for the statewide annual municipal

census that is currently used to create the master juror list and

Human Resources Division.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Massachusetts Rehabilitation Commission.

4120-4051 For a one-time matching grant for the assistive technology loan program to fund adaptive equipment for people with limited \$565,000

EXECUTIVE OFFICE OF TRANSPORTATION.

Office of the Secretary.

6000-8888 For the costs associated with the special commission on transportation finance established pursuant to section 13 of chapter 196 of the acts of 2004 \$25,000

EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT

7002-0011 For a summer jobs youth-at-risk program targeted at reducing juvenile delinquency in high-risk areas of the Commonwealth, provided, that \$500,000 of these funds shall be matched by private organizations, prior appropriation continued \$3,050,000

Department of Education.

7010-0030 For per pupil facilities aid for commonwealth charter schools, calculated pursuant to subsection (nn) of section 89 of chapter 71 of the General Laws, as amended by provisions of this act; provided, that funds shall be expended from this item to provide one time grants to ensure that no charter school receives less funding in fiscal year 2005 than it would have received had tuition been calculated pursuant to subsection (nn) of section 89 of chapter 71 of the General Laws as in effect prior to passage of this act; provided, that up to \$8,455,000 shall be available for use by the commissioner of education as matching funds for federal financial assistance; and provided further, that said matching funds shall be available for expenditure until June 30, 2009\$21,615,575

Board of Higher Education.

7066-0115 For the purposes of implementing section 15E of chapter 15A of the General Laws to encourage private fundraising by the commonwealth's public institutions of higher education; provided, that funds shall be disbursed on a quarterly basis in proportion to the amount of funds raised by each institution;

provided further, that the board of higher education shall implement this program in a manner which ensures that each institution shall have an equal opportunity to secure matching funds from this item; provided further, that \$9,000,000 shall be allocated to university of Massachusetts campuses; provided further, that \$2,000,000 shall be allocated to state college campuses; and provided further, that \$1,000,000 shall be allocated to community college campuses\$12,000,000

EXECUTIVE OFFICE OF PUBLIC SAFETY.

State Police.

8100-0195 For the purchase of bullet proof vests for use by state police troopers\$2,000,000 Massachusetts Emergency Management Agency.

8800-0085 For the commonwealth's share of disaster relief assistance to individuals affected by the natural disaster of flooding beginning on April 1, 2004, and ending on April 30, 2004, for the counties of Essex, Middlesex, Norfolk, Suffolk and Worcester; provided, that such assistance shall be 25 per cent of the total assistance determined to be eligible by the Federal Emergency Management Agency for the Other Needs Assistance portion under the Individual Household Program; and provided further, that funds may be allocated from this item and made payable as reimbursement to the Federal Emergency Management Agency as a result of their full payment to said individuals in accordance with the standard contract for the commonwealth of Massachusetts, to be executed jointly by the Federal Emergency Management Agency and the Massachusetts emergency management agency\$500,000

SECTION 2B. Notwithstanding the provisions of any general or special law to the contrary, the agencies listed in this section may expend the amounts listed in this section for the provision of services to agencies listed in section 2. All expenditures made pursuant to this section shall be accompanied by a corresponding transfer of funds from an account listed in section 2 to the Intragovernmental Service Fund, established by section 2Q of chapter 29 of the General Laws. No expenditures shall be made from the Intragovernmental Service Fund which would cause that fund to be in deficit at the close of fiscal year 2005. All authorizations in this section shall be charged to the Intragovernmental Service Fund and shall not be subject to section 5D of chapter 29 of the General Laws. Any balance remaining

in that fund at the close of fiscal year 2005 shall be transferred to the General Fund.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE. Reserves.

1599-3100

SECTION 2C.I. For the purpose of making available in fiscal year 2005 balances of appropriations which otherwise would revert on June 30, 2004, the unexpended balances of the maintenance appropriations listed below, not to exceed the amount specified below for each item, and the unexpended balance of all appropriations in the Massachusetts management accounting and reporting system with a secretariat code of 01 or 17, are hereby re-appropriated for the purposes of and subject to the conditions stated for the corresponding item in section 2 of the general appropriation act for fiscal year 2005; provided, however, that for items which do not appear in said section 2 of said general appropriation act, the amounts in this section are re-appropriated for the purposes of and subject to the conditions stated for the corresponding item in section 2 or 2A of this act or in prior appropriation acts. Amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in said section 2 of said general appropriation act; provided, however, that for items which do not appear in said section 2 of said general appropriation act, the amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in section 2 or 2A of this act or in prior appropriation acts. The sums re-appropriated herein shall be in addition to any amounts available for said purposes. All amounts appropriated in section 2 and 2A of this act shall be available for expenditure in fiscal year 2005.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.	
Reserves.	
1599-3385	,500
1599-3391	,799
1599-4500\$1,727	,500
1599-8085	,575
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.	
Department of Transitional Assistance.	
4403-2120	,635
4405-2000	,854
4408-1000	,208
Department of Public Health.	
4510-0110 \$100	,000

4800-1100

Department	of	Social	S	ervices.
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 	-,,
Department of Mental Health.	

5046-0000	\$496,550
5095-0015	\$487,898

EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT.

Department of Workforce Development.

7003-0701\$20.467.874

EXECUTIVE OFFICE OF PUBLIC SAFETY AND HOMELAND SECURITY.

SECTION 2C.II. For the purpose of making available in fiscal year 2005 balances of retained revenue and intragovernmental chargeback authorizations which otherwise would revert on June 30, 2004, the unexpended balances of the authorizations listed below, not to exceed the amount specified below for each item, are hereby re-authorized for the purposes of and subject to the conditions stated for the corresponding item in section 2 or 2B of the general appropriation act for fiscal year 2005; provided, however, that for items which do not appear in said section 2 or 2B of said general appropriation act, the amounts in this section are re-authorized for the purposes of and subject to the conditions stated for the corresponding item in section 2, 2A, or 2B of this act or in prior appropriation acts. Amounts in this section are re-authorized from the fund or funds designated for the corresponding item in said section 2 or 2B of said general appropriation act; provided, however, that for items which do not appear in said section 2 or 2B of said general appropriation act, the amounts in this section are re-authorized from the fund or funds designated for the corresponding item in section 2, 2A, or 2B of this act or in prior appropriation acts. The sums re-authorized herein shall be in addition to any amounts available for said purposes.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Reserves.

1599-3100\$7,000,000

SECTION 2D. The amounts set forth in this section are hereby appropriated from the General Federal Grants Fund. Federal funds received in excess of the amount appropriated in this section shall be expended only in accordance with section 6B of chapter 29 of the General Laws. The amount of any unexpended balance of federal grant funds received before June 30, 2004, and not included as part of an appropriation item in this section, is hereby made available for expenditure during fiscal year 2005, in addition to any amount appropriated in this section.

EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT.

Department of Workforce Development.

7002-6624 For the purposes of a federally funded grant entitled, UI Program
Administration
7002-6626 For the purposes of a federally funded grant entitled,
Employment Services Program\$20,394,571
7002-6628 For the purposes of a federally funded grant entitled, Disabled
Veterans Outreach
7002-6629 For the purposes of a federally funded grant entitled, Local
Veterans Employment Representatives\$1,424,950
SECTION 2E. To provide for certain unanticipated obligations of the
Commonwealth, to provide for certain other activities and projects and to meet certain
requirements of lavy the sums get forth herein are hereby engagined from the Ctabilization

SECTION 2E. To provide for certain unanticipated obligations of the Commonwealth, to provide for certain other activities and projects and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the Stabilization Fund for the several purposes and subject to the conditions specified therein, and subject to the provisions of law regulating the disbursement of public funds; provided, that notwithstanding the provisions of any general or special law to the contrary, appropriations made herein shall not revert and be available for expenditure until June 30, 2007.

SECRETARY OF STATE.

0526-0909 For a program of grants to units of municipal government and to private, nonprofit organizations for the preservation of historic properties, landscapes and sites; provided that \$100,000 shall be provided for the study, repair and renovation of the historic Bristol county superior courthouse; provided further, that \$50,000 shall be expended for flag restoration in the town of Athol; provided further, that \$400,000 shall be expended for renovations of the Phineas Upham house in Melrose; provided further, that \$75,000 shall be provided for the preservation of Easthampton Town Hall; provided further, that \$500,000 shall be provided for the Zeiterion Theatre in New Bedford; provided further, that \$250,000 shall be provided for the Essex Shipbuilding Museum; provided further, that \$500,000 shall be expended for the Edmund Fowle house in Watertown; and provided further, that \$100,000 shall be expended for the little red shop in Hopedale

\$2,475,000

TREASURER AND RECEIVER GENERAL.

Lottery Commission.

0640-0006 For the development, upgrading and improvement of the lottery's

electronic gaming systems; provided, that funds appropriated herein shall be used solely for upgrading aging electronicgaming systems to ensure the continued viability of the lottery program; provided further, that the executive director of the Massachusetts lottery commission shall submit a report no later than February 1, 2005 to the house and senate committees on ways and means that shall include, but not be limited to, a detailed description of the problems with current electronic gaming systems, a plan with a time table for implementation of new gaming systems and the costs associated with said implementations\$6,000,000

EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE.

Division of Capital Asset Management and Maintenance.

1102-2399 For repairs, renovation, construction, reconstitution and other improvements to the department of conservation and recreation's recreational-rinks; provided, that all funds appropriated herein shall be subject to private matching funds up to a two-to-one match; provided further, that \$3,500,000 shall be expended for the Barnstable community youth center; provided further that not less than \$200,000 shall be expended for the Greenfield community youth center\$3,700,000

Department of Veterans Services.

1410-0179 For the construction of a World War II Veterans' Memorial on

Reserves.

1599-1223 For a reserve to improve Medicaid reimbursements to hospitals, physician practices, community health centers and other healthcare providers that provide health care to patients who receive medical benefits or medical assistance pursuant to chapter 118E of the General Laws; provided, that funds shall be distributed pursuant to the findings of the commission established in this act; provided further, that no funds appropriated herein shall be expended for administrative or personnel costs; and provided further, that the division of medical assistance shall submit to the house Medicaid committee, the joint committee on health care and the house and senate committees on ways and means a report detailing the expenditures from this appropriation no later than June 30, 2005\$15,000,000

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS.

Department of Conservation and Recreation.

2800-0105 For repairs to the department of conservation and recreation's recreational rinks; provided, that all funds appropriated herein shall be subject to private matching funds up to a two-to-one match; provided further, that \$1,000,000 shall be expended for Connell Rink in Weymouth; provided further, that \$900,000 shall be expended for bath house repairs at Houghton Pond; and provided further, that \$1,000,000 shall be expended for the repairs and improvement of the Walter C. Bryan Memorial Rink in West Roxbury

. \$2,900,000

2800-0106 For repairs to roads and bridges operated by the department of conservation and recreation; provided, that \$3,778,000 shall be expended for repairs to the General Edwards Bridge in Lynn; provided further, that \$490,000 shall be expended for repairs to Beades Bridge in Boston; provided further, that \$147,000 shall be expended for repairs to Cheney Bridge in Dover; provided further, that \$1,250,000 shall be expended for repairs to Bowker Overpass Ramp H; provided further, that \$1,120,000 shall be expended for the Mystic Valley/Alewife Brook Parkway in Arlington; provided further, that \$1,740,000 shall be expended for the Boston University Bridge in Boston; provided further, that \$630,000 shall be expended for the River Street Bridge at Mother Brook in Boston; provided further, that \$400,000 shall be expended for statewide graffiti remediation; provided further, that \$1,845,000 shall be expended for Craigie Dam Bridge; and provided further, that \$900,000 shall be expended for the design, engineering and construction of a pedestrian bridge across Gallivan Boulevard in the city of Boston\$12,300,000

2800-0107 For furthering the establishment of a world class park and beach system for the commonwealth; provided, that \$5,000,000 shall be expended for the Wollaston Beach clean-up and Ouincy Shore Drive reconstruction; provided further, that \$1,000,000 shall be expended for the Winthrop Beach restoration; provided further, that \$5,000,000 shall be expended for Horseneck Beach improvements and repairs at Westport Point in Westport; provided further, that \$5,000,000 shall be expended for the Cape Cod Rail Trail; provided further, that \$2,000,000 shall be expended for Salisbury beach

improvements and repairs; provided further, that \$1,000,000 shall be expended on swimming pool repairs in Fall River, Brockton, South Hadley, Westfield and Weymouth; provided further, that \$30,000 shall be expended for the removal of fences surrounding the MWRA covered storage facility in at Norumbega Reservoir in Weston; provided further, that \$100,000 shall be expended for the repair and restoration of trails located at the Bradley Palmer State Park and surrounding satellite facilities; provided further, that \$25,000 shall be expended for the study and possible corrective measures of coastal erosion in the Merrymount and Black's Creek areas of Quincy; provided further, that \$75,000 shall be expended for a fence at the Brooklawn Park in New Bedford; provided further, that not less than \$1,000,000 shall be made available for construction of a bath house at Constitution Beach in the East Boston section of the city of Boston; provided further, that not less than \$1,200,000 shall be expended for reconstruction of the Halfway Bathhouse at the Nahant Beach reservation; provided further, that not less than \$6,000,000 shall be expended for capital improvements and maintenance costs for Revere beach in the city of Revere; provided further, that \$1,000,000 shall be expended for Rocky Beach and Short Beach in Revere and Winthrop; provided further, that said monies shall be expended on maintenance projects including, but not limited to narrowing the roadway at all gateways and installing signs at all such gateways, providing neckdowns at all pedestrian crossings, crosswalk improvements, converting angle parking to parallel parking, improving street lighting and ornaments, and improving and installing new drainage systems; provided further, that not less than \$2,000,000 shall be expended for the rehabilitation of the Manning Bowl facility in the City of Lynn; provided further, that \$2,000,000 shall be expended for a boathouse for Community Rowing, on the property west of the Daly Rink and east of the Newton Yacht Club; provided further, that \$1,000,000 shall be expended for the reconstruction of the Point Allerton seawall in Hull; provided further, that \$500,000 shall be expended for the demolition of the Veteran's Memorial pool in Westfield and the construction of a spray park and playground improvements in the area adjacent to the pool; and provided further, that \$700,000 shall

	be expended on Scusset Beach improvements and repairs\$36,380,000 or the purpose of improvements to public access; provided that \$50,000 shall be expended for the Dartmouth public boat access ramp; provided further, that \$430,000 shall be expended for the repair of the east parking lot and installation of storm drainage vaults and the replacement of the public access boat ramp in the town of Harwich; provided further, that \$500,000 shall be expended for the Lagoon Pond Boat Ramp in Tisbury; and provided further, that \$400,000 shall be expended for a boat ramp in the town of Wellfleet\$1,380,000 or the purposes of construction and renovation of Dilboy Field along route 16 in Somerville\$8,000,000	
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.		
4000-0260 Fo	or the purpose of providing one-time grants for infrastructure development, loan forgiveness, or similar incentive payments to community dentists or community health centers for the purposes of increasing their capacity and increasing access to dental care for individuals covered under the MassHealth program	
	Department of Public Health.	
4590-0916	For medical equipment and facility repairs and improvements	

EXECUTIVE OFFICE OF TRANSPORTATION.

. \$1,656,709

at the Lemuel Shattuck hospital

Office of the Secretary.

6005-0020 To provide for transportation improvements, to include road, pedestrian and infrastructure projects; provided, that \$1,000,000 shall be granted to the town of Plymouth for public safety improvements on Obery Street; provided further, that not less than \$100,000 shall be expended for the design and installation of a pedestrian crosswalk and pedestrian signalization at the intersection of Park Avenue and Washington Street in Braintree; provided further, that not less than \$475,000 shall be expended for the LIFT bus service operating in the towns of Framingham, Ashland, Holliston, Hopkinton and Milford; provided further, that not less than \$1,000,000 shall be expended for the reconstruction and repair of the arterial road Liberty Street, between Lisle Street and Zana Park Drive in Braintree; provided further, that \$1,250,000 shall be expended for the Rockwell Village Revitalization Initiative in the city

of Leominster; provided further, that \$250,000 shall be expended for a streetscape and improvements to public infratructure in the city of Pittsfield; and provided further, that \$3,000,000 shall be expended for the purposes of infrastructural spending and aesthetic improvements in Kenmore Square

. . . . \$7,075,000

Office of the Secretary.

Department of Housing and Community Development.

7004-0089 For economic development grants for municipalities, provided, that \$150,000 shall be granted to the city of Lawrence for the Our House Family Learning and Workforce Development Center; provided further, that \$1,000,000 shall be granted to the town of Lynnfield for the costs of the economic development of Reedy Meadow, so-called; provided further, that \$2,800,000 shall be granted to the city of Lawrence for affordable housing and economic development at Washington Mills, so-called; provided further, that \$1,100,000 shall be granted to the town of Norwood for a one-time matching grant for the elderly population growth project; provided further, that \$50,000 shall be granted to the town Tyngsboro; provided further, that \$250,000 shall be granted to the city of New Bedford for the demolition of the former Fairhaven Mill Complex; provided further, that \$25,000 shall be granted to the town of Blackstone; provided further, that \$50,000 shall be granted to the town of Norwood for a study on the cost of submerging utility lines in South Norwood; provided further, that \$1,000,000 shall be granted to the city of Worcester for the Worcester Public Safety Complex; provided further, that \$50,000 shall be granted to the town of Dracut; provided further, that \$2,000,000 shall be granted to the town of Waltham for public safety improvements to certain public housing complexes; provided further, that \$500,000 shall be granted to the town of Dedham for construction of a public access road for the proposed senior complex in Dedham; provided further, that \$450,000 shall be granted to the town of Gardner; provided further, that not less than \$750,000 shall be expended to the town of Ludlow for an economic and community development grant; provided further, that \$100,000 shall be granted to the towns of Otis and Becket for phase 2 emergency repairs of the Green Water Pond Dam; and provided further, that \$380,000 shall be granted to the town

of Winthrop for child safety grants; provided further, that \$50,000 shall be granted to the town of Gardner \$10,655,000

BOARD OF HIGHER EDUCATION.

7114-0103 For the Second Degree program at Salem state college; including the costs of replacing the Nursing Laboratory \$1,000,000

EXECUTIVE OFFICE OF PUBLIC SAFETY AND HOMELAND SECURITY.

Department of Fire Services.

8000-0050 For a one-time firefighting equipment grant program; provided, that the fire departments of every city, town, fire district and authority of the commonwealth shall be eligible to receive the one-time grants authorized herein; provided, that said grants shall be solely for one-time equipment purchases; provided further, that the one-time grants shall be distributed to municipalities according to a formula giving equal weight to each municipalities population; provided further, that a municipality shall not receive less than \$5,000; provided further, that said one-time grant program shall be administer by the executive office of public safety who shall no later than October 1, 2004 submit to the joint committee on public safety and the house and senate committees on ways and means the formula and regulations established by said office for the distribution of said grants; provided further, that eligible fire safety equipment under this program shall include, but is not limited to, turnout gear, hand-held power lights, communication devices, telephones, personal alert safety systems, so-called, air packs, tanks, compressors, thermal imaging devices and computerized personnel accountability systems, but shall exclude firefighter apparatus and vehicles; provided further, that no grant funds awarded herein shall be used to fund any personnel costs; provided further, that no grant shall be awarded to the department of fire services; provided further, that not later than February 1, 2005, the executive office of public safety shall submit a report to the house and senate committees on ways and means that shall include, but not be limited to, the following; the amount of each grant, the recipient of the grant, the purpose of the grant, the equipment purchased with the grant; and provided further, that each municipality will provide the executive office of public safety with a comprehensive list of the best-practices that have been instituted as a result of these grants

EXECUTIVE OFFICE OF PUBLIC SAFETY.

8000-0221 For costs associated with increased policing of gang activity; provided, that for fiscal years 2005 and 2006, not less than \$1,740,000 shall be expended for anti-gang policing activities in the cities of Boston and Springfield, including the following: (i) \$250,000 in each of said fiscal years for the Morton Street-Talbot Avenue corridor in the city of Boston, (ii) \$50,000 in each of said fiscal years for enhanced policing activities in the Mattapan Square section of the city of Boston, (iii) \$450,000 for increased police patrols in the city of Springfield and (iv) \$120,000 in each of said fiscal years for	
police patrols in Dudley	740,000
Department of State Police.	
8100-0032 For a feasibility and cost impact study of building a new state police crime lab; provided, that said study shall also include design specifications that are in accordance with national crime lab accreditation standards	000,000

ture located at the New Braintree Regional Dispatch Center; provided, that funding from this item will be utilized for the purchase of necessary communications equipment for municipal police and fire departments within the dispatch area\$1,200,000

Massachusetts Emergency Management Agency.

8800-0099 For the purposes of leveraging a federal matching grant for

SECTION 3. Notwithstanding any general or special law to the contrary, the state comptroller shall transfer on June 30, 2004, \$75,000,000 from the Stabilization Fund to the Division of Local Services of the Department of Revenue to be distributed according to the following schedule; provided, that no funds authorized herein shall be distributed to any municipality prior to the appropriate local official or officials signing a declaration provided by the Division of Local Services acknowledging that said one-time municipal aid distributed herein shall be a one-time grant and shall not be recurring.

	One-Time,
	Non- Recurring
MUNICIPALITY	Municipal Aid
ABINGTON	169,563
ACTON	131,999
ACUSHNET	139,546

	One-Time,
	Non- Recurring
MUNICIPALITY	Municipal Aid
ADAMS	192,354
AGAWAM	363,247
ALFORD	1,094
AMESBURY	168,936
AMHERST	817,054
ANDOVER	153,377
ARLINGTON	305,831
ASHBURNHAM	68,685
ASHBY	35,036
ASHFIELD	20,851
ASHLAND	122,346
ATHOL	266,098
ATTLEBORO	627,899
AUBURN	174,369
AVON	31,553
AYER	61,200
BARNSTABLE	218,500
BARRE	86,773
BECKET	10,371
BEDFORD	61,385
BELCHERTOWN	198,749
BELLINGHAM	128,748
BELMONT	132,654
BERKLEY	66,145
BERLIN	15,142
BERNARDSTON	31,359
BEVERLY	339,985
BILLERICA	328,399
BLACKSTONE	92,329
BLANDFORD	14,369
BOLTON	21,840
BOSTON	4,635,129
BOURNE	133,603
BOXBOROUGH	28,428
BOXFORD	40,742
BOYLSTON	32,335
BRAINTREE	246,125
BREWSTER	44,628

	One-Time,
	Non- Recurring
MUNICIPALITY	Municipal Aid
BRIDGEWATER	340,398
BRIMFIELD	41,090
BROCKTON	1,767,047
BROOKFIELD	56,293
BROOKLINE	293,731
BUCKLAND	29,665
BURLINGTON	122,441
CAMBRIDGE	494,860
CANTON	133,797
CARLISLE	18,925
CARVER	152,044
CHARLEMONT	20,128
CHARLTON	130,567
CHATHAM	11,128
CHELMSFORD	258,131
CHELSEA	779,138
CHESHIRE	58,814
CHESTER	20,343
CHESTERFIELD	14,832
CHICOPEE	1,168,673
CHILMARK	308
CLARKSBURG	34,718
CLINTON	226,486
COHASSET	29,132
COLRAIN	29,081
CONCORD	60,044
CONWAY	19,176
CUMMINGTON	11,278
DALTON	105,928
DANVERS	183,218
DARTMOUTH	270,359
DEDHAM	171,536
DEERFIELD	44,647
DENNIS	62,418
DIGHTON	70,885
DOUGLAS	76,458
DOVER	16,688
DRACUT	368,890

	One-Time,
	Non- Recurring
MUNICIPALITY	Municipal Aid
DUDLEY	161,762
DUNSTABLE	20,238
DUXBURY	69,565
EAST BRIDGEWATER	152,886
EAST BROOKFIELD	28,690
EAST LONGMEADOW	142,593
EASTHAM	16,753
EASTHAMPTON	278,116
EASTON	222,405
EDGARTOWN	3,651
EGREMONT	6,403
ERVING	3,103
ESSEX	17,401
EVERETT	384,006
FAIRHAVEN	203,075
FALL RIVER	2,345,228
FALMOUTH	143,543
FITCHBURG	897,735
FLORIDA	3,830
FOXBOROUGH	138,846
FRAMINGHAM	605,035
FRANKLIN	242,342
FREETOWN	92,166
GARDNER	483,181
AQUINNAH	249
GEORGETOWN	58,874
GILL	19,371
GLOUCESTER	214,727
GOSHEN	9,955
GOSNOLD	49
GRAFTON	168,771
GRANBY	89,230
GRANVILLE	18,413
GREAT BARRINGTON	74,483
GREENFIELD	333,312
GROTON	69,795
GROVELAND	56,858

	One-Time, Non- Recurring
MUNICIPALITY	Municipal Aid
HADLEY	38,711
HALIFAX	90,273
HAMILTON	58,400
HAMPDEN	67,236
HANCOCK	4,355
HANOVER	95,779
HANSON	99,494
HARDWICK	43,699
HARVARD	36,542
HARWICH	42,256
HATFIELD	28,700
HAVERHILL	811,390
HAWLEY	4,111
HEATH	10,874
HINGHAM	100,706
HINSDALE	24,455
HOLBROOK	132,628
HOLDEN	173,202
HOLLAND	28,343
HOLLISTON	113,745
HOLYOKE	935,782
HOPEDALE	68,837
HOPKINTON	72,363
HUBBARDSTON	49,568
HUDSON	172,931
HULL	85,206
HUNTINGTON	34,984
IPSWICH	84,658
KINGSTON	101,395
LAKEVILLE	90,602
LANCASTER	88,765
LANESBOROUGH	30,862
LAWRENCE	2,254,683
LEE	55,213
LEICESTER	175,243
LENOX.	32,698
LEOMINSTER	635,173
LEVERETT	13,358

	One-Time,
MUNICIPALITY	Non- Recurring Municipal Aid
	•
LEXINGTON	132,884
LEYDEN	10,098
LINCOLN	37,931
LITTLETON	54,488
LONGMEADOW	145,579
LOWELL	2,335,793
LUDLOW	347,571
LUNENBURG	94,827
LYNN	1,687,200
LYNNFIELD	67,905
MALDEN	796,301
MANCHESTER	16,016
MANSFIELD	200,533
MARBLEHEAD	95,588
MARION	24,567
MARLBOROUGH	329,414
MARSHFIELD	192,218
MASHPEE	54,194
MATTAPOISETT	40,804
MAYNARD	102,603
MEDFIELD	77,760
MEDFORD	552,789
MEDWAY	112,669
MELROSE	262,835
MENDON	41,818
MERRIMAC	70,942
METHUEN	608,235
MIDDLEBOROUGH	248,174
MIDDLEFIELD	6,647
MIDDLETON	51,963
MILFORD	` 296,207
MILLBURY	179,797
MILLIS	74,618
MILLVILLE	38,406
MILTON	187,807
MONROE	395
MONSON	136,987
MONTAGUE	135,941

	One-Time, Non- Recurring
MUNICIPALITY	Municipal Aid
MONTEREY	3,137
MONTGOMERY	6,711
MOUNT WASHINGTON	282
NAHANT	20,641
NANTUCKET	7,788
NATICK	200,185
NEEDHAM	142,917
NEW ASHFORD	2,360
NEW BEDFORD	2,356,001
NEW BRAINTREE	12,263
NEW MARLBOROUGH	8,257
NEW SALEM	13,155
NEWBURY	43,376
NEWBURYPORT	111,899
NEWTON	389,592
NORFOLK	98,044
NORTH ADAMS	397,493
NORTH ANDOVER	201,467
NORTH ATTLEBOROUGH	274,970
NORTH BROOKFIELD	79,271
NORTH READING	91,162
NORTHAMPTON	381,576
NORTHBOROUGH	108,053
NORTHBRIDGE	177,019
NORTHFIELD	28,020
NORTON	203,275
NORWELL	53,371
NORWOOD	235,610
OAK BLUFFS	7,432
OAKHAM	20,676
ORANGE	160,826
ORLEANS	15,176
OTIS	5,429
OXFORD	203,473
PALMER	224,377
PAXTON	50,769
PEABODY	400,441
PELHAM	16,912

MUNICIPALITY	One-Time, Non- Recurring Municipal Aid
PEMBROKE	161,018
PEPPERELL	126,158
PERU	12,712
PETERSHAM	11,564
PHILLIPSTON	21,148
PITTSFIELD	819,401
PLAINFIELD	6,090
PLAINVILLE	79,771
PLYMOUTH	422,511
PLYMPTON	22,468
PRINCETON	25,504
PROVINCETOWN	7,376
QUINCY	884,069
RANDOLPH	380,228
RAYNHAM	103,494
READING	183,430
REHOBOTH	94,548
REVERE	663,352
RICHMOND	8,739
ROCHESTER	42,461
ROCKLAND	220,680
ROCKPORT	39,207
ROWE	257
ROWLEY	40,496
ROYALSTON	17,942
RUSSELL	27,112
RUTLAND	85,867
SALEM SALISBURY	450,485 70,231
	· · · · · · · · · · · · · · · · · · ·
SANDISFIELD SANDWICH	4,453
SAUGUS	135,640 210,846
SAVOY	10,707
SCITUATE	109,291
SEEKONK	126,303
SHARON	128,627
SHEFFIELD	25,222
SHELBURNE	25,255
	25,255

MUNICIDALITY	One-Time, Non- Recurring
MUNICIPALITY	Municipal Aid
SHERBORN	16,778
SHIRLEY	87,967
SHREWSBURY	269,859
SHUTESBURY	20,243
SOMERSET	176,307
SOMERVILLE	950,087
SOUTH HADLEY	269,834
SOUTHAMPTON	71,826
SOUTHBOROUGH	40,962
SOUTHBRIDGE	402,853
SOUTHWICK	110,724
SPENCER	182,434
SPRINGFIELD	4,185,177
STERLING	65,621
STOCKBRIDGE	10,320
STONEHAM	186,026
STOUGHTON	280,229
STOW	38,011
STURBRIDGE	75,436
SUDBURY	81,199
SUNDERLAND	55,948
SUTTON	81,565
SWAMPSCOTT	94,322
SWANSEA	176,030
TAUNTON	863,743
TEMPLETON	114,440
TEWKSBURY	243,561
TISBURY	7,549
TOLLAND	1,698
TOPSFIELD	38,428
TOWNSEND	118,555
TRURO	3,070
TYNGSBOROUGH	107,144
TYRINGHAM	1,131
UPTON	41,394
UXBRIDGE	122,044
WAKEFIELD	190,399
WALES	26,289

	One-Time,
	Non- Recurring
MUNICIPALITY	Municipal Aid
WALPOLE	180,961
WALTHAM	413,391
WARE	181,888
WAREHAM	189,543
WARREN	97,306
WARWICK	10,170
WASHINGTON	6,553
WATERTOWN	237,990
WAYLAND	62,022
WEBSTER	267,722
WELLESLEY	87,088
WELLFLEET	4,761
WENDELL	17,300
WENHAM	27,706
WEST BOYLSTON	90,370
WEST BRIDGEWATER	50,693
WEST BROOKFIELD	52,574
WEST NEWBURY	26,685
WEST SPRINGFIELD	422,729
WEST STOCKBRIDGE	7,332
WEST TISBURY	3,242
WESTBOROUGH	106,195
WESTFIELD	676,228
WESTFORD	134,926
WESTHAMPTON	15,919
WESTMINSTER	67,987
WESTON	30,244
WESTPORT	107,266
WESTWOOD	62,660
WEYMOUTH	600,955
WHATELY	16,017
WHITMAN	197,293
WILBRAHAM	140,591
WILLIAMSBURG	29,508
WILLIAMSTOWN	96,629
WILMINGTON	159,709
WINCHENDON	230,527
WINCHESTER	95,808

MUNICIPALITY	One-Time, Non- Recurring Municipal Aid
	•
WINDSOR	10,121
WINTHROP	220,302
WOBURN	276,918
WORCESTER	3,612,186
WORTHINGTON	14,115
WRENTHAM	76,330
YARMOUTH	149,833
State Total	75,000,000

SECTION 4. Chapter 10 of the General Laws is hereby amended by striking out section 61, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 61. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Motor Vehicle Inspection Trust Fund. There shall be credited to said fund all monies received or collected, including interest earned thereon, from that portion of the fee owed to the commonwealth pursuant to the seventh paragraph of section 7A of chapter 90 for a motor vehicle inspection. Amounts so credited shall be received and held in trust by the commonwealth and shall be expended, without further appropriation, solely for the purposes of administration and implementation of the motor vehicle inspection program established pursuant to said section 7A and sections 142J and 142M of chapter 111, including the direct personnel costs associated with said inspection program. The fund may incur a negative balance in anticipation of revenues to be received; provided, however, that the fund shall be in balance by June 30, 2009, and shall be in balance at the close of each fiscal year thereafter. All revenues credited to and all expenditures made from said fund shall be reported, by subsidiary, on the Massachusetts management accounting and reporting system and all personnel compensated from said fund shall be recorded on the human resources classification management system, so-called.

SECTION 5. Chapter 15A of the General Laws is hereby amended by striking out section 15E, as so appearing, and inserting in place thereof the following section:-

Section 15E. It is hereby declared to be the policy of the commonwealth to encourage private fundraising by the state university and public colleges and to assist such fundraising through a matching program to be known as the public higher education endowment incentive program which shall not result in direct or indirect reductions in the commonwealth's appropriations to such institutions for operations or for capital support.

Subject to appropriation, the commonwealth shall contribute funds to each institution's recognized foundation in an amount necessary to match private contributions in the previous fiscal year to the institutions or a foundation's endowment based on the following matching formula. Subject to appropriation, the commonwealth's contribution shall be equal to \$1 for every \$2, or \$1 for such greater number of dollars as may be established by

the board of higher education, privately contributed to the university's board of trustees or a foundation, provided that the maximum total contributions from the commonwealth shall be \$50,000,000; \$1 for every \$2, or \$1 dollar for such greater number of dollars as may be established by the board of higher education, privately contributed to each state college's board of trustees or foundation, provided that the maximum total contributions from the commonwealth shall be \$5,000,000 for each institution; \$1 for every \$2, or \$1 for such greater number of dollars as may be established by the board of higher education, privately contributed to each community college's board of trustees or foundation, provided that the maximum total contributions from the commonwealth shall be \$1,000,000 for each institution.

Private contributions to the endowment for purposes of this program shall be limited to donations to an endowment for academic purposes including, but not limited to, scholarships, endowed chairs and contributions in support of academic facility construction and maintenance approved by the appropriate board of trustees.

Said program shall terminate for the university when its foundation has received \$50,000,000 in appropriated matching funds according to the formula prescribed above, or on July 1, 2010, whichever is sooner. Said program shall terminate for any state college when its foundation has received \$5,000,000 in appropriated matching funds according to the formula prescribed above or on July 1, 2010, whichever is sooner. Said program shall terminate for any community college when its foundation has received \$1,000,000 in appropriated matching funds according to the formula prescribed above or on July 1, 2010, whichever is sooner.

For each institution, the program shall be administered by its foundation, as defined in section 37, in accordance with procedures established by the board of trustees and filed with the house and senate committees on ways and means no later than December 15, 2004. Such procedures shall include a method for each board of trustees to certify to the house and senate committees on ways and means the actual amount received in private contributions to the endowment in each fiscal year. Such procedures shall also include safeguards for protecting the anonymity of donors who indicate their desire not to be identified.

SECTION 6. Section 3B of chapter 23A of the General Laws, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words "Corporation for Business, Work and Learning" and inserting in place thereof the following words:- Commonwealth Corporation.

SECTION 7. Section 56 of said chapter 23A, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words "Corporation for Business, Work and Learning" and inserting in place thereof the following words:- Commonwealth Corporation.

SECTION 8. Section 29 of chapter 23G of the General Laws, as so appearing, is hereby amended by striking out, in line 7, the figure "\$250,000,000" and inserting in place thereof the following figure:-\$300,000,000

SECTION 9. Section 2RR of chapter 29 of the General Laws, as so appearing, is hereby amended by striking out, in lines 42 and 43, the words "corporation for business, work and learning" and inserting in place thereof the following words:- Commonwealth

Corporation.

SECTION 10. Said chapter 29 is hereby further amended by inserting after section 2MMM the following section:-

Section 2NNN. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Roche Community Rink Fund. There shall be credited to such fund revenues generated from fees, fines, leases, gifts, grants, interest earned on any monies within this fund or any other revenue source at the Roche Community Rink, formerly the Bryant Rink, in the West Roxbury section of the city of Boston. Revenues credited to the fund shall be used, not subject to appropriation, for operational costs, capital improvements, equipment and maintenance of said rink, including the costs of personnel, but no expenditure shall be made from the fund that shall cause the fund to be in deficit at the close of a fiscal year.

SECTION 11. Section 3 of chapter 29D of the General Laws, as so appearing is hereby amended by striking out, in lines 24, 35, lines 48 and 49, line 51 and in line 54, the words "Tobacco Settlement" and inserting in place thereof, in each instance, the following words:- General.

NO SECTION 12.

NO SECTION 13.

SECTION 14. Said section 3 of said chapter 29D, as so appearing, is hereby further amended by striking out paragraph (f) and inserting in place thereof the following paragraph:-

(f) Not later than October 31 of each year, the comptroller shall certify to the trustees, the fiscal affairs division, the house and senate committees on ways and means, the joint committee on health care and the advisory committee on health care and tobacco control the balance in the Health Care Security Trust Fund and the total return generated by the principal of said trust fund during the prior 12 month period ending on June 30. On or before July 1 of each year, for fiscal years 2002, 2003 and 2004 the comptroller shall transfer 50 per cent of said return, as so certified by the comptroller in the previous October, from the Health Care Security Trust to the Tobacco Settlement Fund, which shall be available for expenditure. For fiscal years 2005 and thereafter, the comptroller shall transfer 30 per cent of said return, as so certified by the comptroller in the previous October, from the Health Care Security Trust to the General Fund, which shall be available for expenditure.

SECTION 15. Section 4 of said chapter 29D, as so appearing, is hereby amended by striking out, in line 22, the words "Tobacco Settlement" and inserting in place thereof the following word:- General.

SECTION 16. Said section 4 of said chapter 29D, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) Said board of trustees shall consist of seven trustees, five of whom shall be appointed by the governor, 1 of whom shall be appointed by the state treasurer and 1 of whom shall be appointed by the attorney general. The trustees shall be experienced in the field of

investment, financial management, law and public management. The initial terms of 1 of the trustees appointed by the governor, and the trustees appointed by the state treasurer and the attorney general shall be for 5 years, the initial terms for 2 of the trustees appointed by the governor shall be 6 years and the initial terms of the remaining appointees of the governor shall be for 7 years. All subsequent appointments, including reappointments, shall be for terms of 5 years. Any vacancy that may occur before the expiration of the term of a trustee, shall be filled by an appointment made jointly by the governor, the state treasurer and the attorney general. Trustees shall be eligible for reappointment.

SECTION 17. Said section 4 of said chapter 29D, as so appearing, is hereby further amended by striking out, in line 82, the words "rate or".

SECTION 18. Section 5 of said chapter 29D, as so appearing, is hereby amended by striking out subsection (h) and inserting in place thereof the following subsection:-

(h) Beginning on the first Wednesday of October, 2003, and every 3 years thereafter, said commission shall conduct a review to evaluate: (1) the present and future health needs of the citizens of the commonwealth; (2) the financial stability of the trust in light of the return on investment and any adjustment factors or other factors affecting the future stream of payments from the tobacco settlement, based upon recommendations by the board of trustees of said trust; (3) whether, and to what extent, the present health needs of the commonwealth, when balanced against future needs, warrant recommending a change in the allocation of monies between the trust and the General Fund; and (4) the merits of all existing programs funded by transfers from the Health Care Security Trust. After such review, the commission shall prepare a report with its recommendations and shall file said report with the office of the governor, the fiscal affairs division, the house and senate committees on ways and means, the joint committee on health care and with the clerk of the house of representatives and the clerk of the senate.

SECTION 19. Section 1 of chapter 32 of the General Laws is hereby amended by inserting after the word "Authority", in line 191, the following words:-, Massachusetts School Building Authority.

SECTION 19A. Subdivision (5) of section 15 of said chapter 32, inserted by section 79 of chapter 14 of the acts of 2004, is amended by striking out the words "chapter 258A" and inserting in place thereof the words:- Chapter 268A.

SECTION 20. Section 91 of said chapter 32, as so appearing, is hereby amended by inserting after the word "terminated", in lines 88 and 89, the following words:- or the earnings from 960 hours, whichever is greater.

SECTION 21. Section 2 of chapter 32A of the General Laws, as so appearing, is hereby amended by inserting after the word "Authority", in line 10, the following words:-, Massachusetts School Building Authority.

SECTION 22. Paragraph (c) of said section 91 of said chapter 32, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of compensation for the position

in which he is to be employed the number of days or hours which he has been employed in any calendar year and the amount of earnings therefrom and, if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount.

SECTION 23. Section 13 of chapter 58 of the General Laws, as so appearing, is hereby amended by inserting after the word "Reservation", in line 13, the following words:-, Blue Hills Reservation, and certain properties in the town of Stoneham.

SECTION 24. Section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by striking out, in lines 562, the words "in such wartime service and".

SECTION 25. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 586, 624, 664, 701, and 747, the word "wartime".

SECTION 26. The seventh paragraph of section 57C of chapter 59 of the General Laws, as appearing in section 54 of chapter 46 of the acts of 2003, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- A real estate tax bill sent out for fiscal year 2006 or any subsequent period pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue more than 90 days.

SECTION 27. Subsection (i) of section 6I of chapter 62 of the General Laws, inserted by section 8 of chapter 290 of the acts of 2004, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan.

SECTION 28. Subsection (i) of section 31H of chapter 63 of the General Laws, inserted by section 12 of said chapter 290, is hereby amended by striking the first sentence and inserting in place thereof the following sentence:- The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan.

SECTION 29. Chapter 69 of the General Laws is hereby amended by inserting after section 1N, inserted by chapter 194 of the acts of 2004, the following section:-

Section 10. The board shall establish guidelines relative to dissection in science classes in public schools. Such guidelines shall require all public schools that offer dissection as a learning activity to permit those students who choose not to participate in dissection to be allowed to demonstrate competency through an alternative method. Alternative methods shall not include a pupil being required to watch another pupil perform dissection. Said alternative methods shall require a level of time and effort by the student

that is comparable to, but not greater than, the level of time and effort required of students participating in dissection. The provisions of this section shall not excuse a student who does not wish to participate in dissection from taking and passing any examinations that are required of those students who do participate in dissection. A teacher shall not discriminate against a student for not participating in dissection.

SECTION 30. Chapter 71 of the General Laws is hereby amended by striking out section 8A, as amended by section 130 of chapter 149 of the acts of 2004, and inserting in place thereof the following section:-

Section 8A. A municipality wherein a person resides who is admitted to a day school in another municipality under section 7, shall, through its school committee, when necessary, provide for the transportation of such person, and shall, subject to appropriation, be entitled to state reimbursement to the full extent of the amount so expended; provided, that such a municipality wherein a person is placed by the department of social services or the trustees of the Massachusetts training schools who is admitted as aforesaid to a day school in another municipality shall similarly provide for the transportation of such pupil to such school and shall, subject to appropriation, be entitled to state reimbursement to the full extent of the amounts so expended; provided further, that no transportation shall be provided for, or reimbursement made on account of, any pupil who resides less than one and 1½ miles from the school which he attends. A municipality shall not be required under the provisions of this section to provide for the transportation of a person who has completed the twelfth grade of school or the equivalent thereto.

SECTION 31. Section 89 of chapter 71 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking subsection (nn) and inserting in place thereof the following:-

(nn) Commonwealth charter schools shall be funded as follows: The commonwealth shall pay a tuition amount to the charter school, which shall be the sum of the tuition amounts calculated separately for each district sending students to the charter school. Tuition amounts for each sending district shall be calculated by the department of education using the formula set forth herein, to reflect, as much as practicable, the actual per pupil spending amount that would be expended in the district if the students attended the district schools. The tuition amount shall be calculated separately for each district sending students to a charter school, and for each charter school to which a district sends students. Each district's per pupil tuition amount for each charter school to which it sends students shall include a per pupil foundation budget component, adjusted to reflect the actual net school spending in the sending district.

In calculating the per pupil foundation budget component, the department shall calculate a foundation budget for the students from each sending district attending the charter school in the previous fiscal year, pursuant to the provisions of section 2 of chapter 70; provided, that the department shall not include in said calculation the assumed tuitioned-out special education enrollment, nor any amounts generated by said assumed enrollment, as defined by said section 2. The per pupil foundation budget component shall be the district's foundation budget for the charter school, as so calculated, divided by the number of students

attending the charter school from the sending district in the previous fiscal year. The per pupil foundation budget component shall be calculated separately for each charter school to which a district sends students. The foundation budget for a charter school shall be the sum of the foundation budgets for the charter school for each district sending students to the charter school.

In adjusting the per pupil foundation budget component, the department shall calculate for each sending district an above foundation spending percentage, which shall be the percentage by which the district's actual net school spending exceeds the foundation budget for the district, as calculated pursuant to the provisions of chapter 70. The department shall further calculate the percentage of actual net school spending reported by the sending district associated with tuition costs for tuitioned-out special education students, including education that occurs in educational collaboratives, and with spending on health care costs for retired employees, for any district for which such costs are included in net school spending, and shall reduce the district's above foundation spending percentage proportionately. The per pupil foundation budget component for each charter school to which the sending district sends students shall be increased by said adjusted above foundation spending percentage.

The total tuition amount owed by a sending district to a charter school shall be the per pupil tuition amount as defined above, multiplied by the total number of students attending the charter school from that district in the current fiscal year. The sending district's total charter school tuition amount for purposes of the following paragraphs shall be the sum of the district's tuition amounts for each charter school to which the district sends students, calculated using the provisions of this section. The receiving charter school's total charter school tuition amount shall be the sum of the tuition amounts calculated for the charter school for each district sending students to the charter school.

The state treasurer is hereby authorized and directed to deduct a district's total charter school tuition amount, as calculated herein, from the total state school aid, as defined in section 2 of said chapter 70, of the district in which the student resides prior to the distribution of said aid. In the case of a child residing in a municipality which belongs to a regional school district, the charter school tuition amount shall be deducted from said chapter 70 education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter 70 by accepting section 14 of said chapter 70, the commonwealth shall assess said district for said excess amount.

The state treasurer is hereby further authorized and directed to disburse to the charter school an amount equal to the charter school's total charter school tuition amount as defined above.

The department shall, subject to appropriation, provide funding to charter schools for a portion of the per pupil capital needs component included in the charter tuition amount. The department shall calculate a statewide per pupil average expenditure from state and local

sources for capital costs solely associated with payments, including interest and principle payments, for the construction, renovation, purchase, acquisition, or improvement of school buildings and land, shall multiply said amount by the number of students the district sends to charter schools, and shall reimburse these sending school districts for said costs. In making these calculations, the department shall use data from the most recent year for which actual district expenditures have been reported by districts to the department.

The board of education shall adopt regulations for implementing the provisions of this subsection, including, but not limited to, regulations for determining the actual per pupil net school spending amounts in districts, and for calculating charter school tuition amounts. In adopting said regulations, the department shall consult with the executive office for administration and finance.

SECTION 32. Subsection (a) of section 5A of chapter 71B of the General Laws, as so appearing, is hereby amended by inserting after the fourth sentence the following sentence:- Charter schools shall receive reimbursements under this section in the same manner as districts.

SECTION 33. Section 5 of chapter 76 of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- No school committee is required to enroll a person who does not actually reside in the town unless said enrollment is authorized by law or by the school committee. Any person who violates or assists in the violation of this provision may be required to remit full restitution to the town of the improperly-attended public schools.

SECTION 34. Chapter 76 of the General Laws, as so appearing, is hereby amended by striking out section 6 and inserting in place thereof the following:-

Section 6. If a child resides temporarily in a town other than the legal residence of his parent or guardian for the special purpose of their attending school, the child may attend school with the authorization of the school committee of said town, and the said town may recover tuition from the parent or guardian, unless under section twelve of chapter seventy-six, such tuition is payable by a town. Tuition payable by the parent or guardian shall, for the period of attendance, be computed at the regular rate established by the school committee for non-resident pupils, but in no case exceeding the average expense per pupil in such school for said period. The school committee of the town in which a child is temporarily residing for the special purpose of their attending school may waive all or part of the tuition charge for such child.

SECTION 35. Section 37 of chapter 79 of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words "as of which they are assessed" and inserting in place thereof the following words:- on which the right to damages under this chapter vested.

SECTION 36. Said section 37 of said chapter 79, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Where the period for which prejudgment interest is owed is not more than one year, such interest shall be calculated at an annual rate equal to the weekly average one-year con-

stant maturity treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date on which the right to damages under this chapter vested. Where the period for which prejudgment interest is owed is more than one year, such interest for the first year shall be calculated in accordance with the preceding sentence, and such interest for each additional year shall be calculated on the principal amount due at an annual rate equal to the weekly average one-year constant maturity treasury yield, as published by the board of governors of the Federal Reserve System, for the calendar week preceding the beginning of each additional year. Post-judgment interest shall be calculated in the same manner as pre-judgment interest, but using, in the first year after judgment, the rate for the calendar week preceding the date on which judgment entered, and in any additional year, the rate for the calendar week preceding the beginning of such additional year.

SECTION 37. Said section 37 of said chapter 79, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The secretary of administration and finance shall maintain a publicly accessible internet website that includes a list of the rates described herein and a calculator for determining the interest due hereunder.

SECTION 38. The second paragraph of section 10A of chapter 91 of the General Laws, inserted by section 33 of chapter 291 of the acts of 2004, is hereby amended by inserting after the words "overseeing mooring" the following word:- permit.

SECTION 39. Section 142M of chapter 111 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 181, the words "at least two separate" and inserting the following words:-one or more.

SECTION 40. Section 16D of chapter 118E of the General Laws, as amended by section 322 of chapter 26 of the acts of 2003, is hereby amended by striking out subsections (2) and (3) and inserting in place thereof the following 2 subsections:-

- (2) A person who is not a citizen of the United States but who is either a qualified alien within the meaning of section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or is otherwise permanently residing in the Untied States under color of law may receive different benefits which shall not be less than the same benefits provided on July 1, 2004 to the eligibility group described in section 265 of chapter 149 of the acts of 2004, unless such person: (i) is residing in a nursing facility, as defined by 42 U.S.C. section 1396, as of June 30, 1997; (ii) was receiving services or benefits pursuant to this chapter as of June 30, 1997; (iii) had an application for long-term care services pending on July 1, 1997; or (iv) is eligible for federally reimbursed services or benefits; provided, however, that services or benefits other than emergency services shall not be provided to undocumented aliens unless required by federal law.
- (3) Benefits for aliens under this section shall not be provided to persons age 19 through age 64 unless such aliens are disabled; but benefits shall not be terminated for persons described in clauses (i), (ii), (iii) and (iv) of subsection (2).

SECTION 41. Section 2 of chapter 128C of the General Laws, as amended by sec-

tion 174 of chapter 149 of the acts of 2004, is hereby further amended by striking out, in line 156, the first time it appears the word "harness" and inserting in place thereof the word:running.

SECTION 42. Subsection (1) of section 1 of chapter 152 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

For purposes of sections 31, 32 and 35C, the earnings of the employee shall be determined as of the date of his last full time employment, irrespective of whether that employee is subject to this chapter. Notwithstanding the prior voluntary retirement of the employee, such earnings shall be considered wages upon which the spouse is dependent at the time of the employee's death. This paragraph shall be deemed to be procedural in character.

NO SECTION 43.

SECTION 44. Section 5 of chapter 200A of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Any intangible property held by the executive, legislative, or judicial branch of the United States Government, or a state, or a county or municipal subdivision of the state, or any of their authorities, agencies, instrumentalities, administrations, services, paying agents or other organizations, and remaining unclaimed for more than one year after it became payable or distributable is presumed abandoned.

SECTION 45. Said chapter 200A is hereby further amended by inserting after section 6D, inserted by section 47 of chapter 4 of the acts of 2003, the following section:-

Section 6E. (a) Mineral proceeds includes all obligations to pay resulting from the production and sale of minerals, including net revenue interests, royalties, overriding royalties, production payments, and joint operating agreements.

(b) All mineral proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three years after they become payable or distributable and the owners underlying right to receive those mineral proceeds are presumed abandoned.

At the time any owners underlying right to receive mineral proceeds is presumed abandoned under this section, any mineral proceeds then held for or owing to the owner as a result of the underlying right and any mineral proceeds accruing after that time as a result of the underlying right and not previously presumed abandoned are presumed abandoned.

SECTION 46. The second paragraph of section 10 of chapter 218 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the line reading "district court of central Middlesex".

SECTION 47. The third paragraph of said section 10 of said chapter 218, as so appearing, is hereby further amended by adding the line "district court of central Middlesex".

SECTION 48. The fourth paragraph of said section 10 of said chapter 218, as amended by section 460 of chapter 26 of the acts of 2003, is hereby further amended by inserting before the line reading "district court of Chelsea", in line 126, the following line:district court of Somerville.

SECTION 49. Section 6I of chapter 231 of the General Laws, as so appearing, is

hereby amended by striking out, in lines 2 to 6, inclusive, the words "rate coupon issue yield equivalent, as determined by the United States secretary of the treasury, of the average accepted auction price for the last auction of fifty-two-week United States treasury bills settled immediately prior to the" and inserting in place thereof the following words:- Weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.

SECTION 50. Chapter 234A of the General Laws is hereby amended by striking out section 13, as so appearing, and inserting in place thereof the following section:-

Section 13. On or before the first day of September of each year, the office of the jury commissioner shall randomly select prospective jurors for each city and town from the corresponding numbered resident list or numbered resident file. Each such numbered resident, so identified and selected, shall be a prospective juror of the city or town. The random procedure and method used for the selection of prospective jurors and the method of generation of random numbers shall be specified in the regulations of the jury commissioner. Technical data on the integrity of the random number generation method used under this section shall be compiled by the office of jury commissioner. Such data shall be available to members of the public upon request.

SECTION 51. Section 2 of chapter 262 of the General Laws, as most recently amended by section 21 of chapter 252 of the acts of 2004, is hereby further amended by striking the figure "\$150" in lines 7 and 12, and inserting in place thereof the figure "\$180"; by striking the figure "\$25" in line 8, and inserting in place thereof the figure "\$30"; by striking the figure "\$50" in line 14, and inserting in place thereof the figure "\$60"; and by striking the figure "\$100" in line 16, and inserting in place thereof the figure "\$180".

SECTION 52. Section 49 of chapter 271 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

(f) The provisions of this section shall apply to tax preparers who make loans to clients in anticipation of refunds and earned income tax credits.

SECTION 53. Pursuant to subsection (d) of section 9 of chapter 372 of the acts of 1984, the Massachusetts Water Resources Authority, notwithstanding the provisions of any other general or special law, ordinance or regulation to the contrary, may convey to the commonwealth, acting by and through its division of capital asset management and maintenance, or to the owner of that certain parcel of land shown as Lot 1 on a plan entitled "Plan of Land in East Boston, Massachusetts, Suffolk County", dated June 12, 2002, prepared by Bryant Associates, or to their respective successors in interest, one or more permanent easements for vehicular and pedestrian access over a certain parcel or parcels of land owned by the authority in the city of Boston. The Massachusetts water resources authority and the commissioner of the division of capital asset management and maintenance are further authorized to grant to said owner of said Lot 1, or to its successors in interest, a non-exclusive easement to enter upon certain parcels of land located adjacent to said Lot 1, under the care and control of said authority or the commonwealth, for the purpose of maintaining said parcels of land, on such terms and conditions as said authority or said commissioner, as the case may be, may determine. The boundaries of all of the aforesaid

easement areas shall be determined by the commissioner of the division of capital asset management and maintenance in consultation with the Massachusetts Water Resources Authority.

SECTION 54. Section 1 of chapter 758 of the acts of 1985 is hereby amended by adding the following paragraph:-

Notwithstanding the provisions of section 3A of chapter 121B of the General Laws and notwithstanding the existence of a local housing authority or redevelopment authority in the city of North Adams or the towns of Adams, Cheshire, Florida, Clarksburg, Hancock, New Ashford, Savoy and Williamstown, the corporation shall be deemed to be and within said city and towns, shall have all rights, powers, and obligation of a housing authority organized under chapter 121B except with respect to any project or activity heretofore undertaken on a particular site or location by a local housing or redevelopment authority organized in said city or towns. Said city and towns shall have the same rights, powers, and obligation with respect to projects and activities of the corporation in such city and towns as are provided in said chapter 121B for a city or town in which a housing authority or redevelopment authority has been created.

SECTION 55. Section 2 of said chapter 758 is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The board of directors shall annually choose from its members a chairman and vice-chairman. The board shall consist of 3 members to be appointed by the governor for a term of 3 years; provided, however, that of the 3 members appointed by the governor, 1 member shall reside in the town of Adams, 1 member shall reside in the city of North Adams, and 1 member shall reside in the town of Williamstown. Upon their appointment the 3 members shall appoint the 6 remaining members. Of the 6 remaining members initially appointed, 2 shall be appointed for a term of 1 year; 2 shall be appointed for a term of 2 years; and 2 shall be appointed for a term of 3 years; provided further, that all subsequent appointments shall be for a term of 3 years; provided further, that of these 6 remaining members, at least 2 members shall reside in 1 of the remaining communities of Hancock, New Ashford, Cheshire, Clarksburg, Savoy or Florida. Of these 6 remaining members, 1 shall be experienced in industrial development, 1 shall be experienced in finance, 1 shall be experienced in real estate matters and 1 shall be a representative of labor. Their terms of office shall be 3 years.

SECTION 56. Section 18 of chapter 498 of the acts of 1993, as amended by chapter 109 of the acts of 2000, is hereby further amended by striking from the second sentence the words "Devens and the town of Ayer" and inserting in place thereof the words:- Deven, and the towns of Shirley and Ayer, and by striking the words "town of Ayer" when they appear in the third and fourth sentences and inserting in place thereof the words "towns of Ayer and Shirley".

SECTION 57. The first paragraph of section 64 of chapter 365 of the acts of 1996 is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There is hereby established within the department of labor and workforce development the Commonwealth Corporation.

SECTION 58. The last paragraph of said section 64 of said chapter 365 is hereby amended by striking out the last sentence, added by section 165 of chapter 43 of the acts of 1997, and inserting in place thereof the following sentence:- The primary purpose of the corporation shall be to serve the needs of working and job-seeking residents of the commonwealth.

SECTION 59. Paragraph (b) of section 200 of chapter 43 of the acts of 1997 is hereby amended by striking out, in line 2, the words "the corporation for business, work and learning" and inserting in place thereof the following words:- Commonwealth Corporation.

SECTION 60. Said paragraph (b) of said section 200 of said chapter 43 is hereby further amended by striking out, in line 9, the words "the corporation for business, work and learning" and inserting in place thereof the following words:- Commonwealth Corporation.

SECTION 61. Paragraph (c) of said section 200 of said chapter 43 is hereby amended by striking out, in line 5, the words "the corporation for business, work and learning" and inserting in place thereof the following words:- Commonwealth Corporation.

SECTION 62. Item 1100-7985 of section 1B of chapter 152 of the acts of 1997 is hereby amended by inserting after the word "Pittsfield", in line 60, the following words:including the acquisition of property adjacent thereto.

SECTION 63. Subsection (c) of section 10 of chapter 152 of the acts of 1997, as amended by section 439 of chapter 26 of the acts of 2003, is hereby further amended by striking out clause (iii) and inserting in place thereof the following clause:- (iii) to pay costs, not exceeding \$2,000,000 of engineering and construction of surface parking facilities within convention center development area as defined in section 2 of chapter 152, without completion of an antecedent facility study and engineering study as provided in section 38N of chapter 190 of the acts of 1982.

SECTION 64. Clause (iv) of said subsection (c) of said section 10 of said chapter 152 is hereby further amended by striking out the figure "\$17,000,000" and inserting in place thereof the following figure:- \$23,000,000.

SECTION 65. Item 2200-2011 of section 2 of chapter 236 of the acts of 2002 is hereby amended by inserting after the word "expended", in line 24, the following words:- to reimburse the city of Melrose.

SECTION 66. Item 1102-3013 of section 2 of chapter 245 of the acts of 2002 is hereby amended by striking out the figure "2,000,000" and inserting in place thereof the following figure:- 3,200,000.

SECTION 67. Item 1599-3000 of section 2A of chapter 140 of the acts of 2003 is hereby amended by striking out the number "1599-3000" and inserting in place thereof the following number:- 1599-3002.

SECTION 68. Chapter 140 of the acts of 2003 is hereby amended by striking out section 85 and inserting in place thereof the following section:-

Section 85. Item 4000-0600 of section 2 of said chapter 26 is hereby amended by adding the following words:- and provided further, that notwithstanding any general or special law to the contrary, for any nursing home or nonacute chronic disease hospital with not

fewer than 350 licensed beds and not fewer than 90,000 medicaid patient days in a state fiscal year, with an established geriatric teaching program for medical students, residents and fellows, students of nursing and other allied health professionals and with an established institute conducting multidisciplinary research into biomedical, psychological, cognitive behavioral and organizational factors associated with aging, that provides kosher food to its residents, the division of medical assistance, in consultation with the division of health care finance and policy, shall approve a special innovative program, and the division of health care finance and policy, in recognition of the unique special innovative program status granted by the division of medical assistance, shall, for any such nursing home or nonacute chronic disease hospital that provides kosher food to its residents, establish the lower of: (1) actual increase cost; or (2) up to a \$5 per day increase to the standard payment rates to reflect the higher dietary costs incurred in providing kosher food.

SECTION 69. Item 0321-1520 of said section 2 of said chapter 149 is hereby amended by striking out the words "provided, that not more than \$500,000 of the sum appropriated in this item may be expended for services rendered before fiscal year 2005" and inserting in place thereof the following words:- provided, that not more than \$1,500,000 of the sum appropriated in this item may be expended for services rendered before fiscal year 2005

SECTION 70. Item 0339-1001 of said section 2 of said chapter 149 is hereby further amended by adding the following words:- and provided further, that \$1,000,000 shall be expended for the Commissioner of Probation to implement a global positioning system in collaboration with the Massachusetts parole board utilizing tamper free ankle bracelets to track level 3 sex offenders actively on parole and sex offenders currently being supervised by the office of the commissioner of probation and deemed appropriate for said tracking by said commissioner.

SECTION 71. Item 0540-2000 of said section 2 of said chapter 149 is hereby amended by adding the following words:- provided, that \$275,000 shall be expended for the relocation of the North Worcester county registry of deeds to the former General Electric building.

SECTION 72. Item 0810-0000 of said section 2 of said chapter 149 is hereby amended by adding the following words:- and provided further, that \$260,000 shall be expended for the Ella J. Baker House in the city of Boston for violence prevention programs for high-risk youth.

SECTION 73. Item 1102-3301 of said section 2 of said chapter 149 is hereby amended by inserting after the words "operation of the bureau" the following words:- and provided further, that no more than \$5,000 shall be expended to install and maintain a plaque in the State House honoring Lt. Frances Y. Slanger.

SECTION 74. Item 1201-0130 of said section 2 of said chapter 149 is hereby amended by striking out the word "September" and inserting in place thereof the following word:- October

SECTION 75. Said item 1201-0130 of said section 2 of said chapter 149 is hereby

further amended by inserting after the word "town" the following words:- subject to the risk of harm confidentiality provisions of clause (18) of subsection (b) of section 21 of chapter 62C of the General Laws.

SECTION 76. Item 1599-3384 of said section 2 of said chapter 149 is hereby amended by striking out the words "fiscal year 2004" and inserting in place thereof the words "the current fiscal year".

SECTION 77. Item 1599-4121 of said section 2 of said chapter 149 is hereby amended by adding the following words:- and for a health and welfare reserve for eligible personnel employed at the University of Massachusetts.

SECTION 78. Item 2200-0100 of section 2 of chapter 149 of the acts of 2004, is hereby amended by inserting after the words "town of Dartmouth" the following words:-provided further, that \$100,000 shall be expended for environmental remediation and cleanup of the Aberjona River in Winchester; provided further, that \$25,000 shall be expended for aquatic weed control in the Upper Mystic Lake; provided further, that \$100,000 shall be expended for the environmental mitigation of Pillings Pond in the town of Lynnfield; provided further, that \$500,000 shall be expended for a sediment and dam removal study for the Assabet River Consortium; provided further, that \$500,000 shall be expended for the study and initial phase of Columbia Avenue seawall in Salem; provided further, that \$300,000 shall be expended for remediation of Martin's pond in the town of North Reading.

SECTION 79. Item 2810-0100 of said section 2 of said chapter 149, is hereby amended by inserting after the words "Schooner Ernestina Commission" the following words:- provided further, that \$500,000 shall be expended for the purchase of information technology systems infrastructure to be used by the department of conservation and recreation for the purposes of program and project monitoring and data collection;.

SECTION 80. Item 2810-2000 of said section 2 of said chapter 149 is hereby amended by inserting after the words "Lawrence Heritage State Park" the following words:provided further, that \$150,000 shall be expended for maintenance, security and improvements at Ames-Nowell State Park in Abington.

SECTION 81. Item 2820-0100 of said section 2 of said chapter 149, is hereby amended by inserting after the words "Fairlawn Street in the city of Malden" the following words:- provided further, that not less than \$50,000 shall be expended on the upgrade and reconstruction of recreation equipment at the Dartmouth Public Elementary Schools;

SECTION 82. Item 4000-0300 of said section 2 of said chapter 149 is hereby amended by inserting after the words "oversight board" the following words:- including administrative costs of the executive office of health and human services and the division of health care finance and policy associated with the implementation of the uncompensated care pool management reforms, including eligibility verification procedures as required by Section 355 of chapter 26 of the Acts of 2003.

SECTION 83. Said section 2 of said chapter 149 is hereby further amended by striking out item 4000-0600 and inserting in place thereof the following item:-4000-0600 For health care services provided to medical assistance recipients

under the department's senior care plan; provided, that funds may be expended from this item for health care services provided to these recipients in prior fiscal years; provided further, that no payment for special provider costs shall be made from this item without the prior written approval of the secretary of administration and finance; provided further, that not less than \$9,240,000 shall be expended for the purposes of a demonstration project known as the "community choices" initiative, so-called; provided further, that under the demonstration, eligible MassHealth enrollees in the section 2176 elder care waiver, so-called, shall be covered for any needed community services, including case management, from among those services available under the waiver or under the Commonwealth's Title XIX state plan, for the purpose of delaying or preventing an imminent nursing home admission; provided further, that elders enrolled in the waiver at risk of imminent nursing home admission shall be provided information about the availability of such services; provided further, that for elders who, pursuant to the aforementioned interagency agreement, have been determined to be at such imminent risk, have chosen to remain in the community, and for whom community care is medically appropriate, the department shall establish a funding level that, on a monthly average basis, is equal to fifty percent of the median monthly per capita expenditure made by the department for nursing facility services provided to elders; provided further, that such funding level may include the costs of needed waiver services or other needed community services available to the elders under the state plan, provided further, that the interagency agreement shall be amended to implement the demonstration project and shall describe how the funding level will be made available to meet the costs of needed waiver services or other needed community services available to the elders under the state plan; provided further, that the department shall enter into an agreement with each aging service access point participating in the demonstration, which shall describe a system to be followed by each aging service access point, in accordance with state law and requirements under Title XIX of the Social Security Act, for coordination of both waiver and non-waiver community services needed by such eligible elders; provided further, that each aging services access point receiving funds under the demonstration project shall submit

monthly reports to the executive office of health and human services and to the department of elder affairs on the care. provided and the service expenditures made under the 2176 elder care waiver and such other information as specified by the department and the executive office; provided further, that executive office of health and human services shall prepare a report on all relevant costs and savings associated with the demonstration project; provided further, that the report shall be submitted to the house and senate committees on ways and means by April 1, 2005; provided further, that the department shall expend funds for the purpose of funding base hourly wage increases and related payroll taxes for certified nurses' aides at nursing facilities, in accordance with 114.2 CMR 6.00 et seg; provided further, that effective January 1, 2002, such wage increases shall be over and above any previously collectively bargained for wage increases; provided further, that the division shall report to the house and senate committees on ways and means on the increases given at each facility by February 1, 2005; provided further, that the department shall in correlation with the senior care options program explore options for enrolling the senior care population into managed care programs through federal waivers or other necessary means; provided further, that not less than \$75,000 shall be made available to reimburse providers of dementia-specific adult day care at the rate paid on January 1, 2003; provided further, that notwithstanding any general or special law to the contrary, for any nursing home or nonacute chronic disease hospital with not fewer than 350 licensed beds and not fewer than 90,000 medicaid patient days in a state fiscal year, with an established geriatric teaching program for medical students, residents and fellows, students of nursing and other allied health professionals and with an established institute conducting multidisciplinary research into biomedical, psychological, cognitive behavioral and organizational factors associated with aging, that provides kosher food to its residents, the division of medical assistance, in consultation with the division of health care finance and policy, shall approve a special innovative program, and the division of health care finance and policy, in recognition of the unique special innovative program status granted by the division of medical assistance, shall, for any such nursing home or nonacute chronic disease hospital that provides kosher food

to its residents, establish the lower of: (1) actual increase cost; or (2) up to a \$5 per day increase to the standard payment rates to reflect the higher dietary costs incurred in providing kosher food; provided further, that notwithstanding any general or special law to the contrary, all licensed chronic care hospitals located in Hampden county shall be paid under the same Medicaid reimbursement methodology as applied to all other similarly situated chronic care hospitals; provided further, that in calculating the Medicaid reimbursement, such reimbursement shall exclude any costs associated with any beds licensed by the department of mental health; provided further, that effective July 1, 2004 through June 30, 2005, the division of health care finance and policy in collaboration with the executive office of elder affairs shall establish nursing facility payment rates and fully fund allowable costs using calendar year 2002 base year costs; provided further, that the secretary of elder affairs may transfer not more than 3 percent of funds appropriated in this item to item 4000-0620; and provided further, that the department shall provide written notice to the house and senate committees on ways and means not less than 30 days prior to any transfer \$1,697,117,500

SECTION 84. Item 4100-0060 of said section 2 of said chapter 149 is hereby amended by inserting after the words "chapter 118G of the General Laws" the following words:- including administrative costs of the executive office of health and human services and the division of health care finance and policy associated with the implementation of the uncompensated care pool management reforms, including eligibility verification procedures as required by section 355 of chapter 26 of the acts of 2003.

SECTION 85. Item 4403-2000 of said section 2 of said chapter 149 is hereby amended by adding the following words:- and provided further, that notwithstanding any general or special law to the contrary, 60 days before promulgating any eligibility or benefit changes, the commissioner shall file with the house and senate committees on ways and means and with the clerks of the senate and house of representatives a determination by the secretary of health and human services that available appropriations for the program will be insufficient to meet projected expenses and a report setting forth the text of and basis for such proposed changes.

SECTION 86. Item 4403-2120 of said section 2 of said chapter 149 is hereby amended by adding the following words:- and provided further, that notwithstanding any general or special law to the contrary, 60 days before promulgating any eligibility or benefit changes, the commissioner shall file with the house and senate committees on ways and means and with the clerks of the senate and house of representatives a determination by the secretary of health and human services that available appropriations for the program will be

insufficient to meet projected expenses and a report setting forth the text of and basis for such proposed changes.

SECTION 87. Item 4408-1000 of said section 2 of said chapter 149 is hereby amended by adding the following words:- and provided further, that notwithstanding any general or special law to the contrary, 60 days before promulgating any eligibility or benefit changes, the commissioner shall file with the house and senate committees on ways and means and with the clerks of the senate and house of representatives a determination by the secretary of health and human services that available appropriations for the program will be insufficient to meet projected expenses and a report setting forth the text of and basis for such proposed changes.

SECTION 88. Item 4512-0200 of section 2 of said chapter 149 is hereby amended by striking out the figure "\$370,800" and inserting in place thereof the following figure: \$412,000.

SECTION 89. Item 4516-1000 of said section 2 of said chapter 149 is hereby amended by striking out the words "for the continuation of the raccoon rabies vaccine field trial on Cape Cod operated through a contract with Tufts University School of Veterinary Medicine in collaboration with the federal Centers for Disease Control and Prevention" and inserting in place thereof the following:- and that of the \$240,000, \$150,000 shall be expended for control and eradication programs for rabies prevention on Cape Cod in conjunction with the Tufts University School of Veterinary Medicine Oral Rabies Vaccine Program.

SECTION 90. Said section 2 of said chapter 149 is hereby further amended by striking out item 4800-0038 and inserting in place thereof the following item:-4800-0038 For stabilization, unification, reunification, permanency, adop-

tion, guardianship, and foster care services provided by the department of social services; provided, that services funded through this item shall include shelter services, substance abuse treatment, family reunification networks, young parent programs, parent aides, education and counseling services, family preservation services, foster care, adoption and guardianship subsidies, tiered reimbursements used to promote the foster care placement of children with special medical and social needs, assessment of the appropriateness of adoption for children in the care of the department for more than 12 months, protective services provided by partnership agencies, targeted recruitment and retention of foster families, respite care services, post-adoption services, support services for foster, kinship and adoptive families and juvenile firesetter programs; provided further, that any child who would have been eligible for a clothing benefit under regulations in place

on January 1, 2004 shall receive a clothing benefit in fiscal year 2005; provided further, that not less than \$500,000 shall be expended on the recruitment and retention of foster parents; provided further, that not less than \$5,000,000 of the funds appropriated herein shall be expended to increase daily rates paid to foster care, adoptive and guardianship families to increase said rates to the level recommended by the United States Department of Agriculture; provided further, that the commissioner of the department of social services shall file a report with the house and senate committees on wavs and means no later than September 1, 2004 on the implementation of said rate increase, the amount the rates will be adjusted by service type and age group, and any other information said commissioner deems necessary; provided further, that the department shall report monthly to the house and senate committees on ways and means on the number of clients served, the cost per unit of service and any available information on the outcome of services provided for each program funded from this item; provided further, that service providers shall provide the department with all information necessary to allow the completion of these reports; provided further, that not later than February 17 of the current fiscal year the department shall provide to the house and senate committees on ways and means a recommendation on whether or not to discontinue any program, including earmarked programs, whose cost per unit of service or service outcomes do not fall within a reasonable standard; provided further, that not less than \$348,850 shall be expended for Latinas y Ninos and Casa Esperanza; provided further, that not less than \$300,000 shall be expended for Summerhill House in Norwood; provided further, that not less than \$298,000 shall be expended for alternative schools for students aged 14 to 16, inclusive, who are placed before the court on child in need of services petitions in region 6; provided further, that not less than \$295,000 shall be expended for Massachusetts Families for Kids; provided further, that not less than \$257,000 shall be expended for a contract for an integrated family services team in region 6; provided further, that not less than \$250,000 shall be expended for the Laboure Center in South Boston; provided

further, that not less than \$200,000 shall be expended for a statewide contract with Northeastern University for a violence prevention and conflict resolution program; provided further, that not less than \$200,000 shall be expended to support the family center component of the Greater Lowell Family Resource Center; provided further, that not less than \$100,000 shall be expended in region 1 for a community-based family unification counseling program to prevent juvenile delinquency; provided further, that not less than \$150,000 shall be expended for a contract with Julie's Family Learning program in the South Boston section of the city of Boston; provided further, that not less than \$140,000 shall be expended for the Comprehensive School Age Parenting Program, Inc. for expansion of a year-round school-based program in Boston high schools and middle schools for pregnant teens, young mothers and fathers and other youth at high-risk for school dropout; provided further, that not less than \$130,000 shall be expended for the Children's Cove Cape and Islands Child Advocacy Center; provided further, that not less than \$104,123 shall be provided for the school-age parenting project at Framingham High School; provided further, that not less than \$100,000 shall be expended for the operation of the Healthy Families program: provided further, that not less than \$99,000 shall be expended on a juvenile firesetters program; provided further, that not less than \$50,000 shall be expended for the purpose of providing case management services for the Amity Transitional Housing program in the city of Lynn; provided further, that not less than \$35,000 shall be expended by the Framingham office of the Department of Social Services for the Metrowest Campership program operated by the Ashland youth advisory board in partnership with said department; provided further, that not less than \$30,000 shall be expended for a contract with Big Brothers and Sisters of Cape Cod and the Islands; provided further, that not less than \$20,000 shall be expended for the Massachusetts Association of Portuguese Speakers in Cambridge; provided further, that not less than \$20,000 shall be expended for the Haitian Coalition of Somerville; provided further, that not less than \$20,000 shall be expended for the Concilio Hispano in Somerville; and provided further, that not less than \$15,000 shall be expended

SECTION 91. Item 4800-0041 of said section 2 of said chapter 149 is hereby amended by adding the following words:- provided, that not more than \$3,500,000 shall be expended for adjustments to tuition for special education services pursuant to section 278 of this act, as amended.

SECTION 92. Said section 2 of said chapter 149 is hereby further amended by striking out item 5920-2025 and inserting in place thereof the following item:-5920-2025 For community-based day and work programs for adults and for

\$2,720,000 in annualized funding for Turning 22 clients who began receiving services in fiscal year 2004 pursuant to item 5920-5000 of section 2 of chapter 26 of the acts of 2003; provided, that not less than \$302,000 shall be expended for the life focus center in the Charlestown section of the city of Boston, including an alternative work program; and provided further, that not more than \$50,000 shall be expended for community-based employment services in region 1 that provide bulk mailing distribution \$109,221,278

SECTION 93. Item 5920-3000 of said section 2 of said chapter 149, is hereby amended by inserting after the words "federal reimbursement possible for such services" the following words:-; provided further, that \$100,000 shall be expended for the Autism Division.

SECTION 94. Item 7003-0702 of said section 2 of said chapter 149, is hereby amended by inserting after the words "Massachusetts Service Alliance" the following words:; provided further, that not less than \$600,000 shall be expended for existing Boston youth service providers, as determined by the Boston Workforce Investment Board, who provide youth career exploration, academic support and remediation, and mentoring for at-risk youth in the city of Boston; provided further, that \$25,000 shall be expended for the Oak Grove Farm in Millis for safety repairs; provided further, that \$25,000 shall be expended for the DeMellow Field in Dartmouth for safety repairs; provided further, that \$300,000 shall be expended for a pilot program to provide employment training and job placement by Year Up of Boston; and provided further, that the contribution of said funds shall be matched by contributions from private entities equal to 2 times the expenditures from this item.

SECTION 95. Item 7006-0040 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; and provided further, that \$62,500 shall be expended in the Springfield office for the management of the office and staff training in conducting inspections and investigations.

NO SECTION 96.

SECTION 97. Item 7007-0515 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; and provided further, that not less than \$25,000

shall be expended for the operation of Berkshire Grown, the buy local campaign of Berkshire County.

SECTION 98. Item 7007-0900 of said section 2 of said chapter 149 is hereby amended by striking out the words "provided further, that \$250,000 shall be expended for a grant to the Massachusetts Sports and Entertainment Partnership" and inserting in place thereof the following:- provided further, that \$450,000 shall be expended for a grant to the Massachusetts Sports and Entertainment Partnership and provided further, that \$390,000 shall be made available to the Devens Dispositions Steering committee, mandated by chapter 498 of the acts of 1993 as amended by chapter 109 of the acts of 2000, to plan for the disposition and development of Devens in the towns of Ayer, Harvard and Shirley.

SECTION 99. Said item 7007-0900 of said section 2 of said chapter 149 is hereby further amended by adding the following words:-; provided further, that not less than \$1,000,000 shall be provided for conflagration mitigation safety improvement grant to the city of Worcester; provided further, that not less than \$500,000 shall be expended for fire safety in East Walpole; and provided further, that \$300,000 shall be expended for the Greater Boston Convention and Visitors Bureau for the operation of a visitors information center at Waterside place in the city of Boston.

SECTION 100. Said item 7007-0900 of said section 2 of said chapter 149 is hereby further amended by striking out the figure "\$17,053,305" and inserting in place thereof the following figure:- \$18,553,306.

SECTION 101. Item 7061-9604 of section 2 of said chapter 149 of the acts of 2004 is hereby amended by inserting after the word "preparations" the following words:-; provided further, that \$75,000 shall be expended for RE-SEED program run through Northeastern University.

SECTION 102. Item 7066-0000 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; and provided further, that \$500,000 shall be expended for the Massachusetts Nursing and Allied Health Workforce Development Initiative, to develop and support strategies that increase the number of Massachusetts public higher education faculty members and students who participate in programs that support careers in fields related to nursing and allied health.

SECTION 103. Item 7100-0200 of said section 2 of said chapter 149, is hereby amended by inserting after the words "Hispanic Writers in the Schools program" the following words:-; provided further, that not less than \$300,000 shall be expended on fire protection equipment at the University of Massachusetts at Dartmouth relative to the new dormitory construction.

SECTION 104. Item 7118-0100 of said section 2 of said said chapter 149 is hereby amended by striking out the figure "\$9,733,263" and inserting in place thereof the following figure:-\$8,733,263.

SECTION 105. Item 7507-0100 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; provided, that \$500,000 shall be expended to for

the Nursing Hybrid program to increase enrollment in nursing education and programs.

SECTION 106. Item 7512-0100 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; provided, that \$15,000 shall be expended for enhancement to the Chief Robert Mortell Memorial.

SECTION 107. Item 8000-2004 of said section 2 of said chapter 149 is hereby amended by inserting after the word "Convention" the following words:-; provided, that notwithstanding any general or special law to the contrary, for the purposes of accommodating timing discrepancies between the receipt of retained revenues and related expenditures, the agency may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system.

SECTION 108. Item 8100-0000 of said section 2 of said chapter 149 is hereby amended by adding the following words:-; provided further, that \$100,000 shall be expended for the SCARR program in Newburyport and Haverhill; provided further, that not less than \$50,000 shall be expended for patrols in the city of Pittsfield; and provided further, that \$50,000 shall be expended for patrols in the Myles Standish State Park in Plymouth.

SECTION 109. Item 8200-0200 of said section 2 of said chapter 149, is hereby amended by adding the following words:- provided further, that \$1,500,000 shall be expended for the reopening of a satellite center in Norwood; provided further, that said council shall secure nonpublic funding for operational costs of said center thereafter; and provided further, that not less than \$500,000 shall be expended for firearm training.

SECTION 110. Item 8900-0001 of said section 2 of said chapter 149 is hereby amended by striking out the words "and provided further, that the department may expend up to \$1,000,000 for the commissioner of probation to implement a global positioning system utilizing tamper free ankle bracelets to track level 3 sex offenders actively on parole".

SECTION 111. Item 8900-0001 of said section 2 of said chapter 149, is hereby amended by inserting after the words "to which inmates will be moved" the following words:-; provided further, that \$100,000 shall be expended for the operations of the correction review board.

SECTION 112. Item 8910-0000 of said section 2 of said chapter 149, is hereby amended by inserting after the words "new correctional facility in fiscal year 2005" the following words:-; provided further, that not less than \$350,000 shall be provided to the sheriff's department of Norfolk county for security system upgrades.

SECTION 113. Item 8910-6619 of said section 2 of said chapter 149 is hereby amended by inserting after the words "\$600,000 in fiscal year 2005" the following words:; provided further, that said sheriff may expend from this item costs associated with joint federal and state law enforcement activities from federal reimbursements received.

NO SECTION 114.

SECTION 115. Section 253 of said chapter 149 is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Notwithstanding any

general or special law to the contrary there shall be a pilot program operated by the Barnstable county sheriff to determine the effectiveness of proposed improvements to the regional uniform protocol for sex offender management.

SECTION 116. Section 260 of said chapter 149 of the acts of 2004 is hereby amended by inserting after the word "intergovernmental" the following word:-intragovernmental.

SECTION 117. Section 261 of said chapter 149 of the acts of 2004 is hereby amended by inserting after the word "intergovernmental", each time it appears, the following words:- or intragovernmental.

SECTION 118. Section 261 of said chapter 149 of the acts of 2004 is hereby amended by inserting after the word "intergovernmental", each time it appears, the following words:- or intragovernmental.

SECTION 119. Section 273 of said chapter 149 of the acts of 2004 is hereby amended by striking out the figure "125,000,000" and inserting in place thereof the following:- 240,000,000.

SECTION 120. Section 278 of chapter 149 of the acts of 2004 is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Notwithstanding any general or special law to the contrary, the division of purchased services of the operational services division which, under section 274 of chapter 110 of the acts of 1993, is responsible for determining prices for programs under chapter 71B of the General Laws, shall set all such prices in fiscal year 2005 by increasing the final fiscal year 2004 price by the rate of inflation as determined by the division. The division shall also adjust prices for Extraordinary Relief, as defined in 808 CMR 1.06(4). Programs for which prices in fiscal year 2004 were lower than the full amount permitted by the division of purchased services shall be permitted to charge in fiscal year 2005 the full price calculated for fiscal year 2004 adjusted by the rate of inflation as determined by the division.

SECTION 121. Said subsection (a) of said section 279 of said chapter 149 is hereby amended by adding the following words:- and Daly Memorial Rink, Brighton.

SECTION 122. Said section 279 of said chapter 149 is hereby further amended by adding the following subsection:-

(f) Notwithstanding this section or any other general or special law to the contrary, the division of capital asset management, in consultation with the department of conservation and recreation, shall lease the Veterans Memorial Skating Rink in Arlington to the town of Arlington for 5 years on the same terms and conditions as the prior lease between the town of Arlington and the former metropolitan district commission.

SECTION 123. Said chapter 149 is hereby further amended by inserting after section 279 the following section:-

Section 279A. Notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, within 30 days of this act

the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, shall enter into a 3 ½ year lease agreement with Community Rowing, Inc. on the same terms and conditions as the lease dated April 14, 1992 between Community Rowing, Inc. and the former metropolitan district commission. The new lease shall provide Community Rowing, Inc. access to the same facilities for the same period of time each year and shall require the same lease payment as under the previous lease. The new lease shall also include other land, not included in the 1992 lease, that was licensed to Community Rowing, Inc. under a license dated April 9, 2002 between Community Rowing, Inc. and the former metropolitan district commission. The new lease shall be effective on July 1, 2004. The 3 ½ year lease shall be superior to, and not be disturbed by, any lease entered into concerning the Daley Memorial Rink in Newton as authorized by Section 279 of Chapter 149 of the Acts of 2004, as amended.

During the 3 ½ year lease, no demolition or other work on the Daly Memorial Rink shall be conducted by the department of conservation and recreation or another entity which has entered into a lease for the use of the Daly Memorial Rink, which would interfere with the full operations of Community Rowing, Inc. between March 15 and November 7, of 2004, 2005, 2006 and 2007.

Notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, shall enter into a second lease with Community Rowing, Inc., which lease shall be for a term of not more than 50 years including extensions. The second lease may, but shall not be required to, run concurrently with the first lease. If the second lease does not run concurrently with the first, the second lease shall run consecutive to the first lease. This lease shall include: the property west of the Daly Memorial Rink and east of the Newton Yacht Club under the custody and control of the department, such area also known as the Community Rowing, Inc. "Locus"; the waterfront area between the Daly Memorial Rink and the Charles River, and in front of the Community Rowing, Inc. Locus; equal access to the Daly Memorial Rink parking lot; the right to maintain sufficient docks for rowing program use along the Charles River in front of the Daly Memorial Rink and the Community Rowing, Inc. "Locus"; and a right of way from the Daly Memorial Rink parking lot to the waterfront area between the Daly Memorial Rink and the Charles River and the Community Rowing, Inc. "Locus".

The consideration for the second lease shall be determined by the department of conservation and recreation under the "2004 Boat Club Permit Renewal" established by the executive office of environmental affairs, office of public private partnership, or as the division of capital asset management, in consultation with the department of conservation and recreation, determines, consistent with the rent determinations made for other boat clubs that lease from the commonwealth and are located on the Charles River and taking into account the public services provided by each boat club and the level of public benefit provided by each boat club and based upon the benefits to the public, the improvements to the property and the operations provided by Community Rowing, Inc.

Community Rowing, Inc. shall assume the costs of any appraisals, surveys and other expenses required by the division of capital asset management, in consultation with the department of conservation and recreation, for the granting of the second lease.

If Community Rowing, Inc. ceases at any time during the term of the second lease to use the property for the storage and program operation described in this section, the lease shall be terminated immediately under such terms and conditions as the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may prescribe.

Any lease or proposed lease or extension of said lease shall be reviewed by the Inspector General for comment and recommendation before any lease is signed or extended.

SECTION 124. Section 280 of said chapter 149 is hereby amended by striking out in the last line the following, "Section 191" and inserting in place thereof:- Section 282.

SECTION 125. Section 283 of said chapter 149 is hereby amended by striking out in the words "House Bill 4850 of 2004" and inserting in place thereof the following words:this chapter.

SECTION 126. Section 285 of said chapter 149 is hereby amended by inserting after the words "section 22A" the following words:- of chapter 55.

SECTION 127. Section 286 of said chapter 149 is hereby amended by striking out in the last sentence, "section 194" and inserting in place thereof the following words:- section 285.

SECTION 128. Sections 285 through 288 of chapter 149 of the Acts of 2004 shall henceforth be known as the "Town of Lancaster Voter Information Act."

SECTION 129. Subsection (d) of section 298 of said chapter 149 is hereby amended by inserting, after the first sentence, the following sentence:- The excise assessed in such year, however, shall be considered the amount raised by imposing a surcharge for the purpose of section 10 of said chapter 44B in the following fiscal year.

SECTION 130. Subsection (h) of said section 298 of said chapter 149 is hereby amended in the first sentence by inserting, after both occurrences of the words "prior to", the following words:-, or after.

SECTION 131. Said subsection (h) of said section 298 of said chapter 149 is hereby further amended by striking out, in the last sentence, the words "or the".

SECTION 132. Said subsection (h) of said section 298 of said chapter 149 is hereby further amended by striking out the words "June 30, 2005" and inserting in place thereof the following words:- on or before adoption of this section.

SECTION 133. Said subsection (h) of said section 298 of said chapter 149 is hereby further amended by striking out the words "for historic resources and half of such remaining annual revenues for community housing" and inserting in place thereof the following sentence:- If such expenditure is made, the revenues remaining after such expenditure and after any expenditure for purposes of the operation of the community preservation committee made under authority of section 6 of chapter 44B shall be expended as follows: one-half for

historic resources and one-half for community housing. Nothing in this section shall preclude the expenditure of funds for the purposes of operation of the community preservation committee, as permitted by section 6 of chapter 44B.

SECTION 134. Said chapter 149 is hereby amended by striking out section 355 and inserting in place thereof the following section:-

Section 355. There shall be a special commission to study the impact and effects on youth of the abuse of OxyContin and other prescription and illicit drugs including, but not limited to, Duragesic, Klonopin, Methadone, Morphine, Vicodin, as well as their generic equivalents, and cocaine, heroin, GHB, and MDMA. The commission shall consist of 3 members appointed by the speaker of the house, including the house chair of the joint committee on health care, 3 members appointed by the senate president, including the senate chair of the joint committee on health care, the commissioner of mental health, the commissioner of public health drug control program and 1 member appointed by the governor from the medical and substance abuse treatment community with specialty experience in drug regulation, prescription, treatment and abuse. The commission shall study the prescription, dispensing, treatment and education of those drugs and shall submit a report, including legislative recommendations, if any, to the joint committee on health care and the house and senate committee on ways and means by June 15, 2005.

SECTION 135. Section 13 of chapter 196 of the acts of 2004 is hereby amended by adding after the words "5 members who shall not be employees of the executive branch and who shall reside in different geographic regions of the commonwealth" the following:- one of whom shall be a representative of the American Council of Engineering Companies, and.

SECTION 136. Item 6033-0417 of chapter 291 of the acts of 2004 is hereby amended by striking out the words "provided further, that the department shall expend the \$785,000 for the completion of the project ongoing for signalization and reconstruction of a bridge and an intersection on North Main Street at Pond Street, Pond Street, West Street, Liberty Street and Grove Street in the town of Randolph as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002" and inserting in place thereof the following:- provided further, that the department shall expend the \$785,000 for the completion of the project ongoing for signalization and reconstruction of a bridge and an intersection on North Main Street at Depot Street, Pond Street, West Street, Liberty Street and Grove Street in the town of Randolph as expressly permitted in Section 19 of Chapter 246 of the Acts of 2002.

SECTION 137. Item 6033-0417 of chapter 291 of the acts of 2004 is hereby amended by striking out the words, "provided further, that \$60,000 shall be expended for the emergency response preemptor signalization at the intersection of North Main Street at Depot Street and at the intersection of Route 28 and Route 139 in Randolph;" and inserting in place thereof the following words:- provided further, that \$60,000 shall be expended for the emergency response preemptor signalization at the intersection of North Main Street at Pond Street and at the intersection of Route 28 and Route 139 in Randolph.

SECTION 138. The first paragraph of chapter 332 of the acts of 2004 is hereby a-

mended by striking out the first sentence and inserting in place thereof the following sentence:- For any retired state police officer who would have been eligible for the increased retirement allowance under section 90A or section 90C ¾ of chapter 32 of the General Laws but did not realize the increased allowance because the retired state police officer died before July 1, 2000 and who has a surviving spouse currently receiving a retirement allowance, the surviving spouse shall be entitled to a recalculated retirement allowance.

SECTION 139. Notwithstanding any general or special law to the contrary, the department of highways is hereby authorized and directed to assume administration of the portion of state highway route 140 located in the city of Gardner.

SECTION 140. Notwithstanding the provisions of any general or special law to the contrary, no funds dedicated to the abstinence education project in the department of public health shall be used for advertising or media purchases.

SECTION 141. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance is hereby directed to promulgate regulations designed to: (a) streamline and simplify signature authorization procedures for clinical laboratory services, and specifically to exclude, as a condition of payment for any laboratory test order form, a physician's handwritten signature; and (b) clarify the billing procedures for specimen referral where the referring laboratories and testing laboratories are subsidiary related. Any change to existing regulation shall require the referring laboratory to disclose on its claim forms (i) the MassHealth provider number for the testing laboratory and (ii) the tests performed by the testing laboratory.

SECTION 142. Notwithstanding any general or special law to the contrary, the unexpended balance of funds made available to the department of workforce development in section 54 of chapter 141 of the acts of 2003, shall not revert to the general fund, and shall be made available for expenditure.

SECTION 143. Notwithstanding any general or special law to the contrary the department of environmental protection shall employ not less than one hundred sixteen full-time employees at the Lakeville regional area office, not less than one hundred and thirty full-time employees shall be employed at the Worcester regional area office, and not less than eighty-seven full-time employees shall be staffed at the Springfield regional area office.

SECTION 144. Notwithstanding any general or special law to the contrary, the division of capital asset management and maintenance is hereby authorized to lease for a term or terms of up to 99 years in accordance with the provisions with this section a portion of the property, together with the building thereon, located at 105 South Huntington Avenue in the city of Boston, to the North American Indian Center of Boston, Inc. Said lease shall be on terms acceptable to the commissioner of the division of capital asset management and maintenance. As consideration for the lease, the lessee shall manage, operate, improve, repair and maintain said portion of said property, and shall operate, improve, repair, replace and maintain the building thereon. As further consideration for such lease, the lessee shall

use the lease property to provide educational and social services to the Native American community, and related functions. The exact boundaries of the portion of the property to be leased pursuant to this section shall be determined by the commission of the division of capital asset management and maintenance.

SECTION 145. Notwithstanding any general or special law to the contrary, the Massachusetts Turnpike Authority shall study the feasibility of utilizing sound-reducing surface material on interstate highway route 90 in the city of Newton.

SECTION 146. Notwithstanding any general or special law to the contrary, the commissioner of capital asset management and maintenance shall be prohibited from declaring as surplus or from conveying and the Massachusetts Highway department is prohibited from leasing state owned real property located in the town of Uxbridge on which is proposed the route 146 southbound visitor center and rest stop.

SECTION 147. Notwithstanding any general or special law to the contrary, in the event the division of health care finance and policy conducts or utilizes an audit of nursing facilities' calendar year 2002 base year costs for the purpose of reducing rates below levels that would be in effect in the absence of the audit, the division shall disallow no more than \$22,000,000 in the aggregate in fiscal year 2005 rates unless (1) fifty percent of total nursing facilities licensed in calendar year 2002 are audited in an identical full-scope manner as applied in the division's originally proposed 114.2 CMR 6.00 Standard Payments to Nursing Facilities regulation issued in May 2004, (2) each audited nursing facility has the right to appeal to the division of administrative law appeals, and that an increase in the aggregate \$22,000,000 disallowance amount shall not take effect until each such appeal is completely adjudicated; (3) the division conducts a public hearing outlining the methodology and reason for disallowing more than \$22 million aggregate amount, taking into account the impact on patient care; (4) the results of said audits are concluded prior to June 30, 2005; and (5) in no event shall the aggregate disallowances resulting from any such audit complying with clauses (1) through (4) exceed \$51,000,000.

SECTION 148. Notwithstanding any general or special law to the contrary, there shall be a committee comprised of the secretary of administration and finance or his designee, two members of the senate selected by the president of the senate, and two members of the house of representatives selected by the speaker of the house of representatives, to oversee and direct a study by a private entity which shall be agreed upon by a majority of the members of such committee to analyze current Medicaid reimbursements to hospitals, physician practices, community health centers and other healthcare providers that provide health care to patients who receive medical benefits or medical assistance pursuant to chapter 118E of the General Laws. Said study shall include, but not be limited to the following:

(1) the amount of Medicaid reimbursement to hospitals, physician practices, community health centers and other health care providers as compared to costs reasonably incurred by said hospitals, physician practices, community health centers and other health care providers for health care provided to patients pursuant to said chapter 118E;

- (2) the amount of reimbursement as compared to costs reasonably incurred by hospitals, community health centers and other relevant health care providers for free health care provided to patients pursuant to said chapter 118G;
- (3) the identity of measures to control costs, and to improve efficiency, to assure health care outcomes, and to increase accountability for said hospitals, physician practices, community health centers and other health care providers;
- (4) the identity of health, safety and economic risks and impacts associated with the amount of reimbursement to said hospitals, physician practices, community health centers and other health care providers, including restricting patient access to needed health care, emergency department diversion, facility closures, deterioration of facility infrastructure, job loss, and workforce shortages in the allied health professions;
- (5) the identity of a dedicated source of revenue to provide a rate of reimbursement to said hospitals, physician practices, community health centers and other health care providers more consistent with the costs reasonably incurred by such hospitals, physician practices, community health centers and other health care providers;
- (6) the amount recommended to be appropriated from the fund and a schedule thereof in addition to the other monies appropriated by the general court for reimbursement to hospitals, physician practices, community health centers and other health care providers for health care provided to patients enrolled in the commonwealth's Medicaid program; and
- (7) the analysis of any other issue, measure, condition or impact as directed by the committee related to the provision of health care services and access to such services for patients enrolled in the commonwealth's Medicaid program.

Said committee shall submit the study to the chairs of the house and senate committees on ways and means, the joint committee on health care, and the chair of the house committee on medicaid by January 1, 2005.

In conjunction with the preparation of the commonwealth's comprehensive annual financial report, the comptroller shall prepare and issue an annual report detailing the revenues and expenditures of said fund.

SECTION 149. There shall be a special commission known as the West Roxbury master plan commission for the purpose of making an investigation and study relative to the development of a master plan for West Roxbury section of the city of Boston. The commission shall consist of the senator from the Suffolk and Norfolk district, the representative from the tenth Suffolk district, the representative in congress from the ninth congressional district of Massachusetts, the director of the Boston Redevelopment Authority, who shall serve as chairman, the secretary of transportation, the secretary of environmental affairs, the secretary of economic development, and 2 persons to be appointed by the mayor of Boston who shall be residents of the West Roxbury section of the city of Boston.

The investigation and study shall include: (1) an evaluation of the nexus between economic development, housing and transportation in the West Roxbury section of the city of Boston; (2) an evaluation of the pedestrian, public transit and automobile transportation network in West Roxbury, including department of conservation and recreation controlled

parkways and boulevards; (3) an evaluation of existing open space in West Roxbury, both private and publicly-owned, including land used for active and passive recreational use, and land adjacent to department of conservation and recreation parks, parkways and boulevards; (4) an evaluation of policy mechanisms to generate and keep wealth in West Roxbury; (5) an evaluation of mechanisms to increase opportunities for existing small businesses in the community to better serve West Roxbury, including, but not limited to an analysis of all existing federal, state, and city of Boston financial programs, including grants and loans, the purpose of which is to assist existing businesses or business development; and (6) an evaluation of public infrastructure investments in West Roxbury as a tool for economic development. No member of the commission shall receive any compensation for his services, nor shall a member be reimbursed for any travel expenses or actual expenses incurred in carrying out his duties as a member of the commission.

The commission shall report the results of its investigation and study, including a minority report, if any, together with its recommendations and drafts of the master plan, by filing the same with the clerk of the Boston city council on or before June 30, 2007 and with the clerks of the house of representatives and the senate, who shall forward the same to their respective committee on ways and means.

SECTION 150. There shall be a special legislative task force to determine the need and feasibility to license pump installers to protect public health and safety and the safety of public water supply in Massachusetts. This task force shall consist of 11 members and shall be chaired by the house and senate chair of the joint committee on natural resources and agriculture. The other 9 members shall include the chairman of the water resources commission, or his designee, the commissioner of the department of environmental protection, or his designee, the commissioner of the department of public health, or his designee, the director of the division of professional licensure, or his designee, and 5 members appointed by the governor, 1 of whom shall be a qualified member of the statewide boards of public health officials association who has been recommended to the governor by the association executive committee, 1 qualified and experienced certified well driller who is a current member of the state-wide well drillers association, and who has been recommended to the governor's office by the association's executive committee, 1 qualified and experienced certified well pump installer who is a current member of the state-wide well drillers association and who has been recommended to the governor by the association's executive committee, 1 member who is a licensed plumber, and 1 member who is a licensed electrician.

The task force shall report to the general court the results of its investigation and study and its recommendations, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerks of the house of representatives and the senate on or before November 11, 2004.

SECTION 151. The division of insurance shall conduct a study of the feasibility of creating a consumer decision support data repository containing comparative data on the cost

and quality of health care services. The data repository is intended to assist consumers by providing comparative information to help them decide where best to receive health care services for which they must pay all or a portion of the cost under the terms of their health insurance plan. As part of its study, the division shall: catalog existing public and private sources of data regarding the cost and quality of services provided by health care facilities and clinicians; determine the feasibility of linking or aggregating those data sources into a single, statewide consumer decision support data repository that can be readily accessed and easily understood by consumers making choices between health care facilities and clinicians based on cost and quality; identify any gaps or limitations in existing data sources that would limit the ability of consumers to use the data repository to make choices between health care facilities and clinicians based on cost and quality; identify any barriers to creating the data repository, including any technical limitations or copyright restrictions on existing data; and estimate the cost of developing and maintaining the data repository.

The division shall file a report detailing its findings along with any legislation necessary to create and implement a single, statewide consumer decision support data repository with the chairs of the joint committees on health care and insurance and the house and senate committees on ways and means by no later than December 31, 2004.

SECTION 152. Notwithstanding the provisions of subsection (h) of section 46 of chapter 121B of the General Laws or any other general or special law to the contrary, the Attleboro Redevelopment Authority may own, construct, finance and maintain intermodal transportation terminals within an urban renewal project area. As used in this provision intermodal transportation terminal shall mean a facility modified as necessary to accommodate several modes of transportation which may include, but not be limited to, inter-city mass transit service, rail or rubber tire, motor bus transportation, railroad transportation, and airline ticket offices and passenger terminal providing direct transportation to and from airports.

SECTION 153. Notwithstanding any general or special law to the contrary, the Secretary of Administration and Finance is hereby authorized to indemnify, exonerate, defend and hold harmless the former Superintendent of the Bureau of State Office Buildings, Dennis Smith, from personal financial loss and expenses, including legal fees and costs, if any, in an amount not to exceed \$1,000,000 arising out of or relating to *Mohammadipour v. Bureau of State Office Buildings et al*, Suffolk Superior Court civil action docket number 99-1713A.

SECTION 154. Notwithstanding any general or special law to the contrary, the comptroller, in consultation with the division of health care finance and policy and the secretary of health and human services, shall transfer \$12,000,000 from the General Fund, effective June 30, 2004, to the Uncompensated Care Trust Fund for the administration of the uncompensated care pool during hospital fiscal year 2005.

SECTION 155. Notwithstanding any general or special law to the contrary, the rink formerly known as the Walter C. Bryan Memorial Rink in the West Roxbury section of the

city of Boston shall be named the Jim Roche Memorial Rink.

SECTION 156. Notwithstanding any general or special law to the contrary, the board of higher education's authority to implement tuition waivers for public institutions of higher education in the Commonwealth solely on the basis of scores on MCAS exams shall be limited to waivers set with reference to a student's MCAS scores relative to other students enrolled in or resident in the student's district of enrollment or residence. The board shall not implement tuition waivers solely on the basis of a student's scores on MCAS exams relative to scores on MCAS exams statewide.

SECTION 157. Notwithstanding any general or special law, rule or regulation to the contrary, a certain parcel of land located on the northerly side of Medford Street in the Charlestown section of the city of Boston is hereby eliminated as a Designated Port Area under C.M.R. 25 and 310 C.M.R. 9 and any other applicable provision of the code of Massachusetts regulations. Said parcel is located at 261-287 Medford Street in Charlestown, assessor's parcel number 02-02750-000, contains approximately 30,470 square feet of land and is registered under certificate of title number 109069 in the Registry District of Suffolk County.

SECTION 158. Notwithstanding any general or special law to the contrary, in order to improve administrative efficiency and preserve fiscal resources, the secretary of the executive office of health and human services may identify administrative activities and functions common to the separate agencies, departments, offices, divisions and commissions within the executive office and to designate such functions "Core Administrative Functions". Common functions that may be designated Core Administrative Functions include, without limitation, human resources, financial management, information technology and human services transportation. All employees performing functions so designated may be employed by the executive office, and the executive office shall charge the agencies, departments, offices, divisions and commissions for such services, subject to appropriation.

Upon the designation of a function as a Core Administrative Function, the employees of each agency, department, office or commission who perform such core administrative functions may be transferred to the executive office of health and human services. The reorganization shall not impair the civil service status of any such transferred employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Nothing in this section shall be construed to impair or change an employee's status, rights, or benefits under chapter 150E of the General Laws.

SECTION 159. Notwithstanding any general or special law to the contrary, in the event the division of health care finance and policy conducts or utilizes an audit of nursing facilities' calendar year 2002 base year costs for the purpose of reducing rates below levels that would be in effect in the absence of the audit, the division shall disallow no more than \$22 million in the aggregate in fiscal year 2005 rates unless (1) fifty percent of total nursing

facilities licensed in calendar year 2002 are audited in an identical full-scope manner as applied in the division's originally proposed 114.2 CMR 6.00 Standard Payments to Nursing Facilities regulation issued in May 2004, (2) each audited nursing facility has the right to appeal to the division of administrative law appeals, and that an increase in the aggregate \$22 million disallowance amount shall not take effect until each such appeal is completely adjudicated; (3) the division conducts a public hearing outlining the methodology and reason for disallowing more than \$22 million aggregate amount, taking into account the impact on patient care; (4) the results of said audits are concluded prior to June 30, 2005; and (5) in no event shall the aggregate disallowances resulting from any such audit complying with clauses (1) through (4) exceed \$51,000,000.

SECTION 160. Notwithstanding any general or special law to the contrary, for fiscal years 2005 to 2010, inclusive, all tuition and fees received by a board of trustees of the Massachusetts Maritime Academy shall be retained by the board of trustees of that institution in a revolving trust fund or funds and shall be expended as the board of the institution may direct. Any balance in the trust funds at the close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not revert to the General Fund.

Notwithstanding any general or special law to the contrary, for employees of public higher education institutions who are paid from tuition retained pursuant to this section, fringe benefits shall be funded as if those employees' salaries were supported by state appropriations. This section shall apply only to fringe benefits associated with salaries paid from tuition retained by the boards of trustees of public higher education institutions as a direct result of the implementation of this section.

SECTION 161. Notwithstanding any general or special law to the contrary, the definition of critical access services pursuant to section 1 of chapter 118G of the General Laws as scheduled to be implemented on October 1, 2004 shall be delayed until April 1, 2005.

SECTION 162. Notwithstanding any general or special law to the contrary, the comptroller, in consultation with the division of health care finance and policy and the secretary of health and human services, shall transfer \$3,000,000 from the General Fund, effective June 30, 2004, to the Uncompensated Care Trust Fund for free care payments to community health centers during hospital fiscal year 2004.

SECTION 163. The Massachusetts Maritime Academy shall submit to the board of higher education, and said board shall consider, a proposal under clause (p) of section 22 of chapter 15A of the General Laws, as amended by section 63 of this act. The proposal shall establish tuition rates and admission standards for the college, and shall assure that the number of undergraduate degree candidates who are Massachusetts residents enrolled on October 1 of 2004 and each subsequent year thereafter shall be no less than 60 per cent of the total number of undergraduate degree candidates enrolled, or the number of Massachusetts residents enrolled on October 1, 2003, whichever is greater. In-state tuition rates for the college shall preserve affordability for Massachusetts residents. Out-of-state tuition rates shall appropriately balance the financial needs of the college with the need to be competitive with peer institutions regionally and nationwide. The proposal shall include

provisions for performance standards specific to the mission of said college to be used in place of the performance measurements system otherwise in effect.

SECTION 164. Pursuant to authority granted to it by section 65A of Chapter 152 and notwithstanding any general or special law to the contrary, the Workers Compensation Rating and Inspection Bureau (hereinafter referred to as "WCRIB") shall initiate a cost containment pilot project for the workers' compensation assigned risk pool whereby third party claims administrators meeting certain criteria shall service claims for policies issued by said assigned risk pool in an effort to reduce losses and introduce competition and innovation into said pool. The WCRIB shall adhere to the following guidelines when implementing said pilot project:

- (1) Any third party administration firm wishing to handle claims from the assigned risk pool must evidence its ability to perform its services based upon the qualification of its key operating personnel and documentation must be submitted demonstrating the claims experience of said personnel.
- (2) The third party administration firm must have at least 5 years of experience administering claims for insured first dollar workers compensation programs, so-called, in the commonwealth of Massachusetts and past experience servicing claims in the Massachusetts workers compensation reinsurance pool. The third party administrator firm must also be a certified Massachusetts Utilization Review Agent. The third party administrator must submit a list to the WCRIB, in a format prescribed by the WCRIB, of all its client employers who have Massachusetts workers compensation insurance premium and the names of the insurance carriers for whom they have administered Massachusetts workers compensation reinsurance pool claims. The WCRIB shall have the right to inspect the books and business records of the third party administration firm in order to verify that their list is complete. The third party administrator must demonstrate to the WCRIB that it possesses and utilizes a management information system capability that allows for both computer access to its claims file by the pool carrier to whom the risk has been assigned and on whose behalf the administrator is administering claims for pursuant to the pilot project. The third party administrator designee must demonstrate that its data can be electronically transferred either directly to the insurer or to an intermediary that would convert the data to a format compatible to the claims data system used by the servicing carrier.
- (3) The pilot project shall commence on November 1, 2004 and shall end on November 1, 2007. The WCRIB shall set aside at least 15 million dollars of the total written pool premium in the first year of the pilot project and 20 million dollars of the total written pool premium in the second year for claims administration by qualified third party claims administration firms. Satisfactory performance criteria for the pilot program shall be established by the WCRIB and shall include, but not be limited to, the following: actual cost savings attributable to the servicing administrators, efficiency of claim handling, and accuracy and timeliness of information flow between all parties. The WCRIB shall review the operations of the servicing administrators on an ongoing basis to determine if their performance has been satisfactory according to the criteria created for judging such. Computer access to claim files and a start-up kit shall be immediately provided to the

appropriate insurance carrier(s) by the third party administration firms participating and an information transmittal relative to the claims being administered shall be provided to said carriers every 30 days in accordance with the standards established by the insurer. After each year of the pilot program, the WCRIB may, based on performance, increase the amount of premium to be assigned to third party claims administration firms participating in the pilot project. After three years, the performance results of the third party administrators participating in the pilot program shall be measured by the WCRIB against the overall performance of the entire assigned risk pool. Said results shall then be compiled by the WCRIB for a report that shall be submitted to the House and Senate chairs of the joint committee on commerce and Labor at the end of the 3-year pilot project. The first report shall be filed by the WCRIB on November 31, 2007.

(4) Pursuant to standards established by the WCRIB's Board of Directors, the WCRIB shall allocate business under this pilot project to qualified third party administration firms that have no common ownership with any insurer writing workers' compensation insurance in the commonwealth. Only those third party administration firms that have demonstrated an ability to significantly reduce workers' compensation losses for their client companies shall be considered for allocation of such pool business under this project. The claims servicing fees that shall apply to the business so allocated shall be the same as those presently paid to other service handling companies by the workers compensation assigned risk pool as authorized by the WCRIB under chapter 152, General Laws. Any third party administration firm designated by the WCRIB to administer claims shall adhere to any and all standards of performance as such standards are written in the pool's plan of operation at the time of the pilot.

SECTION 165. For income tax years beginning after January 1, 2004 but before January 1, 2005, there shall be deducted from Part B adjusted gross income in determining Part B taxable income, under chapter 62 of the General Laws, amounts expended by an individual for tolls paid for through a FastLane account or for weekly or monthly transit commuter passes for MBTA transit or commuter rail, not including amounts reimbursed by an employer or otherwise. In the case of a single person or a married person filing a separate return or a head of household, as defined in chapter 62 of the General Laws, filing a separate return, this deduction shall apply only to the portion of such expended amount that exceeds \$150, and the total amount deducted shall not exceed \$750. In the case of a married couple filing a joint return, this deduction shall apply only to the portion of such amount expended by each individual that exceeds \$150, and the total amount deducted shall not exceed \$750 for each individual. The commissioner of revenue shall adopt regulations necessary for the implementation of this section.

SECTION 166. The division of capital asset management and maintenance is hereby authorized and directed to transfer care and custody of a parcel of vacant commonwealth land in the town of Sandwich to the chief medical examiner for use as a location for a new medical examiner's facility. The parcel to be transferred will be an approximately two acre portion of an approximately twelve acre parcel of land located northerly of Sandwich Road

and easterly of Simpkins Road in the town of Sandwich currently under the control and jurisdiction of the military division. The exact boundaries of the parcel to be transferred are to be determined by the division of capital asset management and maintenance. Transfer of said parcel shall be without consideration and shall not be subject to the provisions of chapter seven of the General Laws. The division of capital asset management and maintenance is authorized, as necessary, to clear title to the parcel to be transferred by eminent domain taking.

SECTION 167. The intersection of Herring Pond Road and State Road (Route 3A) in the town of Plymouth shall hereby be known as the Lance Corporal Jeffrey C. Burgess, USMC Memorial Square. The department of highway will authorize the Jeffrey C. Burgess Memorial Fund to erect and maintain a memorial consisting of a granite marker with Lance Corporal Burgess's name, rank, the dates of his birth and death while serving for Iraqi Freedom.

SECTION 168. The division of administration and finance, in consultation with the Massachusetts office of travel and tourism and the Massachusetts Film Bureau, shall study the creation of a tax-based instrumentality for encouraging the activity of film production in the commonwealth. The study shall review, but not be limited to, whether such an instrumentality would increase film production in the commonwealth, the probable costs of such an instrumentality compared to the economic benefits attendant to increasing film production in the commonwealth, actions taken by other states in creating such an instrumentality, how a "film" should be defined for purposes of any proposed instrumentality and the types of taxpayers most likely to benefit from any proposed instrumentality. The division shall report its findings to the joint committee on commerce and labor, the joint committee on education arts and humanities and the house and senate committees on ways and means no later than October 30, 2004.

SECTION 169. The office of jury commissioner shall establish an administrative records list of the commonwealth's residents 17 years and older for the purpose of testing the feasibility of using such a list for the creation of jury pools. The following state agencies shall provide in electronic form a list of residents 17 years and older contained in their respective databases: state secretary, registry of motor vehicles, department of revenue, department of transitional assistance, and division of unemployment assistance. In addition, cities and towns that conduct an annual census shall provide such data, and all commonwealth colleges and universities shall provide such data from enrollment records. Said lists shall contain, name, residential address, mailing address and date of birth to the extent that they possess this information, in a format to be specified by the office of the jury commissioner. In those cases where a federal waiver or authorization is needed in order to provide this information, each agency or entity shall take all necessary steps to seek such authorization or waiver. No information shall be provided to the office of jury commissioner beyond that required to create the administrative records list. The office of the jury commissioner shall treat the lists and the information contained in them confidential to the

extent required by law. Nothing shall be included in the administrative records list that would indicate from which source list the information on any individual resident was derived. The commissioner may secure and use additional lists from non-governmental institutions and sources in order to create the administrative records list. The commissioner shall provide in electronic form a copy of the administrative records list to the state secretary for purposes of testing its use to maintain voter registration lists and testing its use as a source for street lists for the cities and towns of the commonwealth. Testing of the administrative records list shall not replace any requirement of present law for creating jury pools, maintaining voting lists or establishing street lists, until further act of the general court. The jury commissioner and the state secretary shall report their findings and recommendations based on the testing required by this section to the clerks of the senate and house of representatives not later than June 30, 2006.

SECTION 170. In accordance with the intent of the March 22, 2004, Lancaster Special Town Meeting, approval by the voters of the town at the November 2, 2004, state election of the ballot question authorized by section 283 of chapter 149 of the acts of 2004 shall be deemed to constitute: (a) acceptance of the obligations set forth in sections 280 through 282 of chapter 149 of the acts of 2004; and (b), approval of the special one year override of the limitations imposed by section 21C of chapter 59 of the General Laws, Proposition 2½, so-called, as authorized by section 280 of said chapter 149, to provide for the purchase of an annuity instrument to satisfy the financial obligations imposed upon the town of Lancaster under section 280 of chapter 149, and therefore, approval of the March 22, 2004, appropriation in the amount of \$650,000 for such purposes. If for any reason this act is not in effect on November 2, 2004, and the voters of the town of Lancaster approve the question authorized by section 283 of chapter 149 of the Acts of 2004, such approval shall be deemed to have the legal consequences set forth herein, and any action taken by the town of Lancaster with regard thereto shall be ratified, validated and confirmed as if this act had been in place prior thereto.

SECTION 171. Section 3. Employees covered by the terms of the collective bargaining agreements listed in 1599-4123 and 1599-4124 and who, after July first two thousand and three, retired or otherwise terminated employment, or the beneficiary of such an employee who died after July first two thousand and three, shall be paid, no later than November nineteenth, two thousand and four, a lump sum amount equal to the difference between (a) the salary specified in the relevant agreement and (b) the salary each received, for the time they were employed during the period July first, two thousand and three through June thirtieth, two thousand and four; provided, further, that notwithstanding any provisions of chapter thirty-two to the contrary, the amount of the retirement allowance paid under any provisions of chapter thirty-two to an employee who prior to retirement was covered by the terms of the collective bargaining agreements listed in 1599-4123 and 1599-4124 and who retired after July first, two thousand and three, shall be calculated as though the employee's regular compensation for any period of employment from July first, two thousand and three

through June thirtieth, two thousand and four had been received by the employee in accordance with the provisions of such agreement and appropriate retirement deductions withheld. Appropriate adjustments shall be made to such an employee's retirement allowance, including payments retroactive to the effective date of retirement.

NO SECTION 172.

NO SECTION 173.

SECTION 174. Subsection (b) of said section 279 of said chapter 149 of the acts of 2004 is hereby amended by striking out the last sentence, and inserting in place thereof the following words:-

The failure of any city or town to apply for pre-qualification as set forth below shall not prohibit that city or town from bidding under this section.

Before the division, in consultation with the department, sends out any request for proposal under this section, the division shall hold open a pre-qualification period of at least one month for cities and towns that desire to bid on rinks that are listed in this section and are located within the city or town. Any city or town that desires to lease a rink under this section may submit materials for prequalification. Such pre-qualification may include, but may not be limited to, said city or town's ability to finance the capital improvements determined to be necessary at each rink listed in this section by the division and to manage, operate and maintain the properties. The division, in consultation with the department, shall determine whether a city or town is prequalified within 15 days of the end of the prequalification period. If a city or town is determined to be pre-qualified, that city or town shall be awarded the lease for that rink under the terms and conditions set forth in subsection (a) and the first paragraph of subsection (b). If a city or town is determined to be pre-qualified, the city or town shall pay nominal consideration for a lease. The length of such lease shall be determined between the division and said city or town.

SECTION 175. Section 260 of chapter 149 of the acts of 2004 is hereby amended by inserting in line 7 after the word "Holyoke" the following words:- or other sources of public funding including but not limited to any transfer of grant funding from the Distressed Provider Expendable Trust Fund.

SECTION 176. Section 261 of chapter 149 of the acts of 2004 is hereby amended by inserting in line 7 after the word "Lawrence" the following words:- or other sources of public funding including but not limited to any transfer of grant funding from the Distressed Provider Expendable Trust Fund.

SECTION 177. Section 261 of chapter 149 of the acts of 2004 is hereby amended by inserting in line 7 after the word "Boston" the following words:- or other sources of public funding including but not limited to any transfer of grant funding from the Distressed Provider Expendable Trust Fund.

SECTION 177A. Notwithstanding any general or special law to the contrary, there shall be a house working group that shall continue to work on recommendations on how to

improve the charter school tuition financing system and the process for selecting charter schools to ensure that charter school funding be reflective of changes made to the state education funding formula under chapter 70 of the General Laws. The working group shall consist of the speaker of the house of representatives, or his designee, and four additional designees of the speaker of the house, including representatives of the minority party of the house, or their designees, the joint committee on education, arts and humanities, and the house on ways and means. On or before July 1, 2005, or at the time legislative changes, to state education funding under chapter 70 of the General Laws are under consideration, the working group shall file recommendations with the joint committee on education, arts and humanities on how to align the existing financing system for charter schools with future changes to state education funding under chapter 70 of the General Laws.

SECTION 177B. (a) The commissioner of the division of capital asset management and maintenance is hereby authorized to convey to the town of Southbridge, for nominal consideration, notwithstanding the provisions of sections 40F through 40J, inclusive, of chapter 7 of the General Laws, or any other general or special law or any rule or regulation to the contrary, a parcel of state-owned land located in said town, formerly under the care and control of the Armory Commission, for use by said town for municipal or any other public purpose, including the leasing of said property to not-for-profit organizations. Said parcel, as shown on deed, was conveyed from inhabitants of the town of Southbridge to the commonwealth of Massachusetts, dated September 15, 1958 and recorded on October 22, 1958 in the Worcester district registry of deeds, Book 3979 page 461.

- (b) The town of Southbridge shall pay for all costs of the appraisal, survey and deed preparation for the conveyance of the property authorized by this act as deemed necessary by the commissioner of the division of capital asset management and maintenance.
- (c) In the event that said property ceases to be used at any time for the purpose described in section 1, or is used for any purpose other than the purpose stated herein, said property, upon notice by the commissioner of the division of capital asset management and maintenance, shall revert to the care and control of the commonwealth and any further disposition of said property shall be subject to the provisions of sections 40E through 40J, inclusive, of chapter 7 of the General Laws, and require the prior approval of the General Court.

SECTION 178. Sections 35, 36, 37 and 49 shall apply to those pending cases in which no final judgment has entered as of the effective date of this act.

SECTION 179. Sections 124, 125, 126, 127, 128 and 170 of this act shall take effect upon passage.

SECTION 180. Section 32 of this act shall take effect on July 1, 2005.

SECTION 181. Section 83 shall be effective November 26, 2003.

SECTION 182. Section 40 shall take effect on October 1, 2004.

SECTION 183. Unless otherwise specified, the provisions of this act shall take effect upon passage.

This bill was returned on September 17, 2004, by the Governor to the House of Representatives, the branch in which said bill was originated, with His objections in writing to the following items therein:

Items Disapproved:

SECTION 2 :	5920-3000	7100-0200	7114-0100	7507-0100	8910-0000
SECTION 2A:	0710-0250	1599-4123	1599-4124	1599-4125	1599-4575

2000-2022

SECTION 2E: 1599-1223 7114-0103 8000-0050 8800-0099

SECTIONS: 16, 20, 22, 29, 37, 42, 44, 52, 54, 55, 85, 86, 87, 90, 93, 103, 105, 111, 112, 116, 117, 118, 122, 134, 135, 139, 141, 143, 145, 146, 147, 148, 150, 156, 157, 159, 161, 164, 168, 171, 175, 176, 177, 177A, and 177B.

SECTION 2 Items reduced in amount

Item	Reduce by	Reduce to
2200-0100	625,000	900,000
4000-0896	2,000,000	2,000,000
7003-0702	650,000	300,000
8900-0001	100,000	2,520,000

Reduce by

SECTION 2A Items reduced in amount and by striking the wording Reduce to

	,		O
1100-1125	125,000	175,000	"and further provided that not less than \$100,000

Wording Stricken

shall be expended for continuing legal education and training as directed by a joint labormanagement committee consisting of 4 representatives of management selected by the Governor's Chief Legal Counsel and 4 representatives of labor selected by the President of the National Association of Government Employees"

SECTION 2E Items reduced in amount and by striking the wording

				0
Item	Reduce by	Reduce to	Wording Stricken	

2800-0107 "; provided further, that \$30,000 shall be 2,030,000 34,350,000 expended for the removal of fences surrounding

the MWRA covered storage facility in at Norumbega Reservoir in Weston"

and

"; provided further, that not less than \$2,000,000 shall be expended for the rehabilitation of the Manning Bowl facility in the City of Lynn"

SECTION 2E: Item reduced in amount and by striking the wording and inserting in place thereof the following:

item	Reduce by	Reduce to	wording stricken
7004-0089	5,730,000	4,925,000	"; provided further, that \$1,100,000 shall be
			granted to the town of Norwood for a one-time
			matching grant for the elderly population growth

project"

and

"; provided further, that \$250,000 shall be granted to the city of New Bedford for the demolition of the former Fairhaven Mill Complex"

and

"; provided further, that \$1,000,000 shall be granted to the city of Worcester for the Worcester Public Safety Complex"

and

"; provided further, that \$2,000,000 shall be granted to the town of Waltham for public safety improvements to certain public housing complexes; provided further, that \$500,000 shall be granted to the town of Dedham for construction of a public access road for the proposed senior complex in Dedham; provided further, that \$450,000 shall be granted to the town of Gardner"

and

"; provided further, that \$100,000 shall be granted to the towns of Otis and Becket for phase 2 emergency repairs of the Green Water Pond Dam; and provided further, that \$380,000

shall be granted to the town of Winthrop for child safety grants"

Wording Inserted

"; provided further, that \$50,000 shall be granted to the town of Gardner"

Section reduced in amount and by striking the wording and inserting in place thereof the following:

SECTION	Reduce by	Reduce to	Wording Stricken
100	1,300,001	200,000	"Said item 7007-0900 of said section 2 of said chapter 149 is hereby further amended by striking out the figure "\$17,053,305" and inserting in place thereof the following figure:-\$18,553,306."
			Wording Inserted
			"Said item 7007-0900 of said section 2 of said chapter 149 is hereby further amended by striking out the figure "\$17,053,305" and inserting in place thereof the following figure:-\$17,253,305."

Sections disapproved by striking the wording:

SECTION Wording Stricken

"provided further, that \$100,000 shall be expended for environmental remediation and cleanup of the Aberjona River in Winchester; provided further, that \$25,000 shall be expended for aquatic weed control in the Upper Mystic Lake;"

and

"; provided further, that \$500,000 shall be expended for the study and initial phase of Columbia Avenue seawall in Salem"

"; provided further, that not less than \$600,000 shall be expended for existing Boston youth service providers, as determined by the Boston Workforce Investment Board, who provide youth career exploration, academic support and remediation, and mentoring for at-risk youth in the city of Boston; provided further, that \$25,000 shall be expended for the Oak Grove Farm in

Millis for safety repairs; provided further, that \$25,000 shall be expended for the DeMellow Field in Dartmouth for safety repairs"

"; provided further, that not less than \$1,000,000 shall be provided for conflagration mitigation safety improvement grant to the city of Worcester"

"; and provided further, that \$300,000 shall be expended for the Greater Boston Convention and Visitors Bureau for the operation of a visitors information center at Waterside place in the city of Boston."

Pursuant to Article 56 as amended by Article 90, Section 3, of the Amendments to the Constitution, the Governor sent a separate letter to the Senate and the House of Representatives setting forth recommended amendments to SECTIONS 30, 40, 109, 123, and 169.

The remainder of this bill was approved by the Governor on September 17, 2004 at three o'clock and zero minutes, P.M.

Chapter 353. AN ACT ESTABLISHING A SICK LEAVE BANK FOR THOMAS F. SWEENEY, JR., AN EMPLOYEE OF THE DEPARTMENT OF CORRECTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the department of correction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law or rule or regulation to the contrary, the department of correction shall establish a sick leave bank for Thomas F. Sweeney, Jr., an employee of said department. Any employee of said department may voluntarily contribute 1 or more of his sick, personal or vacation days to said sick leave bank for use by said Thomas F. Sweeney, Jr.

When Thomas F. Sweeney, Jr. terminates employment with said department or requests to dissolve said sick leave bank, the balance of the sick leave time remaining in the sick leave bank shall be transferred to the extended illness leave bank.

The foregoing was laid before the Governor on the Ninth day of September, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 354. AN ACT AUTHORIZING THE BOARD OF SELECTMEN OF ACTON TO LEASE A CERTAIN PARCEL OF LAND.

Be it enacted, etc., as follows:

SECTION 1. The town of Acton may lease map H-2A, parcel 49 of the assessors maps for a term of not more than 25 years, for the purpose of constructing private parking facilities.

SECTION 2. Notwithstanding any general or special law to the contrary, including chapter 30B of the General Laws, the board of selectmen of the town of Acton may issue a request for proposals for the lease described in section 1 to determine the terms and conditions of such request, to accept any proposal or negotiate changes in any proposal, or to reject all proposals, as they determine to be in the best interests of the town, and to take all others actions as may be necessary or desirable to carry out such project, but paragraphs (b) and (g) of section 16 of said chapter 30B shall apply to the lease described in section 1.

SECTION 3. This act shall take effect upon its passage.

Approved September 23, 2004.

Chapter 355. AN ACT PROHIBITING DISCRIMINATION AGAINST VETERANS IN EMPLOYMENT.

Be it enacted, etc., as follows:

SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subsection 1C the following subsection:-

1D. For an employer, an employment agency, the commonwealth or any of its political subdivisions, by itself or its agents, to deny initial employment, reemployment, retention in employment, promotion or any benefit of employment to a person who is a member of, applies to perform, or has an obligation to perform, service in a uniformed military service of the United States, including the National Guard, on the basis of that membership, application or obligation.

SECTION 2. Chapter 115 of the General Laws is hereby amended by inserting after section 2A the following section:-

Section 2B. There shall be a commission on veterans employment opportunities that shall investigate whether veterans are subjected to employment discrimination on the basis of their status as veterans. The commission shall report its findings and recommendation annually on March 1 to the secretary of veterans affairs. The commission shall consist of 5 persons as follows: the secretary of veterans affairs or his designee, the secretary of economic development or his designee, a member appointed by the speaker of the house of representatives, a member appointed by the president of the senate and a veteran appointed by the Governor.

Approved September 23, 2004.

Chapter 356. AN ACT ESTABLISHING THE BERKSHIRE COUNTY COMMISSION ON THE STATUS OF WOMEN.

Be it enacted, etc., as follows:

SECTION 1. Section 66 of chapter 3 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 60, the words "and (f)" and inserting in place thereof the following words:- (f) to appoint members to regional chapters of the commission; and (g).

- **SECTION 2.** (a) There shall be a permanent commission on the status of women in Berkshire county, hereinafter referred to as "the commission", consisting of 9 persons who are to be appointed by the Massachusetts commission on the status of women. The commission shall conduct an ongoing study of all matters concerning women in Berkshire county. The commission shall report their findings to the Massachusetts commission on the status of women annually, on or before June 2, and recommend solutions to the problems facing the women of Berkshire county. The Massachusetts commission on the status of women shall make such appointments to the Berkshire commission from a pool of applicants who reside in Berkshire county.
- (b) Members shall serve a term of 3 years and until their successors are appointed. Commissioners may be reappointed for 2 consecutive terms. After the completion of 2 consecutive terms, former commissioners may reapply to serve on the commission after a year has passed since their last term. The initial members of the Berkshire county commission on the status of women shall be appointed for the following terms: 3 members for a term of 1 year; 3 members for a term of 2 years; and 3 members for a term of 3 years.
- (c) Vacancies in the membership of the commission shall be filled by the Massachusetts commission on the status of women for the balance of the unexpired term.
- (d) Appointments by the Massachusetts commission on the status of women to the Berkshire county commission on the status of women shall be made in consultation with women's organizations. Nominations shall be solicited between August 1 and September 16 of each year through an open application that shall be widely distributed throughout Berkshire county. Members of the commission shall be diverse and represent different municipalities in Berkshire county.
- (e) Members shall serve on the commission as volunteers and shall not be compensated.
- (f) The commission shall elect from among its members a chair, a vice chair, a treasurer and any other officers it deems necessary.
- (g) The commission shall meet at least 6 times a year, at the members' discretion. Members of the Massachusetts commission on the status of women may attend the meetings of the Berkshire county commission on the status of women.
- (h) The commission may accept and solicit funds, including any gifts, donations, grants or bequests, or any federal funds for any of the purposes of this section. Such funds shall be deposited in a separate account to be expended at the discretion of the commission.
 - (i) The powers of the commission shall include, but not be limited to, the following:
- a) the use of voluntary and uncompensated services of private individuals, agencies and organizations as may from time to time be offered and needed; b) recommendation of policies and recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of the commission; c) enactment of bylaws for its own governance; and d) the conduct of regular, public meetings and fact-finding hearings and other public forums as it may deem necessary.

Approved September 30, 2004.

Chapter 357. AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO LEASE CERTAIN TOWN-OWNED PROPERTIES FOR TWENTY-FIVE YEARS.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 3 of chapter 40 of the General Laws to the contrary, the town of Brookline may lease the town-owned properties known and numbered as 29 Avon street and 15 Newton street for a period not to exceed 25 years, upon such terms and conditions as the board of selectmen shall determine, provided, that such terms and conditions are approved by a town meeting of said town.

SECTION 2. This act shall take effect upon its passage.

Approved September 30, 2004.

Chapter 358. AN ACT PROVIDING FOR A CHARTER OF THE TOWN OF PLYMOUTH.

Be it enacted, etc., as follows:

SECTION 1. The following shall be the charter for the town of Plymouth.

CHAPTER 1 POWERS OF THE TOWN

Section 1 Incorporation

1-1-1 The present Town of Plymouth, Massachusetts, within its territorial limits as now or may hereafter be established by law, is hereby continued as a body politic and corporate under the name Town of Plymouth.

Section 2 Scope of Town Powers

1-2-1 The town shall possess, exercise and enjoy all powers possible under the constitution and laws of the Commonwealth of Massachusetts as fully and completely as though they were expressly enumerated in this Charter.

Section 3 Form of Government

1-3-1 This Charter provides for the representative town meeting-selectmen-town manager form of government.

Section 4 Construction of Charter

1-4-1 The powers of the town under this Charter shall be construed liberally in favor of the town and the specific mention of particular powers in this Charter shall not be construed as limiting in any measure the general powers of the town as stated in this chapter.

Section 5 Intergovernmental Relations

1-5-1 Consistent with any constitutional or statutory provision, the Town of Plymouth may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more

municipalities, civil divisions, subdivisions or agencies of the Commonwealth, other states or the United States government.

CHAPTER 2

THE LEGISLATIVE BRANCH: REPRESENTATIVE TOWN MEETING

Section 1 Division of the Town into Precincts

2-1-1 The town shall be divided into voting precincts which shall contain, as nearly as possible, an equal number of inhabitants. Each voting precinct shall be composed of compact and contiguous territory, as prescribed by general law.

Section 2 Composition, Membership, and Eligibility

- 2-2-1 The town shall have a representative town meeting which shall consist of representative town meeting members who are elected for three-year (3) overlapping terms. The number of representative town meeting members shall be determined as follows: Each precinct shall elect (9) members; this provision shall be implemented by each precinct electing three (3) members in each annual town election occurring after the effective date of this Charter. Should the number of precincts in the town change, the total number of regular town meeting members shall increase or decrease accordingly.
- 2-2-2 Any registered voter of the town shall be eligible for election to town meeting membership.
- 2-2-3 The Town Clerk shall serve as clerk of the representative town meeting. The Town Clerk shall cause notice of all meetings to be posted in the town office building and a public place within each precinct. The Town Clerk shall mail copies of the notice to the place of residence of all representative town meeting members, citing the place, date, and time of the meeting.
- 2-2-4 The Town Clerk shall keep a detailed journal of all representative town meeting proceedings and perform such other duties as may be assigned by this Charter, by-law, or vote of the representative town meeting.
- 2-2-5 Representative town meeting members shall serve without compensation or monetary allowance for any expenses incurred in the performance of their duties.
- 2-2-6 Representative town meeting members shall occupy sections assigned to them by the Town Clerk in a section of the hall which has been reserved exclusively for them.
- 2-2-7 Any representative town meeting member who is unable to attend a representative town meeting session shall provide notice of his or her anticipated absence, and the expected duration of the absence, to the Town Clerk prior to such session.

Section 3 Powers

- 2-3-1 The representative town meeting shall exercise all legislative powers of the town.
- 2-3-2 The representative town meeting shall consider and act upon all proposed by-laws.
- 2-3-3 The representative town meeting shall have the power to consider and act upon, pursuant to its legislative authority, with or without amendments, all proposed operating and

capital improvement budgets, bond issues, and all other financial proposals of the town and such other matters as prescribed by law and all matters that appear on the town warrant, except as otherwise provided by general law.

2-3-4 The Committee of Precinct Chairs described in Section 2-11-4 may from time to time appoint subcommittees of itself or committees of Town Meeting members to review town by-laws, town meeting rules and for such other purposes as they shall deem appropriate and shall make recommendations to the Representative Town Meeting and/or the moderator at least annually. The committee also may perform other duties designated to facilitate the business of town meeting. In addition to any other powers conferred upon it by the representative town meeting, the Committee of Precinct Chairs shall periodically review the rules of procedure that govern the conduct of the representative town meeting and report its finding to the representative town meeting at least annually.

Section 4 Procedures

2-4-1 The representative town meeting shall meet at least twice (2) in each calendar year. The first such meeting, the spring annual representative town meeting, shall be convened during the period of March through April, at a time fixed by by-law. The spring annual representative town meeting shall be concerned primarily with the determination of all matters that concern raising, appropriating, or transferring funds, including, but not limited to the adoption of an annual operating budget covering all town agencies. The second such meeting shall be held during the last four calendar months, at a time fixed by by-law.

The budget, as adopted at the spring annual representative town meeting, may be reopened by a citizen-petitioned article pursuant to section 10 of chapter 39 of the General Laws, or any other applicable law, or may be reopened by an affirmative vote of a majority of the members of the Board of Selectmen.

- 2-4-2 The quorum necessary for the conduct of representative town meeting business shall be two-thirds (%) of the total number of elected representative town meeting members. A smaller number than the required quorum may adjourn any meeting forthwith to a stated date, time, and place.
- 2-4-3 The representative town meeting shall always operate in open session and secret ballots shall not be allowed.
- 2-4-4 The order of consideration of the articles on the warrant may be changed only by a two-thirds (%) vote of those present and voting.
- 2-4-5 The representative town meeting may adopt rules and regulations relating to its procedures and its methods of operation.
- 2-4-6 Except in the case of a unanimous voice vote as declared by the Moderator, a roll call vote shall be required for all final main motions with respect to the following subject matters: adoption or amendment of zoning by-laws; adoption or amendment of general by-laws; and fiscal matters which are defined as any appropriation, borrowing, fund transfer, or the creation of or re-authorization of such enterprise or revolving funds as may be authorized by state law, provided, however, that in the event of a vote which the Moderator

determines to be near unanimous, the Moderator may elect to take a roll call of only those voting in the minority.

2-4-7 In the event that the Advisory and Finance Committee fails to comply with the provisions of Section 2-12-2 of this Charter, the scheduled representative town meeting shall convene and then adjourn to such a date as would allow the Advisory and Finance Committee to make copies of its detailed written report available to representative town meeting members and voters fourteen (14) days prior to said date.

If the Advisory and Finance Committee has failed to consider a warrant article, the representative town meeting may consider that article provided that two-thirds (%) of the representative town meeting members in attendance vote to so do. No such vote shall be taken unless the article has been presented to the Advisory and Finance Committee.

Section 5 Attendance of Representative Town Meeting Members

- 2-5-1 Representative town meeting members shall attend all representative town meeting sessions. Each calendar day during which any portion or portions of a representative town meeting or meetings is/are conducted shall be deemed to be a single "representative town meeting session".
- 2-5-2 During each representative town meeting session, the Town Clerk shall cause the attendance to be taken prior to the commencement of the session, and the Moderator shall take roll on at least one occasion after commencement of the session and a quorum has been reached. A record of those in attendance shall be kept open until the end of each representative town meeting session to enable latecomers to be recorded as present. The attendance record shall be public and be made part of the representative town meeting proceedings.
- 2-5-3 A representative town meeting member who ceases to reside in the representative town meeting member's precinct during the term of office shall notify the Town Clerk, who shall declare the seat vacant as of the time of said notice. The Town Clerk may also declare such seat vacant if the registrars of voters, pursuant to sections 47B, 48 and 49 of chapter 51 of the General Laws, or any other applicable law, determine that the representative town meeting member is illegally or incorrectly registered to vote in that precinct.

Section 6 Moderator

- 2-6-1 A Moderator shall be elected at the regular town elections for a term of three (3) years.
- 2-6-2 The Moderator shall have no vote unless the representative town meeting members present and voting are equally divided.
- 2-6-3 The Moderator shall preside at all representative town meeting sessions and shall perform such other duties as may from time to time be assigned to the office through by-law or vote of the representative town meeting.
- 2-6-4 Promptly following the annual town election, the Moderator shall appoint an Assistant Moderator for a term commencing at the first annual or special representative town

meeting following such annual election, and ending on the date of the annual town election in the following year. Such appointment shall be subject to the approval of the next annual or special representative town meeting, the Assistant Moderator shall substitute for the Moderator in the event that the Moderator is absent from a representative town meeting session or at the discretion and request of the Moderator, and shall carry out the duties of the Moderator excluding any exercise of appointing authority at such representative town meeting session. In the event that the Moderator cannot carry out the duties of his office by reason of death or disability, then the Assistant Moderator shall carry out all of the duties of the office of Moderator. The Assistant Moderator position shall be uncompensated.

Section 7 Rights of Non-Members

2-7-1 Residents and taxpayers of the town may speak on any article in a warrant. Section 8 Compulsory Attendance

2-8-1 All town officers, the Town Manager, the town engineer, chairpersons of boards, commissions, and the Advisory and Finance Committee, and all department heads or those officials' designated representatives, shall attend all representative town meeting sessions. They shall have all the privileges of representative town meeting members, except the power to vote, unless they have been elected to the office of representative town meeting member. The absence of any such person shall not invalidate the actions of the representative town meeting.

Section 9 Filling Vacancies

2-9-1 The Town Clerk shall notify forthwith the precinct of any vacancy which occurs in a precinct delegation.

2-9-2 The person who received the highest number of votes among the unsuccessful representative town meeting member candidates at the most recent election in the precinct shall fill the vacancy until the next regular election. If such person declines, or is unable to fill the vacancy, the person who received the next highest number of votes among the unsuccessful representative town meeting member candidates at the most recent election shall fill the vacancy. If the vacancy cannot be filled in this manner, the precinct caucus delegation shall vote to fill the vacancy. If necessary, the Town Clerk shall call members of the precinct caucus delegation together by written notice and shall conduct the election.

Section 10 Conflict of Interest

2-10-1 Notwithstanding any general or special law to the contrary, any representative town meeting member who also holds a position of employment by the town shall be prohibited from voting on any town meeting article in which such employee, or such employee's department, has a financial interest. Such representative town meeting member shall notify the Town Clerk, in writing, prior to the representative town meeting session or during such session at such time as such member becomes so aware, as to any articles giving rise to such financial interest. This section shall apply to the annual budget article, or any later amendment thereto, as follows: The representative town meeting member is prohibited from voting on the budget line item for his or her department or agency, but shall not be pro-

hibited from voting on any other line item, or from voting on the overall budget appropriation.

- 2-10-2 Notwithstanding any general or special law to the contrary, no representative town meeting member shall vote on any town meeting article in which an immediate family member, or any business or organization in which the representative town meeting member serves as an officer, director, partner, or employee, or has a financial interest. For purposes of this section, "immediate family member" shall be defined as the representative town meeting member, his or her spouse and each of their parents, children, brothers, and sisters. Any such representative town meeting member shall notify the Town Clerk, in writing prior to the representative town meeting session, as to any articles giving rise to such financial interest.
- 2-10-3 For the purposes of Section 10 of Chapter 2 of this Charter, the "financial interest" of a representative town meeting member shall be determined pursuant to the interpretation of the term "financial interest" by the State Ethics Commission and applicable reported appellate court decisions, which are hereby incorporated by reference. The "financial interest" of a department shall be defined as any particular warrant article and related motions or votes which specifically refer to said department.

Section 11 Caucuses

- 2-11-1 The representative town meeting members from each precinct shall, within twenty (20) days following each town election, meet and elect from among their own precinct's representative town meeting members, a chairperson, vice-chairperson, and clerk, to serve for a term of one (1) year, and shall file a notice of such organization with the Town Clerk. If the Town Clerk fails to receive a notice of organization within twenty-one (21) days following a town election, the Town Clerk shall immediately call a meeting of the representative town meeting members from such precincts that have failed to organize, for the purposes of organizing.
- 2-11-2 Each precinct delegation shall hold a caucus meeting for the purpose of reviewing the subject matter of the upcoming representative town meeting. Caucus meetings may be held in conjunction with other precinct delegations.
- 2-11-3 Each precinct chairperson shall arrange for the posting of notices of caucus meetings in Town Hall. Each such caucus meeting shall be conducted in accordance with section 23A et seq., of chapter 39 of the General Laws, the Open Meeting Law.
- 2-11-4 The precinct chairpersons shall meet together within forty-five (45) days following each town election, and shall organize as a Committee of Precinct Chairs, electing a Chairperson and a Clerk.

Section 12 Advisory and Finance Committee

2-12-1 An Advisory and Finance Committee of fifteen (15) members shall be appointed by the Moderator for three-year (3) overlapping terms. There shall be at least one member from each precinct of the town. The Advisory and Finance Committee shall choose from its members a chairperson and fill such other offices as it may create. The Moderator

may fill any vacancy by appointment and the term of such appointment shall be for the remainder of the unexpired term of the person causing such vacancy.

Persons not registered to vote in the Town of Plymouth, Town of Plymouth employees, and representative town meeting members shall not be eligible for appointment to, or service on, the Advisory and Finance Committee.

- 2-12-2 The Advisory and Finance Committee shall conduct one (1) or more public hearings on the proposed operating and capital budget and shall issue its recommendations in a detailed written report and make copies available to representative town meeting members and voters at least fourteen (14) days prior to the scheduled date of the representative town meeting. In preparing its report, the Committee may require any town department, board, or office to furnish it with appropriate financial reports and budgetary information.
- 2-12-3 The Advisory and Finance Committee shall present the proposed budget to the representative town meeting.
- 2-12-4 In the final month of the fiscal year, no department, commission, office or agency may expend, except for amounts previously encumbered, more than one-twelfth (1/12) of its annual appropriation, unless expenditures have been approved by the Advisory and Finance Committee.

CHAPTER 3

THE EXECUTIVE BRANCH: THE BOARD OF SELECTMEN, THE TOWN MANAGER AND PLANNING BOARD

Section 1 The Board of Selectmen: Composition and Terms

- 3-1-1 A Board of Selectmen of five (5) members shall be elected for three-year (3) overlapping terms. The regular election for the office of selectman shall be held in accordance with Chapter Five of this Charter.
- 3-1-2 Vacancies in the office of selectman shall be filled by special election in accordance with section 10 of chapter 41 of the General Laws, and any other applicable law.

Section 2 Board of Selectmen: General Powers and Duties

- 3-2-1 The Board of Selectmen shall be the chief executive body of the town. It shall serve as the goal setting, long-range planning and policy-making body of the town. It shall make recommendations on major courses of action to the representative town meeting. It shall adopt policy directives and guidelines which the officers, boards, committees, commissions and employees of the town shall implement. The Board of Selectmen shall maintain a policy handbook containing such policy directives and guidelines.
- 3-2-2 The Board of Selectmen shall have the power to enact rules and regulations to implement its policies.
- 3-2-3 The Board of Selectmen shall review the annual proposed operating and capital budgets submitted by the Town Manager and make recommendations with respect thereto as it deems advisable. The Town Manager shall present the budget, incorporating the recommendations of the Board of Selectmen, to the Advisory and Finance Committee.

- 3-2-4 The Board of Selectmen shall act as the licensing authority of the town and shall have the power and responsibility to issue licenses, to make all necessary rules and regulations regarding the issuance of licenses, to attach conditions and impose restrictions in the public interest, and to enforce, or cause to be enforced, laws, rules and regulations relating to all businesses for which it issues licenses.
- 3-2-5 The Board of Selectmen shall have the power to approve all collective bargaining agreements to which the town is the contracting agency.
- 3-2-6 The Board of Selectmen shall be responsible, through the Town Manager, for the efficient and orderly operation of all agencies of the town except those under the direction of another elected town agency.
- 3-2-7 The Board of Selectmen may investigate or authorize the Town Manager, or another town officer or any agency, to investigate the conduct of any town department, office or agency. A detailed written report of any such investigation shall be filed in the Town Manager's office, and a report summarizing such investigation shall be printed in the next published annual town report.
- 3-2-8 The Board of Selectmen shall meet jointly with the School Committee, and all other elected boards of the town for the purpose of sharing information. The Board of Selectmen shall schedule the joint meeting(s), which shall be held no less than once (1) a year.

Section 3 Appointments

3-3-1 The Board of Selectmen shall appoint a Town Manager, town counsel, registrars of voters, election officers, constables, and members of all multiple-member boards, committees, and commissions except as otherwise provided in this Charter and/or the town by-laws.

Section 4 Town Manager: Appointment and Removal

- 3-4-1 The Board of Selectmen shall appoint a Town Manager by an affirmative vote of four (4) members of the Board.
- 3-4-2 The Town Manager shall be appointed solely on the basis of executive and administrative qualifications. The Town Manager shall be a professionally qualified person of proven ability, especially fitted to perform the duties of the office by education, training, and previous experience in municipal administration. The Town Manager shall have had at least five (5) years of full-time paid experience as a City or Town Manager, Assistant City or Town Manager, Town Administrator or Assistant Town Administrator, or the equivalent level of experience.

The town may, from time to time, establish such additional qualifications as deemed necessary and appropriate. The Town Manager shall not be subject to a personnel by-law, if any. In addition to other terms as set forth in this Charter generally and in this Section 4 of Chapter 3 specifically, the Town Manager shall devote full-time to the office and shall not hold any other public office, elective or appointive, nor engage in any other business or occupation during the term of office, unless such action is approved in advance, in writing, by the Board of Selectmen. With the approval of the Board of Selectmen, the Town Manager

may serve as the town's representative to regional boards, commissions, and the like, but the Town Manager may not receive additional compensation from the town for such services.

To the extent permitted by law, the terms of the Town Manager's employment shall be the subject of a written agreement between the parties setting forth the length of service, compensation, vacation, sick leave, benefits, and such other matters (excluding tenure) as are customarily included in an employment contract.

3-4-3 The Board of Selectmen may discipline or discharge the Town Manager at any time by an affirmative vote of four (4) members of the Board of Selectmen. Within seven (7) days thereafter, the Town Manager may appeal the decision of the Board of Selectmen by filing a written request for a public hearing with the Board of Selectmen. If such a request is filed, the Board of Selectmen shall conduct a public hearing within fourteen (14) days of the written request, and act upon the appeal within seven (7) days after the public hearing.

3-4-4 The Board of Selectmen shall designate a qualified person to serve as Acting Town Manager and to perform the duties of the office during any vacancy of the Town Manager exceeding thirty (30) days caused by the Town Manager's absence, illness, suspension, removal, or resignation. The term of appointment of an Acting Town Manager shall not exceed one hundred eighty (180) days.

Section 5 Town Manager: Powers and Duties

3-5-1 The Town Manager shall be the chief administrator officer of the town. The Town Manager shall be responsible to the Board of Selectmen for the effective management of all town affairs placed in the Town Manager's charge by this Charter, the Board of Selectmen, by-law, or vote of the representative town meeting. The Town Manager shall be responsible for the implementation of town policies established by the Board of Selectmen.

The Town Manager shall:

a. unless otherwise provided herein and in Section 2 of Chapter 6 of this Charter, and except as may be otherwise provided in Civil Service Law, appoint, suspend, or remove all department heads, a Board of Assessors, and all officers, subordinates, and employees of the town, including those under grant funding, except employees of the school department. The Town Manager shall appoint a town clerk, whose duties shall be as specified in general or special legislation. In the case of an employee who works with a multiple-member board or the Plymouth Public Library Corporation, the Town Manager shall act in accordance with this Section only after consultation with that multiple-member board, or the Plymouth Public Library Corporation, as the case may be. Except as may be otherwise provided in Civil Service Law, appointments, suspension, or removals of Department and Division Heads, or equivalents regardless of title, shall take effect on the fifteenth (15) day after the Town Manager files notice of the action with the Board of Selectmen unless the Board shall within that period, by a vote of four members veto the action. The Board of Selectmen may, by a majority vote, waive this fifteen (15) day period, whereupon the action shall become effective forthwith. This same authority to veto the actions of the Town Manager provided herein to the Board of Selectmen shall accrue to the Planning Board in the case of the appointment, suspension or removal of the Director of Planning and Development;

- b. fix the compensation of all town officers and employees appointed by the Town Manager within the limits of existing appropriations and personnel bylaws;
- c. supervise all town departments under the jurisdiction of the Board of Selectmen and direct the operations of the town;
- d. may, with the approval of the Board of Selectmen, establish, reorganize, consolidate or abolish any department or position under the Town Manager's direction and supervision;
- e. administer, either directly or through designated persons, all provisions of general and special laws applicable to the town, and all by-laws and regulations established by the Board of Selectmen;
 - f. coordinate the operational and strategic planning for the town;
 - g. administer all grants received by the town;
- h. submit to the Board of Selectmen a written proposed operating budget for the ensuing fiscal year, providing in detail the estimated revenue from all sources and all expenditures, including debt services, for the previous, current and ensuing year;
- i. submit annually to the Board of Selectmen a five-year (5) capital improvements program, including a list of all capital improvements proposed for the next five (5) fiscal years with supporting data, cost estimates, methods of financing, recommended time schedules, and the effect on the operating budget or revenues for each proposed capital improvement;
- j. keep full and complete records of the financial and administrative activities of the town and render a detailed written report on all operations as often and for such periods as may be required by the Board of Selectmen;
- k. administer and enforce collective bargaining contracts, and personnel rules, regulations, and by-laws adopted by the town;
- l. develop and maintain a complete inventory of real and personal property of the town, except school property, at least annually;
- m. procure from the school department, a detailed written report of the complete inventory of real and personal school property for annual submission to the Board of Selectmen. The school department shall be obligated to prepare the detailed written report;
- n. have full jurisdiction over the lease, rental, and use of all town property, except schools, and shall be responsible for the maintenance and repair of all town property;
- o. be the Chief Procurement Officer under the provisions of chapter 30B of the General Laws, responsible for the purchasing of all supplies, materials, and equipment for the town, including the bidding and awarding of all contracts, except for the school department;
- p. approve all warrants or vouchers for payment of town funds submitted by the Town Accountant;
- q. negotiate collective bargaining contracts on behalf of the Board of Selectmen, unless the Town Manager specifically designates another negotiator or negotiating team;

- r. represent the town at local, state, and regional meetings, and undertake public relations activities for the Board of Selectmen;
- s. have authority to examine, without notice, the activities of any agency under the Town Manager's control, or the conduct of any officer or employee thereof;
- t. have access to all town books and records necessary for the performance of the duties of Town Manager;
- u. conduct periodic operational and staffing evaluations of selected town departments, and provide a written report of the assessments performed to the Board of Selectmen and to the representative town meeting; and
- v. perform any other duties required by town by-laws, the Board of Selectmen, or vote of the representative town meeting.

Section 6 Department of Public Works

3-6-1 The Director of the Department of Public Works shall be appointed by the Town Manager and shall be a civil engineer or any other combination of experience and education including a Masters Degree in a related field. The Director of the Department of Public Works shall be qualified by education and experience for the duties of the office.

3-6-2 The Department of Public Works shall be responsible for:

the design, construction, maintenance, repair, and cleaning of roads, sidewalks, storm drains, bridges, and other public way related structures;

the maintenance, repair, and cleaning of all buildings owned or leased by the Town; the development and maintenance of all cemeteries, parks, and recreation facilities; snow removal;

providing for and supervising the collection and disposal of garbage and other refuse, and the maintenance and operation of all facilities for the disposal of the same;

the supervision, care and replacement of trees;

the design, construction, operation, and maintenance of all water and sewer facilities; such other functions as the Town Manager assigns; and

have general responsibility and supervision of the maintenance and custodial services for all town-owned buildings and grounds.

Section 7 Board of Health

- 3-7-1 A Board of Health of five (5) members shall be appointed by the Board of Selectmen for three-year (3) overlapping terms.
- 3-7-2 The Board of Health shall exercise such powers and duties as prescribed by the General Laws, this Charter and town by-laws.

Section 8 Establishment and Scope of the Department of Finance

3-8-1 There shall be a Department of Finance responsible for the fiscal and financial affairs of the town and for the coordination and overall supervision of all fiscal and financial activities of all town government agencies except the School Department. The Department of Finance shall include the functions of Accountant, Treasurer, Collector, Assessors and Director of Data Processing.

3-8-2 The Department of Finance shall be responsible for, and shall include, the following functions:

coordination of all financial services and activities of town government;

maintenance of all accounting records and other financial statements for all town government offices and agencies;

payment of all financial obligations on behalf of the town;

investment of town funds and management of debt;

receipt of all funds due to the town from any source;

maintenance of the system of property valuation;

rendering of advice, assistance, guidance and recommendations to all other town offices and agencies in any financial or fiscal affairs;

monitoring throughout the fiscal year of the expenditure of funds by town offices and agencies;

general supervision of the purchase of all goods, services, materials and supplies by the town; and

general supervision of all data processing functions, activities and equipment of town government offices and agencies.

Section 9 Director of Finance

- 3-9-1 The Town Manager shall appoint a Director of Finance. The Director of Finance shall be especially fitted by education, training, and experience to perform the duties of the office.
- 3-9-2 At the discretion of the Town Manager, the Director of Finance may serve as the head of any division within the department. The Town Manager also may designate a person to serve as head of more than one (1) division within the department.
- 3-9-3 The Director of Finance shall be responsible to the Town Manager for the effective operation of the Department of Finance and all fiscal and financial activities of town government. The Director shall coordinate and provide overall supervision for all activities of the department and, in consultation with the division head and the Town Manager, shall have the authority to direct and assign all personnel serving in that department.
- 3-9-4 The Director of Finance shall be responsible to the Town Manager and shall have the following specific powers and duties, subject to the direction of the Town Manager:

coordination of the financial functions of all departments and agencies and supervision of the following functions: accounting, treasury, tax collections, assessing, data processing, budgeting and procurement; ensure that each function is operating efficiently and in accordance with the applicable statute, by-law, code and/or accepted practice;

accountability for planning, organizing and providing administrative direction for all financial functions;

working with the Town Manager and the Board of Selectmen in developing strategic financial plans and policies;

compilation and submission of an annual operating budget and an annual capital improvement plan to the Town Manager. The Director shall receive all requests made for the expenditure of town funds from every town office and agency and shall assemble all such requests into a form deemed to be best suited to show a complete financial plan for all town funds and activities for the ensuing fiscal year. The proposed budget shall show in detail all estimated income from the proposed property tax levy and from every other source by category; and

general oversight, throughout the year, of the expenditure of all town funds pursuant to such budgets and expenditures as authorized by the representative town meeting.

Section 10 Conservation Commission

3-10-1 The Board of Selectmen shall appoint a Conservation Commission of seven (7) members for three-year (3) overlapping terms.

3-10-2 The commission shall exercise such powers and duties as prescribed by general law, this Charter, and town by-laws.

Section 11 Development and Industrial Commission

3-11-1 The Town Manager shall appoint a Development and Industrial Commission of nine (9) members for five-year (5) overlapping terms.

3-11-2 The Commission shall exercise such powers and duties as prescribed by general law, this Charter, and town by-laws.

Section 12 Zoning Board of Appeals

3-12-1 The Board of Selectmen shall appoint a Zoning Board of Appeals of five (5) members and two (2) associate members for three-year (3) overlapping terms.

3-12-2 The board shall exercise such powers and duties as prescribed by general law, this Charter, and town by-laws.

Section 13 Establishment and Scope of the Department of Planning and Development

3-13-1 There shall be a Department of Planning and Development responsible for the planning of the land use, environmental, community planning, and economic planning and development functions of the town. The Department of Planning and Development shall supervise and coordinate all planning and development activities of all town government offices and agencies. The Department of Planning and Development shall include the functions of comprehensive planning, subdivision control, zoning appeals, preservation of natural open space, community development, economic development. design review, redevelopment, and planning of new buildings and facilities.

3-13-2 The Department of Planning and Development shall be responsible for, and shall have, the following specific duties:

development and maintenance of a Comprehensive Master Plan;

coordination of all land use planning and development activities of town government; administration of subdivision control rules and regulations;

preservation of natural open space, and land acquisition and management; conservation administration and enforcement;

redevelopment, revitalization and rehabilitation activities;

administration of design review, historic district review, and zoning board of appeals, review and planning of affordable housing;

administration of economic development;

maintenance of all land use planning, development, and related records and reports for all town government offices and agencies;

rendering of advice, assistance, guidance, and recommendations to all other town offices and agencies on land use, environmental, community and economic planning, and development matters; and

cooperation with, and participation in, regional area planning.

Section 14 Planning Board

3-14-1 The town shall elect a Planning Board of five (5) members for five-year (5) overlapping terms.

3-14-2 The Planning Board shall exercise such powers and duties as prescribed by general law, this Charter, and applicable town by-laws.

3-14-3 The Planning Board shall serve as the long-range planning body of the town with respect to the planning of the physical, environmental, community, and economic development of the town. The Planning Board shall be responsible, through the Director of Planning and Development, for the efficient and orderly operation of all Planning Board functions and all related activities.

3-14-4 The Planning Board shall develop and maintain a Comprehensive Master Plan (CMP) which shall be the guidance document for departmental duties under Section 3-13-2, above, and for the Board's recommendations to the representative town meeting. The CMP shall be updated periodically to address current issues concerning the physical, environmental, community and economic development of the town, including planning strategies for Open Space Preservation, Land Acquisition, Village Centers Development, Economic Development, Housing, and Historic Preservation. The Board shall report annually to the representative town meeting to inform the town of all updates to the CMP and any implementation measures that may require town meeting approval. The Planning Board's recommendations on zoning by-law amendments to the representative town meeting shall be consistent with the CMP. The Planning Board shall solicit public comment and participation throughout the Comprehensive Master Planning Process and shall adopt the CMP and/or annual CMP updates only after a duly noticed public hearing.

3-14-5 The Planning Board shall make recommendations to the representative town meeting and to the Board of Selectmen on all matters concerning the planning of the physical, environmental, community, and economic development of the town as prescribed by general law, this Charter, and applicable town by-laws, and specifically with reference to the consistency of such matters with the current CMP.

3-14-6 At the request of the Planning Board any town board or agency dealing with significant public improvements relating to the physical, environmental, community or economic development of the town, shall report the status of such plans or development to

the Planning Board so as to be evaluated and included in the CMP and in the Planning Board's recommendations to the representative town meeting and the Board of Selectmen.

3-14-7 The Planning Board may appoint committees to assist and advise the Board in carrying out its duties under this charter such as a Master Plan committee, a Land Use and Acquisition Committee and such other committees as the Board deems necessary to assist the Board in performing its duties. Failure of the Board to appoint such committees shall not relieve the Board of its responsibilities to fulfill all the duties enumerated under this charter.

3-14-8 The Planning Board shall appoint an open space committee comprised of nine persons to act in an advisory capacity to the Planning Board, representative town meeting with respect to the preservation of natural open space and to assist the Community Preservation Committee in fulfilling its duties under the Community Preservation Act. Five members shall be appointed by the Planning Board, two by the Selectmen and 2 by the Conservation Commission.

Section 15 Director of Planning and Development

3-15-1 There shall be a Director of Planning and Development appointed by the Town Manager with veto authority by the Planning Board as delineated in Chapter 3. The Director shall be a professionally qualified person of proven ability, especially fitted to perform the duties of the office by education and training. The Director of Planning and Development shall have had at least five (5) years of full-time paid experience in community planning and development.

3-15-2 At the discretion of the Town Manager, the Director of Planning and Development may serve as the head of any division within the Department of Planning and Development. The Town Manager may also designate one person to serve as the head of more than one division within the Department.

3-15-3 The Director of Planning and Development shall be responsible to the Planning Board for the effective operation of all Planning Board functions and all related activities. The Director shall coordinate and provide overall supervision of all activities of the Department of Planning and Development, and shall have, in consultation with the division head and the Town Manager, the authority to direct and assign all personnel serving in the Department of Planning and Development.

3-15-4 The Director of Planning and Development shall be responsible for, and shall have, the following specific duties:

coordination of the land use, environmental, community, and economic planning and development functions of all town departments and agencies;

supervision of the following functions: planning, preservation of natural open space, land acquisition, community development, economic development, design review, subdivision control, affordable housing, and zoning appeals;

assuring that each function is operating efficiently and in accordance with the applicable statute, by-law, code, and/or accepted practice;

accountability for long-range planning and organizing;

provision of administrative direction for all functions of the Department of Planning and Development; and

working with the Planning Board, Town Manager, and Board of Selectmen in developing strategic plans and policies.

Section 16 Building Committee

- 3-16-1 The Board of Selectmen shall appoint a Building Committee which shall consist of nine (9) members. The committee shall have among its members one (1) member of the Planning Board, a registered professional engineer or architect, an attorney, a person employed in the construction industry or a related trade or occupation, two (2) members of the School Committee and three (3) other persons. Members of the committee shall be appointed for three-year overlapping terms.
- 3-16-2 The Building Committee shall meet with various town departments from time to time to determine the need for additions or renovations to any existing buildings or facilities, for the construction of new buildings or facilities, or for the demolition or disposal of existing buildings. The committee shall report its recommendations to the Board of Selectmen and the Representative Town Meeting and the School Committee when applicable. Whenever any such work is authorized by the Representative Town Meeting, the Building Committee shall be responsible for the supervision of all work relating thereto, including site planning, preliminary architectural drawings, final plans, and the supervision of all construction.
- 3-16-3 Upon request of the Building Committee the town manager may provide support personnel to assist the Building Committee in carrying out its duties.

CHAPTER 4 ELECTED TOWN BOARDS AND OFFICERS

Section 1 General Provisions

- 4-1-1 Beginning with the first town election held after the effective date of this Charter, the town shall elect the following boards and offices:
 - a board of selectmen of five (5) members;
- a school committee of seven (7) members who shall be elected for three-year (3) overlapping terms;
- a housing authority of five (5) members, four (4) to be elected, and one (1) to be appointed in accordance with applicable law, for five-year (5) overlapping terms;
 - a planning board of five (5) members; and
- a redevelopment authority of five (5) members, four (4) to be elected, and one (1) to be appointed in accordance with applicable law, for five-year (5) overlapping terms.
- 4-1-2 The terms of office of multiple-member boards shall overlap, except as general or special law may provide otherwise. Representative town meeting members shall be elected in accordance with Section 2-2-1 of this Charter.
 - 4-1-3 During the term for which a member is elected, and for one (1) year following

expiration of such term, no member of any elected board under this Charter shall be eligible to accept any paid position under such board or in the same department.

4-1-4 Vacancies in boards established under this chapter, except the Board of Selectmen, shall be filled by the Board of Selectmen, together with the remaining members of the appropriate board in accordance with the provisions of general law.

Section 2 Simultaneous Elected Offices

4-2-1 No representative town meeting member, or elected town official representing the entire town, shall hold simultaneously any other elected town office other than member of a Charter Commission. Any person who holds multiple offices in violation of this section shall promptly inform the Town Clerk as to which office that person will vacate. Election to any county, state or federal office shall be deemed to be an event disqualifying an elected town official (including but not limited to representative town meeting member) from continuing in his or her elected town office

CHAPTER 5 ELECTIONS

Section 1 Town Elections

- 5-1-1 The regular election for all town offices shall be by official ballot held on the second Saturday of May of each year.
- 5-1-2 The order in which names of candidates appear on election ballots for any office, including that of representative town meeting member, shall be determined by a drawing by lot conducted by the town clerk which shall be open to the public. Notification to the candidates and to the public shall be by publication in a local newspaper during the week preceding the week in which the day of the drawing is to take place. The ballot shall identify candidates seeking re-election with the phrase "Candidate for Re-election" placed next to the candidate's name.

Section 2 Elections to be Nonpartisan

5-2-1 All town elections shall be nonpartisan, and election ballots for town offices shall be printed without any party mark, emblem, vignette, or designation whatsoever.

Section 3 Time of Taking Office

5-3-1 Any person duly elected to any office or board shall take up the duties of the office immediately upon certification, provided that such person shall first have been sworn to the faithful performance of the duties of that office by the Town Clerk.

Section 4 Nomination of Candidates for Election to Representative Town Meeting

- 5-4-1 The nomination of a candidate for election or reelection as representative town meeting member shall be made by separate nomination papers signed by not less than ten (10) registered voters of the precinct in which the candidate resides. Nomination papers shall be filed with the Town Clerk no later than the last day on which the nomination papers of candidates for other offices must be filed.
- 5-4-2 Nomination papers shall identify representative town meeting members seeking re-election with the phrase "Candidate for Re-election" placed next to each candidate's name.

5-4-3 The nomination procedure for all other elected positions shall be as set forth in general or special law.

Section 5 Initiative

5-5-1 Any ten (10) registered voters of the town may secure the inclusion of an article in the warrant for either of the annual representative town meetings by written petition to the Board of Selectmen. At least one hundred (100) registered voters may secure the same for any special town meeting.

Section 6 Referendum

- 5-6-1 A vote of the town meeting under any article in the warrant shall not be operative until ten (10) days after its final passage other than the following: (a) to adjourn; (b) to appropriate money for the payment of principal and interest of bonds and notes of the town; (c) to authorize the temporary borrowing of money in anticipation of revenues and (d) to amend zoning bylaws or as otherwise provided by statute.
- 5-6-2 If within ten (10) days of an affirmative vote of final passage by the representative town meeting, a petition signed by not less than three (3) percent of the registered voters in the town is filed with the Town Clerk asking that any question involved in such a vote be submitted to the voters of the town, then the town shall hold a referendum for the sole purpose of presenting the question to the voters of the town.
- 5-6-3 Within five (5) days after receipt of the petition the Town Clerk shall determine whether the petition contains a sufficient number of signatures. If there is a sufficient number of signatures, the Town Clerk shall inform the Board of Selectmen, who, with the Town Clerk, shall provide for a referendum to be held between thirty-five (35) and forty-five (45) days after such determination.
- 5-6-4 Each question to be voted on in the referendum shall be submitted to the voters in the following form: "Shall the town vote to approve the action of the representative town meeting whereby it was voted that (here insert a brief summary of the substance of the vote)?"
- 5-6-5 The vote on a referendum question shall be in accordance with the provisions of general law relating to special town elections.

Section 7 Recall of Elective Officeholders

- 5-7-1 Voters may recall any elected officeholder as herein provided.
- 5-7-2 Five hundred (500) registered voters of the town may file an initial petition containing the name of the officeholder sought to be recalled and a statement of the grounds for recall with the Town Clerk. No more than fifty (50) names shall be counted from any one (1) precinct of the town.
- 5-7-3 The Town Clerk shall thereupon deliver to the first ten (10) registered voters named on such initial petition, a sufficient number of copies of recall petition blanks demanding such recall. The Town Clerk shall keep these printed forms available. The Town Clerk shall sign and affix the official seal to the recall petition blanks that are issued. Photocopies of recall petitions which do not bear the official seal shall not be accepted by

the Town Clerk. The recall petition blanks shall be dated and addressed to the Board of Selectmen, demanding the election of a successor to such office. The recall petition blanks shall contain the names of the ten (10) persons to whom the recall petition blanks are issued, the number of recall petitions issued, the name of the officeholder whose recall is sought, and the grounds for recall as stated in the initial petition.

5-7-4 The Town Clerk shall enter a copy of the recall petition in the town records. The recall petition shall bear the signatures and residential addresses of at least fifteen (15) percent of the registered voters and shall be returned to the Town Clerk within twenty (20) business days after the filing of the initial petition. All completed recall petitions containing the signatures requesting a recall election need not be submitted simultaneously.

5-7-5 The Town Clerk shall submit the recall petition to the registrars of voters within one (1) business day of receipt. The registrars of voters shall certify thereon the number of signatures which represent registered voters within seven (7) business days.

5-7-6 If the recall petition is certified by the registrars of voters as sufficient, the Town Clerk shall submit the same with a certificate so stating to the Board of Selectmen. Within three (3) business days of receipt of the certificate of certification, the Board of Selectmen shall give written notice by registered mail, of the receipt of the certificate to the officeholder sought to be recalled.

5-7-7 If the officeholder does not resign within five (5) business days thereafter, the Board of Selectmen shall order a special election to be held on a date fixed by them, which shall be not less than sixty (60) nor more than ninety (90) days after the date of the Town Clerk's certificate that a sufficient recall petition has been filed; provided, however, that if any other town election is to occur within one hundred (100) days after the date of the certificate, the Board of Selectmen shall postpone the holding of the special election to the date of such other election.

5-7-8 The nomination of candidates, the publication of the warrant for the recall election, and the conduct of the same, shall all be in accordance with the provisions of general law relating to elections. The election to replace the officeholder sought to be removed shall be held on the same day as the recall election.

5-7-9 The incumbent shall continue to perform the duties of office until the recall election. If not recalled, the incumbent shall continue in office for the remainder of the unexpired term. An incumbent having successfully survived a recall election shall not again be subject to recall during the same term of office. If recalled, the incumbent shall be deemed removed upon the qualification of the successor who shall hold office for the remainder of the unexpired term. If the successor fails to qualify within five (5) business days after receiving notification of election, the incumbent shall thereupon be deemed removed and the office vacant.

5-7-10 The form of the question to be voted upon shall be substantially as follows: "Shall (here insert the name and title of the elective officeholder whose recall is sought) be recalled?" The action of the voters to recall shall require a majority vote, but shall not be effective unless the total of those voting for and against recall exceeds twenty (20) percent

of the registered voters of the town.

5-7-11 No person, having been removed from office by recall or having resigned from office while recall proceedings were pending, shall be appointed to any town office within two (2) years following said removal or resignation.

5-7-12 Recall proceedings shall not be initiated during the first or last one hundred eighty (180) days of any officeholder's term of office.

Section 8 Recall of Representative Town Meeting Members

5-8-1 Representative town meeting members shall be subject to recall as generally provided in Section 7 of Chapter 5 of this Charter, provided:

that the words "representative town meeting member" shall be substituted for the word "officeholder" throughout Section 7 of Chapter 5 of this Charter;

that in Section 5-7-2 the number "one hundred twenty-five (125)" shall be substituted for the number "five hundred (500)," and that names submitted shall be those of registered voters residing in the precinct of the intended recall election;

that in Section 5-7-4, the recall petition shall include the signatures and residential addresses of at least fifteen (15) percent of the registered voters residing in the precinct, and the words "ten (10) business days" shall be substituted for the words "twenty (20) business days";

that in Section 5-7-7 the words "special precinct election" shall be substituted for the words "special election";

that in Section 5-7-10 the words "of the precinct" shall be substituted for the words "of the town"; and

that any vacancy created by a recall election shall be filled in accordance with the provisions of Section 9 of Chapter 2 of this Charter.

CHAPTER 6 TOWN BOARDS, COMMISSIONS, COMMITTEES, AND DEPARTMENT AND DIVISION HEADS

Section 1 General Provisions

6-1-1 All boards, commissions, and committees of the town shall organize annually as soon after the annual election as practicable, to elect necessary officers, establish quorum requirements, adopt rules of procedure, and maintain minutes. All boards, commissions, and committees of the town regularly shall file approved meeting minutes with the Town Clerk. Such minutes shall be made available for inspection to all persons requesting them.

Section 2 Delegation of Appointment, Discipline, and Removal Power

6-2-1 The powers conferred upon the Town Manager in Section 3-5-1(a) of this Charter, for all employees subject to the provisions of chapter 31 of the General Laws, the Civil Service Law, except Department and Division Heads, or their equivalents regardless of title, and school employees, may be delegated to the appropriate Department Heads. To the extent permitted by law, such powers, which shall include the ability to appoint, discipline, or discharge an employee, shall be subject to final approval by the Town Manager,

without appeal or recourse to the Board of Selectmen.

CHAPTER 7 GENERAL PROVISIONS

Section 1 Charter Amendment

7-1-1 This Charter may be replaced, revised, or amended in accordance with the General Laws.

Section 2 Specific Provisions to Prevail

7-2-1 To the extent that any specific provision of this Charter conflicts with any general provision, the specific provision shall prevail.

Section 3 Severability of Charter

7-3-1 If any provision of this Charter is held invalid, the other provisions of this Charter shall not be affected thereby. If the application of this Charter or any of its provisions to any person or circumstances is held invalid, the application of this Charter and its provisions to other persons and circumstances shall not be affected thereby.

Section 4 Continuation, Revision, and Republication of By-Laws

7-4-1 All special acts, by-laws, resolutions, rules, regulations, and votes of the town meeting in force on the effective date of this Charter, not inconsistent with its provisions, shall continue in force until amended or repealed.

Section 5 Enforceability of this Charter

7-5-1 The provisions of this Charter may be enforced by any applicable general or special law, including, but not limited to section 14 of chapter 43B of the General Laws and chapter 231A of the General Laws.

Section 6 Periodic Charter Review

7-6-1 At lease once in every five (5) years, a special committee shall be appointed by the town Moderator for the purpose of reviewing this Charter and to make a report, with recommendations, to the next annual representative town meeting concerning any proposed amendments which said committee may determine to be necessary or desirable.

SECTION 2. This act shall be submitted to the voters of the town of Plymouth at the annual town election to be held on May 14, 2005 in the form of the following question, which shall be placed on the official ballot:-

"Shall an act passed by the general court in the year 2004 entitled 'An Act providing for a charter of the town of Plymouth' be accepted?" If a majority of votes cast in answer to said question is in the affirmative, this act shall take effect on July 1, 2005, but not otherwise.

SECTION 3. Section 2 shall take effect upon its passage.

Approved September 30, 2004.

Chapter 359. AN ACT RELATIVE TO THE CHARTER OF THE CITY OF PITTSFIELD.

Be it enacted, etc., as follows:

SECTION 1. Section 26 of chapter 280 of the acts of 1932, as appearing in section 1 of chapter 401 of the acts of 1983, is hereby amended by striking out, in line 6, the words "a commissioner of public health,".

SECTION 2. Said section 26 of said chapter 280, as so appearing, is hereby further amended by striking out, in lines 10 and 14, the words "commissioners of public health and" and inserting in place thereof, in each instance, the following words:- commissioner of.

SECTION 3. Said section 26 of said chapter 280, as so appearing, is hereby further amended by striking out the fifth paragraph.

SECTION 4. The city of Pittsfield may establish, by ordinance, a board of health consisting of 5 members, 1 of whom shall be a physician.

SECTION 5. This act shall take effect upon its passage.

Approved September 30, 2004.

Chapter 360. AN ACT AUTHORIZING THE TOWN OF LINCOLN TO REGULATE CERTAIN PROPERTY TAX EXEMPTION ELIGIBILITY REQUIREMENTS FOR THE ELDERLY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding clause Forty-first A of section 5 of chapter 59 of the General Laws or any other general or special law to the contrary, and subject to sections 2 to 5, inclusive, of this act, the board of assessors of the town of Lincoln shall defer the real estate property tax payment for property of a person 60 years of age or older and occupied by him as his domicile, or a person who owns the same jointly with his spouse, either of whom is 60 years of age or older and occupied as their domicile, or of a person who owns the same jointly or is a tenant in common with a person not his spouse and occupied by him as his domicile, if the person claiming the exemption either alone or together with his spouse had combined income of \$60,000 or less during the preceding year. No restrictions shall be imposed based upon the number of years the property owner (a) has been domiciled in the commonwealth; or (b) owns and occupies as his domicile such real property.

SECTION 2. Any such person may, on or before December 15 of each year to which the tax relates or within 3 months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of all or part of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest

in such property bears to the whole tax due. The board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with the board of assessors on behalf of the town.

Said agreement shall provide that:-

- (1) no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of 4 per cent per annum for the first year and at an annual rate set thereafter by the board of selectmen provided that the rate set by the selectmen shall never exceed 8 per cent per annum;
- (2) the total amount of such taxes due, plus interest, for the current and prior years does exceed 50 per cent of the owner's proportional share of the full and fair cash value of such real property;
- (3) upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to the real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, that if such heir-at-law, assignee or devisee is a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the 50 per cent requirement of clause (2);
- (4) if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and
- (5) any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

SECTION 3. In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under this act, plus interest as hereinafter provided. A lien filed pursuant to this act shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the town and shall be added to and become a part of the taxes due.

SECTION 4. In addition to the remedies provided by this act, the recorded statement of the assessors provided for in this act shall have the same force and effect as a valid taking for nonpayment of taxes under section 53 of chapter 60 of the General Laws, except that: (1) interest shall accrue at the rate provided in this act until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section 62 of said chapter 60; (2) no assignment of the municipality's interest under this act may be made pursuant to section 52 of said chapter 60; and (3) no petition under section 65 of said chapter 60 to foreclose the lien may be filed before the expiration of 6 months from the conveyance of the property or the death of the person whose taxes have been deferred.

SECTION 5. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 361. AN ACT RELATIVE TO REDUCTION IN RANK FOR MEMBERS OF THE FIRE DEPARTMENT OF THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 33 of chapter 31 of the General Laws or the first sentence of section 39 of said chapter 31 or any other general or special law or rule to the contrary, if a permanent employee of the fire department of the city of Boston serving in any position in a title above the lowest title on such department is to be separated from such position because of lack of money or the abolition of such position, each such employee shall be separated from his position according to such employee's seniority in title based on such employee's length of service in such title after permanent promotion in the department and shall be reinstated to such position held according to such seniority, provided, however, that this act shall only apply to reductions in force resulting in demotions from titles above the lowest title on such department to the next lower title or titles in succession in such department and shall not affect the seniority of any employee in service for any other purpose, including but not limited to, the separation of any permanent employee from service on such department.

SECTION 2. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 362. AN ACT DESIGNATING A CERTAIN OVERPASS IN THE TOWN OF MILFORD AS THE GREATER MILFORD VETERANS MEMORIAL OVERPASS.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the overpass on interstate highway route 495 spanning state highway route 85 in the town of Milford shall be designated and known as the Greater Milford Veterans memorial overpass, in honor and recognition of all residents of the greater Milford area who have served with distinction in the United States armed forces. The department of highways shall erect and maintain suitable markers bearing such designation in compliance with the standards of the department.

Approved October 7, 2004.

Chapter 363. AN ACT DESIGNATING A CERTAIN OVERPASS IN THE TOWN OF MILFORD AS THE GUNNERY SERGEANT ELIA P. FONTECCHIO MEMORIAL OVERPASS.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the overpass on interstate highway route 495 spanning state highway route 109 in the town of Milford shall be designated and known as the Gunnery Sergeant Elia P. Fontecchio memorial overpass, in honor of Gunnery Sergeant Elia P. Fontecchio who was killed in action while serving with the First Marine Expeditionary Force in Iraq in the service of the United States. The department of highways shall erect and maintain suitable markers bearing such designation in compliance with the standards of the department.

Approved October 7, 2004.

Chapter 364. AN ACT RELATIVE TO THE REDUCTION IN RANK FOR CERTAIN PUBLIC EMPLOYEES IN THE CITY OF HAVERHILL.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law or rule to the contrary, if permanent employee of the fire force of the city of Haverhill serving in any position in a title above the lowest title on the force is to be separated from the position because of lack of money or the abolition of the position, he shall be separated from the position according to his seniority in the title, based on his length of service after permanent promotion in the force and shall be reinstated to the position held by him according to the seniority; but, this section

shall apply only to a reduction in force resulting in a demotion from title above the lowest title on the force to the next lowest title in succession in the force and shall not affect the seniority of any employee in service for any other purpose, including but not limited to, the separation of a permanent employee from service on the force.

SECTION 2. Notwithstanding any general or specific law or rule to the contrary, if a permanent employee of the superior and executive police officers of the city of Haverhill serving in any position in a title above the lowest title on such force is to be separated from the position because of lack of money or the abolition of the position, he shall be separated from the position according to his seniority in the title, based on his length of service after permanent promotion in the force and shall be reinstated to the position held by him according to the seniority; but, this section shall apply only to a reduction in force resulting in a demotion from title above the lowest title on the force to the next lowest title in succession in the force and shall not affect the seniority of any employee in service for any other purpose, including but not limited to, the separation of a permanent employee from service on the force.

SECTION 3. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 365. AN ACT AUTHORIZING THE TOWN OF MARSHFIELD TO REDUCE SEWER FEE LIABILITY AND BETTERMENT CHARGE IN EXCHANGE FOR SENIORS' VOLUNTEER SERVICES.

Be it enacted, etc., as follows:

SECTION 1. (a) Notwithstanding any general or special law to the contrary, in addition to any reduction in real estate tax liability allowed pursuant to section 5K of chapter 59 of the General Laws, the board of selectmen of the town of Marshfield may establish a program to allow any person over the age of 60 to volunteer to provide services to the town in exchange for reduction of his sewer bill and betterment charge. Any such reduction shall be in addition to any exemption or abatement to which the person is otherwise entitled. No such person shall receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for services provided pursuant to such reduction, nor shall the reduction of the sewer bill and betterment charge exceed \$500 in a tax year.

(b) The town shall maintain a record for each taxpayer including, but not limited to the number of hours of service and the total amount by which the sewer fees and betterment charge have been reduced, and shall provide a copy of the record to the assessor so the actual sewer bill and betterment charge reflects the reduced rate. A copy of the record shall also be provided to the taxpayer prior to the issuance of the actual sewer bill and betterment charge.

(c) The town may adopt local rules and procedures for implementing this section in a manner consistent with the intent of this section.

SECTION 2. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 366. AN ACT AUTHORIZING THE TOWN OF PEMBROKE TO BORROW CERTAIN SUMS OF MONEY.

Be it enacted, etc., as follows:

SECTION 1. The town of Pembroke may borrow from time to time such sums of money as may be necessary, not to exceed an aggregate amount of \$600,000 for certain costs related to the withdrawal of the town from the Silver Lake Regional School District, including the expense of moving certain furniture and equipment from the district high school, the assumption by the town of HVAC lease, the town's share of the termination cost of the district's portable classroom lease, the town's share of the district's library bond and the town's share of the district's instructional equipment leases. Each authorized issue shall constitute a separate loan and each such loan shall be payable within 20 years from its date.

Indebtedness incurred under this act shall not be included in determining the limit of indebtedness of the town under section 10 of chapter 44 of the General Laws but, except as provided herein, shall otherwise be subject to said chapter 44.

SECTION 2. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 367 AN ACT ESTABLISHING THE MATTAPOISETT RIVER VALLEY WATER DISTRICT.

Be it enacted, etc., as follows:

SECTION 1. The establishment of the Mattapoisett River Valley Water District, hereinafter referred to as the district, pursuant to section 25 of chapter 40N of the General Laws by votes of the towns of Fairhaven, Marion, Mattapoisett and Rochester passed at town meetings in 2004 and in accordance with the agreement among said towns for the establishment of the district approved pursuant to said votes, hereinafter referred to as the agreement, and all actions heretofore taken by the district commission which were not inconsistent with this act or with the terms of the agreement, are hereby validated, ratified and confirmed in all respects, notwithstanding any failure to comply with the procedural requirements of said section 25. The purpose of the district shall be to provide for the supply,

treatment and distribution of water to the member towns.

SECTION 2. The powers, duties and liabilities of the district shall be vested in and exercised by a district commission organized in accordance with this section and the agreement. The commission shall choose a chairman and secretary by ballot from its membership. It shall appoint a treasurer who need not be a member of said commission. The treasurer shall receive and take charge of all money belonging to the district and shall pay any bill of the district which shall have been approved by the commission. The treasurer may, by vote of said commission, be compensated for his services. The treasurer of the district shall be subject to sections 35, 52 and 109A of chapter 41 of the General Laws, to the extent applicable.

(a) Each of the member towns shall appoint 3 commission members. One of the 3 members shall be appointed by the board of selectmen; 1 by the water commissioners, or the board in that town having the authority of water commissioners; and 1 mutually agreed to by the board of selectmen and by the water commissioners; but, in the event of a failure to make a mutual selection of the third commission member in a town after a vacancy has existed for 45 days, the position shall be filled by appointment by the town moderator.

SECTION 3. The district shall be a body politic and corporate and political subdivision of the commonwealth and, notwithstanding the last sentence of section 25 of chapter 40N of the General Laws, shall have the following powers and duties:-

- (1) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal appearing on a bond or note of the district shall have the same legal effect as such seal would have if it were impressed thereon.
- (2) To sue and be sued, but only to the same extent and upon the same conditions that a city or town may be sued.
- (3) To purchase, take by eminent domain under chapter 79 of the General Laws or otherwise acquire land within the member towns, or any interests therein, for the purposes of the district, including the protection of the water supply; to construct, reconstruct, replace, rehabilitate, repair, equip, operate and maintain water supply, treatment and distribution facilities for the benefit of said towns, and any other facilities necessary to carry out the purposes of the district; and to make any necessary contracts in relation thereto.
- (4) To incur debt for the purpose of acquiring land, or any interests therein, and constructing, reconstruction, replacing, rehabilitating, repairing and equipping water supply, treatment and distribution facilities and any other facilities necessary to carry out the purposes of the district, including debt for the purposes of designing and otherwise planning any such improvements, for a term not exceeding 30 years; but, written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the board of selectmen of each town, comprising the district not later than 7 days after the date on which said debt was authorized by the district commission, and no debt shall be incurred until the expiration of 45 days from the date said debt was authorized by the district commission. If before the expiration of said period, any member town expresses disapproval by vote of a majority of the voters present and voting on the matter at a town meeting called

for the purpose of expressing such disapproval, the said debt shall not be incurred; but, in the event of any such disapproval by a member town, the district commission may prepare and authorize another proposal for the incurrence of debt which may be the same as any prior proposal and shall be subject to the requirements of this section. Notwithstanding section X of the district agreement, a member town shall not be required to hold a town meeting within said 45 day period and the failure of a member town to hold a town meeting shall not constitute disapproval of the amount of the debt authorized by the district commission.

- (5) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and the treasurer of the district commission, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.
- (6) To receive and disburse funds for any district purpose, and to invest funds in any investments legally permitted for cities and towns.
- (7) To incur temporary debt in anticipation of revenue to be received from the member towns or from any other source.
 - (8) To assess member towns for any expenses of the district.
- (9) To maintain a reserve fund, and to carry over the remaining balance of such fund into the ensuing fiscal year, subject to the limitations in section 4 of this act.
- (10) To apply to receive and expend or hold any grants or gifts for the purposes of the district.
- (11) To engage legal counsel, financial advisors, engineers, accountants, consultants, agents and other advisors.
- (12) To submit an annual report to each of the member towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each town were computed.
- (13) To employ an executive director and such other employees as it considers necessary to operate such district.
- (14) To enter into contracts with any persons, including but not limited to non-member cities and towns, other bodies politic and the United States of America, that are necessary or convenient to carrying out the powers of the district, including but not limited to contracts for the purchase, supply, treatment and distribution of water and contracts for the operation and management of the water facilities of the district.
- (15) In the interest of the health, safety and welfare of the public in the member towns, to regulate, and to limit or prohibit any party in the construction of new facilities, including new wells, and/or in the enlargement, improvement, or increased use of any facilities which were in existence on or before July 1, 2004, for the taking of water from the Mattapoisett river aquifer, notwithstanding any general or special law to the contrary.

- (16) To establish standards and procedures for the sale of water by member towns to each other, and no sale of water shall be allowed between member towns except pursuant to such standards and procedures. No sales shall be allowed by a member town to a non-member town except for short term sales made necessary due to emergency or circumstances beyond the reasonable control of the non-member community, but in any event not to exceed 25,000 gallons per day and for no longer than 30 days.
- (17) To enact by-laws and rules concerning the management and regulation of its affairs and the use of its facilities and the provision of its services.
- (18) To convey, sell, lease or otherwise dispose of any district real or personal property, or interests therein, no longer needed for district purposes.
- (19) To do any and all other things necessary and convenient to carrying out the powers and purposes of the district, and all other things incidental and related thereto.

SECTION 4. The district commission shall annually determine the amounts necessary to be raised to maintain and operate the district during the ensuing fiscal year, plus a reserve fund not to exceed 15 per cent of the maintenance and operating budget, and the amounts required for payment of debt and interest incurred by the district which will be due in said year, and shall apportion the amounts so determined among the several member towns in accordance with the terms of the agreement. The amounts so apportioned for each town shall, prior to February first in each year, be certified by the district treasurer to the treasurers of the several towns. Except to the extent provided for from water system revenues and other sources, the obligation of each member town to pay apportionments pursuant to the agreement shall be included in the amounts to be assessed annually in such town under section 23 of chapter 59 of the General Laws, and, with or without an appropriation therefore, the town treasurer shall pay to the district the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned pursuant to the agreement shall not be included in the statutory limit of indebtedness of any town.

SECTION 5. Notwithstanding chapter 44 of the General Laws to the contrary, only sections 16 to 28, inclusive, of said chapter 44, so far as apt, shall apply to the district; provided, however, that section 16 of said chapter 44 relating to the countersigning of bonds and notes and section 24 of said chapter 44 relating to the countersigning and approval of notes and the certificates of the clerk relating thereto shall not apply to the district; and provided further that, notwithstanding section 19 of said chapter 44 to the contrary, the maturities of each issue of bonds and notes of the district shall be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the treasurer or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal. Any debt incurred by the district shall not be subject to the limit of indebtedness prescribed in section 10 of said chapter 44.

SECTION 6. The member towns may from time to time amend the district agreement if the agreement as so amended is not inconsistent with this act.

SECTION 7. Notwithstanding any general or special law to the contrary, section 4 of this act or the terms of the agreement, costs of designing the district's water treatment facility in the aggregate amount of \$715,000 shall be financed by the towns of Fairhaven, Marion and Mattapoisett, pursuant to the appropriations voted by said towns for their respective shares of said project costs at town meetings held in 2004, and said votes and appropriations are hereby validated, ratified and confirmed in all respects, including, in the case of the votes of the towns of Marion and Mattapoisett, the authorizations pursuant to said votes to raise such appropriations by borrowing, which indebtedness shall be incurred by said towns pursuant to clause (22) of section 7 of chapter 44 of the General Laws. Each of said towns shall transfer all or any portion of the amounts appropriated for said design project to the district for application to pay project costs only upon receipt by the treasurer of the town from the district of copies of invoices or other evidence satisfactory to the treasurer that the project costs for which said amounts are being transferred have been incurred by the district and are due and payable.

Approved October 7, 2004.

Chapter 368. AN ACT RELATIVE TO DENTAL HYGIENISTS.

Be it enacted, etc., as follows:

SECTION 1. Section 7 of chapter 94C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "nurse", in line 74, the second time it appears, the following words:- or a licensed dental hygienist under the supervision of a practitioner as defined in section 1 for the purposes of administering local anesthesia agents only.

SECTION 2. Paragraph (a) of section 9 of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

A practitioner, as defined in section 1, may cause controlled substances to be administered under his direction by a licensed dental hygienist, for the purposes of local anesthesia only.

SECTION 3. Paragraph (c) of said section 9 of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

A licensed dental hygienist who has obtained a controlled substance from a practitioner, as defined in section 1, for dispensing to an ultimate user pursuant to paragraph (a) shall return to such practitioner any unused portion of the substance which is no longer required by the patient.

SECTION 4. Section 51 of chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the word "rootplaning", in line 25, the following words:-

as well as the administration of local anesthesia agents.

Approved October 7, 2004.

Chapter 369. AN ACT PROVIDING CREDITABLE SERVICE TO CERTAIN RESEARCH FACULTY FUNDED BY RESEARCH INSTITUTES AND FOUNDATIONS UNDER AGREEMENT WITH THE UNIVERSITY OF MASSACHUSETTS.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the period or periods during which any member employed by the University of Massachusetts and subsequently directed by the university to accept employment with an institute or foundation supporting research faculty, was so employed in furtherance of a contract for services between the university and any such institute or foundation, shall be allowed as creditable service; provided, however, that such service when added to such other creditable service of such member shall not exceed 10 years; provided, further, that such member shall not be credited until such member has paid into the Annuity Savings Fund of the state employees retirement system, in 1 sum or installments, upon such terms and conditions as the board may prescribe, makeup payments, for each year of such creditable service sought, of an amount equal to 10 per cent of the regular annual compensation of the member when such member entered the retirement system; and provided, further, that if such member has enrolled in the optional retirement plan as provided in section 40 of chapter 15A of the General Laws there shall be no required makeup payments.

Approved October 7, 2004.

Chapter 370. AN ACT RELATIVE TO THE TERMS OF CERTAIN BONDS OF THE CITY OF REVERE TO BE ISSUED TO FINANCE THE CONSTRUCTION OF A PUBLIC SAFETY FACILITY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the city of Revere may issue bonds up to but not exceed the sum of \$17,000,000 for the purpose of designating, constructing, originally equipping and furnishing a new public safety facility for a term not exceeding 30 years and without regard to the term of any temporary loan issued in anticipation of such bonds.

SECTION 2. This act shall take effect upon its passage.

Approved October 7, 2004..

Chapter 371. AN ACT INCREASING THE RETIREMENT ALLOWANCE FOR CERTAIN RETIREES OF THE TOWN OF ARLINGTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary, the Arlington contributory retirement board shall have authority to increase the retirement allowance of: Walter Amorin, Joseph Paragona, William Towle, Lillian Rowe and Daniel Sullivan, retirees of the town of Arlington as if they qualified for section 90C of said chapter 32 when they retired under chapter 133 of the acts of 1992, notwithstanding the fact that these retirees' actual service with said town of Arlington at the time of their retirement was for a period of time less than 25 years.

SECTION 2. This act shall take effect upon its passage.

Approved October 7, 2004.

Chapter 372. AN ACT RELATIVE TO TOWN MEETING MEMBERS IN THE TOWN OF FRAMINGHAM.

Be it enacted, etc., as follows:

SECTION 1. Section 5 of chapter 143 of the acts of 1949 is hereby amended by striking out the second sentence, as most recently amended by section 2 of chapter 54 of the acts of 1992, and inserting in place thereof the following sentence:- A town meeting member who removes from the town, or from the precinct in which the town meeting member was elected, or who is elected to any other town office, except charter commission member, shall cease to be a town meeting member.

SECTION 2. Paragraph (4) of section 5A of said chapter 143, as appearing in chapter 338 of the acts of 2002, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- When a town meeting member moves from the precinct from which the town meeting member was elected to another precinct, and a resident of the town notifies the town clerk of the move, the town clerk shall verify that the town meeting member no longer resides in the precinct and after verification shall declare the position vacant. The vacancy shall be filled in accordance with this act.

SECTION 3. Paragraph (5) of said section 5A of said chapter 143, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- When a town meeting member moves from the town of Framingham, and a resident of the town notifies the town clerk of the move, the town clerk shall verify that the town meeting member no longer resides in the town and, after verification, declares the position vacant. The vacancy shall be filled in accordance with this act.

Approved October 14, 2004.

Chapter 373. AN ACT VALIDATING THE RESULTS OF THE ANNUAL TOWN ELECTION HELD IN THE TOWN OF FALMOUTH ON MAY 18, 2004.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, all acts and proceedings taken by the town of Falmouth at the annual town election held on May 18, 2004 and all actions taken pursuant thereto are hereby ratified, validated and confirmed, notwithstanding any defect or omission in posting the warrant for the election.

SECTION 2. This act shall take effect upon its passage.

Emergency Letter: 10/14/04 @ 4:05 P.M.

Approved October 14, 2004.

Chapter 374. AN ACT RELATIVE TO THE CHARTER OF THE CITY OF LAWRENCE.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 425 of the acts of 1983 is hereby amended by striking out subsection 5.7 and inserting in place thereof the following subsection:-

- 5.7 Filling of Vacancies.
- (a) School Committee Member. If a vacancy in the office of school committee member shall occur in the first 18 months of the term for which school committee members are elected, the vacancy shall be filled in the same manner as provided for district councilors; if the candidate who is willing to serve shall have received not less than 30 per cent of the votes cast for the office of school committee member in the district in which the vacancy exists. If no such candidate is available the city council shall, within 30 days following the date the vacancy is declared to exist, elect a suitable person from among the voters residing in the district to serve for the balance of the unexpired term.
- (b) In general, no vacancy which occurs after the first eighteen months of the term for which school committee members are elected shall be filled unless failure to fill such vacancies would result in fewer than four persons serving as members of the school committee, in that event all such vacancies shall be filled in the manner provided above.

Whenever a vacancy exists on the school committee which is not filled at the time of the city election, the person elected at such election to fill the seat in which the vacancy exists shall forthwith be sworn and shall, in addition to the term for which he was elected, serve for the balance of the then unexpired term.

SECTION 2. Subsection 8.3 of said section 1 of said chapter 425 is hereby further amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) Signature Requirements - The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election shall be as follows: for the office of the mayor not less than two hundred and fifty; for the office of councilor at large not less than one hundred; and for the office of district councilor or school committee member not less than fifty signatures of voters of the district from which the candidate seeks to be nominated. In no case shall a person collect signatures to be a candidate for more than one city office.

SECTION 3. This act shall take effect upon its passage.

Approved October 14, 2004.

Chapter 375. AN ACT AUTHORIZING THE TOWN OF NORWOOD TO LEASE CERTAIN LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary the town of Norwood may lease a certain parcel of water supply land to the Y.M.C.A. of Greater Boston, a non-profit corporation, for a term not to exceed 75 years, for the purpose of facilitating the construction, operation and maintenance of a recreational facility by the Y.M.C.A. of Greater Boston including, but not limited to, an ice skating rink and a swimming pool or pools. The parcel is shown as a part of parcel B on a plan of land entitled "Compiled Plan of Portion of Town of Norwood Water Supply Land on University Avenue in Norwood, Mass." dated May 1, 1997.

SECTION 2. Before the lease of the land, the town of Norwood shall ensure that an independent appraisal of the land is conducted. The Y.M.C.A. of Greater Boston shall be responsible for any costs associated with the appraisal and for any costs associated with surveys and other expenses relating to the lease of the land.

SECTION 3. Upon the passage of this act, the terms of the lease including, but not limited to, the consideration to be paid by the Y.M.C.A. of Greater Boston to the town of Norwood for the lease of the land shall be negotiated by the Norwood board of selectmen. The board of selectmen shall not execute or sign any such lease with the Y.M.C.A. of Greater Boston without first obtaining further approval from the Norwood town meeting.

SECTION 4. If the land is ever used for any purpose other than the purposes listed in section 1 or listed within the terms of the lease that is ultimately negotiated by the Norwood board of selectmen and ratified by Norwood town meeting, the authorization to lease the land to the Y.M.C.A. of Greater Boston granted by this act shall immediately become null and void and any leasehold interest in the land shall immediately revert to the town of Norwood.

Approved October 14, 2004.

Chapter 376. AN ACT ESTABLISHING A SICK LEAVE BANK FOR A CERTAIN EMPLOYEE OF THE DEPARTMENT OF SOCIAL SERVICES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the department of social services, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the department of social services shall establish a sick leave bank for Jamie Richard, an employee of said department. Any employee of said department may voluntarily contribute 1 or more of his sick, personal or vacation days to the paid leave bank for use by said Jamie Richard. Whenever said Jamie Richard terminates employment with said department or requests to dissolve said sick leave bank, the balance of the leave time shall be transferred to the department's sick leave bank. Approved October 14, 2004.

Chapter 377. AN ACT VALIDATING THE SPECIAL TOWN ELECTION HELD IN THE TOWN OF GOSHEN.

Be it enacted, etc., as follows:

Notwithstanding any general or special law or by-law to the contrary, all acts, votes and proceedings taken by the town of Goshen at its special town election held on September 13, 2003 and all actions taken pursuant thereto, are hereby ratified, validated and confirmed, notwithstanding any defect or omission in the posting of the warrant for the election.

Approved October 14, 2004.

Chapter 378. AN ACT RELATIVE TO DISABILITY INSURANCE.

Be it enacted, etc., as follows:

Paragraph (b) of subdivision (3) of section 108 of chapter 175 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out policy provision (6) and inserting in place thereof the following policy provision:-

Overinsurance.- After the loss-of-time benefit of this policy has been payable for 90 days, the benefit shall be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed (insert amount) per cent of the insured's earned income; provided, however, that if

the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded (insert amount) of the insured's earned income at the time of such application, the higher percentage will be used in place of (insert amount). The adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as (i) the product of the insured's earned income and (insert amount) per cent or, if higher, the alternative percentage described at the end of the first sentence of this provision bears to (ii) the total amount of loss-of-time benefits payable for such month under this policy and all other valid loss-of-time coverage on the insured, without giving effect to the overinsurance provision, in this or any other coverage, less in both (i) and (ii) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an overinsurance provision. In making the computation, all benefits and earnings shall be converted to a consistent (insert "weekly" if the loss-of-time benefit of this policy is payable weekly, "monthly" if the benefit is payable monthly, etc.) basis. If the numerator of the foregoing ratio is zero or is a negative, no benefit shall be payable under this policy. In no event shall this provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy and all other valid loss-of-time coverage below the less of \$300 and the total combined amount of loss-of-time benefits determined without giving effect to any overinsurance provision, or operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, or take into account or operate to reduce any benefit other than the loss-of-time benefit.

For the purposes of this provision the following words shall have the following meanings:

"Earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and ones average monthly earnings for a period of 2 years immediately preceding the commencement of disability, and shall not include any investment income or any other income not derived from the insured's vocational abilities.

"Overinsurance provisions", shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

Policy provision (6) may be included only in a policy which provides a loss-of-time benefit which may be payable for at least 52 weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings not less than 60 per cent, selected by the in-

surer and inserted in lieu of the blank factor specified in this section. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of the other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a definition of "valid loss-of-time coverage" approved as to form by the commissioner, which definition may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance authority of this or any other state of the United States or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workmen's compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the commissioner.

Approved October 15, 2004.

Chapter 379. AN ACT AUTHORIZING THE TOWN OF EASTON TO PAY A CERTAIN UNPAID BILL.

Be it enacted, etc., as follows:

SECTION 1. The town treasurer of the town of Easton may pay from available funds to Northeast Reclamation Corp. an unpaid bill for pavement reclamation and loading of excess materials on Purchase street incurred by said town and totaling a sum not to exceed \$61,746.14, notwithstanding the failure of the town to comply with the provisions of law relating to competitive bidding in awarding the contract.

SECTION 2. This act shall take effect upon its passage.

Approved October 22, 2004.

Chapter 380. AN ACT RELATIVE TO THE COMMUNITY DEVELOPMENT AUTHORITY IN THE CITY OF MARLBOROUGH.

Be it enacted, etc., as follows:

SECTION 1. Chapter 327 of the acts of 1979 is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. There is hereby established a Community Development Authority of the city, herein referred to as the authority, which shall be an operating agency and an urban renewal agency within the meaning of chapter 121B of the General Laws, an economic de-

velopment and industrial corporation within the meaning of chapter 121C of the General Laws and a housing authority within the meaning of said chapter 121B. The powers of the authority under said chapters 121B and 121C shall be exercised in conformity with the restrictions contained in this act.

The authority shall be managed, controlled and governed by a board consisting of 7 members, the chairman of which shall be the mayor, 1 member who shall be appointed by the secretary of communities and development and 5 members who shall be appointed by the mayor with the approval of the city council. One member appointed by the mayor shall be a banker who is a resident of the city of Marlborough, the second shall be a realtor who is a resident of the city of Marlborough. Both shall be appointed for an initial term of 2 and 3 years, respectively, and thereafter as the term of a member expires, his successor shall be appointed for a term of 3 years. The remaining 3 members shall serve initial terms of 1, 2 and 3 years, respectively, and thereafter as the term of a member expires, his successor shall be appointed for a term of 3 years. The member appointed by the secretary of communities and development shall serve for a term of 5 years. After the qualification of such members, the city clerk shall forthwith file a certificate of their appointments with the department of community affairs and a duplicate thereof in the office of the state secretary. Thereupon the state secretary shall issue to the authority a certificate of organization as provided in said chapter 121B.

The chairman of the authority shall not receive additional compensation and the authority shall make use of the services of the department for staff and administrative functions and the department may charge the authority for such services an amount agreed to by the department and the authority with the approval of the mayor.

SECTION 2. Section 1 shall not affect the terms of the current members of the Community Development Authority of the city of Marlborough as of the effective date of this act.

Approved October 22, 2004.

Chapter 381. AN ACT AUTHORIZING BARNSTABLE COUNTY TO ADMINISTER THE REPAIR, REPLACEMENT AND UPGRADE OF SEPTIC SYSTEMS.

Be it enacted, etc., as follows:

SECTION 1. Upon the request of any town within Barnstable county, the county commissioners of the county may assume and exercise any of the powers of the town and the town's board of health, under section 127B ½ of chapter 111 of the General Laws for the purpose of entering into agreements with owners of structures for human habitation for the repair, replacement or upgrade of septic systems required under the state environmental code pursuant to section 13 of chapter 21A of the General Laws.

SECTION 2. Any costs incurred by Barnstable county under this act may be funded by an appropriation or by borrowing from the water pollution abatement trust established in chapter 29C of the General Laws. For such purposes, the treasurer of the county, with the approval of the county commissioners and with authorization by the assembly of delegates, may issue bonds or notes of the county to the water pollution abatement trust, which shall bear on their face the words, Community Septic Management Program Loan, Act of 2001. Each authorized issue shall constitute a separate loan and such loans shall be payable not more than 20 years from their dates of issuance. The bonds or notes shall be signed by the county treasurer and countersigned by a majority of the county commissioners and otherwise shall be issued in such form and upon such terms and conditions, not inconsistent with the act, as the county and the water pollution abatement trust shall agree in accordance with said chapter 29C. Sections 37A, 37B and 38 of chapter 35 of the General Laws shall not apply to the issuance of bonds or notes under this section.

SECTION 3. Barnstable county shall constitute a regional government unit under chapter 29C of the General Laws for the purposes authorized by this act; provided, however, that only towns which have requested the county to perform the services provided in this act shall be deemed to be the service recipients of the county under said chapter 29C, and maturing principal and interest on indebtedness incurred by the county under this act shall be appropriated and assessed only upon those towns. Any appropriation by the county or by a town for the purposes of this act shall not be included for the purpose of computation of the assessment or levy limits otherwise imposed upon the county or town by the General Laws.

SECTION 4. Notwithstanding section 127B of chapter 111 of the General Laws and section 13 of chapter 80 of the General Laws to the contrary, any betterment agreement made by Barnstable county with owners of structures for human habitation for the repair, replacement or upgrade of septic systems under said section 127B may be without interest.

SECTION 5. This act shall take effect upon its passage.

Approved October 22, 2004.

Chapter 382. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO GRANT AN EASEMENT IN CERTAIN LAND IN THE TOWN OF BRIDGEWATER.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of the division of capital asset management and maintenance may, notwithstanding section 40H of chapter 7 of the General Laws or any other general or special law to the contrary in consultation with the armory commission, grant an

easement in a certain parcel of land under the control of the armory commission to the Bridgewater Knights of Columbus Council No. 488 in the town of Bridgewater with the following rights:

- (a) to construct, alter and maintain a combined paved driveway to provide access to and egress from the abutting property now or formerly of said Council;
- (b) to erect and install signs, pavement markings and other traffic control devices to ensure the safety of said Council;
- (c) to access and egress the abutting property of said council over the easement; provided, however, that no right or use shall interfere with the military's use of this parcel of land.

The land over which the easements are granted shall be as follows:

Beginning at a point in the easterly sideline of Bedford Street, at the southwest corner of the grantor's property;

Thence along the easterly sideline of Bedford Street, N 07° 31'16" W a distance of twenty-five (25.00) feet;

Thence turning and running N 82° 11'44" E a distance of one-hundred-fifty (150.00) feet;

Thence S 07° 31'16" E a distance of twenty-five (25.00) feet to property now or formerly of the grantee;

Thence turning and running S 82° 11'44" W, by land now or formerly of the grantee, a distance of one hundred-fifty (150.00) feet back to the point of beginning. The exact boundaries of the parcel shall be determined by the commissioner in consultation with the armory commission after completion of a survey.

The armory commission may:

- (a) construct, alter and maintain a combined, paved driveway to provide access to and egress from the remaining property now or formerly of the commonwealth;
- (b) erect and install signs, pavement markings and other traffic control devices to ensure the safety and security of the commonwealth's property, members, employees and guests;
- (c) locate, construct, alter and maintain utilities within the easement, to service the property now or formerly of the commonwealth.

SECTION 2. The grantees of the easement shall assume all costs associated with any engineering, surveys, appraisals, deed preparation and other expenses deemed necessary by the commissioner to execute the conveyance authorized in section 1.

SECTION 3. No instruments conveying, by or on behalf of the commonwealth, the easement described in section 1 shall be valid unless the instrument provides that the easement shall be used solely for the purposes described in said section 1. The easement instrument shall include a clause which shall state that in the event that the easements cease to be used by Bridgewater Knights of Columbus Council No. 488 for the purposes described in said section 1 at any time, the easement shall revert to the commonwealth under the control of and for use by the division of capital asset management and maintenance upon

such terms and conditions as the commissioner may determine. Should the easements revert to the commonwealth, any further disposition of the easements shall be subject to sections 40E to 40J, inclusive, of chapter 7 of the General Laws and the prior approval of the general court.

Approved October 29, 2004.

Chapter 383. AN ACT CREATING A COMMUNITY AND ECONOMIC DEVELOPMENT AUTHORITY IN THE TOWN OF WAREHAM.

Be it enacted, etc., as follows:

SECTION 1. Section 4 of chapter 270 of the acts of 1977 is hereby amended by striking out the first and second paragraphs and inserting in place thereof the following paragraph:-

There is hereby established a Community and Economic Development Authority of the town, hereinafter referred to as the authority, which shall be an operating agency and an urban renewal agency within the meaning of chapter 121B of the General Laws. The powers of the authority under said chapter 121B shall be exercised in conformity with the restrictions contained in the act. The authority shall be managed, controlled and governed by a board of officers, comprised of 7 members, to be appointed by the board of selectmen to 3 year terms, but the original appointments shall be arranged so that as nearly as possible the terms of 1/3 of members expire each year. The town administrator, the town planner and any other town officer may attend and speak at all meetings of the board, but may not vote. In making appointments to the board of officers, the board of selectmen shall appoint members to be representative of disparate social and economic segments of the town considering such factors as income, ethic heritage, racial origin, age and sex. The members of the board shall not receive any expenses for their service on the board, except for any actual expenses, subject to the approval of the board of selectmen. Any officer of the board may be removed for cause in accordance with the town charter as on file with the state secretary in accordance with chapter 43B of the General Laws. Upon appointment of the members of the board, the town clerk shall forthwith file a certificate of their appointments with the department of housing and community development and a duplicate thereof in the office of the secretary of state, who shall thereupon issue to the authority a certificate of organization as provided in chapter 121B of the General Laws.

SECTION 2. Said chapter 270 is hereby further amended by striking out section 7 and inserting in place thereof the following section:-

Section 7. The board of selectmen shall establish an economic advisory council and a community development advisory council to advise the board of officers created pursuant to section 4, each to consist of 5 members to be appointed by the board of selectmen for terms of 3 years. In making appointments to the board of officers, the board of selectmen

shall appoint members to be representative of disparate social and economic segments of the town considering such factors as income, ethic heritage, racial origin, age and sex, and further, such appointments may include persons who are from business organizations, and town officials. Initial appointments to the councils shall be arranged so that as nearly as possible the terms of 1/3 of the members expire each year. Any advisory council members may be removed in accordance with the town charter as on file with the state secretary pursuant to section 12 of chapter 43B of the General Laws. Each advisory council shall meet at least 4 times yearly, provided that 1 such meeting shall be a joint meeting of both advisory councils and the board of officers, and shall publish notice of each such meeting at least 7 days before the meeting in a newspaper of general circulation in the town. The advisory councils may provide advice on various issues such as pending grant applications with community or economic development components, performance on past or present community development grants, and proposed uses of available community or economic development funds. Each advisory council shall provide the other advisory council and the board of officers with a copy of the minutes of each meeting held, and shall also file such minutes with the town clerk.

SECTION 3. Section 8 of said chapter 270 is hereby amended by adding the following sentence:- Notwithstanding this section or any other provision of this act to the contrary, to the extent permitted by law, the board of selectmen may by majority vote delegate to the town administrator any of its responsibilities under the act that may be consistent with the town administrator's authority under the town charter, as on file with the state secretary in accordance with the requirements of section 12 of chapter 43B of the General Laws.

SECTION 4. There shall be in the town of Wareham a Community and Economic Development Authority, in this act called the authority, which shall exercise the function, duties and responsibilities and have the authority of the community development authority, as set forth in sections 4 and 5 of chapter 270 of the acts of 1977, and the Economic Development Industrial Corporation, established by vote of the November 28, 1972 town meeting pursuant to section 3 of chapter 121C of the General Laws, as well as those powers conferred directly on such authorities pursuant to chapters 121B and 121C of the General Laws. References in chapter 270 of the acts of 1977 to the "community development authority of the town" or the "authority" shall be considered to refer to the authority established by this act. Upon the effective date of this act, the assets and liabilities of the community development authority and the economic development industrial corporation shall be transferred by operation of law to the authority, and the community development authority and economic development industrial corporation shall thereupon be abolished. The authority shall be deemed for all intents and purposes to be successor in interest to the community development authority created by chapter 270 of the acts of 1977 and the economic development industrial corporation created by vote of the November 28, 1972 town meeting.

SECTION 5. The department of community development established by sections 1 to 3, inclusive, of chapter 270 of the acts of 1977, and the powers and responsibilities and functions of the department of community development, including those of the director of the department, may be reorganized pursuant to the town charter, as on file with the secretary of the commonwealth in accordance with section 12 of chapter 43B of the General Laws.

SECTION 6. This act shall take effect upon its passage.

Approved October 29, 2004.

Chapter 384. AN ACT ESTABLISHING A PRESUMPTION RELATIVE TO THE DISABILITY RETIREMENT OF A CERTAIN FIREFIGHTER IN THE CITY OF SALEM.

Beit enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary affecting the noncontributory or contributory retirement system in the commonwealth, any condition of impairment of health caused by Hepatitis C resulting in total or partial disability or death to William Hudson, a uniformed member of the paid fire department of the city of Salem, shall, if he successfully passed a physical examination on entry into such service or subsequently passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in line of duty, unless the contrary is shown by competent evidence.

SECTION 2. For the purposes of determining the order of persons on eligible lists pursuant to section 26 of chapter 31 of the General Laws, the presumption established under this act shall not apply to the death or disability of William Hudson whose son or daughter is eligible for appointment.

SECTION 3. The presumption established under this act shall not apply to the death of William Hudson for which a pension is provided under section 100 of chapter 32 of the General Laws.

SECTION 4. The presumption established under this act shall not apply to eligibility for the \$100,000 killed in the line of duty benefit provided under section 100A of chapter 32 of the General Laws.

SECTION 5. This act shall take effect upon its passage.

Approved October 29, 2004.

Chapter 385. AN ACT AUTHORIZING THE TOWN OF ADAMS TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES TO ERICFLY, INC.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Adams may grant to Ericfly, Inc. a license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138. The license shall be subject to all of said chapter 138 except said section 17.

SECTION 2. This act shall take effect upon its passage.

Approved October 29, 2004.

Chapter 386. AN ACT AUTHORIZING THE TOWN OF ADAMS TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES TO NICHOLAS ENTERPRISES, INC.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Adams may grant to Nicholas Enterprises, Inc. a license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138. The license shall be subject to all of said chapter 138 except said section 17.

SECTION 2. This act shall take effect upon 'ts passage.

Approved October 29, 2004.

Chapter 387. AN ACT AUTHORIZING THE STATE BOARD OF RETIREMENT TO GRANT CREDITABLE SERVICE TO JOSEPH A. QUINLAN.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the state board of retirement shall credit Joseph A. Quinlan, an employee of the northern district attorney's office, with creditable service for the service he rendered for the northern district attorney's office for the period of August 1, 1990 to December 31, 1990 for the purpose of determining his superannuation retirement allowance under chapter 32 of the General Laws.

SECTION 2. Eligibility for this creditable service shall be conditioned upon payment by Joseph A. Quinlan to the state employees' retirement system of an amount equal to

the amount that would have been deducted under said chapter 32 if he had received regular compensation during the applicable period at the annual rate of regular compensation that he was receiving immediately before this period, together with regular interest on that amount. Such repayment shall be made in 1 lump sum or in installments, as the state retirement board shall prescribe, within 60 days after the effective date of this act.

Approved October 29, 2004.

Chapter 388. AN ACT RELATIVE TO PRE-MARITAL TESTING.

Be it enacted, etc., as follows:

Section 28A of chapter 207 of the General Laws is hereby repealed.

Approved December 29, 2004.

Chapter 389. AN ACT DIRECTING THE COMMISSIONER OF REVENUE TO ACCEPT CERTAIN APPLICATIONS FOR ABATEMENT.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, the commissioner of revenue shall accept applications for abatement of taxes on behalf of Old Colony Stationary, Inc. of Whitinsville for the tax years 1994, 1995, 1996 and 1997. The applications shall be considered timely if filed with the commissioner within 90 days from the effective date of this act. An abatement paid pursuant to these applications shall not include payment of interest or of costs related to the filing of the applications.

Approved October 29, 2004.

Chapter 390. AN ACT PROVIDING FOR THE ANNUAL OBSERVANCE OF WORLD WAR II COMMEMORATION DAY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the annual observance of World War II Commemoration Day, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Chapter 6 of the General Laws is hereby amended by inserting after section 15XXXX the following section:-

Section 15YYYY. The governor shall annually issue a proclamation setting apart September 2 as World War II Commemoration Day, in honor of those who served in that war and recommending that the day be observed in an appropriate manner by the people and recommending that church bells be rung at 9:04 a.m. on that day in recognition of the final surrender of Japan and the formal conclusion of the conflict.

Approved November 2, 2004.

Chapter 391. AN ACT RELATIVE TO THE BELCHERTOWN ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 121C of the General Laws or any other general or special law to the contrary, the Belchertown Economic Development and Industrial Corporation may acquire and hold land, easements and other interests in land for development and may receive or borrow public funds either directly or indirectly for commercial, business and housing development purposes in the town of Belchertown and may convey all or a portion of such land, easement, and other interests in land in a developed or undeveloped condition, on such terms as it deems appropriate to accomplish such purpose or any other purpose permitted by said chapter 121C.

SECTION 2. This act shall take effect upon its passage.

Approved November 9, 2004.

Chapter 392. AN ACT AUTHORIZING THE CITY OF QUINCY TO ESTABLISH AN AFFORDABLE HOUSING TRUST FUND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the city of Quincy shall establish an Affordable Housing Trust Fund, in this act called the "fund". The city of Quincy shall appropriate into the fund any monies received by the city under the city of Quincy's affordable housing ordinance. Monies appropriated into the fund shall be used by the city of Quincy for any purpose consistent with the city of Quincy's affordable housing ordinance and: (1) the creation of affordable housing units through a variety of means including, but not limited to, the provisions of favorable financing terms or direct write down of costs for either nonprofit or for-profit developers or to subsidize the purchase

of sites, existing structures, or affordable units within a larger development; (2) multifamily rehabilitation programs; (3) limited equity cooperatives; and (4) condominium conversions.

SECTION 2. Monies appropriated into the fund may be expended for purposes other than those contained in the city of Quincy's affordable housing ordinance upon a determination by the city of Quincy affordable housing trust fund committee that the expenditure is in the public interest and unanimous vote by the committee for the expenditure with the approval of the mayor of the city of Quincy.

SECTION 3. The fund shall be administered by the city of Quincy affordable housing trust fund committee, and the director of the city of Quincy's department of planning and community development or his designee, shall serve as trustee of the fund.

The members of the Quincy affordable housing trust fund committee may vote to accept, purchase, and disburse the trust funds, pursuant to the Quincy affordable housing ordinance. In the case of the acceptance, purchase, sale or disbursement of any housing units, land or property under the affordable housing ordinance, such acceptance, purchase, sale or disbursement is referred to the Quincy city council and approved consistent with all the requirements of law.

SECTION 4. Notwithstanding any general or special law to the contrary, the city of Quincy shall establish an Affordable Housing Trust, in this act called the "trust". The city of Quincy shall place into the trust any housing units, land or property received by the city under the city of Quincy's affordable housing ordinance. Trust property shall be used by the city of Quincy for any purpose consistent with the city of Quincy's affordable housing ordinance and: (1) the creation of affordable housing units through a variety of means including, but not limited to, the provisions of favorable financing terms or direct write down of costs for either nonprofit or for-profit developers or to subsidize the purchase of sites, existing structures, or affordable units within a larger development; (2) multifamily rehabilitation programs; (3) limited equity cooperatives; and (4) condominium conversions.

SECTION 5. Trust property may be used for purposes other than those contained in the city of Quincy's affordable housing ordinance upon a determination by the city of Quincy affordable housing trust fund committee that the use is in the public interest and unanimous vote by the committee for the use with the approval of the mayor of the city of Quincy.

SECTION 6. The trust shall be administered by the city of Quincy affordable housing trust fund committee, and the director of the city of Quincy's department of planning and community development or his designee, shall serve as trustee of the trust.

The members of the Quincy affordable housing trust fund committee may vote to accept, purchase, sell or disburse housing units, land or property conveyed to the city of Quincy pursuant to the Quincy affordable housing ordinance. In the case of the acceptance, purchase, sale or disbursement of any housing units, land or property under the affordable housing ordinance, such acceptance, purchase, sale or disbursement shall be referred to the Quincy city council and approved consistent with all the requirements of law.

SECTION 7. This act shall function in conjunction with the city of Quincy's affordable housing ordinance.

SECTION 8. This act shall take effect upon its passage.

Approved November 9, 2004.

Chapter 393. AN ACT RELATIVE TO THE TRANSPORTATION OF CERTAIN PERSONS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is relative to the transportation of certain persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Chapter 74 of the General Laws is hereby amended by striking out section 8A, as most recently amended by section 130 of chapter 149 of the acts of 2004, and inserting in place thereof the following section:-

Section 8A. A municipality, wherein a person resides who is admitted to a day school in another municipality under section 7, shall, through its school committee, when necessary, provide for the transportation of such person, and shall, subject to appropriation, be entitled to state reimbursement to the full extent of the amount so expended; provided, that such a municipality wherein a person is placed by the department of social services or the trustees of the Massachusetts training schools who is admitted as aforesaid to a day school in another municipality shall similarly provide for the transportation of such pupil to such school and shall, subject to appropriation, be entitled to state reimbursement to the full extent of the amounts so expended; provided further, that no transportation shall be provided for, or reimbursement made on account of, any pupil who resides less than 1 ½ miles from the school which he attends. A municipality shall not be required under the provisions of this section to provide for the transportation of a person who has completed the twelfth grade of school or the equivalent thereto.

Approved November 9, 2004.

Chapter 394. AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS IN THE TOWN OF CANTON.

Be it enacted, etc., as follows:

SECTION 1. The police chief of the town of Canton may appoint, as he deems necessary, retired Canton police officers as special police officers for the purpose of perform-

ing police details or any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work. Such retired police officers must have been regular Canton police officers who retired based upon superannuation. The special police officers shall be subject to the same maximum age restriction as applied to regular police officers under chapter 32 of the General Laws. Such special police officers must pass a medical examination, by a physician or other certified professional chosen by the town, to determine that they are capable of performing the essential duties of a special police officer, the cost of which shall be borne by the special police officers, prior to performing any police details.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws or to section 99A of chapter 41 of the General Laws.

SECTION 3. Special police officers appointed under this act shall, when performing the duties under section 1, have the same power to make arrests and to perform other police functions as do regular police officers of the town of Canton.

SECTION 4. Special police officers shall be appointed for an indefinite term, subject to removal by the police chief, with the approval of the board of selectmen, at any time, upon 14 days written notice. Upon request, the police chief shall provide the reasons for such removal in writing.

SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the chief of police of the town of Canton, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms qualifications and licensing requirements regarding uniforms and equipment. Special police officers appointed under this act shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers appointed under this act shall be sworn before the town clerk who shall keep a record of all such appointments.

SECTION 7. Special police officers appointed under this act shall be subject to sections 100 and 111F of chapter 41 of the General Laws. The amount payable under said section 111F of said chapter 41 shall be calculated by averaging the amount earned over the prior 52 weeks as a special police officer working police details, or averaged over such lesser period of time for any officer designated as special police officers less than 52 weeks prior to the incapacity. In no event shall payment under said section 111F of said chapter 41 exceed, in any calendar year, the limitation on earning contained in paragraph (b) of section 91 of chapter 32 of the General Laws. Payment under said section 111F of said chapter 41 shall terminate when a special police officer reaches the age of 65. In the event the age limitation applicable to regular police officers serving a town is increased from 65 years of age, the termination of benefits under said section 111F of said chapter 41, as provided herein to special police officers, shall terminate at such a higher age limit, but in no event shall

the benefits extend beyond the age of 70 for any special police officer. Special police officers appointed under this act shall not be subject to section 85H of said chapter 32, nor eligible for any benefits pursuant thereto.

SECTION 8. Appointment as a special police officer under this act shall entitle any individual appointed as such to assignment to any detail.

SECTION 9. Retired Canton police officers, serving as special police officers under this act, shall be subject to the limitations on hours worked and on payments to retired town employees under paragraph (b) of section 91 of chapter 32 of the General Laws.

SECTION 10. This act shall take effect upon its passage.

Approved November 9, 2004.

Chapter 395. AN ACT PROHIBITING RECORDING CERTAIN PRODUCTIONS IN A MOVIE THEATER.

Be it enacted, etc., as follows:

SECTION 1. Chapter 266 of the General Laws is hereby amended by striking out section 143, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 143. As used in sections 143A to 143H, inclusive, the following words shall have the following meanings:-

"Article" or "recorded device", the tangible medium upon which sounds or images are recorded or otherwise stored, and shall include any original phonograph record, disc, wire, tape, audio or video cassette, film or other medium now known or later developed on which sounds or images may be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

"Audiovisual recording function", the capability to record or transmit visual images or soundtrack, including any portion thereof, from a motion picture.

"Motion picture theater", movie theater, screening room, or other venue if used primarily for the exhibition of motion pictures.

"Owner", the person or other entity who owns a master phonograph record, master disc, master tape, master film or other device used for reproducing recorded visual images or sounds on a phonograph record, disc, tape, film, video cassette or other article on which visual images or sound is recorded, and from which the transferred recorded images or sounds are directly or indirectly derived.

SECTION 2. Section 143A of said chapter 266, as so appearing, is hereby amended by striking out, in line 10, the words "one hundred and forty-three D" and inserting in place thereof the following figure:- 143E.

SECTION 3. Section 143B of said chapter 266, as so appearing, is hereby amended by striking out, in line 8, the words "one hundred and forty-three D" and inserting in place thereof the following figure:- 143E.

SECTION 4. Section 143C of said chapter 266, as so appearing, is hereby amended by striking out, in line 7, the words "one hundred and forty-three D" and inserting in place thereof the following figure:- 143E.

SECTION 5. Said chapter 266 is hereby further amended by striking out sections 143D and 143E, as so appearing, and inserting in place thereof the following 5 sections:-

Section 143D. (a) Nothing in sections 143A to 143C, inclusive, shall be construed to apply to any person lawfully entitled to use or who causes to be used such sound or images for profit through public performance, or who transfers or causes to be transferred any such sound or images as part of a radio or television broadcast or for archival preservation.

(b) Nothing in section 143A to 143C, inclusive, shall be construed to apply to local, state or federal law enforcement officers employing an audiovisual recording function during the lawful exercise of law enforcement duties.

Section 143E. Whoever violates any provision of section 143A to section 143C, inclusive, shall be punished:

- (i) by imprisonment for not more than 1 year in the house of correction or by a fine of not more than \$25,000, or by both such fine and imprisonment;
- (ii) by imprisonment in the house of correction for not more than 2 years or by a fine of not more than \$100,000, or by both such fine and imprisonment if the offense involves less than 1,000 but not less than 100 unlawful sound recordings or less than 65 but not less than 7 unlawful audio visual recordings; or
- (iii) by imprisonment in state prison for not more than 5 years or by a fine of not more than \$250,000, or by both such fine and imprisonment if the offense involves not less than 1,000 unlawful sound recordings or not less than 65 unlawful audio visual recordings.

Section 143F. (a) Any person, in a motion picture theater while a motion picture is being exhibited, who knowingly operates an audiovisual recording function, with the intent to unlawfully record the motion picture and without the consent of the owner or lessee of the motion picture theater, shall be punished for a first offense by imprisonment in the house of correction for not more than 2 years or by a fine of not more than \$100,000, or by both such fine and imprisonment and for a second or subsequent conviction, by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$250,000, or by both such fine and imprisonment.

(b) Nothing in subsection (a) shall be construed to apply to local, state or federal law enforcement officers employing an audiovisual recording function during the lawful exercise of law enforcement duties.

Section 143G. In an action for false arrest or false imprisonment brought by any person, by reason of having been detained for questioning or awaiting the arrival of law enforcement, on or in the immediate vicinity of a motion picture theater, if such person was

detained in a reasonable manner and for not more than a reasonable length of time by a person authorized to make arrests or by the owner or his agent or servant authorized for such purpose and if there were reasonable grounds to believe that the person so detained was committing or attempting to commit any violation of section 143F, it shall be a defense to such action.

Section 143H. Upon conviction of a person for a violation of sections 143A to 143C, inclusive, or section 143F, the court may order the forfeiture, destruction or other disposition of all recordings on which the conviction is based and all implements, devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based. Such order shall be stayed pending any appeal.

SECTION 6. Chapter 272 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following section:-

Section, 104. (a) As used in this section, the following words shall have the following meanings:

"Electronically surveils" or "electronically surveilled", to view, obtain or record a person's visual image by the use or aid of a camera, cellular or other wireless communication device, computer, television or other electronic device.

"Partially nude" the exposure of the human genitals, buttocks, pubic area or female breast below a point immediately above the top of the areola.

- (b) Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and without that person's knowledge and consent, shall be punished by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment.
- (c) Whoever willfully disseminates the visual image of another person who is nude or partially nude, with knowledge that such visual image was unlawfully obtained in violation of subsection (b) and without consent of the person so depicted, shall be punished by imprisonment in the house of correction for not more than 2½ years or in state prison for a period of not more than 5 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.
- (d) This section shall not apply to a merchant that electronically surveils a customer changing room, provided that signage warning customers of the merchant's surveillance activity is conspicuous posted at all entrances, and in the interior of any changing room electronically surveilled.
- (e) This section shall not apply to a law enforcement officer when acting within the scope of the officer's authority under applicable law, or by an order or warrant issued by a court.
- (f) A sheriff, deputy sheriff or police officer may arrest without a warrant, any person believed upon probable cause to have violated this section.

- (g) Any photograph, videotape or other recorded visual image, depicting a person who is nude or partially nude that is part of any court record arising from a prosecution under this section, shall not be open to public inspection and shall only be made available for inspection by court personnel to any law enforcement officer, prosecuting attorney, defendant's attorney, defendant, or victim connected to such prosecution, unless otherwise ordered by the court.
- (h) A justice of the superior court or district court in a prosecution under this section may issue appropriate orders to restrain or prevent the unlawful dissemination of a person's visual image in violation of this section.

Approved November 16, 2004.

Chapter 396. AN ACT RELATIVE TO THE OPERATION OF MOTORIZED SCOOTERS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate forthwith the operation of motorized scooters, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 90 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of "Motorized bicycle" the following definition:-

"Motorized scooter", any 2 wheeled tandem or 3 wheeled device, that has handlebars, designed to be stood or sat upon by the operator, powered by an electric or gas powered motor that is capable of propelling the device with or without human propulsion. The definition of "motorized scooter" shall not include a motorcycle or motorized bicycle or a 3 wheeled motorized wheelchair.

SECTION 2. Said chapter 90 is hereby further amended by striking out section 1C, as so appearing, and inserting in place thereof the following section:-

Section 1C. Motorized bicycles and motorized scooters shall comply with all applicable federal motor vehicle safety standards.

SECTION 3. Said chapter 90 is hereby further amended by inserting after section 1D, as so appearing, the following section:-

Section 1E. A motorized scooter shall not be operated on any way by a person not possessing a valid driver's license or learner's permit, nor at a speed in excess of 20 miles per hour. A person operating a motorized scooter upon a way shall have the right to use all public ways in the commonwealth except limited access or express state highways where signs specifically prohibiting scooters or bicycles have been posted, and shall be subject to

all traffic laws and regulations of the commonwealth and the regulations contained in this section, except that: (1) a scooter operator shall keep to the right side of the road at all times, including when passing a motor vehicle which is moving in the travel lane of the way; and (2) the scooter shall be equipped with operational stop and turn signals so that the operator can keep both hands on the handlebars at all times. No person shall operate a motor scooter upon any way at any time after sunset or before sunrise.

A person operating a motorized scooter shall wear protective headgear conforming with such minimum standards of construction and performance as the registrar may prescribe. No person operating a motorized scooter shall permit any other person to ride as a passenger on the scooter.

A person convicted of a violation of this section shall be punished by a fine of not more than \$25 for the first violation, not less than \$25 nor more than \$50 for a second violation and not less than \$50 nor more than \$100 for a third or subsequent violation.

SECTION 4. Section 8B of said chapter 90, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "bicycle", in lines 18 and 19, the following words:- or motorized scooter.

SECTION 5. The definition of "Automobile law violation" in section 1 of chapter 90C of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- A recreation vehicle and a snow vehicle, both as defined in section 20 of chapter 90B, a motorized bicycle and motorized scooter, both as defined in section 1 of chapter 90, shall be considered a motor vehicle for the purposes of this chapter.

Approved November 18, 2004.

Chapter 397. AN ACT AUTHORIZING DEFERMENT OF THE HALE HOSPITAL DEFICIT NOTES BY THE CITY OF HAVERHILL.

Be it enacted, etc., as follows:

SECTION 1. The second paragraph of section 1 of chapter 387 of the acts of 2000 is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Notwithstanding section 5 of chapter 44A of the General Laws or any other general or special law to the contrary, any bond or note issued under the authority of this act shall be payable not later than June 30, 2023.

SECTION 2. The third paragraph of said section 1 of said chapter 387 is hereby amended by inserting after the word "principal", in line 6, the following words:-; provided, however, that the amount of principal to be paid in each of fiscal years 2005 through 2009 need not exceed ½ of the amount which otherwise would have been payable in each such fiscal year, if bonds had been issued in fiscal year 2004 with maturities arranged so that the amounts payable in the several years for principal and interest combined were as nearly equal

as practicable.

SECTION 3. Said section 1 of said chapter 387 is hereby further amended by adding the following paragraph:-

Notwithstanding section 17 of chapter 44 of the General Laws, any temporary loans issued in anticipation of money to be derived from the sale of bonds or notes hereunder, and any temporary loans issued to refund a prior temporary loan, may mature at any time not later than June 30, 2023. Any such temporary loan or loans shall be paid in part from revenue funds on its maturity date in the amount, if any, hereinafter required. Each such payment from revenue funds shall be at least equal to the minimum annual payment which would have been required under this act if such temporary loan had been issued as a serial loan on the date of issue of such temporary loan or any prior temporary loan being directly or indirectly refunded by such temporary loan.

SECTION 4. The third paragraph of section 4 of said chapter 387 is hereby amended by striking out the last sentence.

SECTION 5. This act shall take effect upon its passage.

Approved November 18, 2004.

Chapter 398. AN ACT RELATIVE TO THE ISSUANCE OF CERTAIN BONDS BY THE TOWN OF EAST LONGMEADOW.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of East Longmeadow may borrow without any further action or vote at a town meeting, from time to time such sums of money as may be necessary, not to exceed an aggregate amount of \$1,400,000 for the purpose of reimbursing the general fund of the town for advances made from the general fund in the amount of \$1,400,000 for the purchase of 8 modular classrooms. Each authorized issue shall constitute a separate loan and each such loan shall be payable within 15 years from its date. Indebtedness incurred under this act shall be included in determining the limit of indebtedness of the town under section 10 of chapter 44 of the General Laws and, except as provided herein, shall otherwise be subject to said chapter 44.

SECTION 2. This act shall take effect upon its passage.

Approved November 18, 2004.

Chapter 399. AN ACT AUTHORIZING THE STATE ETHICS COMMISSION TO PROVIDE EXEMPTIONS FROM THE CONFLICT OF INTEREST LAW.

Be it enacted, etc., as follows:

SECTION 1. Section 3 of chapter 268B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out clause (a) and inserting in place thereof the following clause:-

(a) prescribe and publish, pursuant to chapter 30A, rules and regulations: (1) to carry out this chapter, including rules governing the conduct of proceedings hereunder; and (2) to carry out chapter 268A; provided, however, that the rules and regulations shall be limited to providing exemptions from the provisions of sections 3 to 7, inclusive, sections 11 to 14, inclusive, sections 17 to 20, inclusive, and section 23 of said chapter 268A;.

SECTION 2. It is the intent of this act to authorize the state ethics commission to establish reasonable exemptions from chapter 268A of the General Laws. The establishment of such exemptions shall not be the basis for inferring that any conduct, items or other matters not so exempted are prohibited, permitted, restricted or otherwise regulated by said chapter 268A.

Approved November 18, 2004.

Chapter 400. AN ACT AUTHORIZING A CERTAIN JUDICIAL LEAVE OF ABSENCE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith a judicial leave of absence, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding section 17 of chapter 211A of the General Laws or any other general or special law to the contrary, the period during which Justice Phillip Rapoza, associate justice of the appeals court, may take a leave of absence to serve as a judge on the special panels for serious crimes in East Timor, established pursuant to regulations authorized by special resolution of the United Nations Security Council, is hereby extended until August 31, 2005. All other provisions and requirements of said section 17 shall apply to such leave of absence.

Approved November 23, 2004.

Chapter 401. AN ACT AUTHORIZING JOSEPH A. VIEIRA III TO TAKE THE CIVIL SERVICE EXAMINATION FOR FIREFIGHTER IN THE TOWN OF WILMINGTON NOTWITHSTANDING THE MAXIMUM AGE REQUIREMENT.

Be it enacted, etc., as follows:

Notwithstanding any general or special law, rule or regulation to the contrary, regulating the maximum age of applicants for appointment as firefighter, Joseph A. Vieira III of the town of Wilmington shall be eligible to take the civil service firefighters examination; provided, however, that he meets all other requirements, shall be eligible for certification and appointment by the appointing authority to the fire department of said town of Wilmington.

Approved November 23, 2004.

Chapter 402. AN ACT ESTABLISHING A FIREARMS LICENSING FUND IN THE TOWN OF CHARLTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the town of Charlton may establish and maintain a separate account known as the Firearms Licensing Fund. The town treasurer shall keep the fund separate and apart from all other monies of the town and shall deposit in the account the town's share of all monies associated with firearms licensing, firearms licenses, and firearm identification card fees received by the town. The treasurer may invest these funds in the manner prescribed in sections 54 and 55 of said chapter 44. The chief of police or a person authorized to act in the chief's place may expend the principal and income from these funds for fees to the commonwealth for firearms licenses, firearm identification cards, and for all costs associated with firearms processing.

SECTION 2. This act shall take effect upon its passage.

Approved November 23, 2004.

Chapter 403. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO CONVEY A CERTAIN PARCEL OF LAND TO THE TOWN OF WESTFIELD.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the division of capital asset management to convey a certain parcel of land to the town of Westfield, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The commissioner of capital asset management and maintenance may,

notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws or any other general or special law or any rule or regulation to the contrary, convey by deed a certain parcel of land located in the town of Westfield containing the pumping station and sewer line on East Mountain road at the Western Massachusetts Hospital to the town of Westfield. The parcel consists of .034 acres, more or less, and is shown as parcel E-5 on a plan entitled "Plan of Easement, Sewage Collection System, Western Mass. Hospital in Westfield, Massachusetts" dated October 14, 1997, prepared by John M. Campetti, surveyor. The exact boundaries of the parcels shall be determined by said commissioner in consultation with the department of conservation and recreation in accordance with the Plan of Easement.

SECTION 2. The consideration for the conveyance authorized by this act shall be the permanent connection and agreement that the city of Westfield shall allow the western Massachusetts hospital facility, its successors and assigns, to connect by means of a sewer tie-in to the pump station on Parcel E-5 to the city of Westfield's sewer collection system, which terminates at the Westfield wastewater treatment plant. Said commissioner shall submit the agreement and any subsequent amendment thereto and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. Said commissioner shall submit the agreement and any subsequent amendments thereto, the reports, and the comments of said inspector general to the house and senate committees on ways and means and the chairmen of the joint committee on state administration.

SECTION 3. The town of Westfield shall pay for all costs of deed preparation for the conveyance of the parcel authorized by this act. The parcel shall be conveyed by release deed in its existing condition without warranty.

Approved November 23, 2004.

Chapter 404. AN ACT ESTABLISHING A SICK LEAVE BANK FOR LINDA J. MAGNO, AN EMPLOYEE OF THE DEPARTMENT OF MENTAL RETARDATION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the department of mental retardation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law or rule or regulation to the contrary, the department of mental retardation shall establish a sick leave bank for Linda J. Magno, an employee of said department. Any employee of said department may voluntarily contribute 1 or more sick of his sick, personal or vacation days to said sick leave bank for use by said

Linda J. Magno. Whenever said Linda J. Magno terminates employment with said department or requests to dissolve the sick leave bank, the balance of the sick leave time shall be transferred to the extended illness leave bank.

Approved November 23, 2004.

Chapter 405. AN ACT AUTHORIZING THE TOWN OF BELLINGHAM TO ESTABLISH A SEWER CONSTRUCTION CAPITAL FUND.

Be it enacted, etc., as follows:

Notwithstanding section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the town of Bellingham may establish a separate fund to be known as the Sewer Construction Capital Fund which the town treasurer shall keep separate and apart from other monies of the town and into which shall be deposited all income derived from the investment of funds that may be appropriated by the town to such fund and all the proceeds of any appropriations, grants, transfers or gifts received by the town for deposit in the fund. Any income derived from the investment or reinvestment of amounts held in the fund shall remain with and become part of the fund. The town treasurer shall be the custodian of the fund and shall make an account of the fund at each annual town meeting. Any funds held in the fund shall constitute trust funds within the meaning of section 54 of said chapter 44. Monies in the fund may be expended, after appropriation, for any capital sewer construction purpose for which the town may lawfully expend money and for debt service associated with sewer construction bonds or notes of the town that may be outstanding from time to time.

Approved November 23, 2004.

Chapter 406. AN ACT RELATIVE TO THE MBTA INFRASTRUCTURE RENOVATION FUND.

Be it enacted, etc., as follows:

Chapter 291 of the acts of 2004 is hereby amended by adding the following section:-SECTION 104. Sections 98 and 103 of chapter 236 of the acts of 2000 are hereby repealed. Section 102 shall take effect on July 1, 2006 and section 103 shall take effect on June 30, 2006.

Approved November 23, 2004.

Chapter 407. AN ACT DESIGNATING THE OFFICIAL COLORS OF THE COMMONWEALTH.

Be it enacted, etc., as follows:

Chapter 2 of the General Laws is hereby amended by adding the following section:
Section 53. Blue, green and cranberry shall be the official colors of the commonwealth.

Approved November 23, 2004.

Chapter 408. AN ACT RELATIVE TO THE WATER SUPPLY PROTECTION TRUST.

Be it enacted, etc., as follows:

Section 73 of chapter 10 of the General Laws, inserted by section 27 of chapter 149 of the acts of 2004, is hereby amended by striking out paragraph (b) and inserting in place thereof the following paragraph:-

(b) There shall be a board of trustees of the trust, which shall consist of the executive director of the Massachusetts Water Resources Authority, the secretary of environmental affairs or his designee, the president of the Swift River Valley Historical Society or his designee, the chairperson of the Massachusetts water resources authority advisory board and a member jointly selected by the North Worcester County Quabbin Anglers Association, Inc. and the Quabbin Fishermen's Association, Inc.

Approved December 1, 2004.

Chapter 409. AN ACT RELATIVE TO CERTAIN APPOINTMENTS BY THE MAYOR OF THE CITY OF MELROSE.

Be it enacted, etc., as follows:

Section 27 of chapter 162 of the acts of 1899 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- The mayor shall appoint the executive officers, including assistant assessors, subject, within 45 days of the appointment, to confirmation by the board of aldermen.

Approved December 1, 2004.

Chapter 410. AN ACT RELATIVE TO THE CIVIL COMMITMENT PROCESS FOR PERSONS WITH MENTAL ILLNESS.

Be it enacted, etc., as follows:

SECTION 1. Section 7 of chapter 123 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 24, the figure "4" and inserting in place thereof the following figure:- 5.

SECTION 2. Section 12 of said chapter 123, as so appearing, is hereby amended by striking out, in lines 11, 22, 65, 68, 73, 87 and 88, the word "four" and inserting in place thereof, in each instance, the following word:- three.

Approved December 1, 2004.

Chapter 411. AN ACT AUTHORIZING THE ROCKLAND SEWER COMMISSION TO ENTER INTO A CONTRACT FOR THE DISPOSAL OF SEWAGE AND THE ABINGTON/ROCKLAND JOINT WATER WORKS TO ENTER INTO A CONTRACT FOR THE SUPPLY OF WATER.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 33 8 of the acts of 1913 or any other general or special law to the contrary, the Rockland sewer commission may enter into an agreement for the disposal of sewage emanating from a certain parcel of land in the town of Hingham, located off Commerce road in the town of Rockland, as identified as Lot "B" on a plan entitled "Definitive Subdivision Plan Commerce Road Extension" in Rockland and Hingham, Massachusetts (Plymouth County), dated April 2, 2004 and recorded with the Plymouth county registry of deeds as Plan Nos. 670 and 726 of 2004 in Plan Book 48, Page 695, in this act called the property.

SECTION 2. In accordance with chapter 206 of the acts of 1885, and section 38 of chapter 40 of the General Laws, and notwithstanding any other general or special law to the contrary, the Abington/Rockland joint water works may enter into a contract to supply all or a portion of the water necessary and convenient for the operation and maintenance of the property.

SECTION 3. The agreements authorized by sections 1 and 2 may allow for the use of the system of sewer mains, pump stations, treatment works, water pipes, aqueducts and other related structures and facilities, or any portion thereof, belonging to the town of Rockland. The agreements for sewer and water may be entered into at such times and on such terms and conditions as stated in this act or as the Rockland sewer commission and the Abington/Rockland joint water works, respectively, determine to be in the best interests of the town.

SECTION 4. The owner of the property shall pay its proportionate share of the costs, charges, and fees arising from or incidental to the owner's use of the mains, pump stations, treatment works, water pipes, aqueducts and other related structures, facilities and services provided by the town of Rockland, including:-

(a) all planning, engineering, procurement, construction costs, and fees for the design, redesign or upgrading of the mains, pump stations, treatment works, water pipes, aqueducts and other related structures, facilities and services of the Rockland sewer and water systems that may be necessary to carry sewage flow from the property and water flow to the property;

(b) all planning, engineering, procurement and facilities of any kind for the design and construction of the particular drains, mains, and pipes laid from the property to the mains in the town:

- (c) obtaining all easements or other rights in land and all necessary permits and approvals required for the laying of the drains, mains and pipes to transport waste water from the property to the mains of the sewer system and fresh water to the property from the mains of the water system, and maintaining the same for the term of the connection agreements;
- (d) all legal, engineering or other costs and fees incurred by the Rockland sewer commission or the Abington/Rockland joint water works or the town in connection with or arising out of the preparation of the agreements, including the negotiation thereof, and for the preparation for and operation of the connection from the property to the sewer and water systems;
- (e) all periodic user fees for the operation of the connection and treatment of sewage and the operation of the connection and supply of water provided pursuant to the agreements contemplated in this act, as determined from time to time by the Rockland sewer commission and the Abington/Rockland joint water works, respectively.

SECTION 5. Any agreements or contracts entered into by the Rockland sewer commission or the Abington/Rockland joint water works after January 1, 2004, but before the effective date of this act, are hereby validated, ratified and confirmed. All future agreements entered into in accordance with this act shall be subject to final approval by the boards of selectmen of the towns of Rockland and Hingham.

Approved December 1, 2004.

Chapter 412. AN ACT ESTABLISHING A SICK LEAVE BANK FOR FAGOTA TUPE, AN EMPLOYEE OF THE DEPARTMENT OF CORRECTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the department of correction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding the provisions of any general or special law, rule or regulation to the contrary, the department of correction shall establish a sick leave bank for Fagota Tupe, an employee of said department. Any employee of said department may voluntarily contribute 1 or more of his sick, personal or vacation days to said sick leave bank for use by said Fagota Tupe. Whenever said Fagota Tupe terminates employment with said department or requests to dissolve the said sick leave bank, the balance of the sick leave time shall be transferred to the extended illness leave bank.

The foregoing was laid before the Governor on the Twenty-second day of November, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

Chapter 413. AN ACT RELATIVE TO UNLAWFUL CONDUCT BY NONRESIDENTS OF PUBLIC HOUSING.

Be it enacted, etc., as follows:

Section 32C of chapter 121B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Whenever a person who is not a member of a tenant household has, on or near a public housing development or a subsidized housing development: (a) caused serious physical harm to a member of a tenant household or employee of the landlord or any other person lawfully on the premises of the housing authority; (b) intentionally, willfully, and repeatedly destroyed, vandalized, or stolen property of a member of a tenant household or of the landlord or any other person lawfully on the premises of the housing authority; (c) intentionally and willfully destroyed, vandalized, or stolen property of a member of a tenant household or of the landlord or any other person lawfully on the premises of the housing authority and attempted to seriously physically harm a member of a tenant household or employee of the landlord or any other person lawfully on the premises of the housing authority; (d) possessed or carried a weapon in violation of section 10 of chapter 269 or possessed or used an explosive or infernal machine, as such as defined in section 102A of chapter 266 with the exception of fire-crackers or violated any other provision of section 101, 102, 102A or 102B of said chapter 266; (e) unlawfully sold or possessed with intent to distribute a controlled substance as established as Class A, B, C, or D in section 31 of chapter 94C; or (f) committed or repeatedly threatened to commit a battery upon a person or damaged or repeatedly threatened to commit damage to the property of another for the pur-

pose of intimidation because of the person's race, color, religion, or national origin or on account of the person's participation in an eviction proceeding; the landlord of such premises may bring a civil action for injunctive or other appropriate equitable relief in order to prohibit the person from entering or remaining in or upon the public or subsidized housing development, unless there is cause to believe that such unlawful conduct is unlikely to continue or to pose a serious threat to the health or safety of the development, the tenant households at such development, or the employees of the landlord. Whenever a tenant or member of a tenant's household residing in a public or subsidized housing development has caused or threatened to cause harm to another tenant, an employee of the landlord, or any other person who is known or believed to be a witness in an eviction against the tenant, the landlord may bring a civil action for injunctive or other appropriate equitable relief in order to protect the witness from harm threatened by the tenant or member of the tenant household.

Approved December 9, 2004.

Chapter 414. AN ACT DESIGNATING A PORTION OF THE LOWELL HERITAGE STATE PARK AS THE MARY BACIGALUPO VICTORIAN GARDEN.

Be it enacted, etc., as follows:

A certain parcel of land within the Lowell heritage state park, under the care and control of the department of conservation and recreation, shall be designated and known as "Mary Bacigalupo Victorian Garden", in honor of the tremendous service of Mary Bacigalupo, a Lowell citizen who was instrumental in the beautification of the city of Lowell. Suitable markers bearing that designation shall be erected by the department of conservation and recreation in compliance with the standards of the department. The department of conservation and recreation may enter into a memorandum of agreement with the city of Lowell to facilitate this act.

Approved December 9, 2004.

Chapter 415. AN ACT RELATIVE TO CERTAIN HOUSING IN THE TOWN OF LINCOLN.

Be it enacted, etc., as follows:

SECTION 1. The exemption in subsections 6 and 7 of section 4 of chapter 151B of the General Laws for residence in communities consisting of structures constructed expressly for use as housing for persons 55 years of age or older on 1 parcel or on contiguous parcels

of land totaling at least 5 acres in size shall apply to structures constructed expressly for use as housing for persons 55 years of age or older at 82 Virginia Road, comprised of Block 3, Lot 0 of Map 5, in the town of Lincoln, notwithstanding the failure of the parcel or parcels to contain at least 5 acres of land.

SECTION 2. This act shall take effect upon its passage.

Approved December 9, 2004.

Chapter 416. AN ACT DESIGNATING A CERTAIN BRIDGE IN THE TOWN OF BARRE AS THE PRIVATE FIRST CLASS EDWARD J. CORMIER MEMORIAL BRIDGE.

Be it enacted, etc., as follows:

The bridge on state highway Route 122 in the town of Barre shall be designated and known as the Private First Class Edward J. Cormier Memorial Bridge, in memory of private first class Edward J. Cormier, who lost his life while serving in Vietnam as a member of the United States Army, 11th Armored Calvary. The department of highways shall erect and maintain suitable markers bearing said designation in compliance with the standards of said department.

Approved December 9, 2004.

Chapter 417. AN ACT AUTHORIZING WATER SUBMETERING IN RESIDENTIAL TENANCIES.

Be it enacted, etc., as follows:

SECTION 1. Subsection (4) of section 15B of chapter 186 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out clause (i) and inserting in place thereof the following clause:-

(i) any unpaid rent or water charges which have not been validly withheld or deducted pursuant to any general or special law.

SECTION 2. Said chapter 186 is hereby further amended by adding the following section:-

Section 22.

(a) For the purposes of this section the following words shall have the following meanings:-

"Common area", any portion of a building with more than 1 dwelling unit that is not incorporated within a dwelling unit.

"Customer service charge", a fixed amount charged by a city or town or water company for providing water to a building.

"Dwelling unit", any house or building, or portion thereof, that is occupied, designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons.

"Landlord", the owner, lessor or sublessor of a dwelling unit, the building of which it is a part, or the premises wherein a customer receives water service through metered measurement.

"Submetering", use of a meter by a landlord who receives water from a water company, which meter measures water supplied to a dwelling unit to enable the landlord to charge the tenant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area.

"Water company", a company, as defined in section 1 of chapter 165 or a municipal utility or any other waterworks system owned, leased, maintained, operated, managed or controlled by anyunit of local government under any general or special law, which company, utility or system supplies water to a landlord through metered measurement. Any landlord imposing charges on tenants or otherwise engaging in any activity permitted under this section shall not be deemed thereby to be functioning as a water company as defined herein or to be subject to any laws or regulations regulating any such company.

"Water conservation device", for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding 2 1/2 gallons of water per minute, for all faucets a maximum flow rate not exceeding 2 and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding 1 and 6/10 gallons of water per flush, contained within a dwelling unit.

- (b) A landlord may cause to be installed by a plumber licensed in the commonwealth, at the expense of such landlord, submetering equipment in the landlord's building to measure the quantity of water provided for the exclusive use of each dwelling unit, provided that such equipment meets the standards of accuracy and testing of the American Water Works Association or a similar accredited association; and provided further, that a submeter is installed for each dwelling unit in the building and for the common areas of the building, so that all water used in a building is measured by both a primary meter and a submeter.
- (c) A landlord may charge a tenant of a dwelling unit for water usage as measured through the use of submetering equipment only in accordance with this section and only upon the landlord certifying that the dwelling unit is in compliance with this section to a board of health, health department or other municipal agency or department charged with enforcement of the state sanitary code. All provisions of this section allowing landlords to charge tenants for water usage shall also be deemed to apply to sewer service charges calculated by means of the same primary meter or submeter. Certification by the landlord shall be provided under the penalties of perjury and shall include a statement that: 1) the dwelling unit is eligible for the imposition on the tenant of a charge for water usage in accordance with paragraph (d); 2) all showerheads, faucets, and water closets in the dwelling unit are water conservation devices and that all water closets were installed by a licensed plumber; and 3) the water sub-

meter measuring the use of water in the dwelling unit was installed by a licensed plumber and is in compliance with the standards of accuracy and testing referenced in subsection (b).

- (d) A dwelling unit shall become eligible for the imposition on the tenant of a charge for water usage only upon the commencement of a new tenancy in such dwelling unit and only if: (1) the dwelling unit is being occupied for the first time; or (2) the previous tenant vacated the dwelling unit voluntarily, or was evicted from the dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit; provided, however, that a dwelling unit shall not be deemed eligible for submetering if the new tenant relocated involuntarily from another dwelling unit in the same building or building complex; and provided further, that once a tenant of a dwelling unit has been charged for the use of water in accordance with this section, such dwelling unit shall remain eligible for the imposition of a charge for the use of water in all subsequent tenancies; and provided further, that a licensed plumber employed by or under contract with the landlord may perform any work in a dwelling unit as is required by this section to allow for the imposition on a tenant of a charge for the use of water, even if such unit is occupied by a tenant upon whom a charge for the use of water cannot be imposed.
- (e) A landlord may not charge the tenant of a dwelling unit separately for water usage measured by a submeter, nor allow such tenant to be so charged, unless the submeter measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure any water usage for any portion of the common areas or by any other party or dwelling unit; provided further, that a landlord shall not charge such tenant for water supplied through a submeter to the dwelling unit prior to the landlord installing fully functional water conservation devices for all faucets, showerheads and water closets in the dwelling unit; and provided further, that the landlord shall ensure that such water conservation devices are installed and functioning properly at the commencement of each subsequent tenancy in such dwelling unit.
- (f) A landlord may not charge the tenant separately, nor allow tenant to be charged separately, for submetered water usage unless the tenant has signed a written rental agreement that clearly and conspicuously provides for such separate charge and that fully discloses in plain language the details of the water submetering and billing arrangement between the landlord and the tenant. Each bill for submetered water usage shall clearly set forth all charges and all other relevant information, including, but not limited to, the current and immediately preceding submeter readings and the date of each such reading, the amount of water consumed since the last reading, the charge per unit of water, the total charge and the payment due date. Such charges shall be billed to the tenant in at leased as many periods as the landlord is billed by the water company providing such water to the building or such payments may be made on a monthly payment schedule as agreed to in the written rental agreement; provided, however, that if the landlord bills the tenant on a monthly basis, payment of the bill by the tenant shall be due 15 days after the date the bill is mailed to the tenant, but if the landlord bills the tenant at intervals greater than 1 month, payment of the

bill by the tenant shall be due 30 days after the date the bill is mailed to the tenant. If the tenant fails to make such payment, such nonpayment shall be a material breach of the written rental agreement. Violation of such breach may be cured by payment of the water charges in full prior to any court hearing to adjudicate such violation.

- (g) A landlord shall determine a calculated cost per unit of water consumption by dividing the total amount of any bill or invoice provided to the landlord from the water company for water usage, the customer service charge and taxes, but not including any interest for the late payment, penalty fees or other discretionary assessments or charges, for all water provided to the premises through the water company meter in that billing period, by the total amount of water consumption for the entire premises. The total amount charged separately to each submetered dwelling unit for water usage for any billing period shall not exceed such calculated cost per unit of water multiplied by the number of units of water delivered exclusively to the particular dwelling unit for the same billing period, provided that the landlord has verified that the total amounts of water usage measured by all submeters in the building, including all submeters for common areas, does not exceed the total amount of water usage in the building for the same billing period as shown on such bill or invoice.
- (h) Whenever a tenancy in a dwelling unit commences after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall mail to the tenant on the first day of such tenancy the reading on the submeter for the dwelling unit as of that day. The landlord may thereafter bill the tenant only for the water measured on the submeter subsequent to such reading.
- (i) Whenever a tenancy in a dwelling unit terminates after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall give to the tenant on the last day of such tenancy the reading on the submeter for the dwelling unit as of that day together with a final bill for water usage in the dwelling unit since the last prior reading of the submeter for such dwelling unit. The landlord shall charge the same rate for the water used by the tenant as the water company charged in the last bill issued to the landlord. Notwithstanding paragraph (f), the bill shall be immediately due and payable by the tenant. If the tenant does not pay the bill, the landlord may deduct the amount of the bill from any security deposit paid by the tenant in accordance with section 15B of chapter 186, prior to returning the balance of the security deposit, if any, to the tenant. If the landlord is not able to give the final reading on the submeter for the dwelling unit together with a final bill for water usage to the tenant on the last day of the tenancy, the landlord shall mail such reading and such final bill to the tenant no later than the day after the termination of the tenancy. If the water company subsequently charges the landlord a lesser rate than the landlord charged the tenant in the final bill, the landlord shall recalculate the bill forthwith based on the lesser rate and mail to the tenant the revised bill together with a rebate for any overpayment made by the tenant.
- (j) A landlord shall not charge or recover, or allow to be charged or recovered, any additional servicing, administrative, establishment, meter-reading, meter-testing, billing, or submetering fee or other fee whatsoever, however denominated.

- (k) Water usage separately charged to tenants pursuant to this section shall be delivered by the water company to the landlord and such landlord shall:-(1) be the consumer; (2) for billing purposes, be the customer of record; (3) be responsible for payment of the water company bills; and (4) be subject to any actions of the water company for nonpayment.
- (l) In the event of nonpayment of a bill to a water company by the landlord, such water company shall have all the remedies against the customer of the water company available pursuant to any law, rule or regulation. A landlord may not shut off or refuse water service to a tenant on the basis that the tenant has not paid a separately assessed submetered water usage charge.
- (m) The landlord shall retain an affirmative obligation to maintain in good working order the water supply system to each dwelling unit and any component thereof, including any water conservation device and submeter installed pursuant to this section, and to respond in a timely manner to any request by the tenant for the repair of any defect or malfunctioning in such water supply system, including any leak. Such water supply system to any dwelling unit and any component thereof including, but not limited to, any water conservation device and submeter installed pursuant to this section, shall be governed by and maintained in accordance with the state sanitary code. In the event of any overcharge by the landlord or any violation of the state sanitary code, the tenant shall have all rights and remedies provided under law for such overcharges or such violations including, but not limited to, the rights and remedies provided under chapters 111, 186 and 239.
- (n) Upon receipt of a bill for water usage from the landlord and within the time allowed for paying the bill, a tenant may request that a person or entity with expertise in the installation and operation of water submeters and with no financial or other relationship with the landlord, test the submeter for the dwelling unit leased by the tenant to determine whether it is accurately measuring the water being used in the dwelling unit. If the submeter is found to be measuring more water than is being used in the dwelling unit, the landlord shall install a new submeter at his own expense and shall also pay for the cost of the test. In addition, the person or entity conducting the test shall determine as accurately as possible the amount of water that was improperly measured by the submeter in both the prior and current billing periods. The landlord shall calculate the amount the tenant was overcharged for the prior billing period and reduce the bill by that amount, or, if the tenant has already paid the bill, give the tenant a rebate in that amount. Upon receipt from the water company of the bill for the current billing period, the landlord shall calculate the amount of the bill attributable to the excessive measurement by the submeter and reduce the bill to the tenant by that amount prior to sending it to the tenant. If the submeter is found to be measuring no more water than is being used in the dwelling unit, the tenant shall pay for the cost of the test; provided, however, that if the tenant does not pay for the cost of the test, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered a part of the bill for purposes of paragraph (f) and clause (i) of subsection (4) of section 15B of chapter 186.
- (o) In the event of a repair of a leak in the water supply system to a dwelling unit, the landlord shall determine as accurately as possible the amount of water that was measured on

the submeter for the dwelling unit as a result of such leak, after a review of the billing records for the dwelling unit and consultation with the licensed plumber repairing the leak. The landlord shall then determine the amount of the bill for the billing period in which the leak occurred that was attributable to such leak and reduce the bill to the tenant by that amount or, if such bill has already been paid, grant the tenant a rebate in that amount; provided, however, that with regard to any leak about which the tenant knew or should have known, the landlord shall only be required to reduce the bill to the tenant, or to grant a rebate to the tenant, by or in an amount attributable to the water usage measured on the submeter as a result of the leak between the date the tenant gave notice to the landlord of the leak and the date the leak was repaired.

- (p) A landlord may impose a charge for water use on the tenant of a dwelling unit that is connected directly to a meter installed by a water company; provided that the meter measures only water that is supplied for the exclusive use of the dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure water usage for any portion of any common area or by any other party or dwelling unit. The landlord and tenant shall have all of the same rights and obligations with respect to water charges for such dwelling unit that landlords and tenants have under this section with respect to water charges for any dwelling unit connected to a submeter; provided, however, that the landlord shall not be required to include in the certificate required by subsection (c) the information required by clause (3) of said subsection (c) for dwelling units connected to a submeter; and provided further, that subsection (n) shall not apply to dwelling units connected directly to a meter installed by a water company. Upon a request by the tenant of a dwelling unit connected directly to a meter installed by a water company, the landlord shall apply for a test of the meter to determine its accuracy in accordance with section 10 of chapter 165. The test shall be conducted in accordance with said section 10. The tenant shall reimburse the landlord for any cost incurred in connection with such test. If the tenant does not reimburse the landlord for such cost, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered to be part of the bill for purposes of subsection (f) and clause (i) of subsection (4) of section 15B of chapter 186.
- (q) Nothing in this section shall be construed to increase or expand, change, eliminate, reduce or otherwise limit the liabilities or obligations of any water company that are set forth in any law, rule, regulation or order to the tenant of a dwelling unit who is receiving water provided to the building by the water company.
- (r) Nothing in this section shall affect or impair the powers and duties of the department of environmental protection or the department of public health with respect to water supply under chapter 111.
- (s) No charge for water usage may be imposed on the tenant of any dwelling unit in a public housing development pursuant to chapter 200 of the acts of 1948, chapter 667 of the acts of 1954, chapter 705 of the acts of 1966, or chapter 689 of the acts of 1974.

(t) The department of public health shall promulgate such additional regulations to the state sanitary code as it determines to be necessary to implement this section.

Approved December 16, 2004.

Chapter 418. AN ACT AUTHORIZING CERTAIN TERMS FOR BORROWING BY THE TOWN OF FALMOUTH FOR THE CONSTRUCTION OF A GOLF COURSE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 44 of the General Laws to the contrary, the maturities of bonds issued by the town of Falmouth to finance costs of acquiring, developing and equipping a municipal golf course, including a clubhouse and related structures, and also including the acquisition of land and existing buildings, improvements, equipment and furnishings and the repair and renovation of existing buildings and improvements for golf course purposes, either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year, commencing with the first year in which a principal payment is required, shall be as nearly equal as practicable in the opinion of the town treasurer, or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds shall be not later than 1 year from the estimated date of commencement of regular operation of the golf course as a municipal golf course, as determined by the town treasurer, and the last payment of principal shall be not later than 30 years from the date of the bonds. Project costs to be financed by the issue of the bonds may include interest incurred on the bonds and any bond anticipation notes for a period of up to 1 year after the date of the original borrowing or, if later, 1 year after the estimated date of commencement of regular operations of the golf course, as determined by the town treasurer. The town may create and maintain, from bond proceeds or other sources of funds, such reserve, replacement, maintenance and improvement funds in connection with the golf course as it may deem necessary and prudent, but the aggregate of such funds provided from bond proceeds for the project shall not exceed 10 per cent of the principal amount of the bonds issued for the project. Any net earnings derived from the investment of the proceeds of the bonds may be expended by the town treasurer to pay interest on the bonds but otherwise shall be used only for acquisition, construction, equipping, operation or maintenance of the golf course. Except as otherwise provided in this act, indebtedness incurred by the town for the golf course project shall be subject to the applicable provisions of said chapter 44.

SECTION 2. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 419. AN ACT EXEMPTING THE POSITION OF TOWN HALL CUSTODIAN OF THE TOWN OF STONEHAM FROM THE CIVIL SERVICE LAW.

Be it enacted, etc., as follows:

SECTION 1. The position of town hall custodian in the town of Stoneham shall be exempt from chapter 31 of the General Laws.

SECTION 2. Section 1 shall apply to a person holding the position of town hall custodian on or after the effective date of this act.

SECTION 3. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 420. AN ACT AUTHORIZING THE TOWN OF WESTBOROUGH TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF WINES AND MALT BEVERAGES TO BE DRUNK ON THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Westborough may grant an additional license for the sale of wines and malt beverages to be drunk on the premises under section 12 of said chapter 138 to Christina's Cafe, Inc. of 22 South street in said town of Westborough, subject to all of said chapter 138 except for said section 17. The licensing authority shall not approve the transfer of the license to any other location.

SECTION 2. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 421. AN ACT AUTHORIZING THE TOWN OF WESTON TO REGULATE CERTAIN PROPERTY TAX EXEMPTION ELIGIBILITY REQUIREMENTS FOR THE ELDERLY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding clause Forty-first A of section 5 of chapter 59 of the General Laws, or any other general or special law to the contrary, and subject to sections 2 to 5, inclusive, the board of assessors of the town of Weston shall defer the real estate property tax payment for property of a person 60 years of age or older and occupied by him as his domicile, or a person who owns the same jointly with his spouse, either of whom is 60 years of age or older and occupied as their domicile, or of a person who owns the same jointly or

is a tenant in common with a person not his spouse and occupied by him as his domicile, if the person claiming the exemption either alone or together with his spouse had combined income during the preceding year of an amount not to exceed the amount established by the board of selectmen and ratified by vote of the annual town meeting, provided that such person has owned and occupied as his domicile such real property in the town for 5 years or is a surviving spouse who inherits such real property and has occupied such real property as his domicile in the town for 5 years and who otherwise qualifies under this act.

SECTION 2. Any such person may, on or before December 15 of each year to which the tax relates or within 3 months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of all or part of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with the board of assessors on behalf of the town.

The agreement shall provide that:-

- (1) no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of 4 per cent per annum for the first year and at an annual rate set thereafter by the board of selectmen provided that the rate set by the selectmen shall never exceed 8 per cent annum;
- (2) the total amount of such taxes due, plus interest, for the current and prior years does not exceed 50 per cent of the owner's proportional share of the full and fair cash value of such real property;
- (3) upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to the real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, that if such heir-at-law, assignee or devisee is a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on the real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the 50 per cent requirement of subparagraph (2);
- (4) if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and
- (5) any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

SECTION 3. In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under this act, plus interest as hereinafter provided. A lien filed pursuant to this act shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

SECTION 4. In addition to the remedies provided by this act, the recorded statement of the assessors provided for in this act shall have the same force and effect as a valid taking for nonpayment of taxes under section 53 of chapter 60 of the General Laws, except that: (1) interest shall accrue at the rate provided in this act until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section 62 of said chapter 60; (2) no assignment of the municipality's interest under this act may be made pursuant to section 52 of said chapter 60; and (3) no petition under section 65 of said chapter 60 to foreclose the lien may be filed before the expiration of 6 months from the conveyance of the property or the death of the person whose taxes have been deferred.

SECTION 5. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 422. AN ACT ESTABLISHING THE ATHOL ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION.

Be it enacted, etc., as follows:

SECTION 1. As used in this act, the following words shall, unless the context requires otherwise, have the following meanings:-

"Corporation", the Athol Economic Development and Industrial Corporation, established in section 3.

"Cost of a project", all costs, whether incurred prior to or after the issue of bonds or notes hereunder, of acquisition, site development, construction, improvement, enlargement, reconstruction, alteration, machinery, equipment, furnishings, demolition, or removal of existing buildings or structures, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during the carrying out of any project, interest for up to 2 years after completion or estimated comple-

tion date of any project, planning, engineering and legal services, administrative expense, the funding of notes issued for capital purposes, such reserve for debt service or other capital or current expenses as may be required by a trust agreement or resolution securing notes or bonds, and all other expenses incidental to the determination of the feasibility of any project or to carrying out the project or to placing the project in operation.

"Director", the director of the department of housing and community development.

"Economic development area", any blighted open area or any decadent area, as defined in section 1 of chapter 121B of the General Laws, which is located in the town of Athol and is zoned for general or restricted manufacturing uses or for general industrial uses whether restricted or not, "industrial uses", or any real open and underutilized land which is suitably zoned for the kinds of activities identified in section 2, including but not limited to research and development, commercial, light industry, and business "non-industrial" uses.

"Economic development plan", a detailed plan, as it shall be approved from time to time by vote of town meeting as herein provided, for 1 or more economic development projects within an economic development area, which plan shall at a minimum indicate the boundaries of the area, indicate intended land acquisition areas and establish the appropriate land uses for the area. The plan shall include design guidelines and siting standards. The plan shall also describe the process by which the corporation shall notify the public of the availability of development sites within the economic development area in order to encourage competing development proposals and shall include the criteria that will be used in judging the development proposals to assure maximum overall public benefits. The plan as adopted will, for purposes of chapter 30B of the General Laws, be considered the plan required by clause (25) of subsection (b) of section 1 of said chapter 30B. All plans as described herein shall also be consistent with the town's comprehensive plan, economic development element as approved at town meeting.

"Economic development project", (1) a project to be undertaken in accordance with an economic development plan for acquisition by the corporation of land and the improvements thereon, if any, within an economic development area and for clearance and development of the land so acquired; or (2) a project for the removal, or rehabilitation or conservation of an economic development area, or for the demolition, removal, or rehabilitation of improvements on land within an economic development area whenever necessary to eliminate unhealthy, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, or eliminate obsolete or other uses detrimental to the public welfare; (3) a project involving any combination of the foregoing types of projects. An economic development project may include improvements necessary for carrying out the objectives of the economic development project, together with such site improvements as are necessary for the preparation of any site for uses in accordance with the economic development plans of the town, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise, including sale, initial leasing or retention by the corporation for industrial, non-industrial or

manufacturing uses in accordance with the economic development plans. An economic development project may also include construction of new buildings, the construction by the corporation of any of the buildings, structures or other facilities located in the area which are to be repaired, moved or rehabilitated.

"MOBD", the Massachusetts Office of Business Development.

"Select board", the select board or board of selectmen in the town of Athol.

"Town Manager", the town manager of the town of Athol.

"Town meeting", direct democracy of town voters acting in lawfully convened session.

SECTION 2. The general court finds and declares that: (a) unused, underused or undeveloped areas exist in parts of the town of Athol; (b) each area constitutes an economic liability, substantially impairs or arrests the sound growth of the town and retards the econo: ic well-being of the commonwealth; (c) each area has decreased the value of private investments and threatens the sources of public revenue; (d) redevelopment of the areas is necessary to retain existing industrial and commercial enterprises, to attract new industrial and commercial development and to promote the sound economic growth of the town; (e) the exercise of powers by the corporation and any assistance that may be given by the town or other public body in connection therewith are public uses and purposes for which public money may be expended; (f) the acquisition, planning, clearance, development, rehabilitation or rebuilding of the unused, underused and underdeveloped areas for industrial and commercial purposes are public benefits for which private property may be regulated by wholesome and reasonable order, law and direction and for which public funds may be expended for the welfare of the town and the commonwealth; (g) there exists in the town a condition of unbalanced development which causes social hardships, increases the public assistance burdens, impairs the security of family life, impedes the economic and physical development of the town and adversely affects the welfare and prosperity of the people; (h) underemployment has been caused in substantial part by industrial and commercial companies moving from the town; (i) some existing industrial and commercial facilities within the town are obsolete and inefficient; (j) the facilities are underutilized, thereby creating additional underemployment; (k) the obsolescence and abandonment of existing facilities are causing serious injury to the economy of the town; (1) the industrial and commercial sectors of the economy provide some of the best opportunities for jobs at higher wages for the inhabitants of the town; (m) new industrial and commercial sites are required to attract and house new industrial and commercial development and to retain existing industrial and commercial operations in need of expansion space; and (n) the modest efforts of private industry have not provided the necessary industrial and commercial sites within the area due to the problems encountered in the assembly of suitable building sites, the unreliable commitment of private capital for development and the inability of private enterprise alone to plan, finance and coordinate industrial and commercial development projects.

SECTION 3. There shall be in the town of Athol a public body politic and corporate known as the Athol Economic Development and Industrial Corporation. There shall be 7 members of the board of directors of the corporation who shall be appointed by the town manager. At least 1 member shall be experienced in industrial or commercial development, 1 in financial matters, 1 in real estate matters, 1 in municipal government, at least 1 member representative of low income people who shall be chosen from a list of 3 submitted by the regional or local community action agency or, if there is no such agency, from a list of 3 submitted by the director. The appointing authority shall designate 1 of the 7 members as chair and another as vice-chair. Each of the 7 members shall be sworn to the faithful performance of his/her official duties as a director of the corporation. A majority of the 7 directors shall constitute a quorum for the transaction of any business, but the action of a majority of the entire board shall be necessary for any transaction. For the purposes of section 11A of chapter 30A of the General Laws, the corporation shall be deemed to be an authority established by the general court to serve a public purpose in the commonwealth.

Of the members of the corporation first appointed, 2 shall be appointed to serve for 1 year from the first day of July in the current year, 2 for 2 years from said date, and 3 for 3 years from said date; but the initial appointments may be made at any time after the effective date of this act.

Upon the expiration of the term of office of any such member, or of any subsequent member, his successor shall be appointed in like manner for a term of 3 years. In the event of a vacancy in the office of a member, his successor shall be appointed in like manner to serve for the remainder of the term.

Unless reappointed, no member of the corporation shall hold office after the expiration of his term; and the appointment of a successor to any person whose term has expired shall be for the remainder of the term which would have begun at such expiration if the successor had then been appointed.

Any member may be removed by the select board for malfeasance, misfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. For purposes of chapter 268A of the General Laws, the members of the corporation shall be deemed to be special municipal employees.

Before the issuance of any bonds under the provisions of this act, each member of the corporation shall execute a surety bond with a surety company authorized to transact business in the commonwealth as surety, in the penal sum of \$50,000 conditioned upon the faithful performance of the duties of his office, each such surety bond to be approved by town counsel and filed in the office of the state secretary. The members of the corporation shall receive no compensation for the performance of their duties hereunder, but each member shall be reimbursed for expenses actually incurred in the performance of his duties. Every such reimbursement shall be open to public inspection from and after the requisition therefor.

SECTION 4. The directors of the corporation shall adopt a corporate seal for the corporation, and designate the custodian thereof; may from time to time appoint and at pleasure remove a clerk, a treasurer or such other officers of the corporation as they may deem

necessary, and may determine their duties and their compensation, which shall be paid by the corporation; shall cause at all times accurate accounts to be kept of all receipts and expenditures of the funds of the corporation; and shall make a report annually in December to the select board, MOBD and to the director, containing an abstract of such accounts and detailed information of all receipts and expenditures, including prices for land purchased or taken and any buildings constructed thereon, contracts for construction of facilities and for the leasing thereof, and such other detailed information as may be deemed helpful. The office of treasurer and clerk may be the same person. The corporation shall cause an audit of its book and accounts to be made at least once in each fiscal year by certified public accountants and the cost thereof shall be treated as an item of current expense. Except as otherwise provided in this act, the corporation shall have full power to exercise care of its property and the management of its business affairs, and to sell and convey any real estate or other property not needed for its business or affairs, by deed or other instrument sealed with the corporate seal, signed and acknowledged by a majority of the board of agents. The treasurer shall give bond for the faithful performance of his duties, with a surety company authorized to do business in this commonwealth as surety, in such sum as the board may determine, the premium therefor to be paid by the corporation. Neither chapter 31 of the General Laws nor any rule made thereunder shall apply to any person employed or engaged by the corporation under this act.

SECTION 5. The corporation may:-

- (a) sue and be sued in its own name, and plead and be impleaded;
- (b) adopt by-laws for the regulation of its affairs and the conduct of its business, and to alter the same at its pleasure;
- (c) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, and to employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts and attorneys and such other employees, agents, and consultants as may be necessary in its judgment, and to fix their compensation;
- (d) receive and accept from any federal agency, the commonwealth or the town grants, loans of advances for or in aid of an economic development program, plan or project and to receive and accept contributions from any source of either money, property, labor, or other things of value, to be held, used and applied for the purposes for which the grants, loans, advances and contributions may be made. The town may borrow outside its debt limits to obtain money for loans to the corporation, or within its debt limits to obtain money for grants to the corporation, with the approval of the bureau of accounts and the director;
- (e) borrow money, and, from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the corporation, for moneys borrowed or in payment for property acquired or for any other purposes of the corporation, and to secure the payment of such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any of the property, rights, or privileges of the

corporation;

- (f) issue revenue bonds of the corporation, payable solely from revenues, for the purpose of paying all or part of the cost of a project or projects, except that the town may, upon request by the corporation, pledge its full faith and credit to the solvency of the corporation;
- (g) invest any funds not required for immediate use or disbursement in certificates of deposit or in obligations of the government of the United States or in obligations of the payment of the principal of, and interest on, which is guaranteed by the government of the United States;
- (h) provide advisory services and technical assistance necessary or desirable to carry out the purposes of this act;
- (i) prepare or cause to be prepared plans, designs, drawings, specifications and estimates of cost for the construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair of economic development projects and from time to time modify such plans, designs, drawings, specifications and estimates;
- (j) finance pollution control facilities in the same manner provided by this act for economic development projects, in which event all provisions of this act which are applicable to economic development projects apply to the pollution control facilities, insofar as the provisions are apt, except as otherwise provided;
- (k) subject to the approval of town meeting, designate areas of the town as economic development areas, or economic opportunity areas as approved by the economic assistance coordinating council;
- (1) acquire and hold by bequest, devise, grant, gift, purchase, exchange, lease, judicial order or decree, or otherwise, for any of its objects and purposes, any property, either real or personal, or any interest therein; and without limiting the generality of the foregoing, acquire by purchase, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain following a public hearing and an affirmative 2/3 vote at an annual town meeting or a special town meeting called for the purpose, with the advice of MOBD and the director in accordance with chapter 79 or chapter 80A of the General Laws insofar as these chapters may apply, private lands, or any interests therein, as it considers necessary for carrying out this act or for providing for the relocation of persons and businesses displaced as a result of carrying out economic development plans, programs and projects. Section 40 of said chapter 79 shall apply to any taking by the corporation, except that the security therein required shall be deposited with the town treasurer and shall be in an amount at least 25 per cent higher than the aggregate average assessed valuations in the 3 previous calendar years of all real estate to be taken by eminent domain. With the advice of MOBD and the director, the date as of which the value of such lands shall be determined for eminent domain purposes shall be the date on which said taking is approved by the town select board;
- (m) make relocation payments to persons and businesses displaced as a result of carrying out economic development plans, programs and projects, including such payments

on a pro tanto basis;

- (n) procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it considers desirable;
- (o) clear and improve property acquired by it, and engage in or contract for construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair thereof;
- (p) arrange or contract with the town for the planning, re-planning, opening, grading or closing of streets, roads, alleys or other places or for the furnishing of facilities or for the acquisition by the town of property or property rights or for the furnishing of property or services in connection with a project or projects;
- (a) sell, convey, mortgage, lease, transfer, option, exchange or otherwise dispose of, any property, either real or personal, or any interest therein, as the objects and purposes of the corporation may require, subject to such limitations as may be prescribed by law;
- (r) loan on mortgages, including purchase money mortgages, on real estate and personal property within economic development areas, to foreclose the same when in default, and bid for and purchase property at any foreclosure or other sale; and in that event, deal with the property in a manner necessary or desirable to protect the interests of the corporation therein;
- (s) manage any plan, program or project whether owned or leased by the corporation and enter into agreements with the commonwealth or the town or any agency or instrumentality thereof or with any person, firm, partnership or corporation either public or private for the purpose of causing any plan, program or project to be managed;
- (t) act with respect to 1 or more projects, as a corporation organized under section 3 or section 18B of chapter 121A of the General Laws; provided that the accounts for each project shall be kept separately, and the income of 1 project shall not be expended upon or for the benefit of another project;
- (u) borrow money for the purposes of aiding in the construction of equipment required by the commonwealth or United States to abate air or water pollution;
- (v) apply to the federal government or to the commonwealth for economic development and urban renewal assistance grants to meet in part the cost of approved economic development projects, receive and administer the grants, contract with the commonwealth for financial assistance, apply for and receive advances for the estimated costs of surveys and plans and administrative expenses in preparation for economic development projects and apply for, receive and administer community development action grants, all to the same extent and subject to the same terms and conditions as an urban renewal agency pursuant to sections 53 to 57A, inclusive, of chapter 121B of the General Laws;
- (w) do all acts and things necessary or convenient to carry out the powers expressly granted in this act. The corporation shall pay the reasonable relocation costs of persons and businesses displaced as a result of carrying out economic development plans, but the corporation shall not be required hereby to pay or contribute to the payment of such costs of

any relocation in excess of \$40,000.

SECTION 6. (a) No economic development project shall be undertaken until (1) a public hearing relating to the town's economic development plans covering the project has been held by the corporation after due notice; (2) the town's economic development plans have been approved by an affirmative 2/3 vote of an annual town meeting or a special town meeting called for the purpose by the town. If an economic development project covered by the plans is not commenced within 7 years after the approval of the plans, the approval of the plans shall lapse.

- (b) Every economic development plan submitted to town meeting for approval under this act (i) shall require that every person occupying the whole or any part of the economic development area shall make every reasonable effort, in employing persons in his business, to give to the fullest practicable extent preference to residents of the town and (ii) shall be accompanied by a report on the plan by the planning board of the town to whom the plan shall have been submitted before its submission to town meeting, by a statement of the proposed method for financing each project covered by the plan, by a comprehensive relocation plan and by such other information as the corporation considers advisable.
- (c) Notice of the public hearing required by subsection (a) shall be given by the corporation to (1) persons, groups and organizations as have requested in writing that notice be given them, (2) MOBD and the director and any agency, whether of the town or of the commonwealth, likely in the judgment of the corporation to have an actual or potential interest in the economic development plan, (3) the senator for every senatorial district of the commonwealth, and the representative for every representative district thereof, within which the economic development area or any part thereof lies, and (4) each community group supported in whole or in part by public funds, whose territory covers all or part of the economic development area.
- (d) If an economic development plan is so approved by town meeting, the corporation shall have the powers and duties imposed by this act to undertake and carry out the economic development projects covered by the plan. The corporation shall not be required to submit an economic development plan so approved to MOBD for further approval.

SECTION 7. Except as provided herein, rents and charges for services or facilities furnished or supplied by the corporation shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the commonwealth or the town. If such rents and charges are derived from a project in connection with which revenue bonds have been issued, they shall, with all other revenues derived from the project, except the part thereof necessary to pay the cost of maintenance, repair and operation and to provide such reserves therefor as provided for in the resolution authorizing the issuance of the bonds or in the trust agreement, but including the part thereof necessary to provide such reserves for the payment of the principal of and the interest on the revenue bonds as provided for in the resolution or trust agreement, and including also use proceeds of any and all sales by the corporation of property within the project area, be set aside at the regular intervals provided for in the resolution or trust agreement in a sinking fund. That fund is hereby pledged to and

charged with the payment of (1) the interest upon the bonds as the interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided.

SECTION 8. The corporation shall be liable in contract or in tort in the same manner as a private corporation. The directors, employees, officers and agents of the corporation shall not be liable as such on its contracts or for torts not committed or directly authorized by them. The property or funds of the corporation shall not be subject to attachment or to levy and sale on execution, but if the corporation refuses to pay a judgment entered against it in any court of competent jurisdiction, the superior court, sitting within and for the county in which the corporation is situated, may, by writ of mandamus, direct the treasure. of the agency to pay the judgment. The real estate of the corporation shall not be subject to liens under chapter 254 of the General Laws, but sections 28 and 29 of chapter 149 of the General Laws shall be applicable to any construction work by the corporation.

Redevelopment or improvement of any property owned by the corporation or leased by the corporation to another party, including design, development, construction and operation, shall be subject to sections 38A to 38O, inclusive, and section 39M of chapter 30; and sections 44A to 44M, inclusive, of chapter 149 of the General Laws, when customized improvements exceed the thresholds contained therein, except to the extent that the corporation enters into a ground lease which provides that title to the improvements remain with the lessee.

SECTION 9. The real estate and tangible personal property of the corporation shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments; but in lieu of such taxes, betterments and special assessments, the town may determine a sum to be paid to it annually in any year or period of years, the sum to be in any year not in excess of the amount that would be levied at the then current tax rate upon the average of the assessed value of such real estate, including buildings and other structures, for the 3 years preceding the year of acquisition thereof, the valuation for each year being reduced by all abatements thereon.

The town may agree with the corporation upon the payments to be made, or the corporation may make and the town may accept the payments, the amount of which shall not in either case be subject to the foregoing limitation.

Nothing in this act shall be construed to prevent the taxation to the same extent and in the same manner as other real estate is taxed, of real estate acquired by the corporation for an economic development project and sold by it, or the taxation to the same extent and in the same manner as real estate of the commonwealth is taxed, of real estate so acquired by the corporation and leased by it; but real estate so acquired by the corporation and sold or leased to an urban redevelopment corporation or other entity operating under chapter 121A of the General Laws or to an insurance company or savings bank or group of savings banks operating under said chapter 121A, shall be taxed as provided in said chapter 121A and not

otherwise.

The corporation and the debentures, revenue bonds and revenue refunding bonds issued under the provisions of this act, their transfer and the income there from including any profit made on the sale thereof, shall at all times be free from taxation by the commonwealth or the town.

SECTION 10. To provide funds for the general purposes of the corporation, including working capital, the corporation may from time to time issue debentures; but the debentures outstanding at any one time shall not exceed \$5,000,000 unless specifically approved by the director. The debentures, unless otherwise authorized by law, shall not constitute a debt of the commonwealth or of the town of Athol or a pledge of the faith and credit of the commonwealth or of the town of Athol and shall be subordinated to all other obligations of the corporation and shall be payable at the time or times and in the installments, if any, as the corporation shall determine, but solely out of the net assets of the corporation; and the holders thereof shall be entitled to interest thereon but only out of the net earnings of the corporation, and in no event at a rate higher than the rate specified therein.

The debentures may be secured by a trust agreement by and between the corporation and a corporate trustee, which shall be located within the commonwealth and shall be a trust company or bank having the powers of a trust company. The trust agreement shall contain provisions for protecting and enforcing the rights and remedies of the debenture holders as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth which may act as depository under the trust agreement to furnish indemnifying bonds or to pledge securities as may be required by the corporation. The trust agreement shall set forth the rights and remedies of the debenture holders and of the trustee, and may restrict the individual right of action by debenture holders. In addition to the foregoing, the trust agreement may contain other provisions as the corporation may consider reasonable and proper for the security of the debenture holders. All expenses incurred in carrying out the trust agreement may be treated as an item of current expense.

Debentures may be issued under this act without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the town of Athol and without any other proceedings or the happening of any other condition or things other than those proceedings, conditions, or things which are specifically required by this act.

SECTION 11. The town may raise and appropriate or may borrow, or may agree with the corporation or with the federal government or the commonwealth to raise and appropriate and to borrow, in aid of the corporation, sums necessary to carry out the purpose and powers of the corporation including defraying part of the development, acquisition and operating costs of any project. Indebtedness of the town authorized under this section shall be outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws and shall be payable within 20 years and otherwise subject to sections 16 to 27, inclusive, of said chapter 44; but the sole amount of indebtedness of the town, outstanding

at any one time under this section and clauses (1), (2), and (4) of section 20 of chapter 121B of the General Laws shall not exceed 5 per cent of the town equalized valuation as defined in section 1 of said chapter 44. Indebtedness incurred under this act shall also be subject to approval under section 22 of said chapter 121B in like manner as indebtedness incurred under said section 20.

SECTION 12. The corporation may provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the corporation for the purposes of paying all or any part of the cost of a project or projects. The principal of and interest on the bonds shall be payable solely from the funds herein provided for the payment. The bonds of each issue shall be dated, shall bear interest at the rates, and shall mature at the time or times, not exceeding 50 years from their date or dates, as determined by the corporation, and may be made redeemable before maturity, at the option of the corporation, at the price or prices and under the terms and conditions as fixed by the corporation before the issuance of the bonds. The corporation shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. The bonds may be issued in coupon or registered form or both, as the corporation may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest. The corporation may sell such bonds in such manner either at public or at private sale, and for such price as it may determine to be in the best interests of the corporation.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or projects, and shall be disbursed in the manner and under the restrictions, if any, as the corporation may provide. Before the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Revenue bonds may be issued under the provisions of this act subject only to those proceedings, conditions or things which are specifically required by this act.

The corporation may provide by resolution for the issuance of revenue refunding bonds of the corporation for the purpose of refunding any revenue bonds then outstanding and issues under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the corporation, for the additional purpose of constructing or reconstructing any extensions or improvements of the project. The issue of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the

corporation in respect of the same shall be governed by the provisions of this act insofar as the same may be applicable.

While any bonds issued by the corporation remain outstanding, the powers, duties or existence of the corporation shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of the bonds.

Revenue and revenue refunding bonds issued under this act, unless otherwise authorized by law, shall not constitute a debt of the commonwealth or of the town, or a pledge of the faith and credit of the commonwealth or of the town, but the bonds shall be payable solely from the funds herein provided therefor from revenues. In the event that the corporation, or the town or commonwealth is not obliged to pay the revenue and revenue refunding bonds, then, and in that event, all the revenue and revenue refunding bonds shall contain on the face thereof a statement to the effect that neither the corporation nor the commonwealth nor the town shall be obliged to pay the same or the interest thereon except from revenues and that neither the faith and credit nor taxing power of the commonwealth or of the town is pledged to the payment of the principal of or the interest on the bonds.

All revenue and revenue refunding bonds issued under this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments as defined in section 3-104 of chapter 106 of the General Laws.

SECTION 13. In the discretion of the corporation, the revenue bonds or revenue refunding bonds may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the commonwealth. The trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage any project or part thereof.

Either the resolution providing for the issuance of bonds or the trust agreement may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including without limiting the generality of the foregoing provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth the duties of, and limitations on, the corporation in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, operation, repair, insurance and disposition of property, the custody, safeguarding, investment, and application of moneys, the use of any surplus bond or note proceeds and the establishment of reserves. The resolution or trust agreement may also contain covenants by the corporation in relation to, among other things, (a) the establishment, revision and collection of rents and charges for services or facilities furnished or supplied by the corporation as shall provide revenues sufficient with other revenues of the project, if any, to pay (i) the cost of maintaining, repairing and operating the project and of making renewals and replacements in connection therewith, (ii) the principal of and the interest on the revenue bonds as the same shall become due and payable, (iii) payments in lieu of taxes, betterment and special assessments, and (iv) reserves for all such purposes, (b) the purpose or purposes for which the proceeds of the sale of the bonds will be applied and the use and disposition thereof, (c) the use and disposition

of the gross revenues of the corporation from the project, any additions thereto and extensions and improvements thereof, including the creation and maintenance of funds for working capital and for renewals and replacements to the project, (d) the amount, if any, of additional revenue bonds payable from the revenues of the project; and the limitations, terms and conditions on which the additional revenue bonds may be issued, and (e) the operation, maintenance, management, accounting and auditing of the project and of the income and revenues of the corporation. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth to act as depository of the proceeds of bonds or of revenues and to furnish the indemnifying bonds or to pledge securities required by the corporation. The trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, the trust agreement may contain other provisions that the corporation considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust agreement may be treated as a part of the cost of the operation of the project. The pledge by the trust agreement or resolution shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and then held or thereafter received by the corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act; and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which pledge is created need be filed or recorded except in the records of the corporation, and no filing need be made under chapter 10 6 of the General Laws.

SECTION 14. Revenue bonds and revenue refunding bonds issued under this act shall be securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by section 14 of chapter 167E of the General Laws, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them; and the bonds shall be obligations which may properly and legally be made eligible for the investment of savings deposits and the income thereof in the manner provided by section 2 of chapter 167F of the General Laws. The bonds shall be securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law.

SECTION 15. Any holder of bonds or debentures issued under this act or of any coupons appertaining thereto, and the trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus

or other proceeding, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under the trust agreement, and may enforce and compel the performance of all duties required by this act or by the trust agreement, to be performed by the corporation or by any officer thereof.

SECTION 16. Insofar as this act is inconsistent with any other general or special law, excluding the state building code, and the municipal zoning ordinance or by-law, this act shall be controlling.

SECTION 17. This act, being necessary for the welfare of the town and its inhabitants, shall be liberally construed to effect its purpose.

SECTION 18. If the town shall modify its charter, or if it shall adopt a new charter, then without amendment of this act, the provisions of this act which refer to specific municipal officials or municipal bodies shall be understood, upon a charter change, to refer to those who under such change exercise the same or equivalent functions.

SECTION 19. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 423. AN ACT ESTABLISHING THE TAUNTON INDUSTRIAL IMPROVEMENT DISTRICT IN THE CITY OF TAUNTON.

Be it enacted, etc., as follows:

SECTION 1. There shall be within the city of Taunton, the Taunton Industrial Improvement District, a body politic and corporate, hereinafter referred to as the "district", consisting of 3 parcels of land bounded and described as follows:

PARCEL ONE

BEGINNING AT A POINT IN THE WESTERLY SIDELINE OF BAY STREET AND BEING THE NORTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL; THENCE

S 06° 04'02" W ONE HUNDRED EIGHTY-FOUR AND 58/100 (184.58) FEET TO A POINT; THENCE

S 25°17'34" W TWO HUNDRED SEVENTY-NINE AND 22/100 (279.22) FEET TO A POINT; THENCE

SOUTHEASTERLY TWO HUNDRED SEVENTY-ONE AND 10/100 (271.10) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF FOUR HUNDRED FIFTY-THREE AND 00/100 (453.00) FEET TO A POINT; THENCE

S 08°59'46" E THREE HUNDRED FIFTY-SEVEN AND 42/100 (357.42) FEET TO A POINT; THENCE

SOUTHERLY TWO HUNDRED SIXTY-ONE AND 81/100 (261.81) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF THREE HUNDRED TWELVE AND

00/100 (312.00) FEET TO A POINT; THENCE

S 39°04'56" W FOUR HUNDRED NINETY-ONE AND 27/100 (491.27) FEET TO A POINT; THENCE

SOUTHEASTERLY FIVE HUNDRED SIXTY-EIGHT AND 66/100 (568.66) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF SIX HUNDRED TEN AND 00/100 (610.00) FEET TO A POINT; THENCE

S 14°20'41" E FOUR HUNDRED THIRTY-THREE AND 00/100 (433.00) FEET TO A POINT, THE LAST EIGHT (8) COURSES BEING BY THE WESTERLY SIDELINE OF BAY STREET; THENCE

\$ 62°46'11" W SIXTY-SEVEN AND 90/100 (67.90) FEET TO A POINT; THENCE \$ 50°12'55" W NINETY-NINE AND 96/100 (99.96) FEET TO A POINT; THENCE \$ 36°04'31" W ONE HUNDRED AND 87/100 (100.87) FEET TO A POINT;

THENCE

S 30°33'27" E FORTY-THREE AND 58/100 (43.58) FEET TO A POINT; THENCE S 28°45'23" E THIRTY-FOUR AND 99/100 (34.99) FEET TO A POINT; THENCE S 15°57'05" E NINETY-TWO AND 87/100 (92.87) FEET TO A POINT, THE LAST

SIX (6) COURSES BEING BY LAND NOW OR FORMERLY RICHARD CHAMBERLAIN; THENCE

S 70°13'09" W SIXTEEN AND 94/100 (16.94) FEET TO A POINT, BY LAND NOW OR FORMERLY ARTHUR W. AND BEVERLY J. THIBAULT; THENCE

S 19°32'53" E SEVEN HUNDRED TWENTY-THREE AND 29/100 (723.29) FEET TO A POINT, THE LAST COURSE BEING BY LAND NOW OR FORMERLY ARTHUR W. AND BEVERLY J. THIBAULT, BY LAND NOW OR FORMERLY ROSEMARY SOUZA AND PAUL FRENNETTE, BY LAND NOW OR FORMERLY JEFFREY P. AND TRACY A. WATTS, BY LAND NOW OR FORMERLY BETTE J. RIEBESEHL, BY LAND NOW OR FORMERLY JUNE B. CARROLL, TRUSTEE AND BY LAND NOW OR FORMERLY DONALD E. DEMELLO; THENCE

S 88°34'10" W ONE HUNDRED NINETY-SEVEN AND 86/100 (197.86) FEET BY LAND NOW OR FORMERLY TIMOTHY J. AND MICHELLE M. LEAHY AND BY LAND NOW OR FORMERLY DANIEL J. AND AGNES E. MCMILLEN TO A POINT; THENCE

S 84°25'24" W TWO HUNDRED TWENTY-EIGHT AND 19/100 (228.19) FEET TO A POINT; THENCE

S 20°11'23" E SIXTY-TWO AND 26/100 (62.26) FEET TO A POINT, THE LAST TWO (2) COURSES BEING BY LAND NOW OR FORMERLY DANIEL J. AND AGNES E. MCMILLEN; THENCE

S 34°10'27" W EIGHTY-TWO AND 25/100 (82.25) FEET BY LAND NOW OR FORMERLY ROLAND A. AND THERESA M. R. LAGACE TO A POINT; THENCE

S 33°52'03" W FIVE HUNDRED TWENTY-EIGHT AND 02/100 (528.02) FEET BY LAND NOW OR FORMERLY ALFRED R. AND BEATRICE M. LAGACE TO A POINT; THENCE

N 72°12'10" W THREE HUNDRED TWENTY-NINE AND 98/100 (329.98) FEET TO A POINT: THENCE

N 69°38'03" W EIGHTY-THREE AND 25/100 (83.25) FEET TO A POINT, THE LAST TWO (2) COURSES BEING BY THE NORTHEASTERLY SIDELINE OF BASSET STREET; THENCE

S 77°25'33" W EIGHT HUNDRED TWO AND 95/100 (802.95) FEET TO A POINT; THENCE

S 07°59'28" E NINE AND 57/100 (9.57) FEET TO A POINT; THENCE

S $58^{\circ}55'40"$ W SIX HUNDRED FIFTY AND 60/100 (650.60) FEET TO A POINT, A PORTION OF THE LAST COURSE BEING BY THE NORTHERLY END OF FREMONT STREET; THENCE

S 09°03'49" W ONE HUNDRED TWENTY-EIGHT AND 19/100 (128.19) FEET TO A POINT; THENCE

S $02^{\circ}22'51"$ W ONE HUNDRED EIGHTY-NINE AND 98/100 (189.98) FEET TO A POINT, THE LAST TWO (2) COURSES BEING BY THE WESTERLY SIDELINE OF FREMONT STREET; THENCE

N 87°37'09" W SIX HUNDRED SIXTY-SIX AND 44/100 (666.44) FEET TO A POINT; THENCE

S 03°44'18" E ONE THOUSAND TWENTY-FIVE AND 66/100 (1025.66) FEET TO A POINT, THE LAST TWO (2) COURSES BEING BY REMAINING LAND NOW OR FORMERLY COMMONWEALTH OF MASSACHUSETTS; THENCE

N 28°32'58" W ONE THOUSAND THREE HUNDRED FIFTEEN AND 00/100 (1315.00) FEET TO A POINT; THENCE

S 74°24'00" W THREE HUNDRED AND 00/100 (300.00) FEET TO A POINT; THENCE

N 28°38'00" W TWO HUNDRED AND 00/100 (200.00) FEET TO A POINT; THENCE

N 31°09'18" E TWO THOUSAND SEVEN HUNDRED FORTY-ONE AND 01/100 (2741.01) FEET TO A POINT; THENCE

N 00°00'00" W ONE THOUSAND FOUR HUNDRED AND 00/100 (1400.00) FEET TO A POINT; THENCE

N 24°03'45" W TWO HUNDRED FORTY-TWO AND 78/100 (242.78) FEET TO A POINT IN THE EASTERLY SIDELINE OF CONSTITUTION DRIVE, THE LAST FIVE COURSE BEING BY THE MYLES STANDISH INDUSTRIAL PARK; THENCE

NORTHWESTERLY FOUR HUNDRED EIGHTEEN AND 63/100 (418.63) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF FOUR HUNDRED FIFTY-FIVE AND 00/100 (455.00) FEET TO A POINT; THENCE

N 47°31'35" W FIFTY-ONE AND 23/100 (51.23) FEET TO A POINT, THE LAST TWO (2) COURSES BEING BY THE EASTERLY SIDELINE OF CONSTITUTION DRIVE; THENCE

N 24°03'45' W ONE HUNDRED FORTY-TWO AND 49/100 (142.49) FEET TO A POINT: THENCE

N 28°09'53" E SEVENTY-NINE AND 53/100 (79.53) FEET TO A POINT; THENCE

N 45°06'06" W THREE HUNDRED AND 00/100 (300.00) FEET TO A POINT, THE LAST THREE (3) COURSES BEING BY LAND NOW OR FORMERLY TAUNTON DEVELOPMENT CORP.; THENCE

N 28°14'16" E THREE HUNDRED AND 00/100 (300.00) FEET TO A POINT THENCE;

NORTHWESTERLY FOUR HUNDRED THIRTY-FOUR AND 83/100 (434.83) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF ONE THOUSAND ONE HUNDRED SIXTY-ONE AND 18/100 (1161.18) FEET TO A POINT; THENCE

NORTHWESTERLY ONE HUNDRED SIXTY-FIVE AND 71/100 (165.71) BY A CURVE TO THE RIGHT HAVING A RADIUS OF FOUR HUNDRED TWENTY AND 00/100 (420.00) FEET TO A POINT; THENCE

NORTHWESTERLY TWO HUNDRED TWENTY-THREE AND 12/100 (223.12) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF ONE THOUSAND NINE HUNDRED FORTY-FIVE AND 47/100 (1945.47) FEET TO A POINT; THENCE

N 53°50'08" W TWO HUNDRED THIRTY-SEVEN AND 21/100 (237.21) FEET TO A POINT; THENCE

NORTHWESTERLY NINETY-NINE AND 72/100 (99.72) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF FIVE HUNDRED FORTY-TWO AND 16/100 (542.16) FEET TO A POINT; THENCE

N 43°17'50" W SIX HUNDRED THREE AND 73/100 (603.73) FEET TO A POINT; THENCE NORTHWESTERLY NINETY-NINE AND 81/100 (99.81) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF SIX HUNDRED SIXTY-TWO AND 21/100 (662.21) FEET TO A POINT; THENCE

N 34°39'41" W TWO HUNDRED SIXTY-TWO AND 10/100 (262.10) FEET TO A POINT; THENCE

NORTHEASTERLY ONE HUNDRED TWO AND 46/100 (102.46) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF FIFTY-SEVEN AND 81/100 (57.81) FEET TO A POINT; THENCE

N 66°53'12" E FOUR HUNDRED THIRTY AND 90/100 (430.90) FEET TO A POINT; THENCE

NORTHEASTERLY THREE HUNDRED FIFTY-SEVEN AND 48/100 (357.48) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF EIGHT HUNDRED THIRTY-FOUR AND 08/100 (834.08) FEET TO A POINT; THENCE

N 42°19'48" E THREE HUNDRED EIGHT AND 29/100 (308.29) FEET TO A POINT: THENCE

NORTHEASTERLY SIXTY-SEVEN AND 58/100 (67.58) FEET BY A CURVE TO

THE RIGHT HAVING A RADIUS OF ONE HUNDRED NINETY-ONE AND 38/100 (191.38) FEET TO A POINT; THENCE

N 62°33'47" E FIVE HUNDRED SEVENTY-EIGHT AND 18/100 (578.18) FEET TO A POINT; THENCE

NORTHEASTERLY TWO HUNDRED AND 60/100 (200.60) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF SIX HUNDRED SIXTY-FIVE AND 60/100 (665.60) FEET TO A POINT; THENCE

EASTERLY TWO HUNDRED SIXTY AND 67/100 (260.67) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF TWO HUNDRED FIFTY AND 00/100 (250.00) FEET TO A POINT; THENCE

SOUTHEASTERLY ONE HUNDRED NINETY AND 48/100 (190.48) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF ONE THOUSAND FORTY-TWO AND 66/100 (1042.66) FEET TO A POINT; THENCE

SOUTHEASTERLY TWO HUNDRED NINETY-TWO AND 95/100 (292.95) FEET BY A CURVE TO THE RIGHT HAVING A RADIUS OF FIVE HUNDRED FORTY-FOUR AND 38/100 (544.38) FEET TO A POINT; THENCE

SOUTHEASTERLY ONE HUNDRED THIRTY-THREE AND 68/100 (133.68) FEET BY A CURVE TO THE LEFT HAVING A RADIUS OF TWO HUNDRED FIFTY-FOUR AND 29/100 (254.29) FEET TO A POINT, THE LAST TWENTY (20) COURSES BEING BY THE MYLES STANDISH INDUSTRIAL PARK; THENCE

S 14°25'18" W FOUR HUNDRED NINE AND 78/100 (409.78) FEET TO A POINT; THENCE

S 01°26'56" W ONE HUNDRED SIXTY-EIGHT AND 86/100 (168.86) FEET TO A POINT; THENCE

S 87°57'00" E THREE HUNDRED THIRTY-THREE AND 22/100 (333.22) FEET TO A POINT; THENCE

S 51°11'15" E THREE HUNDRED FIFTY-NINE AND 78/100 (359.78) FEET TO A POINT; THENCE

S 81°39'59" E ONE HUNDRED FORTY-EIGHT AND 55/100 (148.55) FEET TO A POINT; THENCE

S 49°06'22" E TWO THOUSAND SEVEN HUNDRED NINE AND 82/100 (2709.82) FEET TO THE POINT OF BEGINNING.

PARCEL TWO

BEGINNING AT A MASSACHUSETTS HIGHWAY BOUND (MHB) ON THE WESTERLY SIDELINE OF STEVENS STREET APPROXIMATELY 560 FEET SOUTH OF THE INTERSECTION WITH MIDDLEBORO AVENUE;

THENCE SOUTH 59 DEGREES 54 MINUTES 40 SECONDS WEST 16.08 FEET; THENCE SOUTH 04 DEGREES 25 MINUTES 09 SECONDS EAST 11.29 FEET; THENCE SOUTH 59 DEGREES 53 MINUTES 38 SECONDS WEST BY LAND OF THE COMMONWEALTH OF MASSACHUSETTS 884.09 FEET;

THENCE SOUTH 54 DEGREES 50 MINUTES 33 SECONDS WEST BY LAND OF THE COMMONWEALTH OF MASSACHUSETTS 187.40 FEET;

THENCE SOUTH 59 DEGREES 53 MINUTES 38 SECONDS WEST BY LAND OF THE COMMONWEALTH OF MASSACHUSETTS 1299.46 FEET;

THENCE SOUTH 59 DEGREES 53 MINUTES 38 SECONDS WEST APPROXIMATELY 30 FEET BY LAND OF THE COMMONWEALTH OF MASSACHUSETTS TO THE CENTERLINE OF THE COTLEY RIVER;

THENCE NORTHEASTERLY APPROXIMATELY 1569 FEET ALONG THE CENTERLINE OF THE COTLEY RIVER;

THENCE NORTHWESTERLY APPROXIMATELY 96 FEET TO THE EDGE OF BARSTOW'S POND;

THENCE NORTHEASTERLY APPROXIMATELY 1452 FEET ALONG THE EDGE OF BARSTOW'S POND;

THENCE NORTH 32 DEGREES 19 MINUTES 00 SECONDS EAST APPROXIMATELY 110 FEET TO THE SOUTHERLY SIDELINE OF MIDDLEBORO AVENUE;

THENCE ALONG AN ARC CURVING TO THE RIGHT HAVING A RADIUS OF 1975.00 FEET BY THE SOUTHERLY SIDELINE OF MIDDLEBORO AVENUE 131.00 FEET:

THENCE SOUTH 43 DEGREES 35 MINUTES 38 SECONDS EAST BY THE SOUTHERLY SIDELINE OF MIDDLEBORO AVENUE 17.95 FEET;

THENCE SOUTH 55 DEGREES 00 MINUTES 33 SECONDS EAST BY THE SOUTHERLY SIDELINE OF MIDDLEBORO AVENUE 93.78 FEET TO A MHB;

THENCE SOUTH 64 DEGREES 48 MINUTES 12 SECONDS EAST BY THE SOUTHERLY SIDELINE OF MIDDLEBORO AVENUE 35.92 FEET;

THENCE SOUTH 01 DEGREES 02 MINUTES 56 SECONDS WEST 166.30 FEET; THENCE SOUTH 04 DEGREES 39 MINUTES 04 SECONDS EAST 98.65 FEET; THENCE SOUTH 76 DEGREES 07 MINUTES 35 SECONDS EAST 106.06 FEET; THENCE SOUTH 73 DEGREES 49 MINUTES 19 SECONDS EAST 241.70 FEET; THENCE SOUTH 18 DEGREES 49 MINUTES 20 SECONDS WEST 151.72 FEET; THENCE NORTH 85 DEGREES 34 MINUTES 00 SECONDS EAST 74.85 FEET; THENCE SOUTH 09 DEGREES 35 MINUTES 20 SECONDS EAST 279.18 FEET TO A STONE BOUND:

THENCE NORTH 85 DEGREES 33 MINUTES 36 SECONDS EAST 304.45 FEET TO THE WESTERLY SIDELINE OF STEVENS STREET;

THENCE SOUTH 09 DEGREES 01 MINUTES 27 SECONDS EAST BY THE WESTERLY SIDELINE OF STEVENS STREET 35.74 FEET TO THE POINT OF BEGINNING.

PARCEL THREE

BEGINNING AT A MASSACHUSETTS HIGHWAY BOUND (MHB) ON THE EASTERLY SIDELINE OF THE ROUTE 24 STATE HIGHWAY LAYOUT NORTH OF, AND ADJACENT TO, THE ROUTE 24/ROUTE 140 INTERCHANGE;

THENCE NORTH 11 DEGREES 44 MINUTES 56 SECONDS EAST 862.24 FEET; THENCE NORTH 59 DEGREES 53 MINUTES 38 SECONDS EAST 1,852.94 FEET BY LAND OF THE COMMONWEALTH OF MASSACHUSETTS; THENCE SOUTHWEST 19 DEGREES 14 MINUTES 38 SECONDS WEST 356.00 FEET:

THENCE SOUTH 24 DEGREES 42 MINUTES 38 SECONDS WEST 161.60 FEET, THENCE SOUTH 49 DEGREES 39 MINUTES 53 SECONDS EAST 603.86 FEET; THENCE SOUTH 12 DEGREES 52 MINUTES 44 SECONDS EAST 316.89 FEET; THENCE SOUTH 13 DEGREES 44 MINUTES 43 SECONDS EAST 223.37 FEET; THENCE SOUTH 08 DEGREES 06 MINUTES 20 SECONDS WEST 70.79 FEET; THENCE SOUTH 01 DEGREES 38 MINUTES 59 SECONDS EAST 214.50 FEET; THENCE SOUTH 23 DEGREES 51 MINUTES 01 SECONDS WEST 311.52 FEET; THENCE SOUTH 67 DEGREES 36 MINUTES 01 SECONDS WEST 486.60 FEET; THENCE SOUTH 72 DEGREES 20 MINUTES 47 SECONDS EAST 511.77 FEET; THENCE SOUTH 70 DEGREES 48 MINUTES 53 SECONDS EAST 141.08 FEET TO AN IRON ROD;

THENCE SOUTH 63 DEGREES 11 MINUTES 08 SECONDS EAST 331.40 FEET TO THE WESTERLY SIDELINE OF STEVENS STREET;

THENCE SOUTH 04 DEGREES 48 MINUTES 11 SECONDS WEST BY THE WESTERLY SIDELINE OF STEVENS STREET 174.70 FEET;

THENCE NORTH 68 DEGREES 39 MINUTES 51 SECONDS WEST 313.86 FEET:

THENCE NORTH 69 DEGREES 12 MINUTES 22 SECONDS WEST 225.17 FEET;

THENCE SOUTH 47 DEGREES 56 MINUTES 00 SECONDS WEST 87.00 FEET; THENCE SOUTH 44 DEGREES 58 MINUTES 21 SECONDS WEST 155.46 FEET; THENCE NORTH 41 DEGREES 25 MINUTES 18 SECONDS WEST 100.09

FEET:

THENCE NORTH 48 DEGREES 06 MINUTES 02 SECONDS WEST 58.02 FEET; THENCE NORTH 35 DEGREES 38 MINUTES 08 SECONDS WEST 61.26 FEET; THENCE NORTH 53 DEGREES 32 MINUTES 38 SECONDS WEST 86.34 FEET; THENCE NORTH 16 DEGREES 01 MINUTES 00 SECONDS EAST 11.00 FEET; THENCE NORTH 46 DEGREES 33 MINUTES 50 SECONDS WEST 396.00

FEET;

THENCE NORTH 70 DEGREES 07 MINUTES 42 SECONDS WEST 636.23 FEET:

THENCE NORTH 69 DEGREES 49 MINUTES 06 SECONDS WEST 246.89 FEET;

THENCE NORTH 69 DEGREES 49 MINUTES 06 SECONDS WEST APPROXIMATELY 30 FEET TO THE CENTERLINE OF THE COTLEY RIVER;

THENCE SOUTHERLY APPROXIMATELY 675 FEET ALONG THE CENTERLINE OF THE COTLEY RIVER;

THENCE SOUTH 79 DEGREES 40 MINUTES 32 SECONDS WEST APPROXIMATELY 30 FEET;

THENCE SOUTH 79 DEGREES 40 MINUTES 32 SECONDS WEST 90.04 FEET

TO THE ROUTE 24 STATE HIGHWAY LAYOUT;

THENCE NORTH 01 DEGREES 00 MINUTES 57 SECONDS EAST BY THE STATE HIGHWAY LAYOUT 438.59 FEET;

THENCE NORTH 45 DEGREES 35 MINUTES 25 SECONDS WEST BY THE STATE HIGHWAY LAYOUT 463.25 FEET TO THE POINT OF BEGINNING.

SECTION 2. The purpose of the district shall be in general to enhance its economic development and more specifically to serve the needs of its residents, property owners, tenants and their employees and clients and the citizens of the city of Taunton, by acquiring, laying, constructing, maintaining, improving and operating storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, including garages, parks and recreational facilities and fiber optic and telecommunication systems and other infrastructure improvements referred to hereafter as the "improvements", whether located within the district or outside the district, if reasonably related to the improvements within the district, contracting with the city of Taunton, the commonwealth, cities, towns or other political entities and private and public utilities serving the district in connection with the improvements, and financing, refinancing, or reimbursing the cost of the design, acquisition, construction or maintenance of the improvements, and assessing and raising revenues for economic development purposes and the design, construction, acquisition, operation and maintenance of the improvements and the district, in the manner as the board of commissioners of the district may determine is in the best interest of the district.

SECTION 3. A board of commissioners, consisting of 5 members, shall exercise the powers conferred by this act. The board shall not be subject to the supervision of the city of Taunton or any board, department, commission, bureau or agency of the city of Taunton or of the commonwealth except to the extent and in the manner provided in this act. The members of the board shall be appointed by the mayor of the city of Taunton as follows: 4 members shall be designated in writing by the Taunton Development Corporation, hereinafter referred to as the "corporation", 3 of whom shall be individuals owning or representing interests owning real estate within the boundaries of the district, and 1 of whom need not have an interest in real estate within the district and 1 of whom shall be designated by the mayor. In the event that corporation shall no longer be in existence, the mayor, with the approval of the municipal council, shall appoint 4 individuals who are either owners of record of real estate within the district or representatives of entities such as corporations, partnerships, realty trusts, limited liability companies and federal, state and local government agencies and authorities, which are such owners of record.

Of the members first appointed, 2 members shall serve for a term expiring on June 30 in the year following the appointment, 2 members shall serve for a term expiring on June 30 in the second year following the appointment, and 1 member shall serve for a term expiring on June 30 in the third year following the appointment. Thereafter, successors shall be appointed for a 3 year term, or in the case of an appointment to fill a vacancy, for the unexpired term, and until their successors are appointed and qualified. Any member may be eligible for reappointment. Three members of the board shall constitute a quorum and the affirmative vote of 3 members shall be necessary to exercise any of the powers enumerated

in section 4. No vacancy in the membership of the board shall impair the right of a quorum to exercise the powers of the board. Any action by the board shall take effect immediately unless otherwise provided and need not be published or posted.

The initial meeting of the board shall be not later than 30 days following the establishment of the district and the appointment of the initial board. Thereafter, the board shall schedule meetings pursuant to its by-laws. At the initial meeting and at all annual meetings, as provided in its by-laws, the board shall elect from its members a chairman who shall preside at all board meetings and who shall serve until his successor shall be elected at the meeting following the annual meeting. The board shall also elect a vice-chairman who shall be empowered to preside over board meetings in the absence of the chairman and who shall serve for like term. The board shall also elect a treasurer and a clerk from its membership and who shall serve for like terms. The duties and responsibilities of the district officers shall be as provided in the district by-laws. All meetings of the board shall be held in accordance with sections 23A to 23C, inclusive, of chapter 39 of the General Laws.

SECTION 4. The board, acting for and on behalf of the district, shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes of this act, including, but without limiting the generality of the foregoing, the following rights and powers to:-

- (a) To adopt by-laws for the regulation of its affairs and the conduct of its business, to promulgate rules, regulations and procedures in connection with the performance of its functions and duties, and to fix, enforce and collect penalties for the violation thereof; provided, however, that any by-laws, rules, regulations and procedures shall be consistent with the powers conferred by this act and with other applicable provisions of the General Laws, and that any by-laws with respect to the removal of members of the board shall be consistent with the laws, statutes, and ordinances applicable to the city of Taunton;
 - (b) to adopt an official seal and alter the same at its pleasure;
- (c) to maintain an office at such place or places within the city of Taunton as it may determine;
- (d) to apply for, receive, accept, administer, expend and comply with the conditions, obligations and requirements respecting any grant, gift, loan, including any grant, gift or loan from agencies of federal, state or local governments, donation or appropriation of any property or money in aid of the purposes of the district and to accept contributions of money, property, labor or other things of value;
- (e) to acquire by purchase, lease, lease-purchase, sale and lease-back, gift or devise, and to obtain options for the acquisition of, any property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties, provided that the district may only acquire real estate or any interest therein pursuant to this clause, within the boundaries of the district, except that the district may acquire real estate or any interest therein outside the boundaries of the district if such acquisition is necessary or convenient in the judgment of the board for the acquisition, construction, maintenance and operation of the improvements within the district;
 - (f) acquire by eminent domain, under chapters 79, 79A, 80 and 80A of the General

Laws, or any alternative method provided by law, any property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties, provided that the district may only acquire real estate or any interest therein pursuant to this subsection, within the boundaries of the district;

- (g) sell, lease, mortgage, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any property, real or personal, tangible or intangible, or any interest therein;
- (h) construct, improve, extend, equip, enlarge, rehabilitate, maintain and repair the improvements within and for the benefit of the district; to acquire existing or construct the improvements under or over any roads, public ways or parking areas, and to enter upon any private land within the district for the purposes of making surveys, borings, soundings or examinations thereof, designing and laying out the improvements and maintaining and repairing the same. Chapter 30B of the General Laws shall apply to the district, except that section 16 of said chapter 30B shall not apply. Chapter 31 of the General Laws shall not apply to any person employed or engaged by the district under this act. With respect to any construction or repair work undertaken by it pursuant to this clause, the district shall be considered a public agency for purposes of section 26 and sections 44A to 44H, inclusive, of chapter 149 of the General Laws. Said chapters 30B and 149 shall not be applicable to improvements acquired by but not constructed, improved, or repaired by the district. All applicable General Laws protecting public health, welfare and safety shall be applicable;
- (i) pledge or assign any money, fees, charges, receipts, or other revenues of the district and any proceeds derived by the district;
- (j) borrow money and incur indebtedness and issue bonds or notes as hereinafter provided;
- (k) enter into contracts and agreements with, but not limited to, the city of Taunton, the corporation or any successor in interest thereto, property owners in the district and any public or private utility in all matters necessary, convenient or desirable for carrying out the purposes of this act including, without limiting the generality of the foregoing, the acquisition of existing improvements, including utilities or infrastructure outside the district but benefiting the district, collection of revenue, data processing, and other matters of management, administration and operation; to make other contracts of every name and nature; and to execute and deliver all instruments necessary or convenient for carrying out any of its purposes;
- (l) exercise the powers and privileges of, and to be subject to the limitations upon, towns and cities provided by sections 38 to 42K, inclusive, of chapter 40 of the General Laws, chapter 80 of the General Laws and sections 1 to 29, inclusive, of chapter 83 of the General Laws, in so far as applicable and consistent with this act; but any requirement in said sections or chapters for a vote by the municipal council of the city of Taunton or the governing body of a city or town or for a vote by the voters of a city, town or district shall be satisfied by a vote or resolution duly adopted by the board in accordance herewith;
- (m) sue and be sued in its own name and to plead and be impleaded; provided, however, that neither the district nor any officer or employee thereof shall be liable in tort

except pursuant to chapter 258 of the General Laws; provided, further, that the district may indemnify its officers and employees to the extent provided in said chapter 258; and provided further that only the property of the district other than revenues pledged to the payment of notes or bonds shall be subject to attachment, or be levied upon by execution or otherwise;

- (n) invest any funds not required for the immediate use of the district in the manner and to the extent permitted under the General Laws for the investment of such funds by the treasurer of a city or district;
- (o) employ assistants, agents, employees and persons, including legal counsel, financial advisors, and other consultants and experts considered necessary or convenient in the board's judgment, and to define their duties and fix their compensation;
- (p) procure insurance on behalf of itself and any of its members, officers, employees and agents, against any loss or liability that may be sustained or incurred in carrying out the purposes of this act in the amount as the district shall consider necessary and appropriate and with one or more insurers who shall be licensed to furnish the insurance in the commonwealth;
- (q) adopt an annual budget and to raise, appropriate, and assess funds in amounts necessary to carry out the purposes for which the district is formed as described hereafter in section 5:
- (r) do all things necessary, convenient or desirable for carrying out the purposes of this act or the powers expressly granted or necessarily implied in this act.

SECTION 5. The board may fix, revise, charge, collect and abate reasonable fees, rates, rents, betterments and assessments, and other charges for the cost of the improvements and other services and commodities furnished or supplied to the real property in the district. In providing for the payment of the cost of the improvements or for the use of the improvements, the board may avail itself of the General Laws relative to the assessment, apportionment, division, fixing, reassessment, revision, abatement and collection of infrastructure charges, including betterments and assessments, or the establishment of liens therefore and interest thereon. Notwithstanding any General Laws to the contrary, the district may pay the entire cost of any improvements, or the debt service of notes or bonds used to fund such costs, from betterments, assessments or fees and may establish said betterments, assessments or fees within 1 year from the completion or acquisition of the improvements. The board may establish a schedule for the payment of betterments or assessments of up to 25 years. The board may determine the circumstances under which the fees, rates, rents, assessments, betterments and other charges, may be increased, if at all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the district. In order to provide for the collection and enforcement of its fees, rates, rents, assessments, betterments and other charges, the board is hereby granted all the powers and privileges with respect thereto held by the city of Taunton on the effective date of this act or as otherwise provided in this act, to be exercised concurrently with the city of Taunton. Any liens imposed by the city of Taunton for the payment of property taxes shall have priority in payment over any liens of the district.

The fees, rates, rents, assessments, betterments and other charges of the board of gen-

eral application shall be adopted and revised by the board at least annually in accordance with the procedures to be established by the board for assuring that interested persons are afforded notice and an opportunity to present data, views and arguments. The board shall hold at least 1 public hearing on its schedule of fees, rates, rents, assessments and other charges or any revision thereof before adoption, notice of which shall be delivered to the mayor and municipal council of the city of Taunton and be published in a newspaper of substantial circulation in the city of Taunton at least 1 month in advance of the hearing. No later than the date of the publication, the board shall make available to the public and deliver to the mayor and the municipal council of the city of Taunton the proposed schedule of fees, rates, rents, assessments and other charges.

The fees, rates, rents, assessments and other charges established by the board shall not be subject to supervision or regulation by any department, division, commission, board, bureau, or agency of the commonwealth or any of its political subdivisions, including without limitation, the city of Taunton, nor shall the district be subject to section 20A of chapter 59 of the General Laws. Notwithstanding the foregoing, except to the extent of fees, rates, rents, assessments, betterments and other charges assessed by the board, the board shall have no general power of taxation. The board's budget for current administrative expenses, exclusive of operational and capital expenses relating to improvements, approved by the board shall be limited to the sum of \$55,000 for the fiscal year in which the district is established. Each fiscal year thereafter said sum may be increased by 2-½ per cent per annum.

The fees, rates, rents, betterments, assessments and other charges established by the board in accordance with this section shall be fixed and adjusted in respect of the aggregate thereof so as to provide revenues at least sufficient (i) to pay the current expenses of the district, (ii) to pay the principal of, premium, if any, and interest on bonds, notes or other evidences of indebtedness issued by the board under this act as the same becomes due and payable, (iii) to create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds, (iv) to provide funds for paying the cost of necessary repairs, replacements and renewals of the improvements and the infrastructure system or systems of the district; and (v) to pay or provide for any amounts that the board may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

SECTION 6. The board may provide by resolution, from time to time, for the issuance of bonds of the district for any of its corporate purposes. Bonds may be issued hereunder as general obligations of the district or as special obligations payable solely from particular funds. Without limiting the generality of the foregoing, the bonds may be issued to pay or refund notes issued pursuant to section 8, to pay the cost of acquiring, laying, constructing, maintaining, and reconstructing the improvements. Cost shall include the cost of: (1) construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by the district, the city of Taunton, the commonwealth or any other Massachusetts governmental entity; (2) all machinery and equipment including machinery and equipment needed to expand or enhance services from the city of Taunton, the commonwealth or

any other Massachusetts governmental entity to the district; (3) financing charges and interest before and during construction, and for a limited time after completion of the construction, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty and costs of issuance; (4) extensions, enlargements, additions, and improvements; (5) architectural, engineering, financial and legal services; (6) plans, specifications, studies, surveys and estimates of costs and of revenues; (7) administrative expenses necessary or incident to the construction, acquisition, and financing of the improvements; (8) other expenses necessary or incident to the construction, acquisition, and financing of the improvements. The principal of and interest on the bonds shall be payable solely from the funds herein provided for their payment. The bonds of each issue shall be dated, shall bear interest at the rates and shall mature at the time or times not exceeding 40 years from their date or dates, as determined by the board, and may be redeemable before maturity, at the option of the board, at the price or prices and under the terms and conditions fixed by the board before the issuance of the bonds. The board shall determine the form of the bonds, and the manner of execution of the bonds, and shall fix the denomination of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the commonwealth and other locations as designated by the board. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. The bonds shall be issued in registered form. The board may sell the bonds in a manner and for a price, either at public or private sale, as it may determine to be for the best interests of the district.

Before the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The board may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. The board may provide by resolution for the issuance of refunding bonds of the district for the purpose of refunding any bonds then outstanding and issued under the provisions of this act, including the payment of any redemption premium thereon on any interest accrued or to accrue to the date of redemption of the bonds and, if considered advisable by the board, for the additional purpose of the acquisition, construction or reconstruction and extension or improvement of the infrastructure system or systems. The issue of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the district in respect of the same shall be governed by this act insofar as the same may be applicable.

While any bonds or notes issued by the board remain outstanding, the powers, duties or existence of the board shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of the bonds or notes. Bonds or notes issued under this act, unless otherwise authorized by law, shall not be considered constitute a debt of the commonwealth or the city of Taunton, or a pledge of the faith and credit of the commonwealth or of the city of Taunton, but the bonds or notes shall be payable solely by the district or as special obligations payable from particular district funds. Any bonds or notes

issued by the district shall contain on the face thereof a statement to the effect that neither the commonwealth nor the city of Taunton shall be obliged to pay the same or the interest thereon, and that neither the faith and credit nor taxing power of the commonwealth or of the city of Taunton is pledged to the payment of the bonds or notes. All bonds or notes issued under this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments as defined in sections 3-104 of chapter 106 of the General Laws.

Issuance by the district of 1 or more series of bonds or notes for 1 or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or any other project, but, the resolution or trust indenture wherein any subsequent bonds or notes may be issued shall recognize and protect any prior pledge made for any prior issue of bonds or notes unless in the resolution or trust indenture authorizing the prior issue the right is reserved to issue subsequent bonds on a parity with the prior issue.

SECTION 7. In the discretion of the board the bonds may be secured by a trust agreement by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the commonwealth. The trust agreement may pledge or assign the revenues. Either the resolution providing for the issuance of bonds or the trust agreement may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including without limiting the generality of the foregoing provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth the duties of and limitations on the district in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, operation, rehabilitation, demolition, repair, insurance and disposition of property, the custody, safeguarding, investment and application of moneys, the use of any surplus bond or note proceeds and the establishment of reserves. resolution or trust agreement may also contain covenants by the board in relation to, among other things: (1) the establishment, revision and collection of fees, rates, assessments, rents and charges for services of facilities furnished or supplied by the district as shall provide revenues sufficient with other revenues of the district, if any, to pay (i) the cost of maintaining, repairing and operating the district utilities and infrastructure and of making renewals and replacements in connection therewith, (ii) the principal of and the interest on the bonds or notes as the same shall become due and payable, (iii) payments in lieu of taxes, betterment and special assessments, and (iv) reserves for the purposes; (2) the purpose for which the proceeds of the sale of the bonds or notes will be applied and the use and disposition thereof; (3) the use and disposition of the gross revenues of the district from the district utilities and infrastructure, any additions thereto and extensions and improvements thereof, including the creation and maintenance of funds for working capital and for renewals and replacements to the district utilities and infrastructure; (4) the amount, if any, of additional bonds or notes payable from the revenues of the district and the limitations, terms and conditions on which the additional bonds or notes may be issued; and (5) the operation, maintenance, management, accounting and auditing of the utilities and district infrastructure and of the income and revenues of the district.

It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth to act as depository of the proceeds of the bonds or of revenues, and to furnish such indemnifying bonds or to pledge securities as required by the board. The trust agreement may set forth the rights and remedies of the bondholders and of the trustees, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures. In addition to the foregoing, the trust agreement may contain other provisions, as the board considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement may be treated as a part of the cost of the operation of the district utilities and infrastructure. The pledge by any trust agreement or resolution shall be valid and binding from time to time when the pledge is made; the revenues or other moneys so pledged and then held or thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act; and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the board, and no filing need be made under chapter 106 of the General Laws.

SECTION 8. The board may provide by resolution for the issuance from time to time, of notes of the district in anticipation of federal, state or local grants for the cost of acquiring, constructing or improving the district utilities or infrastructure or in anticipation of bonds to be issued pursuant to section 6. The notes shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to this act. The notes shall mature at the time or times as provided by the issuing resolution of the board and may be renewed from time to time; but the notes and renewals thereof shall mature on or before 20 years from their date of issuance.

SECTION 9. In addition to other security provided herein, or otherwise by law, bonds, notes or obligations issued by the district under this act, may be secured, in whole or in part, by a letter of credit, line of credit, bond insurance policy, liquidity facility or other credit facility for the purpose of providing funds for payments in respect of bonds, notes or other obligations required by the holder thereof to be redeemed or repurchased prior to maturity or for providing additional security for the bonds, notes or other obligations. In connection therewith, the district may enter into reimbursement agreements, remarketing agreements, standby bond purchase agreements and any other necessary or appropriate agreements. The board may pledge or assign any of its revenues as security for the reimbursement by the district to the issuers or providers of the letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities of any payments made under the letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities.

SECTION 10. In connection with or incidental to the issuance of bonds, notes or other obligations the district may enter into the contracts as the board may determine to be

necessary or appropriate to place the bonds, notes or other obligations of the district, as represented by the bonds or notes, or other obligations in whole or in part, on the interest rate or cash flow basis as the board may determine, including without limitation, interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures contracts, contracts providing for payments based on levels of, or changes in, interest rates or market indices, contracts to manage interest rate risk, including without limitation, interest rate floors or caps, options, puts, calls and similar arrangements. The contracts shall contain such payment, security, default, remedy and other terms and conditions as the board may consider appropriate and shall be entered into with the party as the district may select, after giving due consideration, where applicable, for the credit worthiness of the counterparty, including any rating by a nationally recognized rating agency, the impact on any rating on outstanding bonds, notes or other obligations or any other criteria the board may consider appropriate.

SECTION 11. The district shall have the power out of any funds available therefor to purchase its bonds or notes. The district may hold, pledge, cancel or resell the bonds or notes, subject to and in accordance with agreements with bondholders. The district may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. Refunding bonds may be issued at the time or times before the maturity or redemption of the refunded bonds as the board considers to be in the public interest. Refunding bonds may be issued in sufficient amounts to pay or provide for the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expense of issuing the refunding bonds, the expense of redeeming bonds being refunded and the reserves for debt service or other capital or current expenses from the proceeds of the refunding bonds as may be required by a trust agreement or resolution securing the bonds. All other provision relating to the issuance of refunding bonds shall be as set forth in this act.

SECTION 12. All moneys received pursuant to this act, whether as proceeds from the issue of bonds or notes, or as revenue or otherwise, shall be considered trust funds to be held and applied solely as provided in this act.

SECTION 13. Bonds or notes issued under this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by the General Laws, banking corporations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control and belonging to them; and the bonds are hereby made obligations that may properly and legally be made eligible for the investment of deposits and income thereof in the manner provided by section 2 of chapter 167F of the General Laws. The bonds or notes are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any

agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law.

Notwithstanding any rule at common law or any authorization, limitation or any such other provision of any general or special law, or any provision in their respective charters, agreements of incorporation, articles or organization, or trust indentures, domestic corporations organized for the purpose of carrying on business within the commonwealth, including without implied limitation any electric or gas company as defined in section 1 of chapter 164 of the General Laws, railroad corporations as defined in section 1 of chapter 160 of the General Laws, financial institutions, trustees and the city of Taunton may acquire, purchase, hold, sell, assign, transfer, or otherwise dispose of any bonds, notes, securities or other evidence of indebtedness of the district and to make contributions to the district, all without the approval of any regulatory authority of the commonwealth.

SECTION 14. Any holder of bonds or notes issued under this act, and a trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights under the laws of the commonwealth or granted hereunder or under the trust agreement, and may enforce and compel the performance of all duties required by this act or by the trust agreement, to be performed by the district or by any officer thereof.

SECTION 15. Notwithstanding this act or any recitals in any bonds or notes issued under this act, all such bonds or notes shall be considered to be investment securities under chapter 106 of the General Laws.

SECTION 16. Bonds or notes may be issued under this act without obtaining the consent of the emergency finance board established under chapter 49 of the acts of 1933 or any department, division, commission, board, bureau or agency of the commonwealth or the city of Taunton, and without any proceedings or the happening of any other conditions or things than those proceedings, conditions or things that are specifically required thereof by this act, and the validity of and security for any bonds or notes issued by the district shall not be affected by the existence or nonexistence of the consent or other proceeding conditions, or things.

SECTION 17. The district and all its receipts, revenues, income and real and personal property shall be exempt from taxation and from betterments and special assessments and the district shall not be required to pay any tax, excise or assessment to or from the commonwealth or any of its political subdivisions. Bonds or notes issued by the district and their transfer and their interest or income, including any profit on the sale thereof, shall at all times be exempt from taxation within the commonwealth, provided that nothing in this act shall act to limit or restrict the ability of the commonwealth or the city of Taunton to tax the individuals and companies, or their real or personal property or any person living or business operating within the boundaries of the district.

SECTION 18. The board shall at all times keep accounts of its receipts, expendi-

tures, disbursements, assets and liabilities, which shall be open to inspection by a duly appointed officer or duly appointed agent or the commonwealth or the city of Taunton. The fiscal year of the district shall be the same fiscal year as established by the General Laws for cities and towns in the commonwealth. The district shall be subject to an audit of its accounts in the manner provided in section 40 of chapter 44 of the General Laws. Before the issuance of any bonds or notes under this act, any member or officer of the board charged with responsibility of the issuance thereof, shall each execute a surety bond in the sum of \$250,000 payable to the district, or in lieu thereof the board shall obtain a blanket position bond covering any member or officer of the board charged with responsibility for the issuance of any bond or notes, such surety bonds to be conditioned upon the faithful performance of the duties of their offices, to be executed by a surety company authorized to transact business in the commonwealth as a surety and approved by the board. For the purposes of chapter 268A of the General Laws, the district shall be considered a municipal agency. The members of the board and employees of the district, together with any person who performs professional services for the district on a part-time, intermittent or consultant basis, such as those of an architect, attorney, engineer, planner, or construction, financial, or real estate expert, shall be special municipal employees.

SECTION 19. The district may make representations and agreements for the benefit of the holders of the district's bonds and notes or other obligations to provide secondary market disclosure information. The board or an officer authorized by the board may make the representations and agreements on behalf of the district or may delegate the authority to any other officer or employee of the district. The agreement may include (1) covenants to provide secondary market disclosure information; (2) arrangements for such information to be provided with the assistance of a paying agent, trustee, dissemination or other agent, and (3) remedies for breach of such agreements, which remedies may be limited to specific performance.

SECTION 20. This act shall be deemed to provide an exclusive, additional, alternative and complete method of accomplishing the purposes of this act and exercising the powers authorized hereby and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the board by law; provided, however, that insofar as the proceedings of this act are inconsistent with any general or specific law, administrative order or regulation, or any resolution or ordinance of the city of Taunton, this act shall be controlling. Without limiting the generality of the foregoing, no resolution or ordinance of the city of Taunton requiring ratification by the mayor and municipal council or the voters of the city of Taunton of certain bond issues shall apply to the issuance of bonds or notes of the district pursuant to this act, nor shall chapter 44 of the General Laws be applicable to the manner of voting or the limitations as to the amount and time of payment of debts incurred by the district.

Except as specifically provided in this act, all other statutes, ordinances, resolutions, rules and regulations of the commonwealth and the city of Taunton shall be applicable to the property, residents and businesses located in the district. Nothing in this act shall in any way

obligate the city of Taunton to pay any costs for the acquisition, construction, equipping or operation and administration of the improvements located within the district.

SECTION 21. Upon petition in writing addressed to the board and signed by all the owners of any business or any industrially zoned, or municipally-owned real estate located in the city of Taunton requesting that the real estate, accurately described therein, be included within the limits of the district, the board, within 30 days of the receipt of the petition, shall hold a properly noticed public hearing to consider the petition. If a majority of the board, following the public hearing, votes to include the real estate within the district, the district clerk shall file a request to the mayor and municipal council of the city of Taunton to approve the inclusion of the real estate within the district. Within 10 days of the approval by the mayor and the municipal council, the district clerk shall file with the Taunton city clerk and the secretary of the commonwealth, attested copies of the petition and the votes of the board and the municipal council; and thereupon the real estate shall become and be part of the district and shall be subject to this act in the same manner and to the same extent as the real estate described in section 1.

SECTION 22. This act being necessary for the welfare of the city of Taunton and its inhabitants shall be liberally construed to affect the purposes hereof.

SECTION 23. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 424. AN ACT AUTHORIZING THE TOWN OF PLYMOUTH TO LEASE CERTAIN LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Plymouth acting by and through its town manager, may enter into long-term ground leases for a term not to exceed 75 years of all or any portion of certain parcels of town-owned land for the construction of 2 multi-level parking facilities and retail shop space. Such leases shall be subject to section 16 of chapter 30B of the General Laws except that leases with the Plymouth Development Corporation shall be exempt from said section 16 of said chapter 30B as provided in section 5 of chapter 182 of the acts of 2002. Such leases may provide that the lessee shall be responsible for the design, development, construction and maintenance of improvements to the site as outlined in the lease agreement.

SECTION 2. The parcels are shown as Plot 19 Lot C-9 and C-4 and Plot 17 Lot 100 on the town of Plymouth assessor's map.

SECTION 3. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 425. AN ACT RELATIVE TO CERTAIN LAND SALES IN THE CITY OF GLOUCESTER.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, all property tax revenues received by the city of Gloucester from land sold by the city in the fiscal years 2004 and 2005 shall be deposited in the Stabilization Fund of the city.

Approved December 16, 2004.

Chapter 426. AN ACT AUTHORIZING THE CITY OF MEDFORD TO USE CERTAIN LAND FOR MEMORIAL PURPOSES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the construction of a World War II memorial by the city of Medford, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

The commissioner of capital asset management and maintenance may, notwithstanding sections 40E to 40J, inclusive of chapter 7 of the General Laws or any other general or special law to the contrary, release the restriction numbered 1 reserved by the commonwealth in a deed conveying a certain parcel of land to the Temple Shalom - Medford Jewish Community Center Inc. recorded in the Middlesex county south registry of deeds, at Book 11422, Page 511 solely to the extent necessary to allow the city of Medford to erect, construct and maintain a monument and ancillary related structures dedicated to the memory of those persons who entered the armed services of the United States of America from the city of Medford during World War II. Except to the extent expressly released pursuant to the immediate preceding sentence, the restriction shall remain in full force and effect. This land is described further on a plan of land entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Middlesex Fells Reservation, Medford, plan showing conveyance to Medford Community Center Inc. August 1967" Benjamin W. Fink Director of Park Engineering, Plan Number 1320 of 1967, dated November 6, 1967, recorded in the Middlesex south registry of deeds at Book 11422, Page 511.

Approved December 16, 2004.

Chapter 427. AN ACT AUTHORIZING THE TOWN OF HINGHAM TO ISSUE PENSION OBLIGATION BONDS.

Be it enacted, etc., as follows:

SECTION 1. The town of Hingham may issue, at 1 time or from time to time, bonds or notes for the purpose of funding the unfunded pension liability of the retirement system of the town. The proceeds of any such issuance shall be transferred by the town to the retirement system. The term of any such bond or note shall not exceed 30 years from the date of issuance and the amount of any such bond or note shall be considered as outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws. No such bonds or notes shall be issued without the approval of the board of selectmen of a loan order by a % vote upon a recommendation of the finance director of the town and the town accountant. After the board of selectmen has approved the loan order, the finance director, town accountant of said town shall submit the order and a plan demonstrating how the town will finance and allocate the debt service associated with the bonds or notes to the executive office for administration and finance, and no bonds or notes authorized by the act shall be issued until the secretary for administration and finance has approved the plan. Except as otherwise provided in this act, such bonds or notes shall be subject to the provisions of said chapter 44.

SECTION 2. The aggregate principal amount of the bonds or notes issued from time to time under this act shall not be greater than the amount sufficient to extinguish the unfunded pension liability of the retirement system of the town of Hingham and the amount necessary to provide for the payment of costs of preparing, issuing and marketing such bonds or notes and for the payment of all other expenses incidental or related thereto. retirement board of the town shall first determine the amount sufficient to extinguish the unfunded pension liability of the retirement system of the town in accordance with the report of a nationally recognized independent consulting firm, or by the consulting actuary generally retained by the retirement board. The public employee retirement administration commission shall receive a copy of the report and shall approve the unfunded pension liability amount. Such report shall also set forth the present value savings to the town reasonably expected to be achieved as a result of the issuance of such bonds or notes and shall be transmitted to the board of selectmen prior to final passage of any order authorizing the issuance of bonds or notes hereunder. In making the initial recommendation to said board of selectmen to adopt a loan order authorizing the issuance of bonds or notes under authority of this act the finance director and town accountant of said town shall indicate his approval of the aggregate principal amount of the bonds or notes as determined by the retirement board.

SECTION 3. The maturities of such bonds or notes shall be scheduled such that the annual combined payments of principal and interest for each issue shall be as nearly equal as practicable in the opinion of the finance director and town accountant of the town of Hingham; but the maturities of such bonds or notes may be scheduled so as to provide a more rapid amortization of principal.

SECTION 4. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 428. AN ACT VALIDATING THE PROCEEDINGS OF THE PRESIDENTIAL PRIMARY IN THE TOWN OF BERNARDSTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, all acts and proceedings taken by the town of Bernardston at the presidential primary election held on March 2, 2004 and all actions taken pursuant thereto are hereby ratified, validated and confirmed, notwithstanding any defect or omission in the calling or conduct of the election.

SECTION 2. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 429. AN ACT RELATIVE TO CERTAIN HOUSING IN THE CITY OF PEABODY.

Be it enacted, etc., as follows:

The exemption from age discrimination in subsections 6 and 7 of section 4 of chapter 151B of the General Laws relative to residency in communities consisting of structures constructed expressly for use as housing for persons 55 years of age or older shall apply to the former Brown School property, shown on Assessor's Map 120, Lot 128, in the city of Peabody, notwithstanding that the parcel is less than 5 acres in total land area.

Approved December 16, 2004.

Chapter 430. AN ACT RELATIVE TO MANAGED CARE CONTRACTS WITH HOME HEALTH AGENCIES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate forthwith certain health contracts, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Subdivision 11 of section 108 of chapter 175 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following sentence: In contracting with a provider of home health services or a licensed hospice agency, an insurer shall not require the provider or agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if the provider is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 2. Subdivision (M) of section 110 of said chapter 175, as so appearing, is hereby amended by adding the following sentence:- In contracting with a provider of home health services or a licensed hospice agency, an insurer shall not require the provider or agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if the provider is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 3. The fourth paragraph of section 5 of chapter 176A of the General Laws, as so appearing, is hereby amended by adding the following sentence:- A contract between a hospital service corporation and a provider of home health services or licensed hospice agency shall not require the participating home health provider or participating licensed hospice agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if the agency is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 4. The first paragraph of section 4 of chapter 176B of the General Laws, as so appearing, is hereby amended by adding the following sentence:- A contract between a medical service corporation and a provider of home health services or a licensed hospice agency shall not require the participating home health provider or participating licensed hospice agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if the agency is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 5. The second paragraph of section 6 of chapter 176G of the General Laws, as so appearing, is hereby amended by adding the following sentence:- No contract between a participating home health agency or a participating licensed hospice agency and a health maintenance organization shall be issued or delivered in the commonwealth that requires the participating home health agency or participating licensed hospice agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if it is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 6. The first paragraph of section 2 of chapter 176I of the General Laws, as so appearing, is hereby amended by adding the following sentence:- A preferred provider arrangement entered into between an organization and a home health agency or licensed hospice agency shall not require the participating home health agency or participating licensed hospice agency to be accredited by the Joint Commission on Accreditation of Healthcare Organizations or other national accrediting body if the agency is certified for participation in the Medicare program, Title XVIII of the federal Social Security Act, 42 U.S.C. Sections 1395 et seq.

SECTION 7. This act shall apply to all contracts involving providers of home health services or licensed hospice agencies that are subject to sections 108 or 110 of chapter 175, section 5 of chapter 176A, section 4 of section 176B, section 6 of chapter 176G or section 2 of chapter 176I of the General Laws and that are entered into, renewed, or amended on or after the effective date of this act.

Approved December 16, 2004.

Chapter 431. AN ACT AMENDING THE INSURANCE LAWS.

Be it enacted, etc., as follows:

SECTION 1. Section 2A of chapter 167F of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 7 to 9, inclusive, the words "either as an agent licensed pursuant to section 163 of chapter 175 or a broker licensed pursuant to section 166 of said chapter 175" and inserting in place thereof the following words:- as an insurance producer licensed pursuant to section 162M or 162N of chapter 175.

SECTION 2. Said section 2A of said chapter 167F, as so appearing, is hereby further amended by striking out, in line 11, the words "agent or broker" and inserting in place thereof the following words:- insurance producer.

SECTION 3. Said section 2A of said chapter 167F, as so appearing, is hereby further amended by striking out, in line 22, the words "agents and brokers" and inserting in place thereof the following word:- producers.

SECTION 4. Said section 2A of said chapter 167F, as so appearing, is hereby further amended by striking out, in line 28, the words "agent or broker" and inserting in place thereof the following word:- producer.

SECTION 5. Said section 2A of said chapter 167F, as so appearing, is hereby further amended by striking out, in line 102, the words "agent or broker" and inserting in place thereof the following word:- producers.

SECTION 6. Said section 2A of said chapter 167F, as so appearing, is hereby further amended by striking out, in lines 129 and 130, the words "and whether acting as insurance agent or broker".

SECTION 7. Section 14 of chapter 175 of the General Laws is hereby amended by striking out, in line 63, as so appearing, the word "fifth" and inserting in place thereof the following word:- fourth.

SECTION 8. Section 113 O of said chapter 175, as so appearing, is hereby amended by striking out, in line 4, the word "three" and inserting in place thereof the following word:five.

SECTION 9. Section 132F of said chapter 175, as so appearing, is hereby amended by striking out, in lines 19, 21, 27, 29, 31, 46 and 68 the word "dollar".

SECTION 10. Section 132G of said chapter 175 is hereby amended by striking out, in line 29, as so appearing, the words "contract on a variable basis" and inserting in place thereof the following words:- such variable, fixed or guaranteed contract.

SECTION 11. Said section 132G of said chapter 175, as so appearing, is hereby further amended by striking out, in line 57, the words "such contract" and inserting in place thereof the following words:- any contract funded by such separate account.

SECTION 12. Section 132I of said chapter 175, as so appearing, is hereby amended by striking out, in line 3, the word "dollar".

SECTION 13. Section 151 of said chapter 175, as so appearing, is hereby amended by striking out clause Fourth.

SECTION 14. Said section 151 of said chapter 175, as so appearing, is hereby amended by striking out, in line 48, the word "Fifth" and inserting in place thereof the following word:- Fourth.

SECTION 15. Section 162 of said chapter 175, as so appearing, is hereby amended by striking out, in line 1, the word "of", the first time it appears, and inserting in place thereof the following word:- or.

SECTION 16. Section 168 of said chapter 175, as so appearing, is hereby amended by striking out, in lines 53 and 54, the words "subdivision (d) of the second paragraph of section twenty" and inserting in place thereof the following words:- subparagraph (i) of paragraph (D) of subsection (1) of section 20A.

SECTION 17. Section 172 of said chapter 175, as so appearing, is hereby amended by striking out, in lines 126 to 128, inclusive, the words, except that no foreign corporation shall be licensed as an insurance agent of a foreign company under section 163 or as a special insurance broker under said section 168.

SECTION 18. Section 206 of said chapter 175, as so appearing, is hereby amended by striking out, in line 21, the words "section two hundred and six D" and inserting in place thereof the following words:- subsection (k) of section 206C.

SECTION 19. Section 209 of said chapter 175, as so appearing, is hereby amended by striking out, in line 2, the words "163 and section 166" and inserting in place thereof the following words:- 162M and section 162N.

SECTION 20. Said section 209 of said chapter 175, as so appearing, is hereby further amended by striking out, in lines 4 and 5, the words "insurance agent or broker" and inserting in place thereof the following words:- insurance producer.

SECTION 21. Said section 209 of said chapter 175, as so appearing, is hereby further amended by striking out, in line 8, the words "agent or broker" and inserting in place thereof the following word:- producer.

SECTION 22. Section 1 of chapter 176N of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "insurance", in line 30, the following words:-, specified disease insurance that it purchased as a supplement and not as a substitute for a health plan and meets any requirements the commissioner by regulation

may set.

SECTION 23. Section 4 of chapter 178A of the General Laws, as so appearing, is hereby amended by striking out, in lines 48 to 50, inclusive, the words "Applicants for a license as an agent or broker for the company shall be filed in accordance with sections one hundred and sixty-three and one hundred and sixty-three A of said chapter one hundred and seventy-five" and inserting in place thereof the following words:- Applications for appointment as an agent for the company shall be filed in accordance with sections 162M, 162N, 162S of said chapter 175.

SECTION 24. Section 68 of chapter 183 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words "agent pursuant to section 163" and inserting in place thereof the following words:- producer pursuant to section 162M or 162N.

Approved December 16, 2004.

Chapter 432. AN ACT EXEMPTING A CERTAIN PROJECT IN THE TOWN OF NEEDHAM FROM CERTAIN PUBLIC CONSTRUCTION REQUIREMENTS.

Be it enacted, etc., as follows:

SECTION 1. Until December 31, 2004, sections 44A ½, 44D ½ and 44D ¾ of chapter 149 of the General Laws shall not apply to the project for renovations and construction of additions to Needham high school, as authorized by the town of Needham at its 2003 annual town meeting. The project shall comply with these sections after December 31, 2004, and shall also comply with all other laws.

SECTION 2. Notwithstanding any general or special law to the contrary, any noncompliance with any provision of chapter 149 of the General Laws by the project for renovations and construction of additions in the town of Needham, as authorized by the town of Needham at its 2003 annual town meeting and which has received a commitment for reimbursement at a reimbursement rate of 50 per cent of the costs of the project from the Massachusetts School Building Authority pursuant to chapter 70B of the General Laws, shall not result in any change in the reimbursement for the project as previously approved by said authority.

SECTION 3. This act shall take effect upon its passage.

Approved December 16, 2004.

Chapter 433. AN ACT RELATIVE TO THE CERTIFICATION OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS.

Be it enacted, etc., as follows:

SECTION 1. Section 86 of chapter 13 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following sentence:- The board shall also evaluate the qualifications of applicants and grant certificates to those who are determined to be qualified as speech-language pathology assistants or audiology assistants.

SECTION 2. Section 138 of chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Audiology" the following definition:-

"Audiology assistant", a person duly certified in accordance with section 139 who assists in the practice of audiology and who works under the supervision and direction of a duly licensed audiologist.

SECTION 3. Said section 138 of said chapter 112, as so appearing, is hereby further amended by adding the following definition:-

"Speech-language pathology assistant", a person duly certified in accordance with section 139 who assists in the practice of speech-language pathology and who works under the supervision and direction of a duly licensed speech-language pathologist.

SECTION 4. Section 139 of said chapter 112, as so appearing, is hereby amended by striking out clauses (2) to (4), inclusive, and inserting in place thereof the following 4 clauses:-

- (2) shall evaluate the qualifications of applicants and grant certificates to those persons who are determined to be qualified as speech-language pathology assistants or audiology assistants and may require applicants for certificate renewal to present evidence of the satisfactory completion of continuing education requirements as determined and published by the board;
- (3) may require applicants for license or certificate renewal to be re-evaluated and re-examined and to present evidence of the satisfactory completion of continuing education requirements as determined and published by the board;
- (4) shall receive and investigate complaints relating to the practice of speech-language pathology and audiology and may report the same to the proper prosecuting officers where appropriate. The board may, after a hearing held pursuant to chapter 30A, revoke, suspend or place on probation the license or certificate of or reprimand a speech-language pathologist or audiologist or a speech-language pathology assistant or audiology assistant if such person:
 - (a) fraudulently procures a license or certificate;
- (b) has violated any laws relative to the practice of speech-language pathology or audiology or any rule or regulation adopted thereunder;
- (c) has committed professional misconduct in the practice of speech-language pathology or audiology; or

- (d) has practiced speech-language pathology or audiology while the ability to so practice was impaired by alcohol or drugs; provided, however, that a person whose license or certificate has been revoked may apply for relicensure or recertification after 1 year from the date of revocation and the board may, in its discretion, grant such relicensure or recertification upon such terms and conditions as the board may deem appropriate; and
- (5) shall prepare annually a list of the names and addresses of persons who are licensed or certified to practice speech-language pathology or audiology.

 SECTION 5. Said chapter 112 is hereby further amended by striking out sections

SECTION 5. Said chapter 112 is hereby further amended by striking out sections 140 to 143, inclusive, as so appearing, and inserting in place thereof the following 4 sections:-

Section 140. A person who desires to be licensed as a speech-language pathologist or audiologist or certified as a speech-language pathology assistant or audiology assistant shall apply to the board in writing on an application form prescribed and furnished by the board. At the time of filing the application, an applicant for licensure or certification shall pay to the board a fee which shall be set by the secretary of administration and finance.

Section 141. The board may at its discretion and without examination license as a speech-language pathologist or audiologist or certify as a speech-language pathology assistant or audiology assistant any applicant who is duly licensed or registered under the laws of another state or territory in the United States, the District of Columbia or the Commonwealth of Puerto Rico; provided, however, that the applicant shall meet the requirements for licensure or certification in the commonwealth and shall pay the appropriate fee set by the secretary of administration and finance.

Section 142. The board shall license as a speech-language pathologist or audiologist or certify as a speech-language pathology assistant or audiology assistant each applicant who meets the requirements set forth in section 144 or 144A. It shall issue a license or certificate to each person so licensed or certified, which shall be conclusive evidence of the right of such person to practice.

Section 143. A licensed speech-language pathologist or audiologist or certified speech-language pathology assistant or audiology assistant shall apply to the board every 2 years on dates determined by the board for renewal of such license or certificate and shall pay to the board a fee which shall be set by the secretary of administration and finance.

SECTION 6. Said chapter 112 is hereby further amended by inserting after section 144 the following section:-

Section 144A. To be eligible for certification by the board as a speech-language pathology assistant or audiology assistant, an applicant shall:-

- (1) be of good moral character;
- (2) possess at a minimum an associate's degree in a speech-language pathology or audiology training program approved by a national certifying body for speech-language pathology or audiology, a bachelor's degree from a college with a speech-language pathology assistant or audiology assistant certificate program or an equivalent course of study with a major emphasis in the area of speech-language pathology or audiology; and

(3) meet the minimum criteria established by a national certifying body for speech-language pathology or audiology for certification as a speech-language pathology assistant or audiology assistant.

SECTION 7. Said chapter 112 is hereby further amended by striking out section 146, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 146. No person shall hold himself out as a speech-language pathologist or practice speech-language pathology unless he is licensed in accordance with the requirements of section 144 or certified in accordance with the requirements of section 144A. No person shall use the title speech-language pathologist or speech-language pathology assistant or any other similar title or description in connection with his name or place of business unless that person is so licensed or certified.

No person shall hold himself out as an audiologist or practice audiology unless he is licensed in accordance with the requirements of section 144 or certified in accordance with the requirements of section 144A. No person shall use the title audiologist or audiology assistant or any other similar title or description in connection with his name or place of business unless that person is so licensed or certified.

SECTION 8. (a) The department of education, in conjunction with the board of licensure for speech-language pathology and audiology, the executive office of health and human services and the department of public health, shall convene a task force to review and make recommendations on the current availability, quality and administration of and future needs for speech-language and audiology services in school districts. The task force's review shall address, but not be limited to, the following areas:-

- (1) the relationship between caseload characteristics and student outcomes including, but not limited to, a review and analysis of professional time spent on direct services to students, activities that support compliance with federal, state and local mandates, indirect services that support students' educational progress and indirect activities that support students in the least restrictive environment and general education curriculum;
- (2) the implementation of the newborn hearing screening program and its efficacy in identifying the future educational needs of children born with hearing impairments; and
- (3) the availability of assistive technology to increase, maintain or improve the functional capabilities of children with hearing impairments including, but not limited to, the impact of Medicaid policies on the availability of services and the use of the most appropriate assistive technology.
- (b) The task force shall include not more than 2 representatives from each of the following offices: the department of education, 1 of whom shall serve as chair, the board of registration of speech-language pathology and audiology, including 1 speech-language pathologist and 1 audiologist, the executive office of health and human services and the department of public health. The task force shall consult with representatives from the following entities: the Massachusetts Speech-Language-Hearing Association, the Massachusetts Developmental Disabilities Council, the Special Education Advisory Council,

the Massachusetts Academy of Pediatrics, the Massachusetts Society of Otolaryngologists, the Massachusetts Hospital Association, the Massachusetts Advocacy Center, the Federation of Children With Special Needs and teachers and administrators.

(c) The task force shall submit a report to the joint committee on education, arts and humanities and the house and senate committees on ways and means not later than March 15,

2005.

SECTION 9. An individual who has worked as a speech-language pathology assistant or an audiology assistant shall make application to the board of licensure for speech-language pathology and audiology for certification by waiver within 2 years of the effective date of section 144A of chapter 112 of the General Laws. The terms and conditions of any such waivers shall be determined by the board.

SECTION 10. The salary or compensation level of any person currently working or otherwise serving as a speech therapist in a public school system shall not be reduced as the result of any reclassification of that person as a speech-language pathology assistant pursuant to sections 138 to 146, inclusive, of chapter 112 of the General Laws; but this section shall not negate any existing collective bargaining agreement.

Approved December 16, 2004.

Chapter 434. AN ACT RELATIVE TO THE REPORTING OF ABUSE OF ELDERS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to mandate forthwith reporting of elder abuse and neglect by certain employees of councils on aging, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section 15 of chapter 19A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "podiatrist", in line 5, the following words:-, director of a council on aging, outreach worker employed by a council on aging. Approved December 22, 2004.

Chapter 435. AN ACT RELATIVE TO INSURANCE COVERAGE FOR TENANT RELOCATION EXPENSES.

Be it enacted, etc., as follows:

The first paragraph of clause Fifteenth A of section 99 of chapter 175 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the first

sentence the following sentence:- The actual costs of relocation shall include, but not be limited to, hotel room rental, a security deposit and first month's rent for a new rental unit if the security deposit or last month's rent is not already due and owing from the landlord to the tenant, clothing replacement, furniture replacement and other reasonable costs and living expenses as a result of being displaced or damaged by fire.

Approved December 22, 2004.

Chapter 436. AN ACT RELATIVE TO THE JOINT UNDERWRITING ASSOCIATION.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 175C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "mischief", in line 11, the following words:- and dwelling coverages.

SECTION 2. Said section 1 of said chapter 175C, as so appearing, is hereby amended by inserting after the definition of "Basic property insurance" the following definition:-

"Large share territory", any territory in which at least 7 per cent of the homeowners premium averaged over the most recent 3 calendar years was written by the association, with the specific percentage to be determined annually, such that the total homeowners premium written by the association in the preceding 3 years in large share territories as a percentage of the total homeowners premium written by the association does not exceed the percentage of the total homeowners premium written by the association in territories in which market share of the association equaled or exceeded 4 per cent in the 3 years immediately preceding 1996, pursuant to section 5; and such that in no event shall there be more than 13 large share territories designated in any given year. A territory cannot be a large share territory if the market share of the association in the territory is less than the market share of the association in another territory that is not a large share territory.

SECTION 3. Said chapter 175C is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

Section 5. (a) The operation of the association shall be subject to the supervision and regulation of the commissioner. The commissioner or any person designated to act for the commissioner shall have the power to examine and investigate the operation of the association and shall have access to all the books, records, files, papers and documents that relate to its operations, may summon and qualify witnesses under oath, and may examine directors, officers, agents or employees or any other person having knowledge of the operations for the purpose of determining if the purposes of this chapter are being fulfilled.

(b) The association may make rate filings in accordance with chapter 174A and chapter 175A; provided, however, that the filing shall be subject to the prior approval of the

commissioner, after proper notice and hearing, subject to the adjudicatory procedures of chapter 30A; and provided, further, that in reviewing the rates for the association, the commissioner shall give consideration, in addition to all other relevant factors, to the loss experience of insurers in the voluntary market, as well as the experience of the association and to the intent of this chapter to make basic property insurance available at reasonable cost to eligible applicants in large share territories.

(c) The commissioner shall approve all rates for the association for homeowners insurance in territories other than large share territories if the commissioner finds that the proposed rates for the territories comply with the requirements of the General Laws; but, the commissioner may disapprove the rate upon a finding that it exceeds a rate equal to the ninetieth percentile of the rates then in use in the territory by the 10 insurers with the largest market shares of homeowners insurance written in the commonwealth on a statewide basis. The commissioner shall approve all rates for the association for homeowners insurance in large share territories only if the commissioner finds that: (1) the proposed rates for the association for the territories comply with the requirements of the General Laws; and (2) no rate for the territory in any calendar year increases over the lowest rate for that product charged by the association during the prior calendar year in the territory by more than the overall statewide average percentage increase in rates charged from December 31 of the year preceding the prior calendar year to December 31 of that prior calendar year for homeowners insurance by the 10 insurers with the largest market shares of such insurance written in the commonwealth on a statewide basis. Notwithstanding clause (2), the commissioner shall consider the effects of predicted hurricane losses and the cost of catastrophe reinsurance on the rates charged by voluntary market insurers and the cost of catastrophe reinsurance and the predicted hurricane losses on the association approving rates for homeowners insurance in all territories. Whenever the average market share of the association during the most recent 3 years shall reach a level which newly qualifies a territory as a large share territory, the association shall analyze the rates of companies in that territory and shall file a report with the commissioner who shall, in turn, either re-certify the current rate or approve a revised rate for the territory filed by the association which bears a relationship to the rates in the voluntary market in the territory which is consistent with the average relationship between the rates charged by the association in all territories in which it has a similar market share and the rates in the voluntary market in those territories. As used in this subsection, the term "homeowners insurance" shall apply only to the types of products sold by the association on the effective date of this section. All other types of homeowners products subsequently sold by the association shall have a rate based on a factor approved by the commissioner that reflects the relative value of the coverage provided by the types of products to those for which rates have been approved by the commissioner.

SECTION 4. There shall be a special commission to examine the homeowner insurance market in large share territories, as defined in section 1 of chapter 175C. The commission shall investigate the availability and affordability of property insurance; the relevant rate driving factors including, but not limited to, insurance fraud, types of loss costs

and their frequency, the cost and availability of reinsurance; the use of storm damage prediction data; the creation and potential benefit of a state-run catastrophic reinsurance program; and the overall competitiveness of the homeowners market in large share territories. The commission shall make any recommendations for legislative or regulatory action on those matters, with the clerks of the house and senate before April 1, 2005.

The commission shall consist of the chairman of the house committee on insurance or a designee; the vice chairman of the house committee on insurance or a designee, the house minority leader or a designee; the chairman of the senate committee on insurance or a designee, the senate minority leader or a designee; 1 member of the house of representatives and 1 member of the senate who represent Cape Cod or coastal areas of the commonwealth; the commissioner of insurance or a designee; a representative from the Massachusetts Property Insurance Underwriting Association; a representative of the Massachusetts Association of Insurance Agents, a representative of the Center for Insurance Research, and a representative of the Massachusetts Public Interest Research Group.

SECTION 5. Sections 2 and 3 shall take effect on October 1, 2005.

SECTION 6. Sections 1 and 4 shall take effect upon the passage of this act. *Emergency Letter: January 5, 2005 @ 3:38 P.M.* Approved December 22, 2004.

Chapter 437. AN ACT RELATIVE TO ELECTIONS IN THE TOWN OF NORTH ATTLEBOROUGH.

Be it enacted, etc., as follows:

SECTION 1. Section 3 of chapter 751 of the acts of 1977, as most recently amended by chapter 208 of the acts of 1992, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- The nomination of candidates, except representative town meeting members, shall be made by nomination papers signed by not fewer than 25 registered voters of the town of North Attleborough, and they shall be filed with the board of election commissioners of the town on or before the forty-ninth day before the date of the primary election, to allow certification of the nomination papers before the final filing date of 35 days before the date of the election.

SECTION 2. Section 6 of chapter 88 of the acts of 1999 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Such papers shall be signed by not less than 10 registered voters of the precinct in which the candidate resides and shall be filed with the board of election commissioners at least 49 days before the election to allow certification of the nomination papers before the final filing date of 35 days before the date of the election.

Approved December 22, 2004.

Chapter 438. AN ACT RELATIVE TO THE TERMS OF CERTAIN BONDS TO BE ISSUED BY THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately facilitate the issuance of bonds to carry out the purposes of certain acts passed by the general court, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 5 of chapter 323 of the acts of 2002 is hereby amended by striking out, in line 4, the figure "2008" and inserting in place thereof the following figure:-2011.

SECTION 2. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 1 of chapter 201 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 3. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 3 of chapter 290 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 4. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 4 of chapter 290 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 5. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 3 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 6. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 4 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Consti-

tution.

SECTION 7. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 5 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 8. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 6 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 7 years. All such bonds shall be payable not later than June 30, 2016, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 9. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 7 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 5 years. All such bonds shall be payable not later than June 30, 2014, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 10. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 8 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 5 years. All such bonds shall be payable not later than June 30, 2014, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 11. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 9 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 5 years. All such bonds shall be payable not later than June 30, 2014, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 12. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 10 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 13. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 11 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than

June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 14. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 12 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 10 years. All such bonds shall be payable not later than June 30, 2019, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

SECTION 15. Notwithstanding any general or special law to the contrary, the bonds which the state treasurer may issue under section 13 of chapter 291 of the acts of 2004 shall be issued for a term not to exceed 20 years. All such bonds shall be payable not later than June 30, 2029, as recommended by the governor in a message to the general court dated October 15, 2004, pursuant to Section 3 of Article LXII of the Amendments to the Constitution.

Approved December 22, 2004.

Chapter 439. AN ACT AUTHORIZING THE TOWN OF HULL TO EXTEND LEASES ON NANTASKET PIER AND TO BORROW MONEY FOR THE CONSTRUCTION OF A CERTAIN MARINE OR PIER FACILITY FOR A TERM NOT TO EXCEED 30 YEARS.

Be it enacted, etc., as follows:

SECTION 1. The town of Hull, acting by and through its board of selectmen, may, subject to paragraphs (a), (b) and (g) of section 16 of chapter 30B of the General Laws, and on such terms and conditions as the town deems to be in the town's best interests in keeping with said paragraphs (a), (b) and (g) of said section 16 of said chapter 30B, extend the leases of the current lessees or their heirs, assigns and successors of portions of Nantasket Pier and the abutting shore land for periods of not more than 25 years for use as a marine or pier facility, including commercial activities incidental and related to such use and necessary in order to achieve the primary public objectives of the town to use such property as a marine or pier facility. A lessee of this property shall not sublease the property, or any portion thereof, or any improvements thereto, without the prior written approval of the board of selectmen of said town.

SECTION 2. The town of Hull may borrow funds, for a term not to exceed 30 years, to construct a marine or pier facility at Nantasket Pier in the town.

SECTION 3. Any further disposition of the marine or pier facility described in sec-

tion 1, or any portion thereof or improvement thereto, shall be subject to section 16 of chapter 30B of the General Laws.

Approved December 22, 2004.

Chapter 440. AN ACT AUTHORIZING THE TOWN OF HULL TO EXTEND THE LEASES AT PEMBERTON PIER.

Be it enacted, etc., as follows:

SECTION 1. The town of Hull, acting by and through its board of selectmen, may, subject to paragraphs (a), (b) and (g) of section 16 of chapter 30B of the General Laws, and on such terms and conditions as the town deems to be in the town's best interests and in keeping with said paragraphs (a), (b) and (g) of said section 16 of said chapter 30B, extend leases with the current lessees or their heirs, assigns and successors for all, or any portion, or any improvement thereto of the Pemberton Pier for a period of not more than 25 years for uses consistent with a pier facility. A lessee of this property, or any portion thereof, or any improvement thereto, shall not sublease the property, portion, or improvement without the prior written approval of the board of selectmen of said town.

SECTION 2. Any further disposition of the Pemberton Pier facility described in section 1, or any portion thereof or improvement thereto, shall be subject to section 16 of chapter 30B of the General Laws.

Approved December 22, 2004.

Chapter 441. AN ACT RELATIVE TO THE UNIFIED SESSION CLERK IN SUFFOLK COUNTY.

Be it enacted, etc., as follows:

Chapter 221 of the General Laws is hereby amended by inserting after section 16 the following section:-

Section 16A. The clerk of the superior court for criminal business in Suffolk county may designate, with the approval of the chief justice for administration and management, 1 assistant clerk appointed under section 5, as the unified session clerk to perform, under the direction of the clerk of the superior court for criminal business in Suffolk county, duties pertaining to the statewide unified session for trials and hearings relative to the determination of sexually dangerous persons pursuant to section 9 of chapter 123A. Such clerk shall receive in addition to the salary paid to him as an assistant clerk under section 4, a sum equivalent to 10 per cent of the salary of an assistant clerk.

Approved December 22, 2004.

Chapter 442. AN ACT RELATIVE TO GROUP MARKETING PLANS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for renewal of certain insurance group marketing plans, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law to the contrary, a group marketing plan approved and in effect, pursuant to section 193R of chapter 175 of the General Laws, during calendar year 2004 may be approved upon renewal, notwithstanding that less than 35 per cent of its members are insured during calendar year 2005.

Approved December 22, 2004.

Chapter 443. AN ACT AUTHORIZING THE CONVEYANCE OF A CERTAIN PARCEL OF LAND IN THE CITY OF REVERE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith conveyance of certain land in the city of Revere, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of sections 40H and 40I, inclusive, of chapter 7 of the General Laws or any other general or special law or rule or regulation to the contrary, the commissioner of the division of capital asset management and maintenance may convey a certain parcel of state-owned land in the city of Revere to Joseph A. Festa, Jr. and John V. Festa, Trustees of the Festa Towers Irrevocable Trust for parking purposes only.

The parcel of land is located on Revere Beach boulevard and is shown as 19,125 square feet more or less and shown as "Map-Block-Parcel- Unit 2-140-004 on a plan of land Revere, Mass", dated April 3, 2000, and drawn by Albert A. Romano. The exact boundaries of the parcel shall be determined by the commissioner in consultation with the department of conservation and recreation after completion of a survey.

SECTION 2. The consideration to be paid to the commonwealth for the conveyance authorized in section 1 shall be the full and fair market value of the property based upon an independent professional appraisal as determined by the commissioner of the division of capital asset management and maintenance.

The inspector general shall review and approve the appraisal. Said inspector general shall prepare a report of his review of the methodology utilized for said appraisal and shall file the report with the commissioner for submission to the house and senate committees on

ways and means and the chairmen of the joint committee on state administration. Said commissioner shall, 30 days before the execution of any agreement authorized by this act, or any subsequent amendment thereof, submit the agreement or amendment and a report thereon to said inspector general for his review and comment. Said inspector general shall issue his review and comment within 15 days of receipt of any agreement or amendment. Said commissioner shall submit the agreement and any subsequent amendments thereof, the reports and the comments of said inspector general, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least 15 days before execution.

SECTION 3. Joseph A. Festa, Jr. and John V. Festa, Trustees of Festa Towers Irrevocable Trust, shall pay for the costs of all appraisals, surveys and deed preparation for the conveyance of the property authorized by this act as may be deemed necessary by the commissioner of the division of capital asset management and maintenance.

SECTION 4. No deed conveying the parcel of land from the commonwealth to the proponents named in this act shall be valid unless the deed contains a provision restricting the use of the parcel to parking purposes only.

Approved December 22, 2004.

Chapter 444. AN ACT RELATIVE TO COMPENSATION FOR CERTAIN ERRONEOUS FELONY CONVICTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to provide a method of compensation for certain erroneous felony convictions, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 258C the following chapter:-

CHAPTER 258D.

COMPENSATION FOR CERTAIN ERRONEOUS FELONY CONVICTIONS.

Section 1. (A) A claim may be brought against the commonwealth for an erroneous felony conviction resulting in incarceration as provided in this chapter.

- (B) The class of persons eligible to obtain relief under this chapter shall be limited to the following:-
- (i) those that have been granted a full pardon pursuant to section 152 of chapter 127, if the governor expressly states in writing his belief in the individual's innocence, or
- (ii) those who have been granted judicial relief by a state court of competent jurisdiction, on grounds which tend to establish the innocence of the individual as set forth

in clause (vi) of subsection (C), and if (a) the judicial relief vacates or reverses the judgment of a felony conviction, and the felony indictment or complaint used to charge the individual with such felony has been dismissed, or if a new trial was ordered, the individual was not retried and the felony indictment or complaint was dismissed or a nolle prosequi was entered, or if a new trial was ordered the individual was found not guilty at the new trial; and (b) at the time of the filing of an action under this chapter no criminal proceeding is pending or can be brought against the individual by a district attorney or the attorney general for any act associated with such felony conviction.

- (C) In order for an individual to prevail and recover damages against the commonwealth in a cause of action brought under this chapter, the individual must establish, by clear and convincing evidence, that:-
 - (i) he is a member of the class of persons defined in subsection (B);
 - (ii) he was convicted of an offense classified as a felony;
- (iii) he did not plead guilty to the offense charged, or to any lesser included offense, unless such guilty plea was withdrawn, vacated or nullified by operation of law on a basis other than a claimed deficiency in the plea warnings required by section 29D of chapter 278;
- (iv) he was sentenced to incarceration for not less than 1 year in state prison or a house of correction as a result of the conviction and has served all or any part of such sentence;
- (v) he was incarcerated solely on the basis of the conviction for the offense that is the subject of the claim;
- (vi) he did not commit the crimes or crime charged in the indictment or complaint or any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony; and
- (vii) to the extent that he is guilty of conduct that would have justified a conviction of any lesser included misdemeanor arising out of or reasonably connected to facts supporting the indictment or complaint, that he has served the maximum sentence he would have received for such lesser included misdemeanor and not less than one additional year in a prison.
- (D) The claimant shall attach to his claim certified copies of: the mittimus that shows the claimant's sentence to incarceration and; the warrants necessary to grant a pardon pursuant to section 152 of chapter 127 or; criminal case docket entries or documents related thereto in the case of judicial relief.
- (E) For the purposes of this chapter "conviction" or "convicted" shall include an adjudication as a youthful offender, if such adjudication resulted in the youthful offender's incarceration in a house of correction or state prison.
- (F) The commonwealth and any individual filing an action for compensation under this chapter shall have the right to a jury trial on any action so filed. In the interest of doing substantial justice, with regard to weight and admissibility of evidence submitted by the claimant or the commonwealth, the court presiding at a jury-waived trial shall exercise its discretion by giving due consideration to any difficulties of proof caused by the passage of

time, the death or unavailability or witnesses, or other factors not caused by the claimant, or those acting on the claimant's or the commonwealth's behalf. At a jury trial, the court shall consider these same factors as part of the exercise of its discretion when determining the admissibility and weight of evidence, and the court shall instruct the jury that it may consider the same factors when it weighs the evidence presented at trial. No evidence proffered by any party shall be excluded on grounds that it was seized or obtained in violation of the Fourth, Fifth or Sixth amendments to the Constitution of the United States, or in violation of Articles 12 or 14 of Part the First of the Constitution of Massachusetts.

Section 2. A claimant shall not be entitled to compensation from the commonwealth for any incarceration or portion thereof, which was or will be credited toward a sentence for, or during which the claimant was also serving a concurrent sentence for the conviction of another crime. In those cases in which only a pardon from the governor is used to support a pending action against the commonwealth brought under this chapter, the subsequent exercise of the governor's authority to revoke such pardon pursuant to section 152 of chapter 127 shall immediately negate the validity of any such pending action and the superior court shall immediately issue a summary judgment in favor of the commonwealth on such grounds.

Section 3. A civil action brought against the commonwealth under this chapter shall be brought in the county where the claimant was convicted or in Suffolk county. The superior court shall have exclusive jurisdiction of all such actions. All civil actions brought pursuant to this chapter shall in all manner proceed by and be governed by the rules of civil procedure except as otherwise expressly provided in this chapter.

Section 4. Service of process for a civil action brought pursuant to this chapter shall be made upon the attorney general for the commonwealth who shall defend the commonwealth against all such claims. The attorney general shall immediately notify the district attorney for the county that prosecuted the felony that forms the basis for the claim. Any district attorney so notified by the attorney general shall immediately notify any individual meeting the definition of "victim", as set forth in section 1 or chapter 258B, of the felony conviction that forms the basis of the claim. Any such victim shall be allowed, but may not be compelled, to testify or furnish other evidence. If such victim is unavailable to testify or decides not to testify, his prior recorded testimony, given under oath at a relevant proceeding, shall only be admissible after judicial review and determination that such testimony, or portion thereof, may be helpful to the factfinder. The attorney general shall consult with the appropriate district attorney relative to the merits of such action and, following consultation, shall have discretion to determine whether to proffer as evidence any documents, records, testimony or other information brought forward to the attorney general by such district attorney in defense of the commonwealth at a time deemed appropriate by the attorney general. The attorney general may arbitrate or settle any claim for damages filed under this chapter, but any award or settlement in excess of \$80,000 shall be made only with the prior approval of the secretary of administration and finance. The acceptance by the claimant of any such award or settlement shall be in writing and shall, except when procured by fraud, be final and conclusive on the claimant, and shall constitute a complete release of

any claim by the claimant against the commonwealth and a complete bar to any action by the claimant against the commonwealth by reason of the same subject matter.

Section 5. (A) Upon a finding or verdict that the claimant has met the requirements of section 1 by the requisite standard of proof and is not barred from compensation by section 2, the court or the jury shall determine the damages that shall be payable to the claimant. In making such determination, the court or jury shall consider, but not be limited to, the consideration of: the income the claimant would have earned, but for his incarceration; the particular circumstances of the claimant's trial and other proceedings; the length and conditions under which the claimant was incarcerated and; any other factors deemed appropriate under the circumstances in order to fairly and reasonably compensate the claimant. The court, in its discretion, may admit expert testimony on these or any factors. The court may include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition that are shown to be directly related to the individual's erroneous felony conviction and resulting incarceration through documentary or oral evidence presented to the court or jury by the claimant as part of the claim if the claimant provided in his original claim for compensation under this chapter: (i) the nature of the services that he seeks; and (ii) the agencies, departments or commissions of the commonwealth from which he seeks to receive such services. Any such agency, department or commission so named in the claim shall be entitled to reasonable notice of the court proceedings pertaining to the possible ordering of such services and shall be given an opportunity to be heard on whether such agency is the appropriate entity to provide such services if so ordered. The court may also include in its judgment an order that entitles any claimant who wishes to apply for and receive educational services from any state or community college of the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses, a 50 per cent reduction of the tuition and fees applicable to such services at said institutions. Once the damages have been determined, the court shall enter a judgment against the commonwealth for the claimant in an amount certain, payable in either a lump sum or in annuity installment payments set by the court; provided, however, that any such annuity installment payments shall have fixed limits on their annual amount and on the time period which they shall be paid to the claimant. A judgment against the commonwealth may not include punitive or exemplary damages. The total liability of the commonwealth for any judgment entered under this chapter shall not exceed \$500,000. Notwithstanding any general or special law to the contrary, the clerk of court shall not add to the judgment and the commonwealth shall not be liable for paying, any prejudgment or post judgment interest on damages. Subject to section 4, relative to award or settlements, the rights and remedies afforded to certain individuals by this chapter are not intended to limit in any way any rights or remedies that such individuals or other individuals may be entitled to exercise and pursue under chapter 258.

- (B) In awarding damages under this section, the court or jury shall not offset the award by any expenses incurred by the commonwealth or any political subdivision of the commonwealth including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe or provide medical services for the claimant nor shall the court offset against the award the value of any reduction in tuition or fees for educational services or the value of services to be provided to the claimant that may be awarded to the claimant pursuant to this section.
- (C) The commonwealth shall not be liable to levy of execution on any real or personal property to satisfy a judgment ordered pursuant to this chapter. Any judgments ordered by the court pursuant to this chapter shall be paid from funds appropriated by the general court for such purpose. Payments by the commonwealth under this chapter are made to remedy the claimant's injury of unjust incarceration. Only those portions of a judgment that are paid or retained as compensation for services in bringing a claim under this chapter by an attorney representing the claimant pursuant to a signed agreement with the claimant or otherwise shall be subject to taxation by the commonwealth.
- (D) The court shall give due consideration to the possible bifurcation of court proceedings to separate the consideration of issues to be resolved by the court, as required by sections 1 and 2, from the determination of reasonable damages and other relief as required by this section.

Section 6. Any party to an action filed under this chapter is entitled to make a motion seeking costs, expenses and interest for wholly insubstantial, frivolous or bad faith claims or defenses advanced by the opposing party during proceedings under this chapter as set forth in section 6F of chapter 231 and is also entitled to the rights of appeal afforded parties in a civil action following a decision on such motions as set forth in section 6G of said chapter 231.

Section 7. (A) Upon the entry of a judgment in favor of a claimant under this chapter and following a separate hearing on the matter, the court shall enter an order either directing the expungement or sealing of those records of the claimant maintained by the criminal history systems board, the probation department, and the sex offender registry that directly pertain to the claimant's erroneous felony conviction case, including documents and other materials and any samples obtained from the claimant. The commonwealth, as well as any other law enforcement agency that may be directly affected by such expungement or sealing of such records including, but not limited to, the district attorney that prosecuted the felony case against the claimant, shall be given reasonable notice and an opportunity to be heard on the issue of whether such records, documents and materials shall be so expunged or sealed. In making its determination as to whether such records, documents and materials shall be so expunged or sealed, the court shall consider the interests of privacy and justice pertaining to the claimant's erroneous felony conviction as well as the probable effect of such expungement or sealing on relevant law enforcement entities and their ability to appropriately investigate and prosecute other persons for the felony which forms the basis

of the claim or other crimes that may relate to the information contained in such records, documents and materials.

- (B) Following a separate hearing conducted by the court, the court may also order the expungement or sealing of those records that directly pertain to the claimant's erroneous felony conviction case that are currently in the care, custody and control of other state, municipal or local departments, agencies, commissions or committees, including law enforcement entities. Any such agency, commission, committee or entity shall be given reasonable notice and an opportunity to be heard on the issue of whether such records, documents and materials shall be expunged or sealed pursuant to this section. In making its determination as to whether such records, documents and materials shall be expunged or sealed, the court shall consider those factors required for consideration by the court in paragraph (A).
- (C) Any order to expunge or seal entered by the court shall provide that, in any employment application, the claimant may answer "no record" as to any charges expunged or sealed pursuant to this section in response to an inquiry regarding prior felony arrests, court appearances or criminal convictions.
- (D) The charges and convictions expunged or sealed shall not operate to disqualify the claimant in any examination, appointment or application for public employment in the service of the commonwealth or any other political subdivision thereof, nor shall such charges and convictions be used against the claimant in any way in any court proceedings or hearings before any court, board or commission to which the claimant is a party to the proceedings.

Section 8. A claim for compensation brought under this chapter shall be commenced within 2 years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in subsection (B) of section 1. Any action by the commonwealth challenging or appealing the grant of such judicial relief shall toll the 2 year period. Every action brought pursuant to this chapter that is not commenced within the time required by this section is forever barred from consideration by the courts of the commonwealth.

Section 9. (A) A court granting judicial relief consistent with the criteria set forth in subclause (a) of clause (ii) of subsection (B) of section 1 shall provide a copy of this chapter to an individual seeking such relief at the time the criteria of said subclause (a) of said clause (ii) of said subsection (B) of said section 1 are satisfied. Such individual shall be required to acknowledge receipt of a copy of this chapter in writing on a form established by the chief justice for administration and management of the trial court. This acknowledgement shall be entered on the docket by the court and shall be admissible in any proceeding filed by a claimant under this chapter.

(B) The parole board, upon the issuance of a full pardon under section 152 of chapter 127, shall provide a copy of this chapter to an individual granted clemency at the time warrants necessary to grant the pardon are issued. Such individual shall be required to acknowledge receipt of a copy of this chapter in writing on a form established by the parole

board, which shall be retained on file by the parole board as part of its official records and shall be admissible in any proceeding filed by a claimant under this chapter.

(C) If a claimant granted judicial relief or a full pardon shows he did not properly receive a copy of the information required by this section, he shall receive a 1 year extension on the 2 year time limit provided in section 8.

SECTION 2. Section 9 of chapter 258 D of the General Laws, inserted by this act, shall apply to any court granting judicial relief consistent with subclause (a) of clause (ii) of subsection (B) of section 1 of said section 9 of said chapter 258D, on or after the effective date of this act.

SECTION 3. Sections 1 to 8, inclusive, of chapter 258 D of the General Laws, inserted by this act, shall apply to erroneous felony convictions occurring on, before or after the effective date of this act. Notwithstanding said section 8 of said chapter 258D, a person convicted, incarcerated or released from custody before the effective date of this act shall commence an action pursuant to chapter 258D within 3 years of the effective date of this act. Any action by the commonwealth challenging or appealing a grant of judicial relief described in subsection (B) of said section 1 of said chapter 258D shall toll the 3 year period. Every action brought pursuant to chapter 258D of the General Laws that is not commenced within the time required by this section or by said section 8 of said chapter 258D is forever barred from consideration by the courts of the commonwealth.

Approved December 30, 2004.

Chapter 445. AN ACT AUTHORIZING MARTHA'S VINEYARD AFFORDABLE HOUSING COVENANTS.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury may adopt by-laws designating the Dukes County Regional Housing Authority as their agent to create, administer and enforce the Martha's Vineyard housing needs covenants. These covenants shall run with the land for a specified number of years or if no termination date is specified, then in perpetuity, and shall be executed by or on behalf of the owner of the land appropriate to: (a) limiting the use of all or part of the land to occupancy by persons or families of middle income in either rental or other housing, (b) restricting the resale price of all or part of the property in order to ensure its affordability by future middle income purchasers, or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or ensuring the creation or retention of the rental and other housing for occupancy by middle income persons and families. For the purpose of this act, "middle income persons and households" shall mean persons or households earning less than 150 per

cent of Dukes county median household income as reported from time to time by the United States Department of Housing and Urban Development.

SECTION 2. Section 3 of chapter 102 of the acts of 1986 is hereby amended by adding the following paragraph:-

The provisions of section 32 of chapter 121B of the General Laws that require that rents of dwelling units in certain projects be a percentage of tenant income shall not apply to any low rent housing project that has not been developed or acquired by the authority with state assistance under section 32, 34 or 41 of said chapter 121B, but all units in any such low rent housing project shall be leased to families of low income, elderly persons of low income or handicapped persons of low income.

SECTION 3. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 446. AN ACT RELATIVE TO TOWN MEETING WARRANT SUMMARIES IN THE TOWN OF NORTH ANDOVER.

Be it enacted, etc., as follows:

Chapter 2 of the charter of the town of North Andover, which is on file in the office of the archivist of the commonwealth as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out section 2-2-4 and inserting in place thereof the following section:-

Section 2-2-4 The warrant for each special town meeting shall have a summary of each article prepared by the town clerk, published in a newspaper of general circulation at least 7 days before the meeting. The publication shall include the location where copies of the full warrant text can be obtained or viewed, or where mailed requests for copies may be sent.

Approved December 30, 2004.

Chapter 447. AN ACT RELATIVE TO TOWN MEETING WARRANTS IN THE TOWN OF NORTH ANDOVER.

Be it enacted, etc., as follows:

Chapter 2 of the charter of the town of North Andover, which is on file in the office of the archivist of the commonwealth as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out section 2-2-2 and inserting in place thereof the following section:-

Section 2-2-2 The warrant for the annual town meeting shall be closed not more than 75 days, but at least 40 days, before the date for the meeting, but by unanimous vote, the board of selectmen may reopen the warrant in case of emergency. The warrant for a special town meeting shall be closed not more than 40 but at least 20 days before the date of the meeting.

Approved December 30, 2004.

Chapter 448. AN ACT AUTHORIZING THE TOWN OF PLYMOUTH AIRPORT COMMISSION TO LEASE CERTAIN PARCELS OF LAND.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 51F of chapter 90 of the General Laws or any other general or special law to the contrary, the town of Plymouth, acting by and through the Plymouth Airport Commission, may enter into extensions and modifications of existing leases for up to 40 years for the following certain parcels of land situated at the Plymouth municipal airport: Parcel P leased to Airport Plaza Trust; Parcel NE-10 leased to Cummings & Associates, Inc., d/b/a Parzi USA; Parcel Q1 leased to Agwey Metal Designs, Inc.; Parcel Q leased to R&L Family Trust; Parcel X leased to R&S Family Trust; and Parcels NW-8, NW-9, and NW-9A leased to IGS Systems, Inc. Such leases may not be assigned, nor may such parcels be sublet, by any lessee without prior written approval of the Plymouth Airport Commission.

SECTION 2. Notwithstanding section 51F of chapter 90 of the General Laws or any other general or special law to the contrary, the town of Plymouth acting by and through the Plymouth Airport Commission may let or lease parcels under its control at the Plymouth municipal airport, other than the parcels listed in section 1, for up to 40 years. Of those leases not exempt under paragraph 29 of subsection (b) of section 1 of chapter 30B of the General Laws, subsections (a), (b) and (g) of section 16 of said chapter 30B shall apply, and such leases shall be exempt from the remaining provisions of said chapter 30B. Any such lease authorized by this section may not be assigned, nor may parcels subject to such a lease be sublet by any lessee without prior written approval of the Plymouth Airport Commission. Any disposition of parcels otherwise than as authorized by this section shall be subject to chapter 30B of the General Laws.

SECTION 3. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 449. AN ACT RELATIVE TO CERTAIN SEWER BETTERMENTS IN THE CITY OF GLOUCESTER.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapters 80 and 83 of the General Laws or any other general or special law to the contrary, the city of Gloucester may assess sewer betterment charges to properties which abut a public sewer constructed by means of any intermunicipal agreement between the city of Gloucester and the towns of Essex or Rockport, even if the public sewer constructed in the city of Gloucester was built by the town of Essex or the town of Rockport. Any such assessment shall not exceed the amount of the adjudged benefit as provided in section 1 of chapter 80 of the General Laws. In the case of the Essex intermunicipal agreement, the benefit shall be determined by including the Essex intermunicipal agreement sewer construction together with the contiguous Little River sewer construction project with the total number of properties sewered being treated as 1 project.

SECTION 2. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 450. AN ACT PROVIDING GREATER CONSUMER PROTECTION POWERS TO THE BOARDS WITHIN THE DIVISION OF PROFESSIONAL LICENSURE.

Be it enacted, etc., as follows:

SECTION 1. Chapter 13 of the General Laws is hereby amended by inserting after section 9B the following section:-

Section 9C. The members of the boards of registration shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

SECTION 2. Section 61 of chapter 112 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the first paragraph the following 3 paragraphs:-

A board of registration under the supervision of the division of professional licensure may discipline the holder of a license, certificate, registration or authority issued pursuant to this chapter or chapters 141 and 142 if it is determined, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding conducted pursuant to chapter 30A, that such holder has:

- (1) engaged in conduct which places into question the holder's competence to practice the profession including, but not limited to, gross misconduct; practicing the profession fraudulently; practicing his profession beyond the authorized scope of his license, certificate, registration or authority; practicing the profession with gross incompetence; or practicing the profession with negligence on 1 or more than 1 occasion;
- (2) engaged in the practice of his profession while the ability to practice was impaired by alcohol or drugs;

- (3) violated any law, rule or regulation of the board of registration governing the practice of the profession;
- (4) been convicted of a criminal offense which is reasonably related to the practice of the profession;
- (5) engaged in dishonesty, fraud or deceit which is reasonably related to the practice of the profession;
- (6) knowingly permitted, aided or abetted an unauthorized person in performing activities requiring a license, certificate, registration or authority; or
- (7) had a license, certificate, registration or authority issued by another state or territory of the United States, the District of Columbia, or a foreign state or nation with authority to issue such a license, certificate, registration or authority revoked, cancelled, suspended, not renewed or otherwise acted against, or if the holder has been disciplined, if the basis for the action would constitute a basis for disciplinary action in the commonwealth.

Notwithstanding any general or special law to the contrary, a board of registration under the supervision of the division of professional licensure, may by a majority vote and after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding conducted pursuant to chapter 30A, upon determination made that the holder of a license, certificate, registration or authority issued by any such board of registration is subject to discipline based on any provision enumerated in this section, undertake 1 or more of the following actions:-

- (1) suspend, revoke, cancel, decline to renew, or place on probation such license, certificate, registration or authority;
 - (2) reprimand or censure a holder;
- (3) assess upon the holder a civil administrative penalty, as determined by the board, not to exceed \$100 for a first violation; \$500 for a second violation; \$1,500 for a third violation; or \$2,500 for a fourth or subsequent violation;
- (4) require the holder to complete additional education and training as a condition of retention or future consideration of reinstatement of the license, certificate, registration or authority;
- (5) require the holder to practice under appropriate supervision for a period of time as determined by the board as a condition of retention or future consideration of reinstatement of the license, certificate, registration or authority;
- (6) require the holder to participate in an alcohol or drug rehabilitation program as a condition of retention or future consideration of reinstatement of the license, certificate, registration or authority.

Nothing in this section shall be deemed a limitation on a board's authority to impose such reasonable sanctions as it deems appropriate by the board after a hearing or by a consent agreement. A person sanctioned under this section shall be subject to such other sanctions or punishment provided by law. The boards shall promulgate such rules and regulations not inconsistent with chapter 30A as necessary for the filing of charges and the conduct of proceedings.

SECTION 3. Section 64 of said chapter 112, as so appearing, is hereby amended by striking out, in line 5, the figure "(8)" and inserting in place thereof the following figure:- (7).

SECTION 4. Said section 64 of said chapter 112, as so appearing, is hereby further amended by adding the following sentence:- Where a statute provides that a court other than the supreme judicial court may review a board's action, such review shall be conducted in accordance with the standards of review provided in paragraphs (3) to (7), inclusive, of said section 14 of said chapter 30A.

SECTION 5. Said chapter 112 is hereby further amended by striking out section 65, as so appearing, and inserting in place thereof the following 6 sections:-

Section 65. (a) Whoever continues to practice a trade or profession after his certificate, registration, license or authority to do so has been suspended, revoked or cancelled under section 61, and while such disability continues, shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than 6 months, or both.

- (b) Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty of not more than \$1,000 for the first violation and not more than \$2,500 for a second or subsequent violation upon a person who practices a trade or profession at a time when his license, certificate, registration or authority to do so has been suspended, revoked or cancelled by the board of registration that issued the license, and upon any person who knowingly practices a trade or profession at a time when his license, certificate, registration or authority to do so has expired; provided, however, that if a licensee has, in accordance with any law and with board regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the board; provided further, that prior to the assessment of a civil administrative penalty under this section, the board shall notify the licensee that he has at least 90 days after the date of expiration within which to submit an application for renewal during which time the board shall waive any applicable penalties pursuant to this paragraph. An assessment of a civil administrative penalty under this section shall bar a subsequent imposition of a criminal penalty for the same violation and an imposition of a criminal penalty under this section shall bar a subsequent assessment of a civil administrative penalty for the same violation.
- (c) A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.

Section 65A. Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held

pursuant to chapter 30A, assess and collect a civil administrative penalty not to exceed \$1,000 for the first violation and a civil administrative penalty not to exceed \$2,500 for a second or subsequent violation upon a person who, without holding the required license, certificate, registration or authority, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required. Nothing in this section shall affect, restrict, diminish or limit any other penalty or remedy provided by law. A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.

Section 65B. A board of registration under the supervision of the division of professional licensure having jurisdiction over a licensee whose continued practice poses an immediate and serious threat to the public health, safety or welfare may suspend or refuse to renew the holder's license, certificate, registration or authority pending a hearing on the merits of the allegation against the holder. Such board shall hold a hearing pursuant to chapter 30A on the necessity for the suspension or refusal to renew within 10 days of that action. At the time of the suspension or refusal to renew, the board shall issue to the licensee a written summary suspension order which specifies the findings of the board and the reasons for its summary suspension and the date, time and place of the 10-day hearing. At the request of the licensee, the board may reschedule the hearing to a date and time mutually agreeable to the board and the licensee. Any such rescheduling of the hearing granted at the licensee's request shall not operate to lift or stay the summary suspension order. If the hearing is not held within 10 days of the board's summary suspension order or such further time as may be agreed to, the license, certificate, registration or authority against which action was taken shall be reinstated. At the adjudicatory hearing on the necessity for summary suspension, the board shall, by a preponderance of the evidence, establish why the summary suspension order should continue in effect pending the final disposition of the complaint. The board shall issue a preliminary written decision within 10 days of the summary suspension hearing. Following the hearing, a continuing suspension imposed by a board shall remain in effect until the conclusion of any formal adjudicatory proceeding on the merits of the allegations against the holder, but any such proceeding shall occur within 60 days of the summary suspension order, or as the parties may otherwise agree. The board shall render its written decision not later than 30 days after the formal adjudicatory proceeding or as the parties may otherwise agree. A licensee subject to a disciplinary action pursuant to this section may seek judicial review of the board's final decision pursuant to chapter 30A. The division, after proper notice and hearings, shall adopt rules and regulations governing the summary suspension procedure authorized by this section. Nothing in this section shall be deemed to limit any board of registration's summary suspension authority.

Section 65C. Meetings of the boards held for the purpose of conducting investigative conferences prior to the issuance of an order to show cause or for purposes of discussing the terms of a negotiated settlement of a complaint against a licensee shall not be considered open meetings within the meaning of section $11A\frac{1}{2}$ of chapter 30A, but a licensee shall have

access to records of any meetings concerning the licensee as may be necessary for the defense of his license at an adjudicatory proceeding.

Section 65D. Twenty per cent of all civil administrative penalties assessed by boards under the supervision of the division of professional licensure pursuant to sections 61 and 65 to 65D, inclusive, shall be deposited in the Division of Professional Licensure Trust Fund established pursuant to subsection (a) of section 35V of chapter 10 and the remaining 80 per cent shall be deposited in the General Fund. Twenty per cent of all civil administrative penalties assessed by boards under the supervision of the department of public health pursuant to sections 65 and 65A of this chapter shall be deposited in the Quality in Health Professions Trust Fund established pursuant to subsection (a) of section 35X of said chapter 10 and the remaining 80 per cent shall be deposited in the General Fund.

Section 65E. Each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health which takes any action against an individual who practices a trade or profession at a time when his license, certificate, registration or authority to do so is not valid because it has been suspended, revoked or cancelled by the board of registration that issued the license, certificate, registration or authority shall report the individual to the attorney general of the commonwealth for review.

SECTION 6. Section 87I of said chapter 112, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 8 to 10, inclusive, the words ", and shall furnish to the board a certificate of a registered physician that such student is not afflicted with any contagious or infectious disease".

SECTION 7. Said section 87I of said chapter 112, as so appearing, is hereby further amended by striking out the tenth sentence.

SECTION 8. Said section 87I of said chapter 112, as so appearing, is hereby further amended by striking out, in lines 54 and 55, the words "with a physician's statement as aforesaid, and" and inserting in place thereof the following words:- and pays.

SECTION 9. Section 87J of said chapter 112, as so appearing, is hereby amended by striking out, in lines 10 to 12, inclusive, the words "upon the presentation of a certificate from a registered physician as to the freedom from contagious or infectious disease of the holder of such card or insignia".

SECTION 10. Section 87K of said chapter 112, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words ", or that infectious or contagious disease has been imparted thereat".

SECTION 11. Said section 87K of said chapter 112, as so appearing, is hereby further amended by striking out, in lines 13 to 15, inclusive, the words "or it is determined by a member of the board that infectious or contagious disease has been imparted to any person thereat".

SECTION 12. Section 87L of said chapter 112, as so appearing, is hereby amended

by striking out, in lines 2 to 4, inclusive, the words ", for having epilepsy or other disease endangering the health and safety of persons whom he may serve" and inserting in place thereof the following word:- or.

SECTION 13. Said section 87L of said chapter 112, as so appearing, is hereby further amended by striking out, in line 6, the words ", or for having imparted any contagious or infectious disease".

SECTION 14. Section 87CC of said chapter 112, as so appearing, is hereby amended by striking out the second and fifth paragraphs.

Approved December 30, 2004.

Chapter 451. AN ACT ESTABLISHING A CAPITAL DEPRECIATION FUND IN THE TOWN OF PAXTON.

Be it enacted, etc., as follows:

SECTION 1. The town of Paxton may create and maintain a special fund to be known as the Capital Depreciation Fund. The town of Paxton may appropriate by a majority vote at an annual or special town meeting in any year such amount as it deems appropriate to the Capital Depreciation Fund. If the budget for the town of Paxton for any fiscal year, as approved at an annual or special town meeting, contains an item entitled "Capital Depreciation Fund", then the dollar amount designated for such item shall be deemed to be a specific appropriation to the Capital Depreciation Fund and may not thereafter be expanded, except in accordance with section 2. The treasurer of the town of Paxton shall be the custodian of the fund and may invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth or invest the same in such securities as are legal for the investment funds of saving banks under laws of the commonwealth or in federal savings and loan associations situated in the commonwealth. Any interest or earnings resulting from the investments shall be added to and become a part of the fund.

SECTION 2. The Capital Depreciation Fund may be appropriated at an annual or special town meeting by a majority vote only for renewals in excess of ordinary repairs, extensions, reconstruction and enlargements of, and additions to, the capital assets of the town of Paxton. So much of the fund as the town may from time to time approve at an annual or special town meeting may also be used to pay notes, bonds or certificates of indebtedness, issued to pay the cost of such renewals, in excess of ordinary repairs, replacements, extensions, reconstructions, enlargements, and additions to the capital assets of the town when such notes, bonds or certificates of indebtedness become due.

Approved December 30, 2004.

Chapter 452. AN ACT DESIGNATING A CERTAIN BRIDGE IN THE TOWN OF CHELMSFORD AS THE MARINE LANCE CORPORAL ANDREW J. ZABIEREK MEMORIAL BRIDGE.

Be it enacted, etc., as follows:

The bridge on North road spanning interstate highway route 495 in the town of Chelmsford shall be designated and known as the Lance Corporal Andrew J. Zabierek memorial bridge, in memory of Marine Lance Corporal Andrew J. Zabierek, who was killed in action in Iraq on May 21, 2004 while in the service of the United States Marine Corps. The department of highways shall erect and maintain suitable markers on the bridge bearing this designation in compliance with standards of the department.

Approved December 30, 2004.

Chapter 453. AN ACT AUTHORIZING THE CITY OF NEWTON TO ESTABLISH INCOME QUALIFICATIONS FOR A CERTAIN TAX DEFERRAL PROGRAM.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding clause forty-first A of section 5 of chapter 59 of the General Laws, the city of Newton may, by ordinance, adopt a maximum qualifying gross receipts amount of more than \$40,000 but not more than \$60,000 for purposes of the tax deferral program authorized under that section. This ordinance may include formulas that allow partial exemptions for eligible persons who have gross receipts of more than \$40,000 but not more than \$60,000.

SECTION 2. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 454. AN ACT RELATIVE TO THE ESTABLISHMENT OF A RETAINED REVENUE ACCOUNT FOR THE END OF LIFE CARE SERVICES COMMISSION.

Be it enacted, etc., as follows:

Section 480 of chapter 159 of the acts of 2000 is hereby amended by adding the following paragraph:-

The commission may accept funds, including gifts, donations, grants or bequests or any federal funds available for the purposes of this section. Such funds shall be deposited in a separate account to be expended at the discretion of the commission to meet the operation

costs associated with the commission.

Approved December 30, 2004.

Chapter 455. AN ACT ESTABLISHING A SICK LEAVE BANK FOR PAMELA DEMPSEY, AN EMPLOYEE OF THE DEPARTMENT OF SOCIAL SERVICES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Notwithstanding any general or special law, rule or regulation to the contrary, the department of social services shall establish a sick leave bank for Pamela Dempsey, an employee of the department. Any employee of the department may voluntarily contribute 1 or more sick, personal or vacation days to the sick leave bank for use by Pamela Dempsey. When Pamela Dempsey terminates employment with the department or requests to dissolve the sick leave bank, the balance of sick leave shall be transferred to the extended illness leave bank.

Approved December 30, 2004.

Chapter 456. AN ACT AUTHORIZING SELF-MONITORING AND TREATMENT OF STUDENTS WITH DIABETES.

Be it enacted, etc., as follows:

Section 54B of chapter 71 of the General Laws is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law or regulation to the contrary, a school district shall not prohibit a student with diabetes from possessing and administering a glucose monitoring test and insulin delivery system, in accordance with department of public health regulations concerning a student's self-administration of a prescription medication.

Approved December 30, 2004.

Chapter 457. AN ACT RELATIVE TO VESSEL SAFETY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to protect the waterways of the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc.. as follows:

SECTION 1. Section 5 of chapter 21 M of the General Laws, inserted by section 11 of chapter 251 of the acts of 2004, is hereby amended by inserting after the first sentence the following sentence:- When operating in the waters of Buzzards bay, a tank vessel shall travel only within the designated vessel route as appearing on the National Oceanic and Atmospheric Administration chart for Buzzards bay, or as designated by the United States Coast Guard or unless special circumstances make travel outside a recommended vessel route necessary in order to avoid and imminent navigational hazard.

SECTION 2. Section 6 of said chapter 21M, as so appearing, is hereby amended by adding the following subsection:-

(d) Notwithstanding subsection (a) the commissioner may authorize a tank vessel carrying 6,000 or more barrels of oil to enter or transit any area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort in section 1 of this chapter, where the department determines that such transit is warranted due to exigent circumstances. No such department authorization shall be construed to relieve or otherwise limit the liability of the owner or operator of a tank vessel for any release of oil, hazardous material, or hazardous waste that occurs while the tank vessel enters or transits an area of special interest without a tugboat escort. The commissioner may promulgate regulations to implement this subsection and shall report on July 1, 2005 and annually thereafter to the joint committee on natural resources and agriculture on how many tank vessels transited an area of special interest without a tugboat escort as defined in section 1, the date and time of such transit, and why an exemption was made to the requirements established in subsection (a).

SECTION 3. Said section 6 of said chapter 21M is hereby amended by striking out subsection (d).

SECTION 4. Section 3 shall take effect on July 1, 2006.

Approved December 30, 2004.

Chapter 458. AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS IN THE TOWN OF WAKEFIELD.

Be it enacted, etc., as follows:

SECTION 1. The town administrator of the town of Wakefield may appoint, as he deems necessary, retired Wakefield police officers as special police officers for the purpose of performing police details or any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work. The retired police officers shall have been regular Wakefield police officers and retired based on superannuation. The special police officers shall be subject to the same maximum age restrictions as applied to regular police officers under chapter 32 of the General Laws. A special police officer shall pass a medical examination by a physician or other certified professional chosen by the town to determine that he is capable of performing the essential duties of a special police officer, the costs of which shall be borne by the special police officer, prior to performing police details.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 or section 99A of chapter 41 of the General Laws.

SECTION 3. Special police officers shall, when performing the duties under section 1, have the same power to make arrests and perform other police functions, as do regular police officers of the town of Wakefield.

SECTION 4. Special police officers shall be appointed for an indefinite term, subject to removal by the chief of police at any time with a 14 day written notice.

SECTION 5. Special police officers shall also be subject to the rules and regulations, policies and procedures and requirements of the chief of police and the town administrator of the town of Wakefield, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms licensing and qualifications and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the town of Wakefield. Special police officers shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers shall be sworn before the town clerk of the town of Wakefield who shall keep a record of all such appointments.

SECTION 7. Special police officers appointed under this act shall be subject to sections 100 and 111F of chapter 41 of the General Laws. The amount payable under said section 111F of said chapter 41 shall be calculated by averaging the amount earned over the prior 52 weeks as a special police officer working police details, or averaged over such lesser period of time for any officer designated as a special police officer less than 52 weeks prior to the incapacity. In no event shall payment under said section 111F of said chapter 41 exceed, in any calendar year, the limitation on earning contained in paragraph (b) of section 91 of chapter 32 of the General Laws. Payment under said section 111F of said chapter 41 shall terminate when a special police officer reaches the age of 65. If the age limitation applicable to regular police officers serving a town is increased from 65 years of age, the termination of benefits under said section 111F of said chapter 41, as provided in this section

for special police officers, shall terminate at such a higher age limit, but in no event shall the benefits extend beyond the age of 70 for any special police officer. Special police officers appointed under this act shall not be subject to section 85H of said chapter 32, nor eligible for any benefits pursuant thereto.

SECTION 8. Appointment as a special police officer does not entitle any individual appointed as such to assignment to any detail.

SECTION 9. Retired Wakefield police officers serving as special police officers under this act shall be subject to the limitations on hours worked and on payments to retired town employees under paragraph (b) of section 91 of chapter 32 of the General Laws.

SECTION 10. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 459. AN ACT RELATIVE TO THE APPOINTMENT OF SPECIAL POLICE OFFICERS IN THE CITY OF MELROSE.

Be it enacted, etc., as follows:

SECTION 1. The mayor of the city of Melrose may appoint, as he deems necessary, retired Melrose police officers as special police officers for the purpose of performing police details or any police duties arising therefrom or during the course of police detail work, regardless of whether or not related to the detail work. The retired police officers shall have been regular Melrose police officers and retired based on superannuation. The special police officers shall be subject to the same maximum age restrictions as apply to regular police officers under chapter 32 of the General Laws. A special police officer shall pass a medical examination by a physician or other certified professional chosen by the city to determine that he is capable of performing the essential duties of a special police officer, the cost of which shall be borne by the special police officer, prior to performing police details.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws or section 99A of chapter 41 of the General Laws.

SECTION 3. Special police officers shall, when performing the duties under section 1, have the same power to make arrests and perform other police functions as do regular police officers of the city of Melrose.

SECTION 4. Special police officers shall be appointed for an indefinite term, subject to removal by the mayor or the chief of police at any time with a 14 day written notice.

SECTION 5. Special police officers shall also be subject to such rules and regulations, policies and procedures and requirements as the chief of police and the mayor of the city of Melrose may impose from time to time, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing

capability to perform the duties of a special police officer, requirements for training, requirements for firearms licensing and qualifications and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the city of Melrose. Special police officers shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers shall be sworn before the city clerk of the city of Melrose who shall keep a record of all such appointments.

SECTION 7. Special police officers appointed under this act shall be subject to sections 100 and 111F of chapter 41 of the General Laws. The amount payable under said section 111F of said chapter 41 shall be calculated by averaging the amount earned over the prior 52 weeks as a special police officer working police details, or averaged over such lesser period of time for any officer designated as a special police officer less than 52 weeks before the incapacity. In no event shall payment under said section 111F of said chapter 41 exceed, in any calendar year, the limitation on earning contained in paragraph (b) of section 91 of chapter 32 of the General Laws. Payment under said section 111F of said chapter 41 shall terminate when a special police officer reaches the age of 65. If the age limitation applicable to regular police officers serving a town is increased from 65 years of age, the termination of benefits under said section 111F of said chapter 41, as provided in this section for special police officers, shall terminate at such a higher age limit, but in no event shall the benefits extend beyond the age of 70 for any special police officer. Special police officers appointed under this act shall not be subject to section 85H of said chapter 32, nor eligible for any benefits pursuant thereto.

SECTION 8. Appointment as a special police officer does not entitle any individual appointed as such to assignment to any detail.

SECTION 9. Retired Melrose police officers serving as special police officers under this act shall be subject to the limitations on hours worked and on payments to retired municipal employees under paragraph (b) of section 91 of chapter 32 of the General Laws.

SECTION 10. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 460. AN ACT RELATIVE TO THE BY-LAWS OF THE TOWN OF PLYMOUTH.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Plymouth may establish by by-law a board of commissioners of trust funds, consisting of 3 members appointed by the board of selectmen of the town for 3 year overlapping terms. The initial appointments shall be made as follows: 1 member for a 1 year term, 1 member for a 2 year term and 1 member for a 3 year term. The board of commissioners of trust funds

shall have those powers and duties of boards of commissioners set forth in the General Laws and shall be subject to the town charter applicable to boards, commissions and multiple member bodies.

The by-law authorized by this section may be amended by vote of the town, subject to the General Laws.

SECTION 2. This act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 461. AN ACT RELATIVE TO BANKS AND BANKING.

Be it enacted, etc., as follows:

SECTION 1. Chapter 167 of the General Laws is hereby amended by striking out section 1, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

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

"Bank", any association or corporation chartered by the commonwealth under chapter 168, 170, 171 or 172, or an individual, association, partnership or corporation incorporated or doing a banking business in the commonwealth subject to the supervision of the commissioner.

"Commissioner", the commissioner of banks.

"Cooperative bank", an association or corporation chartered pursuant to chapter 170.

"Credit union", an association or corporation chartered pursuant to chapter 171.

"Federal bank", a national banking association, savings and loan association or savings bank that exists by authority of the United States, the main office of which is located in the commonwealth.

"Federal branch", a branch in the commonwealth of any out-of-state federal bank.

"Foreign bank", an association or corporation authorized to do a banking business the main office of which is located outside the commonwealth and which exists by authority of a country other than the United States.

"Internet bank", a bank, federal bank, foreign bank or out-of-state bank that provides its services exclusively or primarily through the internet.

"Limited purpose trust company", an association or corporation chartered pursuant to section 9A of chapter 172.

"Massachusetts bank", a bank, other than an association or corporation chartered pursuant to chapter 171.

"Massachusetts branch", a branch in the commonwealth of an out-of-state bank.

"Out-of-state bank", an association or corporation authorized to do a banking business, the main office of which is located outside the commonwealth and which exists by

authority of a state of the United States except the commonwealth.

"Out-of-state branch", a branch of a Massachusetts bank located outside the commonwealth.

"Out-of-state federal bank", a national banking association, savings and loan association or savings bank that exists by authority of the United States, the main office of which is located outside the commonwealth.

"Savings bank", an association or corporation chartered pursuant to chapter 168.

"State", a state, commonwealth or territory of the United States, the District of Columbia, or a foreign country.

"Trust company", an association or corporation chartered pursuant to chapter 172.

SECTION 2. Section 2A of said chapter 167, as so appearing, is hereby amended by striking out, in line 12, the word "herein" and inserting in place thereof the following words:- herein, or any internet bank which is either located in the commonwealth, has its main office located in the commonwealth, or has depositors or borrowers which are located in the commonwealth.

SECTION 3. Section 14 of said chapter 167, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

To assist in carrying out this section, the commissioner shall promulgate regulations which shall include the regulations promulgated pursuant to federal law; provided, however, that with respect to such assessments of corporations chartered pursuant to chapter 171 and electronic banking activities and the electronic delivery of banking services, including internet banking activities of banks, the commissioner may make such adjustments and exceptions thereto as are deemed required; and provided, further, that the regulations may include, but not be limited to, a consideration of a bank's origination of loans and other efforts to assist existing low and moderate income residents to be able to remain in affordable housing in their neighborhoods, a bank's origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units, a bank's participation, including investments in community development and redevelopment programs and small business technical assistance programs, pursuant but not limited to, paragraphs 8, 29 and 30 of section 2 of chapter 167F, and such other requirements as in the judgment of the commissioner reasonably bear upon the extent to which a bank is helping to meet the credit needs of its entire community. Notwithstanding the foregoing, the commissioner shall further take into account the provision of state-of-the art computers and internet access at minimal or no cost to low and moderate income residents as part of the assessment of electronic banking activities and the electronic delivery of banking services, including internet banking activities of banks. Except for emergency regulations adopted pursuant to section 2 of chapter 30A, a regulation, or an amendment or repeal thereof, shall, after compliance with section 5 of chapter 30A, be submitted to the general court.

SECTION 4. Said section 14 of said chapter 167, as so appearing, is hereby further

amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

In considering an application for the establishment of a domestic branch or other facility with the ability to accept deposits, the relocation of the main office or branch office, or a merger or consolidation with or the acquisition of assets or assumption of liabilities of any Massachusetts bank, federal bank, foreign bank, out-of-state bank or out-of-state federal bank, the commissioner shall consider, but not be limited to, the record of performance of the bank and its holding company, including all subsidiaries thereof, relative to this section. Notwithstanding any other law to the contrary, the commissioner shall establish an alternative community reinvestment examination procedure for supervised banks which, as of the most recent federal or state examination, have been assigned a rating of outstanding record or high satisfactory record of performance in meeting its community credit needs.

SECTION 5. Said section 14 of said chapter 167, as so appearing, is hereby further amended by striking out the eighth paragraph.

SECTION 6. The first paragraph of section 37 of said chapter 167, as so appearing, is hereby further amended by striking out the fourth and fifth sentences.

SECTION 7. Said section 37 of said chapter 167, as so appearing, is hereby further amended by striking out the last paragraph.

SECTION 8. Said chapter 167 is hereby further amended by striking out section 37B, as so appearing, and inserting in place thereof the following section:-

Section 37B. A bank, federal bank, federal credit union or a foreign bank, out-of-state bank and out-of-state federal bank with a branch office in the commonwealth may establish educational bank training programs, student savings deposit programs and school branch office programs. A bank or foreign bank or out-of-state bank with a branch office in the commonwealth shall conduct the program under terms and conditions as the commissioner determines. A federal bank, federal credit union or out-of-state federal bank with a branch office in the commonwealth shall conduct the program in compliance with applicable federal law and regulations.

SECTION 9. Section 46 of said chapter 167, as so appearing, is hereby amended by striking out, in line 2, the word "bank" and inserting in place thereof the following words:bank, except an internet bank.

SECTION 10. Section 1 of chapter 167A of the General Laws, as so appearing, is hereby amended by striking out, in line 10, the word "herein" and inserting in place thereof the following words:- herein; but the term shall not include a limited purpose trust company, as defined in section 1 of chapter 167, or any other entity which by its charter may engage only in activities substantially equivalent to those authorized for a limited purpose trust company.

SECTION 11. Section 3 of chapter 167B of the General Laws, as so appearing, is hereby amended by striking out the second paragraph.

SECTION 12. Section 4 of said chapter 167B, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

A bank which intends to terminate the use of an electronic branch, other than an electronic branch located at an office of a financial institution, shall file a written request with the commissioner, which shall include the reasons for the termination; but, if in the opinion of the commissioner an emergency exists, he may waive this requirement. An electronic branch shall not be terminated or use thereof terminated until approved by the commissioner or upon the expiration of 30 days from the date the written request is made, whichever is sooner.

SECTION 13. The General Laws are hereby amended by striking out chapter 167C and inserting in place thereof the following chapter:-

CHAPTER 167C. BANK LOCATIONS.

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

"Bank", an association or corporation chartered by the commonwealth under chapter 168, 170 and 172.

"Commissioner", the commissioner of banks.

"Foreign bank", an association or corporation authorized to do a banking business in the commonwealth, the main office of which is located outside the commonwealth, and which exists by authority of a country other than the United States.

"Governing board", the board of directors, the board of trustees or similar board of a bank.

"Out-of-state bank", an association or corporation authorized to do a banking business in the commonwealth, the main office of which is located outside the commonwealth, and which exists by the authority of a state of the United States except the commonwealth.

"Out-of-state branch", a branch of a bank located outside the commonwealth.

"Out-of-state federal bank", a national banking association, savings and loan association or savings bank that exists by authority of the United States, the main office of which is located outside the commonwealth.

Section 2. The main office of a bank shall be in the town specified in its charter or in its agreement of association, or in such other town to which the office has been lawfully moved or to which it may be moved as provided in this section. The location of the main office of a bank may be changed to a point in the town of its location with the written consent of the commissioner. With the approval of the board of bank incorporation and upon the vote of $\frac{2}{3}$ of the corporators or members and the approval of its board of trustees or board of directors present at a meeting called for the purpose, a bank may change the location of its main office to another town within the commonwealth by appropriate amendment of its charter or of its agreement of association, a copy of which amendment shall be filed immediately with the secretary of state.

Section 3. A bank which has received a rating of satisfactory or higher in its most recent examination pursuant to section 14 of chapter 167 and which is adequately capitalized, and has not been notified that it is in troubled condition, may establish and maintain 1 or more branch offices or depots in a city or town within the commonwealth upon at least 60 days written notice in advance thereof to the commissioner; but, if in the opinion of the commissioner, the public would not benefit by the establishment of the additional banking facilities or that competition among banking institutions would be adversely affected thereby, he may disapprove the same in writing within the 60-day period.

A bank, national banking association, federal savings and loan association or federal savings bank located in the commonwealth, the majority of shares of the voting stock of which is owned by a bank holding company pursuant to chapter 167A, 167H, or 12 USC 1841 et seq., if the main office of such company is located in the commonwealth, may transact with a customer business which pertains to the customer's accounts maintained at any other bank located in the commonwealth the majority of the voting shares of which is owned by the same bank holding company in like manner.

With the written consent of the commissioner and under procedures as he may require, a branch office or depot may be closed or its location may be changed; but before approving the closing or relocation, the commissioner shall determine that the area served by the branch office or depot will not be adversely affected thereby. In making that determination, the commissioner shall consider the effects of the closing as it relates to the availability of credit in the area, the convenience and necessity of deposit services therein, and other factors he considers appropriate.

The business transacted by a bank at its main office may be transacted at a branch office. The business at a depot shall be transacted only on the days designated by the governing board thereof, and shall be limited to the receipt of deposits and collection of moneys due or payable to the bank, and the business shall be subject to such other conditions, prescribed by the commissioner.

Section 4. The commissioner may authorize a bank to conduct mobile branch banking subject to this chapter in any county in the commonwealth in which the bank has its main office or a branch office under conditions as he may approve and in accordance with regulations he may establish for the purpose.

Section 5. Every notice or application to change the location of the main office to establish and maintain 1 or more branch offices or depots, or to change the location or close 1 or more branch offices or depots shall be accompanied by payment of an investigation fee, the amount of which shall be determined annually by the commissioner of administration under section 3B of chapter 7 of the General Laws.

Section 6. A bank, upon approval by the commissioner of an application therefor in prescribed manner and form and in accordance with applicable law, may establish and maintain branches through a merger or consolidation with or by the purchase of the whole or any part of the assets or stock of a foreign bank, out-of-state bank or out-of-state federal

bank. A request for the approval by the commissioner shall be accompanied by (i) an investigation fee the amount of which shall be determined annually by the commissioner of administration under the provisions of section 3B of chapter 7, (ii) a copy of the terms of any agreement reached by the respective governing boards of the banks involved, and (iii) certified copies of the votes of such boards. Upon approval of the merger or consolidation:

- (1) The corporate existence of the acquired bank shall be discontinued and consolidated into that of the acquiring bank. All rights, privileges and franchises of the acquired institution and its right, title and interest to property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing shall be considered fully and finally, and without any right of reversion, transferred to or vested in the acquiring bank, without further act or deed, and the acquiring bank shall have and hold the same in its own right.
- (2) The rights, obligations and relations of the acquired institution to a shareholder or depositor, creditor, trustee, beneficiary of a trust, or other person, as of the effective date of the merger or consolidation, shall remain unimpaired, and the acquiring bank shall succeed to all of those rights, obligations and relations.
- (3) A pending action or other judicial proceeding to which an institution involved in the merger or consolidation is a party shall not be considered to have been abated or discontinued by reason of the merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the merger or consolidation had not occurred; but, the acquiring bank may be substituted as a party to the action or proceeding, and the judgment, order or decree may be rendered in the name of the acquiring bank.
- (4) A foreclosure of a mortgage begun by the acquired institution before the approval of the merger or consolidation may be completed by the acquiring bank, and publication previously made by the acquired institution may be continued in the name of the acquired institution.

The offices of a foreign bank, out-of-state bank or out-of-state federal bank merged or consolidated with or whose assets or stock were purchased pursuant to this section, may be maintained as branch offices of the bank; but, the resulting branch shall be considered to be an out-of-state branch and subject to the supervision of the commissioner and the applicable laws of the jurisdiction in which the out-of-state branch is located.

Section 7. A bank, with the approval of and under conditions imposed by the commissioner, may establish a branch de novo in a state of the United States other than the commonwealth or in a foreign country in accordance with the laws of the state or foreign country, and may exercise the powers at the branch de novo as are permitted to banks existing by the authority of the jurisdiction in which the branch is located, unless the commissioner determines that the exercise of the powers is unsafe or unsound.

Section 8. Notwithstanding any other law to the contrary, the commissioner may enter into a cooperative agreement with bank regulators in jurisdictions other than the commonwealth to facilitate the regulatory supervision of Massachusetts and out-of-state branches including an agreement relative to the coordination of examinations or joint participation in

examinations of the branches, and may accept reports of examinations by the regulators pursuant to the agreement. The commissioner may also enter into an agreement providing for enforcement actions against Massachusetts and out-of-state branches. The agreement may include provisions relative to the amount and assessment of fees for an examination or enforcement action. Nothing in this section shall be construed to limit the authority of the commissioner to independently conduct examinations of and enforcement actions against a branch.

Section 9. A bank may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations in the commonwealth or in any other state as an agent for another banking institution, whether located within the commonwealth or in another state. The banking institution acting as such agent shall not be considered to be a branch of the principal banking institution. A banking institution acting as such agent shall not conduct an activity which it would be prohibited from conducting as a principal under a state or federal law, or, as a principal, have an agent conduct an activity which the institution would be prohibited from conducting under a state or federal law. The agency relationship shall be consistent with safe and sound banking practices and all applicable regulations of the commissioner. For the purposes of this section, a banking institution shall mean a bank, federal bank, foreign bank, out-of-state bank and an out-of-state federal bank as such terms are defined in section 1 of chapter 167.

SECTION 14. Chapter 167D of the General Laws is hereby amended by striking out section 10, as so appearing.

SECTION 15. The General Laws are hereby amended by striking out chapter 167E and inserting in place thereof the following chapter:-

CHAPTER 167E.

MORTGAGES AND LOANS.

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

"Bank", a savings bank, co-operative bank, or trust company subject to the supervision of the commissioner of banks.

"Capital", (1) the sum of the capital stock, surplus account and undivided profits of a savings bank or a co-operative bank which has converted to a stockholder form of corporation, a subsidiary banking institution of a mutual holding company as defined in chapter 167H or a trust company as defined in section 1 of chapter 172; (2) the sum of the surplus account of a mutual form savings bank governed by chapter 168 or a mutual form co-operative bank governed by chapter 170. The commissioner, in his discretion, may further define or permit adjustments to the capital accounts of a bank necessary to effect the purposes of this chapter.

"Commissioner", the commissioner of banks.

"Real estate", land or property, without geographic limitation, including improved land with a dwelling, owner occupied or unoccupied dwellings, unimproved land, farmland,

a unit of a condominium, shares of stock issued by a co-operative housing corporation, industrial and commercial property, leasehold interests created in air rights over land, and any other interest in land; but a loan secured by real estate shall include a loan on a leasehold under a lease which does not expire for at least 5 years beyond the maturity date of the loan.

Section 2. Every bank, subject to limitations imposed by this chapter or other General Laws, shall have the following powers and whatever further incidental or complementary powers that may fairly be implied from those expressly conferred and such as are reasonably necessary to enable it to exercise fully those powers according to common customs and usages:

- (1) to discount, buy, invest in, hold, assign, transfer, sell and negotiate promissory notes, drafts, bills of exchange, mortgages, trade acceptances, banker's acceptances, bonds, debentures, bonds or notes secured by mortgages, installment obligations, accounts receivable, balances due on conditional sales and other evidences of debt for its own account or for the account of customers;
- (2) to advance money or credits on real estate, on improvements thereto or on personal security, on terms to be agreed upon; and
- (3) to buy, sell or make loans as participation loans with another bank or with an insurance company and to service loans sold by it.

Section 3. (a) A bank may make or acquire loans and mortgage loans.

- (b) For purposes of this chapter, the term "mortgage loan" shall mean a loan, line of credit, letter of credit or borrowing secured primarily by a lien on an interest in real estate. The following categories of mortgage loans are specifically authorized by this section:
- (i) residential mortgage loans secured by a first mortgage lien on a dwelling with 4 or less separate households and occupied or to be occupied by the borrower;
- (ii) residential mortgage loans secured by a subordinate mortgage lien on a dwelling with 4 or less separate households and occupied or to be occupied by the borrower including home improvement loans, home equity lines of credit and second mortgage loans;
- (iii) mortgage loans secured by a lien on real estate held or used for commercial, investment, governmental, nonprofit or other purposes;
 - (iv) land loans;
- (v) construction loans to improve real estate with improvements, structures, or projects for residential, commercial, investment, governmental or non-profit use and purposes related or incident thereto including infrastructure and development;
- (vi) mortgage loans secured by a lien on real estate saleable in the secondary market or underwritten in accordance with mortgage loan programs of public instrumentalities created by the commonwealth of the federal government for the purpose of financing and expanding the supply of residence mortgages or affordable housing.
- (c) The following categories of loans shall not be considered mortgage loans for purposes of subsection (b) but shall be treated as loans pursuant to subsection (d).
- (1) Loans for which a lien on or interest in real estate is taken as additional collateral through an abundance of caution, including loans pursuant to which the bank takes a blanket

lien on all or substantially all of the assets of the borrower, and the value of the real estate is low relative to the aggregate value of all collateral.

- (2) Loans made to manufacturing, industrial or commercial borrowers with a lien or
- interest in real estate taken as all or a portion of the collateral to directly or indirectly secure the loans, when a bank looks for repayment out of the operations of the borrower's business, relying on the borrower's general credit standing and the borrower's forecast of operations.

 (3) Loans to finance the construction of industrial or commercial buildings and having maturity not exceeding 36 months where there is a valid and binding agreement with a financially responsible lender to advance the full amount of the bank's loan upon completion of construction, but, a bank shall not invest in or be liable on the loans in an aggregate amount in excess of 100 persons of its position. aggregate amount in excess of 100 per cent of its capital.
- (d) The term "loan" means any loan, line of credit or letter of credit, whether secured by collateral or security of any nature or unsecured, for consumer, business or other purposes, other than a real estate loan.
- (e) Extensions of credit under subsections (a) to (d), inclusive, may contain agreed upon terms and conditions including, but not limited to, those governing the payment of principal and interest, collateral, maximum loan to value ratios, maximum debt to income ratios, amortization, prepayment, loan servicing and the apportionment of taxes, betterment assessments and insurance of any kind applicable to the loan, subject to limitations imposed by this chapter or other law. A bank also may subsequently revise or modify the terms or conditions subject to agreement of the parties.
- (f) Notwithstanding subsections (a) to (e), inclusive, reverse mortgage loans and adjustable rate mortgage loans on owner occupied dwellings shall be subject to sections 7 and 8.
- (g) The commissioner may by directive, guideline or regulation, carry out the purposes of this section and to further define the terms used in this section to promote safe and sound banking practices.
- Section 4. (a) Each bank shall adopt and maintain comprehensive written loan policies that establish appropriate limits and standards for extensions of credit under section 3 that are consistent with safe and sound banking practices and are appropriate to the size, nature and scope of the bank's operations.
- (b) The loan policies shall establish prudent loan underwriting standards that clearly and measurably address, at a minimum: (1) maximum loan to value, loan amount, loan maturities, and debt to income requirements; (2) collateral and appraisal requirements; (3) application and loan approval requirements; and (4) loan administration procedures. The written loan policies shall be reviewed and approved annually by the bank's governing board.
- (c) The commissioner may by directive, guideline or regulation, establish additional minimum safe and sound lending requirements.
- Section 5. (a) A bank shall inspect the real estate securing a loan in the event that a payment of interest or principal upon the loan or on account of real estate taxes upon the parcel mortgaged to secure the same shall be in default, inspection for the purpose aforesaid

shall be made within 91 days from the date of the default in payment of interest or principal or within 181 days from the date of the default in payment on account of taxes, as the case may be, and thereafter periodic inspection shall continue in accordance with this subsection until the loan shall no longer be in default.

- (b) The commissioner may cause an appraisal of real estate to be made at the expense of the bank whenever the commissioner considers an excessive loan has been made or is about to be made upon real estate.
- (c) A bank shall not directly or indirectly, make a loan or discount on the security of the shares of its own capital or on the security of the shares of capital of any company, 50 per cent or more of the assets of which consists of capital of the corporation, unless the security shall be necessary to prevent loss upon a debt previously contracted in good faith. An officer or employee of a bank who knowingly violates this section shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

Section 6. (a) The total obligations of 1 borrower to a bank under this chapter and chapter 167F shall not exceed the following limitations.

- (1) 20 per cent of the total of the bank's capital;
- (2) 25 per cent of the total of the bank's capital, if the amount of the obligations in excess of the limitations in clause (1) is fully secured by obligations of the United States of like value;
- (3) 100 per cent of the total of the bank's capital, if the amount of the obligations in excess of the limitations in clause (1) is fully secured by obligations of the United States of like value, due within 3 years of the date of the note of the borrower.
- (4) Obligations of a foreign government or a political subdivision thereof shall be limited to 10 per cent of capital.
- (5) Obligations of all foreign governments and the political subdivisions thereof shall not exceed a total of 50 per cent of capital.
 - (b) The limitations of subsection (a) shall not apply to:
 - (1) Obligations of the United States.
 - (2) Obligations of the commonwealth and its political subdivisions.
 - (3) Obligations of a state or a political subdivision thereof in the United States.
- (4) Obligations to the extent that they are secured as to principal and interest by the unconditional guarantee, insurance or other like commitment of the United States, an agency of the United States or a federal reserve bank, whether the commitment provides for payment in cash or in obligations of the United States.
 - (5) Obligations arising out of the discount of:
- (i) Drafts or bills of exchange drawn in good faith against actually existing values, and (ii) commercial or business paper actually owned by the person negotiating it.
- (6) Obligations to the extent that they are secured as to principal and interest by the guarantee, insurance or other like commitment of the Massachusetts Development Finance Agency pursuant to chapter 23G.

- (7) Obligations for funds advanced to facilitate the clearance or settlement of securities transactions in accordance with customary industry practice and applicable rules of a stock exchange or market system; if, (i) the obligations are secured by readily-marketable securities, which may include the securities being purchased, having a market value at the time the advance is made of not less than the principal amount of the advance, and (ii) the obligations so advanced are repaid following the settlement of, and receipt of proceeds from, securities transactions which have been effected for the purpose of repaying the obligations so advanced.
- (8) Obligations which are secured by a deposit account in the lending bank which is not subject to withdrawal.
- (9) Obligations secured by a mortgage loan secured by a first lien on real estate improved with a dwelling to be occupied by not more than 4 families and occupied or to be occupied in whole or in part by the borrower shall not be calculated against the total obligations of the borrower for the purposes of the limitations under subsection (a).
- (10) Obligations to the extent they are secured by securities issued or guaranteed by a United States government-sponsored entity, including the Federal National Mortgage Association and the federal Home Loan Mortgage Corporation.
- (11) Obligations to provide securities, incurred in connection with securities loans, which obligations are fully secured by securities convertible at the option of the bank acting as principal or agent into securities of the same issue and class as the securities that are the subject matter of the obligation.
- (12) Obligations to the extent they are initially and thereafter secured by collateral consisting of a combination of cash and readily marketable securities with a value of not less than 100 per cent of the obligations.
- (c) Notwithstanding subsection (a), liabilities for federal funds and other short-term obligations of any national bank or other bank to a bank may exceed 100 per cent of the capital and no collateral shall be required for the obligations except insofar as the commissioner of banks may by regulation set limits on the obligations and require collateral of any kind.
- (d) Obligations to 1 borrower will be attributed to another person and each person will be considered a borrower if the obligation was used for the direct benefit of another person or there was a common enterprise considered to exist between the persons. For the purposes of this section the word "person" shall include an individual, sole proprietorship, partnership, limited liability company, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality or political subdivision thereof and including the liabilities of the members of a firm or any similar entity or organization. The commissioner shall have the authority to determine whether a loan putatively made to 1 person shall for purposes of this section be attributed to another person.
- (e) This section shall not apply to mortgages taken in good faith by way of security for debts to the bank previously contracted, or to loans made by the bank to secure the payment of a portion of the purchase price of real estate acquired by the bank by foreclosure,

or otherwise.

(f) The commissioner may by directive, guideline or regulation, prescribe additional requirements to administer and carry out this section and to further define the terms used in this section.

Section 7. (a) A bank may make or acquire a reverse mortgage loan, pursuant to a program for reverse mortgage loans which has been submitted to and approved by the commissioner, to the owner of real estate improved with a dwelling designed to be occupied by not more than 4 families; provided, however, that each such owner shall be at least 60 years of age and shall occupy the mortgaged real estate in whole or in part; and provided further, that a person shall be considered to be the owner of real estate notwithstanding that legal title thereto is held in the name of a trust if the person is the beneficiary of such trust.

- (b) For the purposes of this section, a reverse mortgage loan shall not be considered a residential mortgage transaction, as defined in section 1 of chapter 140D or any other transaction specified in subsection (e) of section 10 of said chapter 140D. The notices and rights contained herein shall be in addition to the disclosure and rights provided for in said chapter 140D, including the right of rescission set forth in said section 10 of said chapter 140D.
- (c) The proceeds from a reverse mortgage loan shall be disbursed to the borrower, pursuant to the program, and together with unpaid interest, if any, shall become due and payable (i) at the end of a fixed term, if any; (ii) upon the death of the borrower; (iii) upon the conveyance of title to the mortgaged real estate; (iv) upon the borrower ceasing to occupy the real estate as a principal dwelling; or (v) upon default by the borrower in the performance of its obligations under the loan agreement.
- (d) The commissioner shall not approve a program for reverse mortgage loans which does not include the following:-
- (1) the type of loan, whether open-end or closed and whether a recourse or non-recourse loan;
- (2) an applicant for the loan shall not be bound for 7 days after his acceptance, in writing, of the lender's written commitment to make the loan;
- (3) the bank shall obtain a written statement signed by the borrower acknowledging receipt of disclosure of all contractual contingencies which could force a sale of the mortgaged real estate;
- (4) a provision permitting prepayment of the loan without penalty at any time before the loan becomes due and payable;
- (5) the interest rate, which may be fixed or variable, and the method of calculation thereof shall be established at loan origination; quote and, at the option of the borrower, may be contingent on the value of the mortgaged real estate at closing or at maturity or on changes in the value during the period between closing and maturity;
- (6) the method of disbursement of the proceeds of the loan to the borrower; but, at the request of the borrower, disbursement may be made to a third party pursuant to the terms of the loan agreement;

- (7) a copy of the form of the note and mortgage deed that will be utilized for the loans;
 - (8) a detailed description of how the plan will function; and
 - (9) other information the commissioner may require.

Before making the loan, a bank shall provide a prospective borrower with written materials explaining in plain language, the type of mortgage being offered and its specific terms, including but not limited to:

- (i) a schedule, if applicable, and explanation of payments to the borrower pursuant to the terms of the mortgage agreement and whether or not property taxes and insurance premiums are to be deducted:
 - (ii) a schedule of outstanding debt over time, if applicable;
- (iii) repayment date, if a fixed term loan, and other provisions which cause the loan to become due and payable;
 - (iv) method of repayment and schedule, if any;
- (v) all contractual contingencies, including lack of home maintenance and other default provisions which may result in a forced sale of the mortgaged property;
- (vi) interest rate and annual percentage rate, and for a reverse mortgage loan for a specified term, total interest payable thereon;
 - (vii) loan fees and charges;
 - (viii) description of prepayment and, if applicable, refinancing features; and
- (ix) inclusion of a statement that the mortgage has tax and estate planning consequences and may affect levels of, or eligibility for, certain government benefits, grants or pensions, and that applicants are advised to explore those matters with appropriate authorities.
- (e) A bank shall not make a reverse mortgage loan as provided in this section until it has received a notice, in writing, that the prospective borrower has completed a reverse mortgage counseling program which has been approved by the executive office of elder affairs and which shall include instruction on reverse mortgage loans. The counseling program shall include, but is not limited to, the subject matter of paragraphs (1) to (9), inclusive, of subsection (d) with respect to all reverse mortgage loan programs approved by the commissioner pursuant to this section. For the purpose of providing the counseling, the executive office of elder affairs shall establish and maintain a list of counseling programs approved by it and shall make such list available to all banks and to the public.
- (f) A reverse mortgage loan shall constitute a lien against the property securing the loan to the extent of all advances made pursuant to the reverse mortgage and all interest accrued on the advances, and the lien shall have priority over any lien filed or recorded after recordation of a reverse mortgage loan.
 - (g) The commissioner may promulgate regulations necessary to carry out this section.
- (h) For the purposes of this section, the term "non-recourse reverse mortgage loan" shall mean a reverse mortgage loan which limits the lender's recovery solely to the value of the property at the time the loan becomes due and payable.

(i) Sections 96 to 114A, inclusive, of chapter 140 shall not apply to a reverse mortgage loan.

Section 8. (a) A bank may make or acquire mortgage loans evidenced by a note which provides for variation in the rate of interest over the term of the note; but a loan made to finance or refinance the purchase of and secured by a first lien on a dwelling house of 4 or fewer separate households occupied in whole or in part by the mortgagor shall be subject to but not limited to the following conditions and restrictions imposed by the commissioner:

- (1) the method by which the rate of interest may be adjusted;
- (2) the frequency with which the rate of interest may be adjusted, but successive rate adjustments shall be no less than 6 months apart;
 - (3) the maximum increase in the rate of interest allowed for the adjustment;
- (4) provisions for decreases in the rate of interest as may be warranted by market conditions:
- (5) requirements for advance notification and explanation of adjustments in the rate of interest, but the notification and explanation shall occur no less than 30 days before the adjustment; and
- (6) methods of disclosure to the mortgagor of the terms and conditions of the loan as required under chapter 140D.

Notwithstanding any law to the contrary, the commissioner may by further conditions and restrictions provide that the rate of amortization may be varied, including utilizing a period of negative amortization, in order to adjust the rate of interest.

SECTION 16. Chapter 167F of the General Laws is hereby amended by striking out section 1, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

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

"Bank", an association or corporation chartered by the commonwealth under chapter 168, 170 or 172.

"Board", the board of trustees or directors, as the case may be, in a bank.

"Capital stock", the sum of the par value of the preferred and common shares of capital stock of a trust company, issued and outstanding.

"Commissioner", the commissioner of banks.

"Federally chartered bank", a national banking association, federal savings and loan association, federal savings bank or federal credit union authorized to do business in the commonwealth.

"Stock corporation", an association or corporation chartered by the commonwealth under the provisions of chapter 168 or 170, which has converted to a stockholder form of corporation, or a trust company as defined in chapter 172.

"Surplus account", an account so designated on the books of a bank and consisting of amounts required by law.

"Thrift Institution", an association or corporation chartered by the commonwealth under chapter 168 or 170 which is in mutual form.

SECTION 17. Section 2 of said chapter 167F of the General Laws, as so appearing, is hereby amended by striking out the introductory paragraph, and inserting in place thereof the following paragraph:-

Every bank, subject to limitations imposed by this chapter or other general law, shall have the following powers and whatever further incidental or complimentary powers that may fairly be implied from those expressly conferred and those reasonably necessary to enable it to exercise fully those powers according to common customs and usages:

SECTION 18. Paragraph 31 of said section 2 of said chapter 167F, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following 2 paragraphs:-

- 32. To engage in an activity and to acquire and retain the shares of any company engaged in any activity that the commissioner determines to be financial in nature or incidental to the financial activity that is complementary to a financial activity and does not pose a substantial risk to the safety and soundness of the bank, subject to the approval of the commissioner and under limitations or conditions he may impose. In determining whether an activity is financial in nature or incidental or complementary thereto, the commissioner shall consider, but shall not be limited to, those activities considered to be financial in nature or incidental to the financial activity or an activity that is complementary to a financial activity under section 103, section 121 and section 122 of Public Law 106-102, entitled the "Gramm-Leach-Bliley Act of 1999". Notwithstanding any general or special law to the contrary, this chapter does not authorize a bank or a subsidiary or affiliate of a bank to sell title insurance.
- 33. To participate in the redevelopment access to capital program created under section 60 of chapter 23A and to make the loans and create the reserve and take other actions necessary or appropriate for participating in the program.

SECTION 19. Section 1 of chapter 167G of the General Laws, as so appearing, is hereby amended by striking out the definition of "Bank" or "such bank", and inserting in place thereof the following definition:-

"Bank" or "such bank", a savings bank, cooperative bank, trust company or limited purpose trust company.

SECTION 20. Chapter 171 of the General Laws is hereby amended by striking out section 8, as so appearing, and inserting in place thereof the following section:-

Section 8. With the written consent of the commissioner, the location of the main office of a credit union may be changed.

After notice and hearing as the commissioner may require and with his written permission and under conditions he approves, a credit union may establish and maintain 1 or more branch offices or depots in the county wherein the main office is located or on a site within 50 miles from the premises of the main office in a city or town in another county. The usual business transacted by a credit union at its main office may be transacted at a branch

office. The business at a depot shall be transacted only on days designated by the board of directors and shall be limited to the receipt of deposits and the collection of moneys due or payable to the credit union, and the business shall be subject to other conditions prescribed by the commissioner.

With the written consent of the commissioner a branch office or depot may be closed, or its location may be changed.

The offices of a credit union consolidating or merging under section 78 may be maintained as branch offices of the credit union, with the written permission of and under conditions approved by the commissioner.

SECTION 21. Section 11 of said chapter 171, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

A member shall not have more than 1 vote and, after a credit union has been incorporated for a year, no member shall be entitled to vote or to be a candidate for director until he has been a member for more than 3 months. An organization member or persons who are parties to a joint account may cast 1 vote on the share or deposit account at any of its meetings by a duly delegated agent or a party to the joint account. A minor shall not have the right to vote. A member may vote in person or by mail. Each credit union shall set forth in its by-laws the method of voting to be used. The voting methods shall be subject to conditions and limitations as the commissioner may establish.

SECTION 22. Section 79 of said chapter 171, as so appearing, is hereby amended by striking out the second paragraph.

SECTION 23. Chapter 172 of the General Laws is hereby amended by inserting after section 9 the following section:-

Section 9A. After notice of intent, application and hearing as the commissioner may require and with his written permission and under conditions he may impose, the commissioner may, if he is satisfied that public convenience and advantage will be promoted and that competition among banking institutions will not be unreasonably affected, grant a certificate to establish a limited purpose trust company for the purpose of conducting trust and fiduciary business authorized under chapter 167G and other law applicable to a state-chartered bank; provided, however, that it will have sufficient capital to support its business operations; provided further that any such limited purpose trust company shall not accept deposits, make loans or otherwise carry on a banking business in the commonwealth; and provided, further, that no person, other than an attorney licensed to practice law in the commonwealth, shall conduct such business in the commonwealth without having acquired the certificate.

A person seeking authority to establish a limited purpose trust company under this section shall file a notice and an application for a certificate with the commissioner, together with a fee, the amount of which shall be determined by the commissioner of administration under the provisions of section 3B of chapter 7. The application shall include the following:-

(a) the name under which the corporation will conduct business;

- (b) the name, residence and post office address of each officer of the corporation;(c) the location of the principal office thereof which shall be within the commonwealth:
- (d) the purpose for which the corporation is formed and the nature of the business to be transacted:
- (e) the amount and classes of its capital stock, and the number of shares into which any class is to be divided; and
 - (f) such other information as the commissioner considers necessary.

Upon receipt of the certificate from the commissioner, the corporation shall file its articles of organization with the state secretary and shall thereupon become eligible to conduct business; but, the certificate shall be considered to be revoked if the corporation does not commence business within 1 year after the date of issuance thereof by the commissioner.

In the transaction of business, a limited purpose trust company shall be subject to sections 11 to 30, inclusive, and other applicable sections of this chapter, and section 36A of chapter 167.

A limited purpose trust company may establish and maintain a trust office or a representative trust office in any state other than the commonwealth. A company intending to establish a trust office or representative trust office in the other state shall file a notice with the commissioner. The notice shall be in a form prescribed by the commissioner and shall contain the name and address of the limited purpose trust company, the location of the proposed office, and be accompanied by a copy of the resolution of its board of directors authorizing the establishment of the out-of-state office.

The company may commence business at the out-of-state trust office or representative trust office upon the expiration of 30 days from the date the required notice is received by the commissioner; but, the 30 day period may be extended by the commissioner upon notice in writing to the company that additional information is required to be submitted to him. For the purposes of this section, a trust office shall mean the business office of the limited purpose trust company at which its licensed business activities are transacted; and a representative trust office shall mean an office established by the company in order to market and solicit business and provide administrative support but at which, licensed business activities of the company could not be conducted.

A limited purpose trust company, or any similar institution as determined by the commissioner, established under the laws of any other state or the United States may, with the approval of the commissioner, establish and maintain an office in the commonwealth; if the laws of the state in which such company or similar institution was established expressly authorize, under conditions no more restrictive than those imposed by the laws of the commonwealth, as determined by the commissioner, the establishment of an office in said state by a limited purpose trust company chartered in the commonwealth.

The commissioner may establish rules and regulations necessary to carry out this section and to govern the affairs of the company, including an examination thereof by him. The regulations may specify which provisions of chapters 167 through 167G, chapters 183

and 184, and other laws of the commonwealth shall be applicable to any such limited purpose trust company.

SECTION 24. Chapter 172A of the General Laws is hereby repealed.

SECTION 25. Section 114A of chapter 140 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "unions", in line 4, the words:- or any subsidiary of the foregoing.

Approved December 30, 2004.

Chapter 462. AN ACT AMENDING CERTAIN APPROPRIATION ACTS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2004, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 13 of chapter 58 of the General Laws is hereby amended by striking out the first paragraph, as most recently amended by section 23 of chapter 352 of the acts of 2004, and inserting in place thereof the following paragraph:-

In 2005 and every fourth year thereafter, the commissioner shall, on or before June 1, determine as of January 1 the fair cash value as hereinafter provided of all land in every town owned by the commonwealth and used for the purposes of a fish hatchery, game preserve or wild life sanctuary, a state military camp ground, the Soldiers' Home in Massachusetts, the Soldiers' Home in Holyoke, a state forest, the University of Massachusetts, or a public institution under the department of correction, the department of education, the department of mental health, the department of mental retardation, the department of public health, the department of transitional assistance, or the department of youth services, land owned by the commonwealth known as the Wachusett Mountain State Reservation, the Mount Greylock State Reservation, the Blue Hills Reservation and the Middlesex Fells Reservation, and of all land owned by the commonwealth and under the care and control of the department of conservation and recreation and used for recreational or conservation purposes; and of all land held by the county commissioners for hospital purposes under sections 78 to 88, inclusive, of chapter 111; and of all land held by the department of environmental protection for use as a solid waste disposal facility under sections 18 to 24, inclusive, of chapter 16; and of any land acquired by the low-level radioactive waste management board pursuant to paragraph (g) of section 23 of chapter 111H.

SECTION 2. The second sentence of paragraph (1) of subsection (b) of section 22 of chapter 141 of the acts of 2003 is hereby amended by striking out the figure "\$10,000,000" and inserting in place thereof the following figure:-\$15,000,000.

SECTION 3. The second sentence of paragraph (1) of subsection (b) of section 24 of said chapter 141 is hereby amended by striking out the figure of "\$10,000,000" and inserting in place thereof the following figure:-\$15,000,000.

SECTION 4. Item 7003-0702 of section 2 of chapter 149 of the of 2004, as amended by section 94 of chapter 352, is hereby further amended by inserting after the words "job placement by Year Up of Boston" the following words:-; provided further, that \$350,000 shall be expended for the Urban League of Massachusetts.

SECTION 5. Said section 2 of said chapter 149 is hereby further amended by striking out item 8200-0200 and inserting in place thereof the following item:-8200-0200 For the operation of veteran, reserve and in-service training pro-

grams conducted by the municipal police training committee; provided, that the committee shall expend not less than \$250,000 in accordance with chapter 30B of the General Laws, for training and technical assistance for chiefs of police and administrative or command personnel by:(a) a combination of training manuals, seminars, computer based training and distance learning; (b) research, drafting and mailing of monthly articles and presentations on legal and administration topics; (c) training presentations during and following monthly meetings of police chiefs; (d) e-mail, toll-free consultation to chiefs on administrative issues and follow-up on seminar topics; (e) a statewide 3 day training conference on management, legal and leadership issues; provided further, that no expenditure authorized by this item shall be charged to item 8200-0222; provided further, that no expenditures shall be made, on or after the effective date of this act, which would cause the commonwealth's obligation for the purpose of this item to exceed the amount appropriated in this item; provided further, that funds shall be expended for the reopening of a satellite center in the town of Norwood; provided further, that the committee shall secure nonpublic funding for operational costs of the satellite center thereafter; and provided further, that not less than \$500,000 shall be expended for firearms training\$4,496,050

SECTION 6. Section 1 of chapter 241 of the acts of 2004 is hereby amended by striking out the fifth sentence.

SECTION 7. Item 7003-0702 of section 2 of chapter 352 of the acts of 2004 is hereby amended by striking out the figure "\$300,000" and inserting in place thereof the following figure:-\$650,000.

SECTION 8. Said section 2 of said chapter 352 is hereby further amended by striking out item 8200-0200.

SECTION 9. Item 1102-2399 of section 2E of said chapter 352 is hereby amended by striking out the words "provided further that not less than \$200,000 shall be expended for the Greenfield community youth center" and inserting in place thereof the following:-provided further, that not less than \$200,000 shall be expended for the Greenleaf community youth center.

SECTION 10. Section 109 of said chapter 352, is hereby repealed.

SECTION 11. Section 165 of said chapter 352 is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-For income tax years beginning on or after January 1, 2004 but before January 1, 2005, there shall be deducted from Part B adjusted gross income in determining Part B taxable income, under chapter 62 of the General Laws, amounts expended by an individual for tolls paid for through a FastLane account or for weekly or monthly transit commuter passes for MBTA transit or commuter rail, not including amounts reimbursed by an employer or otherwise.

SECTION 12. Sections 2 and 3 shall take effect on January 1, 2005.

Approved December 30, 2004.

This bill was returned on December 30, 2004, by the Lieutenant-Governor, Acting Governor to the House of Representatives, the branch in which said bill was originated, with Her objections in writing to the following Section therein:

Section Disapproved: SECTION 1.

Chapter 463. AN ACT ESTABLISHING THE ESSEX NORTH SHORE AGRICULTURAL AND TECHNICAL SCHOOL DISTRICT.

Be it enacted, etc., as follows:

SECTION 1. Chapter 74A of the General Laws is hereby repealed.

SECTION 2. As used in this act, the following words shall, unless the context requires otherwise, have the following meanings:

"Commissioner", the commissioner of education.

"District", the Essex North Shore Agricultural and Technical School District established in section 6.

"Division", the division of capital asset management and maintenance.

"Member municipality", a city or town which has elected membership in the district, or which has been admitted to membership in accordance with the district's by-laws.

"School committee", the school committee established in section 7.

SECTION 3. There shall be a temporary oversight board which shall consist of 11 members, for the purpose of overseeing all aspects of the planning and development of the new school in conjunction with the Massachusetts school building authority and the division of capital asset management; 5 of whom shall be from the North Shore vocational regional school to be appointed by the chairman of the North Shore vocational regional school committee and each shall be a resident of a different member town of the North Shore Vocational Regional School District; 3 of whom from the Essex agricultural and technical high school to be appointed by the chairman of the board of trustees of the Essex agricultural and technical high school and shall be residents of a municipality in Essex county with students currently attending Essex agricultural and technical high school; 1 of whom shall be a resident of the city of Peabody appointed by the mayor of the city; 1 of whom shall be a resident of the town of Danvers appointed by the town manager; and 1 of whom shall be appointed by the commissioner of agriculture. At its first meeting, the board shall elect a chairman from among its members. Any required votes of the temporary oversight board shall be by simple majority with no weighted vote. The temporary oversight board shall submit quarterly reports to the North Shore vocational regional school committee, the Essex agricultural and technical high school, the commissioner of education, the executive director of the Massachusetts School Building Authority, the director of the division of capital asset management and maintenance, the house and senate chairs of the joint committee on education, arts and humanities, and the chairs of the house and senate ways and means committees. The board, whose appointments shall be made within 30 days from the effective date of this act, shall not begin construction nor incur indebtedness until the vote required by section 4 has been certified by the commissioner of education.

Notwithstanding this act, or any other general or special law to the contrary, the governing entities in place for the North Shore vocational regional school and the Essex agricultural and technical high school shall remain in place and shall continue to exercise their powers, duties, and responsibilities until the July 1 preceding the opening of the Essex North Shore agricultural and technical school. These entities, and the temporary oversight board, shall be dissolved and cease to exist on the July 1 preceding the opening of the Essex North Shore agricultural and technical school, when the Essex North Shore Agricultural and Technical School District established in section 6 becomes the successor agency to the Essex agricultural and technical high school and the North Shore Vocational Regional School District pursuant to section 14.

SECTION 4. Any city or town which is a member of the North Shore Vocational Regional School District, or the city of Peabody may elect to become a member municipality of the district by vote of the city council or town meeting. A certified copy of the vote shall be sent by the city or town clerk to the commissioner. Upon the election by cities and towns representing at least 75 per cent of the October 1, 2004, foundation enrollment of the North Shore Vocational Regional School District, the commissioner shall certify the local adoption

of this chapter to the secretary of the commonwealth. Additional elections may be made subsequent to the date of the certification, but before the July 1 preceding the opening of the Essex North Shore agricultural and technical school. On or after that date, the admission of additional member municipalities shall be governed by the district's by-laws.

SECTION 5. The Massachusetts School Building Authority, in consultation with the temporary oversight board established in section 3, the department of education, and the division of capital asset management and maintenance shall examine the conditions necessary or convenient to facilitate the opening of the Essex North Shore agricultural and technical school, including, but not limited to, capital needs of the schools. The Authority shall include its findings as part of the annual school building needs assessment required by paragraph (a) of section 17 of chapter 70B and shall forward the findings, together with recommended legislation, if any, to the secretary of administration and finance, the joint committee on education, arts, and humanities, and the house and senate committees on ways and means, but not later than 6 months after the establishment of the temporary oversight board established in section 3.

SECTION 6. The Essex North Shore Agricultural and Technical School District is hereby established as a body politic and corporate, with all powers and duties conferred by law upon regional school districts to the extent that those powers and duties are not inconsistent with this act.

SECTION 7. There shall be an Essex North Shore agricultural and technical district school committee. The powers, duties and liabilities of the district shall be vested and exercised by the school committee in accordance with this chapter. The school committee shall consist of 20 members as follows: 3 members to be appointed by the commissioner of agriculture, with the approval of the governor; 1 additional member from the city of Peabody selected by mayor of the city; 1 member to be selected by each member community of the North Shore Regional Vocational District which votes under section 4 to become a member municipality of the Essex North Shore Agricultural and Technical School District; provided, that the selection of said members shall be in accordance with procedures in place in the North Shore regional vocational district before the establishment of the Essex North Shore Agricultural and Technical School District. Members shall serve 3 year terms with the initial terms structured so as to provide for staggered terms.

The commissioner or his designee shall fix the time and location of the initial meeting of the school committee and shall preside at such meeting until the election of a chairperson. At the initial meeting, the commissioner or his designee shall divide the members by lot into 3 groups as nearly equal in number as possible, the first group to serve until December 31 of the year following, the second group to serve until December 31 of the third group to serve until December 31 of the third year following. All members shall serve until their respective successors are duly appointed and qualified.

In any committee vote or election, each member of the school committee shall be entitled to cast 1 vote. In addition, those members representing member municipalities shall be entitled to cast 1 additional vote for each 50 students, or major portion thereof, who are

residents of the member's municipality and who are enrolled as full-time students in grades 9 to 12, inclusive, in any school operated by the district as of October 1 of the preceding calendar year. During the initial year of operation, the additional votes shall be based on enrollment at the Essex agricultural and technical high school, the North Shore Vocational Technical School District, and vocational programs at Peabody school district.

The school committee shall adopt by-laws governing the election of a chairman and

The school committee shall adopt by-laws governing the election of a chairman and other officers; the scheduling of annual and other meetings; the establishment of and delegation of powers to sub-committees; the admission of new member municipalities and the withdrawal of existing member municipalities; the calculation and payment of assessments and tuition; and other items not inconsistent with this chapter or other laws. The by-laws shall be adopted or amended by a $\frac{1}{2}$ vote of the school committee.

SECTION 8. The school committee shall have exclusive use of the property occupied as of July 1, 2004 by the Essex agricultural and technical high school at no cost for so long as it remains in use for the purpose of public education, and shall keep all buildings and improvements thereto in good repair. Title to the property shall remain with the commonwealth; but, notwithstanding any general or special law to the contrary, the division, acting on behalf of the commonwealth, may enter into a lease with the district for a term of years and upon conditions as the division and the district determine necessary to carry out this act. The school committee, with the approval of the commissioner of the division, may lease portions of the property for periods not to exceed 3 years; if the leases are for agricultural or educational purposes or are otherwise related to the district's mission.

SECTION 9. The district shall offer, in addition to its other vocational technical programs, comprehensive vocational technical agriculture programs in grades 9 to 12, inclusive. The vocational technical agriculture programs shall be under the supervision of a full-time coordinator. Admission to the vocational technical agriculture programs shall be open to all students in the commonwealth regardless of residence; but, the district may establish, with the approval of the commissioner, admissions criteria unrelated to residency. The vocational technical agriculture programs shall have a minimum full-time combined enrollment of 300 students unless a lesser number is approved by the commissioner. Section 12B of chapter 76 of the General Laws shall not apply to the admission of students to the programs. Tuition for all non-resident students in the vocational technical agriculture programs shall be established and paid pursuant to section 7C of chapter 74 of the General Laws. In approving the tuition rates, the commissioner shall take into account the specialized nature of vocational technical agriculture programs, and shall also include capital and debt service costs attributable to the programs.

SECTION 10. The district's annual budget shall be prepared and approved pursuant to section 16B of chapter 71 of the General Laws. District operating and capital expenses in excess of the required local contributions as established under chapter 70 of the General Laws shall be apportioned to the member municipalities on the basis of their respective pupil enrollment in the district; but, for the purpose of the apportionment each member municipality shall be considered to have at least 5 full-time students. During the initial year

of operation, any budgets and assessments approved before the July 1 preceding the opening of the Essex North Shore agricultural and technical school, pursuant to the North Shore Vocational Regional School District agreement or chapter 74A of the General Laws, shall have full force and effect. The district shall make appropriate provisions for the initial year of operation with regard to vocational programs transferred from the Peabody school district.

SECTION 11. Notwithstanding any general or special law to the contrary, the district shall be considered an eligible institution for financing assistance provided by the health and educational facilities authority established under chapter 614 of the acts of 1968. The school committee shall establish and maintain a capital reserve fund for the purpose of financing necessary facility maintenance and capital improvements. The capital reserve fund shall be subject to the limits on stabilization funds in section 16G ½ of chapter 71 of the General Laws. Except as provided in this section, the General Laws regulating borrowing by regional districts and limitations on borrowing by regional districts, including but not limited to chapter 70B of the General Laws and clauses (d), (e), (g), and (n) of section 16 of chapter 71 of the General Laws, shall apply to the district.

SECTION 12. The district shall be responsible for the transportation of its students in accordance with sections 7A and 16C of chapter 71 of the General Laws and may contract with municipalities for the provision of transportation services; but, the responsibility for non-resident students enrolled in the agricultural vocational programs shall be limited to students residing in municipalities within a 10 mile radius of the district, as determined by the commissioner.

SECTION 13. Employees of the district shall be eligible to participate in all group insurance programs and benefits administered by the group insurance commission pursuant to section 16 of chapter 34B of the General Laws; but, the district shall reimburse the commonwealth for costs of group insurance and benefits attributable to the district. Employees of the district shall become members of the city of Salem contributory retirement system, except that educators certified under section 38G of chapter 71 of the General Laws who are employed by the district shall be members of the teachers' retirement system under chapter 32. Employees of the district shall be considered public employees for purposes of tort liability under chapter 258 of the General Laws, and the school committee shall be considered the public employer for purposes of tort liability under said chapter 258.

SECTION 14. Commencing on the July 1 preceding the opening of the Essex North Shore agricultural and technical school, the Essex North Shore Agricultural and Technical School District shall be the successor agency to the Essex agricultural and technical high school and the North Shore Vocational Regional School District, and shall assume all assets, liabilities, and obligations of those entities except as provided by this act. Employees of the Essex agricultural and technical high school, employees of the North Shore Vocational Regional School District, and any employees of Peabody school district who become employees of Essex North Shore agricultural and technical school shall suffer no impairment of employment rights held immediately before that date. The employees shall suffer no interruption of service; no impairment of seniority, retirement, civil service or other rights;

no reduction in rate of compensation or salary grade; and no change in union representation. All employees shall continue their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered public employees within the meaning of section 1 of said chapter 150E, subject to the definitions set forth therein.

The school committee of the Essex North Shore Agricultural and Technical School District shall serve as the public employer for purposes of said chapter 150E and shall be responsible for the negotiation of all necessary collective bargaining agreements. Rights and obligations under collective bargaining agreements covering the employees that are in effect immediately before that date shall be assumed by and imposed upon the school committee as of that date. Employees who are subject to collective bargaining agreements shall continue to be represented by the employee organizations that are parties to the agreements until those employees elect to alter the representation in accordance with said chapter 150E.

SECTION 15. Notwithstanding any general or special law to the contrary, the Essex North Shore Agricultural and Technical School District shall sell any real or personal property formerly owned by the North Shore Regional Vocational School District when the property is no longer needed for the district's educational programs. The town of Middleton shall have the option to purchase the real property at fair market value as determined by an independent appraisal. The proceeds from any sale shall be used to reduce any outstanding long-term indebtedness of the North Shore Vocational Regional School District and to make any required repayments to the commonwealth pursuant to chapter 70B of the General Laws. Any remaining proceeds shall be distributed to the former member municipalities of the North Shore Vocational Regional School District in accordance with the capital cost allocation provisions of said district's regional agreement.

SECTION 16. Notwithstanding any general or special law to the contrary, any member municipality of the North Shore Vocational Regional School District which does not elect membership in the Essex North Shore Agricultural and Technical School District shall remain liable for any unpaid prior year assessments and for its share of the outstanding indebtedness of the North Shore Vocational Regional School District, including interest thereon. Notwithstanding section 7 of chapter 74A of the General Laws, those cities or towns shall pay tuition for any students enrolled in the district pursuant to section 7C of chapter 74 of the General Laws.

SECTION 17. The Essex North Shore agricultural and technical school shall not be an independent agricultural and technical school pursuant to chapter 74A of the General Laws.

SECTION 18. Section 1 and sections 6 to 17, inclusive, shall take effect following certification by the commissioner of education of the votes required by section 4, when the Essex North Shore Agricultural and Technical School District, established in section 6, becomes the successor agency to the Essex agricultural and technical high school and the North Shore Vocational Regional School. This certification by the commissioner shall occur not later than July 1, 2009.

SECTION 19. The remainder of this act shall take effect upon its passage.

Approved December 30, 2004.

Chapter 464. AN ACT FURTHER PREVENTING INSURANCE FRAUD IN THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to prevent insurance fraud in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 112 of the General Laws is hereby amended by inserting after section 23M the following section:-

Section $23M \frac{1}{2}$. (a) The board shall promulgate regulations necessary to regulate and inspect the practice settings of its licensees and may require the practice settings to be licensed by the board if the practice settings are not regulated by the department of public health. Fees for the licensing of any practice setting and renewals thereof shall be determined by the secretary of administration pursuant to section 3B of chapter 7 and shall be deposited in the Division of Professional Licensure Trust Fund established by section 35V of chapter 10.

(b) This section shall not apply to a physical therapist who owns and operates the practice, does not employ a physical therapist and is not in partnership with any other physical therapist.

SECTION 2. Section 23P ½ of said chapter 112, as appearing in the 2002 Official Edition, is hereby amended by adding the following 3 paragraphs:-

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is suspended for more than 1 year for professional misconduct with regard to insurance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy until the license is reinstated by the board.

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is suspended for a second offense with regard to insurance claims shall have his license permanently revoked.

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is revoked with regard to insurance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy.

SECTION 3. Section 89 of said chapter 112, as so appearing, is hereby amended by inserting after the definition of "Chiropractic" the following definition:

"Chiropractic facility", a place, office, clinic or establishment in which chiropractic treatment is provided or in which business and patient records related to chiropractic treatment are used or stored which has been registered by the board pursuant to section 94A.

SECTION 4. Said chapter 112 is hereby further amended by inserting after section 94 the following section:-

Section 94A. (a) A person shall not engage in the practice of chiropractic except in a licensed chiropractic facility and provided the person is licensed by the board pursuant to section 91 or 92.

- (b) The board may authorize 1 or more licensed chiropractors, or any person employing a licensed chiropractor, to operate a licensed chiropractic facility if the facility satisfies the requirements established by the board by regulations, and upon payment to the board of an annual fee. The board shall promulgate regulations necessary to ensure the safe and lawful practice of chiropractic.
- (c) A chiropractic facility shall not be licensed or operated unless the board has in its records the name and license number of the licensed chiropractor who is the chiropractor of record for that chiropractic facility. The chiropractor of record for the licensed chiropractic facility shall be responsible for operating the chiropractic facility in compliance with the laws of the commonwealth and the rules and regulations of the board.
- (d) Each licensed chiropractic facility may be inspected by the board or its agents to determine its compliance with the laws of the commonwealth and the rules and regulations of the board. The chiropractor of record shall be responsible for cooperating with the inspection and any investigations conducted by the board or its agents. Upon request, the chiropractor of record shall provide the board or its agents with access to and, if requested, copies of any records, charts, reports, treatment notes, billing records, x-rays, test results, reviews, assessments, papers, correspondence and any other data or material. Any party required to provide documents in compliance with this section shall not be liable in any civil or criminal action for providing documents to the board.
- (e) A license issued by the board for a chiropractic facility shall be valid only for the location named therein, and shall not be transferable. A license or renewal issued to a chiropractic facility shall expire on the date the director of the division of professional licensure determines. Fees for licenses and renewals thereof shall be determined by the secretary of administration pursuant to section 3B of chapter 7 and shall be deposited in the Division of Professional Licensure Trust Fund established by section 35V of chapter 10.

 (f) This section shall not apply to a chiropractor who owns and operates the practice,
- does not employ a chiropractor and is not in partnership with any other chiropractor.

SECTION 5. Section 95 of said chapter 112, as so appearing, is hereby amended by adding the following 3 paragraphs:-

A chiropractor whose license, certificate, registration, or authority relating to the practice is suspended for more than 1 year for professional misconduct with regard to insur-

ance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic medicine or physical therapy until the license is reinstated by the board.

A chiropractor whose license, certificate, registration, or authority relating to the practice is suspended for a second offense with regard to insurance claims shall have the license permanently revoked.

A chiropractor whose license, certificate, registration, or authority relating to the practice is revoked with regard to insurance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy.

SECTION 6. Chapter 175 of the General Laws is hereby amended by inserting after section 113U the following section:-

Section 113V. (a) For purposes of this section, the following words shall have the following meaning:-

"Automobile Insurers Bureau of Massachusetts", the rating organization licensed by the commissioner under section 8 of chapter 175A, or its successor.

"Commissioner", the commissioner of insurance.

"Insurance fraud bureau", a bureau authorized by chapter 338 of the acts of 1990, or its successor.

"Medical licensing boards", the board of registration in medicine and those boards of registration and examination in the division of professional licensure which relate to medical or health care providers.

- (b) At least annually, the medical licensing boards that receive funding pursuant to paragraph (3) of subsection (d) shall review the data made available to them by the Automobile Insurers Bureau of Massachusetts for indication of overutilization of practice or fraud involving automobile insurance claims by individual practitioners or by provider groups. Where overutilization of practice or fraud involving automobile insurance claims by 1 or more licensees is suspected, the board shall conduct an investigation. If the investigation results in evidence that a pattern of fraud, overutilization of practice, or professional misconduct exists, the medical licensing boards shall initiate professional disciplinary proceedings to determine whether that practitioner's or provider group's license should be suspended, revoked, or be subjected to some other appropriate penalty.
- (c) If a licensee subject to the jurisdiction of the medical licensing boards has been convicted of insurance fraud, the medical licensing boards shall immediately initiate professional disciplinary proceedings to determine whether the applicable license should be suspended, revoked, or subjected to some other appropriate remedy.
- (d)(1) The costs of this program shall be paid by the Automobile Insurers Bureau of Massachusetts and not passed on to holders of automobile insurance policies in the commonwealth. Each insurer licensed in the commonwealth to write a motor vehicle liability policy as defined in section 34A of chapter 90 shall pay the Automobile Insurers Bureau of Massachusetts an amount equal to 10 cents for each private passenger motor vehicle liability

policy written as of December 31 of the preceding year, according to the records of the Automobile Insurers Bureau of Massachusetts. On or before March 1 of each year, the Automobile Insurers Bureau of Massachusetts shall remit the total amount paid under this subsection to the commissioner. An insurer shall not include the assessment paid under this section in any data used to fix and establish rates under section 113B of chapter 175.

- (2) On or before March 1 of each year, the commissioner shall consult with an advisory group consisting of the attorney general or his designee, a district attorney or his designee to be appointed by the attorney general, a representative of the insurance fraud bureau, and 2 members of the public to be appointed by the governor on how the funds paid under subsection (1) should be distributed. Within 60 days of the receipt of said moneys, the commissioner shall allocate and distribute moneys to the medical licensing boards on an analysis of the likelihood of overutilization of practice or fraud relating to automobile related injuries by practitioners under each medical licensing board's jurisdiction and the needs of each applicable board for the use of the funds after disbursement.
- (3) The funds collected pursuant to paragraph (1) shall be used solely by the health care fraud unit of the division of professional licensure, the disciplinary unit of the board of registration in medicine and other medical licensing boards for the investigation of overutilization of practice or fraud involving automobile insurance claims. Any funds not expended by the various medical licensing boards within 12 months of their receipt shall be returned to the commissioner who shall keep the funds in a separate account. These funds shall be made available to the medical licensing boards during the next calendar year in accordance with this subsection.
- (e) Any data made available to or received by the medical licensing boards from the Automobile Insurers Bureau of Massachusetts pursuant to this act shall not be considered a "public record" as defined in clause Twenty-sixth of section 7 of chapter 4.
- (f) In the absence of fraud or bad faith, an insurer or employee or agent thereof, member of said insurance fraud bureau or an employee or an agent thereof, member of said medical licensing boards or an employee or agent thereof, member of said Automobile Insurers Bureau of Massachusetts or an employee or agent thereof, or other person subject to this section, shall not be subject to criminal or civil liability, and no civil cause of action of any nature shall arise against such person for any information relating to suspected over-treatment or fraudulent insurance transactions furnished to medical provider licensing boards or the insurance fraud bureau, their agents and employees pursuant to this section. Nothing herein is intended to abrogate or modify in any way common law privilege of immunity heretofore enjoyed by any person.

SECTION 7. Chapter 266 of the General Laws is hereby amended by inserting after section 111B the following section:-

Section 111C. (a) As used in this section, the following words shall have the following meanings:-

"Provider", an attorney, a health care professional licensed pursuant to chapter 112,

an owner or operator of a health care practice or facility, any person who creates the impression that he or his practice or facility can provide legal or health care services, or any person employed or acting on behalf of any of the aforementioned persons.

"Public media", telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards and mailed or electronically transmitted written communications that do not involve in-person contact with a specific prospective client, patient or customer.

"Runner", a person who, for a pecuniary benefit, procures or attempts to procure a client, patient or customer at the direction of, request of, or in cooperation with a provider whose purpose is to seek to fraudulently obtain benefits under a contract of insurance or fraudulently assert a claim against an insured or an insurance carrier for providing services to the client, patient or customer. "Runner" shall not include a person who procures or attempts to procure clients, patients or customers for a provider through public media or a person who refers clients, patients or customers to a provider as otherwise authorized by law.

(b) Whoever knowingly acts as a runner or uses, solicits, directs, hires or employs another to act as a runner for the purpose of defrauding an insured or an insurance carrier shall be punished by imprisonment in the state prison for not more than 5 years, by imprisonment in a jail or house of correction for not less than 6 months nor more than 2 ½ years or by a fine of not less than \$1,000 nor more than \$4,000.

SECTION 8. Section 23B of chapter 112 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the paragraph contained in lines 17 through 26, inclusive, and inserting in place thereof the following paragraph:-

Licenses shall expire every 2 years on the birth anniversary of the licensee. Licensees shall pay to the board a renewal fee determined by the secretary of administration and finance. The board may require specific continuing education as a condition of license renewal. The board may provide for the late renewal of a license that has lapsed and may require the payment of a late fee, an examination, continuing education, and supervised experience before issuing the renewed license. For purposes of implementing the transition to birthday renewals, for licenses renewing on or about January 2006, the board may issue licenses that expire in less than 2 years.

Approved January 3, 2005.

Chapter 465. AN ACT AUTHORIZING A CERTAIN QUESTION TO BE PLACED ON THE BALLOT IN THE TOWN OF LANCASTER.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Lancaster shall place on the ballot, at a special town election to be held 35 days after the effective date of this act, the following question:

"Shall the town vote to accept section 282 of chapter 149 of the acts of 2004, which makes Claire B. McNamara, the surviving spouse of firefighter Martin H. McNamara V, so long as she remains unmarried, and her dependents, eligible for health insurance through the town of Lancaster on the same basis as all other retirees with responsibility for the retiree's share of all premiums?"

If a majority of the votes cast in answer to this question is in the affirmative, section 282 of chapter 149 of the acts of 2004 shall take effect, but not otherwise.

SECTION 2. This act shall take effect upon its passage.

Approved January 3, 2005.

Chapter 466. AN ACT TO DECOUPLE FROM FEDERAL PRODUCTION ACTIVITY DEDUCTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to decouple from federal production activity deduction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

- **SECTION 1.** Paragraph (1) of subsection (d) of section 2 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following subparagraph:-
- (O) The deduction allowed by section 199 of the Code, as amended and in effect for the current tax year.
- **SECTION 2.** The definition of "Net income" in section 1 of chapter 63 of the General Laws is hereby amended by striking out clauses (c) and (d), as so appearing, and inserting in place thereof the following 3 clauses:-
- (c) taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by a state;
 - (d) the deduction allowed by section 168(k) of the Code; or
 - (e) the deduction allowed by section 199 of the Code.
- **SECTION 3.** Paragraph 4 of section 30 of said chapter 63, as most recently amended by section 5 of chapter 143 of the acts of 2003, is hereby further amended by adding the following clause:-
 - (vi) the deduction allowed by section 199 of the Code.
- **SECTION 4.** Paragraph (b) of subsection (1) of section 52A of said chapter 63, as appearing in the 2002 Official Edition, is hereby amended by striking out clauses (iii) and (iv) and inserting in place thereof the following 3 clauses:-

- (iii) taxes on or measured by income, franchise taxes measured by gross or net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States or a foreign country or a political subdivision of any of the foregoing,
 - (iv) the deduction allowed by section 168(k) of the Code, and
 - (v) the deduction allowed by section 199 of the Code.

SECTION 5. This act shall apply to taxable years beginning on or after January 1, 2005.

Approved January 3, 2005.

Chapter 467. AN ACT INCREASING THE MINIMUM AGE FOR APPOINTMENT AS A POLICE OFFICER.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to increase the minimum age for appointment of police officers, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 10 of chapter 22C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 26, the word "nineteenth" and inserting in place thereof the following figure:- twenty-first.

SECTION 2. Section 58 of chapter 31 of the General Laws, as so appearing, is hereby amended by striking out, in lines 18 and 19, the words "or police officer".

SECTION 3. The second paragraph of said section 58 of said chapter 31, as so appearing, is hereby amended by adding the following sentence:- No person shall be eligible to take an examination for original appointment to the position of police officer in any city or town if he will not have reached his twenty-first birthday on or before the final date for the filing of applications for such examination, as so stated.

SECTION 4. Section 64 of said chapter 31, as so appearing, is hereby amended by striking out, in line 14, the word "nineteenth" and inserting in the place thereof the following figure:- twenty-first.

SECTION 5. Notwithstanding any general or special law to the contrary, no person who has not reached his twenty-first birthday shall be appointed for the first time as a public safety officer in the division of law enforcement of the department of fisheries, wildlife and recreational vehicles or a campus police officer at a state or community college. The minimum age restriction for original appointment to said positions in effect before the effective

date of this act shall apply to persons who have completed a competitive examination for said position before the effective date of this act.

SECTION 6. Section 10 of chapter 22C of the General Laws in effect before the effective date of this act shall apply to any person who has completed a competitive examination for appointment to the state police before the effective date of this act.

Approved January 5, 2005.

Chapter 468. AN ACT PROHIBITING FEES FOR MAILING BILLS OR INVOICES.

Be it enacted, etc., as follows:

Chapter 93 of the General Laws is hereby amended by inserting after section 43 the following section:-

Section 43A. A person engaged in trade or commerce shall not assess a fee, penalty or other charge for the sending of an original bill or invoice by postal mail to a natural person in this commonwealth; but this section shall not apply to a reasonable discount offered to a natural person for voluntary agreement to pay or otherwise satisfy a bill or invoice after its receipt by means other than postal mail, or for voluntary options such as customized bills or invoices.

Approved January 5, 2005.

Chapter 469. AN ACT PROVIDING FOR THE APPOINTMENT OF A CLERK-TREASURER OF THE ONSET FIRE DISTRICT.

Be it enacted, etc., as follows:

SECTION 1. Section 7 of chapter 408 of the acts of 1924 is hereby amended by striking out the last paragraph, added by chapter 12 of the acts of 1999, and inserting in place thereof the following 2 paragraphs:-

The prudential committee of the district shall appoint a suitably qualified person to the office of clerk-treasurer of the district. The clerk-treasurer shall have and exercise all the powers and rights and be subject to all the duties and liabilities now or hereafter conferred or imposed by law upon fire district clerks and fire district treasurers, and the district shall not have an office of clerk or an office of treasurer. The clerk-treasurer shall hold office at the will of the prudential committee and may be removed from office in the discretion of the prudential committee. The clerk-treasurer shall be sworn to the faithful performance of duty by the chairman of the prudential committee or by a justice of the peace. In case of death,

resignation or removal from office of the clerk-treasurer, the prudential committee shall appoint a suitably qualified person to fill the vacancy.

The prudential committee may establish an employment contract for a period of time with a clerk-treasurer appointed by the prudential committee to provide for the salary, fringe benefits and other conditions of employment, including but not limited to severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties of office, liability insurance, leave, supplemental retirement and insurance benefits for the clerk-treasurer. Nothing in the preceding sentence shall affect the appointment or removal powers of the prudential committee over the clerk-treasurer.

SECTION 2. Notwithstanding section 1 of this act, the incumbent in the office of clerk-treasurer upon the effective date of this act shall continue to hold that office and perform the duties thereof until the expiration of the term for which he was elected and the appointment and qualification of a successor, or until the incumbent otherwise vacates the office.

Approved January 5, 2005.

Chapter 470. AN ACT RELATIVE TO THE GRANTING OF ALL ALCOHOLIC BEVERAGES LICENSES TO BE DRUNK ON THE PREMISES BY THE TOWN OF ROCKPORT.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding sections 11, 11A and 17 of chapter 138 of the General Laws, or any other general or special law to the contrary, the board of selectmen of the town of Rockport may place upon the official ballot to be used at the next annual town election the following question:-

Shall the board of selectmen be authorized to grant up to 10 year-round licenses and up to 20 seasonal licenses for the sale of all alcoholic beverages to be drunk on the premises by patrons of restaurants but only to patrons who are seated at tables or on stools for the consumption of meals, or for a special license under section 14 of chapter 138 of the General Laws or licenses for the sale of all alcoholic beverages to be drunk on the premises by those patrons attending a function, social gathering or conference in such establishments, including but not limited to, inns and hotels as deemed appropriate by the board?

Yes

No

If a majority of votes cast in answer to the question are in the affirmative, the town may grant licenses for the sale of all alcoholic beverages to be drunk on the premise of restaurants and other establishments. Nothing in this act shall authorize the issuance of licenses for the sale of all alcoholic beverages not to be drunk on the premises. The board

of selectmen may from time to time issue regulations for the granting of the licenses and define terms appropriate to carrying out the objectives of this act. Notwithstanding section 12 of said chapter 138, the board of selectmen, in its discretion, may limit the hours during which such sales may be made. The granting of such licenses shall in all other respects be governed by said chapter 138.

SECTION 2. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 471. AN ACT AUTHORIZING THE TOWN OF ORLEANS TO ISSUE BONDS TO CREATE OR PRESERVE AFFORDABLE HOUSING.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, and in addition to the powers granted by chapter 260 of the acts of 2000, the town of Orleans may issue bonds or notes for a period of not more than 20 years for the purpose of creating or preserving affordable housing as defined in chapter 104 of the Orleans town code. Except as otherwise provided in this act, such bonds or notes shall be subject to chapter 44 of the General Laws.

SECTION 2. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 472. AN ACT RELATIVE TO FILLING VACANCIES IN THE CITY COUNCIL OF THE CITY OF QUINCY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding chapter 633 of the acts of 1956, chapter 11 of the acts of 1984, section 50A of chapter 43 of the General Laws or any other general or special law to the contrary, if a vacancy occurs in a ward councilor position of the city council of the city of Quincy for any cause during the first 12 months of the term of office of the council, the city clerk shall forthwith call a special election to elect a new ward councillor for the remainder of the term.

SECTION 2. Any vacancy occurring in the position of councilor-at-large in the council shall be filled pursuant to section 50A of chapter 43 of the General Laws.

SECTION 3. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 473. AN ACT RELATIVE TO THE CHARTER OF THE CITY OF PEABODY.

Be it enacted, etc., as follows:

The charter of the city of Peabody, which is on file in the office of the archivist of the commonwealth as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out section 35 and inserting in place thereof the following section:-

Section 35. Condemnation of Land for Municipal Purposes.

At the request of any department, and with the approval of the mayor and the city council, the city council may take in fee, in the name of the city, for any municipal purpose any land within the limits of the city not already appropriated to public use. Land taken as such by right of eminent domain shall be paid for in the manner provided for the taking of, and the payment of damages for, land taken for highways. No land shall be taken until an appropriation by loan or otherwise for the general purpose for which the land is needed shall have been made by the mayor and city council, by a ½ vote of all its members; nor shall a price be paid in excess of the appropriation, unless a larger sum is awarded by a court of competent jurisdiction. All proceedings in the taking of land shall be under the advice of the law department, which shall keep a record thereof.

Approved January 5, 2005.

Chapter 474. AN ACT AUTHORIZING THE TOWN OF MILLBURY TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Millbury may grant to The Shops at Blackstone Valley located at 70 Worcester/Providence turnpike in said town, a license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of chapter 138. The license shall be subject to all of said chapter 138 except for section 17, and the licensing authority shall not approve the transfer of the license to any other location.

SECTION 2. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 475. AN ACT RELATIVE TO THE FINANCIAL CONDITIONS IN THE TOWN OF SOUTHBRIDGE.

Be it enacted, etc., as follows:

SECTION 1. (a) Notwithstanding any general or special law, town charter provision or local by-law to the contrary, the town of Southbridge, with the approval of the commissioner of revenue, in this act called the commissioner, or with the approval of the finance advisory board, in this act called the board, if the board has been established under section 3, may borrow, at one time or from time to time, sums approved by town council and then by the commissioner or the board, but in no event in an amount in the aggregate more than \$2,500,000 to maintain and operate the town while it adjusts the level of its expenses and revenues to achieve balanced budgets and fiscal stability. The commissioner or board may limit such borrowing to an amount or amounts less than the amount or amounts approved by town council and shall limit such borrowing to the extent the commissioner or board, if established under section 3, determines that the town is not levying property taxes up to its levy limit and otherwise reasonably maximizing its local revenues. Bonds or notes issued under this act for operating purposes may be issued for a term of not more than 5 years and shall be backed by the full faith of the town. The bonds and notes shall be eligible to be issued as qualified bonds or notes pursuant to chapter 44A of the General Laws. Indebtedness incurred under this act shall not be included in determining the statutory limit of indebtedness of the town under section 10 of chapter 44 of the General Laws but, except as provided in this act, shall otherwise be subject to said chapter 44. Amounts raised to pay indebtedness incurred under authority of this section shall be subject to section 21C of chapter 59 of the General Laws.

- (b) The maturities of each issue of bonds or notes authorized under this act, including any refunding bonds, may, if approved by the town officers authorized to issue and approve the bonds or notes, and by the commissioner or board, be arranged so that for each issue the amounts payable in the several years for principal and interest combined are as nearly equal as is practicable in the opinion of the officers authorized to issue and approve the bonds or notes, or in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.
- (c) All proceeds of any loan authorized shall be deposited in a separate fund which shall be set up on the books of the town of Southbridge and be maintained separate and apart from all other funds and accounts of the town. This fund shall be called the Town of Southbridge Financial Stability Fund, in this act called the fund. The council, with the approval of the commissioner or board, may authorize disbursements from the fund for operating purposes that the town manager considers appropriate to maintain and continue town operations. Funds borrowed for operating purposes may be applied, with the approval of the director of accounts in the department of revenue, in this act called the director, as general revenue for purposes of section 23 of chapter 59 of the General Laws. The director may establish rules and procedures that he considers appropriate relating to disbursements from the fund and the reporting and accounting for these disbursements.

SECTION 2. As an alternative to borrowing authorized under section 1, and notwithstanding any general or special law or town charter provision or by-law to the contrary, the town of Southbridge may capitalize a sum not to exceed \$2,500,000, the amorti-

zation amount, and fund the amortization amount in equal or decreasing annual installments over a period starting with fiscal year 2006 and not exceeding 5 years. For fiscal year 2006, and fully subject to section 21C of chapter 59 of the General Laws, the board of assessors of the town of Southbridge, may, subject to the approval of the commissioner, or with the approval of the finance advisory board, in this act called the board, if the board has been established under section 3, deduct such portion of the amortization amount as the commissioner approves as consistent with this act, from the amount to be assessed pursuant to section 23 of said chapter 59. Under the conditions imposed in this act, the assessors of the town of Southbridge may similarly deduct such portion of the amortized amount in any year until the amortization is completed no later than fiscal year 2010.

SECTION 3. (A) With respect to fiscal year 2006, and in any other year which bonds, notes or an amortization amount authorized under this act remain outstanding, no later than 10 days following the enactment of the town's annual operating budget or June 1, whichever is earlier, the assessors and council shall submit to the director of accounts a pro forma tax rate recapitulation for the following fiscal year. The director shall ascertain if the town budget for that fiscal year contains reasonable revenues from taxation and other sources to meet the appropriations and other amounts required by law to be raised under section 23 of chapter 59 of the General Laws, and the director shall report his conclusion to the commissioner. If the commissioner determines that the town budget as presented would not permit certification of the tax rate for the next fiscal year to be approved, he shall certify such determination in writing and provide notice thereof with a copy of the certificate to the secretary of administration and finance, the clerks of the senate and house of representatives, the town council of the town of Southbridge, and the town clerk of the town of Southbridge, and upon such notifications, the board shall forthwith be established in the town with the powers and duties set forth in this act. The board shall exercise its powers and duties only for the limited purpose of ensuring that the town budget is balanced. The board shall exercise its powers and duties only so long as amounts borrowed or capitalized before June 30, 2005 under sections 1 and 2 remain outstanding.

- (B) The board shall consist of the deputy commissioner of the division of local services in the department of revenue or his designee, the director of accounts or his designee, and the chair of the town council or his designee.
- (C) Until the board ceases to exist, no appropriation, borrowing authorization or transfer shall take effect until approved by the board. As used in the preceding sentence, a transfer shall not include a transfer by the advisory and financial committee from the reserve fund provided for in section 6 of chapter 40 of the General Laws. The board may approve an appropriation, borrowing authority or transfer, in whole or part. In addition to the authority and powers conferred elsewhere in this act, and notwithstanding any town charter provision, or local by-law to the contrary, the board shall have the following authority:
- (a) The authority, by majority vote, to amend at any time any appropriation, borrowing authority, transfer, or other municipal spending authority. The authority to amend, pursuant to the authority contained in this act, shall include the power to increase or decrease

an existing appropriation, borrowing authorization, transfer or spending authority; the authority to eliminate an existing appropriation, borrowing authorization, transfer or spending authority; and the power to create an appropriation, transfer or spending authority. In exercising its authority under this clause, the board may act with respect to municipal spending purposes that are not the subject of separately identified appropriations. Nothing in this act shall allow the board to unilaterally modify any contracts with any municipal employees.

- (b) If there is no annual budget lawfully established for a fiscal year by the first day of such fiscal year, the authority, by majority vote, to establish such appropriations for that fiscal year as the board deems appropriate, and to amend, as provided for above such appropriations during the fiscal year.
- (c) The authority, by majority vote, to encumber or impound, at any time, any unexpended or unencumbered appropriation or spending authority of any kind, notwithstanding the prior approval of the board of such appropriation or spending authority. To the extent that funds previously encumbered or impounded remain encumbered or impounded at the conclusion of the fiscal year, such amounts shall revert to the General Fund.
- (d) In addition and without limitation of the other authority in this section, the independent authority, by majority vote, to establish, set, raise or lower any fee, rate or charge, for any service, license, permit or other municipal activity, otherwise within the authority of the town to establish, set, raise or lower. No such fee, rate or charge shall be established, set, raised or lowered without written notice to the town council at least 45 days before the effective date of such action.
- (D) Action by the board, under the authority of this act, shall in all respects constitute valid and lawful action by the town for purposes of chapters 40, 41, 44, and 59 of the General Laws and for all municipal finance and other matters.
- (E) While the board continues in existence, the town manager shall, at the same time as the annual budget is submitted to the town council, provide to the board a copy of the proposed annual budget together with a supporting revenue and expenditure statement in such detail as the board may prescribe. The board shall review such budgetary information and may issue a report of its findings.
- (F) In order to promote and ensure the fiscal stability of the town of Southbridge, the board may also require the filing of a detailed annual work plan by each municipal department, which shall be approved by the town council, school committee, or other elected board as appropriate, setting forth certain actions that may be implemented by each such department through its department head to ensure greater efficiency in the delivery of services by the town.
- (G) Each work plan shall be in such detail as the board may prescribe, and may include, but not be limited to, the following: (1) a plan for improved financial and spending controls; (2) budget guidelines and objectives for the fiscal year; (3) a professional and nonprofessional staffing plan; (4) a plan for other proposed savings to be implemented. Any

such plan submitted by the school department shall be approved by the school committee prior to submission to the board.

- (H) While the board is in existence, the board may require that a status report be filed with the board by each department head on a quarterly basis.
- (I) The board may waive any reporting or filing requirements contained in this section.
- (J) The board may prepare reports of its findings and issue recommendations for further action to the town council, school committee or other elected board, municipal department heads, or agencies of the commonwealth that the board determines appropriate. Members of the board who are employees or officers of the commonwealth or the town of Southbridge shall serve without compensation. The board may adopt such rules and procedures that it considers necessary and appropriate to effectuate the purposes of this act.

SECTION 4. The town accountant, or other official with responsibility for accounting matters, of the town of Southbridge shall have the powers and duties vested in this office by general or special law, and in addition, the powers and duties provided in this act. To the extent not otherwise inconsistent with this act, the office of the town accountant shall also have the powers and duties provided by local by-law.

The town accountant shall, in addition to his other duties, provide, upon majority vote and at the written request of the town council, within a reasonable time period from such request, an oral or written assessment, or both, as the town council may request, of the current and future financial impact of the cost of any proposed appropriation, lease or contract arrangement for a term including more than one fiscal year, collective bargaining agreement or borrowing authorization, particularly, but not limited to, as such cost item would relate to the continuous provision of the existing level of municipal services. To the extent reasonable, this assessment shall include an analysis or other information of a financial nature as is specifically requested by the town council. The assessment and analysis shall be provided by the town accountant as his professional opinion.

SECTION 5. (a) Notwithstanding any general or special law, town charter provision or local by-law to the contrary, but subject to section 21C of chapter 59 of the General Laws, the town of Southbridge shall establish a special reserve fund for extraordinary and unforeseen expenditures, which fund shall be called the Supplemental Reserve Fund to Ensure Fiscal Stability. This fund shall be separate and in addition to any amounts appropriated pursuant to section 6 of chapter 40 of the General Laws.

- (b) Commencing with fiscal year 2006 and for all fiscal years thereafter, before the date when the tax rate is fixed, the board of assessors shall include in the amounts to be raised pursuant to section 23 of chapter 59 of the General Laws for such fiscal year an amount, the supplemental reserve fund sum, as determined under this section, such amount to be certified to the board of assessors by the town accountant.
- (c) The supplemental reserve fund sum for fiscal year 2006 shall be an amount equal to 0.25 per cent of the gross amount to be raised for the prior fiscal year as appearing on the town's tax rate recapitulation for that prior year; the supplemental reserve fund sum for fiscal

year 2007 shall be an amount equal to 0.50 per cent of the gross amount to be raised for the prior fiscal year as appearing on the town's tax rate recapitulation for that prior year; the supplemental reserve fund sum for fiscal year 2008 shall be an amount equal to 0.75 per cent of the gross amount to be raised for the prior fiscal year as appearing on the town's tax rate recapitulation for that prior year; the supplemental reserve fund sum for fiscal year 2009 shall be an amount equal to 1 per cent of the gross amount to be raised for the prior fiscal year as appearing on the town's tax rate recapitulation for the prior year; and the supplemental reserve fund sum for fiscal year 2010 and each subsequent fiscal year shall be an amount equal to 1.5 per cent of the gross amount to be raised for the prior fiscal year as appearing on the town's tax rate recapitulation for that prior year.

- (d) In each year the amount required to be raised for such supplemental reserve fund may be reduced by the amount, if any, remaining in the supplemental reserve fund established for the preceding year after all expenditures have been made therefrom as authorized in this act, and this remaining amount shall be retained in such supplemental reserve fund provided for the then current fiscal year.
- (e) Transfers or expenditures may be made from the supplemental reserve fund of any fiscal year during that fiscal year only, and then only by the town council, and if the board continues in existence at the time of such transfer or expenditure, only with the approval of the board. Each such transfer or expenditure request by the town manager shall be accompanied by a written statement detailing the amount and the reason for the transfer or expenditure. Except for such transfers or expenditures as are authorized in this act, there shall be no other transfers or reductions in the amount of this fund.
- (f) All amounts required by this act to be raised for each fiscal year shall be certified to the board of assessors by the town accountant before the establishment of the tax rate for the then current fiscal year. While the board remains in existence, the board, to the extent it considers it appropriate to effectuate the purposes of this act, may waive in part or in whole the requirements of this section.

SECTION 6. No official of the town of Southbridge, except in the case of an emergency involving the health and safety of the people or their property, shall knowingly expend or cause to be expended in any fiscal year any sum in excess of that official's departmental or other governmental unit's appropriation duly made in accordance with the law, nor commit the town, nor cause it to be committed, to any obligation for the future payment of money in excess of that appropriation, with the exception of court judgments.

Any official who intentionally violates this section shall be personally liable to the town for any amounts expended in excess of an appropriation to the extent that the town does not recover such amounts from the person or persons to whom such amounts were paid. The superior court or a single justice of the supreme judicial court shall have jurisdiction to adjudicate claims brought by the town under this act and to order relief that the court finds appropriate to prevent further violations of this section. Any violation of this section shall be deemed sufficient cause for removal.

SECTION 7. For the purposes of this act, the word "official" shall mean a town department head, permanent, temporary or acting, including the superintendent of schools, and all members of municipal boards, committees, including the school committee, and commissions which recommend, authorize or approve the expenditure of funds, and the word "emergency" shall mean a major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an unexpected and immediate threat to the health and safety of persons or property.

SECTION 8. (a) In any year during which bonds, notes or an amortization amount authorized under this act remain outstanding, the commissioner of revenue shall not certify the annual tax rate of the town of Southbridge until an audit report for the preceding fiscal year has been received and accepted by the commissioner. The audit report shall be prepared by a certified public accountant in accordance with generally accepted accounting principles and shall include accompanying financial statements.

- (b) In any year during which bonds, notes or an amortization amount authorized under this act remain outstanding, the town shall submit to the commissioner quarterly reports presenting a budget to actual comparison of revenues and expenditures. The written reports shall be submitted within 30 days after the conclusion of each fiscal quarter and shall be in such form and include such information and detail as the commissioner may prescribe.
- (c) In any year during which bonds, notes or an amortization amount authorized by this act remain outstanding, the town shall not issue any bond, note or other form of indebtedness without written notification to, and the approval of, the commissioner.

SECTION 9. This act shall take effect upon its passage and, except for section 5, shall expire 5 years after its effective date.

Approved January 5, 2005.

Chapter 476. AN ACT RELATIVE TO ELECTIONS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. Chapter 129 of the acts of 1920 is hereby repealed.

SECTION 2. Section 15 of chapter 452 of the acts of 1948, as appearing in section 1 of chapter 233 of the acts of 1993, is hereby amended by striking out, in line 2, the word "forthwith" and inserting in place thereof the following words:- within 21 calendar days.

SECTION 3. Section 55 of said chapter 452, as appearing in section 3 of chapter 342 of the acts of 1983, is hereby amended by striking out, in line 2, the word "thirteenth" and inserting in place thereof the following word:- twenty-third.

SECTION 4. Said section 55 of said chapter 452, as so appearing, is hereby further amended by striking out, in line 3, the word "eighth" and inserting in place thereof the following words:- nineteenth Tuesday at 5:00 P.M.

SECTION 5. The first paragraph of section 55A of said chapter 452, as appearing in section 4 of chapter 342 of the acts of 1983, is hereby amended by striking out, in line 5, the word "eleventh" and inserting in place thereof the following words:-twenty-first Tuesday preceding the preliminary election nor after 5:00 P.M. on the nineteenth.

SECTION 6. The fourth paragraph of said section 55A of said chapter 452, as so appearing, inserted by section 4 of said chapter 342, is hereby amended by striking out the portion of the form headed "Signatures of Nominators" and inserting in place thereof the following portion of the form:-

SIGNATURE OF	CURRENT	WARD	PRECINCT	RESIDENCE OF
NOMINATOR	RESIDENCE			REGISTRATION
(To be signed by	(If the nominator's			(If the nominator is
the nominator in	current residence is			not registered to vote
person with the	not the address at			at the "Current
nominator's name	which the nominator			Residence then the
precisely as given	shall complete the			nominator shall
when the	column title			complete the
nominator	"Residence of			column)
registered to vote)	Registration"			

SECTION 7. The third paragraph of section 56 of said chapter 452, as appearing in section 5 of said chapter 342, is hereby amended by striking out, in line 4, the word "eighth" and inserting in place thereof the following word:- eighteenth.

SECTION 8. Section 57 of said chapter 452, as appearing in section 6 of said chapter 342, is hereby amended by striking out, in line 15, the words "thirty-fourth day" and inserting in place thereof the following words:- thirteenth Tuesday.

SECTION 9. Section 57A of said chapter 452, as appearing in section 2 of chapter 376 of the acts of 1951, is hereby amended by striking out, in line 6, the words "twenty-eighth day" and inserting in place thereof the following words:- twelfth Tuesday.

SECTION 10. Section 57B of said chapter 452, as so appearing, is hereby amended by striking out, in line 5, the words "twenty-eighth day" and inserting in place thereof the following words:- twelfth Tuesday.

SECTION 11. The second sentence of the first paragraph of said section 57B of said chapter 452, as appearing in chapter 257 of the acts of 1952, is hereby amended by striking out the words "twenty-ninth day", the first time they appear, and inserting in place thereof the following words:- twelfth Tuesday.

SECTION 12. Said second sentence of said first paragraph of said section 57B of said chapter 452, as so appearing, is hereby further amended by striking out the words "said twenty-ninth day" and inserting in place thereof the following words:- the day following the twelfth Tuesday.

SECTION 13. Section 59 of said chapter 452, as appearing in section 9 of chapter 342 of the acts of 1983, is hereby amended by inserting after the word "FOR", in line 9, the following words:- UP TO.

SECTION 14. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 477. AN ACT ESTABLISHING AN ECONOMIC DEVELOPMENT FUND IN THE TOWN OF PLYMOUTH.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 53 of chapter 44 of the General Laws or any other special or general law to the contrary, the town of Plymouth may establish a special account to be known as the Town of Plymouth Economic Development Fund. There shall be credited to the fund all amounts constituting payments in lieu of taxes on real property received by the town pursuant to written tax increment financing agreement, approved by town meeting and the Massachusetts Economic Assistance Coordinating Council in accordance with section 59 of chapter 40 and other applicable laws, as well as any other funds specifically designated in such agreements.

SECTION 2. The amounts credited to the fund may, without further appropriation by the town, be expended by a majority vote of the board of trustees of the Plymouth Regional Economic Development Foundation Inc., the foundation, created pursuant to chapter 180 of the General Laws.

SECTION 3. The fund may be expended only for the following economic development purposes:-

- (a) feasibility studies, economic data gathering, and payment of consultants to compile reports relative to economic development activities that will foster increased tax revenues to the town of Plymouth and create quality employment opportunities for its residents:
- (b) marketing and promotion of economic development activities that will enhance the town's workforce, the ability to attract commerce or new businesses to the town;
- (c) matching grants or funding of the construction, installation, improvements and related expenditures, of infrastructure related to projects of development that will leverage future developments resulting in quality employment opportunities and increased tax revenues; and
- (d) general operations of the foundation, purchasing of literature, software or other products that would assist the economic development efforts of the town and the foundation.

SECTION 4. The foundation shall make an annual report on all expenditures from the fund on a date to be determined by the town manager. The foundation shall provide the

town manager, contemporaneously with filing with the secretary of the commonwealth pursuant to chapters 156B and 180 of the General Laws, copies of all said filings.

SECTION 5. Upon dissolution of the foundation, or a change in corporate purpose

SECTION 5. Upon dissolution of the foundation, or a change in corporate purpose inconsistent with this act, as determined by the board of selectmen, said board shall act in place of the foundation until such time as town meeting determines otherwise in the manner hereinafter provided. Town meeting may choose a successor to the foundation by designating a nonprofit corporation, or, by so designating or establishing by by-law a town committee or department for such purpose; provided, however, that if the town meeting should designate a nonprofit corporation or establish or designate a town committee or department to be a successor to the foundation, the name of the nonprofit corporation or town committee or department shall be deemed to be substituted for that of the foundation throughout this act.

SECTION 6. This act shall take effect upon its passage.

Approved January 5, 2005.

Chapter 478. AN ACT DESIGNATING A CERTAIN INTERSECTION IN THE CITY OF LYNN AS THE DONALD DITULLIO MEMORIAL SQUARE.

Be it enacted, etc., as follows:

The intersection of Lynnfield street/state highway route 129 and Dartmouth street in the city of Lynn shall be designated and known as the Donald DiTullio Memorial Square, in memory of Donald DiTullio who was killed on September 11, 2001 aboard American Airlines Flight 11. The department of highways shall erect and maintain a suitable marker on said intersection bearing said designation in compliance with the standards of said department.

Approved January 5, 2005.

Chapter 479. AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF GROVELAND.

Be it enacted, etc., as follows:

SECTION 1. Any holder of an elective office in the town of Groveland may be recalled therefrom by the registered voters of the town as herein provided, for reason of lack of fitness, incompetence, neglect of duties, corruption, malfeasance, misfeasance or violation of oath.

SECTION 2. Four hundred registered voters of the town may file an affidavit with the town clerk containing the name of the officer sought to be recalled and a statement of the grounds for recall. The town clerk shall thereupon deliver to the voters copies of printed form petition blanks addressed to the board of selectmen demanding the recall. The blanks shall be issued under the signature and official seal of the town clerk. They shall be dated, and shall contain the names of all persons to whom they are issued, the name of the person whose recall is sought, and the grounds of recall as stated in the affidavit. In addition, the petitions shall demand the election of a successor to the office. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk. The recall petition shall be returned and filed with the town clerk within 30 days after the filing of the affidavit, with signatures, names and street addresses of at least 20 per cent of the registered voters of the town. Within 5 working days of receipt, the town clerk shall submit the petition to the registrars of voters in the town, and the registrars shall forthwith certify thereon the number of signatures which are names of registered voters of the town.

SECTION 3. If the petition shall be found and certified by the town clerk to be sufficient, it shall be submitted with his certificate to the board of selectmen without delay. The board of selectmen shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled. If the officer does not resign within 5 calendar days, the board of selectmen shall forthwith order an election to be held on a date fixed by them not less than 64 nor more than 90 days after the date the election is called after receipt of the certificate, but if any other town election is scheduled to occur within 100 days after the date of the certificate, the board of selectmen shall postpone the holding of the recall election to the date of such other election. If a vacancy occurs in the office after a recall election has been ordered, the election shall nevertheless proceed as provided in this act.

SECTION 4. An officer sought to be removed may be a candidate to succeed himself in an election to be held to fill the vacancy, and unless the officer requests otherwise in writing, the town clerk shall place said name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the removal election, and the conduct of the same, shall all be in accordance with the law relating to elections, unless otherwise provided in this section.

SECTION 5. The incumbent shall continue to perform the duties of his office until the recall election. If the incumbent is not removed, he shall continue in office for the remainder of his unexpired term, subject to recall as before, except as provided in this act. If not re-elected in the recall election, he shall be considered removed upon the qualification of a successor, who shall hold office during the unexpired term. If the successor fails to qualify within 5 days after receiving notification of election, the incumbent shall thereupon be considered removed and the office vacant.

SECTION 6. Ballots used in a recall election shall contain the following propositions in the order indicated:

For the recall of (name of officer)	{ }
Against the recall of (name of officer)	{ }

Immediately at the right of each proposition there shall be a designated place for voters to vote for either of the propositions. Under the proposition shall appear the word "Candidates", the directions to voters required by section 42 of chapter 54 of the General Laws, and beneath this, the names of candidates nominated as hereinbefore provided.

If a majority of votes on the question is against the recall, the ballots for candidates need not be counted or take any action relative thereto. If a majority of the votes cast upon the question of recall is in favor of the recall, the officer shall be recalled and the ballots for candidates shall be counted. The candidate receiving the highest number of votes shall be declared elected.

SECTION 7. A recall petition shall not be filed against an officer within 3 months after he takes office, nor, in the case of an officer subjected to a recall election and not recalled thereby, until at least 3 months have elapsed after the election at which the recall was submitted to the voters of the town.

SECTION 8. A person who has been recalled from an office or who has resigned from office while recall proceedings were pending against him shall not be appointed to any town office within 2 years after the recall or resignation.

Approved January 6, 2005.

Chapter 480. AN ACT RELATIVE UNDERGROUND CABLE TO THE REIMBURSEMENT SCHEDULE.

Be it enacted, etc., as follows:

SECTION 1. Section 22A of chapter 166 of the General Laws, as appearing in the

2002 Official Edition, is hereby amended by adding the following clause:
(i) "Retail delivery revenues", the revenues that a distribution company, as defined in section 1 of chapter 164, receives for transmission and distribution service excluding revenues from power supply, transition charges, renewable charges and demand side management charges.

SECTION 2. Section 22D of said chapter 166, as so appearing, is hereby amended by inserting after the word "revenue", in line 39, the following words:- or in the case of a distribution company as defined in section 1 of chapter 164, 7 per cent of retail delivery revenues.

SECTION 3. Said section 22D of said chapter 166, as so appearing, is hereby further amended by striking out, in line 42, the words "of the next nine".

SECTION 4. Said section 22D of said chapter 166, as so appearing, is hereby further amended by inserting after the word "revenue", in line 43, the following words:- or in the case of a distribution company as defined in section 1 of chapter 164, 7 per cent of retail delivery revenues, but any utility may receive interest at the rate set by the department

for customer security deposits.

SECTION 5. Said section 22D of said chapter 166, as so appearing, is hereby further amended by inserting after the word "revenue", in line 49, the following words:- or in the case of a distribution company as defined in section 1 of chapter 164, the retail delivery revenues.

SECTION 6. Section 22E of said chapter 166, as so appearing, is hereby amended by inserting after the word "revenue", in line 6, the following words:- or in the case of a distribution company as defined in section 1 of chapter 164, 7 per cent of retail delivery revenues.

SECTION 7. Section 22M of said chapter 166, as so appearing, is hereby amended by striking out, in lines 6 to 9, inclusive, the words "the provisions of section twenty-two D, provided said utility is not in violation of the provisions of said ordinance or by-law and provided further said ordinance or by-law has been in effect for a period of at least one year" and inserting in place thereof the following words:- section 22D. However, a distribution company, as defined in section 1 of chapter 164, shall impose and collect a surcharge of 7 per cent of retail delivery revenues, plus interest at the rate set by the department, for customer security deposits except in a city or town that before the effective date of this section has enacted an ordinance or by-law under section 22D establishing a 2 per cent surcharge or where construction is in progress or already completed, unless the city or town otherwise agrees to the 7 per cent surcharge by adopting an ordinance or by-law under said section 22D. A surcharge under this section shall apply only if the distribution company is not in violation of the ordinance or by-law and if the ordinance or by-law has been in effect for a period of at least 1 year.

Approved January 6, 2005.

Chapter 481. AN ACT CEDING CONCURRENT JURISDICTION TO THE UNITED STATES OVER CERTAIN PROPERTY LOCATED AT THE FORMER DEVENS ARMY BASE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the commonwealth hereby cedes concurrent jurisdiction to the United States over the lands, waters, and improvements in the town of Harvard that: (a) are presently owned or hereafter acquired by condemnation or otherwise, leased, occupied or controlled by the United States for the use by the Federal Bureau of Prisons; and (b) comprise any part of the correctional institution presently known and identified as the Federal Medical Center.

SECTION 2. Cession of concurrent jurisdiction pursuant to section 1 shall take ef-

fect only upon acceptance of the jurisdiction by the United States pursuant to 40 U.S.C. section 255. Exclusive jurisdiction over all or any portion of the property described in section 1 shall revest in the commonwealth if the property ceases to be used by the United States for correctional purposes.

Approved January 6, 2005.

Chapter 482. AN ACT AUTHORIZING THE RETIREMENT BOARD OF THE CITY OF WATERTOWN TO MAKE CERTAIN PAYMENTS.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 90C of chapter 32 of the General Laws or any other general or special law to the contrary, the retirement board of the city known as the town of Watertown may grant increases under said section 90C of said chapter 32 to any former employee of said city retired for superannuation who was credited with 25 years or more of service pursuant to any early retirement incentive program. Payments made pursuant to this act shall be prospective as of the effective date of this act.

SECTION 2. This act shall take effect upon its passage.

Approved January 6, 2005.

Chapter 483. AN ACT AUTHORIZING THE CITY OF BROCKTON TO ISSUE PENSION FUNDING BONDS OR NOTES.

Be it enacted, etc., as follows:

SECTION 1. The city of Brockton may issue bonds or notes from time to time for the purpose of funding all or a portion of the unfunded pension liability of the retirement system of the city of Brockton. Bonds or notes issued under this act shall be outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws, shall be issued for terms not in excess of 30 years from their date of issue and, except as otherwise provided in this act, shall be subject to the applicable provisions of said chapter 44. The aggregate amount of bonds or notes which may be issued by the city of Brockton under this act, shall not exceed the amount which the retirement board of the city of Brockton, with the approval of the city's chief financial officer, treasurer, and city council, shall determine to be necessary to be issued to fund the unfunded pension liability of the retirement system of the city of Brockton as of a particular date and to provide for issuance costs and other expenses necessary or incidental thereto. Such determination of the retirement board of the city of Brockton of the unfunded pension liability shall be based upon the report of a nationally recognized independent consulting firm, which shall be acceptable to the Public Employee

Retirement Administration Commission, and which may be the consulting actuary generally retained by the retirement board of the city.

SECTION 2. The maturities of bonds or notes issued under this act (i) shall be arranged so that for each issue the annual combined payments of principal and interest shall be as nearly equal as practicable, in the opinion of the treasurer and mayor, or in accordance with a schedule providing for a more rapid amortization of the principal, or (ii) shall be arranged so that for each issue the annual combined payments of principal and interest shall be in amounts specifically approved by the secretary for administration and finance.

SECTION 3. Proceeds of any bonds or notes issued under this act other than amounts to be applied to issuance costs or other expenses shall be paid by the city of Brockton to the retirement board of the city of Brockton, shall be allocated solely to reduce the unfunded pension liability to which the bonds or notes relate, shall be invested in any investments which are permitted under chapter 32 of the General Laws, and shall otherwise be held and expended by the retirement board of the city of Brockton in accordance with the law.

SECTION 4. Before the issue of any bonds or notes under this act the city of Brockton shall submit to the executive office for administration and finance a plan showing the amount of the bonds and notes to be issued, the amount of the unfunded pension liability to be funded with the proceeds of the bonds and notes, the proposed maturity schedule of the bonds and notes, the proposed allocation of, if any, and plan to finance the principal of and interest on the bonds and notes, the present value savings reasonably expected to be achieved as a result of the issue of the bonds or notes, and any other information requested by the secretary for administration and finance relating to the bonds and notes and no bonds or notes shall be issued hereunder until the secretary has approved the plan and specifically approved the maturity schedule of the bonds or notes if required by section 2. In granting the approval, the secretary shall require the establishment of a reserve to be created from a portion not to exceed 60 per cent in any year, of the amount of the annual savings used to calculate the present value savings. Subject to the regulations established by the secretary, the reserve shall be held and controlled by the city and shall be separate from any other reserve or fund of the city allowed or required by statute. The secretary shall establish a method to calculate both the required amount of annual contribution to the reserve and the minimum value to be maintained in the reserve and shall prescribe conditions for expenditure from the reserve, including its use if necessary to prevent or limit any future unfunded actuarial pension liability, and the conditions under which all or a portion of the funds in the reserve may be available for unrestricted purposes in which case such funds or portions thereof shall be transferred to the city treasury. Any funds in the reserve shall be trust funds within the meaning of section 54 of chapter 44 of the General Laws and, expected as otherwise provided in this act, shall be subject to the provisions of said section 54.

SECTION 5. If the unfunded pension liability to be funded with the proceeds of an issue of bond or notes issued under this act relates in part to employees of a governmental

unit other than the city of Brockton, each such governmental unit shall be responsible for reimbursing the city of Brockton for such proportion of the annual debt service expense paid by the city of Brockton for bonds or notes issued hereunder as is equal to the proportion of the total unfunded pension liability to be funded with the proceeds of the bonds or notes as relates to that governmental unit. Notwithstanding any general or special law to the contrary, the Public Employee Retirement Administration Commission shall increase the annual amount to be certified under section 22 of the General Laws as the amount necessary to be paid by each such governmental unit other than the city of Brockton by each such governmental unit's proportionate share of the annual debt service expense as determined herein. The city of Brockton shall have the same legal rights and authority as the retirement board of the city of Brockton to collect any amount so assessed to any such governmental unit.

SECTION 6. Notwithstanding chapter 70 of the General Laws or any other general or special law to the contrary, the portion of the annual debt service paid by the city of Brockton for bonds or notes issued under this act applicable to school department personnel who are members of the city's retirement system shall be included in the computation of net school spending for the purposes of said chapter 70 or any other law.

SECTION 7. This act shall take effect upon its passage.

Approved January 6, 2005.

Chapter 484. AN ACT AUTHORIZING THE TOWN OF NATICK TO ENTER INTO A CERTAIN AGREEMENT WITH THE TOWN OF WELLESLEY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 4A of chapter 40 of the General Laws or any other general or special law to the contrary, the town of Natick may enter into an agreement with the town of Wellesley for a term in excess of 25 years, to allow certain residential properties in the town of Wellesley in the area of River street, Schaller street and Washington street to connect to and use the sewer system of the town of Natick. The town of Natick may impose a lien upon property in the town of Wellesley which connects to the sewer system of the town of Natick pursuant to such an agreement, which lien shall secure unpaid fees and charges relative to connection to or use of the sewer system of the town of Natick. If a charge or fee secured by such lien remains unpaid when the town of Wellesley assessor is preparing a real estate tax list and warrant, upon request by the town of Natick, the charge or fee may be added to the tax on such property pursuant to section 58 of chapter 40 of the General Laws. Upon receipt of tax payments which include a charge or fee imposed pursuant to the agreement authorized by this act, the town of Wellesley shall forthwith transfer such charge or fee payment to the town of Natick.

SECTION 2. This act shall take effect upon its passage.

Approved January 6, 2005.

Chapter 485. AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ISSUE PENSION OBLIGATION BONDS OR NOTES.

Be it enacted, etc., as follows:

SECTION 1. The town of Brookline may issue, at one time or from time to time, bonds or notes for the purpose of funding the unfunded pension liability of the retirement system of the town. The proceeds of any such issuance shall be transferred by the town to the retirement system. The term of any such bonds or notes shall not exceed 30 years from the date of issuance and the amount of any such bonds or notes shall be outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws. No such bonds or notes shall be issued without a % vote of the town meeting of the town of Brookline. Upon the authorization of the issuance of pension obligation bonds by the town meeting, the town shall submit the vote and a plan demonstrating how the town will finance and allocate the debt service associated with the bonds or notes to the executive office for administration and finance, and no bonds or notes authorized to be issued by this act shall be issued until the secretary for administration and finance has approved the plan and the issuance of such bonds or notes. Except as otherwise provided in this act, such bonds or notes shall be subject to the provisions of said chapter 44.

SECTION 2. The aggregate principal amount of the bonds or notes issued under authority of this act shall not be greater than the amount sufficient to extinguish the unfunded pension liability of the retirement system of the town of Brookline as determined in accordance with this section. The retirement board of the town shall first determine the amount sufficient to extinguish the unfunded pension liability of the retirement system of the town in accordance with the report of a nationally recognized independent consulting firm, which may be the consulting actuary generally retained by the retirement board, and with the approval of the public employee retirement administration commission. The report shall also set for the present value savings to the town reasonably expected to be achieved as a result of the issuance of such bonds or notes.

SECTION 3. The maturities of such bonds or notes shall be scheduled such that the annual combined payments of principal and interest for each issue shall be as nearly equal as practicable in the opinion of the selectmen, in any manner that shall provide for a more rapid amortization of principal, or in accordance with any other manner consistent with the town's approved funding schedule, as the secretary for administration and finance shall approve.

SECTION 4. Every governmental unit the employees of which are members of the retirement system of the town of Brookline shall be responsible in accordance with this section for paying such proportion of the annual debt service expense paid by the town for bonds issued under authority of this act as is equal to the proportion of the total unfunded pension liability of the retirement system allocated to such member under section 2. Notwithstanding any general or special law to the contrary, the public employee retirement administration commission shall increase the annual amount to be certified under section 22 of chapter 32 of the General Laws as the amount necessary to be paid by each governmental unit in the retirement system other than the expense as determined in this act, and shall decrease the amount to be paid by the town by an equal amount. The town shall have the same legal rights and authority as the retirement board of the town to collect any amount so assessed by the retirement board to any such governmental unit.

SECTION 5. Notwithstanding chapter 70 of the General Laws or any other general or special law to the contrary, the portion of the annual debt service paid by the town of Brookline for bonds or notes issued under this act applicable to school department personnel who are members of the town's retirement system shall be included in the computation of net school spending for the purposes of said chapter 70 or any other law.

SECTION 6. This act shall take effect upon its passage.

Approved January 6, 2005.

Chapter 486. AN ACT AUTHORIZING THE TOWN OF ASHBY TO ESTABLISH A CAPITAL RESERVE ACCOUNT.

Be it enacted, etc., as follows:

SECTION 1. The town of Ashby may establish and maintain a special account to be known as the Capital Reserve Account and may raise and appropriate money for it. The town treasurer shall maintain the account as a separate account. The treasurer may invest funds in the account in the manner authorized by sections 55 and 55B of chapter 44 of the General Laws and any interest earned on the account shall be credited to and become part of the account. The town may appropriate by a 1/2 vote at any special or annual town meeting such sums as may be available in the account for any capital purchase or capital expenditure of the town.

SECTION 2. This act shall effect take upon its passage.

Approved January 6, 2005.

Chapter 487. AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF ROWE.

Be it enacted, etc., as follows:

SECTION 1. A holder of an elected office in the town of Rowe may be recalled therefrom by the registered voters of the town as provided in this act.

SECTION 2. Twenty-five registered voters of the town of Rowe may file with the town clerk a recall affidavit, using either a blank recall affidavit as prepared by the town clerk or an affidavit substantially similar thereto, containing the name and position of the officer whose recall is sought and a statement of the grounds for the recall. Upon certification of the required signatures, the clerk shall forthwith deliver to the first named voter on the affidavit copies of the petition blanks addressed to the board of selectmen demanding the recall, copies of which printed forms the clerk shall keep available. The blanks shall be issued by the clerk with the signature and official seal of the clerk attached thereto. They shall be dated, shall contain the names of the first 25 registered voters whose names appear on the recall affidavit, the name and position of the person whose recall is sought and the grounds of recall as stated in the affidavit and shall demand the election of a successor to the office. A copy of the petition shall be entered in a record book to be kept in the office of the clerk. The recall petition shall be returned and filed with the clerk within 21 days after the filing of the affidavit and shall have been signed by at least 20 per cent of the registered voters of the town as of the date of the affidavit was filed with the clerk. To every signature shall be added the place of residence of the signer, giving the street and number, if any. The clerk shall, within 72 hours of receipt thereof, submit the petition to the registrars of voters in the town, and the registrars shall forthwith certify thereon the number of signatures which are names of registered voters of the town.

SECTION 3. If the petition shall be found and certified by the town clerk to be sufficient, the clerk shall submit the same with his certificate to the board of selectmen without delay. The board of selectmen shall forthwith give written notice of the receipt of the certificate, either by hand or by certified mail, return receipt requested, to the officer sought to be recalled. If the officer does not resign within 5 days after receipt of the notice, the board of selectmen shall forthwith order an election to be held on a date fixed by them not less than 64 nor more than 90 days after the date the election is called; but if any other town election is scheduled to occur within 100 days after the days of the certificate, the board shall postpone the holding of the recall election to the date of the other election, and the question of recall shall appear on the ballot of the other election. If a vacancy occurs in the office after a recall election has been ordered, the election shall nevertheless proceed as provided in this section.

SECTION 4. Any officer sought to be removed may be a candidate to succeed himself and, unless the officer requests otherwise in writing, the town clerk shall place his name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the recall election and the conduct of the same shall be in accordance with

laws relating to elections unless otherwise provided in this act.

SECTION 5. The incumbent shall continue to perform the duties of the office until the recall election. If not recalled, the incumbent shall continue in office for the remainder of the unexpired term, subject to recall as before, except as provided in section 7. If recalled, the incumbent shall be considered removed. If the successor fails to qualify within 10 days after receiving notification of his election, the office shall be considered vacant.

SECTION 6. Ballots used in a recall election shall submit the following propositions in the order indicated:

For the recall of (name of officer)

Against the recall of (name of officer)

Immediately at the right of each proposition there shall be a square in which the voter, by making a cross mark (x) may vote for either of the propositions. Under the propositions shall appear the word "Candidates" and the directions to voters required by section 42 of chapter 54 of the General Laws and, beneath this, the names of candidates nominated as hereinbefore provided. If a majority of the votes cast upon the question of recall is in the affirmative, then candidate receiving the highest number of votes shall be declared elected. If a majority of the votes cast upon the question of recall is in the negative, the ballots cast for candidates to fill the potential vacancy shall not be counted.

SECTION 7. A recall petition shall not be filed against an officer within 6 months after the officer takes office, nor in the last 6 months of the term, nor in the case of an officer subject to recall election and recalled thereby, until at least 6 months after the election at which the recall was submitted to the voters of the town has elapsed.

SECTION 8. No person who has been recalled from an office or who has resigned from office while recall proceedings were pending against him shall be appointed to any town office within 1 year after the recall or resignation.

Approved January 6, 2005.

Chapter 488. AN ACT AUTHORIZING THE CITY OF LOWELL TO PAY A CERTAIN UNPAID BILL.

Be it enacted, etc., as follows:

SECTION 1. The city of Lowell may appropriate for the payment of, and after such appropriation, the treasurer of the city may pay to Munis an unpaid bill incurred by the city totaling \$32,619.60, the bill being legally unenforceable against the city and as certified for payment by the Management Information Services department of the city. The money so appropriated to pay such bill shall be paid by that department.

SECTION 2. No bill shall be approved by the auditor of the city of Lowell for payment or paid by the treasurer thereof under authority of this act unless and until certificates

have been signed and filed with said auditor, stating under the penalties of perjury, that the services and supplies for which said bill has been submitted were ordered by an official or an employee or agent of the city and that such services and supplies were rendered to the city or official or agent.

SECTION 3. Any person who knowingly files a certificate required by section 2 which is false and who thereby receives payment for services which were not rendered to the city of Lowell, shall be punished by imprisonment for not more than 1 year or by a fine of not more than \$300, or both such fine and imprisonment.

Approved January 6, 2005.

Chapter 489. AN ACT INCREASING THE BORROWING LIMIT OF THE TOWN OF MILFORD FOR THE FUNDING OF THE GERIATRIC AUTHORITY OF MILFORD.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for increased borrowing authority for the town of Milford for the purpose of funding the Geriatric Authority of Milford, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section 10A of chapter 76 of the acts of 1982 is hereby amended by striking out, in line 3, the words "ten million dollars" and inserting in place thereof the following figure: \$25,000,000.

Approved January 6, 2005.

Chapter 490. AN ACT RELATIVE TO CERTAIN SCHOOL CONSTRUCTION PROJECTS IN THE TOWN OF MILTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, in order to implement its school building program, the town of Milton may, in addition to the pre-qualification requirements under section 44D of chapter 149 of the General Laws, establish and impose a requirement that only contractors and subcontractors with a workers' compensation modification factor, as promulgated by the workers' compensation rating bureau, of 125 per cent or less shall be eligible to submit a bid or offer. A contractor or subcontractor with a modification factor of up to 135 per cent shall be eligible to submit a

bid or offer, if the modification factor was caused by a single loss. For the purpose of this act, the words "school building program" shall mean the design, construction, repair, renovation, remodeling, equipping, furnishing and partial or complete demolition regarding the Collicot school and the Cunningham school in the town of Milton, authorized by vote of the February 2002 Milton special town meeting and the October 2002 special town meeting.

SECTION 2. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 491. AN ACT ESTABLISHING MUNICIPAL AFFORDABLE HOUSING TRUST FUNDS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 44 of the General Laws is hereby amended by inserting after section 55B the following section:-

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. For the purposes of this section, acceptance shall be in a town by vote of an annual town meeting, and in any other municipality in accordance with section 4 of chapter 4.

- (b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth.
- (c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, may include, but not be limited to, the following:-
- (1) to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation grants of funds or other property tendered to the trust in connection with provisions of any zoning ordinance or by-law or any other ordinance or by-law;
- (2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- (3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit

or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract:

- (4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
- (5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;
- (6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
- (7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- (9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
 - (10) to carry property for accounting purposes other than acquisition date values;
- (11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
 - (12) to make distributions or divisions of principal in kind;
- (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
- (14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
- (15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
 - (16) to extend the time for payment of any obligation to the trust.
- (d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted

and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees

for purposes of chapter 268A.

- (f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.
- (g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.
- (h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.
- (i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.
- (j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.
- **SECTION 2**. Section 5 of chapter 44B of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

Approved January 7, 2005.

Chapter 492. AN ACT AUTHORIZING THE TOWN OF SHREWSBURY TO ESTABLISH A CERTAIN FUND.

Be it enacted, etc., as follows:

- **SECTION 1.** The town of Shrewsbury may establish a separate fund to be known as the Lakeway Overlay District Fund for the purpose of providing street lights, sidewalks, trash receptacles, parking and public realm improvements in the Lakeway Overlay District as defined by of the town of Shrewsbury zoning by-law.
- **SECTION 2**. All the expenditures from the fund shall be used for public improvements that enhance, revitalize, improve, beautify, or increase pedestrian safety in the Lakeway Overlay District. The following are eligible uses of the Lakeway Overlay District Fund:
- (a) acquire and improve land for off-street parking, including surface parking lots and structured parking; and

- (b) acquire, install and maintain public amenities, including but not limited to sidewalks, benches, trash receptacles, street lights, landscaping and plantings, and directional or informational signage and kiosks; and
- (c) acquire, improve, manage, or convey by lease or sale real property in the Lakeway Overlay District for purposes consistent with the Shrewsbury Master Plan, Capital Improvements Plan, or any other plans, studies or programs authorized and approved by the planning board to address the economic development, land use, or transportation needs of the Lakeway Overlay District.

Expenditures shall be authorized by a majority vote of town meeting upon a favorable recommendation of the planning board and the board of selectmen. The town manager shall be responsible for carrying out all expenditures authorized by town meeting.

SECTION 3. As a means of providing available assets for the fund, all monies received by the town through the following means shall be paid over to and become a part of the fund for the purposes set forth in this act;

- (a) cash payments made by developers to the town pursuant to the town of Shrewsbury zoning by-law; and
- (b) gifts, grants, donations, contributions or other cash payments made to and accepted by the town for the purpose of carrying out public improvements in the Lakeway Overlay District.

SECTION 4. Real property interests acquired or conveyed by the town under this act shall be in accordance with section 16 of chapter 30B of the General Laws, unless exempt under section 1 of said chapter 30B or under other laws of the commonwealth.

SECTION 5. The town treasurer shall be the custodian of the fund and shall invest the funds in the manner authorized by sections 55, 55A and 55B of chapter 44 of the General Laws. Any income or proceeds received from the investment of funds shall be credited to and become part of the fund.

Approved January 7, 2005.

Chapter 493. AN ACT VALIDATING ACTIONS TAKEN AT THE ANNUAL ELECTION IN THE TOWN OF BOXBOROUGH.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 42 of chapter 54 of the General Laws or any other general or special law to the contrary, all acts and proceedings taken by the town of Boxborough relative to the election date printed on absentee and regular election ballots for the May 17, 2004, annual town election, are hereby ratified, validated and confirmed, notwithstanding any defect or omission in the election date printed on such absentee and regular election ballots.

SECTION 2. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 494. AN ACT AUTHORIZING THE CITY OF NORTHAMPTON TO CONVERT SEASONAL LICENSES FOR THE SALE OF WINES AND MALT BEVERAGES TO BE DRUNK ON THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Northampton may convert all issued seasonal licenses for the sale of wines and malt beverages to be drunk on the premises pursuant to section 12 of said chapter 138 to annual licenses for the sale of wines and malt beverages to be drunk on the premises pursuant to said section 12 of said chapter 138. Notwithstanding section 15A of said chapter 138, seasonal licenses being converted to annual licenses pursuant to this act shall not be subject to the notification of abutters requirement. The licenses shall be subject to all of said chapter 138, except said sections 15A and 17.

SECTION 2. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 495. AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO ENTER INTO A CERTAIN LEASE.

Be it enacted, etc., as follows:

Chapter 149 of the acts of 2004 is hereby amended by inserting after section 279 the following section:-

SECTION 279A. Notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may enter into a 3½ year lease agreement with Community Rowing, Inc. The new lease may provide Community Rowing, Inc. access to the same facilities for the same period of time each year. The new lease may also include all or a portion of other adjacent land not included in a April 14, 1992 lease that was licensed to Community Rowing, Inc. under a license dated April 9, 2002 between Community Rowing, Inc. and the former metropolitan district commission. The 3½ year lease shall be superior to, and not be disturbed by, any lease entered into concerning the Daly Memorial Rink in city of Newton

as authorized by section 279, but the 3 ½ year lease shall not unreasonably impair the ability of the department of conservation and recreation to use and lease the Daly Memorial Rink for public recreational skating purposes.

During the 3 ½ year lease, no demolition or other work on the Daly Memorial Rink shall be conducted by the department of conservation and recreation or another entity which has entered into a lease for the use of the Daly Memorial Rink, which would interfere with the operations of Community Rowing, Inc. between March 15 and November 7, of 2004, 2005, 2006 and 2007, as determined by the department of conservation and recreation in consultation with Community Rowing, Inc.

Notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may enter into a second lease with Community Rowing, Inc., which lease shall be for a term of not more than 50 years including extensions for the purpose of operating a public access rowing program and storage of shells and trailers for use by such program. The second lease may, but shall not be required to, run concurrently with the first lease. If the second lease does not run concurrently with the first, the second lease shall run consecutive to the first lease. This second lease shall include either: (a) the property west of the Daly Memorial Rink and east of the Newton Yacht Club under the custody and control of the department, such area also known as the Community Rowing, Inc. "Locus"; the waterfront area between the Daly Memorial Rink and the Charles River, and in front of the Community Rowing, Inc. Locus; equal access to the Daly Memorial Rink parking lot, so long as such access does not interfere with the ability of the department of conservation and recreation or its lessee to reasonably use the Daly Memorial Rink for public recreational skating purposes; the right to maintain sufficient docks for rowing program use along the Charles River in front of the Daly Memorial Rink and the Community Rowing, Inc. "Locus"; and a right of way from the Daly Memorial Rink parking lot to the waterfront area between the Daly Memorial Rink and the Charles River and the Community Rowing, Inc. "Locus"; or (b) an alternative site of comparable land area, parking, waterfront, and transportation access within the Charles River Basin as the "Locus", as may be identified as the appropriate alternative pursuant to a review conducted in accordance with the Massachusetts Environmental Policy Act and subject to the approval of the commissioners of conservation and recreation and capital asset management and maintenance. The lessee shall assume all costs of the operation and maintenance of any facility erected on the site. Any state funding available for the construction of a boathouse or appurtenant facilities on the leased site shall be subject to the provision of a 2 to 1 private match of cash funds. Such lease shall also provide for continuing public access to the leased site acceptable to the department of conservation and recreation. Notwithstanding sections 38A ½ to 38 O, inclusive, of chapter 7 and sections 44A to 44J, inclusive, of chapter 149 of the General Laws, design and construction services for the boathouse and any appurtenant facilities shall be procured and implemented in accordance

with the requirements and process established by the division of capital maintenance and management, except that the final design of the boathouse and appurtenant facilities shall subject to the approval of the department of conservation and recreation.

The consideration for each lease shall be determined by the department of conservation and recreation under the "2004 Boat Club Permit Renewal" established by the executive office of environmental affairs, office of public private partnerships, or, as the division of capital asset management, in consultation with the department of conservation and recreation determines, consistent with the rent determinations made for other boat clubs that lease from the commonwealth and are located on the Charles River and taking into account: the public services provided by each boat club; the level of public benefit provided by each boat club; the benefits to the public; the improvements to the property; and the operations provided by Community Rowing, Inc.

Community Rowing, Inc. shall assume the costs of any appraisals, surveys and other expenses required by the division of capital asset management, in consultation with the department of conservation and recreation, for the granting of the leases as provided in this act.

If Community Rowing, Inc. ceases at any time during the term of the second lease to use the property for the storage and program operation described in this section, the lease shall be terminated immediately under such terms and conditions as the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may prescribe.

Any lease, proposed lease or extension of any lease shall be reviewed by the inspector general for comment and recommendation and shall be subject to the approval of the general court before any such lease is signed or extended.

Approved January 7, 2005.

Chapter 496. AN ACT EXEMPTING CERTAIN POSITIONS IN THE TOWN OF WINTHROP FROM CIVIL SERVICE LAW.

Be it enacted, etc., as follows:

SECTION 1. All positions in the department of public works and cemetery department of the town of Winthrop shall be exempt from chapter 31 of the General Laws.

SECTION 2. Section 1 shall not impair the civil service status of any person holding a position in the department of public works or cemetery department on the effective date of this act.

SECTION 3. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 497. AN ACT RELATIVE TO REINSURANCE AGREEMENTS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 175 of the General Laws is hereby amended by striking out section 20, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 20. (a) A domestic company, except as herein provided, may reinsure in any other company any part or all of any risks assumed by it, and shall file with the annual statement required by section 25 and at such other times as the commissioner may require, schedules of all reinsurance. A contract of reinsurance, other than life, made by a domestic company or by a company incorporated in a foreign country and having its principal office in the commonwealth, ceding more than 75 per cent of its total outstanding risks, shall be subject to the written approval of the commissioner. A reinsurance contract made by a domestic life company shall not cede more than 90 per cent of the risks covered by the reinsurance contract without the permission of the commissioner.

- (b) When reinsurance is so effected the ceding company, other than a life company, shall thereafter be charged on the gross premium basis with an unearned premium liability, and a life company shall be charged thereafter with a reserve liability, both the unearned premium and reserve liability representing the proportion of the obligation retained by it. Reinsurance credits shall be established in accordance with section 20A.
- (c) A company ceding reinsurance to a mutual company shall not, unless the contract of reinsurance so provides, become thereby a member of the company accepting the reinsurance or be entitled to any dividend or expiration return of premium or be subject to liability to assessment.
- (d) A company and any officer or agent thereof effecting or acting in the negotiation of reinsurance in violation of this section shall severally be punished by a fine of \$5,000.

SECTION 2. Section 20A of said chapter 175, as so appearing, is hereby amended by striking out subsection (4) and inserting in place thereof the following subsection:-

- 4. (A) A credit shall not be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract(s) reinsured by the assuming insurer on the basis of claims filed and allowed in the liquidation proceeding, without diminution because of the insolvency of the ceding insurer. The payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) where the contract of insurance or reinsurance specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or (2) where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.
- (B) Notwithstanding paragraph (A), if a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under

the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for the coverage. Payment for the reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer shall discharge the reinsurer of all further liability to any other party for the claim payment.

(C) A reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or contract reinsured within a reasonable time after the claim is filed in the insolvency proceeding and during the pendency of the claim the assuming insurer may investigate the claim and interpose, at its own expense, in the proceedings where the claim is to be adjudicated any defense or defenses which it may consider available to the ceding company or its liquidator or receiver or statutory successor. Subject to court approval, the expense thus incurred by the assuming insurer shall be chargeable, against the insolvent ceding-insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit, which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where 2 or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

Approved January 7, 2005.

Chapter 498. AN ACT AUTHORIZING THE TOWN OF WESTBOROUGH TO GRANT THREE ADDITIONAL LICENSES FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Westborough may grant up to 3 additional licenses for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138. The licenses shall be restricted to the zoning district entitled "Downtown Planning Overlay District" for the purpose of downtown revitalization and to promote economic vitality. The licenses shall be subject to all of said chapter 138, except said section 17. The licensing authority shall not approve the transfer of any of the licenses to any other location.

SECTION 2. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 499. AN ACT AUTHORIZING THE TOWN OF RANDOLPH TO ESTABLISH A TOWN CHARTER.

Be it enacted, etc., as follows:

SECTION 1-1: SHORT TITLE

This instrument shall be known as the Charter, 2004 for the Town of Randolph.

SECTION 1-2: DIVISION OF POWERS

The administration of the fiscal, prudential and municipal affairs of Randolph, with the government thereof, shall be vested in an executive branch comprised of a Mayor and a legislative branch consisting of a Town Council.

SECTION 1-3: POWERS OF THE TOWN

Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or in the general laws of the Commonwealth, it is the intention and the purpose of the voters of Randolph through the adoption of this Charter to secure for themselves and for their government all of the powers it is possible to secure as fully and as completely as though each such power were specifically and individually enumerated herein.

SECTION 1-4: CONSTRUCTION

The powers of the Town of Randolph under this Charter are to be construed liberally in favor of the town, and the specific mention of any particular power is not intended to limit the general powers of the town as stated in Section 1-3.

SECTION 1-5: INTERGOVERNMENTAL RELATIONS

Subject only to express limitations in the constitution or general laws of the Commonwealth, Randolph may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the Commonwealth or any agency or political sub-division thereof, or with the United States government or any agency thereof.

SECTION 1-6: ETHICAL STANDARDS

Elected and appointed officers and employees of the Town of Randolph are expected to demonstrate, by their example, in their general conduct and in the performance of their duties and responsibilities, the highest ethical standards, to the end that the public may justifiably have trust and confidence in the integrity of its government. In addition to any requirements of state law, elected and appointed officers and employees of the Town of Randolph are expected to recognize that they act always as agents for the public, that they hold their offices or positions for the benefit of the public, that the public interest is their primary concern, and that they are expected to faithfully discharge the duties of their offices regardless of personal considerations. Elected and appointed officers and employees of the Town of Randolph shall not use their official positions to secure or to grant special consideration, treatment, advantage, privilege or exemption to themselves or to any other person beyond that which is available to every other person.

SECTION 1-7: REPRESENTATION AND DIVERSITY

The voters of Randolph are cognizant of and support federal and state laws, which provide for non-discrimination and openness in appointment and hiring practices. In recognition of these statutes, and in support of them, it is expected that the Mayor, the Town Council and other appointing authorities will, when selecting persons to be appointed to offices or positions of the town, make a good faith effort to assure that the interest of every citizen, in every section of the town, is considered.

SECTION 1-8: DEFINITIONS

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this Charter shall have the following meanings:

- (a) Bureau The word "bureau" shall mean an organizational structure consisting of more than one agency or department under a common leadership.
- (b) Charter the word "Charter" shall mean this Charter and includes any amendment to it hereafter adopted.
- (c) Emergency the word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action or response.
- (d) Full Council, Full Multiple Member Body The words "full council" or "full multiple member body" shall mean the entire authorized complement of the Town Council, School Committee or other multiple member body notwithstanding any vacancy which might exist.
- (e) Initiative Measure the words "initiative measure" shall mean a measure proposed by registered voters through the initiative process provided under this Charter.
- (f) Local Newspaper the words "local newspaper" shall mean a newspaper of general circulation within Randolph, with either a weekly or daily circulation.
- (g) Majority Vote the words "majority vote" when used in connection with a meeting of the Town Council or School Committee shall mean a majority of the membership.
- (h) Super Majority Vote The words "super majority vote" when used in connection with a meeting of the Town Council shall mean passage of an item when the Town Council has achieved five (5) votes out of seven (7).
- (i) Measure the word "measure" shall mean any ordinance, order, resolution, or other vote or proceeding adopted, or which the Town Council might adopt.
- (j) Multiple Member Body The words "multiple member body" shall mean any board, commission, committee, sub-committee or other body consisting of two or more persons whether elected, appointed or otherwise constituted, but not including the Town Council, School Committee, Stetson Trustees, or library trustees.
- (k) Referendum Measure the words "referendum measure" shall mean a measure adopted by the Town Council that is protested by voters under the referendum procedures of this Charter.

- (l) Town the word "town" shall mean the town of Randolph.
- (m) Town Agency the words "town agency" (or "municipal agency") shall mean any multiple member body, any department, division, or office of the town of Randolph.
- (n) Town Bulletin Boards The words "town bulletin boards" shall mean the bulletin board in the town hall on which the Town Clerk posts official notices of meetings and upon which other official town notices are posted, and the bulletin boards at any other locations as may be designated town bulletin boards by the Town Council.
 - (o) Voters the word "voters" shall mean registered voters of the town of Randolph.

ARTICLE 2 LEGISLATIVE BRANCH

SECTION 2-1: COMPOSITION, TERM OF OFFICE

- (a) Composition there shall be a Town Council consisting of seven members. Three of these members shall be nominated and elected by and from the voters of the town at large and four of these members shall be nominated and elected by and from the four districts into which the town is divided. The Town Council shall exercise the legislative powers of the town.
- (b) Term of Office Except as is otherwise provided the term of office for councilors shall be for two years.

The terms of office of Town Councilors shall begin on the first business day of January in the year following their election, and shall expire when their successors have been qualified.

(c) Eligibility - any voter shall be eligible to hold the office of councilor-at-large. A district councilor shall at the time of election be a voter of the district from which elected, provided, however, if any district councilor shall during the first twelve months of the term of office remove to another district in the town such office shall be deemed vacant and the balance of the unexpired term shall be filled in the manner provided. If such removal occurs after the first twelve months of the term of office such councilor may continue to serve for the balance of the term for which elected. If a Councilor At-large or a district councilor removes from the town during the term for which elected such office shall immediately be deemed vacant and filled in the manner provided.

SECTION 2-2: COUNCIL OFFICERS

- (a) President:
- (i) Election and Term As soon as practicable after the councilors-elect have been qualified following each bi-annual election the members of the Town Council shall elect from among its members a council president who shall serve until the council reorganizes the following January. The Council may choose to re-elect a sitting president. Council President may serve up to two consecutive terms if elected by the Council and is eligible to serve again with at least one year of service on the Town Council with another serving as Council President between service as Council President.
- (ii) Powers and Duties The council president shall preside at all meetings of the Town Council, regulate its proceedings and shall decide all questions of order. The council

president shall appoint all members of all committees of the Town Council, whether special or standing. The council president shall have the same powers to vote upon all measures coming before the Town Council as any other member of the Town Council. The council president shall perform such other duties consistent with the office as may be provided by Charter, by ordinance or by other vote of the Town Council.

- (b) Council Vice-President The members of the Town Council shall also elect from among its members a council vice-president who shall serve as acting president during the temporary absence or disability of the council president during the ensuing term of office. The powers of an acting council president shall be limited to only those powers of the office indispensably essential to the performance of the duties of the office during the period of such temporary absence or disability and no others.
- (c) Council Clerk Members of the Town Council shall also elect one of there own members as council clerk. The council clerk shall be the official in charge of ensuring that appropriate minutes are kept and proper notice is given of all council proceedings.

SECTION 2-3: PROHIBITIONS

- (a) Holding Other Office or Position No Town Councilor shall, while a member of the Town Council, hold any other compensated town office or position. No former councilor shall hold any compensated appointive office or employment until one year after the expiration of service on the Town Council. This provision shall not prevent a town officer or employee who has taken a leave of absence from such duties in order to serve as a member of the Town Council from returning to such office or employment following service as a member of the Town Council.
- (b) Interference with Administration Neither the Town Council nor any of its members shall direct the appointment or employment of any person, or the removal of any person, or in any manner attempt to participate in the appointment or removal of persons in that part of the administrative service of the town for which the Mayor is responsible. Except for the purpose of inquiries and investigations pursuant to section 2-7, the Town Council and its members shall deal with the officers and employees serving under the Mayor solely through the Mayor or his designee, and neither the Town Council nor any member of the Town Council shall give orders or directions to any such officer or employee, except by passage of ordinance of general applicability.

Violations of this section shall be punished in the manner and to the extent as may be established by town ordinance.

SECTION 2-4: COMPENSATION, EXPENSES

(a) Salary - the members of the Town Council shall receive such salary for their services as may from time to time be set by ordinance. No ordinance increasing the salary of Town Councilors shall be effective unless it shall have been adopted on or before the last day of June in the second year following a town election and it provides that such salary is to take effect upon the organization of the town government following the next town election. Members of the Town Council shall not be considered "employees" for the purpose of chapter thirty-two B of the Massachusetts General Laws. The Mayor must approve or veto

such salary increase, and the Town Council can override the Mayor's veto by vote of a supermajority consisting of at least five members.

(b) Expenses - Subject to appropriation and to prior authorization, the council members shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.

SECTION 2-5: GENERAL POWERS (Residuary)

Except as otherwise provided by general law or by this Charter, all powers of the town shall be vested in the Town Council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the town by law.

SECTION 2-6: EXERCISE OF POWERS; QUORUM; RULES

- (a) Exercise of Powers except as otherwise provided by general law or this Charter the legislative powers of the Town Council may be exercised in a manner determined by the Town Council.
- (b) Quorum the presence of four members shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time. Except as otherwise provided by general law or by this Charter, the affirmative vote of four members shall be required to adopt any ordinance or appropriation order.
- (c) Rules of Procedure the Town Council shall from time to time adopt rules regulating its procedures, which shall be in addition to the following:
- (i) Regular meetings of the Town Council shall be held at the time and place fixed by ordinance. Notwithstanding, the council shall be called into session at least biweekly, and those meeting days must be on Mondays.
- (ii) Special meetings of the Town Council shall be held on the call of the Mayor, on the call of the council president, or, on the call of any three or more members, by written notice delivered in hand or to the place of business or residence of each member and which contains a listing of the items to be acted upon. Except in case of an emergency such notice shall be delivered at least forty-eight weekday hours in advance of the time set for such meeting. A copy of the notice to members shall, forthwith, be posted upon the town bulletin boards.
- (d) Committees the Town Council shall establish such committees as it deems to be necessary or desirable to enable it to study and evaluate the matters that come before the Town Council. The Town Council may appoint members of the council to serve on such committees, and town employees may be appointed to serve on such committees.

SECTION 2-7: ACCESS TO INFORMATION

- (a) In General the Town Council may make investigations into the affairs of the town and into the conduct and performance of any town agency and for this purpose may subpoena witnesses, administer oaths and require the production of evidence.
- (b) Town Officers, Members of Town Agencies, Employees The Town Council may require the Mayor or any member of a town agency or town employee who is not responsible to the Mayor to appear before it to give such information as the Town Council may require in relation to the municipal services, functions, powers, or duties which are within the scope

of responsibility of such person and within the jurisdiction of the Town Council. The Town Council may require any person from whom it seeks information under the provisions of this section to appear before it in person or to respond to written questions made available to that person in order to provide specific information on conduct of any aspect of the business of the town. Any person required to appear before the council may bring to any such meeting any assistant, department head, or other town officer or employees that person may deem necessary to assist in responding to the questions posed by the Town Council.

(c) Notice - The Town Council shall give not fewer than five days notice to any person it may require to appear before it under the provisions of this section. The notice shall include specific questions on which the Town Council seeks information and no person called to appear before the Town Council under this section shall be required to respond to any question not relevant or related to those presented in advance and in writing. Notice shall be by delivery in hand, or by registered or certified mail to the last known place of residence of any such person.

SECTION 2-8: TOWN COUNCIL EMPLOYEES

- (a) Other Council Employees the Town Council may employ other persons within the funds available to it to assist it in carrying out its responsibilities.
- (b) Town Attorney The council may consult the town attorney so designated by the office of the Mayor for the purpose of receiving advice and assistance in the preparation and review of legislation.
- (c) Salaries/Compensation the officers selected by the Town Council shall receive such salaries or other compensation as may from time to time be provided for such office.
- (d) Removal/Suspension any person appointed by the Town Council may be removed or suspended by the Town Council.

SECTION 2-9: ORDINANCES AND OTHER MEASURES

(a) Emergency Ordinances - No ordinance shall be passed finally on the date it is introduced, except in case of emergency involving the health or safety of the people or their property.

No ordinance shall be regarded as an emergency ordinance unless the emergency is defined and declared in a preamble to such ordinance, separately voted upon and receiving the affirmative vote of four or more members of the Town Council.

Emergency ordinances shall stand repealed on the sixty-first day following their adoption, unless an earlier date is specified in the measure, or unless a second emergency measure adopted in conformity with this section is passed extending it, or unless a measure passed in conformity with the procedures for measures generally has been passed extending it.

- (b) Measures, In General the Town Council may pass a measure through all of its stages at any one meeting, except proposed ordinances, appropriation orders and loan authorizations.
- (c) Publication and Public Hearing Every proposed ordinance, appropriation order or loan authorization, except emergency ordinances as provided in section 2-9(a), shall be

published once in full in a local newspaper, and in any additional manner as may be provided by ordinance, at least seven days before its final passage. After final passage it shall be posted on the town bulletin board and otherwise published as may be required by ordinance. Provided, however, that whenever a proposed ordinance or codification of ordinances or other measure would exceed in length more than ten column inches of ordinary newspaper notice print, then in lieu of publication in a local newspaper, the same may be published and made available at the office of the Town Clerk, and if so published and made available at least ten days before its final passage this shall be deemed sufficient notice. Whenever the Town Council provides for publication in this manner, in lieu of the newspaper publication, it shall, at least seven days before final passage publish in a local newspaper a general summary of the proposed ordinance, appropriation order or loan authorization, and a notice stating the times and places at which copies of the proposed ordinance, appropriation order or loan authorization may be obtained by the public.

The newspaper publication described above shall also include the date, time and place at which a public hearing will be held concerning the proposed ordinance, appropriation order or loan authorization and the body which will conduct the said hearing.

SECTION 2-10: COUNCIL REVIEW OF CERTAIN APPOINTMENTS

(a) Individual appointments - The Mayor shall submit to the Town Council the name of each person the Mayor desires to appoint to specific positions as noted in Section 4-4 of this Charter. The Town Council shall investigate each such candidate for appointment and may require the candidate to appear before Town Council or a committee thereof, to give information relevant to such appointment.

Appointments made by the Mayor to an individual position shall become effective if approved by a vote of four or more members of the Town Council. If after thirty days the Town Council shall fail to act on the appointments then the Mayor's recommendations shall be deemed adopted.

(b) Policy-Making Multiple Member Bodies - The Mayor shall submit to the Town Council the name of each person the Mayor desires to appoint as a member of one of the policy making multiple-member bodies which are enumerated in section 4-4. The Town Council shall investigate each such candidate for appointment and may require any person whose name has been referred to it to appear before the Town Council, or a committee thereof, to give such information relevant to such appointment as the committee, or the Town Council, may require.

Appointments made by the Mayor to the policy making multiple member bodies enumerated in section 4-4 shall become effective if approved by a vote of four or more members of the Town Council. If after thirty days the Town Council shall fail to act on the appointments then the Mayor's recommendations shall be deemed adopted.

(c) Non-Policy-Making (Advisory) Multiple Member Bodies - The Mayor shall submit to the Town Council the name of each person the Mayor desires to appoint as a member of any advisory multiple-member body which the Mayor is authorized to appoint. The Town Council shall investigate each such candidate for appointment and may require

any person whose name has been referred to it to appear before the Town Council, or a committee thereof, to give such information relevant to such appointment as the committee, or the Town Council, may require.

Appointments made by the Mayor to advisory multiple member bodies shall become effective on the thirtieth day following the date on which notice of the proposed appointment was filed with the Clerk of the Town Council, unless five members of the Town Council shall within the said thirty days vote to reject such appointment, or unless the Town Council has sooner voted to affirm the appointment. Rejection by the Town Council shall require a two-thirds vote of the full council (five members so voting).

SECTION 2-11: FILLING OF VACANCIES

- (a) Councilor-at-Large If a vacancy shall occur in the office of councilor-at-large during the term for which councilors are elected the vacancy shall be filled in descending order of votes received by the candidate for the office of councilor-at-large at the preceding town election who received the largest number of votes without being elected, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of councilor-at-large at the said election. The Town Clerk shall certify such candidate to the office of councilor-at-large to serve for the balance of the then unexpired term.
- (b) District Councilor If a vacancy shall occur in the office of district councilor during the term for which councilors are elected the vacancy shall be filled by the candidate for the office of district councilor in the district in which the vacancy resides who received the largest number of votes without being elected at the preceding town election, provided such person remains eligible and willing to serve, and provided such person received votes at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of district councilor in said district at said election. The Town Clerk shall certify such candidate to the office of district councilor to serve for the balance of the un-expired term.
- (c) Filling of Vacancies by the Mayor and Town Council Whenever a vacancy shall occur in the office of councilor-at-large and there is no available candidate to fill such vacancy in the manner provided in section 2-11 (a), or whenever a vacancy shall occur in the office of district councilor and there is no available candidate to fill such vacancy in the manner provided by section 2-11 (b); the vacancy shall be filled by the individual Town Councilors placing names into nomination to the office of the Mayor. The Mayor shall choose from among the nominees. The Mayor shall then forward one name to the Town Council for ratification. A vote of two-thirds of the members of the remaining Town Council is required for ratification. The Town Clerk shall certify such candidate to the office of Town Councilor to serve for the balance of the then expired term.

ARTICLE 3 ELECTED TOWN OFFICERS

SECTION 3-1: ELECTIVE TOWN OFFICES

- (a) In General The town offices to be filled by the voters in addition to the offices of Mayor, councilor-at-large and district councilor shall be six members of the School Committee, three members of the Stetson School Fund and the Town Clerk.
- (b) Other Offices Filled at Town Elections In addition to the town offices enumerated above, other officers or representatives to regional authorities or districts as may be established by law or by interlocal agreement may also be filled by ballot at town elections.
- (c) Coordination Notwithstanding their election by the voters, the town officers named in this section shall be subject to the call of the Mayor, at all reasonable times, for consultation, conference and discussion on any matter relating to their respective offices.
 - (d) Compensation, Expenses
- (1) Salary The members of elected town offices shall receive such salary for their services as may from time to time be set by ordinance. No ordinance increasing the salary of an elected town officer shall be effective unless it shall have been adopted more than six months prior to the date of a regular town election and it provides that such salary is to take effect upon the organization of the town government following the next town election.
- (2) Expenses Subject to appropriation and to prior authorization, the elected town officers shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.
 - (e) Filling of Vacancies in Elected Offices
- (1) Multiple Member Body If there is a vacancy in an elected board, it shall be filled by the town council.

SECTION 3-2: SCHOOL COMMITTEE

- (a) Composition, Term of Office There shall be a School Committee, which shall consist of seven members. Six of the members shall be nominated and elected by and from the voters of the town at large and the Mayor shall serve as the seventh member. The Mayor shall be a voting member but may not serve as the chairman of the School Committee or hold any other office on the committee.
- (b) Term of Office At each bi-annual town election the School Committee members shall be elected each to serve for a term of two years. The term of office of School Committee members shall begin on the first business day of January in the year following their election, and shall expire when their successors have been qualified.
 - (c) School Committee Chair
- (1) Election and Term As soon as practicable after the School Committee members-elect have been qualified following each bi-annual town election, as provided in article 8, the School Committee shall organize by electing one of its members to serve as School Committee chair and one of its members to serve as School Committee vice chair. The School Committee may reorganize in January of off years. Notwithstanding the above, the School Committee Chair may serve up to two consecutive terms if elected by the School

Committee and is eligible to serve again with at least one year of service on the School Committee with another serving as committee chair between service as committee Chair.

- (2) Powers and Duties The School Committee chair shall preside at all meetings of the School Committee, regulate its proceedings and shall decide all questions of order. The School Committee chair shall have the same powers to vote upon all measures coming before the School Committee as any other member of the School Committee. The School Committee chair shall perform such other duties consistent with the office as may be provided by Charter, by ordinance or by other vote of the School Committee.
- (d) School Committee Powers and Duties The School Committee shall have all powers which are conferred on School Committees by general laws and such additional powers and duties as may be provided by the Charter, by ordinance, or otherwise and not inconsistent with said grant of powers conferred by general laws. The powers and duties of the School Committee shall include the following:
- 1) To elect a superintendent of the schools who shall be charged with the day-to-day administration of the school system, subject only to policy guidelines and directives adopted by the School Committee and, upon the recommendation of said superintendent, to establish and appoint assistant or associate superintendents as provided in section fifty-nine of chapter seventy-one of the General Laws.
- 2) To make all reasonable rules and regulations for the management of the public school system and for conducting the business of the School Committee as may be deemed necessary or desirable.
- 3) To adopt and to oversee the administration of an annual operating budget for the school department, subject to appropriation by the Town Council.

The School Committee shall provide ordinary maintenance of all school buildings and grounds, provided, however, the Mayor may propose a reorganization in accordance with section 6-1 of this Charter to provide for the maintenance of school buildings and grounds.

Whenever the School Committee shall determine that additional classrooms or facilities are necessary to meet the educational needs of the community, at least one member of the School Committee, or a designee of the School Committee, shall serve on the agency, board or committee to which the planning or construction of such new, remodeled or renovated school building is delegated. The School Committee as a whole shall appoint said member or designee.

SECTION 3-3: TRUSTEES OF THE STETSON FUND

Composition, Term of Office - There shall be a board of trustees of the Stetson School Fund, which shall be governed in accordance with the document titled, The Stetson Donation of a Town House and Fund for a High School to the Town of Randolph, voted on June 17, 1841, with the following proviso:

The terms of these members shall be two years.

SECTION 3-4: TOWN CLERK

(a) There shall be a Town Clerk elected for a term of 4 years.

- (b) The office of the Town Clerk shall be as defined in the general laws of the Commonwealth of Massachusetts.
- (c) The election of the Town Clerk shall be on the bi-annual election opposite the election of the Mayor. During the transition for this Charter any person serving in the elected position of the Town Clerk on the date this Charter takes effect shall continue in such office beyond the expiration of the term to which he/she was elected, until the first election to be held for Town Clerk, pursuant to this Charter which election shall be held in the Fall of 2007.

ARTICLE 4

EXECUTIVE - ADMINISTRATIVE BRANCH

SECTION 4-1: MAYOR: QUALIFICATIONS; TERM OF OFFICE; COMPENSATION, ETC

- (a) Mayor, Qualifications -- The chief executive officer of the town shall be a Mayor, elected by and from the voters of the town at large. Any voter shall be eligible to hold the office of Mayor.
- (b) Term of Office The term of office of the Mayor shall be four years beginning on the first business day of January following the bi-annual town election at which chosen and until a successor is qualified.
- (c) Compensation The Town Council shall, by ordinance, establish an annual salary for the Mayor in accordance with Section 3-1 (d)(1).
 - (d) Expenses Expenses shall be reimbursed in accordance with Section 3-1(d)(2).
- (e) Prohibitions The Mayor shall hold no other town office or town employment except those expressly authorized by this Charter. No former Mayor shall hold any compensated appointed town office until one year following the date on which such former Mayor's town service has terminated. This provision shall not prevent a person holding an office, position or other employment under the town, who has taken a leave of absence in order to serve as Mayor from returning to the same office or other position, or town employment held at the time such leave of absence commenced; provided, however, no such person shall be eligible for any other municipal position until at least one year following the termination of service as Mayor.

SECTION 4-2: EXECUTIVE POWERS

The executive powers of the town not otherwise vested specifically by this Charter, shall be vested in the Mayor. The Mayor shall cause the Charter, the laws, the ordinances and other orders for the government of the town to be enforced, and shall cause a record of all official acts of the executive branch of the town government to be kept.

The Mayor shall be recognized as the official head of the town government for all matters concerning the town including ceremonial, civil and other purposes and shall be recognized by the courts for the purpose of serving civil process and by the Governor for military purposes. The Mayor shall be the town's official representative when dealing with all governments including Federal, State, County, Municipal and Foreign.

The Mayor shall, by virtue of the office, be a voting member of the School Committee. The administration of the ordinary, day-to-day direction and supervision of all

town agencies except the school department, is the responsibility of the Mayor who may be assisted by the office of the Director of Administration and Finance.

The Mayor shall establish policy goals and objectives to guide the town in the preparation and development of an annual operating budget and a capital outlay program.

The Mayor shall present an annual state of the town message to the Town Council setting out proposed policies to be adopted by the Town Council, which, in the opinion of the Mayor, addresses the problems and opportunities of the town.

An annual report, which contains a general summary of the activities of all town agencies, shall be published within one hundred and twenty days following the close of each fiscal year by the office of the Mayor. The annual report shall contain reports by all departments, committees and commissions and boards.

The Mayor shall, from time to time throughout the year, by written communications, recommend to the Town Council for its consideration such measures, as, in the judgment of the Mayor, the town requires.

SECTION 4-3: APPROVAL OF THE MAYOR, EXCEPTION (Veto)

Every appropriation or other order, ordinance, resolution or other vote adopted or passed by the Town Council relative to the affairs of the town, except memorial resolutions, the selection of town officers by the Town Council and any matters relating solely to the internal affairs of the Town Council, shall be presented to the Mayor for approval. If the Mayor approves of the measure the Mayor shall sign it; if the Mayor disapproves of the measure the Mayor shall return the measure, with the specific reason or reasons for such disapproval attached thereto, in writing, to the Town Council. The Mayor may disapprove or reduce items or parts of items in an appropriation and thus exercise a selective veto power. The Town Council shall enter the objections of the Mayor on its records, and not sooner than ten days, nor after thirty days from the date of its return to the Town Council, shall again consider the same measure. If the Town Council, notwithstanding such disapproval, by the Mayor, shall again pass the order, ordinance, or resolution by a vote of five of the councilors, it shall then be deemed in force, notwithstanding the failure of the Mayor to approve the same. If the Mayor has neither signed a measure nor returned it to the Town Council within ten days following the date it was presented to the Mayor, the measure shall be deemed approved and in force.

SECTION 4-4: APPOINTMENTS BY THE MAYOR

- (a) Director of Administration and Finance There shall be a director of administration and finance appointed by the Mayor and confirmed by the Town Council in accordance with Section 2-10 (a) of this Charter. The term of the office shall be five years subject to removal as may be otherwise provided in this Charter or by town ordinance. The initial term of the director of administration shall not expire in the year coinciding with a Mayoral election except for cause.
- (b) Collector of Taxes/Treasurer There shall be a collector of taxes/treasurer who is appointed by and report to the Mayor for an at will term. To be confirmed by the Town Council in accordance with Section 2-10 (a).

- (c) Town Counsel/Attorney The Mayor may enter into a contractual agreement with an individual or firm to provide legal counsel to the Mayor and the Town of Randolph. To be confirmed by the Town Council in accordance with Section 2-10 (a).
- (d) Town Planner: There may be a Town Planner appointed by and reporting to the Mayor for an at-will term. To be confirmed by the Town Council in accordance with Section 2-10 (a).
- (e) Bureau Heads and Department Heads: The Mayor shall appoint all Bureau Heads and Department Heads for an at-will term. To be confirmed by the Town Council in accordance with Section 2-10 (a).
- (f) Policy Making Bodies: The Mayor shall appoint the members of all multiple member bodies which are policy making in nature, the decisions of which are final, legally binding except for judicial review, if any and not subject to ratification by another town agency. These appointments to be confirmed by the Town Council in accordance with Section 2-10(b) of this Charter. These appointments shall include, but are not limited to:
 - 1) Conservation Commission 7 members for a 3 year term,
- 2) Board of Appeals 7 members for a 3 year term, with 3 alternates for a 1 year term,
 - 3) Board of Health 5 members for a 3 year term,
 - 4) Planning Board 5 members for a 3 year term,
 - 5) Design Review Board 5 members for a 3 year term,
 - (or any successors to said multiple member bodies).
- 6) Randolph Housing Authority There shall be a Randolph Housing Authority consisting of 5 members 4 members shall be appointed by and report to the Mayor, the fifth member shall be an appointee by the Governor of the Commonwealth. The terms of office shall be 5 years.
- 7) Registrars of Voters There shall be a 3-member board of registrars appointed by the Mayor in accordance with Mass General Laws. The term shall be 3 years.
- 8) Assessors There shall be a board of assessors consisting of three members for a term of three years, who shall be appointed by and report to the Mayor.
- 9) Commissioners of the Department of Public Works There shall be a Board of Public Works consisting of 5 members appointed by and report to the Mayor for a term of three years.
 - 10) Historical Commission 7 members for 3 years.
- (g) Advisory Bodies: The Mayor shall appoint the members of all multiple member bodies, which are advisory in nature and not policy making. These nominations made by the Mayor shall be subject to rejection by the Town Council as provided in section 2-10(c). These appointments shall include, but are not limited to:
 - 1) Local Education Fund Committee 9 members for a 3-year term
 - (h) Vacant
- (i) Town Employees: The Mayor shall appoint all other Town employees except employees of the Town Council described in section 2-8, School Department, and other elected

officials.

SECTION 4-5: REMOVAL OR SUSPENSION OF OFFICIALS

Town Officers, Bureau Heads and Department Heads - Town Officers, Bureau Heads and Department Heads and all other persons appointed by the Mayor serve at the pleasure of the Mayor with no fixed term of office. The Mayor may, in writing, remove or suspend any town officer, Bureau Head, or the head of any town department appointed by the Mayor by filing a written statement, with the Town Clerk, setting forth in precise detail the specific reasons for such removal or suspension. A copy of the written statement shall be delivered in hand, or mailed by certified mail, postage prepaid, to the last known address of the said town officer, bureau or department head. The said town officer, bureau head or department head may make a written reply by filing such a reply statement, with the Town Clerk, within ten days following the date of the statement of the Mayor has been filed; but, such reply shall have no effect upon the removal or suspension unless the Mayor shall so determine. The decision of the Mayor in suspending or removing a town officer or a department head shall be final, it being the intention of this provision to vest all authority and to fix all responsibility for such suspension or removal solely in the Mayor.

SECTION 4-6: TEMPORARY ABSENCE OF THE MAYOR

(a) Acting Mayor - Whenever, by reason of sickness, absence from the town or other cause, the Mayor shall be unable to perform the duties of the office for a period of more than ten successive working days, the president of the Town Council shall be the acting Mayor. In the event of the absence or disability of the president of the Town Council, the vice-president of the Town Council shall serve as acting Mayor.

The Mayor shall, by a letter filed with the Town Council and a copy filed with the Town Clerk, designate a qualified town officer or town employee to serve as acting Mayor during the temporary absence of the Mayor for periods of ten days or less and to serve only when the needs of the town require and only to the extent necessary under the then circumstances.

(b) Powers of Acting Mayor - The acting Mayor shall have only those powers of the Mayor as are indispensably essential to the conduct of the business of the town in an orderly and efficient manner and on which action may not be delayed. The acting Mayor shall have no authority to make any permanent appointment or removal from town service unless the disability of the Mayor shall extend beyond sixty days nor shall an acting Mayor approve or disapprove of any measure adopted by the Town Council unless the time within which the Mayor must act would expire before the return of the Mayor. During any period in which any member of the Town Council is serving as acting Mayor, such councilor shall not vote as a member of the Town Council.

SECTION 4-7: VACANCY IN OFFICE OF MAYOR

(a) Special Election - If a vacancy in the office of Mayor occurs during the first thirty six months of the term for which the Mayor is elected, whether by reason of death, resignation, removal from office, incapacity or otherwise, the Town Council shall forthwith

order a special election, to be held within ninety days following the date the vacancy is created, to fill such vacancy for the balance of the then expired term.

- (b) Council Election If a vacancy in the office of Mayor occurs after the first thirty six months of the term for which the Mayor is elected, whether by reason of death, resignation, removal from office, or otherwise, the president of the Town Council shall become the Mayor. Upon the qualification of the president of the Town Council as the Mayor, under this section, a vacancy shall exist in that council seat on the Town Council, which shall be filled in the manner provided in section 2-11. If the council president shall for any reason decline to serve as acting Mayor the Town Council shall, forthwith, by majority vote, select a Mayor from among its members.
- (c) Powers, Term of Office A Mayor chosen pursuant to section 4-7(b), above, shall serve only until the time of the next regular election at which time the person elected to fill the office for the ensuing term of office, shall upon qualification, serve, in addition, for the balance of the then unexpired term.

ARTICLE 5 FINANCE AND FISCAL PROCEDURES

SECTION 5-1: FINANCIAL PROJECTIONS

Annually, on or before the first day of November, the Mayor, with the assistance of the Director of Administration and Finance, shall prepare and develop long range financial projections for the town that include actual revenues and expenditures for the preceding fiscal year, estimated revenues and expenditures for the current fiscal year, projected revenues and expenditures for at least the next three fiscal years, an identification of each factor which the Mayor believes is likely to have an impact on the financial condition of the town during such period, revenue trends in state distributions and in local receipts, potential sources of new or expanded revenues, new or expanded cost items, a summary statement of the fiscal condition of the town at the end of each year during the period reported on and a recommendation for actions to be taken to minimize any adverse affects upon the town and to maximize favorable trends.

Revenue and expenditure projections shall be clearly stated and their basis explained, the report should specifically identify and explain any policies related to the use, retention or accumulation of any reserves. The financial projection report shall provide the basis for the spending guidelines promulgated by the Mayor to guide spending agencies in the preparation of spending requests for the ensuing fiscal year.

SECTION 5-2: SCHOOL COMMITTEE BUDGET

(a) Submission to The Mayor - The proposed budget adopted by the School Committee shall be submitted to the Mayor on or before the first Monday in February, to allow the Mayor sufficient time within which to consider the effect the school department's requested appropriation will have upon the total town operating budget. The Mayor is required to consider the school budget as submitted but may make specific recommendations for changes, by decreasing or increasing requested appropriations, and to return the proposed budget back to the School Committee for reconsideration within fifteen days. The School

Committee is required to consider the Mayors recommendations and shall submit a second budget to the Mayor within fifteen days. The schools second budget submittal may or may not reflect the suggested changes. The action of the School Committee in adopting the proposed budget, following the public hearing, shall be summarized and the results of a roll call vote taken on each amendment to the proposed budget as may be offered shall be recorded. If the School Committee has not submitted proposed operating budget for the schools within the time and in the manner provided in this section, the Mayor shall in such circumstance prepare the proposed operating budget.

(b) Public Hearing - At least twenty-one days before the meeting at which the School

Committee is scheduled to vote on its final budget request, for submission to the Mayor in accordance with the paragraph above. The School Committee shall cause to be published in a local newspaper a general summary of its proposed budget. The summary shall specifically indicate any major variations from the current budget and the reasons for such changes. The notice shall further indicate the times and places at which complete copies of the proposed budget are available for examination by the public, and it shall indicate the date, time and place, (not less than seven nor more than fourteen days following such publication), when a public hearing will be held by the School Committee on the proposed budget. The School Committee shall not take its final vote on its proposed budget until all persons who desire to be heard concerning the budget proposal have had a reasonable opportunity to be heard.

SECTION 5-3: SUBMISSION OF BUDGET AND BUDGET MESSAGE

Annually on the first Monday in April the Mayor, shall submit to the Town Council a proposed operating budget that is balanced, for the ensuing fiscal year with an accompanying budget message and supporting documents. The Director of Administration and Finance shall prepare for the public a general summary and analysis of the proposed budget. The summary shall specifically indicate any major variations from the current operating budget and the reason for such changes. The Director of Administration and Finance's summary shall be publicized in a local newspaper and this notice shall further indicate the times and places at which complete copies of the proposed operating budget for the town are available for examination by the public. If the Mayor has not submitted a proposed operating budget within the time and in the manner provided in this section the Town Council may, in such circumstance, prepare its own proposed operating budget.

SECTION 5-4: BUDGET MESSAGE / STATE OF THE TOWN ADDRESS

On the first Monday in April the Mayor shall give the state of the town address. In such a forum and form as prescribed in section 5-4a.

The Mayors' message shall explain the budget both in fiscal terms and in terms of the work programs linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the town for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the town's debt position,

including factors affecting the ability to raise resources through debt issues, and include such other material as the Mayor deems desirable. At this time the Mayor shall cause to be delivered to the President of the Council or designee the proposed operating budget.

(a) The State of the Town Address Protocol - The Mayor shall cause to be gathered in a suitable public place all elected and appointed officials of the town. The Mayor shall in a suitable fashion, hand deliver the official Mayors budget proposal, Blue Book, to the President of the Town Council and The Chairman of the School Committee. The Mayor shall at this time deliver an address to the citizenry of Randolph.

SECTION 5-5: THE BUDGET

The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the Mayor deems desirable or the Town Council may require for effective management and an understanding of the relationship between the budget and the town's strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by Bureau, and program, purpose or activity, and the method of financing such expenditures, and methods to measure outcomes and performance related goals;
- (2) Proposed longer term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by bureau, department or by other high level organization unit when practicable, the proposed method of financing each such capital expenditure and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the town and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance, exclusive of reserves.

SECTION 5-6: ACTION ON THE BUDGET

- (a) Public Hearing Forthwith upon its receipt of the proposed operating budget the Town Council shall provide for the publication in a local newspaper of a notice stating the time and place, not less than seven nor more than fourteen days following such publication, at which it will hold a public hearing on the proposed operating budget as submitted by the Mayor.
- (b) Review The Town Council shall consider, in open public meetings, the detailed expenditures proposed for each town agency and may confer with representatives of each such agency in connection with its review and consideration. The Town Council may require

the Mayor, or any other town agency, to furnish it with such additional information, as it may deem necessary to assist it in its review and consideration of the proposed operating budget.

(c) Action by Town Council - The Town Council shall adopt the budget, with or

(c) Action by Town Council - The Town Council shall adopt the budget, with or without amendments, within sixty days following the date the proposed budget was received by it or general law may provide such other period as. In amending the budget the Town Council may delete or decrease any programs or amounts, except expenditures required by law or for debt service. But, if the Town Council fails to take any action with respect to any item in the proposed budget within sixty days following the date of its receipt of the proposed budget, such amount shall, without any action by the Town Council, become a part of the appropriations for the ensuing fiscal year and shall be available for the purposes specified.

SECTION 5-7: SUPPLEMENTARY BUDGETS, OTHER APPROPRIATIONS

- (a) Intradepartmental Transfers With the approval of the Mayor, funds appropriated for one line item within the appropriation made for a particular town agency may be transferred to another line item within the same town agency or another town agency within the same bureau. Whenever such a transfer is authorized by the Mayor notice of the transfer and the circumstances under which such transfer was deemed advisable, shall be filed with the Clerk of the Town Council.
- (b) Interdepartmental Transfers With the approval of the Town Council funds appropriated for the use within one town bureau may be transferred for the use within another town bureau. Requests for the transfer of funds from one town agency to another shall be made by the Mayor, in writing, to the Town Council and shall include a statement setting forth the reason the additional funds are needed by the agency to which it is proposed they be transferred. The Town Council shall, by ordinance, provide a procedure governing such requests, which shall include at least two readings and a public hearing by the Town Council, and it shall specify the circumstances under which notice by publication in a newspaper shall be required.
- (c) Appropriation Whenever the Mayor shall submit to the Town Council a request for a new appropriation of any sum of money, either as a supplement to some item in the annual operating budget or for an item, or items, not included in the annual operating budget as adopted, the Town Council shall not act upon such request until it has (1) given public notice of the request, and (2) held a public hearing concerning such request. The Town Council shall, by ordinance, determine the level of appropriation request above which amount newspaper publication will be required and below which amount posting on the town bulletin boards will be sufficient.

SECTION 5-8: ALLOTMENTS

On or before August first of each year, or within ten days after the approval by the Town Council of the annual appropriation order for such fiscal year, whichever shall occur later, the town officials in charge of departments or agencies including the superintendent of schools for the school department, shall submit to the Director of Administration and Finance, with a copy to the Town Clerk, in such form as the Director of Administration and

Finance may prescribe, an allotment schedule of the appropriations of all categories included in said budget, indicating the amounts to be expended by the department or agency for personnel and for every other budget category during each of the fiscal quarters of said fiscal year, or such shorter time periods as the Director of Administration and Finance, may prescribe.

Whenever the Director of Administration and Finance determines that any department or agency including the school department, will exhaust or has exhausted its quarterly or shorter time period allotment and any amounts unexpended in previous periods, the Director of Administration and Finance shall give notice in writing to such effect to the department head, the Mayor, and to the Town Clerk who shall forthwith transmit the same to the Town Council. Upon such a determination and notice thereof, the Director of Administration and Finance shall provide such officers additional reports on at least a monthly basis indicating the status of such accounts.

The Mayor, within seven days after receiving such notice, shall determine whether to waive or to enforce such allotment. If the allotment for such period is waived or is not enforced, as provided above, the department or agency head shall reduce the subsequent period allotments appropriately. If the allotment for such period is enforced or not waived, thereafter the department, on a schedule to be approved by the Director of Administration and Finance, shall so adjust expenditures to eliminate the deficit. All actions, notices, and decisions provided for in this section shall be transmitted to the Town Council and the Town Clerk within seven days.

SECTION 5-9: CAPITAL IMPROVEMENT PROGRAM

The Mayor shall submit a capital improvement program to the Town Council on or before the first of December before the start of each fiscal year. It shall include:

- 1. A clear and concise general summary of its contents;
- 2. A list of all capital improvements proposed to be undertaken during the next ensuing five years, with supporting information as to the need for each capital improvement; cost estimates, methods of financing and recommended time schedules for each improvement; and,
- 3. The estimated annual cost of operating and maintaining each facility and piece of major equipment involved.

This information is to be annually revised by the Mayor and the Director of Administration and Finance with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

SECTION 5-10: INDEPENDENT AUDIT

The Town Council shall annually provide for an outside audit of the books and accounts of the town to be made by a certified public accountant, or a firm of certified public accountants, who have no personal interest, direct or indirect, in the fiscal affairs of the town or any of its officers. The Mayor shall annually provide a sufficient sum of money to conduct the audit. The award of a contract to audit shall be made by the Town Council on

or before September fifteenth of each year. A standing committee of the council shall be assigned to coordinate the work of the individual or firm selected with the town officials. The report of the audit shall be filed in final form with the Town Council not later than March first in the year following its award.

SECTION 5-11: FORENSIC AUDIT

The Town Council may upon evidence of accounting irregularities choose to employ an individual or firm to conduct a forensic audit to determine the scope of the irregularities. This position shall be temporary in nature and be for a specific purpose. These actions shall require a super majority vote of the Town Council. All findings of such forensic audit shall be made available to the public upon completion of said audit providing it does not conflict with any investigation or general law to the contrary.

ARTICLE 6

ADMINISTRATIVE ORGANIZATION

SECTION 6-1: ORGANIZATION OF TOWN AGENCIES

The organization of the town into operating bureaus or agencies for the provision of services and the administration of the government may be accomplished only through an organization, or reorganization, plan submitted by the Mayor to the Town Council. No organization plan may originate with the Town Council.

The Mayor may, subject only to express prohibitions in a general law, or this Charter, propose to establish, reorganize, consolidate or abolish any town agency in whole or in part. No services or functions assigned by this Charter to a particular bureau may be discontinued or assigned to any other bureau unless this Charter so provides.

Every organization or reorganization plan submitted by the Mayor pursuant to this provision shall contain a proposed ordinance which sets out, in detail, such amendments, insertions, revisions, repeals or otherwise of existing ordinances as may be necessary to accomplish the desired reorganization. Such reorganization plan and proposed ordinance shall be accompanied by a message of the Mayor, which explains the benefits expected to ensue.

Whenever the Mayor proposes such a plan the Town Council shall hold one or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time and place at which the public hearing will be held, not less than seven nor more than fourteen days following said publication.

An organization or reorganization plan shall become effective at the expiration of sixty days following the date the proposal is submitted to the Town Council unless the Town Council shall, by a super majority vote, within such period vote to disapprove the plan. The Town Council may vote only to approve or to disapprove the plan and may not vote to amend or to alter it.

Upon acceptance of this Charter the organization plan of the Town of Randolph shall be adopted according to the attached flow chart referenced as Article 10.

SECTION 6-2: BOARD OF LICENSE COMMISSIONERS

The Board of License Commissioners shall be The Town Council. The Council shall have the power to issue licenses for inn holders or common victuallers, the powers of a licensing board appointed under section four of chapter one hundred and thirty-eight of the General Laws, shall be the licensing authority for the purposes of chapter one hundred and thirty-eight and chapter one hundred and forty of the General Laws and which shall have all of the other powers with respect to licenses which prior to the adoption of the home rule Charter were exercised by the Board of Selectmen. The board of licensing commissioners may grant licenses relating to alcoholic beverages under chapter one hundred and thirty-eight of the General Laws and those licenses under chapter one hundred and forty of the General Laws which are not, by the provisions of said chapter, placed within the jurisdiction of another town officer or agency, and it shall have all the powers and duties of a licensing authority under said chapters.

The Town Clerk, the inspector of buildings, the director of public health, the fire chief, the police chief, and the tax collector (or persons performing similar duties under any other title) shall advise the council and may sit in on the council hearings without additional compensation.

SECTION 6-3: BUREAU OF ADMINISTRATION AND FINANCE

- 1. Establishment, Scope There shall be a consolidated dept of administration and finance as provided by MGL Chapter 43C Section 11. There shall be a Director of Administration and Finance who shall be appointed by and be responsible to the Mayor, the director of administration and finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer/collector, assessors and procurement officer of the town, provided, however, that no director of administration and municipal finance shall serve, ex-officio as both accountant, auditor or comptroller and treasurer/collector.
- 2. Director of the Bureau of Administration and Finance The Bureau of administration and finance shall assume all of the duties and responsibilities related to but need not be limited, to the following:
 - (i) coordination of financial services and activities
 - (ii) maintenance of all accountant records and other financial statements,
 - (iii) payment of all obligations,
 - (iv) receipt of all funds due,
- (v) assistance to all other town departments and offices in any matter related to financial affairs,
- (vi) monitoring of all funds, including periodic reporting to appropriate agencies on the status of accounts,
- (vii) supervision of all purchases of all goods, materials and supplies, and maintenance of inventory controls
 - (viii) supervision of all data processing facilities and
- (ix) any other matter relating to municipal finance as may be determined necessary or desirable,

- (x) With respect to the school business office, the school business manager shall be appointed by and be an employee of the School Committee. The school business manager shall carry out directives of the School Committee as they relate to various programs, the transfers of money from various accounts as long as the directives are in keeping with proper accounting procedures as directed by the Director of Administration and Finance, Dept. of Revenue and the Dept. of Education
- 3. Delegation of Authority The Director of Administration and Finance may authorize any subordinate officer or employee to exercise any power or perform any function or duty which is assigned to the office of the Director of Administration and Finance, provided, however, that all acts performed under any such delegation shall at all times be deemed to be the acts of the Director of Administration and Finance.

The bureau of administration and finance may be restructured in accordance with Section 6-1 of this Charter.

SECTION 6-4: BUREAU OF PUBLIC SAFETY

1. Establishment, Scope

There shall be a bureau of public safety. The bureau of public safety shall consist of the civil defense department, the police department, the fire department, the auxiliary police department, the animal control officer/inspector and the field driver.

2. Director of the Bureau of Public Safety - The Mayor shall serve as the head of the bureau of public safety.

The bureau of public safety may be restructured in accordance with Section 6-1 of this Charter.

SECTION 6-5: BUREAU OF PARKS and PUBLIC WORKS

- 1. Establishment, Scope- There shall be a department of public works responsible for the performance of all public works related functions and activities of the town. The department of public works shall be organized as pursuant to Chapter 460 of the acts of 1989 except where referenced below:
- (a) The currently elected by virtue of chapter 460 of the Acts of 1989 members shall upon effective date of this Charter be appointed members, except as provided in subsection 8 of section 9-6.
 - (b) Strike word Division in any reference in the act.
- 2. Director of the Bureau of Parks and Public Works The Bureau of Parks and Public Works shall be under the direct control and supervision of a director of parks and public works who shall be appointed by and who shall be responsible to the Mayor. The director of parks and public works shall serve for an at-will term. The director of parks and public works shall be a person especially fitted by education, training, experience, and previous experience and training to perform the duties of the office. The director of parks and public works shall be responsible for the supervision and coordination of all activities of the department of public works in accordance with state statutes, town ordinances, administrative code and rules and regulations. Notwithstanding, the director of parks and public works shall with the approval of the Mayor organize/and utilize all resources, within

the bureau to maximize the efficient delivery of services.

This bureau may be restructured in accordance with Section 6-1 of this Charter.

SECTION: 6-6 BUREAUS OF SOCIAL SERVICES

- 1. Establishment, Scope There shall be a bureau of social services, which shall be responsible for the planning, and coordination of all social service related activities of the town. The bureau of social services shall be responsible for the coordination of all of the duties and responsibilities related to the delivery of social services which prior to the adoption of this home rule Charter were performed by or under the authority of the Veterans department, elderly department, youth commission, recreation department, fair housing officer, and the board of public health (except the issuance of food establishment permits, milk permits, and the responsibilities of the code enforcement officer, when not in conflict) and it may have additional powers, duties and responsibilities with respect to the delivery of social services activities as may from time to time be provided by general law, special law or ordinance. The bureau of social services shall for the purpose of coordinating budgeting only shall also encompass the Turner Free Library.
- 2. Director of the Bureau of Social Services-The bureau of social services shall be under the direct control and supervision of a director of social services who shall be appointed by and who shall be responsible to the Mayor. The director of social services shall serve for an at-will term. The director of social services shall be a person especially fitted by education, training, experience, and previous experience and training to perform the duties of the office. The director of social services shall be responsible for the supervision and coordination of all activities of the bureau of social services in accordance with state statutes, general laws, special laws and ordinances.
- (a) Turner Free Library shall be run by the Trustees in accordance with the deed dated April 2nd, 1875 signed and delivered by Seth Turner, Royal W. Turner, Mary B. Turner, Abby W. Turner and Anne M. Sweetser.

The operating budget and all town-funded capital expenditures shall be coordinated through the director of social services.

This bureau my be restructured in accordance with Section 6-1

SECTION 6-7: BUREAU OF INSPECTIONAL SERVICES AND COMMUNITY DEVELOPMENT

- 1. Establishment, Scope-Within the bureau of inspectional services and community development there shall be a department of inspectional services and a department of planning and community development.
- 2. Department of Inspectional Services There shall be a department of inspectional services responsible for the coordination of all building and land use related permits functions. The department of inspectional services shall be responsible for the coordination of all of the duties and responsibilities related to inspectional services which prior to the adoption of this home rule Charter were performed by or under the authority of the building department, wire inspector, plumbing and gas inspector, milk inspector, board of health, fence viewer, sealer of weights and measures, and code enforcement officer and it may have

such additional powers, duties and responsibilities with respect to inspectional services as may from time to time be provided by general law, special law or ordinance.

3. Department of Planning and Community Development - There shall be a

- department of Planning and Community Development There shall be a department of planning and community development responsible for the coordination of all the planning and development related activities of the town. The department of planning and community development shall be responsible for the coordination of all of the duties and responsibilities related to planning and development activities which prior to the adoption of this home rule Charter were performed by or under the authority of the planning board, conservation commission, historical commission, design review board, handicap commission, business and industrial commission, and the board of appeals and it may have such additional powers, duties and responsibilities with the respect to the coordination of planning and development related functions and activities as may from time to time be provided, by general law, special law or ordinance. Such ordinance may include in its scope the coordination of all land acquisition and land management proposals, economic development planning, community development block grants, the preparation of a comprehensive master plan and maintenance of a centralized source of computerized and paper records, reports, statistical data and other planning and development related materials.

 4. Director of the Bureau of the Inspectional Services and Community Development
- 4. Director of the Bureau of the Inspectional Services and Community Development The bureau of inspectional services and community development shall be under the direct control and supervision of a director of planning and community development who shall be appointed by and who shall be responsible to the Mayor. The director of planning and community development shall serve for an at-will term. The director of planning and community development shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of planning and community development shall be responsible for the supervision and coordination of all activities of the department of planning and community development as well as all activities of the department of inspectional services in accordance with state statutes, general and special laws town ordinances, and rules and regulations.

This bureau may be restructured in accordance with section 6-1.

SECTION 6-8: BUREAU OF HUMAN RESOURCES

1. Establishment, Scope- There shall be a bureau of human resources, which shall be responsible for all personnel, and employee related functions and activities of the town government and its administration. The bureau of human resources shall assume all of the duties and responsibilities related to human resources activities which prior to the adoption of this home rule Charter were performed by or under the authority of the Board of Selectmen, town accountant, town collector, Town Clerk, personnel board, department of public works, building commissioner, board of health, turner library, and the heads of all town agencies, departments, boards, committees, and commissions and it may have such additional powers, duties and responsibilities with respect to human resources related functions and activities as the town may from time to time provide by ordinance.

2. Director of the Bureau of Human Resources - A director of human resources who shall be appointed by and who shall be responsible to the Mayor shall head the bureau of human resources. The director of human resources shall serve for an at-will term. The director of human resources shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of human resources shall be responsible for the supervision and coordination of all activities of the department of human resources in accordance with statutes, town ordinances and rules and regulations.

This bureau may be restructured in accordance with section 6-1.

ARTICLE 7

ELECTIONS; ELECTION RELATED MATTERS

SECTION 7-1: TOWN ELECTIONS; GENERAL

The regular town election shall be held on the first Tuesday following the first Monday in November of bi-annual year, in odd numbered years between regular state elections for state offices.

In any year when there are more than three candidates completing the requirements to place their name in nomination for the position of Mayor, a preliminary election shall be held on the first Tuesday following the first Monday in September. Preliminary elections shall be held in the town of Randolph only for the office of mayor.

SECTION 7-2: PRECINCTS AND DISTRICTS

The territory of the town shall be divided into four districts so established as to consist of as nearly an equal number of inhabitants as it is possible to achieve based on compact and contiguous territory, bounded insofar as possible by the center line of known streets or ways or by other well defined limits. Each such district shall be composed of voting precincts established in accordance with sections one through ten of chapter fifty-four of the General Laws. The Town Council shall from time to time, but at least once in each ten years, review such districts to insure their uniformity in number of inhabitants. The Town Council shall approve district boundaries by a simple majority subject to the approval of the Mayor. The Town Council may override a veto of the Mayor by a simple majority. Until the town council establishes new districts or otherwise takes actions with respect to districts, the town council districts shall be as follows:-

District 1: Precincts 1 and 2 as existing at the time of this charter takes effect pursuant to section 9-7 of this charter;

District 2: Precincts 3 and 4 as existing at the time of this charter takes effect pursuant to section 9-7 of this charter;

District 3: Precincts 5 and 6 as existing at the time of this charter takes effect pursuant to section 9-7 of this charter; and

District 4: Precincts 7 and 8 as existing at the time of this charter takes effect pursuant to section 9-7 of this charter.

SECTION 7-3: APPLICATION OF STATE LAWS

Except as expressly provided in the Charter and authorized by statute, all town elec-

tions shall be governed by applicable laws of Commonwealth and of the United States relating to the right to vote, the registration of voters, the nomination of candidates, the conduct of preliminary and regular elections, the submission of Charter amendments and other propositions, the counting of votes and the declaration of results.

SECTION 7-4: FREE PETITIONS

- (a) Individual Petitions, Action Discretionary The Town Council and the School Committee shall receive all petitions presented to them and may, in their discretion, take such action with regard to such petitions as they deem necessary and appropriate.
- (b) Group Petitions; Action Required The Town Council or the School Committee, as the case may be, shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by at least fifty registered voters. The hearing shall be held by the Town Council or the School Committee, or, in either case, by a committee or subcommittee thereof and the action by the Town Council or School Committee shall be taken not later than three months after the petition is filed with the clerk. Hearings on two or more petitions filed under this Section may be held at the same time and place. The clerk shall mail notice of the hearing to ten petitioners whose names first appear on each petition at least seven days before the hearing. Notice by publication at least seven days prior to all such hearings shall also be made, and shall be at public expense. No hearing shall be heard upon any one subject more than once in any given twelve month period.

SECTION 7-5 CITIZEN INITIATIVE MEASURES

- (a) Commencement Initiative procedures shall be started by the filing of a proposed initiative petition with the Clerk of the Town Council or the secretary of the School Committee, as the case may be. The petition shall be addressed to the Town Council or to the School Committee, shall contain a request for the passage of a particular measure which shall be set forth in full in the petition, and shall be signed by at least fifty registered voters. The petition shall be accompanied by an affidavit signed by ten registered voters and containing their residential address stating they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form.
- (b) Referral to Town Attorney. The Clerk of the Town Council or the Secretary of the School Committee, as the case may be, shall forthwith following receipt of each such proposed petition deliver a copy of the petition to the town attorney. The town attorney shall, within fifteen days following receipt of a copy of the petition, in writing, advise the Town Council or the School Committee, as may be appropriate, whether the measure as proposed may lawfully be proposed by the initiative process and whether, in its present form it may be lawfully adopted by the Town Council or the School Committee. If the opinion of the town attorney is that the measure is not in proper form the reply shall state the reasons for such opinion, in full. A copy of the opinion of the town attorney shall also be mailed to the person designated as clerk of the petitioners committee.
- (c) Submission to Town Clerk If the opinion of the town attorney is that the petition is in a proper form the Town Clerk shall provide blank forms for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed measure,

as determined by the town attorney, together with the names and addresses of the first ten registered voters who signed the originating petition. Within thirty days following the date the blank forms are issued by the Town Clerk the petitions shall be returned and filed with the Town Clerk signed by at least five per cent of the total number of registered voters as of the date of the most recent town election. Signatures to an initiative petition need not all be on one paper, but all such papers pertaining to any one measure shall be fastened together and shall be filed as a single instrument, with the endorsement thereon of the name and residence address of the person designated as filing the same. With each signature on the petition there shall also appear the street and number of the residence of each signer.

Within ten days following the filing of the petition the board of registrars of voters shall ascertain by what number of voters the petition has been signed, and what percentage that number is of the total number of voters as of the date of the most recent town election. The Town Clerk shall attach to the petition a certificate showing the results of their examination and shall return the petition to the Clerk of the Town Council, or the secretary of the School Committee, according to how the petition is addressed. A copy of the board of registrars of voter's certificate shall also be mailed to the person designated as clerk of the petitioners committee.

- (d) Action on Petitions Within thirty days following the date a petition has been returned to the Clerk of the Town Council, or the Secretary of the School Committee, and after publication in accordance with the provisions of Section 2-9(c), the Town Council or the School Committee shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure, or by rejecting it. The passage of a measure, which is in lieu of an initiative measure, shall be deemed to be a rejection of the initiative measure. If the Town Council or the School Committee fails to act with respect to any initiative measure, which is presented, to it within thirty days following the date it is returned to it, the measure shall be deemed to have been rejected on such thirtieth day. If an initiative measure is rejected, the Clerk of the Town Council, or the Secretary of the School Committee, shall promptly give notice of that fact to the person designated as the clerk of the petitioners committee, by certified mail.
- (e) Supplementary Petitions Within sixty days following the date an initiative petition has been rejected, a supplemental initiative petition may be filed with the Clerk of the Town Council or the secretary of the School Committee, but only by persons constituting the original petitioners committee. The supplemental initiative petition shall be signed by a number of additional voters, that is equal to ten percent of the total number of registered voters as of the date of the most recent town election. Such supplemental petitions shall comply with the form of signatures and timing of certification of signatures set forth in section 7-5(c) of this charter. If the number of signatures to such supplemental petition is found to be sufficient by the Town Clerk, the Town Council shall call a special election to be held on a date fixed by it not less than thirty-five nor more than ninety days following the date of the certificate of the Town Clerk (for the board of registrars of voters) that a sufficient

number of voters have signed the supplemental initiative petition and shall submit the proposed measure, without alteration, to the voters for determination; provided, however, if any other town election is to be held within one hundred and twenty days following the date of the said certificate, the Town Council may omit the calling of such special election and cause said question to appear on the election ballot at such approaching election for determination by the voters.

- (f) Publication The full text of any initiative measure which is submitted to the voters shall be published in a local newspaper not less than seven nor more than fourteen days preceding the date of the election at which such question is to be voted upon. Additional copies of the full text shall be available for distribution to the public in the office of the Town Clerk.
- (g) Form of Question The ballots used when voting on a measure proposed by the voters under this Section shall contain a question in substantially the following form:

Shall the following measure, which was proposed by an initiative petition, take effect?

(Here insert a fair, concise summary prepared by the petitioners, and approved by the Town Attorney.)

(YES)

(NO)

(h) Time of Taking Effect - If a majority of the votes cast on the question is in the affirmative, the measure shall be deemed to be effective forthwith, unless a later date is specified in such measure.

SECTION 7-6: REFERENDUM PETITION; EFFECT ON FINAL PASSAGE

If, within twenty-one days after the final passage of any measure, a petition signed by voters equal in number to at least three per cent of the total number of voters, and addressed to the Town Council or to the School Committee, as the case may be, protesting against such measure or any part thereof taking effect, is filed with the Town Clerk, the same shall thereupon and thereby be suspended from taking effect; and the Town Council or the School Committee, as the case may be, shall immediately reconsider such measure or part thereof; and if such measure or part thereof is not entirely rescinded the Town Council shall submit the same, by the method herein provided, to a vote of the voters either at the next regular town election, or at a special election which may, in its discretion, be called for the purpose and such measure or part thereof shall forthwith become null and void unless a majority of the voters voting on the same at such election vote in favor thereof.

SECTION 7-7: MEASURES NOT SUBJECT TO INITIATIVE AND REFERENDUM

Measures which include the following subject matter shall not be subject to initiative and referendum procedures: (a) borrowings of the town; (b) appropriations for the payment of debt or debt service; (c) internal operational procedures of the Town Council and the School Committee; (d) emergency measures; (e) the Town budget as a whole or the School

Committee budget as a whole; (f) appropriation of funds to implement a collective bargaining agreement; (g) procedures relating to election, appointment, removal, discharge or any other personnel action; and (h) proceedings providing for the submission or referral of a matter to the voters at an election.

SECTION 7-8: SUBMISSION OF PROPOSED MEASURE TO VOTERS

The Town Council may, of its own motion, and shall, upon request of the School Committee if a measure originates with that committee and pertains to the affairs under its administration, submit to a vote of the voters for adoption or rejection at a general or special town election any proposed measure, or a proposition for the repeal or amendment of any measure.

SECTION 7-9: MEASURES WITH CONFLICTING PROVISIONS

If two or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

SECTION 7-10: RECALL OF ELECTED OFFICE HOLDERS

- (a) Application Any holder of an elected office in the town, with more than six months remaining in the term of office for which the officer was elected, may be recalled by the voters of the town in the manner provided in this section. No recall petition shall be filed against an officer within six months after taking office.
- (b) Recall Petition A recall petition may be initiated by the filing of an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall, provided that, the affidavit is signed by at least six hundred voters for an officer elected at large and one hundred fifty voters residing within a district for an officer elected from such district.

The Town Clerk shall thereupon deliver to said voters making the affidavit, copies of petition blanks demanding such recall, copies of which printed forms the Town Clerk shall keep available. Such blanks shall be issued by the Town Clerk, with signature and official seal attached thereto. They shall be dated, shall be addressed to the Town Council and shall contain the names of all the persons to whom they are issued, the number of blanks so issued, the name of the person whose recall is sought, the office from which removal is sought and the grounds of recall as stated in the affidavit. A copy of the petition shall be entered in a record book to be kept in the office of the Town Clerk. Said recall petition shall be returned and filed with the Town Clerk within ten days after the filing of the affidavit, and shall have been signed by at least ten per cent of the registered voters of the town for any officer elected at large and of the district in the case of an officer elected from a district.

The Town Clerk shall forthwith submit the petition to the registrars of voters in the town, and the registrars shall, within five working days, certify thereon the number of signatures, which are names of registered voters of the town.

(c) Recall Election - If the petition shall be found and certified by the Town Clerk to be sufficient, the Town Clerk shall submit the same with such certificate to the Town Council within five working days, and the Town Council shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does

not resign within five days thereafter, order an election to be held on a date fixed by them not less than 64 and not more than 90 days after the date of the Town Clerk's certificate that a sufficient petition has been filed; provided, however, that if any other town election is to occur within ninety days after the date of the certificate the Town Council shall postpone the holding of the recall election to the date of such other election.

If a vacancy occurs in said office after a recall election has been ordered, the election shall not proceed as provided in this section.

- (d) Office Holder The incumbent shall continue to perform the duties of the office until the recall election. If said incumbent is not recalled, the incumbent shall continue in office for the remainder of the unexpired term subject to recall as before. If recalled the officer shall be deemed removed and the office vacant. The vacancy created thereby shall be filled in accordance with this Charter. Any person appointed to fill the vacancy caused by such recall shall hold office for the unexpired term of the officer recalled.
- (e) Ballot Proposition The form of the question to be voted upon shall be substantially as follows:

"Shall (here insert the name and title of the elective officer whose recall is sought) be recalled?"

If a majority of the votes cast upon the question of recall is in the affirmative, such elected officer shall be recalled.

No recall election shall be effective unless at least twenty percent of those entitled to vote shall have voted.

- (f) Repeat of Recall In the case of an officer subjected to a recall election and not recalled thereby, no recall petition shall be filed against such officer until at least sixty days after the election at which the officer's recall was submitted to the voters of the town.
- (g) Office Holder Recalled No person who has been recalled from an office or who has resigned from office while recall proceedings were pending against such person, shall be appointed to any town office within one year after such recall or such resignation.

SECTION 7-11: OPEN MEETING OF THE VOTERS

(a) Scheduled Meetings - The Town Council shall conduct at least two open, public forums during the course of each year, one to be held in the fall, during the period between Labor Day and Christmas, shall be primarily concerned with the level of public satisfaction with the delivery of services by the town, and one to be held in the spring, during the period from President's Day to Memorial Day, shall be primarily concerned with matters of budget and finance.

The forums shall be held for the purpose of providing an opportunity for voters and non-resident taxpayers to bring to the attention of their elected officers problems they believe are not being addressed, or not being properly addressed, and to offer proposed solutions to these and other problems facing the community.

The forums shall be held and conducted following the style and format of an open town meeting. The Mayor shall preside, regulate the proceedings and decide all questions of order. All elected and appointed officials of the town shall attend, unless excused by the

Mayor, in order that they might be available to respond to questions raised by the public and that they might hear comments, criticisms and suggestions made with respect to areas within the scope of their responsibilities.

The forum shall be held in a place convenient for the public and at least two week's notice shall be given by newspaper advertisement and such other methods as are deemed to be necessary or desirable. The notice shall state the date, time and place at which each forum will be held.

(b) Meetings on Petition of Voters - The Town Council shall call public forum meetings of the voters of the town upon the receipt of a written request that a meeting of the voters be called and setting forth the specific purposes for which the meeting is requested, and signed by three hundred, or more voters. The Mayor or other designee of the Town Council shall preside and regulate the proceedings of such meetings. The Mayor shall cause the attendance of town officials and employees necessary to respond to the issues and concerns raised by petitioners.

ARTICLE 8 GENERAL PROVISION

SECTION 8-1: CHARTER REVISION OR AMENDMENT

The Charter may be replaced, revised or amended by a Home Rule Petition or in accordance with any procedure made available by Article 2, section 8 of the Amendments to the Constitution of the Commonwealth and any laws of the Commonwealth enacted to implement said constitutional amendment.

SECTION 8-2: SEVERABILITY

The provisions of this Charter are severable. If any of the provisions of this Charter are held to be unconstitutional, or invalid, the remaining provisions of this Charter shall not be affected thereby. If the application of this Charter, or any of its provisions, to any person or circumstances is held to be invalid, the application of said Charter and its provisions to other persons or circumstances should not be affected thereby.

SECTION 8-3: RULES OF INTERPRETATION

The following rules shall apply when interpreting the Charter:

- (a) Specific Provisions to Prevail To the extent that any specific provision of the Charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.
- (b) Number and Gender Words imparting the singular number may extend and be applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender.
- (c) Computation of Time In computing time under the Charter, if seven days or less, only business days, not including Saturdays, Sundays, or legal holidays shall be counted; if more than seven days, every day shall be counted.

SECTION 8-4: RULES AND REGULATIONS

A copy of all rules and regulations adopted by any town agency shall be placed on

file in the office of the Town Clerk and shall be available for review by any person who requests such information at any reasonable time. No rule or regulation adopted by any town agency shall become effective until five days in addition to any other applicable law following the date it is so filed.

SECTION 8-5: PERIODIC REVIEW OF CHARTER AND ORDINANCES

- (a) Review of Ordinances The Town Council shall provide, at five-year intervals, in January of each year ending in a four or in a nine, for a review of all town ordinances for the purpose of determining if any amendments or revisions may be necessary or desirable. Such review shall be conducted under the supervision of the town attorney, or, if the Town Council so directs by special counsel chosen for that purpose. A report, with recommendations, shall be submitted to the Town Council within nine months following the establishment of the committee.
- (b) Review of Charter The Town Council shall provide, at ten-year intervals, in January of each year ending in a four, for a review of the town Charter for the purpose of determining if any amendments or revisions may be necessary or desirable. Such review shall be conducted under the supervision of the town attorney, or, if the Town Council so directs by special counsel chosen for that purpose. A report, with recommendations, shall be submitted to the Town Council within nine months following the establishment of the committee. The committee appointed to review the town ordinances might be assigned this additional responsibility.
- (c) Establishment of a Review Committee In order to carry out the review as directed in Section 8-5(a)(b). The Town Council shall appoint a committee of seven member who shall be coordinated by the Town Attorney or Special Council.

SECTION 8-6: UNIFORM PROCEDURES GOVERNING MULTIPLE MEMBER BODIES

All multiple member bodies of the town, whether elected, appointed or otherwise constituted, shall meet regularly at such times and places as they may, by their own rules prescribe, unless some other provision is made by ordinance or by law. Special meetings of any multiple member body shall be held on the call of the chairman or by one-third of the members thereof by written notice delivered in hand or to the place of residence of each member at least forty-eight business day hours in advance of the time set, which shall contain notice of the subjects to be acted upon. A copy of the said notice shall also be posted on the town bulletin board. Except as may otherwise be authorized by law, all meetings of all multiple member bodies shall at all times be open to the public and the media.

SECTION 8-7: OATH OF OFFICE OF ELECTED OFFICERS

The Mayor-elect, the councilors-elect, School Committee members-elect, Stetson trustees-elect shall, on the first business day in January following their election, meet and be sworn to the faithful discharge of their duties. The oath may be administered by the Town Clerk, or by a judge of a court of record, or by a justice of the peace. A certificate that said oath or oaths have been taken shall be entered in the journal of the Town Council.

The oath of office shall be in such a form as provided by in Section 8-7(b).

In case of the absence of any member-elect on said day the oath of office may at any time thereafter be administered to such person who for any reason shall not have taken the oath on the day named. A certificate of each oath subsequently taken shall be entered in the journal of the Town Council.

After the oath has been administered to the councilors present, the Town Council shall organize by electing from among its members a person to serve as president, as provided in section 2-2(a) and a person to serve as vice-president as provided in section 2-2(c). And a person to serve as clerk as provided in 2-2(d). The Mayor shall preside during the election of the president of the council if the Mayor cannot attend, the council member senior in years of service on the Town Council shall preside during such election. If two or more members are equally senior in years of service on the Town Council the member senior both in years of service and age shall preside. The president and vice-president shall be sworn to such service by the Town Clerk, or, in the case of the absence of the Town Clerk, by any person qualified to take oaths or affirmations.

After the oath has been administered to the School Committee members present, the School Committee shall organize by electing from among their members a person to serve as the chair and a person to serve as the vice-chair, as provided in Section 3-2(c), If the Mayor is unable to preside during such election the member senior in years of service on the School Committee shall preside. If two or more members are equally senior in years of service on the School Committee the member senior both in years of service and age shall preside. The chair and the vice-chair shall be sworn by the Town Clerk, or, in the case of the absence of the Town Clerk, by any person qualified to take oaths or affirmations.

(a) Transfer of Authority:

On the First business day in January following each election the Town Clerk shall cause to take place a suitable ceremony for the swearing in of new officers and the proper and dignified transfer of authority to the incoming government.

The location of such ceremony shall be held in a large venue that is accessible to the general public, and shall be open to the general public.

In years of a Mayoral elections the transfer from one administration to the next shall include a morning debriefing between administrations at the Town Hall followed by a joint procession from Town Hall to the swearing in venue.

The Swearing in ceremony shall include at a minimum the National Anthem of the United States, the Pledge of Allegiance, and invocation.

The Mayor shall be sworn in during the twelve noon (12:00pm) EST hour unless extraordinary circumstances prevent this occurrence.

The Town Clerk shall cause to passed between one administration and the next the Official "Town Charter", and the "Mayor's Gavel of Authority".

Following the swearing in of the Mayor, the oaths of office shall be given to the District Town Councilors, and Town Councilors at Large, followed by the School Committee and Stetson Trustees.

The Town Council shall elect a Council President and the School Committee shall elect a Chairman as called for in this Charter.

The Mayor may give brief remarks, followed by the Town Council President and the School Committee Chairman.

In years not involving a Mayoral election, the same procedures shall apply excepting the Mayor.

All Officers shall recite the oath of Office contained in this Charter; failure to recite or affirm an officer's intent to the oath shall deem that office vacant.

(b) The Official Oath

I (state your name)do solemnly swear, that I will faithfully and impartially, discharge and perform all the duties incumbent on me, as (a member of or Mayor) according to the best of my abilities and understandings, agreeably to the rules and regulations of the Constitution of the United States of America, of the Constitution and laws of this Commonwealth, and the Laws of the Town of Randolph, So help me God.

SECTION 8-8: CERTIFICATE OF ELECTION OR APPOINTMENT

Every person who is elected, including those elected by the Town Council, or appointed to an office of the town shall receive a certificate of such election or appointment from the Town Clerk. Except as otherwise provided by law, every person who is elected, including those elected by the Town Council, or appointed to an office of the town before performing any act under such appointment or election, shall take and subscribe to an oath to qualify to enter upon the duties. The Town Clerk shall keep a record of such oath.

SECTION 8-9: ENFORCEMENT OF CHARTER PROVISIONS

Whenever it appears to the Mayor that any town agency or town employee is failing to follow any provision of this Charter the Mayor shall, in writing, cause notice to be given to such agency or employee directing compliance with the Charter. If it shall appear to the Town Council that the Mayor personally is not following the provisions of the Charter it shall, by resolution, direct the attention of the Mayor to those areas in which the council members believe there is a failure to comply with Charter provisions and directing compliance with the Charter.

The procedures made available in chapter two hundred and thirty-one A of the General Laws may be used to determine the rights, duties, status or other legal relations arising under this Charter, including any question of construction or validity which may be involved in such determination.

ARTICLE 9 TRANSITIONAL PROVISIONS

SECTION 9-1: CONTINUATION OF EXISTING LAWS

All general laws, special laws, town by-laws, town meeting votes, and rules and regulations of or pertaining to Randolph that are in force when this Charter takes effect, and not specifically or by implication repealed hereby, shall continue in full force and effect until amended or repealed, or rescinded by due course of law, or until they expire by their own limitation. In any case in which the provisions of this Charter are found to be inconsistent

with the provisions of any general or special law, which would otherwise be applicable, the provisions of this Charter shall be deemed to prevail. Every inconsistency between the prior law and this Charter shall be decided in favor of this Charter.

SECTION 9-2: CONTINUATION OF GOVERNMENT AND ADMINISTRATION

All town agencies, boards, committees and commissions shall continue to perform their duties until re-elected, re-appointed, or until successors to there respective positions are duly appointed or elected, or until their duties have been transferred and assumed by another town agency.

SECTION 9-3: TRANSFER OF RECORDS AND PROPERTY

All records, property and equipment whatsoever of any town agency, or part thereof, the powers and duties of which are assigned in whole or in part to another town agency, shall be transferred forthwith to such agency.

SECTION 9-4: CONTINUATION OF PERSONNEL

Any person holding a town office, or a position in the administrative service of the town, or any person holding permanent, full time employment and not by periodic appointment, under the town of Randolph, shall retain such office, or position, or employment, and shall continue to perform the duties of such office, position or employment until provision shall have been made for the performance of those duties by another person or agency; provided, however, no person in the permanent full time service of the town of Randolph shall forfeit their pay grade, or time in service of the town. All such persons shall be retained in a capacity as similar to the capacity in which they were serving at the time this Charter is adopted as is practicable and any reduction in the personnel needs of the town shall be accomplished through a policy of attrition, unless specific provision is otherwise made in this article.

SECTION 9-5: EFFECT ON OBLIGATIONS, TAXES, ETC.

All official bonds, recognizance's, obligations, contracts, and other instruments entered into or executed by or to the town before the adoption of this Charter, and all taxes, assessments, fines, penalties, forfeitures, incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the Charter; and no legal act done by or in favor of the town shall be rendered invalid by reason of the adoption of this Charter.

SECTION 9-6: TIME OF TAKING EFFECT

This Charter shall take effect upon its ratification by the voters and in accordance with the following schedule:

1. All town officers and employees shall continue to perform their duties in the same manner and to the same extent as they have performed the same prior to the ratification by the voters of the home rule Charter, but, being cognizant that on the first business day in January of the year following the year the Charter has been so ratified, that the executive and legislative authority of the town will thereafter be vested in a Mayor and a Town Council.

- 2. A special town election shall be held on the first Tuesday following the first Monday in September 2005 for the purpose of electing a Mayor, and Town Council and School Committee and the trustees of the Stetson School Fund and all other previously elected officials shall continue in office to the completion of the terms to which they were elected, or until they otherwise vacate such office, and shall be eligible for appointment to such position upon expiration of such term, except as may be otherwise provided in this charter for election for the office of town clerk, and except for the automatic reappointment set forth in section 9-6 (8) of this charter. For such purpose the incumbent Town Clerk shall have all the powers and duties conferred by this Charter on the Town Clerk. The Board of Selectmen shall issue the warrants for such elections.
- 3. Forthwith following the special election held in September 2005 the person elected as Mayor and the persons elected as Town Council members and School Committee shall be sworn to the faithful performance of their duties and shall take up so much of the powers and duties of their offices as are necessary to begin the process of transition from the existing form of government to the new form of government. This preparation for the transfer shall include a review by the Town Council members of policies and procedures to govern the conduct of the business of the Town Council and the adoption by it of rules by which it will conduct its business.

The person chosen, as Mayor shall meet regularly with the members of the Board of Selectmen and the School Committee and for such purpose shall be considered a member ex officio of such bodies. The Mayor shall have a right to meet with any town officer, town agency or town employee during regular business hours for the purpose of acquiring and advancing knowledge and information necessary to assume the powers of Mayor on the first business day of January in the year following the year in which the Charter is adopted. The Mayor shall be responsible for a review of the existing town by-laws to be undertaken to bring them into conformity with the new Charter.

The town shall provide suitable offices in a public building and access to clerical services and office machines to the Mayor-elect and councilors-elect to enable them to undertake and to carry out their transitional assignments.

The Mayor elect and the councilors-elect shall receive for their services for the period following the special election through December 31, 2005 one-fourth of the annual salary provided for their respective offices.

4. On the first business day of January in the year following the year in which this Charter is adopted the terms of office of the members of the Board of Selectmen, the members of the finance committee, the town moderator and of the representative town meeting members shall all be terminated, and their offices abolished. The Mayor, Town Council and School Committee shall organize as provided in section 8-7. Every other elected and appointed town officer, members of multiple member bodies and employees shall continue to serve in the same office or position for the balance of the term for which they were elected or appointed or until some other provision is made in accordance with the provisions of section 6-1 or, unless some other provision is specifically made hereinafter in

section 9-6 for any particular office or position.

- 5. Until such time as another salary is established for the office of the Mayor, in accordance with the procedure provided in section 3-1(c), the initial salary for the Mayor of Randolph shall be established at \$80,000 per annum. The initial salary for the members of the Town Council shall be established as \$1,500 for each councilor and \$2,000 for the council president.
- 6. The office of executive secretary is hereby abolished effective on the first business day of January in the year following the year in which this Charter is adopted. The incumbent of the office of executive secretary shall continue to serve in that office until the said first business day of January and may be continued in the service of the municipality beyond said termination date, in some other position, until the expiration of any contract for services in effect at the time this Charter is adopted.
- 7. As soon as practical after the first Mayor and council have been elected and taken the oath of office the Mayor shall appoint and call together for an initial meeting the members of the Board of Selectmen during the transitional period between the election of the mayor and the town council and the transfer of power on January 1 thereafter and the January 1 termination of the offices of selectmen and executive secretary all as set forth in section 9-6(4) and the members of the Town Council. The Board of Selectmen during the transitional period between the election of the mayor and the town council and the transfer of power on January 1 thereafter and the January 1 termination of the offices of selectmen and executive secretary, all as set forth in section 9-6(4) and its staff shall keep the Town Council so established fully apraised of its activities in the year-end renewing of licenses in order to acquaint the members of the said Town Council to these procedures. The Town Council shall assume full authority under chapter one hundred and thirty-eight and chapter one hundred forty of the General Laws on the first business day in January in the year following the year this Charter is adopted.
- 8. Notwithstanding any other provision of this Charter to the contrary any person serving full time in any elected office which will become an appointed office under this Charter, and who has been elected to the said office at least twice, shall at the expiration of the term for which elected, automatically, be deemed appointed to the same office by the Mayor or other appointing authority.
- 9. Not later than thirty days following the election at which this Charter is adopted the Board of Selectmen during the transitional period between the election of the mayor and the town council and the transfer of power on January 1 thereafter and the January 1 termination of the offices of selectmen and the executive secretary, all as set forth in section 9-6(4) shall appoint seven persons to be a committee to begin a review of the town by-laws for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this Charter and to fully implement the provisions of this Charter. If possible, at least two of the persons appointed to the committee shall have been members of the Randolph Government study committee. The committee shall submit a report, with recommendations, to the Mayor and council forthwith following

the election held in the year in which this Charter is adopted. The review shall be conducted under the supervision of the town attorney, or, by special counsel appointed for that express purpose.

- 10. Forthwith following the election held in the year in which this Charter is adopted the Mayor-elect shall appoint seven persons to be a committee to review the town by-laws for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this Charter and to fully implement the provisions of this Charter. Upon the appointment of such committee the committee established under paragraph 9, above, shall be terminated. The Mayor may appoint to such committee any of the persons, who served on the committee established under paragraph 9, or he may appoint different people, but, if available, at least two of the persons appointed to the committee shall have been members of the Randolph government study committee. The committee shall submit a report, with recommendations, within one year following its creation and may submit interim reports with recommendations at any time. The review shall be conducted under the supervision of the town attorney, or, or by special counsel appointed for that express purpose.
- 11. Notwithstanding any provision of this Charter which might appear to the contrary it is recognized that it will not be possible for the first person elected as Mayor to begin at once to exercise all of the powers, duties and responsibilities which are assigned to the office of the Mayor. It is recognized that it is in the best interest of the town of Randolph that such assumption be on a gradual basis as the Mayor, Town Council and other municipal officials are able to adopt ordinances and other regulations as are necessary to implement all of the provisions of the Charter.
- 12. The Mayor and Town Council shall have authority to adopt measures which clarify, confirm or extend any of the transition provisions in order that such transition may be made in the most expeditious and least contentious manner possible.

SECTION 2. The state secretary shall cause the following question to be placed on the official ballot to be used in the town of Randolph at the town election to be held in the year 2005: "Shall an act passed by the general court entitled "An Act authorizing the town of Randolph to establish a town charter, be accepted?"

() Yes

() No

If a majority of the voters cast in answer to this question are in the affirmative, this act shall take effect, but not otherwise.

Summary: If accepted, the proposed charter would:

Establish a Mayor as the chief executive officer of the town, elected for a term of 4 years; establish a 7 member Town Council, with 4 members elected from respective districts and 3 members elected at large for a term of 2 years each; establish the office of Director of Administration and Finance (DAF), appointed by the mayor with responsibility for the daily management of the town's business; and provide for the election by the voters of a 6 member

School Committee and a 3 member Stetson School Fund. All other positions currently elected by the voters would become appointed positions. The Mayor would be responsible for the employment of professionals to carry out the day-to-day administration of town affairs. This charter also provides strengthened financial controls, flexibility to reorganize town agencies in the future, and rights for voters to present initiative petitions and recall elected officials.

Concurrent with the adoption of this proposed form, the Board of Selectmen and Executive Secretary would be abolished and their responsibilities would be held by the mayor. The Town Meeting would be abolished and their responsibilities would be held by the Town Council.

SECTION 3. This act shall take effect upon its passage.

Approved January 7, 2005.

Chapter 500. AN ACT RELATIVE TO CIVIL SERVICE POSITIONS IN THE CITY OF NORTHAMPTON.

Be it enacted, etc., as follows:

SECTION 1. (a) Definitions. The mayor of the city of Northampton shall be the appointing authority for all sworn police officers positions set forth in paragraph (b).

(b) Pursuant to the appended Memoranda of Understanding between the city of Northampton and the International Brotherhood of Police Officers, effective July 1, 2003, the following employees shall be covered by this act and the code of ordinances of the city of Northampton: (a) all police sergeants, (b) all police lieutenants, (c) all police captains of the city of Northampton, and (d) the police chief of the city of Northampton.

SECTION 2. Notwithstanding any general or special law, chapter 250 of the acts of 1883 or any ordinance of the city of Northampton to the contrary, appointments, promotions, disciplinary actions and terminations of all sworn police personnel in the city of Northampton set forth in paragraph (b) of section 1 shall be conducted in conformity with such requirements as may be set forth in: a collective bargaining agreement; an employment contract in effect between the city and the individual; or the personnel policies of the city of Northampton and the Northampton police department.

SECTION 3. Each incumbent employee who has the present status of permanent civil service employee in his present position shall retain his civil service status until such time as he no longer serves in that position.

Approved January 7, 2005.

Chapter 501. AN ACT RELATIVE TO CRIMES AGAINST ELDERS AND PERSONS WITH DISABILITIES.

Be it enacted, etc., as follows:

SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out section 72K, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 72K. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Bodily injury", substantial impairment of the physical condition including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin.

"Serious bodily injury", bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.

"Sexual assault", a violation or attempt to commit a violation of section 13B, 13F, 13H, 22, 22A, 24 or section 24B of chapter 265 or section 3 of chapter 272.

(b) The attorney general may file a civil action against a person who commits abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property, or against a person who wantonly or recklessly permits or causes another to commit abuse, mistreatment or neglect of a patient or resident or who misappropriates patient or resident property. The civil penalty for such abuse, mistreatment, neglect or misappropriation shall not exceed: \$5,000 if no bodily injury results; \$10,000 if bodily injury results; \$20,000 if sexual assault or serious bodily injury results; and \$50,000 if death results. Section 60B of chapter 231 shall not apply to an action brought by the attorney general pursuant to this section. Nothing in this section shall preclude the filing of any action brought by the attorney general or a private party pursuant to chapter 93A or any action by the department pursuant to this chapter.

SECTION 2. Section 13H of chapter 265, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

Whoever commits an indecent assault and battery on an elder or person with a disability, as defined in section 13K, shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in the house of correction for not more than 2½ years, and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for not more than 20 years. A prosecution commenced under this paragraph shall not be placed on file nor continued without a finding.

SECTION 3. Paragraph (a) of section 13K of said chapter 265, as so appearing, is hereby amended by inserting before the definition of "Bodily injury" the following definition:-

"Abuse", physical contact which either harms or creates a substantial likelihood of harm.

SECTION 4. Said paragraph (a) of said section 13K of said chapter 265, as so appearing, is hereby further amended by striking out, in lines 9, 22, 40 and 45, the word "physical".

SECTION 5. Said paragraph (a) of said section 13K of said chapter 265, as so appearing, is hereby further amended by inserting after the definition of "Elder" the following 2 definitions:-

"Mistreatment", the use of medications or treatments, isolation, or physical or chemical restraints which harms or creates a substantial likelihood of harm.

"Neglect", the failure to provide treatment or services necessary to maintain health and safety and which either harms or creates a substantial likelihood of harm.

SECTION 6. Said paragraph (a) of section 13K of said chapter 265, as so appearing, is hereby further amended by striking out the definition of "Person with a disability" and inserting in place thereof the following definition:-

"Person with disability", a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual's ability to provide for his or her own care or protection.

SECTION 7. Said section 13K of said chapter 265, as so appearing, is hereby further amended by inserting after paragraph (a) the following paragraph:-

(a $\frac{1}{2}$) Whoever commits an assault and battery upon an elder or person with a disability shall be punished by imprisonment in the state prison for not more than 3 years or by imprisonment in a house of correction for not more than 2 $\frac{1}{2}$ years, or by a fine of not more than \$1,000, or both such fine and imprisonment.

SECTION 8. Said section 13K of said chapter 265, as so appearing, is hereby further amended by inserting after paragraph (d) the following paragraph:-

(d ½) Whoever, being a caretaker of an elder or person with a disability, wantonly or recklessly commits or permits another to commit abuse, neglect or mistreatment upon such elder or person with a disability, shall be punished by imprisonment in the state prison for not more than 3 years, or imprisonment in the house of correction for not more than 2 ½ years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

SECTION 9. Section 38 of said chapter 265 is hereby repealed.

Approved January 11, 2005.

Chapter 502. AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2005 TO COMPENSATE FOR CERTAIN UNDERPAYMENTS.

Be it enacted, etc., as follows:

NO SECTION 1. NO SECTION 2.

SECTION 2A. To provide for certain unanticipated obligations of the Commonwealth, the sums set forth in this section are hereby appropriated from the General Fund, for the several purposes and subject to the conditions specified in this section, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2005.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Department of Revenue.

1201-4645 For the distribution of local option taxes to cities and towns described in this item that have adopted a local option room occupancy excise pursuant to section 3A of chapter 64G of the General Laws; provided, that the amount shall be distributed by the commissioner of revenue proportionately among those cities and towns that have not received, before the effective date of this act, the full amount of the excise to which they were entitled under said section 3A for tax periods from September 1, 1998 through August 30, 2004, due to the incorrect allocation of revenues among cities and towns adopting this excise; provided further, that the amount shall compensate for underpayments so determined for the periods specified, shall be computed without interest, and shall represent full compensation for all periods to these cities and towns for any under-allocation of excise under section 3A before the effective date of this act; and provided further, that the comptroller shall not seek reimbursement from cities and towns that may have been over-allocated amounts attributable to the excise under said section 3A before the effective date of this act\$3,271,336

SECTION 3. Notwithstanding any general or special law to the contrary, no later than June 30, 2005, the comptroller shall transfer \$3,271,336 from the Commonwealth Stabilization Fund, established pursuant to section 2H of chapter 29 of the General Laws, for the purpose of reimbursing the General Fund for expenditures appropriated in this act.

SECTION 4. This act shall take effect upon its passage.

Approved January 11, 2005.

Chapter 503. AN ACT AUTHORIZING THE TOWN OF SALISBURY TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALL ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the town of Salisbury may grant to Chef Howie's HoBo Cafe & Lounge, Inc. located at 5 Broadway in said town, a license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138. The license shall be subject to all of said chapter 138 except said section 17. The licensing authority shall not approve the transfer of the license to any other location.

SECTION 2. This act shall take effect upon its passage.

Approved January 11, 2005.

Chapter 504. AN ACT EXTENDING THE PERIOD FOR DISBURSEMENT OF CERTAIN FUNDS.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 2A of chapter 304 of the acts of 2004 is hereby amended by striking out the word "June 30, 2004" and inserting in place thereof the word:- June 30,2005.

SECTION 2. This act shall take effect upon its passage.

Emergency Letter: January 13, 2005 @ 3:24 P.M.

Approved January 13, 2005.

Chapter 505. AN ACT RELATIVE TO LICENSING FEES FOR SERVICE DOGS.

Be it enacted, etc., as follows:

Section 139 of chapter 140 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the fifth sentence the following sentence:- The office on disability shall adopt rules and regulations for the licensing of service dogs and no fee shall be charged for a license for a dog recognized as a service dog.

Approved January 13, 2005.

Chapter 506. AN ACT RELATIVE TO THE LICENSURE AND ACCREDITATION OF HEALTH PLANS.

Be it enacted, etc., as follows:

SECTION 1. Section 2 of chapter 176 O of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 17, the figure "12" and inserting in place thereof the following figure:- 24.

SECTION 2. Section 3 of said chapter 176 O, as so appearing, is hereby amended by striking out subsection (f) and inserting in place thereof the following subsection:-

(f) Accreditation granted to carriers pursuant to this section shall be renewed every 2 years. The fee for the renewal shall be in an amount determined by the commissioner, but shall not be less than \$1,000.

Approved January 13, 2005.

Chapter 507. AN ACT FURTHER REGULATING PUBLIC CONSTRUCTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to further regulate public construction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 44D ½ of chapter 149 of the General Laws, inserted by section 19 of chapter 193 of the acts of 2004, is hereby amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 general contractors to submit bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to sections 44B to 44E, inclusive, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to said sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a general contractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the general contractor or review by the awarding authority, for not more than 120 days from the due date of the responses from the first request for qualifications issued to general contractors for the project.

SECTION 2. Section 44D ¾ of said chapter 149, inserted by said section 19 of said chapter 193 is hereby amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 subcontractors in a particular trade to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications, invite filed sub-bids pursuant to sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite bids from the 2 prequalified subcontractors. If the awarding authority qualifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications, invite filed sub-bids pursuant to said sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite filed sub-bids from the 2 prequalified subcontractors. An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a subcontractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the subcontractor or review by the awarding authority for not more than 120 days from the due date of the responses from the first request for qualifications issued to subcontractors for the project.

SECTION 3. Chapter 193 of the acts of 2004 is hereby amended by striking out section 34 and inserting in place thereof the following two sections:-

Section 34. Implementation of subcontractor certification by the division of capital asset management and maintenance as required by section 18 shall be completed not later than December 31, 2005.

Section 35. Section 27 shall take effect on January 1, 2005.

Approved January 13, 2005.

Chapter 508. AN ACT DESIGNATING CERTAIN LAND IN THE TOWN OF BRIDGEWATER AS CONSERVATION, AGRICULTURE, OPEN SPACE AND PASSIVE RECREATIONAL PURPOSES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to designate certain land in the town of Bridgewater, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The parcels of land identified in section 2 and under the care, custody and control of the department of correction, are hereby designated for the purposes and uses of forest, agriculture and open space protection, management and conservation, and limited public access for passive recreation and enjoyment, and shall be held solely for these purposes and uses. The department of correction, in consultation with the executive office of environmental affairs, may develop reasonable rules or promulgate regulations for the appropriate operation of and reasonable limitations on public access to such parcels. No temporary or permanent buildings or other structures, roads, paved areas, fences or utilities shall be added to any parcel identified in section 2, nor shall any such parcel be substantially altered, except those additions or alterations that are consistent with the purposes to which the parcels have been dedicated under this act and only with the prior approval of the department of correction and subject to the department of correction's rules and regulations for use of the property.

SECTION 2. The parcels are identified as all of the lands, including lands under water, in the town of Bridgewater, as described in Assessors Map #90, lot 32, Map #90, lot 41A, Map #103, lot 40, Map #114, lot 39, Map #114, lot 37, Map #114, lot 38, Map #103, lot 41, Map #91, lot 49A, Map #103, lot 48, Map #103, lot 46, Map #114, lot 43, Map #114, lot 42, Map #114, lot 44, Map #104, lot 44A, Map #104, lot 45, Map #104, lot 47, Map #89, lot 57, Map #89, lot 58, Map #127, lot 28, Map #133, lot 27, Map #134, lot 13, and Map #127, lot 29.

SECTION 3. The executive office of environmental affairs may expend funds from otherwise acceptable and available accounts or provide services, not to exceed a cumulative value of \$200 per acre, on the parcels described in section 2 for environmental services at facilities of the department of correction. The department of corrections shall retain care, custody and control of the parcels and all operation, management and maintenance responsibilities and obligations associated therewith.

Approved January 13, 2005.

Chapter 1. RESOLVE IN FAVOR OF THE ESTATE OF MARY JANE SIMMONS.

RESOLVED, That for the purpose of promoting the public good and after an appropriation has been made therefore, there be paid out of the state treasury to the estate of the late Mary Jane Simmons, who died while a member of the present house of representatives, the salary to which she would have been entitled had she lived and served until the end of the term for which she was elected. The additional benefits provided for by this resolve shall be included as regular compensation for Mary Jane Simmons for the purpose of computing her retirement benefits pursuant to chapter 32 of the General Laws.

Approved December 16, 2004

SUMMARY OF THE ACTS AND RESOLVE APPROVED, APPROVAL WITHHELD, ACTS VETOED BY THE GOVERNOR, PASSED OVER HIS VETO, AND ACTS DECLARED EMERGENCY LAWS BY THE GOVERNOR UNDER THE AUTHORITY OF THE CONSTITUTION.

During the second session of the General Court held in 2004, 508 Acts were enacted of which 470 Acts and one Resolve received the Governor's approval.

Chapters 107, 160, 183, 184, 185,186, 194, 234, 235, 237, 238, 239, 240, 241, 242, 243, 292, 293, 294, 353 and 412 were not approved by the Governor within the ten days prescribed by the Constitution. They were not returned to either legislative branch during the ten days with the Governor's reasons for disapproval in writing and since the General Court had not prorogued during that time, these acts have the force of law and have been so certified.

Nine Acts were returned by the Governor to the House, the branch in which each Act had originated, with his objections in writing thereto. Chapter 52 was passed by the House on March 11, 2004 and by the Senate on March 25, 2004. Chapter 138 was passed by the House on May 18, 2004 and by the Senate on June 9, 2004. Chapter 195 was passed by the House on July 8, 2004 and by the Senate on July 13, 2004. Chapter 306, 309, 310 and 311 were passed by the House and the Senate on July 30, 2004. Chapter 307 was passed by the House on May 25, 2004 and by the Senate on July 30, 2004. Chapter 323 was passed by the House on July 21, 2004 and by the Senate on July 22, 2004. The Governor's objections notwithstanding, these chapters have the force of law and have been so certified.

Six Acts were returned by the Governor to the Senate, the branch in which each Act had originated, with his objections thereto. Chapter 236 was passed by the Senate and the House on July 30, 2004. Chapters 244 and 247 were passed by the Senate on July 13, 2004 and by the House on July 14, 2004. Chapter 245 was passed by the Senate on March 4, 2004 and by the House on July 20, 2004. Chapter 248 was passed by the Senate on April 29, 2004 and by the House on May 6, 2004. Chapter 305 was passed by the Senate and the House on July 31, 2004. The Governor's objections notwithstanding, these chapters have the force of law and have been so certified.

One Act was returned by the Lieutenant Governor, Acting Governor to the House, the branch in which the Act had originated with her objections thereto. Chapter 308 was passed by the House on July 21, 2004 and by the Senate on July 22, 2004.

One Act was returned by the Lieutenant Governor, Acting Governor to the Senate, the branch in which the Act had originated with her objections thereto. Chapter 246 was passed by the Senate on July 13, 2004 and by the House on July 14, 2004. The Lieutenant Governor, Acting Governor's objections notwithstanding, these two chapters have the force of law and have been so certified.

This summary does not include those line item vetoes by the Governor on appropriation Acts nor any subsequent legislative action on those vetoes.

Five Acts were declared to be emergency laws by the Governor under Article XLVIII of the Amendments to the Constitution. These are Chapters 66, 150, 252, 351 and 504.

The 2004 session of the General Court was dissolved at midnight on Tuesday January 4, 2005 the session having lasted 364 days.

William Francis Galvin
Secretary of the Commonwealth

Iple Francis Ballin

OFFICE OF THE SECRETARY, BOSTON, MASSACHUSETTS October 31, 2005

I hereby certify that the Acts and Resolve contained in this volume are true copies of the originals on file with this department.

I further certify that the Index and the Table of Changes contained in this volume have been prepared under the direction of the Committee on Rules of the two branches of the General Court in accordance with the provisions of M.G.L. c. 3, section 52.

William Francis Galvin Secretary of the Commonwealth

Gillen Frencis Golch

TABLE OF CHANGES

SHOWING

TO WHAT EXTENT THE GENERAL LAWS OF THE COMMONWEALTH, AS APPEARING IN THE 2002 OFFICIAL EDITION, HAVE BEEN AFFECTED BY THE LEGISLATION PASSED BY THE GENERAL COURT SINCE JANUARY 1, 2003.

CHAPTER 1 - Jurisdiction of the Commonwealth and of the United States.

CHAPTER 2 - Arms, Great Seal and Other Emblems of the Commonwealth.

§ 52 added, 2003, 17.

§ 53 added, 2004, 407.

CHAPTER 3 - The General Court.

- § 39, definition of "client" inserted, 2004, 149 § 4; definition of "Lobbyist entity" inserted, 2004, 149 § 5. (See 2004, 149 § 428.)
- § 40 **repealed**, 2004, 149 § 6. (See 2004, 149 § 428.)
- § 41, second paragraph revised, 2003, 26 § 4; 2003, 140 § 3; **section revised**, 2004, 149 § 7. (See 2003, 26 § 715; 140 § 136; 2004, 149 § 428.)

CHAPTER 4 - Statutes.

- § 4 revised, 2004, 122 § 1.
- § 7, definition of "Veteran" revised, 2004, 116 § 1; clause Nineteenth A inserted, 2004, 122
- § 2; clause Twenty-sixth, subclauses (o) and (p) inserted, 2004, 149 § 8; section amended, 2004, 349. (See 2004, 149 § 428.)
- **CHAPTER 5 Printing and Distribution of Laws and Public Documents.**
- CHAPTER 6 The Governor, Lieutenant Governor and Council, Certain Officers under the Governor and Council, and State Library.
- § 150000 added, 2003, 14.
- § 15RRRR added, 2003, 20.
- § 15SSSS added, 2003, 68.
- § 15TTTT added, 2004, 2.
- § 15UUUU added, 2004, 12.
- § 15VVVV added, 2004, 12.
- § 15VVVV added, 2004, 43.

CHAPTER 6 - The Governor, Lieutenant Governor and Council, Certain Officers under the Governor and Council, and State Library. - continued

- § 15WWWW added, 2004, 69.
- § 15XXXX added, 2004, 140.
- § 15YYYY added, 2004, 390.
- § 17 amended, 2003, 140 § 4. (See 2003, 140 § 136.)
- § 17A amended, 2003, 26 § 549. (See 2003, 26 § 715.)
- § 43 **repealed**, 2003, 26 § 5. (See 2003, 26 § 715.)
- § 44 repealed, 2003, 26 § 5. (See 2003, 26 § 715.)
- § 45 repealed, 2003, 26 § 5. (See 2003, 26 § 715.)
- § 57 revised, 2004, 196 § 1. (See 2004, 196 § 19.)
- § 79 amended, 2004, 149 § 9. (See 2004, 149 § 428.)
- § 115A, last paragraph revised, 2004, 267.
- § 116A amended, 2003, 26 § 6. (See 2003, 26 § 715.)
- § 135, paragraph added, 2003, 26 § 7; last paragraph stricken out, 2004, 149 § 10. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 136, paragraph added, 2003, 26 § 8; last paragraph stricken out, 2004, 149 § 11. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 156 amended, 2003, 26 §§ 9, 10. (See 2003, 26 § 715.)
- § 172A revised, 2003, 26 § 11; paragraph added, 2003, 46 § 1; **section revised**, 2004, 149 § 12. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 178C, definitions of "Employment" and "Institution of higher learning" inserted, 2003, 77 § 1; section amended, 2003, 77 §§ 2, 3.
- § 178D amended, 2003, 77 § 4; 2 paragraphs inserted after first paragraph, 2003, 140 § 5.
- § 178E amended, 2003, 77 §§ 5, 6; subsection (a), sentence added, 2003, 140 § 9; subsection (h), second sentence revised, 2003, 77 § 7; section amended, 2003, 77 §§ 8, 9, 10; subsections (o), (p) and (q) inserted, 2003, 77 §11; subsection (p), first sentence amended, 2003, 140 § 10; section amended, 2003, 140 § 6, 7, 8, 11.
- § 178F amended, 2003, 77 §§ 12, 13, 14.
- § 178F 1/2 amended, 2003, 77 § 15; 140 § 12.
- § 178G amended, 2003, 77 § 16.
- § 178J amended, 2003, 77 § 17; subsection (c), first paragraph, clause (7) inserted, 2003, 77 § 18.
- § 178K amended, 2003, 77 §§ 19, 20, 21; subsection (2), paragraph (c), clause (vii) inserted, 2003, 77 § 22; section amended, 2003, 140 § 13; section amended, 2004, 149 § 13(b). (See 2004, 149 § 428.)
- § 1780 amended, 2003, 140 § 14.
- § 178Q added, 2003, 26 § 12. (See 2003, 26 § 715.)
- § 184A added, 2004, 149 § 14. (See 2004, 149 § 428.)
- § 201 amended, 2004, 304 § 1.
- § 202, paragraph added, 2003, 26 § 13. (See 2003, 26 § 715.)
- § 214 added, 2003, 69.

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- § 2 amended, 2003, 26 § 551; 2004, 196 § 2. (See 2003, 26 § 715.)
- § 8B added, 2003, 26 § 14. (See 2003, 26 § 715.)
- § 16 revised, 2003, 26 § 15. (See 2003, 26 § 715.)
- § 16B, sentence added, 2003, 26 § 16. (See 2003, 26 § 715.)
- § 16G added, 2003, 26 § 550; subsection (d) revised, 2004, 149 § 16. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 17C amended, 2003, 26 § 552. (See 2003, 26 § 715.)
- § 17D amended, 2003, 26 § 553. (See 2003, 26 § 715.)
- § 18 amended, 2004, 291 § 19.
- § 18 ½ (appearing in 2002 Official Edition) revised, 2004, 149 § 19.)
- § 18 ½, first paragraph, first sentence revised, 2003, 26 § 22; section revised, 2004, 149 § 18. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 19 revised, 2004, 196 § 3; subsection (b) revised, 2004, 291 § 20.
- § 103 added, 2004, 196 § 4.

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CHAPTER 7 - Executive Office for Administration and Finance. (Former title, Commission on Administration and Finance.)

- § 1 revised, 2003, 46 § 2.
- § 4A, 4 paragraphs added, 2004, 149 § 20. (See 2004, 149 § 428.)
- § 4I, first paragraph amended, 2003, 46 § 4.
- § 4Q added, 2003, 46 § 3.
- § 22B ½ added, 2003, 46 § 5.
- § 38 ½, definition of "Public agency" revised, 2004, 193 § 1.
- § 38D, subparagraph (b), clause (i) revised, 2004, 193 § 2.
- § 38H, subsection (i) revised, 2004, 193 § 3.
- § 38K, subsection (a), clause (ii) revised, 2004, 193 § 4; subsection (b), 3 sentences added, 2004, 193 § 5.
- § 40N, definition of "Veteran-owned business" inserted, 2003, 137 § 4; section amended, 2003, 137 § 5, 6, 7, 8, 9, 10, 11, 12; paragraph added, 2003, 137 § 13; section revised, 2004, 193 § 6.
- § 53 amended, 2003, 26 § 25. (See 2003, 26 § 715.)

CHAPTER 7A - Office of the Comptroller.

- § 12 amended, 2003, 26 § 29. (See 2003, 26 § 715.)
- § 18 amended, 2003, 26 §§ 30, 31. (See 2003, 26 § 715.)

CHAPTER 8 - State Superintendent of Buildings, and State House.

- § 9 amended, 2003, 26 § 32; **section revised**, 2004, 149 § 428. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 9A revised, 2003, 55 § 3.

CHAPTER 9 - Department of the State Secretary.

§ 31 added, 2003, 4 § 2. (See 2002, 4 § 85.)

CHAPTER 9A - Address Confidentiality Program. (New Chapter added, 2000, 409.)

CHAPTER 10 - Department of the State Treasurer.

- § 10, second paragraph revised, 2003, 26 § 33. (See 2003, 26 § 715.)
- § 28 revised, 2004 149 § 23. (See 2004, 149 § 428.)
- § 28A revised, 2004, 262 § 1. (See 2004, 262 § 71.)
- § 35D amended, 2003, 26 § 34. (See 2003, 26 § 715.)
- § 35G repealed, 2003, 26 § 35. (See 2003, 26 § 713.)
- § 35H repealed, 2003, 26 § 36. (See 2003, 26 § 713.)
- § 35L repealed, 2003, 26 § 37. (See 2003, 26 § 713.)
- § 35P revised, 2003, 55 § 4.
- § 35Q repealed, 2003, 26 § 38. (See 2003, 26 § 713.)
- § 35U, last sentence stricken out, 2004, 291 § 21.
- § 35V, subsection (a), second sentence amended, 2003, 26 § 40; subsection (b) revised, subsection (c) inserted, 2003, 26 § 41. (See 2003, 26 § 715.)
- § 35W ½ added, 2004 149 § 24. (See 2004, 149 § 428.)
- § 35X, subsection (c) inserted, 2003, 26 § 42. (See 2003, 26 § 715.)
- § 35Z added, 2004 149 § 25. (See 2004, 149 § 428.)
- § 35AA added, 2004 149 § 26. (See 2004, 149 § 428.)
- § 35BB added, 2004, 210 § 1.
- § 42 revised, 2003, 26 § 43(A). (See 2003, 26 § 715.)
- § 42A added, 2003, 26 § 43(A). (See 2003, 26 § 715.)
- § 42B added, 2003, 26 § 43(A). (See 2003, 26 § 715.)
- § 42C added, 2003, 26 § 43(A). (See 2003, 26 § 715.)
- § 47, sentence inserted after seventh sentence, 2003, 26 § 44; **section repealed**, 2003, 46 § 6. (See 2003, 26 § 715.)
- § 49 **repealed**, 2003, 26 § 45. (See 2003, 26 § 713.)
- § 51 **repealed**, 2003, 26 § 46. (See 2003, 26 § 713.)
- § 59, fourth and fifth sentences stricken out, 3 sentences inserted, 2003, 26 § 47; section amended, 2004, 276 § 1. (See 2003, 26 § 715.)
- § 59A added, 2004, 276 § 2.

CHAPTER 10 - Department of the State Treasurer. - continued

- § 61 revised, 2004, 352 § 4. (See 2004, 352 § 183.)
- § 63 amended, 2004, 291 § 22; paragraph inserted after fourth paragraph, 2004, 291 § 23.
- § 70 added, 2003, 26 § 48; seventh sentence stricken out, 2003, 140 § 15. (See 2003, 26 § 715; 140 § 136.)
- § 71 added, 2003, 26 § 48. (See 2003, 26 § 715.)
- § 72 added, 2003, 26 § 48. (See 2003, 26 § 715.)
- § 73 added, 2004, 149 § 27; paragraph (b) revised, 2004, 408. (See 2004, 149 § 428.)
- § 74 added, 2004, 304 § 2.

CHAPTER 11 - Department of the State Auditor.

- § 12 amended, 2003, 46 § 7.
- § 17 amended, 2004, 338 §§ 1,2; clause (8) revised, 2004, 338 § 3; clause (13) inserted, 2004, 338 § 4.

CHAPTER 12 - Department of the Attorney General, and the District Attorneys.

§ 8F, second paragraph, fourth sentence revised, 2004, 182.

CHAPTER 12A - Office of the Inspector General.

CHAPTER 12B - State Gambling and Advisory Commission.

CHAPTER 13 - Division and Boards of Registration. (Former title-Department of Civil Service and Registration.) (Title revised, 1998, 161 § 59.)

- § 9C added, 2004, 450 § 1.
- § 86, sentence added, 2004, 433 § 1.

CHAPTER 14 - Department of Revenue.

§ 9 **repealed**, 2004, 338 § 5.

CHAPTER 15 - Department of Education.

§ 1E, first sentence revised, 2004, 234 § 1. (See 2004, 234 § 2.)

CHAPTER 15A - Public Education.

- § 4 revised, 2003, 26 § 683; first sentence revise, 2004, 149 § 29. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 5, second paragraph revised, 2004, 149 § 30. (See 2004, 149 § 428.)
- § 7, paragraph added, 2003, 26 § 49.) 2003, 26 § 715.)
- § 7A added, 2003, 26 § 687; subsection (f) revised, 2004, 149 § 31. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 9 amended, 2003, 26 §§ 50, 51, 52, 684, 685. (See 2003, 26 § 715.)
- § 15B, paragraph inserted after second paragraph, 2003, 26 § 53; **amended**, 2003, 26 § 54. (See 2003, 26 § 715.)
- § 15E revised, 2004, 352 § 5. (See 2004, 352 § 183.)
- § 15F revised, 2004, 149 § 33. (2004, 149 § 428.)
- § 22 amended, 2003, 26 §§ 55, 692. (See 2003, 26 § 715.)
- § 24A amended, 2004, 149 § 34. (Seen 2004, 149 § 428.)
- § 41 added, 2003, 26 § 56. (See 2003, 26 § 715.)
- CHAPTER 15B The New England Educational Loan Marketing Corporation Act. (Chapter repealed, 1982, 356 § 2.)
- **CHAPTER 15C Massachusetts College Student Loan Authority.**
- CHAPTER 15D Department of Early Education and Care. (New Chapter added, 2004, 205.) (See 2004, 205 § 2.)
- CHAPTER 16 Department of Highways.

 (Formerly, Department of Public Works.)
- § 1 revised, 2004, 196 § 5
- § 2, fourth sentence stricken out, 2004, 196 § 6.
- § 3 amended, 2004, 196 § 7.
- § 3A repealed, 2004, 196 § 8.
- § 4 **repealed**, 2004, 291 § 24.
- § 5 **repealed**, 2004, 291 § 24.
- § 19 revised, 2003, 26 § 57. (See 2003, 26 § 715.)
- § 23 **repealed**, 2003, 26 § 58. (See 2003, 26 § 713.)

CHAPTER 17 - Department of Public Health.

CHAPTER 18 - Department of Transitional Assistance. (Title revised, 1995, 5 § 7. Former title, Department of Public Welfare.) (See 1995, 5 § 7.)

§ 5G, last paragraph, sentence added, 2003, 26 § 59. (See 2003, 26 § 715.) § 29 amended, 2004, 338 § 6.

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CHAPTER 18B - Department of Social Services.

CHAPTER 19 - Department of Mental Health.

CHAPTER 19A - Department of Elder Affairs.

§ 1, paragraph added, 2003, 26 § 17. (See 2003, 26 § 715.)

§ 4B revised, 2003, 26 § 18. (See 2003, 26 § 715.)

§ 14, definition of "Abuse" revised, 2004, 149 § 36. (See 2004, 149 § 428.)

§ 15 amended, 2004, 434.

§ 39, subsection (b), sentence added, 2004, 96 § 1; subsection (s) inserted, 2003, 4 § 3. (See 2002, 4 § 85.)

CHAPTER 19B - Department of Mental Retardation.

CHAPTER 19C - Disabled Persons Protection Commission.

§ 11 revised, 2004, 296.

CHAPTER 19D - Assisted Living. (New Chapter inserted, 1994, 354 § 3.)

§ 4, paragraph inserted after second paragraph, 2004, 149 § 37. (See 2004, 149 § 428.)

CHAPTER 20 - Department of Food and Agriculture.

§ 10 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 11 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 12 **repealed**, 2003, 26 § 60. (See 2003, 26 § 715)

§ 13 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 14 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 15 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 16 repealed, 2003, 26 § 60. (See 2003, 26 § 715)

§ 17 **repealed**, 2003, 26 § 60. (See 2003, 26 § 715)

CHAPTER 20 - Department of Food and Agriculture. - continued

- § 18 **repealed**, 2003, 26 § 60. (See 2003, 26 § 715)
- § 20 **repealed**, 2003, 26 § 61. (See 2003, 26 § 715)
- § 21 repealed, 2003, 26 § 61. (See 2003, 26 § 715)
- § 23 added, 2003, 26 § 62. (See 2003, 26 § 715.)
- § 24 added, 2003, 26 § 62. (See 2003, 26 § 715.)
- § 25 added, 2003, 26 § 62. (See 2003, 26 § 715.)
- § 26 added, 2003, 26 § 62. (See 2003, 26 § 715.)

CHAPTER 21 - Department of Environmental Management.

- § 1, fourth paragraph revised, 2003, 26 § 63. (See 2003, 26 § 715.)
- § 2 revised, 2003, 26 § 64. (See 2003, 26 § 715.)
- § 2A, first paragraph revised, 2003, 26 § 65; **section amended**, 2003, 26 §§ 66, 67, 68, 69. (See 2003, 26 § 715.)
- § 2B amended, 2003, 26 §§ 70, 71; last paragraph stricken out, 2003, 26 § 72. (See 2003, 26 § 715.)
- § 2C amended, 2003, 26 § § 73, 74, 75, 76. (See 2003, 26 § 715.)
- § 2D amended, 2003, 26 § 77. (See 2003, 26 § 715.)
- § 2E amended, 2003, 26 § 78. (See 2003, 26 § 715.)
- § 2F revised, 2003, 26 § 79. (See 2003, 26 § 715.)
- § 2G added, 2003, 26 § 80. (See 2003, 26 § 715.)
- § 3 revised, 2003, 26 § 81. (See 2003, 26 § 715.)
- § 3A amended, 2003, 26 § 82. (See 2003, 26 § 715.)
- § 3B amended, 2003, 26 § 83. (See 2003, 26 § 715.)
- § 3C amended, 2003, 26 § 84. (See 2003, 26 § 715.)
- § 3D amended, 2003, 26 § 85. (See 2003, 26 § 715.)
- § 4 **repealed**, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4A repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4B repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4D repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4E repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4F repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 4G repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 5 **repealed**, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 5A **repealed**, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6 **repealed**, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6A repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6B repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6C repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6D repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
- § 6E **repealed**, 2003, 26 § 86. (See 2003, 26 § 715.)

Department of Environmental Management. - continued CHAPTER 21 -

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§ 6F repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 6F½ repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 6I repealed, 2003, 26 § 87. (See 2003, 26 § 713.)
§ 7 repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7A repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7B repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7C repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7D repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7E repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7F repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7G repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7H repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 7I repealed, 2003, 26 § 86. (See 2003, 26 § 715.)
§ 8 amended, 2003, 26 §§ 88, 89. (See 2003, 26 § 715.)
§ 9A amended, 2003, 26 § 90. (See 2003, 26 § 715.)
§ 14 amended, 2003, 26 §§ 91, 92. (See 2003, 26 § 715.)
§ 17A repealed, 2003, 26 § 93. (See 2003, 26 § 715.)
§ 17B repealed, 2003, 26 § 93. (See 2003, 26 § 715.)
§ 17F repealed, 2003, 26 § 94. (See 2003, 26 § 713.)
§ 19 amended, 2003, 26 § 95. (See 2003, 26 § 715.)
§ 26A amended, 2003, 26 § 96. (See 2003, 26 § 715.)
§ 42 amended, 2004, 251 § 1.
§ 50B revised, 2004, 251 § 2.
§ 59 added, 2003, 26 § 97. (See 2003, 26 § 715.)
§ 60 added, 2003, 26 § 97. (See 2003, 26 § 715.)
§ 61 added, 2003, 26 § 97. (See 2003, 26 § 715.)
§ 62 added, 2003, 26 § 97. (See 2003, 26 § 715.)
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CHAPTER 21A - Executive Office of Environmental Affairs.

- § 7A **repealed**, 2003, 26 § 99. (See 2003, 26 § 715.) § 8 amended, 2003, 26 § 100; fourth paragraph revised, 2003, 26 § 101; section amended, 2003, 26 §§ 102, 103, 104, 105; sixth paragraph, last sentence stricken out, 2003, 26 § 106; ninth and tenth paragraphs stricken out, 2003, 26 § 107; section amended, 2004, 149 § 38. (See 2003, 26 § 715; 2004, 149 § 428.) § 8A amended, 2003, 26 §§ 109, 110, 111. (See 2003, 26 § 715.)
- § 10 **repealed**, 2003, 26 § 112. (See 2003, 26 § 715.)
- § 10A added, 2003, 26 § 113. (See 2003, 26 § 715.)

§ 63 added, 2003, 26 § 97. (See 2003, 26 § 715.)

§ 7 amended, 2003, 26 § 98. (See 2003, 26 § 715.)

§ 10B added, 2003, 26 § 113. (See 2003, 26 § 715.)

CHAPTER 21A - Executive Office of Environmental Affairs. - continued

- § 10C added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 10D added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 10E added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 10F added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 10G added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 10H added, 2003, 26 § 113. (See 2003, 26 § 715.)
- § 11 amended, 2003, 26 § 114. (See 2003, 26 § 715.)
- § 11A amended, 2003, 26 § 115; section revised, 2004, 291 § 26. (See 2003, 26 § 715.)
- § 11B added, 2003, 26 § 116. (See 2003, 26 § 715.)
- § 11C added, 2003, 26 § 116. (See 2003, 26 § 715.)
- § 13, sentence inserted after sixth sentence, 2004, 149 § 39. (See 2004, 149 § 428.)
- § 16 amended, 2004, 251 § 3; tenth paragraph, sentence added, 2004, 251 § 4; **section amended**, 2004, 251 § 5; last paragraph, sentence inserted after first sentence, 2004, 251 § 6.
- § 18, subsection (d), clauses (6) and (7) added, 2004, 149 § 40. (See 2004, 149 § 428.)

CHAPTER 21B - Mining Regulation and Reclamation.

CHAPTER 21C - Massachusetts Hazardous Waste Management Act.

CHAPTER 21D - Massachusetts Hazardous Waste Facility Siting Act.

- § 2 amended, 2003, 26 § 118. (See 2003, 26 § 715.)
- § 3 amended, 2003, 26 §§ 119, 120; last paragraph stricken out, 2003, 26 §121. (See 2003, 26 § 715.)
- § 7 amended, 2003, 26 § 122. (See 2003, 26 § 715.)

CHAPTER 21E - Massachusetts Oil and Hazardous Material Release Prevention and Response Act.

- § 2 amended, 2003, 46 §§ 8, 8A, 8B, 8C, 8D, 8E.
- § 3A, subsection (j), subparagraph (a) of paragraph (3), clause (i) revised amended, 2003, 141 § 1.
- § 3B, third paragraph revised, 2004, 149 § 42; **section amended**, 2004, 149 § 43, 44. (See 2004, 149 § 428.)
- § 6, first paragraph amended, 2004, 251 § 7; third paragraph, subsection (b), clauses (i), (ii) and (iii) stricken out, clause (i) inserted, 2003, 141 § 2.
- § 11 amended, 2004, 251 § 8.

CHAPTER 21F - Coastal Facilities Improvement.

- CHAPTER 21G Massachusetts Water Management Act.
- CHAPTER 21H Solid Waste Facilities.
 (New chapter inserted, 1987, 584 § 3.)
- CHAPTER 21I Massachusetts Toxics Use Reduction Act. (New chapter inserted, 1989, 265 § 3.)
- CHAPTER 21J Underground Storage Tank Petroleum Product Cleanup Fund. (New chapter inserted, 1990, 524 § 1).
- § 5 amended, 2004, 149 § 45. (See 2004, 149 § 428.)
- CHAPTER 21K Mitigation of Hazardous Material. (New Chapter inserted, 1998, 194 § 64.)
- § 2, subsections (c) and (d) added, 2004, 251 § 9.
- CHAPTER 21L ENVIRONMENTAL ENDANGERMENT ACT.
 (New Chapter inserted, 2003, 26 § 123.) (See 2003, 26 § 715.)

§ 4 added, 2004, 251 § 10.

CHAPTER 21M - (New Chapter inserted, 2004, 251 § 11.)

- § 5, sentence inserted after first sentence, 2004, 457 § 1.
- § 6, subsection (d) added; 2004, 457 § 2; subsection (d) stricken out, 2004, 457 § 3. (See 2004, 457 § 4.)

CHAPTER 22 - Department of Public Safety.

- § 15A repealed, 2004, 338 § 7.
- § 15B repealed, 2004, 338 § 7.
- § 15C repealed, 2004, 338 § 7.
- CHAPTER 22A Central Register for Missing Children.
- CHAPTER 22B Capitol Police. (Chapter repealed, 1991, 412 § 21.) (See 1991, 412 § 139.)
- CHAPTER 22C The Department of State Police. (New chapter inserted, 1991, 412 § 22.) (See 1991, 412 § 139.)
- §10 amended, 2004, 467 § 1. (See 2004, 467 § 6.)

- CHAPTER 22D Department of Fire Services.
 (New chapter inserted, 1996, 151 § 109.) (See 1996, 151 § 690.)
- CHAPTER 22E State DNA Database. (New chapter inserted, 1997, 106 § 7.)
- § 3, first sentence revised, 2003, 107 § 1; amended, 2004, 149 § 46. (2004, 149 § 428.)
- CHAPTER 23 Department of Labor and Work Force Development.
 (New title inserted, 1996, 1996, 151 § 110, Former title, Department of Labor and Industries.) (See 1996, 151 § 690.)
- § 1 revised, 2003, 26 § 554. (See 2003, 26 § 715.)
- § 2 revised, 2003, 26 § 554. (See 2003, 26 § 715.)
- § 3 revised, 2003, 26 § 554. (See 2003, 26 § 715.)
- § 3A inserted, 2003, 26 § 554. (See 2003, 26 § 715.)
- § 4 revised, 2003, 26 § 554; first paragraph, second sentence revised, 2004, 324 § 1; paragraph inserted after first paragraph, 2004, 324 § 2. (See 2003, 26 § 715.)
- § 5 stricken out, 2003, 26 § 554; first paragraph, fourth sentence stricken out, two sentences inserted, 2004, 324 § 3; paragraph inserted after first paragraph, 2004, 324 § 4. (See 2003, 26 § 715.)
- § 6 stricken out, 2003, 26 § 554. (See 2003, 26 § 715.)
- § 8, paragraph inserted after first paragraph, 2004, 324 § 5.
- § 9J, first sentences stricken out, 2 sentences inserted, 2003, 26 § 555; 2004, 149 § 47. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 9L repealed, 2003, 26 § 556. (See 2003, 26 § 715.)
- § 9M repealed, 2003, 26 § 556. (See 2003, 26 § 715.)
- § 9N amended, 2003, 26 §§ 557, 558; **section amended**, 2003, 142 § 1; subsection (a), 4 paragraphs added, 2003, 142 § 1A; subsection (b) revised, 2003, 142 § 2. (See 2003, 26 § 715; 142 § 16.)
- § 11A amended, 2003, 26 § 559. (See 2003, 26 § 715.)
- § 11E, first sentence revised, 2004, 149 § 48. (See 2004, 149 § 428.)
- § 11H, definition of "Director" revised, 2004, 149 § 49; definition of "Division" revised, 2004, 149, 50. (See 2004, 149 § 428.)
- CHAPTER 23A Department of Economic Development.

 (New title inserted, Former title, Department of Commerce and Development.)
- § 1 revised, 2003, 26 § 563. (See 2003, 26 § 715.)
- § 3B amended, 2003, 26 § 564; 2004, 352 § 6. (See 2003, 26 § 715; 2004, 352 § 183.)
- § 3F amended, 2004, 262 §§ 2, 3; subsection (2), sentence added, 2094, 262 § 4.
- § 13A, second paragraph, first sentence revised, 2003, 26 § 566. (See 2003, 26 § 715.)

CHAPTER 23A - Department of Economic Development. - continued

- § 23A, first paragraph, first sentence revised, 2003, 26 § 567; **section amended**, 2003, 26 § 568. (See 2003, 26 § 715.)
- § 39 amended, 2003, 137 §§ 14, 15.
- § 40 amended, 2003, 137 § 16.
- § 44 amended, 2003, 137 §§ 17, 18, 19; subsection (11) added, 2004, 193 § 7.
- § 45 **repealed**, 2003, 26 § 565. (See 2003, 26 § 715.)
- § 56 amended, 2004, 352 § 7. (See 2004, 352 § 183.)
- § 60 amended, 2003, 141 § 4.
- CHAPTER 23B Department of Housing and Community Development.

 (Title Changed, 1996, 204 § 15, Former Title, Division of Housing and Community Development.)
- CHAPTER 23C Board of Conciliation and Arbitration.
- **CHAPTER 23D Massachusetts Industrial Service Program.**
- § 2 revised, 2003, 26 § 569. (See 2003, 26 § 715.)
- CHAPTER 23E Division of Industrial Accidents.

 (Former Title, Department of Industrial Accidents)
- CHAPTER 23F The Economic Diversification Program. (New chapter inserted, 1990, 525.)
- CHAPTER 23G The Massachusetts Development Finance Agency. (New chapter inserted, 1998, 289 § 24.) (See 1998, 289 § 33.)
- § 7 amended, 2003, 26 § 570. (See 2003, 26 § 715.)
- § 27 revised, 2003, 141 § 5
- § 28 revised, 2003, 141 § 5.
- § 29 amended, 2004, 352 § 8. (See 2004, 352 § 183.)

CHAPTER 23H - WORKFORCE DEVELOPMENT.

(New chapter inserted, 2003, 26 § 571.) (See 2003, 26 § 715.)

- § 1 added, 2003, 26 § 571. (See 2003, 26 § 715.)
- § 2 added, 2003, 26 § 571. (See 2003, 26 § 715.)
- § 3 added, 2003, 26 § 571; first sentence revised, 2004, 149 § 51. (See 2003, 26 § 715; 2004, 19 § 428.)
- § 4 added, 2003, 26 § 571. (See 2003, 26 § 715.)

CHAPTER 23H - WORKFORCE DEVELOPMENT. - continued

- § 5 added, 2003, 26 § 571. (See 2003, 26 § 715.)
- § 6 added, 2003, 26 § 571; subsection (a) revised, 2004, 149 § 52. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 7 added, 2003, 26 § 571. (See 2003, 26 § 715.)
- § 8 added, 2003, 141 § 6.
- § 8 added, 2004, 149 § 53. (See 2004, 149 § 428.)
- § 9 added, 2003, 141 § 6.
- § 10 added, 2003, 141 § 6.
- CHAPTER 24 Department of Industrial Accidents. (Chapter repealed, 1953, 314 § 14.)
- CHAPTER 24A Office of Consumer Affairs and Business Regulation. (New chapter inserted, 1996, 151 § 148.) (See 1996, 151 § 690.)
- CHAPTER 25 Department of Public Utilities.
- § 19, sentence inserted after fifth sentence, 2003, 46 § 9.
- CHAPTER 25A Division of Energy Resources.

 (Formerly, Executive Office of Energy Resources.)
- § 11H added, 2004, 149 § 54. (See 2004, 149 § 428.)
- § 13 added, 2004, 149 § 55. (See 2004, 149 § 428.)
- CHAPTER 25B Massachusetts Appliance Efficiency Standards Act.
- CHAPTER 26 Department of Banking and Insurance.
- **CHAPTER 27 Department of Correction.**
- CHAPTER 28 Metropolitan District Commission. (Chapter repealed, 2003, 26 § 125. (See 2003, 26 § 715.)
- CHAPTER 28A Office of Child Care Services.
 (2000 313 8.) (Former Title, Office For Children.)
- § 5A repealed, 2003, 26 § 126. (See 2003, 26, § 713.)

CHAPTER 29 - State Finance.

§ 1, definition of "Balanced budget, clause (ii) revised, 2003, 26 § 537; definition of "Consolidated net surplus in the operating funds" stricken out, definition of "Consolidated net surplus in the budgetary funds" inserted" revised, 2003, 26 § 127; section amended, 2003, 101 § 1. (See 2003, 26 § 715; 101 § 15.) § 2C1/2 repealed, 2003, 26 § 128. (See 2003, 26 § 704.) § 2H, second paragraph amended, 2003, 26 § 129. (See 2003, 26 § 129.) § 2J repealed, 2003, 26 § 130. (See 2003, 26 § 713.) § 2K repealed, 2003, 26 § 131. (See 2003, 26 § 713.) § 2P repealed, 2003, 26 § 132. (See 2003, 26 § 713.) § 2P ½ repealed, 2003, 26 § 133. (See 2003, 26 § 713.) § 2R repealed, 2003, 26 § 134. (See 2003, 26 § 713.) § 2S repealed, 2003, 26 § 135. (See 2003, 26 § 713.) § 2T repealed, 2003, 26 § 136. (See 2003, 26 § 713.) § 2U repealed, 2003, 26 § 137. (See 2003, 26 § 713.) § 2Y repealed, 2003, 26 § 138. (See 2003, 26 § 713.) § 2AA repealed, 2003, 26 § 139. (See 2003, 26 § 713.) § 2BB repealed, 2003, 26 § 140. (See 2003, 26 § 713.) § 2CC repealed, 2003, 26 § 141. (See 2003, 26 § 713.) § 2EE repealed, 2003, 26 § 142. (See 2003, 26 § 713.) § 2FF amended, 2003, 26 § 143; first paragraph, clause (f) stricken out, 2003, 26 § 144. (See 2003, 26 § 715.) § 2GG repealed, 2003, 26 § 145. (See 2003, 26 § 713.) § 2II repealed, 2003, 26 § 146. (See 2003, 26 § 713.) § 2KK repealed, 2003, 26 § 147. (See 2003, 26 § 713.) § 2LL repealed, 2003, 26 § 148. (See 2003, 26 § 713.) § 2MM repealed, 2003, 26 § 149. (See 2003, 26 § 713.) § 2NN repealed, 2003, 26 § 150. (See 2003, 26 § 713.) § 200 repealed, 2003, 26 § 151. (See 2003, 26 § 713.) § 2RR, subsection (b), paragraph (1), clause (ix) inserted, 2003, 141 § 8; section amended, 2003, 141 §§ 10, 11; subsections (f) to (k) inserted, 2003, 141 § 9; section amended, 2004, 352 § 9. (See 2003, 141 § 79; 2004, 352 § 183.) § 2SS **repealed**, 2003, 26 § 152. (See 2003, 26 § 713.) § 2UU repealed, 2003, 26 § 153. (See 2003, 26 § 713.) § 2VV repealed, 2003, 26 § 154. (See 2003, 26 § 713.) § 2WW repealed, 2003, 26 § 155. (See 2003, 26 § 713.) § 2XX repealed, 2003, 26 § 156. (See 2003, 26 § 713.) § 2YY repealed, 2003, 26 § 157. (See 2003, 26 § 713.) § 2BBB repealed, 2003, 26 § 158. (See 2003, 26 § 713.)

§ 2CCC repealed, 2003, 26 § 159. (See 2003, 26 § 713.)

§ 2JJJ added, 2003, 4 § 4. (See 2002, 4 § 85.)

CHAPTER 29 - State Finance. - continued

- § 2KKK added, 2003, 4 § 4. (See 2002, 4 § 85.)
- § 2LLL added, 2003, 26 § 162. (See 2003, 26 § 715.)
- § 2MMM added, 2003, 141 § 13.
- § 2NNN added, 2004, 352 § 10. (See 2004, 352 § 183.)
- § 3A revised, 2003, 26 § 161. (See 2003, 26 § 715.)
- § 5B, last paragraph revised, 2003, 26 § 163. (See 2003, 26 § 715.)
- § 5C revised, 2003, 26 § 164; clause (a) revised, 2003, 26 § 165. (See 2003, 26 § 715.)
- § 7H amended, 2004, 149 § 58. (See 2004, 149 § 428.)
- § 9A repealed, 2003, 26 § 166. (See 2003, 26 § 715.)
- § 9B, first paragraph, first sentence revised, 2003, 1 §§ 1, 2. (See 2003, 1 § 7.)
- § 9C, first paragraph revised, 2003, 1 § 3; **section revised**, 2003, 26 § 167. (See 2003, 1 § 7; 26 § 715.)
- § 27B amended, 2004, 149 § 60. (See 2004, 149 § 428.)
- § 29E, sentence inserted after first sentence, 2004, 149 § 61. (See 2004, 149 § 428.)
- § 29F amended, 2003, 26 §§ 170, 171; **section amended**, 2004, 193 § 8. (See 2003, 26 § 715.)
- § 31A amended, 2003, 46 § 10.
- § 39M amended, 2004, 193 §§ 9, 10.

CHAPTER 29A - Financing the Judicial System.

- CHAPTER 29B State Revenue Growth Control. (Chapter repealed, 1998, 194 § 103.) (See 1998, 194 § 433.)
- CHAPTER 29C Water Pollution Abatement Revolving Loan Program. (New chapter inserted, 1989, 275 § 8.)
- CHAPTER 29D THE HEALTH CARE SECURITY TRUST.
 (New chapter inserted, 1999, 127 § 43.)(See 1999, 127 § 390.)
- § 3 amended, 2004, 352 § 11; paragraph (f) revised, 2004, 352 § 14. (See 2004, 352 § 183.)
- § 4 amended, 2004, 352 §§ 15, 17. (See 2004, 352 § 183.)
- § 5, subsection (h) revised, 2004, 352 § 18. (See 2004, 352 § 183.)
- CHAPTER 30 General Provisions Relative to State Departments, Commissions, Officers and Employees.
- § 1 amended, 2003, 26 § 172. (See 2003, 26 § 715.)
- § 9J added, 2004, 149 § 62. (See 2004, 149 § 428.)
- § 39L, clause (1) revised, 2004, 178 § 1. (See 2004, 178 § 49.)
- § 39M, subsection (c) revised, 2004, 306 § 1. (See 2004, 306 § 5.)

CHAPTER 30 - General Provisions Relative to State Departments, Commissions, Officers and Employees. - continued

- § 39S added, 2004, 306 § 2. (See 2004, 306 § 5.)
- § 59 amended, 2004, 149 § 63. (See 2004, 149 § 428.)
- § 65 added, 2003, 26 § 173; subsection (c) revised, 2003; 140 § 16; 2004, 149 § 64. (See 2003, 26 § 715; 140 § 136; 2004, 149 § 428.)

CHAPTER 30A - State Administrative Procedure.

CHAPTER 30B - Uniform Procurement Act. (New chapter inserted, 1989, 687 § 3.)

- § 12 amended, 2003, 46 § 11.
- § 18 amended, 2003, 137 § 20.

CHAPTER 31 - Civil Service.

- § 48 amended, 2003, 26 § 572. (See 2003, 26 § 715.)
- § 58 amended, 2004, 467 § 2; second paragraph, sentence added, 2004, 467 § 3. (See 2004, 467 § 6.)
- § 62 amended, 2003, 26 § 174. (See 2003, 26 § 715.)
- § 64 amended, 2004, 467 § 4. (See 2004, 467 § 6.)

CHAPTER 31A - Municipal Personnel Systems.

CHAPTER 32 - Retirement Systems and Pensions.

- § 1, definition of "Accumulated assumed actuarial deductions" inserted, 2004, 149 § 65; definition of "Accumulated buyback deductions" inserted, 2004, 280 § 1; definition of "Actuarial assumed interest" inserted, 2004, 149 § 66' definition of "Actuarial equivalent" revised, 204, 149 § 67; definition of "Buyback interest" inserted, 2004, 279 § 1; section amended, 2004, 352 § 19. (See 2004, 149 § 428; 279 § 1; 280 § 3; 352 § 183.)
- § 3 amended, 2004, 279 §§ 2, 3; **section amended**, 2004, 280 § 2. (See 2004, 279 § 4; 280 § 3.)
- § 5, subsection (1), paragraph (e) stricken out, 2003, 26 § 175. (See 2003, 26 § 715.)
- § 7 amended, 2004, 149 §§ 71, 72. (See 2004, 149 § 428.)
- § 9 amended, 2004, 149 §§ 73, 74; subdivision (2), paragraph (c), 2 sentences added, 2004, 149 § 75; **section amended**, 2004, 149 § 76. (See 2004, 149 § 428.)
- § 12, subdivision (1), second sentence of first paragraph revised, 2004, 149 § 77. (See 2004, 149 § 428.)
- § 12B amended, 2004, 149 § 78. (See 2004, 149 § 428.)

CHAPTER 32 - Retirement Systems and Pensions. - continued

- § 15, subdivision (5) inserted, 2004, 149 § 79; **section amended**, 2004, 352 § 19A. (See 2004, 149 § 428; 352 § 183.)
- § 22C, subsection (1), first paragraph, first sentence stricken out, 2 sentences inserted, 2003, 26 § 176; amended, 2003, 26 § 177; third sentence stricken out, 2004, 149 § 80; second paragraph, last sentence revised, 2003, 26 § 178; last paragraph amended, 2003, 26 § 179; revised, 2004, 149 § 81. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 23, subdivision (6) inserted, 2004, 149 § 82. (See 2004, 149 § 428.)
- § 26 amended, 2004, 149 §§ 82, 83. (See 2004, 149 § 428.)
- § 91A amended, 2004, 149 § 85; 3 sentences added, 2004, 149 § 86. (See 2004, 149 § 428.)
- § 94B amended, 2004, 65 §§ 3, 4.
- § 100 amended, 2004, 149 § 87. (See 2004, 149 § 428.)
- § 105 added, 2004, 149 § 88. (See 2004, 149 § 428.)

CHAPTER 32A - Contributory Group General or Blanket Insurance for Persons in the Service of the Commonwealth.

- § 2 amended, 2004, 352 § 21. (See 2004, 352 § 183.)
- § 19 amended, 2004, 149 § 89. (See 2004, 149 § 428.)

CHAPTER 32B - Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and their Dependents.

- § 2, definition of "Employee", sentence inserted after first sentence, 2003, 46 § 12.
- § 9A revised, 2003, 46 § 13.
- § 11, two paragraphs inserted after second paragraph, 2004, 149 § 90. (See 2004, 149 § 428.)
- CHAPTER 33 Militia.
- **CHAPTER 34 Counties and County Commissioners.**
- **CHAPTER 34A County Charter Procedures.**
- CHAPTER 34B Abolition of County Government. (New chapter inserted, 1999, 127 § 53.)(See 1999, 127 § 390.)
- CHAPTER 35 County Treasurers, State Supervision of County Accounts and County Finances.

CHAPTER 36 - Registers of Deeds.

§ 41 added, 2003, 4 § 5. (See 2002, 4 § 85.)

CHAPTER 37 - Sheriffs.

CHAPTER 38 - Medical Examiners.

§ 6 revised, 2003, 140 § 17.

§ 14 revised, 2003, 140 § 18.

CHAPTER 39 - Municipal Government.

CHAPTER 40 - Powers and Duties of Cities and Towns.

- § 5B revised, 2003, 46 § 14; first paragraph, sentence added, 2003, 140 § 19. (See 2003, 140 § 137.)
- § 5G amended, 2004, 291 § 28.
- § 8G amended, 2003, 124 § 1; sentence added, 2003, 124 § 2; paragraph added, 2004, 81.
- § 44F amended, 2003, 46 § 15.
- § 60 added, 2003, 46 § 16.

CHAPTER 40A - Zoning Regulations.

CHAPTER 40B - Regional Planning.

- § 20 amended, 2003, 26 § 181. (See 2003, 26 § 715.)
- § 24 amended, 2003, 26 § 182. (See 2003, 26 § 715.)

CHAPTER 40C - Historic Districts.

CHAPTER 40D - Industrial Development of Cities and Towns.

§ 21, subsection (h), third sentence revised, 2003, 127 § 1. (See 2003, 127 § 24.)

CHAPTER 40E - Massachusetts Industrial Development Authority.

CHAPTER 40F - The Massachusetts Community Development Finance Corporation.

CHAPTER 40G - Massachusetts Technology Development Corporation.

CHAPTER 40H - Community Economic Development Assistance Corporation.

- CHAPTER 40I THE BAY STATE SKILLS CORPORATION ACT. (Chapter repealed, 1996, 151 § 196.) (See 1996, 151 § 690.)
- CHAPTER 40J Massachusetts Technology Park Corporation.
- § 4E, subsection (1) inserted, 2002, 26 § 183. (See 2003, 26 § 715.)
- § 4F added, 2003, 141 § 19.
- § 6A added, 2003, 141 § 18; subsection (a), third sentence amended, 2004, 149 § 91. (See 2004, 149 § 428.)
- CHAPTER 40K MASSACHUSETTS PRODUCT DEVELOPMENT CORPORATION.
 (Chapter repealed, 1996, 58 § 23.) (See 1996, 58 § 105.)
- CHAPTER 40L AGRICULTURAL INCENTIVE AREAS.
- CHAPTER 40M GOVERNMENTAL UNITS POOLED INSURANCE.
- CHAPTER 40N MODEL WATER AND SEWER COMMISSION. (New chapter inserted, 1992, 343 § 2.)
- § 8 amended, 2002, 26 § 184. (See 2003, 26 § 715.) § 18 amended, 2003, 46 § 17.
- CHAPTER 400 BUSINESS IMPROVEMENT DISTRICTS. (New chapter inserted, 1994, 173.)
- CHAPTER 40O The Massachusetts Rent Control Prohibition Act.

 (New chapter inserted, 1994, 368 § 1.) (See 1994, 368 § 2.) (Voted by the people under Art. 48.) (Chapter stricken out, 1997, 19 § 10.) (See 1997, 19 § 127.)
- CHAPTER 40P The Massachusetts Rent Control Prohibition Act. (New chapter inserted, 1997, 19 § 10.) (See 1997, 19 § 127.)
- CHAPTER 40Q- DISTRICT IMPROVEMENT FINANCING. (New Chapter inserted, 2003, 46 § 18.)
- CHAPTER 40R- SMART GROWTH ZONING AND HOUSING PRODUCTION. (New Chapter inserted, 2004, 149 § 92.) (See 2004, 149 § 428.)

CHAPTER 41 - Officers and Employees of Cities, Towns and Districts.

- § 41, sentence inserted after first sentence, 2003, 46 § 19.
- § 95A added, 2003, 46 § 20; section revised, 2003, 140 § 20. (See 2003, 140 § 138.)
- § 95B added, 2003, 46 § 20; section revised, 2003, 140 § 21.
- § 99E amended, 2003, 46 § 21.
- § 108L, ten paragraphs added, 2004, 149 § 93. (See 2004, 149 § 428.)
- CHAPTER 40Q- DISTRICT IMPROVEMENT FINANCING. (New Chapter inserted, 2003, 46 § 18.)
- **CHAPTER 42 Boundaries of Cities and Towns.**
- CHAPTER 43 City Charters.
- CHAPTER 43A Standard Form of Representative Town Meeting Government.
- **CHAPTER 43B Home Rule Procedures.**
- CHAPTER 43C OPTIONAL FORMS OF MUNICIPAL ADMINISTRATION ACT.
 (New chapter inserted, 1987, 756.)
- CHAPTER 43D EXPEDITED PERMITTING. (New chapter inserted, 2004, 149 § 94.) (See 2004, 149 § 428.)

CHAPTER 44 - Municipal Finance.

- § 1, definition of "Municipal finance oversight board" inserted, 2004, 149 § 95. (See 2004, 149 § 428.)
- § 7, clause (3A) revised, 2003, 46 § 22; clause (9) revised, 2003, 26 § 23.
- § 8 amended, 2003, 46 §§ 24, 25, 26; clause (8) amended, 2004, 149 § 96; clause (8A) amended, 2004, 149 § 97; clause (15) revised, 2003, 26 § 27; 2004, 149 § 98; section amended, 2003, 26 §§ 28, 29, 30, 31. (See 2004, 149 § 428.)
- § 10, first paragraph revised, 2003, 46 § 32; amended, 2004, 149 § 99. (See 2004, 149 § 428.)
- § 20, 2 sentences added, 2003, 46 § 33.
- § 21A, first paragraph, first sentence revised, 2003, 46 § 34.
- § 42A added, 2003, 46 § 35.
- § 53G amended, 2003, 46 § 36.
- § 55C added, 2004, 491 § 1.
- § 72 amended, 2003, 26 § 186. (See 2003, 26 § 186.)

CHAPTER 44A - QUALIFIED BOND ACT.

§ 1, definition of "Board" revised, 2003, 46 § 37; stricken out, 2004, 149 § 100; definition of "Municipal finance oversight board" inserted, 2004, 149 § 101. (See 2004, 149 § 428.)

CHAPTER 44B. - COMMUNITY PRESERVATION. (New chapter inserted, 2000, 267 § 1.)

§ 5, subsection (f) inserted, 2003, 46 § 38; paragraph added, 2004, 491 § 2.

CHAPTER 45 - Public Parks, Playgrounds and the Public Domain.

CHAPTER 46 - Return and Registry of Births, Marriages and Death.

§ 9, paragraph added, 2004, 120 § 1.

CHAPTER 47 - Infirmaries.

CHAPTER 48 - Fires, Fire Departments and Fire Districts.

CHAPTER 49 - Fences, Fence Viewers, Pounds and Field Drivers.

CHAPTER 49A - Use of Certain Animals for Scientific Investigation, Experiment or Instruction.

CHAPTER 50 - General Provisions relative to Primaries, Caucuses and Elections.

CHAPTER 51 - Voters.

§ 4, subsection (e) inserted, 2003, 46 § 40.

§ 36, first paragraph, first sentence stricken out, two sentences inserted, 2004, 334 § 1.

§ 59A repealed, 2004, 334 § 2.

CHAPTER 52 - Political Committees.

CHAPTER 53 - Nominations, Questions to be Submitted to the Voters, Primaries and Caucuses.

§ 7 amended, 2004, 236 § 1.

§ 10 amended, 2004, 236 § 2.

§ 28 amended, 2004, 236 § 3.

§ 37, first paragraph, fifth sentence revised, 2004, 173 § 1.

§ 37A, last paragraph revised, 2004, 173 § 2.

CHAPTER 53 - Nominations, Questions to be Submitted to the Voters, Primaries and Caucuses. - continued

§ 38, first paragraph, second sentence stricken out, 2004, 173 § 3; second, third and fourth paragraphs stricken out, 2004, 173 § 4.

§ 46 amended, 2004, 236 § 4.

CHAPTER 54 - Elections.

§ 67 amended, 2004, 334 § 3.

§ 76B revised, 2004, 334 § 4.

§ 76C added, 2004, 334 § 4.

§ 95 amended, 2004, 151 § 1.

§ 99 amended, 2004, 151 § 2.

§ 135 amended, 2004, 334 § 5.

§ 139 repealed, 2004, 236 § 5.

§ 140 revised, 2004, 236 § 6.

- CHAPTER 54A Election of City and Town Officers by Proportional Representation and Preferential Voting.
- CHAPTER 55 Disclosure of Campaign Expenditures and Contributions and Election Inquests.
- § 9A amended, 2004, 149, §§ 102, 103. (See 2004, 149 § 428.)
- § 18C, clause (1) revised, 2003, 26 § 43(B). (See 2003, 26 § 715.)
- CHAPTER 55A THE MASSACHUSETTS CLEAN ELECTION LAW.

 (Chapter revised, 1998, 395 § 2)(New title inserted, 1998, 395 § 2,
 Former Title, Limited Public Financing of Campaigns for
 Statewide Elective Office.)

 (SECTION REPEALED, 2003, 26 § 43(C), (See 2003, 26 § 715.)
- CHAPTER 55B The State Ballot Law Commission.
- CHAPTER 55C. LIMITED PUBLIC FINANCING OF CAMPAIGNS FOR STATEWIDE ELECTIVE OFFICE.

 (CHAPTER ADDED, 2003, 26 § 43(D). (See 2003, 26 § 715.)
- **CHAPTER 56 Violations of Elections Laws.**

CHAPTER 57 - Congressional, Councilor and Senatorial Districts, and Apportionment of Representatives.

§ 4 amended, 2004, 74 §§ 1, 2.

CHAPTER 58 - General Provisions Relative to Taxation.

- § 10C, first paragraph, fourth sentence stricken out, 2004, 262 § 5; second paragraph stricken out, 2004, 262 § 6.
- § 13 amended, 2003, 26 § 187; **section amended**, 2004, 262 § 7; 352 § 23; first paragraph revised, 2004, 462 § 1. (See 2003, 26 § 715; 352 § 183.)
- § 14 revised, 2004, 262 § 8.
- § 15 amended, 2004, 262 § 9.
- § 17C amended, 2003, 26 § 188. (See 2003, 26 § 715.)
- § 18D amended, 2003, 26 § 189. (See 2003, 26 § 715.)

CHAPTER 58A - Appellate Tax Board.

(Former title, Board of Tax Appeals.) (Chapter revised, 1998, 485 § 2.) (See 1998, 485 § 23.)

CHAPTER 59 - Assessment of Local Taxes.

- § 2D amended, 2003, 46 § 41; subsection (f) revised, 2003, 46 § 42.
- § 5 amended, 2003, 26 § 190; **section amended**, 2003, 46 §§ 43, 44, 45, 46, 47, 47A; clause Sixteenth, paragraph (4) revised, 2004, 178 § 2; second paragraph revised, 2004, 178 § 3; clause Forty-first, second paragraph revised, 2004, 149 § 105; clause Fifty-fifth inserted, 2003, 46 § 48; **section amended**, 2004, 352 §§ 24, 25. (See 2003, 26 § 715; 2004, 149 § 428; 178 § 49; 2004, 352 § 183.)
- § 5C, paragraph added, 2003, 46 § 49.
- § 5D amended, 2003, 26 § 191. (See 2003, 26 § 715.)
- § 20A amended, 2003, 26 § 192. (See 2003, 26 § 715.)
- § 21C, paragraph (g), paragraph added, 2003, 46 § 50.
- § 25 amended, 2003, 46 § 51.
- § 57, sentence added, 2003, 46 § 52; last sentence revised, 2004, 149 § 107. (See 2004, 149 § 428.)
- § 57C, first paragraph revised, 2003, 46 § 53; 2004, 149 § 108; second paragraph, sentence added, 2004, 149 § 110; seventh paragraph revised, 2003, 46 § 54; second sentence revised, 2004, 352 § 26; section amended, 2004, 149 §§ 109, 112; eighth paragraph revised, 2004, 149 § 111. (See 2004, 149 § 428; 352 § 183.)

CHAPTER 59A - Classification of Real Property.

CHAPTER 60 - Collection of Local Taxes.

- § 2C, subsection (b) revised, 2004, 295 § 1; subsection (c), paragraphs (1) and (2) revised, 2004, 295 § 2; section amended, 2004, 295 § 3; subsection (d) revised, 2004, 295 § 4; subsection (h) revised, 2004, 295 § 5.
- § 3E added, 2003, 46 § 55.
- § 15 amended, 2003, 46 §§ 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68; clause 19. Added, 2003, 46 § 69.
- § 23 amended, 2003, 4 § 6. (See 2002, 4 § 85.)
- § 52 revised, 20094, 295 § 6.
- § 62, second paragraph revised, 2004, 295 § 7.
- § 62A revised, 2004, 295 § 8.
- § 65 amended, 2003, 46 § 70.

CHAPTER 60A - Excise Tax on Registered Motor Vehicles in Lieu of Local Property Tax.

- § 1 amended, 2003, 46 § 71.
- § 2, tenth sentence revised, 2004, 262 § 10.
- § 8 added, 2004, 262 § 11; paragraph (a), second paragraph revised, 2004, 262 § 12; paragraph (b) revised, 2004, 262 § 13.
- CHAPTER 60B Excise on Boats, Ships and Vessels in Lieu of Local Property Tax.
- CHAPTER 61 Classification and Taxation of Forest Lands and Forest Products. (Former title, Taxation of Forest Products and Classification and of Forest Lands.)
- CHAPTER 61A Assessment and Taxation of Agricultural and Horticultural Land.
- **CHAPTER 61B Classification and Taxation of Recreational Land.**

CHAPTER 62 - Taxation of Incomes.

- § 2, subsection (d), paragraph (1), subparagraph (O) inserted, 2004, 466 § 1; paragraph (3) added, 2004, 304 § 3.
- § 5A, subsection (a), last 2 sentences stricken out, 5 sentences inserted, 2003, 4 § 7.
- § 6 amended, 2003, 141 § 20.
- § 6C amended, 2003, 26 § 43(E). (See 2003, 26 § 715.)
- § 6I, subsection (I), first sentence revised, 2004, 352 § 27. (See 2004, 352 § 183.) § 6J added, 2003, 141 § 22; subsection (a), definition of "Qualified rehabilitation expenditure" revised, 2004, 65 § 5; subsection (b) revised, 2004, 65 § 6; subsection (e) stricken out, 2004, 65 § 7; subsection (g) revised, 2004, 65 § 8; subsection (i) revised, 2004, 65 § 9. (See 2003, 141 § 81; 2004, 65 § 54.)

CHAPTER 62 - Taxation of Incomes. - continued

- § 8, paragraph (b) revised, 2003, 4 § 8.
- § 10 amended, 2004, 262 § 14; subsections (h), (i) and (j) added, 2004, 262 § 15.
- § 12 repealed, 2004, 262 § 16.
- § 12A repealed, 2004, 262 § 16.
- § 13 amended, 2004, 262 § 17.
- § 17, first paragraph, sentence added, 2003, 4 § 9; paragraph (b), first sentence revised, 2004, 262 § 18.
- § 63, subsection (a) revised, 2004, 262 § 19; subsection (d), third sentence revised, 2004, 262 § 20.

CHAPTER 62A - Simplified Method of Computing Individual Income Taxes.

CHAPTER 62B - Withholding of Taxes on Wages and Declaration of Estimated Income Tax.

- § 2, inserting paragraph after fourth paragraph, 2004, 262 § 21; **section amended**, 2004, 262 § 22. (See 2004, 262 § 71.)
- § 13 amended, 2004, 262 § 23.
- § 14 amended, 2004, 262 § 24.

CHAPTER 62C - Administrative Provisions Relative to State Taxation.

- § 3A added, 2003, 4 § 10.
- § 21, subsection (b), clause (9) revised, 2003, 9, § 1; clause (21) added, 2004, 149 § 115; section amended, 2004, 338 § 8. (See 2004, 149 § 428.).
- § 26, subsection (c) revised, 2003, 26 § 193. (See 2003, 26 § 715.)
- § 30, 2 paragraphs added, 2003, 143 § 1.
- § 33, subsection (g) inserted, 2003, 143 § 2.
- § 35 revised, 2004, 262 § 25.
- § 36, third paragraph revised, 2003, 143 § 2A.
- § 37 paragraph inserted after first paragraph, 2003, 26 § 194; **section amended**, 2003, 26 § 195. (See 2003, 26 § 715.)
- § 39 revised, 2003, 143 § 2B.
- § 40 amended, 2003, 26 § 196; subsection (a), paragraph added, 2003, 26 § 197; **section amended**, 2003, 26 § 198. (See 2003, 26 § 715.)
- § 50, subsection (a), last 2 sentences stricken out, 6 sentences inserted, 2004, 262 § 26. (See 2004, 262 § 70.)
- § 53 amended, 2004, 262 § 27; subsection (e) added, 2004, 262 § 28. (See 2004, 262 § 71.)
- § 65, first paragraph, first sentence revised, 2004, 262 § 29. (See 2004, 262 § 70.)
- § 67D added, 2003, 141 § 23; subsection (b), second sentence revised, 2004, 65 § 10. (See 2004, 65 § 55.)
- § 83, subsection (a), second sentence revised, 2004, 178 § 4. (See 2004, 178 § 49.)

CHAPTER 62D - SET-OFF DEBT COLLECTION.

- § 1, definition of "Claimant agency" revised, 2003, 9, § 2; definition of "Debt" revised, 2003, 9 § 3; 26 § 199; sentence added, 2003, 26 § 201; definition of "Debtor" revised, 2003, 9 § 4; 26 § 200. (See 2003, 26 § 715.)
- § 10, first paragraph revised, 2003, 9 § 5.
- § 13 revised, 2003, 9 § 6; clause (ix) amended, 2003, 26 § 202. (See 2003, 26 § 715).

CHAPTER 62E - WAGE REPORTING SYSTEM.

- § 2 amended, 2004, 262 § 30; last sentence revised, 2004, 262 § 31.
- § 3, first paragraph revised, 2003, 9 § 7.
- § 4 amended, 2004, 262 §§ 32, 33.
- § 5 amended, 2004, 262 § 34.

CHAPTER 62F - LIMITATION ON THE GROWTH OF STATE TAX REVENUES.

§ 6A, second paragraph revised, 2003, 26 § 203; first sentence revised, 2004, 149 § amended, 2004, 149 § 116. (See 2003, 26 § 715; 2004, 149 § 428.)

CHAPTER 63 - Taxation of Corporations.

- § 1, definition of "Code" inserted, 2003, 4 § 11; definition of "Financial institution" revised, 2003, 143 § 3; definition of "Net income", 2 sentences inserted after first sentence, 2003, 4 § 12; third sentence revised, 2003, 143 § 4; clauses (c) and (d) stricken out, clauses (c), (d) and (e) inserted, 2004, 466 § 2.
- § 2A, subsection (a), sentence added, 2004, 262 § 35.
- § 30, paragraphs 1 and 2 revised, 2003, 4 § 13; 26 § 204; 127 § 2; paragraph 4, sentence inserted after second sentence, 2003, 4 § 14; third sentence stricken out and 2 sentences inserted, 2003, 143 § 5; clause (v) inserted, 2003, 4 § 15; clause (vi) inserted, 2004, 466 § 3; paragraph 16 added, 2003, 4 § 16; **section amended**, 2004, 262 §§ 36, 37; paragraph (9) stricken out, 2004, 262 § 38; paragraphs (10) and (11) revised, 2004, 262 § 39. (See 2003, 26 § 712; 127 § 24.)
- § 31A, paragraph (k) revised, 2003, 26 § 205; 141 § 25; paragraph (l) revised, 2003, 26 § 206; 141 § 25. (See 2003, 26 § 715.)
- § 31H, subsection (I), first sentence revised, 2004, 352 § 28. (See 2004, 352 § 183.)
- § 31I added, 2003, 4 § 17.
- § 31J added, 2003, 4 § 17.
- § 31K added, 2003, 136.
- \S 32B, first paragraph, sentence added, 2004, 262 \S 40.
- § 32D revised, 2003, 4 § 18.
- § 33 amended, 2003, 4 §§ 19, 20, 21; last paragraph, sentence added, 2003, 4 § 22.

CHAPTER 63 - Taxation of Corporations. - continued

- § 38, subsection (b), sentence added, 2004, 262 § 41; subsection (f), third paragraph revised, 2004, 262 § 42; subsection (n) added, 2004, 262 § 43.
- § 38B, subsection (b ½) inserted, 2004, 262 § 44; subsection (d) inserted, 2003, 4 § 23. (See 2003, 4 § 90.)
- § 38C amended, 2003, 4 § 24; **section revised**, 2003, 141 § 27; first sentence revised, 2003, 127 § 3; **section revised**, 2004, 65 § 11; first paragraph, first sentence revised, 2004, 65 § 12. (See 2003, 127 § 24; 2004, 65 § 55.)
- § 38N, subsection (a), 3 paragraphs added, 2004, 262 § 45.
- § 38Q amended, 2003, 141 § 28.
- § 38R added, 2003, 141 § 24; subsection (a), definition of "Qualified rehabilitation expenditure" revised, 2004, 65 § 13; definition of "taxpayer" revised, 2004, 65 § 14; subsection (b) revised, 2004, 65 § 15; subsection (e) stricken out, 2004, 65 § 16; subsection (g) revised, 2004, 65 § 17; subsection (i) revised, 2004, 65 § 18. (See 2003, 141 § 81; 2004, 65 § 54.)
- § 38S added, 2004, 304 § 4.
- § 39A amended, 2003, 4 §§ 25, 26, 27; last paragraph, sentence added, 2003, 4 § 28.
- § 42A revised, 2004, 262 § 46.
- § 42B amended, 2003, 4 § 29; section revised, 2003, 141 § 29.
- § 52A, definition of "Code" inserted, 2003, 4 § 30; paragraph (b) of subsection (1), clauses (iii) and (iv) stricken out, clauses (iii), (iv) and (v) inserted, 2004, 466 § 4.

CHAPTER 63A - Taxation of Certain Corporations, Associations and Organizations Engaged in the Sale of Alcoholic Beverages.

§ 1, subsection (c), paragraph (3) added, 2004, 149 § 119. (See 2004, 149 § 428.)

CHAPTER 63B - Declaration of Estimated Tax by Corporations.

§ 3, subsection (c), clause (iii) stricken out, clauses (iii) and (iv) inserted, 2004, 262 § 47.

CHAPTER 63C - Taxation of Income of Certain Corporations. (Chapter repealed, 1985, 593 § 24.)

CHAPTER 64 - Taxation of Stock Transfers.

CHAPTER 64A - Taxation of Sales of Gasoline. (Former Title, Taxation of Sales of Gasoline and Certain other Motor Vehicle Fuel.)

§13 amended, 2003, 101 § 2. (See 2003, 101 § 15.)

CHAPTER 64B - Excise upon Charges for Meals served to the Public.

CHAPTER 64C - Cigarette Excise.

CHAPTER 64D - Excise on Deeds, Instruments and Writings.

§ 6B added, 2003, 143 § 6.

§ 12, first paragraph revised, 2004, 149 § 122. (See 2004, 149 § 428.)

CHAPTER 64E - Taxation of Special Fuels Used in the Propulsion of Motor Vehicles.

CHAPTER 64F - Taxation of Fuel and Special Fuels Acquired Outside and used within the Commonwealth.

CHAPTER 64G - Room Occupancy Excise.

CHAPTER 64H - Tax on Retail Sales of Certain Tangible Personal Property.

- § 1, definition of "Sale at retail" or "Retail sale", sentence added, 2003, 9 § 8; second sentence revised, 2004, 262 § 48. (See 2003, 9 § 38.)
- § 6 amended, 2004, 149 § 123; **section amended**, 2004, 262 § 49; paragraph (ff) revised, 2004, 262 § 50. (See 2004, 149 § 428.)

CHAPTER 64I - Tax on storage, Use or Other Consumption of Certain Tangible Personal Property

§ 2 amended, 2004, 262 § 51.

§ 4A added, 2004, 262 § 52.

CHAPTER 64J - TAXATION OF FUELS USED IN THE PROPULSION OF AIRCRAFT.

§ 12 amended, 2003, 46 § 72.

CHAPTER 64K - Controlled Substances Tax. (New Chapter inserted, 1993, 110 § 127.) (See 1993, 110 § 390.)

CHAPTER 65 - Taxation of Legacies and Successions.

CHAPTER 65A - Taxation of Transfers of Certain Estates.

CHAPTER 65B - Settlement of Disputes respecting the Domicile of Decedents for Death Tax Purposes.

CHAPTER 65C - Massachusetts Estate Tax.

CHAPTER 66 - Public Records.

§ 10, subsection (d), third paragraph revised, 2004, 149 § 124. (See 2004, 149 § 428.) § 17D amended, 2003, 26 § 207. (See 2003, 26 § 715.)

CHAPTER 66A - Fair Information Practices.

CHAPTER 67 - Parishes and Religious Societies.

CHAPTER 68 - Donations and Conveyances for Pious and Charitable Uses.

CHAPTER 68A - Limitations Upon the Conduct of Certain Trusts and Corporations Having Charitable Interests.

CHAPTER 69 - Powers and Duties of the Department of Education.

- § 1I, five paragraphs inserted after sixth paragraph, 2003, 46 § 73; tenth paragraph, third sentence stricken out, 2 sentences inserted, 2004, 65 § 19.
- § 1N added, 2004, 194 § 1. (See 2004, 194 § 2.)
- CHAPTER 70 School Funds and State Aid for Public Schools.

 (Former title, School Funds and Other State Aid for Public Schools.)(Chapter revised, 1993, 71 § 32.)
- CHAPTER 70A EQUAL EDUCATIONAL OPPORTUNITY GRANTS. (Chapter repealed, 1993, 71 § 33.)
- CHAPTER 70B SCHOOL BUILDING ASSISTANCE PROGRAM.
 (New chapter inserted, 2000, 159 § 140. (See 2000, 159 § 498.)
- § 1 amended, 2004, 208 § 1.
- § 1A added, 2004, 208 § 2.
- § 2 amended, 2004, 208 § 3; definition of "Approved school project" revised, 2004, 208
- § 4; definition of "Board of education" or "board" stricken out, definition of "Authority" inserted, 2004, 208 § 5; definition of "Commissioner" stricken out, 2004, 208 § 6; section amended, 2004, 208 § 7; definition of "School project" inserted, 2004, 208 § 8; section amended, 2004, 208 § 9, 10; definition of "Trust" inserted, 2004, 208 § 11.
- § 3, two paragraphs inserted after first paragraph, 2004 § 210 § 2; third paragraph, clauses (e), (f) and (g) revised, 2004, 210 § 3; section amended, 2004, 208 §§ 12, 13; clauses (m) and (n) stricken out, subparagraphs (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) ad (w) inserted, 2004, 208 § 15.

CHAPTER 70B - SCHOOL BUILDING ASSISTANCE PROGRAM.

- § 3A revised, 2004, 208 § 16.
- § 3B added, 2004, 208 § 17.
- § 3C added, 2004, 208 § 17.
- § 3D added, 2004, 208 § 17.
- § 4 amended, 2004, 208 § 18; last sentence stricken out, 2004, 208 § 19.
- § 5 revised, 2004, 208 § 20.
- § 6 amended, 2003, 46 § 74; section revised, 2004, 208 § 21.
- § 7 revised, 2004, 208 § 22.
- § 8 amended, 2004, 208 § 23; second paragraph stricken out, 2004, 208 § 24.
- § 9 amended, 2004, 208 §§ 25, 26, 28; subsection (c), first sentence revised, 2004, 208 § 27.
- § 10, first paragraph revised, 2004, 208 § 29; first paragraph stricken out, 2004, 208 § 30; section amended, 2004, 208 § 31; subsection (a), paragraph (C) amended, 2004, 208 § 32; section amended, 2004, 208 § 33; subsection (c) revised, 2004, 208 § 34. (See 2004, 208 § 57.)
- § 11 revised, 2004, 208 § 35.
- § 12 repealed, 2004, 208 § 36.
- § 13 repealed, 2004, 208 § 36.
- § 14 amended, 2004, 208 § 37.
- § 15, subsection (a) revised, 2004, 208 § 38; section amended, 2004, 208 § 39.
- § 16 amended, 2004, 208 § 40.
- § 17 revised, 2004, 208 § 41.
- § 18 **repealed**, 2004, 208 § 36.
- § 19 revised, 2004, 208 § 42.

CHAPTER 71 - Public Schools.

- § 8A revised, 2004, 352 § 30. (See 2004, 352 § 183.)
- § 13D, paragraph added, 2004, 126 § 1.
- § 14B, last paragraph revised, 2003, 46 § 75.
- § 16 amended, 2003, 46 §§ 76; 77; clause (o) inserted, 2003, 46 § 78.
- § 16G ½ amended, 2003, 46 § 79.
- § 16H **repealed**, 2003, 46 § 80.
- § 54B, paragraph added, 2004, 351; paragraph added, 2004, 456.
- § 55B **repealed**, 2003, 46 § 81.
- § 57, two sentences inserted after penultimate sentence, 2004, 181.
- § 59C, fifth paragraph revised, 2003, 46 § 82.
- § 68, sentence inserted after fifth sentence, 2003, 46 § 83.
- § 89, subsection (nn) revised, 2004, 352 § 31. (See 2004, 352 § 183.)

CHAPTER 71A - TRANSITIONAL BILINGUAL EDUCATION. (Chapter revised, 2002, 386.) (See 2002, 386 § 4.)

- § 4, second sentence revised, 2003, 26 § 209; last sentence revised, 2003, 26 § 210. (See 2003, 26 § 715.)
- § 5, subsection (a), third sentence revised, 2003, 26 § 211. (See 2003, 26 § 715.)
- § 7, two paragraphs added, 2003, 26 § 212. (See 2003, 26 § 715.)
- § 7A added, 2003, 26 § 213. (See 2003, 26 § 715.)

CHAPTER 71B - CHILDREN WITH SPECIAL NEEDS.

- § 3 amended, 2003, 26 § 214. (See 2003, 26 § 715.)
- § 5A, subsection (a), sentence inserted after fourth sentence, 2004, 352 § 32; subsection (b), definitions of "In-district programs" and "Out-of-district programs" stricken out, 2003, 26 § 215; subsection (c) revised, 2003, 26 § 216; first paragraph, fourth sentence amended, 2004, 149 § 128; paragraph added, 2003, 26 § 217; subsection (f) and (g) revised, 2004, 149 § 129. (See 2003, 26 § 715; 2004, 149 § 428; 352 § 180.)
- **CHAPTER 72 School Registers and Returns.**
- CHAPTER 73 State Colleges and Community Colleges.

 (Former title, State Teachers Colleges and Community Colleges.)
- **CHAPTER 74 Vocational Education.**
- § 8A revised, 2003, 46 § 84; 2004, 393; sentence added, 2004, 149 § 130. (See 2004, 149 § 428.)
- CHAPTER 74A INDEPENDENT AGRICULTURAL AND TECHNICAL SCHOOL.

 (Chapter inserted 2000, 159 & 191.) (See 2000, 159 & 498.)

(Chapter inserted 2000, 159 § 191.) (See 2000, 159 § 498.) (Chapter repealed, 2004, 463 § 1.) (See 2004, 463 § 18.)

- § 22 amended, 2003, 26 § 218. (See 2003, 26 § 715.)
- CHAPTER 75 University of Massachusetts. (Former title, Massachusetts State College.)
- § 1A, fifth paragraph, clause (n), 8 sentences inserted after first sentence, 2003, 26 § 219. (See 2003, 26 § 715.)
- § 34A added, 2004, 149 § 131. (See 2004, 149 § 428.)
- § 45 added, 2003, 141 § 30.

CHAPTER 75A - University of Lowell.

(Former title, Lowell Technological Institute of Massachusetts.)

(Chapter repealed, 1991, 142 § 23.) (See 1991, 142 § 4, 50.)

CHAPTER 75B - Southeastern Massachusetts University.

(Former title, South Eastern Massachusetts University)

(Former title Southeastern Massachusetts Technological Institute.)

(Chapter repealed, 1991, 142 § 24.) (See 1991, 142 §§ 19, 50.)

CHAPTER 75C - Private Correspondence Schools.

CHAPTER 75D - Private Business Schools.

CHAPTER 76 - School Attendance.

§ 5, sentence inserted after first sentence, 2004, 352 § 33. (See 2004, 352 § 183.)
§ 6 revised, 2004, 352 § 34. (See 2004, 352 § 183.)
§ 15D added, 2004, 229.

CHAPTER 77 - School Offenders and County Training Schools.

CHAPTER 78 - Libraries.

CHAPTER 78A - YOUTH CONSERVATION AND SERVICE CORPS. (Chapter inserted 1993, 19 § 19.)

CHAPTER 79 - Eminent Domain.

§ 37 amended, 2004, 352 § 35; second paragraph revised, 2004, 352 § 36. (See 2004, 352 § 183.)

CHAPTER 79A - Relocation Assistance.

CHAPTER 80 - Betterments.

CHAPTER 80A - Eminent Domain Takings and Betterment Assessments by Judicial Proceedings.

CHAPTER 81 - State Highways.

CHAPTER 81A - THE MASSACHUSETTS TURNPIKE AUTHORITY AND THE METROPOLITAN HIGHWAY SYSTEM. (Chapter inserted 1997, 3 § 6.)

§ 2 revised, 2004, 196 § 9. (See 2004, 196 § 19.)

§ 18 amended, 2003, 26 § 223. (See 2003, 26 § 715.)

CHAPTER 82 - The Laying Out, Alteration, Relocation and Discontinuance of Public Ways, and Specific Repairs Thereon.

§ 35A added, 2004, 291 § 29.

§ 40E amended, 2004, 149 §§ 132, 133, 134. (See 2004, 149 § 428.)

CHAPTER 82A - EXCAVATION AND TRENCH SAFETY. (New Chapter inserted, 2002, 387 § 2.)

CHAPTER 83 - Sewers Drains and Sidewalks.

- § 1 amended, 2004, 149 § 135; first paragraph, sentence inserted after first sentence, 2004, 149 § 136; sentence added, 2004, 149 § 137. (See 2004, 149 § 428.)
- § 10, sentence inserted after first sentence, 2004, 149 § 138. (See 2004, 149 § 428.)
- § 16 amended, 2004, 149 § 139; 3 sentences added, 2004, 149 § 140. (See 2004, 149 § 428.)

CHAPTER 84 - Repair of Ways and Bridges.

CHAPTER 85 - Regulations and By Laws to Ways and Bridges.

§ 11B amended, 2004, 330 § 1.

§ 11B ½ added, 2004, 330 § 2.

§ 11D, first paragraph revised, 2004, 330 § 3.

CHAPTER 86 - Boundaries of Highways and Other Public Places, and Encroachments Thereon.

CHAPTER 87 - Shade Trees.

CHAPTER 88 - Ferries, Canals and Public Landings.

CHAPTER 89 - Law of the Road.

§ 9 amended, 2003, 46 § 85.

§ 11 amended, 2003, 46 § 86; section amended, 2004, 270 §§ 1, 2; third paragraph stricken out, two paragraphs inserted, 2004, 270 § 3.

CHAPTER 90 - Motor Vehicles and Aircraft.

- § 1, definition of "Automobile law violation" second sentence revised, 2004, 396 § 5; definition of "Motorized scooter" inserted, 2004, 396 § 1; definition of "owner" revised, 2004, 149 § 141. (See 2004, 149 § 428.)
- § 1C revised, 2004, 396 § 2.
- § 1D added, 2004, 396 § 3.
- § 2, paragraph added, 2003, 26 § 224; section amended, 2004, 155 §§ 1,2,3; eighteenth paragraph, sentence added, 2004, 220 § 3; paragraph inserted after eighteenth paragraph, 2004, 155 § 4; section amended, 2004, 220 §§ 1, 2. (See 2003, 26 § 715.)
- § 2E amended, 2003, 71.
- § 2F amended, 2003, 46 § 87; section amended, 2003, 140 § 22; subsection (c) amended, 2003, 140 § 23; section amended, 2004, 220 § 4.; subsection (d) added, 2004, 220 § 5.
- § 3 amended, 2003, 46 §§ 88, 89, 90, 91, 92. 93, 94, 95.
- § 3 ½, subsection (c), paragraph added, 2003, 46 § 96.
- § 7 amended, 2004, 24.
- § 8B amended, 2004, 396 § 4.
- § 19K added, 2004, 149 § 142. (See 2004, 149 § 428.)
- § 20, fourth paragraph revised, 2003, 26 § 226; fifth paragraph, sentence added, 2004, 276 § 3; section amended, 2004, 291 § 30. (See 2003, 26 § 715.)
- § 20A, fifth paragraph, third sentence revised, 2003, 46 § 97.
- § 20A 1/2 amended, 2004, 291 § 31.
- § 20E amended, 2003, 46 § 98; subsection (b) revised, 2003, 140 § 24; subsection (j) stricken out, 2003, 140 § 25.
- § 20H added, 2004, 291 § 32.
- § 22, subsection (j) inserted, 2003, 26 § 227. (See 2003, 26 § 715.)
- § 24, subdivision (1), paragraph (a), subparagraph (1), second paragraph revised, 2003, 26 § 228; paragraph (e), third sentence stricken out, 2003, 28 § 3; paragraph (f), subparagraph (l), third sentence revised, 2003, 28 § 5; subdivision (2), paragraph (a), second paragraph revised, 2003, 26 § 229; section amended, 2003, 28 § 1,2, 4, 6, 7. (See 2003, 26 § 715.)
- § 24D, first paragraph amended, 2003, 28 § 8; section amended, 2003, 28 § 9, 10, 11, 12; fourth paragraph revised, 2003, 28 § 13; section amended, 2003, 28 § 14, 15, 16, 17, 18, 19.
- § 24E amended, 2003, 28 § 20.
- § 24Gamended, 2003, 28 §§ 21, 22.
- § 24J amended, 2003, 28 § 23.
- § 24L amended, 2003, 28 §§ 24, 25.
- § 24N amended, 2003, 28 § 26; first paragraph, sixth sentence revised, 2003, 28 § 27.
- § 32G, paragraph added, 2004, 126 § 2.
- § 33, paragraph (36) revised, 2003, 26 § 230. (See 2003, 26 § 715.)
- § 34, second paragraph revised, 2004, 126 § 3.

CHAPTER 90A - The Highway Safety Act.

§ 1 amended, 2003, 26 § 233. (See 2003, 26 § 715.)

CHAPTER 90B - Motorboats, Other Vessels and Recreational Vehicles. (Former title- Motorboats and Other Vessels.) (Title revised, 1998, 463 § 72.)

- § 8 amended, 2003, 28 §§ 28, 29.
- § 8A amended, 2003, 28 §§ 30, 31; subsection (2) amended, 2003, 28 § 31.
- § 8B amended, 2003, 28 § 32.
- § 26 amended, 2003, 28 § 33.

CHAPTER 90C - Procedure against Violators of Motor Vehicle Laws.

- § 1,definitions of "District court" and "Division" revised, 2003, 26 § 234. (See 2003, 26 § 715.)
- § 2 amended, 2003, 46 § 99.
- § 3, paragraph (4), fourth paragraph, sentence inserted after first sentence, 2003, 26 § 236. (See 2003, 26 § 715.)

CHAPTER 90D - Motor Vehicle Certificate of Title.

- § 2 amended, 2004, 149 § 144. (See 2004, 149 § 428.)
- § 24, paragraph added, 2004, 243 § 1.
- § 24A, added, 2004, 243 § 2.
- § 32, subsection (c) added, 2004, 243 § 3.

CHAPTER 90E - Bikeways.

- CHAPTER 90F UNIFORM OPERATION OF COMMERCIAL MOTOR VEHICLES ACT.
 (New chapter inserted, 1990, 246 § 2.)
- CHAPTER 90G CIVIL INFRACTIONS.

 (New chapter inserted, 1992, 133 § 452.) (See 1992, 133 § 598.)

 (Chapter repealed, 1993, 182 § 8.)
- CHAPTER 90H GATEWAY ROADS PROGRAM. (New chapter inserted, 1994, 273 § 26.)

CHAPTER 91 - Waterways.

- § 1 amended, 2003, 26 § 237. (See 2003, 26 § 715.)
- § 3 amended, 2003, 26 § 238. (See 2003, 26 § 715.)
- § 10A, paragraph inserted after first paragraph, 2004, 291 § 33; second paragraph amended, 2004, 352 § 38. (See 2004, 352 § 183.)
- § 10A ½ repealed, 2003, 26 § 239. (See 2003, 26 § 713.)
- § 10C amended, 2004, 149, § 145. (See 2004, 149 § 428.)
- § 59 amended, 2004, 251 § 14.

CHAPTER 91A - Port of Boston Commission. (Former title, Port of Boston Authority.)

CHAPTER 92 - Metropolitan Sewers, Water and Parks.

- § 1A added, 2003, 26 § 243; second sentence stricken out, 2004, 149 § 146. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 1B added, 2003, 26 § 243. (See 2003, 26 § 715.)
- § 9A repealed, 2003, 26 § 241. (See 2003, 26 § 715.)
- § 33 revised, 2003, 26 § 242. (See 2003, 26 § 715.)
- § 34 revised, 2003, 26 § 244. (See 2003, 26 § 715.)
- § 34A revised, 2003, 26 § 245. (See 2003, 26 § 715.)
- § 35 amended, 2003, 26 §§ 246, 247; paragraph added, 2003, 26 § 248. (See 2003, 26 § 715.)
- § 35A revised, 2003, 26 § 249. (See 2003, 26 § 715.)
- § 36 amended, 2003, 26 § 251; second and third sentences stricken out, 2003, 26 § 252. (See 2003, 26 § 715.)
- § 37 revised, 2003, 26 § 253; first sentence amended, 2004, 149 § 148; second paragraph, first sentence amended, 2004, 149 § 148A; third paragraph, first sentence amended, 2004, 149 § 148B. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 38 amended, 2003, 26 §§ 254, 255, 256, 257. (See 2003, 26 § 715.)
- § 39 **repealed**, 2003, 26 § 258. (See 2003, 26 § 715.)
- § 40 **repealed**, 2003, 26 § 258. (See 2003, 26 § 715.)
- § 48 **repealed**, 2003, 26 § 259. (See 2003, 26 § 715.)
- § 53 amended, 2003, 26 § 260. (See 2003, 26 § 715.)
- § 54 repealed, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 55 repealed, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 59A repealed, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 60 repealed, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 64 **repealed**, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 65 repealed, 2003, 26 § 261. (See 2003, 26 § 715.)
- § 66 **repealed**, 2003, 26 § 261. (See 2003, 26 § 715.)

CHAPTER 92 - Metropolitan Sewers, Water and Parks. - continued

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§ 74 amended, 2003, 26 § 262. (See 2003, 26 § 715.)
§ 74A repealed, 2003, 26 § 263. (See 2003, 26 § 715.)
§ 75 revised, 2003, 26 § 264. (See 2003, 26 § 715.)
§ 76 repealed, 2003, 26 § 265. (See 2003, 26 § 715.)
§ 76A amended, 2003, 26 §§ 266, 267, 268, 269. (See 2003, 26 § 715.)
§ 79 amended, 2003, 26 § 270, 271, 272, 273. (See 2003, 26 § 715.)
§ 80 amended, 2003, 26 § 274. (See 2003, 26 § 715.)
§ 83 amended, 2003, 26 § 275. (See 2003, 26 § 715.)
§ 84 amended, 2003, 26 §§ 276, 277. (See 2003, 26 § 715.)
§ 85 amended, 2003, 26 §§ 278, 279, 280, 281. (See 2003, 26 § 715.)
§ 86 amended, 2003, 26 §§ 282, 283. (See 2003, 26 § 715.)
§ 87 amended, 2003, 26 §§ 284, 285, 286. (See 2003, 26 § 715.)
§ 88 amended, 2003, 26 § 287. (See 2003, 26 § 715.)
§ 93 amended, 2003, 26 § 288. (See 2003, 26 § 715.)
§ 96 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 97 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 98 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 100 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 101 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 103 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 104 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 105 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 106 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 107 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 107A repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 108 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 109 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 110 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 111 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 112 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 113 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 113A repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 114 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 114A repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 115 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 116 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 117 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 118 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
§ 119 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)
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CHAPTER 92 - Metropolitan Sewers, Water and Parks. - continued

§ 120 repealed, 2003, 26 § 289. (See 2003, 26 § 715.)

CHAPTER 92A - Commonwealth Zoological Corporation. (New chapter inserted, 1991, 6 § 24.) (See 1991, 6 § 58.)

CHAPTER 92A½ - WATERSHED MANAGEMENT.

(New chapter inserted, 2003, 26 § 290.) (See 2003, 26 § 715.)

- § 4, last sentence amended, 2004, 149 § 149. (See 2004, 149 § 428.)
- § 11, fifth sentence revised, 2004, 149 § 150; seventh sentence revised, 2004, 149 § 151. (See 2004, 149 § 428.)
- § 12, second sentence stricken out, 2 sentences inserted, 2004, 149 § 152. (See 2004, 149 § 428.)

CHAPTER 92B - COMMONWEALTH ZOOLOGICAL CORPORATION. (New chapter inserted, 1992, 286 § 165.)

- § 1, definitions of "Commission" and "Commissioner" stricken out, 2003, 26 § 291; definitions of "Director" and "Division" inserted, 2003, 26 § 291A. (See 2003, 26 § 715.)
- § 2 amended, 2003, 26 § 292. (See 2003, 26 § 715.)
- § 5 amended, 2003, 26 § 293. (See 2003, 26 § 715.)
- § 8 amended, 2003, 26 § 294. (See 2003, 26 § 715.)

CHAPTER 93 - Regulation of Trade and Certain Enterprises.

- § 14 **repealed**, 2003, 26 § 295. (See 2003, 26 § 713.)
- § 24 revised, 2003, 130.
- § 24A revised, 2003, 130.
- § 24B revised, 2003, 130.
- § 24C revised, 2003, 130.
- § 24D revised, 2003, 130.
- § 24E added, 2003, 130.
- § 24F added, 2003, 130.
- § 24G added, 2003, 130.
- § 24H added, 2003, 130.
- § 24I added, 2003, 130.
- § 24J added, 2003, 130.
- § 24K added, 2003, 130.
- § 25 revised, 2003, 130.
- § 43A added, 2004, 468.

CHAPTER 93A - Regulation of Business Practices for Consumers Protection.

§ 9, paragraph 3A, last sentence stricken out, 2004, 252 § 1.

CHAPTER 93B - Regulation of Business Practices Between Motor Vehicle Manufactures, Distributors and Dealers.

(Chapter revised, 2002, 222 § 3.) (See 2002, 222 § 7.)

CHAPTER 93C - Protection of Consumers Against Careless and Erroneous Billings.

CHAPTER 93D - Control of Outdoor Advertising Adjacent to the Interstate and Primary Systems.

CHAPTER 93E - Regulation of Dealers Agreements for the Sale of Gasoline.

CHAPTER 93F - Regulating Certain Business Practices Between Motion Picture Distributors and Exhibitors.

CHAPTER 93G - EQUIPMENT DEALERS. (New chapter inserted, 1996, 265.)

CHAPTER 94 - Inspection and Sale of Food, Drugs and Various Articles.

§ 184C, second paragraph amended, 2004, 322.

§ 187, fifth paragraph, definition of "Written prescription" revised, 2003, 133 § 1.

§ 323F repealed, 2003, 26 § 296. (See 2003, 26 § 713.)

CHAPTER 94A - MILK CONTROL.

CHAPTER 94B - Hazardous Substances.

CHAPTER 94C - Controlled Substances Act.

§ 7 amended, 2004, 368 § 1

§ 9, paragraph (a), paragraph added, 2004, 368 § 2; paragraph (c), paragraph added, 2004, 368 § 3.

§ 23, subsection (g) revised, 2003, 133 § 2.

CHAPTER 94D - Controlled Substances Therapeutic Research Act. (New chapter inserted, 1991, 480 § 1.)

CHAPTER 94E - Provisions Concerning Certain Tobacco Manufacturers. (New chapter inserted, 2000, 117 § 2.)

§ 1, definition of "Units sold" revised, 2004, 90 § 1.

§ 2, subclause (2), paragraph (ii) revised, 2004, 90 § 2.

CHAPTER 94F - Complementary Provisions Concerning Tobacco Product Manufacturers.

(New chapter inserted, 2004, 90 § 3.)

CHAPTER 95 - Measuring of Leather.

CHAPTER 96 - Measurement of Lumber.

CHAPTER 97 - Surveying of Land.

CHAPTER 98 - Weights and Measures.

§ 29, first paragraph, sentence added, 2004, 215.

CHAPTER 99 - The Metric System of Weights and Measures.

CHAPTER 100 - Auctioneers.

CHAPTER 100A - MOTOR VEHICLE DAMAGE REPAIR SHOPS.
(New chapter inserted, 1988, 273 § 32.) (See 1988, 273 § 77.)

CHAPTER 101 - Transient Vendors, Hawkers and Peddlers.

CHAPTER 102 - Shipping and Seamen, Harbors and Harbor Masters.

CHAPTER 103 - Pilots.

§ 1A added, 2004, 251 § 15.

§ 21 amended, 2004, 50 § 1; paragraph added, 2004, 50 § 2; **section amended**, 2004, 251 § 16.

§ 28 amended, 2004, 251 § 17.

§ 31 amended, 2004, 263 §§ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11.

CHAPTER 104 - Agents, Consignees and Factors.

CHAPTER 104A - Consignment of Fine Art.

CHAPTER 105 - Public Warehouses.

§ 4, paragraph added, 2004, 271 § 1.

CHAPTER 105A - SELF-STORAGE FACILITIES.

CHAPTER 106 - Uniform Commercial Code.

CHAPTER 107 - Money and Registration, Issuance and Redemption of Bonds and Other Securities, Facsimile Signatures.

(Former title, Money and Negotiable Instruments.)

CHAPTER 107A - Assignments of Accounts Receivable

CHAPTER 108 - Criminal Offences Relative to Bills of Lading. (Former title, Bills of Lading.)

CHAPTER 108A - Partnerships.

CHAPTER 109 - Limited Partnerships.

- § 16A, subsection (a) revised, 2004, 178 § 5; subsection (e), clause (7) revised, 2004, 178 § 6. (See 2004, 178 § 49.)
- § 48, second sentence revised, 2004, 178 § 7. (See 2004, 178 § 49.)
- § 49, first sentence revised, 2004, 178 § 8. (See 2004, 178 § 49.)
- § 50, last sentence revised, 2004, 178 § 9. (See 2004, 178 § 49.)
- § 55, subsection (a) revised, 2004, 178 § 10. (See 2004, 178 § 49.)
- § 55, subsection (b), last sentence revised, 2004, 178 § 11. (See 2004, 178 § 49.)

CHAPTER 109A - UNIFORM FRAUDULENT TRANSFER ACT. (Chapter revised, 1996, 157.)

CHAPTER 110 - Labels, Trade Marks, Names and Registration Thereof.

§ 6 amended, 2003, 4 § 31.

CHAPTER 110A - Uniform Securities Act.

CHAPTER 110B - Registration and Protection of Trademarks.

CHAPTER 110C - Regulation of Take-over Bids in the Acquisition of Corporations.

CHAPTER 110D - REGULATION OF CONTROL SHARE ACQUISITIONS. (New chapter inserted, 1987, 272 § 1.) (See 1987, 272 § 3.)

- § 1, paragraph (e), introductory paragraph revised, 2003, 127 § 4. (See 2003, 127 § 24.)
- § 2, subsection (e) revised, 2003, 127 § 5. (See 2003, 127 § 24.)
- § 7, first sentence stricken out, three sentences inserted, 127 § 6. (See 2003, 127 § 24.)
- § 8, first paragraph revised, 2003, 127 § 7. (See 2003, 127 § 24.)

CHAPTER 110E - REGULATION OF CONTROL SHARE ACQUISITIONS OF FOREIGN CORPORATIONS.

(New chapter inserted, 1987, 272 § 2.)

CHAPTER 110F - BUSINESS COMBINATIONS WITH INTERESTED SHARE-HOLDERS.

(New chapter inserted, 1989, 242 § 8.)

- § 2, paragraph (g), clause (i) revised, 2003, 127 § 8. (See 2003, 127 § 24.)
- § 3, paragraph (f) revised, 2003, 127 § 9. (See 2003, 127 § 24.)

CHAPTER 110G - UNIFORM ELECTRONIC TRANSACTIONS. (New chapter inserted, 2003, 133 § 3.)

CHAPTER 111 - Public Health.

- § 5K, paragraph (F), last sentence amended, 2003, 26 § 297; paragraph (G), last sentence revised, 2004, 149 § 154. (See 2003, 26 § 715.)
- § 20 amended, 2003, 26 § 298. (See 2003, 26 § 715.)
- § 24C repealed, 2003, 26 § 299. (See 2003, 26 § 715.)
- § 24D repealed, 2003, 26 § 300. (See 2003, 26 § 715.)
- § 24G repealed, 2003, 26 § 301. (See 2003, 26 § 715.)
- § 25A, paragraph added, 2003, 140 § 26.
- § 70 amended, 2003, 135 § 1; paragraph added, 2003, 135 § 2. (See 2003, 135 § 5.)
- § 72K revised, 2004, 501 § 1.
- § 72N amended, 2003, 26 § 302. (See 2003, 26 § 715.)
- § 72Y, fifth paragraph amended, 2003, 26 § 303. (See 2003, 26 § 715.)
- § 72Z added, 2004, 149 § 155. (See 2004, 149 § 428.)
- § 111B amended, 2003, 140 §§ 27, 28. (See 2003, 140 § 136.)
- § 142M amended, 2004, 352 § 39. (See 2004, 352 § 183.)
- § 174A amended, 2003, 26 § 304. (See 2003, 26 § 715.)
- § 175, last sentence stricken out, 2003, 26 § 305. (See 2003, 26 § 715.)
- § 197B amended, 2003, 26 § 573. (See 2003, 26 § 715.)
- § 219 added, 2004, 228.

CHAPTER 111A - Drug Addiction Rehabilitation. (Chapter repealed, 1969, 889 § 23A.)

CHAPTER 111B - Alcoholism.

CHAPTER 111C - Emergency Medical Services System.
Chapter Revised, 2000, 54 § 3. (See 2000, 54 § 12.)
(Former title, Emergency Medical Care.)

§ 3, subsection (b), clause (4) revised, 2003, 154.

CHAPTER 111D - Clinical Laboratories.

CHAPTER 111E - DRUG REHABILITATION.

CHAPTER 111F- HAZARDOUS SUBSTANCES DISCLOSURE BY EMPLOYERS.

§ 1 amended, 2003, 26 § 574. (See 2003, 26 § 715.)

CHAPTER 111G - EARLY CHILDHOOD INTERVENTION SERVICES.

CHAPTER 111H - MASSACHUSETTS LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT ACT.

CHAPTER 1111 - WOMEN'S, INFANTS AND CHILDREN PROGRAM. (New chapter inserted, 1992, 414 § 3.)

CHAPTER 111J - Alcohol and Drug Counselors.
(New chapter inserted, 1999, 127 § 115.) (See 1999, 127 § 390.)

CHAPTER 111K - CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND COMMISSION.

(New chapter inserted, 2000, 159 § 207.) (See 2000, 159 § 498.)

CHAPTER 112 - Registration of Certain Professions and Occupations.

§ 5, 3 paragraphs added, 2004, 108.

§ 12D, second and third paragraphs revised, 2003, 133 § 4.

§ 12CC amended, 2003, 135 § 3. (See 2003, 135 § 5.)

§ 23B amended, 2004, 464 § 8.

 $\ 23M \ 1/2 \ added, 2004, 464 \ 1.$

 \S 23P ½, three paragraphs added, 2004, 464 \S 2.

CHAPTER 112 - Registration of Certain Professions and Occupations. - continued

- § 39C added, 2003, 26 § 306. (See 2003, 26 § 715.)
- § 51 amended, 2004, 368 § 4.
- § 61, three paragraphs inserted after first paragraph, 2004, 450 § 2.
- § 86, sentence added, 2004, 396 § 1.
- § 87A 1/2 revised, 2004, 97.
- § 87AAA 3/4 added, 2004, 149 § 156. (See 2004, 149 § 420.)
- § 89, definition of "Chiropractic facility" inserted, 2004, 464 § 3.
- § 94A added, 2004, 464 § 4.
- § 95, three paragraphs added, 2004, 464 § 5.
- § 129B added, 2004, 209.
- § 138, definition Of "Audiology assistant" inserted, 2004, 433 § 2; definition of "Speech-language pathology assistant" inserted, 2004, 433 § 3.
- § 139, clauses (2) to (4) stricken out, clauses (2) to (5) inserted, 2004, 433 § 4.
- § 140 revised, 2004, 396 § 5.
- § 141 revised, 2004, 396 § 5.
- § 142 revised, 2004, 396 § 5.
- § 143 revised, 2004, 396 § 5.
- § 144A added, 2004, 396 § 6
- § 146 revised, 2004, 396 § 7.

CHAPTER 113 - Promotion of Anatomical Science.

CHAPTER 114 - Cemeteries and Burials.

- § 1A, paragraph added, 2004, 177 § 1.
- § 2A added, 2004, 177 § 2.
- § 5C added, 2004, 177 § 3.
- § 44, first sentence revised, 2004, 149 § 159. (See 2004, 149 § 428.)
- § 45 amended, 2004, 120 § 2.

CHAPTER 115 - Veteran's Benefits. (Former title, State and Military Aid, Soldier's Relief, etc.)

§ 2B added, 2004, 355 § 2.

CHAPTER 115A - Soldier's Homes.

§ 5 amended, 2003, 26 § 307. (See 2003, 26 § 715.)

CHAPTER 116 - Settlement.

- CHAPTER 117 Support by the Commonwealth. (Former title, Support by the Cities and Towns.)
- CHAPTER 117A SUPPORT BY THE COMMONWEALTH.

 (New chapter inserted, 1991, 255 § 4.) (See 1991, 255 § 7.)
- CHAPTER 118 Aid to Families with Dependent Children. (Former title, Aid to Dependent Children.)
- CHAPTER 118A Assistance to the Aged and Disabled.

 (Former title, Old Age Assistance and Medical Assistance for the Aged.)
- CHAPTER 118B The Merit System in the Administration of Aid to Families with Dependent Children and Old Age Assistance.
- CHAPTER 118C Coverage of Certain Employees under the Federal Social Security Act.
- CHAPTER 118D Assistance to Persons who are Disabled.
- CHAPTER 118E Medical Care and Assistance. (Chapter revised, 1993, 161 § 17.)
- § 1 revised, 2003, 26 § 308. (See 2003, 26 § 715.)
- § 2 revised, 2003, 26 § 308. (See 2003, 26 § 715.)
- § 3 stricken out, 2003, 26 § 308. (See 2003, 26 § 715.)
- § 4 stricken out, 2003, 26 § 308. (See 2003, 26 § 715.)
- § 5 stricken out, 2003, 26 § 308. (See 2003, 26 § 715.) § 6 amended, 2003, 26 § 309, 310. (See 2003, 26 § 715.)
- § 7 amended, 2003, 26 §§ 311. (See 2003, 26 § 715.)
- § 8, clauses a and b stricken out, clauses a, a ½, a ¾, b, b ½ inserted, 2003, 26 § 312. (See 2003, 26 § 715.)
- § 9, sentence added, 2003, 26 § 313. (See 2003, 26 § 715.)
- § 9A amended, 2003, 26 §§ 314, 315; subsection (3) amended, 2003, 26 § 316. (See 2003, 26 § 715.)
- § 9E added, 2003, 26 § 317. (See 2003, 26 § 715.)
- § 10E added, 2003, 26 § 318. (See 2003, 26 § 715.)
- § 10F added, 2003, 26 § 319. (See 2003, 26 § 715.)
- § 12, paragraph added, 2003, 140 § 29; third paragraph, sentence added, 2004, 65 § 20. (See 2003, 140 § 136.)
- § 13A, paragraph added, 2004, 149, § 162. (See 2004, 149 § 428.)
- § 14A, paragraph added, 2004, 149 § 163. (See 2004, 149 § 428.)

CHAPTER 118E - Medical Care and Assistance. - continued

- § 16D, subsection (2) amended, 2003, 26 § 321; revised, 2004, 352 § 40; subsections (3), (4), (5) and (6) added, 2003, 26 § 322; subsection (3) revised, 2004, 352 § 40. (See 2003, 26 § 715; 2004, 352 § 182.)
- § 21A, subsection (c) revised, 2003, 26 § 323. (See 2003, 26 § 715.)
- § 22, paragraph added, 2003, 26 § 324. (See 2003, 26 § 715.)
- § 23, paragraph inserted before first paragraph, 2004, 149 § 165; first paragraph, first sentence revised, 2004, 149 § 166; sixth paragraph, sentence added, 2003, 26 § 325. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 25, last paragraph, second sentence amended, 2003, 26 § 327; last sentence revised, 2003, 26 § 326; paragraph added, 2003, 26 § 328. (See 2003, 26 § 715.)
- § 31, subsection (c) revised, 2003, 26 § 329; 2004, 149 § 167. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 32 revised, 2003, 26 § 330; 2004, 149 § 167. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 51 amended, 2003, 26 § 331. (See 2003, 26 § 715.)

CHAPTER 118F - DEPARTMENT OF MEDICAL SECURITY. (New chapter added, 1988, 23 § 45.) (See 1988, 23 § 45.) (Chapter repealed, 1996, 151 § 274.) (See 1996, 151 § 690.)

CHAPTER 118G - HEALTH CARE FINANCE AND POLICY. (New chapter added, 1996, 151 § 275.) (See 1996, 151 § 690.)

- § 1, definition of "Critical Access services" inserted, 2003, 26 § 332; definitions of "Emergency bad debt", "Emergency medical condition" and "Emergency services" inserted, 2003, 26 § 333; definition of "Executive office" inserted, 2003, 26 § 334; definition of "Free care" revised, 2003, 26 § 335; definition of "Pediatric hospital" and Pediatric specialty unit" inserted, 2004, 149 § 169; definition of "Secretary" inserted, 2003, 26 § 337. (See 2003, 26 § 715; 2004, 149 § 428.).
- § 2, second paragraph, clause (b) stricken out, 2003, 26 § 339. (See 2003, 26 § 715.)
- § 2A added, 2003, 26 § 339. (See 2003, 26 § 715.)
- § 7 amended, 2003, 26 § 340; tenth paragraph amended, 2003, 26 § 341; **section amended**, 2003, 26 § 342; twelfth paragraph stricken out, 2003, 26 § 343. (See 2003, 26 § 715.)
- § 8 amended, 2003, 26 § 344. (See 2003, 26 § 715.)
- § 9 amended, 2003, 26 § 345. (See 2003, 26 § 715.)
- § 10 amended, 2003, 26 §§ 346, 347. (See 2003, 26 § 715.)
- § 11 amended, 2003, 26 §§ 348, 349; **section amended**, 2004, 149 § 170. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 12 amended, 2003, 26 § 350. (See 2003, 26 § 715.)
- § 15 amended, 2003, 26 § 351. (See 2003, 26 § 715.)
- § 17 amended, 2003, 26 § 352. (See 2003, 26 § 715.)

CHAPTER 118G - HEALTH CARE FINANCE AND POLICY. - continued

- § 18, subsection (a), third sentence revised, 2003, 26 § 353; subsection (I), fifth sentence revised, 2003, 26 § 354; subsection (k), first sentence stricken out, 2 sentences inserted, 2003, 26 § 355; subsection (l), first sentence revises, 2003, 26 § 356; paragraph added, 2003, 26 § 357; subsection (m) revised, 2003, 26 § 358; subsection (n), paragraph added, 2003, 26 § 359; subsection (p) added, 2004, 149 § 171. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 25, subsection (c), sentence added, 2003, 26 § 360. (See 2003, 26 § 715.)
- § 27 added, 2004, 149 § 172. (See 2004, 149 § 428.)

CHAPTER 119 - Protection and Care of Children, and Proceedings against Them.

- § 29A revised, 2003, 26 § 168. (See 2003, 26, § 715.)
- § 39 ½ added, 2004, 227 § 1. (See 2004, 227 § 3.)
- § 39F, second sentence stricken out, 3 sentences inserted, 2003, 26 § 169. (See 2003, 26, § 715.)
- § 85 added, 2004, 319 § 1.

CHAPTER 119A - CHILD SUPPORT ENFORCEMENT.

- § 2 amended, 2003, 26 § 364; subsection (c), third and fourth sentences revised, 2004, 262 § 53. (See 2003, 26 § 713.)
- § 5A amended, 2003, 9 §§ 9, 10. (See 2003, 9 § 38.)
- § 9 amended, 2004, 262 §§ 54, 55.
- § 10 amended, 2004, 262 §§ 56, 57; paragraph (3) added, 2004, 262 § 58.
- § 10A added, 2004, 262 § 59.
- § 12, subsection (a), first sentence revised, 2003, 9 § 11; section amended, 2003, 9 §§ 12, 13, 14, 15, 16; subsection (b), paragraph (5), two sentences inserted after fourth sentence, 2003, 9 § 17; last paragraph, sentence added, 2003, 9 § 19; section amended, 2003, 9 §§ 18, 20, 21, 22; subsection (c), third paragraph, sentence inserted after second sentence, 2003, 9 § 23; section amended, 2003, 9 §§ 24, 25, 26, 27, 28, 29, 30, 31; subsection (k), first, second and third sentences stricken out and six sentences inserted, 2003, 9 § 32; section amended, 2003, 9 § 33; subsection (l), sentence added, 2003, 9 § 34; section amended, 2003, 9 § 35. (See 2003, 9 § 38.)
- § 29A revised, 2003, 26 § 168. (See 2003, 26 § 715.)
- CHAPTER 120 Department of Youth Services and Massachusetts Training Schools.

 (Former title, Youth Service Board and Massachusetts Training Schools.)
- § 11 amended, 2003, 26 § 365. (See 2003, 26 § 715.)

CHAPTER 121 - Powers and Duties of the Department of Public Welfare, and the Massachusetts Hospital School.

CHAPTER 121A - Urban Redevelopment Corporations.

CHAPTER 121B - Housing and Urban Renewal.

§ 32, first paragraph, third sentence stricken out, 5 sentences inserted, 2003, 26 § 366; four sentences inserted after third sentence, 2004, 149 § 173. (See 2003, 26 § 715; 2004, 149 § 428.)

§ 32C, first paragraph revised, 2004, 396 § 413.

CHAPTER 121C - Economic Development and Industrial Corporations.

CHAPTER 121D - Affordable Housing Trust Fund. (New chapter inserted, 2000, 159 § 227.) (See 2000, 159 § 498.)

CHAPTER 122 - Tewksbury Hospital.

(Former title, Tewksbury State Hospital and Infirmary.)

CHAPTER 123 - Treatment and Commitment of Mentally Ill and Mentally Retarded Persons.

§ 7 amended, 2004, 410 § 1. § 12 amended, 2004, 410 § 2.

CHAPTER 123A - Care, Treatment and Rehabilitation of Sexually Dangerous Persons.

(Former title, Care, Treatment and Rehabilitation of Sexual Offenders and Victims of such Offenders.)

§ 1 amended, 2004, 66 § 1; definition of "Conviction" inserted, 2004, 66 § 2; section amended, 2004, 66 §§ 3, 4, 5, 6.

§ 12 amended, 2004, 66 §§ 8, 9.

CHAPTER 123B - MENTAL HEALTH.

CHAPTER 124 - Powers and Duties of the Department of Correction.

§ 1, clause (u) added, 2003, 26 § 367. (See 2003, 26 § 715.)

- CHAPTER 125 Correctional Institutions of the Commonwealth.

 (Former title, Penal and Reformatory Institutions of the Commonwealth.)
- CHAPTER 126 Jails, Houses of Correction and Reformation, and County Industrial Farms.
- CHAPTER 127 Officers and Inmates of Penal and Reformatory Institutions, Paroles and Pardons.

§ 83A amended, 2003, 26 §§ 369, 370. (See 2003, 26 § 715.)

CHAPTER 128 - Agriculture.

- § 1 amended, 2003, 26 §§ 371, 372. (See 2003, 26 § 715.)
- § 2A amended, 2003, 26 §§ 373, 374, 375. (See 2003, 26 § 715.)
- § 2B amended, 2003, 26 § 376. (See 2003, 26 § 715.)
- § 7A added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 7B added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 7C added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 7D added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 7E added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 7F added, 2003, 26 § 377. (See 2003, 26 § 715.)
- § 8B amended, 2003, 26 § 378. (See 2003, 26 § 715.)
- § 13A added, 2003, 26 § 379. (See 2003, 26 § 715.)
- § 13BA added, 2003, 26 § 379. (See 2003, 26 § 715.)

CHAPTER 128A - Horse and Dog Racing Meetings.

- CHAPTER 128B Conservation of Soil and Soil Resources and Prevention and Control of Erosion.
- CHAPTER 128C SIMULCAST WAGERING OF HORSE AND DOG RACING. (New chapter inserted, 1992, 101 § 5.)
- § 2 amended, 2004, 149 § 174; section amended, 2004, 352 § 41. (See 2004, 149 § 428.)
- CHAPTER 129 Livestock Disease Control. (Former title, Animal Industry.)
- CHAPTER 129A Marine Fish and Fisheries, Inland Fish and Fisheries, Birds and Mammals, General Provisions.

CHAPTER 130 - Marine Fish and Fisheries. (Former title, Marine Fish and Fisheries Including Crustacean and Shellfish.)

- § 1A added, 2003, 26 § 380. (See 2003, 26 § 715.)
- § 1B added, 2003, 26 § 380. (See 2003, 26 § 715.)
- § 2B repealed, 2003, 26 § 381. (See 2003, 26 § 713.)
- § 23 amended, 2004, 251 §§ 18, 19.
- § 98, sentence inserted after first sentence, 2004, 197.

CHAPTER 131 - Inland Fisheries and Game and Other Natural Resources. (Former title, Powers and Duties of the Division of Fisheries and Game.)

- § 1 amended, 2003, 26 § 382. (See 2003, 26 § 715.)
- § 1A added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1B added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1C added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1D added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1E added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1F added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1G added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1H added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 1I added, 2003, 26 § 383. (See 2003, 26 § 715.)
- § 2 repealed, 2003, 26 § 384. (See 2003, 26 § 713.)
- § 2A amended, 2003, 101 § 3. (See 2003, 101 § 15.)
- § 2B amended, 2003, 101 § 4. (See 2003, 101 § 15.)
- § 2C added, 2003, 101 § 5. (See 2003, 101 § 15.)
- § 22A amended, 2003, 101 § 6. (See 2003, 101 § 15.)
- § 40A amended, 2003, 26 § 386. (See 2003, 26 § 715.)

CHAPTER 131A - MASSACHUSETTS ENDANGERED SPECIES ACT. (New chapter added, 1990, 408 § 4.) (See 1990, 408 § 5.)

§ 7 added, 2004, 149 § 175. (See 2004, 149 § 428.)

CHAPTER 132 - Forestry.

- § 12A amended, 2003, 26 § 387. (See 2003, 26 § 715.)
- § 30 amended, 2003, 26 § 388. (See 2003, 26 § 715.)
- § 31 amended, 2003, 26 § 389. (See 2003, 26 § 715.)
- § 32 amended, 2003, 26 § 390. (See 2003, 26 § 715.)
- § 33 repealed, 2003, 26 § 391. (See 2003, 26 § 715.)

CHAPTER 132 - Forestry. - continued

- § 36 repealed, 2003, 26 § 391. (See 2003, 26 § 715.)
- § 36A repealed, 2003, 26 § 391. (See 2003, 26 § 715.)

CHAPTER 132A - State Recreation Areas outside of the Metropolitan Parks District. (Former title, State Parks and Reservations outside of the Metropolitan Parks District.)

- § 1 amended, 2003, 26 § 392. (See 2003, 26 § 715.)
- § 1B added, 2003, 26 § 393; second sentence stricken out, 2004, 149 § 176. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 1C added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 1D added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 1E added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 1F added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 1G added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 1H added, 2003, 26 § 393. (See 2003, 26 § 715.)
- § 2 amended, 2003, 26 §§ 394, 395. (See 2003, 26 § 715.)
- § 2C amended, 2003, 26 §§ 396. (See 2003, 26 § 715.)
- § 3 amended, 2003, 26 §§ 397, 398; last sentence stricken out, 2003, 26 § 399. (See 2003, 26 § 715.)
- § 3A amended, 2003, 26 § 400. (See 2003, 26 § 715.)
- § 3B added, 2003, 26 § 401. (See 2003, 26 § 715.)
- § 7 revised, 2003, 26 § 402. (See 2003, 26 § 715.)
- § 7A amended, 2003, 26 § 403; sentence added, 2003, 26 § 404. (See 2003, 26 § 715.)
- § 7B added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 7C added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 7D added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 7E added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 7F added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 7G added, 2003, 26 § 405. (See 2003, 26 § 715.)
- § 8 amended, 2003, 26 § 406. (See 2003, 26 § 715.)
- \$ 10 repealed 2003, 26 \$ 407 (See 2003, 20 \$ 713.
- § 10 **repealed**, 2003, 26 § 407. (See 2003, 26 § 713.) § 11A **repealed**, 2003, 26 § 408. (See 2003, 26 § 715.)
- § 11B repealed, 2003, 26 § 408. (See 2003, 26 § 715.)
- § 11C repealed, 2003, 26 § 408. (See 2003, 26 § 715.)
- § 11D repealed, 2003, 26 § 408. (See 2003, 26 § 715.)

CHAPTER 132B - Massachusetts Pesticide Control Act.

§ 3A amended, 2003, 26 §§ 409, 410. (See 2003, 26 § 715.)

- **CHAPTER 133 Disposition of Old and Infirm Animals.**
- **CHAPTER 134 Lost Goods and Stray Beasts.**
- **CHAPTER 135 Unclaimed and Abandoned Property.**
- CHAPTER 136 Observance of a Common Day of Rest and Legal Holidays. (Former title, Observance of the Lord's, Day and Legal Holidays.)
- § 6, clause (52) revised, 2003, 141 § 31; 2004, 65 § 21.
- CHAPTER 137 Gaming.
- CHAPTER 138 Alcoholic Liquors.

 (Former title, Intoxicating Liquors and Certain Non-intoxicating Beverages.)
- § 1 amended, 2003, 26 § 411. (See 2003, 26 § 715.)
- § 12, sixth paragraph, last sentence revised, 2004, 149 § 177. (See 2004, 149 § 428.)
- § 13 revised, 2003, 26 § 412. (See 2003, 26 § 715.)
- § 15 amended, 2004, 149 § 178. (See 2004, 149 § 428.)
- § 18, first paragraph, first sentence stricken out, 2 sentences inserted, 2003, 26 § 413; first paragraph, last sentence stricken out, 2 paragraphs inserted, 2004, 149 § 180; paragraph added, 2004, 149 § 181. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 18A amended, 2003, 26 § 414; third paragraph amended, 2003, 140 § 32. (See 2003, 26 § 715; 140 § 136.)
- § 18B amended, 2003, 26 § 415. (See 2003, 26 § 715.)
- § 19 amended, 2003, 26 § 416. (See 2003, 26 § 715.) § 19A amended, 2003, 26 § 417. (See 2003, 26 § 715.)
- § 20, first 3 paragraphs revised, 2003, 26 § 418. (See 2003, 26 § 715.)
- § 20A amended, 2003, 26 § 419. (See 2003, 26 § 715.)
- § 22 amended, 2003, 26 § 420, 421, 422. 423. (See 2003, 26 § 715.)
- § 24 amended, 2003, 140 § 33. (See 2003, 140 § 136.)
- § 33 revised, 2003, 141 § 32; subsection (b) stricken out, 2004, 65 § 22.
- § 35 amended, 2003, 26 §§ 424, 425. (See 2003, 26 § 715.)

CHAPTER 139 - Common Nuisances.

CHAPTER 140 - Licenses.

- § 2 amended, 2003, 46 §§ 100, 100A. (See 2003, 46 § 142.)
- § 59 amended, 2003, 46 § 101.
- § 114A amended, 2004, 461 § 25.

CHAPTER 140 - Licenses. - continued

- § 121 amended, 2004, 150 §§ 1,2,3.
- § 122, seventh sentence stricken out, 2 sentences inserted, 2003, 26 § 426. (See 2003, 26 § 715.)
- § 122B, fifth sentence stricken out, 2 sentences inserted, 2003, 26 § 427. (See 2003, 26 § 715.)
- § 129B, clause (9), first sentence amended, 2004, 150 §§ 5, 6; fifth and sixth sentences stricken out, 3 sentences inserted, 2003, 26 § 428; sentence inserted after sixth sentence, 2003, 46 § 102; revised, 2003, 140 § 34; clauses (9A) and (9B) inserted, 2003, 140 § 34; clause (9A), sentence added, 2004, 65 § 23; clause (9B), first paragraph, sentence inserted after second sentence, 2004, 65 § 24; section amended, 2004, 150 § 4; clause (12) amended, 2004, 150 §§ 7,8. (See 2003, 26 § 715.)
- § 130B added, 2004, 150 § 9.
- § 131, subsection (i), fourth sentence stricken out, 4 sentences inserted, 2003, 26 § 429; first paragraph, sentence added, 2003, 46 § 103; first two sentences revised, 2004, 150 § 11; fifth sentence amended, 2004, 150 § 12; sentence added, 2004, 150 § 13; section amended, 2004, 150 § 10, 14, 15; subsection (m), sentence inserted after second sentence, 2004, 150 § 16. (See 2003, 26 § 715.)
- § 131A, second paragraph revised, 2003, 26 § 430. (See 2003, 26 § 715.)
- § 131F, fourth paragraph, third sentence stricken out, 2 sentences inserted, 2003, 26 § 431. (See 2003, 26 § 715.)
- § 131H, third sentence stricken out, 2 sentences inserted, 2003, 26 § 432. (See 2003, 26 § 715.)
- § 131J revised, 2004, 170 § 1.
- § 139, sentence inserted after fifth sentence, 2004, 505.

CHAPTER 140A - Regulation of Certain Credit Transactions.

CHAPTER 140B - Control of Certain Junkyards.

CHAPTER 140C - Consumer Credit Cost Disclosure. (Chapter repealed, 1981, 733 § 1.)

CHAPTER 140D - CONSUMER CREDIT COST DISCLOSURE. (New chapter inserted, 1981, 733 § 2.)

CHAPTER 140E - CONSUMER ACCOUNT DISCLOSURE.

CHAPTER 141 - Supervision of Electricians.

CHAPTER 142 - Supervision of Plumbing.

- § 4, first sentence revised, 2004, 298, 1.
- § 6A added, 2004, 298, 2.

CHAPTER 142A - REGULATION OF HOME IMPROVEMENT CONTRACTORS. (New chapter inserted, 1991, 453.)

CHAPTER 143 - Inspection and Regulation of, and Licenses for, Buildings, Elevators and Cinematographs.

§ 6, sentence added, 2004, 191.

§ 64 amended, 2004, 149 § 182. (See 2004, 149 § 428.)

§ 97A added, 2004, 304 § 4A.

CHAPTER 144 - Tenement Houses in Cities.

CHAPTER 145 - Tenement Houses in Towns.

CHAPTER 146 - Inspection of Boilers, Air Tanks, etc., Licenses of Engineers, Firemen, and Operators of Hoisting Machinery.

CHAPTER 147 - State and Other Police, and Certain Power and Duties of the Department of Public Safety.

CHAPTER 148 - Fire Prevention.

- § 10A, first paragraph, last sentence revised, 2003, 46 § 104.
- § 26G 1/2 added, 2004, 304 § 5.
- § 34A added, 2004, 304 § 6.
- § 34B added, 2004, 304 § 6.
- § 34C added, 2004, 304 § 6.
- § 34D added, 2004, 304 § 6.

CHAPTER 148A -

(New chapter inserted, 2004, 304 § 7.) (See 2004, 304 § 12.)

CHAPTER 149 - Labor and Industries.

- § 1 amended, 2003, 26 § 575; definition of "Department" revised, 2003, 26 § 576. (See 2003, 26 § 715.)
- § 27B amended, 2004, 125 §§ 1, 2, 3; fourth paragraph revised, 2004, 125 § 4.
- § 27C amended, 2004, 125 §§ 5, 6, 7, 8, 9, 10, 11.

CHAPTER 149 - Labor and Industries. - continued

- § 29D added, 2004, 291 § 35.
- § 38 amended, 2003, 26 § 433. (See 2003, 26 § 715.)
- § 44 amended, 2003, 26 §§ 434, 435, 436. (See 2003, 26 § 715.)
- § 44A, subsection (2) revised, 2004, 193 §§ 11, 12.
- § 44A ½ added, 2004, 193 § 13.
- § 44B, subsection (4), second sentence revised, 2004, 193 § 14.
- § 44D, subsection (1), paragraph (a), sentence inserted after fourth sentence, 2003, 46 § 105; subsection (2), last sentence revised, 2004, 193 § 15; subsection (3), sentence added, 2003, 46 § 106; subsection (7), first paragraph, sentence added, 2004, 193 § 16; subsection (8) revised, 2004, 193 § 17; subsection (11) inserted, 2004, 193 § 18; subsection (12) inserted, 2004, 193 § 18; subsection (13) inserted, 2004, 193 § 18; subsection (14) inserted, 2004, 193 § 18; subsection (15) inserted, 2004, 193 § 18; subsection (16) inserted, 2004, 193 § 18; subsection (17) inserted, 2004, 193 § 18. (See 2004, 193 § 34.)
- § 44D ½ added, 2004, 193 § 19; subsection (i) revised, 2004, 507 § 1.
- § 44D ¾ added, 2004, 193 § 19; subsection (i) revised, 2004, 507 § 2.
- § 44E, subsection (1) revised, 2004, 193 § 20; subdivision (2), Paragraph E, second paragraph revised, 2004, 306 § 3; Paragraph I, first paragraph revised, 2004, 306 § 4. (See 2004, 306 § 5.)
- § 44F amended, 2004, 193 § 21; subsection (2), paragraph (D) revised, 2004, 193 § 22; subsection (3), third paragraph revised, 2004, 193 § 23; subsection (4), paragraph (c) revised, 2004, 193 § 24.
- § 44H revised, 2004, 193 § 25.
- § 148B revised, 2004, 193 § 26.
- § 150, first sentence revised, 2004, 125 § 12.
- § 152A revised, 2004, 125 § 13.
- \S 159A **repealed**, 2004, 125 \S 14.
- § 183, definition of "Control transferor", clause (i) revised, 2003, 127 § 10. (See 2003, 127 § 24.)
- § 184, subsection (a) revised, 2003, 127 § 11. (See 2003, 127 § 24.)

CHAPTER 149A. -PUBLIC CONSTRUCTION ALTERNATIVE DELIVERY METHODS.

(New Chapter added, 2004, 193 § 27.) (See 2004, 193 § 34.)

CHAPTER 150 - Conciliation and Arbitration of Industrial Disputes.

CHAPTER 150A - Labor Relations.

CHAPTER 150B - Peaceful Settlement of Industrial Disputes Dangerous to Public Health and Safety.

CHAPTER 150C - Collective Bargaining Agreements to Arbitrate.

CHAPTER 150D - Registration of Labor Replacements of Strike Breakers.

CHAPTER 150E - Labor Relations; Public Employees.

- § 1, definition of "Employer" or "public employer", sentence added, 2003, 140 § 35. (See 2003, 140 § 136.)
- § 7 amended, 2003, 140 § 36. (See 2003, 140 § 136.)

CHAPTER 151 - Minimum Fair Wages. (Former title, Minimum Fair Wages for Women and Minors.)

- § 1A, first paragraph, 2 sentences added, 2003, 140 § 37.
- § 2, "definition of "Commissioner" revised, 2003, 26 § 577; definition of "Department" revised, 2003, 26 § 578. (See 2003, 26 § 715.)
- § 15 amended, 2004, 125 § 15; sentence added, 2004, 125 § 16.
- § 19, subsection (3) revised, 2004, 125 § 17; subsection (5), sentence added, 2004, 125 § 18.

CHAPTER 151A - EMPLOYMENT AND TRAINING. (Title revised, 1990, 177 § 247. Former title, Employment Security.)

- (Chapter amended by striking out the words "division of employment and training", each time it appears, and inserting the words "division of employment assistance", in each instance, 2003, 26 § 579.) (See 2003, 26 § 715.)
- § 1, paragraph (e ½) revised, 2003, 26 § 580; 2004, 149 § 183; paragraph (g) revised, 2003, 26 § 581; 2004, 149 § 184. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 13, 4 paragraphs added, 2003, 142 § 3. (See 200, 142 § 16.)
- § 14, subsection (a), paragraph (4) revised, 2003, 142 § 4; subsection (I), paragraph (1) revised, 2003, 142 § 5. (See 2003, 142 § 16.)
- § 14F amended, 2003, 142 § 6. (See 2003, 142 § 16.)
- § 14G, subsection (k), sentence added, 2004, 10.
- § 15, subsection (a), paragraph added, 2003, 142 § 7. (See 2003, 142 § 16.)
- § 22 amended, 2003, 26 § 582. (See 2003, 26 § 715.)
- § 25, subsection (e) 2 paragraphs inserted after eighth paragraph, 2003, 142 § 8; subsection (j) added, 2003, 142 § 9. (See 2003, 142 § 16.)
- § 30 amended, 2003, 142 § 10. (See 2003, 142 § 16.)
- § 47, paragraph added, 2003, 142 § 12. (See 200, 142 § 16.)

CHAPTER 151A - EMPLOYMENT AND TRAINING. - continued

- § 58, paragraph (g) inserted, 2003, 26 § 583; revised, 2004, 149 § 185. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 58A, paragraph added, 2003, 142 § 13. (See 2003, 142 § 16.)
- § 61, second paragraph revised, 2003, 26 § 584; revised, 2004, 149 § 186. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 62A amended, 2003, 26 § 585; subsection (a) amended, 2004, 149 § 187; subsection (b) revised, 2003, 26 § 586; 2004, 149 § 187A. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 69 amended, 2003, 142 § 13A. (See 2003, 142 § 16.)
- § 69D added, 2003, 142 § 14. (See 2003, 142 § 16.)
- § 71D, first sentence revised, 2003, 26 § 587. (See 2003, 26 § 715.)
- § 74 amended, 2003, 26 § 588. (See 2003, 26 § 715.)
- CHAPTER 151B Unlawful Discrimination Because Of Race, Color, Religious Creed, National Origin, Ancestry Or Sex.

 (Former title, Unlawful Discrimination Against Race, Color, Religious Creed, National Origin or Ancestry.)
- § 3, first paragraph, subsection 15 inserted, 2003, 26 § 437. (See 2003, 26 § 715.)
- § 4, subsection 1D inserted, 2004, 355 § 1.
- § 5, last paragraph revised, 2003, 26 § 438. (See 2003, 26 § 715.)

CHAPTER 151C - Fair Education Practices.

CHAPTER 151D - Health, Welfare and Retirement Funds.

CHAPTER 151E - Prohibition of Certain Discrimination by Business.

CHAPTER 152 - Workers' Compensation.

(Former title: Workmen's Compensation.)

§ 10, subsection (c) revised, 2003, 26 § 439. (See 2003, 26 § 715.)

CHAPTER 153 - Liability of Employers to Employees for Injuries not resulting in Death.

CHAPTER 154 - Assignment of Wages.

CHAPTER 155 - General Provisions Relative to Corporations.

- § 1 revised, 2003, 127 § 12. (See 2003, 127 § 24.)
- § 8, last sentence revised, 2004, 178 § 12. (See 2004, 178 § 49.)
- § 9A, first paragraph revised, 2004, 178 § 13. (See 2004, 178 § 49.)

CHAPTER 156 - Business Corporations.

- § 2 revised, 2003, 127 § 13. (See 2003, 127 § 24.)
- § 46A, subsection (2), first sentence revised, 2004, 178 § 14. (See 2004, 178 § 49.)
- § 46D, clause (b), paragraph (2), first paragraph revised, 2004, 178 § 15. (See 2004, 178 § 49.)

CHAPTER 156A - Professional Corporations.

- § 4, subsection (a) revised, 2004, 178 § 16. (See 2004, 178 § 49.)
- § 6, subsection (a) revised, 2004, 178 § 17. (See 2004, 178 § 49.)
- § 7, first paragraph, first sentence revised, 2004, 178 § 18. (See 2004, 178 § 49.)
- § 13, subsection (a), clause (3) revised, 2003, 127 § 14; 2004, 178 § 19. (See 2003, 127 § 24; 2004, 178 § 49.)
- § 14 revised, 2003, 127 § 15; 2004, 178 § 20. (See 2003, 127 § 24; 2004, 178 § 49.)
- § 15, first sentence revised, 2004, 178 § 21. (See 2004, 178 § 49.)
- § 17, subsection (b), clause (1) revised, 2004, 178 § 22; subsection (c), first sentence revised, 2004, 178 § 23; subsection (d) revised, 2004, 178 § 24. (See 2004, 178 § 49.)
- § 18, first sentence revised, 2004, 178 § 25. (See 2004, 178 § 49.)

CHAPTER 156B - Certain Business Corporations.

- § 49, second sentence revised, 2004, 178 § 26. (See 2004, 178 § 49.)
- § 79, subsection (b), last sentence revised, 2004, 178 § 27. (See 2004, 178 § 49.)
- § 82, subsection (b), first sentence revised, 2004, 178 § 28. (See 2004, 178 § 49.)
- § 83A revised, 2003, 4 § 32.

CHAPTER 156C - LIMITED LIABILITY COMPANY ACT. (New chapter inserted, 1995, 281 § 18.) (See 1995, 281 § 22.)

- § 2 amended, 2003, 4 § 33.
- § 6, subsection (b), sentence added, 2003, 4 § 34.
- § 8 amended, 2003, 4 §§ 35, 36.
- § 14 amended, 2003, 4 § 37, 38.
- § 17 amended, 2003, 4 § 39.
- § 22 amended, 2003, 4 § 40.

CHAPTER 156C - LIMITED LIABILITY COMPANY ACT. - continued

- § 24 amended, 2003, 4 § 41; subsection (b), (c), and (d) inserted, 2003, 4 § 42.
- § 43 amended, 2003, 4 § 43.
- § 47, second sentence revised, 2004, 178 § 29. (See 2004, 178 § 49.)
- § 48, first sentence revised, 2004, 178 § 30. (See 2004, 178 § 49.)
- § 49, last sentence revised, 2004, 178 § 31. (See 2004, 178 § 49.)
- § 51, second sentence revised, 2004, 178 § 32. (See 2004, 178 § 49.)
- § 59 amended, 2003, 4 § 44; subsection (a) revised, 2003, 127 § 16; 2004, 18 § 33. (See 2003, 127 § 24; 2004, 178 § 49.)
- § 61(a), clause (7) revised, 2004, 178 § 34. (See 2004, 178 § 49.)
- § 69 added, 2003, 4 § 45.

CHAPTER 156D. - BUSINESS CORPORATIONS.

(New chapter inserted, 2003, 127 § 17.) (See 2003, 127 § 24.)

- § 1.25, subdivision B of Part 1, subsection (a) revised, 2004, 178 § 35. (See 2004, 178 § 49.)
- § 1.28 of subdivision B of Part 1, revised, 2004, 178 § 36. (See 2004, 178 § 49.)
- § 6.25 of Part 6, subsection (d) revised, 2004, 178 § 37. (See 2004, 178 § 49.)
- § 9.25 of subdivision A of Part 9, subsection (c) revised, 2004, 178 § 38. (See 2004, 178 § 49.)
- § 14.21 of subdivision B of Part 14, subsection (a) and (c) stricken out, subsections (a) and (b) inserted, 2004, 178 § 39. (See 2004, 178 § 49.)
- § 15.01 of subdivision A of Part 15, subsection (c), clauses (7) and (8) stricken out, 2004, 178 § 40. (See 2004, 178 § 49.)
- § 15.31 of subdivision C of Part 15, subsection (a) revised, 2004, 178 § 41. (See 2004, 178 § 49.)
- § 16.22 of subdivision B of Part 16, subsection (a), clause (5) revised, 2004, 178 § 42; clause (8) revised, 20094, 178 § 43; subsection (d) stricken out, 2004, 178 § 44. (See 2004, 178 § 49.)

CHAPTER 157 - Co-operative Corporations.

CHAPTER 157A - EMPLOYEE COOPERATIVE CORPORATIONS.

§ 3, first paragraph revised, 2003, 127 § 18. (See 2003, 127 § 24.)

CHAPTER 157B - Cooperative Housing Cooperations.

CHAPTER 158 - Certain Miscellaneous Corporations.

CHAPTER 159 - Common Carriers.

§ 101, paragraph added, 2004, 291 § 36.

CHAPTER 159A - Common Carriers of Passengers by Motor Vehicle.

§ 16, paragraph added, 2003, 26 § 440. (See 2003, 26 § 715.)

CHAPTER 159B - Carriers of Property by Motor Vehicle.

§ 6B, first paragraph, sentence added, 2003, 46 § 107.

CHAPTER 159C - TELEMARKETING SOLICITATION.
(New Chapter inserted, 2002, 265 § 1.) (See 2002, 265 § 2.)

CHAPTER 160 - Railroads.

CHAPTER 161 - Street Railways.

CHAPTER 161A - Massachusetts Bay Transit Authority. (Chapter revised, 1999, 127 § 151.) (See 1999, 127 § 385.)

§ 11, first paragraph, last sentence stricken out, 2003, 55 § 5.

§ 35 revised, 2004, 65 § 25.

CHAPTER 161B - Transportation Facilities, Highway Systems and Urban Development Plan.

§ 1, definition of "Council" inserted, 2004, 196 § 10.

§ 26 added, 2003, 26 § 441. (See 2003, 26 § 715.)

§ 27 added, 2004, 196 § 11.

CHAPTER 161C - Rail Transportation in the Commonwealth.

CHAPTER 161D - THE MASSACHUSETTS INTERCITY BUS CAPITAL ASSISTANCE PROGRAM.

§ 6 **repealed**, 2003, 26 § 442. (See 2003, 26 § 713.)

CHAPTER 162 - Electric Railroads.

CHAPTER 163 - Trackless Trolley Companies.

CHAPTER 164 - Manufacture and Sale of Gas and Electricity.

- § 1, definition of "Electric company" revised, 2004, 249 § 1.
- § 2 revised, 2004, 249 § 2.
- § 47C, amended, 20094, 269 §§ 1, 2; section amended, 2004, 269 §§ 1, 2.
- § 58A, first sentence stricken out, two sentences inserted, 2004, 318.
- § 69H ½ amended, 2003, 26 § 443. (See 2003, 26 § 715.)
- § 69J, third paragraph revised, 2004, 249 § 3.
- § 71, sentence added, 2004, 249 § 4.
- § 72 amended, 2004, 249 §§ 5, 7; sixth sentence stricken out, two sentences inserted, 2004, 249 § 6; sentence added, 2004, 249 § 8.
- § 105A amended, 2003, 140 §§ 38, 39.

CHAPTER 164A - New England Power Pool.

CHAPTER 165 - Water and Aqueduct Companies.

CHAPTER 166 - Telephone and Telegraph Companies, and Lines for the Transmission of Electricity.

- § 22A, clause (i) inserted, 2004, 480 § 1.
- § 22D amended, 2004, 480 §§ 2, 3, 4, 5.
- § 22E amended, 2004, 480 § 6.
- § 22M amended, 2004, 480 § 7.

CHAPTER 166A - Community Antenna Television Systems.

CHAPTER 167 - Supervision of Banks.

- § 1 revised, 2004, 461 § 1.
- § 2A amended, 2004, 461 § 2.
- § 14, second paragraph revised, 2004, 461 § 3; fourth paragraph revised, 2004, 461 § 4; eighth paragraph stricken out, 2004, 461 § 5.
- § 37, first paragraph, fourth and fifth sentences stricken out, 2004, 461 § 6; last paragraph stricken out, 2004, 461 § 7.
- § 37B revised, 2004, 461 § 8.
- § 46 amended, 2004, 461 § 9.

CHAPTER 167A - Bank Holding Companies.

§ 1 amended, 2004, 461 § 10.

CHAPTER 167B - ELECTRONIC BRANCHES AND ELECTRONIC FUND TRANSFERS.

- § 3 amended, 2004, 461 § 11.
- § 4, fifth paragraph revised, 2004, 461 § 12.

CHAPTER 167C - BANK LOCATIONS. (Chapter Revised, 2004, 461 § 13.)

CHAPTER 167D - DEPOSITS AND ACCOUNTS.

§ 10 stricken out, 2004, 461 § 14.

CHAPTER 167E - MORTGAGES AND LOANS. (Chapter Revised, 2004, 461 § 15.)

CHAPTER 167F - INVESTMENTS AND OTHER POWERS.

- § 1 revised, 2004, 461 § 16.
- § 2, introductory paragraph revised, 2004, 461 § 17; Paragraph 31, last paragraph stricken out, two paragraphs inserted, 2004, 461 § 18.
- § 2A amended, 2004, 431 §§ 1, 2, 3, 4, 5, 6.

CHAPTER 167G - TRUST DEPARTMENT.

- § 1, definition of "Bank" or "such bank" revised, 2004, 461 § 19.
- § 3 amended, 2004, 256.

CHAPTER 167H - MUTUAL HOLDING COMPANIES. (New chapter inserted, 1987, 630.)

CHAPTER 168 - Savings Banks.

CHAPTER 169 - Deposits with Others than Banks. (Chapter revised, 1995, 337 § 1.)

CHAPTER 169A - LICENSING OF CHECK CASHERS.
(New chapter inserted, 1993, 308 § 1.) (See 1993, 308 § 2.)

CHAPTER 170 - Co-operative Banks.

CHAPTER 171 - Credit Unions.

- § 8 revised, 2004, 461 § 20.
- § 11, second paragraph revised, 2004, 461 § 21.
- § 25 revised, 2004, 244.
- § 29, fifth paragraph revised, 2004, 222 § 1.
- § 30, first paragraph revised, 2004, 222 § 2.
- § 33 revised, 2004, 222 § 3.
- § 79, second paragraph stricken out, 2004, 461 § 22.

CHAPTER 172 - Trust Companies.

§ 9A added, 2004, 461 § 23.

CHAPTER 172A - Banking Companies. (Chapter repealed, 2004, 461 § 24.)

CHAPTER 173 - Mortgage Loan Investment Companies.

CHAPTER 174 - BOND AND INVESTMENT COMPANIES. (Chapter repealed, 1950, 822 § 1.)

CHAPTER 174A - Regulation of Rates for Fire, Marine and Inland Marine Insurance, and Rating Organizations.

CHAPTER 174B - Regulation of Automobile Clubs.

CHAPTER 175 - Insurance.

- § 1, definition of "Compensation" stricken out, 2004, 123 § 1; definition of "Earned premiums" stricken out, 2004, 123 § 2; definition of "Liability" stricken out, 2004, 123 § 3; definition of "Loss payments" stricken out, 2004, 123 § 4; definition of "Net assets" revised, 2004, 123 § 5; definition of "Unearned premiums" revised, 2004, 123 § 6. (See 2004, 123 § 17.)
- § 10 revised, 2004, 123 § 7. (See 2004, 123 § 17.)
- § 11 revised, 2004, 123 § 8. (See 2004, 123 § 17.)
- § 11A revised, 2004, 123 § 9. (See 2004, 123 § 17.)
- § 12 revised, 2004, 123 § 10. (See 2004, 123 § 17.)
- § 12A repealed, 2004, 123 § 11. (See 2004, 123 § 17.)
- § 14, first paragraph, clause inserted, 2003, 26 § 444; clause inserted after Twenty-second clause, 2004, 149 § 188; **section amended**, 2004, 431 § 7. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 19E, first paragraph revised, 2003, 127 § 19. (See 2003, 127 § 24.)

CHAPTER 175 - Insurance. - continued

- § 20 revised, 2004, 497 § 1.
- § 20A, Subsection (2), first paragraph of paragraph (C), sentence added, 2004, 123 § 12; paragraph (D) stricken out, 2004, 123 § 13; subsection (4) revised, 2004, 497 § 2. (See 2004, 123 § 17.)
- § 24E added, 2003, 26 § 445; subsection (a), first paragraph, fifth sentence amended, 2003, 140 § \$ 40, 41; second paragraph, first sentence amended, 2003, 140 § 42; second sentence amended, 2003, 140 § 43; subsection (b½) inserted, 2003, 140 § 44; subsection (c), third sentence amended, 2003, 140 § 45; subsection (d) amended, 2003, 140 § 46; subsection (e), first sentence revised, 2003, 140 § 47; second sentence amended, 2003, 140 § 48. (See 2003, 26 § 715; 140 § 136.)
- § 24F added, 2004, 262 § 60. (See 2004, 262 § 71.)
- § 47C, third paragraph, last sentence revised, 2004, 149 § 189. (See 2004, 149 § 428.)
- § 64 amended, 2004, 123 § 14. (See 2004, 123 § 17.)
- § 66B, fifth, sixth and seventh sentences stricken out, sentence inserted, 2004, 123 § 15. (See 2004, 123 § 17.)
- § 94I, second paragraph, second and third sentences stricken out, sentence inserted, 123 § 16. (See 2004, 123 § 17.)
- § 99, clause Fifteenth, first paragraph, sentence inserted after first sentence, 2004, 435.
- § 108, subdivision (3), paragraph (b), policy provision (6) revised, 2004, 378; subdivision 11, sentence added, 2004, 430 § 1.
- § 110, subdivision M, sentence added, 2004, 430 § 2.
- § 110I, subsection (f) added, 2003, 9 § 36. (See 2003, 9 § 38.)
- § 113B revised, 2004, 213 § 1.
- § 113O amended, 2004, 431 § 8.
- § 113V added, 2004, 464 § 6.
- § 132F amended, 2004, 431 § 9.
- § 132G amended, 2004, 102 § 1; second paragraph, second sentence stricken out, 3 sentences inserted, 2004, 102 § 2; section amended, 2004, 431 §§ 10, 11.
- § 132I amended, 2004, 431 § 12.
- § 144A repealed, 2004, 59 § 2. (See 2004, 59 § 3.)
- § 144A ½ added, 2004, 59 § 1.
- § 151, clause Fourth stricken out, 2004, 431 § 13; section amended, 2004, 431 § 14.
- § 162 amended, 2004, 431 § 15.
- § 168, first paragraph, 2 sentences inserted after fifth sentences, 2004, 146 § 1; section amended, 2004, 431 § 16.
- § 172 amended, 2004, 431 § 17.
- § 206 amended, 2004, 431 § 18.
- § 209 amended, 2004, 431 §§ 19, 20, 21.
- § 224 added, 2004, 146 § 2.
- § 225 added, 2004, 146 § 2.

CHAPTER 175A - Regulation of Rates for Certain Casualty Insurance, including Fidelity, Surety and Guaranty Bonds, and for all other Forms of Motor Vehicle Insurance, and Regulation of Rating Organizations.

CHAPTER 175B - Unauthorized Insurer's Process Act.

CHAPTER 175C - Urban Area Insurance Placement Facility.

 $\$ 1 amended, 2004, 436 $\$ 1; definition of "Large share territory" inserted, 2004, 436 $\$ 2. (See 2004, 436 $\$ 5, 6.

§ 5 revised, 2004, 436 § 3.

CHAPTER 175D - Massachusetts Insurers Insolvency Fund.

CHAPTER 175E - Regulation of Rates for Optional Motor Vehicle Insurance.

CHAPTER 175F - Medical Malpractice Self-Insurance Trust Funds.

CHAPTER 175G - POLLUTION LIABILITY REINSURANCE CORPORATION. (New chapter inserted, 1987, 650 § 2.)

CHAPTER 175H - FALSE HEALTH CARE CLAIMS. (New chapter inserted, 1988, 295.)

CHAPTER 1751 - INSURANCE INFORMATION AND PRIVACY PROTECTION. (New chapter inserted, 1991, 516 § 1.) (See 1991, 516 § 6.)

CHAPTER 175J - ADMINISTRATIVE SUPERVISION AND HAZARDOUS FINANCIAL CONDITIONS OF INSURITIES. (New chapter inserted, 1993, 226 § 52.)

CHAPTER 176 - Fraternal Benefit Societies.

CHAPTER 176A - Non Profit Hospital Service Corporations.

§ 5, fourth paragraph, sentence added, 2004, 430 § 3.

§ 8B, third paragraph, last sentence revised, 2004, 149 § 190. (See 2004, 149 § 428.)

CHAPTER 176B - Medical Service Corporations.

§ 4 first paragraph, sentence added, 2004, 430 § 4.

§ 4C, third paragraph, last sentence revised, 2004, 149 § 191. (See 2004, 149 § 428.)

CHAPTER 176C - Non-Profit Medical Service Plans.

CHAPTER 176D - UNFAIR PRACTICES AND UNFAIR DECEPTION ACTS AND PRACTICES IN THE BUSINESS OF INSURANCE.

§ 1, paragraph (a) revised, 2003, 141 § 33. (See 2003, 141 § 83.)

CHAPTER 176E - Dental Service Corporations.

CHAPTER 176F - Optometric Service Corporations.

CHAPTER 176G - Health Maintenance Organizations.

- §1, definition of "Affiliate" inserted, 2003, 141 § 34; definition of "Control" inserted, 2003, 141 § 35; definition of "Foreign health maintenance organization" inserted, 2003, 141 § 36; definition of "Health maintenance organization holding company system, 2003, 141 § 37; definition of "Managed hospital payment basis inserted, definition of "Member" revised, definition of "Net worth" inserted, 2003, 141 § 38; definitions of "Person", "Subsidiary", "Uncovered expenditures" and "Voting security" inserted, 2003, 141 § 39. (See 2003, 141 § 83.)
- § 3, clause (1) revised, 2003, 141 § 40. (See 2003, 141 § 83.)
- § 4, second paragraph, last sentence revised, 2004, 149 § 192. (See 2004, 149 § 428.)
- § 6, second paragraph, sentence added, 2004, 430 § 5.
- § 10 revised, 2003, 141 § 41. (See 2003, 141 § 83.)
- § 14, first sentence revised, 2003, 141 § 42. (See 2003, 141 § 83.)
- § 20 amended, 2003, 141 §§ 43, 44. (See 2003, 141 § 83.)
- § 20A added, 2003, 141 § 45. (See 2003, 141 § 83.)
- § 25 added, 2003, 141 § 46. (See 2003, 141 § 83.)
- § 26 added, 2003, 141 § 46. (See 2003, 141 § 83.)
- § 27 added, 2003, 141 § 46. (See 2003, 141 § 83.)
- § 28 added, 2003, 141 § 46. (See 2003, 141 § 83.)

CHAPTER 176H - Legal Service Plans.

CHAPTER 176I - PREFERRED PROVIDER ARRANGEMENTS.
(New chapter inserted, 1988, 23 § 65.) (See 1988, 23 § 92.)

§ 4, first paragraph, sentence added, 2004, 430 § 6.

CHAPTER 176J - SMALL GROUP HEALTH INSURANCE. (New chapter inserted, 1991, 495 § 42.)

- CHAPTER 176K MEDICARE SUPPLEMENT INSURANCE PLANS. (New chapter inserted, 1993, 495 § 45.)
- CHAPTER 176L RISK RETENTION AND RISK PURCHASING GROUPS. (New chapter inserted, 1993, 226 § 53.)
- CHAPTER 176M -NONGROUP HEALTH INSURANCE. (New chapter inserted, 1996, 297 § 29.) (See 1997, 297 § 34.)
- CHAPTER 176N PORTABILITY OF HEALTH INSURANCE. (New chapter inserted, 1996, 297 § 30.) (See 1996, 297 § 34.)
- § 1 amended, 2004, 431 § 22.
- CHAPTER 176O HEALTH INSURANCE CONSUMER PROTECTIONS. (New chapter inserted, 2000, 141§ 27.) (See 2000, 141§ 35.)
- § 2 amended, 2004, 506 § 1. § 3, subsection (f) revised, 2004, 506 § 2.
- CHAPTER 176P LIMITED SOCIETIES.

 (New chapter inserted, 2000, 320 § 19.) (See, 2000, 320 § 20.)
- CHAPTER 177 ASSESSMENT INSURANCE. (Chapter repealed, 1924, 406 § 17; 1929, 24, § 1.)
- CHAPTER 178 Savings Bank Life Insurance. (Chapter repealed, 1990, 499 § 22.) (See 1990, 499 §24.)
- CHAPTER 178A SAVINGS BANK LIFE INSURANCE.
 (New chapter inserted, 1990, 499 § 23.) (See 1990, 499 § 24.)
- § 4 amended, 2004, 431 § 23.
- CHAPTER 179 Proprietors of Wharves, Real Estate lying in Common, and General Fields.
- CHAPTER 180 Corporations for Charitable and Certain Other Purposes.
- § 10A, subsection (b), paragraph (2) revised, 2004, 178 § 45. (See 2004, 178 § 49.)
- § 17J, first paragraph, 3 sentences inserted after first sentence, 2003, 140 § 49.
- § 17M added, 2004, 153.

CHAPTER 180A - Management of Institutional Funds.

CHAPTER 181 - Foreign Corporations. (Chapter repealed, 2004, 65 § 26. (See 2004, 65 § 56.)

CHAPTER 182 - Voluntary Associations and Certain Trusts.

CHAPTER 183 - Alienation of Land.

§ 28C added, 2004, 268 § 1.

§ 56 revised, 2004, 268 § 2.

§ 59 revised, 2004, 268 § 3.

§ 66, paragraph added, 2004, 268 § 4.

§ 68 amended, 2004, 431 § 24.

CHAPTER 183A - Condominiums.

CHAPTER 183B - REAL ESTATE TIME-SHARES.
(New chapter inserted, 1987, 760 § 1.) (See 1987, 760 § 2.)

CHAPTER 183C - PREDATORY HOME LOAN PRACTICES. (New chapter inserted, 2004, 268 § 6.)

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CHAPTER 185 - The Land Court and Registration of Title to Land.

CHAPTER 185A - Housing Court of the City of Boston, Jurisdiction and Powers.

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CHAPTER 185C - Housing Court Department.

§ 19 revised, 2003, 26 § 446. (See 2003, 26 § 715.)

CHAPTER 186 - Estates for Years and at Will.

§ 15B, subsection (4), clause (I) revised, 2004, 417 § 1.

§ 22 added, 2004, 417 § 2.

CHAPTER 187 - Easements.

CHAPTER 188 - Homesteads.

§ 1 amended, 2004, 218 § 1.

§ 1A amended, 2004, 218 § 2.

CHAPTER 189 - Dower and Curtesy.

CHAPTER 190 - Descent and Distribution of Real and Personal Property.

CHAPTER 190A - Effect of Apparently Simultaneous Deaths Upon Devolution and Disposition of Property, including Proceeds of Insurance.

CHAPTER 191 - Wills.

CHAPTER 191A - Disclaimer of Certain Property Interest Act.

CHAPTER 191B - UNIFORM STATUTORY WILL ACT. (New chapter inserted, 1987, 319 § 2.)

CHAPTER 192 - Probate of Wills and Appointment of Executors.

CHAPTER 193 - Appointment of Administrators.

CHAPTER 194 - Public Administrators.

CHAPTER 195 - General Provisions relative to Executors and Administrators.

CHAPTER 196 - Allowances to Widows and Children, and Advancements.

CHAPTER 197 - PAYMENT OF DEBTS, LEGACIES AND DISTRIBUTIVE SHARES.

§ 9, subsection (d) revised, 2003, 26 § 447. (See 2003, 26 § 715.)

CHAPTER 198 - Insolvent Estates of Deceased Persons.

CHAPTER 199 - Settlement of Estates of Deceased Non-residents.

CHAPTER 199A - General Provisions Regarding Certain Foreign Fiduciaries.

CHAPTER 200 - Settlement of Estates of Absentees.

CHAPTER 200A - Abandoned Property.

§ 1A amended, 2003, 4 § 46.

§ 5D revised, 2003, 18 § 1.

§ 6D added, 2003, 4 § 47.

§ 6E added, 2004, 352 § 45. (See 2004, 352 § 183.)

§ 7 amended, 2003, 4 § 48.

§ 8A, subsection (a) revised, 2003, 4 § 49.

§ 9A revised, 2003, 46 § 108.

§ 12 amended, 2003, 4 § 50.

CHAPTER 201 - Guardians and Conservators.

CHAPTER 201A - UNIFORM TRANSFER TO MINORS ACT.

(Title revised, 1987, 465 § 57.) (Former title, Uniform Gifts to Minors Act.)

CHAPTER 201B - UNIFORM DURABLE POWER OF ATTORNEY ACT.

CHAPTER 201C - STATUTORY CUSTODIANSHIP TRUSTS.

CHAPTER 201D - HEALTH CARE PROXIES.
(New chapter inserted, 1990, 332 § 1.) (Title inserted, 1992, 286 § 252.)

CHAPTER 201E - UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT.
(New chapter inserted, 1998, 377.)

CHAPTER 202 - Sales, Mortgages and Leases of Real Estate by Executors, Administrators, Guardians and Conservators.

CHAPTER 203 - Trusts.

- CHAPTER 203A Uniform Common Trust Fund Act.

 (Former title, Collective Investment of Small Trust Funds.)
- CHAPTER 203B UNIFORM CUSTODIAL TRUST ACT.
 (New chapter inserted, 1993, 434 § 1.) (See 1993, 434 §§ 2, 3.)
- CHAPTER 203C PRUDENT INVESTMENT.
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- CHAPTER 204 General Provisions relative to Sales, Mortgages, Releases, Compromises, etc., by Executors, etc.
- CHAPTER 205 Bonds of Executors, Administrators, Guardians, Conservators, Trustees, and Receivers.
- CHAPTER 206 Accounts and Settlements of Executors, Administrators, Guardians, Conservators, Trustees and Receivers.

CHAPTER 207 - Marriage.

§ 28A repealed, 2004, 388.

CHAPTER 208 - Divorce.

CHAPTER 209 - Husband and Wife.

CHAPTER 209A - Abuse Prevention.

§ 7, fifth paragraph, sentence inserted after first sentence, 2003, 26 § 448. (See 2003, 26 § 715.)

CHAPTER 209B - Massachusetts Child Custody Jurisdiction Act.

CHAPTER 209C - CHILDREN BORN OUT OF WEDLOCK.

CHAPTER 209D - UNIFORM INTERSTATE FAMILY SUPPORT ACT. (New chapter inserted, 1995, 5 § 87.) (See 1995, 5 § 143.)

CHAPTER 210 - Adoption of Children and Change of Names.

CHAPTER 211 - The Supreme Judicial Court.

CHAPTER 211A - Appeals Court.

CHAPTER 211B - Trial Court of the Commonwealth.

- § 2, first sentence revised, 2003, 26 § 449. (See 2003, 26 § 715.)
- § 6A added, 2003, 26 § 450. (See 2003, 26 § 715.)

CHAPTER 211C - Commission on Judicial Conduct.

CHAPTER 211D - Committee for Public Counsel Services.

- § 2 ½ added, 2003, 26 § 452; **section revised**, 2004, 149 § 195. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 6, paragraph (a) amended, 2004, 149 § 193. (See 2004, 149 § 428.)
- § 6B added, 2004, 149 § 194. (See 2004, 149 § 428.)

CHAPTER 211E - MASSACHUSETTS SENTENCING COMMISSION. (New chapter inserted, 1996, 12 § 9.)

CHAPTER 211F - OFFICE OF COMMUNITY CORRECTIONS. (New chapter inserted, 1996, 12 § 9.)

CHAPTER 212 - The Superior Court.

- § 3, two sentences added, 2004, 252 § 2.
- § 3A added, 2004, 252 § 3.
- § 12 amended, 2004, 252 § 4.

CHAPTER 213 - Provisions Common to the Supreme Judicial and Superior Courts.

CHAPTER 214 - Equity Jurisdiction. (Former title, Equity Jurisdiction and Procedure in the Supreme Judicial and Superior Courts.)

CHAPTER 215 - Probate Courts.

CHAPTER 216 - Courts of Insolvency.

CHAPTER 217 - Judges and Registers of Probate and Insolvency.

CHAPTER 218 - District Courts.

- § 1 revised, 2003, 45 § 1; Under the caption of "Middlesex", seventh paragraph revised, 2003, 140 § 50; tenth paragraph revised, 2003, 140 § 51. (See 2003, 45 § 2; 140 § 136.)
- § 3 amended, 2003, 26 § 454. (See 2003, 26 § 715.)
- § 6 amended, 2003, 26 §§ 455, 456, 457. (See 2003, 26 § 715.)
- § 8, first sentence revised, 2003, 26 § 458; 2004, 149 § 196. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 9, paragraph inserted after first paragraph, 2003, 26 § 459. (See 2003, 26 § 715.)
- § 10, second paragraph amended, 2004, 352 § 46; third paragraph amended, 2004, 352 § 47; fourth paragraph amended, 2003, 26 § 460; 2004, 352 § 48; eighth paragraph amended, 2003, 26 §§ 461, 462; eleventh and twelfth paragraphs stricken out, 2003, 26 § 463; fifteenth paragraph amended, 2003, 26 §§ 464, 465; 2004, 149 § 198; section amended, 2004, 149 § 197. (See 2003, 26 § 715; 2004, 149 § 428; 352 § 183.)
- § 10A amended, 2003, 26 § 466. (See 2003, 26 § 715.)
- § 11 amended, 2003, 26 § 467. (See 2003, 26 § 715.)
- § 19, first sentence stricken out, four sentences inserted, 2004, 252 § 5.
- § 19A revised, 2004, 252 § 6.
- § 19B revised, 2004, 252 § 7.
- § 19C, paragraph inserted after first paragraph, 2004, 252 § 8.
- § 22 amended, 2003, 26 § 468; **section amended**, 2004, 149 § 199. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 26 amended, 2003, 26 § 469. (See 2003, 26 § 715.)
- § 35A revised, 2004, 149 § 200. (See 2004, 149 § 428.)
- § 38 amended, 2003, 26 §§ 470, 471. (See 2003, 26 § 715.)
- § 39 amended, 2003, 26 § 472. (See 2003, 26 § 715.)
- § 40 amended, 2003, 26 §§ 473, 474. (See 2003, 26 § 715.)
- § 47 amended, 2003, 26 § 475. (See 2003, 26 § 715.)
- § 48 amended, 2003, 26 § 476. (See 2003, 26 § 715.)
- § 49 amended, 2003, 26 § 477. (See 2003, 26 § 715.)
- § 50 amended, 2003, 26 § 478. (See 2003, 26 § 715.)
- § 51A, paragraph inserted after first paragraph, 2003, 26 § 479. (See 2003, 26 § 715.)
- § 52A added, 2004, 149 § 201. (See 2004, 149 § 428.)
- § 53 amended, 2003, 26 § 480; 5 paragraphs added, 2003, 26 § 481; **section revised**, 2004, 149 § 202. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 53A revised, 2003, 26 § 482; **section revised**, 2004, 149 § 203. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 54 amended, 2003, 26 §§ 483, 484; **section amended**, 2004, 252 § 9. (See 2003, 26 § 715.)
- § 56 revised, 2004, 149 § 204. (See 2004, 149 § 428.)
- § 57, paragraph under caption "Suffolk county" stricken out, 3 paragraphs inserted, 2003, 26 § 485. (See 2003, 26 § 715.)

CHAPTER 218 - District Courts. - continued

- § 66 amended, 2003, 26 § 486. (See 2003, 26 § 715.)
- § 68 amended, 2003, 26 § 487. (See 2003, 26 § 715.)
- § 70 amended, 2003, 26 § 488. (See 2003, 26 § 715.)
- § 75B revised, 2003, 26 § 489; **section amended**, 2004, 149 § 205. (See 2003, 26 § 715; 2004, 149 § 428.)
- § 80A revised, 2003, 26 § 490. (See 2003, 26 § 715.)

CHAPTER 219 - Trial Justices.

CHAPTER 220 - Courts and Naturalization.

CHAPTER 221 - Clerks, Attorneys and Other Officers of Judicial Court.

- § 15 revised, 2003, 132.
- § 16A added, 2004, 441.
- § 37, fourth sentence stricken out and 2 sentences inserted, 2003, 26 § 491. (See 2003, 26 § 715.)
- § 62B amended, 2003, 26 § 492. (See 2003, 26 § 715.)

CHAPTER 221A - THE MASSACHUSETTS LEGAL ASSISTANCE CORPORATION ACT.

CHAPTER 221B - CHILD SUPPORT HEARING OFFICERS.

CHAPTER 221C - COURT INTERPRETERS FOR THE TRIAL COURT.

CHAPTER 222 - Justices of the Peace, Notaries Public and Commissioners.

§ 12 added, 2004, 149 § 206. (See 2004, 149 § 428.)

CHAPTER 223 - Commencement of Actions, Service of Process.

- § 10 amended, 2004, 252 § 10.
- § 37, second paragraph revised, 2003, 127 § 20. (See 2003, 127 § 24.)
- § 38 revised, 2004, 178 § 46. (See 2004, 178 § 49.)

CHAPTER 223A - Jurisdiction of Courts and of the Commonwealth over Persons in Other States and Counties.

CHAPTER 224 - Arrest on Mense Process and Supplementary Proceedings in Civil Actions.

- § 14, first pargraph, fifth sentence stricken out, two sentences inserted, 2003, 127 § 21. (See 2003, 127 § 24.)
- § 19 amended, 2004, 252 § 11.
- CHAPTER 225 PROCESS AFTER JUDGEMENT FOR NECESSARIES OR LABOR.
- CHAPTER 226 Bail.
- CHAPTER 227 Proceedings against Absent Defendants and upon Insufficient Service.
- CHAPTER 228 Survival of Actions and Death and Disabilities of Parties.
- **CHAPTER 229 Actions for Death and Injuries Resulting in Death.**
- CHAPTER 230 Actions By and Against Executors and Administrators.
- CHAPTER 231 Pleading and Practice.
- § 6I amended, 2004, 352 § 49. (See 2004, 352 § 183.)
- § 59A amended, 2004, 252 § 12.
- § 60K added, 2004, 149 § 207. (See 2004, 149 § 428.)
- § 97 revised, 2004, 252 § 13.
- § 98 amended, 2004, 252 § 14.
- § 108 revised, 2004, 252 § 15.
- § 118A added, 2004, 252 § 16.
- CHAPTER 231A Procedure for Declaratory Judgments.
- **CHAPTER 231B Contribution among Joint Tortfeasors.**
- CHAPTER 231C Structured Settlement Contracts. (New Chapter added, 2000, 427 § 1.)
- CHAPTER 232 Set-off and Tender.
- CHAPTER 232A Tender.

CHAPTER 233 - Witnesses and Evidence.

§ 8 amended, 2003, 26 § 493. (See 2003, 26 § 715.)

CHAPTER 234 - Juries.

CHAPTER 234A - Office Of Jury Commissioner For The Commonwealth.

§ 13 revised, 2004, 352 § 50. (See 2004, 352 § 183.)

CHAPTER 235 - Judgement and Execution.

CHAPTER 236 - Levy of Executions on Land.

CHAPTER 237 - Writs of Entry.

CHAPTER 238 - Writs of Dower.

CHAPTER 239 - Summary Process for Possession of Land.

§ 2 amended, 2004, 252 § 17.

§ 3, third paragraph revised, 2004, 271 § 2; last paragraph revised, 2004, 252 § 18.

§ 4 revised, 2004, 271 § 3.

§ 5 revised, 2004, 252 § 19.

CHAPTER 240 - Proceedings for Settlement of Title to Land.

CHAPTER 241 - Partition of Land.

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CHAPTER 245 - Informations by the Commonwealth.

CHAPTER 246 - Trustee Process.

CHAPTER 247 - Replevin.

CHAPTER 248 - Habeas Corpus and Personal Liberty.

CHAPTER 249 - Audita Querela, Certiorari, Mandamus and Quo Warranto.

CHAPTER 250 - Writs of Error, Vacating Judgment, Writs of Review.

CHAPTER 251 - Uniform Arbitration Act for Commercial Disputes. (Former title, Arbitration.)

CHAPTER 252 - Improvement of Low Land and Swamps.

§ 4A amended, 2003, 26 § 494. (See 2003, 26 § 715.)

CHAPTER 253 - Mills, Dams and Reservoirs.

CHAPTER 254 - Liens on Buildings and Land.

CHAPTER 255 - Mortgages, Conditional Sales and Pledges of Personal Property, and Liens Thereon.

CHAPTER 255A - Trust Receipts and Pledges without Possession in the Pledgee.

CHAPTER 255B - Retail Installment Sales of Motor Vehicles.

CHAPTER 255C - Insurance Premium Finance Agencies.

CHAPTER 255D - Retail Installment Sales and Services.

§ 2, paragraph added, 2004, 268 § 7.

CHAPTER 255E - LICENSING OF CERTAIN MORTGAGE LENDERS AND BROKERS.

(New chapter inserted, 1991, 144 § 3.) (See 1991, 144 § 5.)

CHAPTER 256 - Recognizances for Debts.

CHAPTER 257 - Seizure And Libelling Of Forfeited Property.

^{§ 8,} third paragraph, sentence inserted after first sentence, 2004, 268 § 8.

^{§ 10,} amended, 2004, 268 § 9.

^{§11} added, 2004, 268 § 10.

^{§ 12} added, 2004, 268 § 10.

- CHAPTER 258 Claims And Indemnity Procedure for the Commonwealth, Its Municipalities, Counties And Districts And The Officers And Employees Thereof.
- CHAPTER 258A Compensation of Victims of Violent Crimes. (Chapter repealed, 1993, 478 § 3.) (See 1993, 478 § 9.)
- CHAPTER 258B Rights of Victims and Witnesses of Crime.
- CHAPTER 258C COMPENSATION OF VICTIMS OF VIOLENT CRIMES. (New chapter inserted, 1993, 478 § 6.) (See 1993, 478 § 8.)
- CHAPTER 258D COMPENSATION OF CERTAIN ERRONEOUS FELONY CONVICTIONS.

 (New chapter inserted, 2004, 444 § 1.)
- **CHAPTER 259 Prevention of Frauds and Perjuries.**
- CHAPTER 260 Limitation of Actions.
- § 4 amended, 2003, 26 § 495. (See 2003, 26 § 715.)
- CHAPTER 261 Costs in Civil Actions.
- § 27D, second sentence stricken out, three sentences inserted, 2004, 252 § 20.

CHAPTER 262 - Fees of Certain Officers.

- § 2 revised, 2003, 26 § 496; **section revised**, 2004, 252 § 21; **section amended**, 2004, 352 § 51. (See 2003, 26 § 715; 2004, 352 § 183.)
- § 2A added, 2003, 26 § 497; paragraph added, 2004, 65 § 26A; **section repealed**, 2004, 309 § 1. (See 2003, 26 § 705; 2004, 65 § 57; 309 § 2.)
- § 4 revised, 2003, 26 § 498. (See 2003, 26 § 715.)
- § 4A revised, 2003, 26 § 499. (See 2003, 26 § 715.)
- § 4C amended, 2003, 26 §§ 500, 501. (See 2003, 26 § 715.)
- § 4D added, 2003, 26 § 502; paragraph added, 2004, 65 § 26B; **section repealed**, 2004, 310 § 1. (See 2003, 26 § 705; 2004, 65 § 57; 310 § 2.)
- § 8 revised, 2003, 26 § 503. (See 2003, 26 § 715.)
- § 34 amended, 2003, 26 § 504; clause (42) stricken out, 2003, 55 § 6. (See 2003, 26 § 715)
- § 38 revised, 2003, 4 § 51. (See 2003, 4 § 85.)
- § 39 amended, 2003, 4 §§ 52, 53, 54, 55, 56, 57, 58; first paragraph amended, 2003, 26 § 505; 2 paragraphs added, 2003, 4 § 59; **section amended**, 2003, 26 § 506. (See 2003, 4 § 85; 26 § 715.)

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- § 40 revised, 2003, 26 § 507. (See 2003, 26 § 715.)
- § 56 amended, 2003, 26 § 508. (See 2003, 26 § 715.)

CHAPTER 263 - Rights of Persons Accused of Crime.

CHAPTER 264 - Crimes against Governments.

CHAPTER 265 - Crimes against the Person.

- § 13H paragraph added, 2004, 501 § 2.
- § 13K, paragraph (a), definition of "Abuse" inserted, 2004, 501 § 3; amended, 2004, 501 § 4; definitions of "Mistreatment" and "Neglect" inserted, 2004, 501 § 5; definition of "Person with a disability" revised, 2004, 501 § 6; paragraph (a ½) inserted, 2004, 501 § 7; paragraph (d ½) inserted, 2004, 501 § 8;.
- §18C, second, third, fourth and fifth sentences stricken out, 2004, 150 § 17.
- § 38 repealed, 2004, 501 § 9.

CHAPTER 266 - Crimes Against Property.

- § 47, second paragraph stricken out, 2004, 319 § 2.
- § 111C added, 2004, 464 § 7.
- § 112 amended, 2004, 319 § 3.
- § 143 revised, 2004, 395 § 1.
- § 143A amended, 2004, 395 § 2.
- § 143B amended, 2004, 395 § 3.
- § 143C amended, 2004, 395 § 4.
- § 143D revised, 2004, 395 § 5.
- § 143E revised, 2004, 395 § 5.
- § 143F added, 2004, 395 § 5. § 143F added, 2004, 395 § 5.
- § 143F added, 2004, 395 § 5.
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§ 87A, second, third, fourth and fifth paragraph stricken out, 8 paragraphs inserted, 2003, 26 § 510. (See 2003, 26 § 715.)

§ 99E added, 2004, 149 § 212. (See 2004, 149 § 428.)

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§ 70C, first paragraph, last sentence stricken out and 3 sentences inserted, 2003, 26 § 511; second paragraph, sentence added, 2003, 26 § 512; section amended, 2004, 149 § 213. (See 2003, 26 § 715; 2004, 149 § 428.)

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