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BILL SUMMARY

REVISED HB. 2694, An Act Making Technical Corrections to the Combined Reporting Law, so called.

SECTION 1. This change will preserve the property tax exemption for certain limited liability companies that qualified for the exemption prior to the adoption last year by Massachusetts of federal entity classification conformity rules. The entity classification rules did not go far enough in ensuring uniformity in tax treatment leaving an incongruity in how limited liability companies that have "checked the box" are treated for purposes of local property tax. If Massachusetts does not adopt this change, two manufacturing businesses operating side by side will be treated identically for purposes of the corporate excise, but will be treated differently for local property tax purposes.

SECTION 2. This provision allows a seven month extension to taxpayers filing a combined report. Ordinarily, business taxpayers are granted a six month extension upon request.

SECTION 3. This provision clarifies that financial institutions will now be able to deduct certain losses on their combined return that were not allowed under a separate entity reporting regime.

SECTION 4. This provision ensures that dividends paid among affiliates will be eliminated regardless of whether such Earning and Profit (E&P) was generated before or after the affiliates were required to file a Massachusetts combined return. Allowance of this elimination is consistent with Internal Revenue Code Section 1502 which provides for elimination of dividends between members of a consolidated group. This provision is also consistent with principles of combined reporting. Prior to adoption of combined reporting, Massachusetts allowed a 95% dividends received deduction for dividends between related parties. The final regulations on combined reporting distinguish between those dividends paid from E&P's in years prior to adoption of combined reporting from dividends paid in years post adoption of combined reporting and subjects them to distinct tax provisions. This distinction is unnecessary as the group should not be subject to tax on a dividend that it has, in effect, paid to itself as there is no increase in the net equity of the group.

SECTION 5. This provision makes several changes to the water's edge rules. When adopting a combined reporting regime, taxing jurisdictions can choose water's edge (income earned within the United States and its territories) or a worldwide version (income earned everywhere.) Most states opt for a water's edge version for: (1) simplicity and ease of compliance; (2) so that international treaties are not implicated and (3) to more closely align with federal rules. Massachusetts law, as currently drafted, does not provide for a true water's edge even though that was the legislative intent. Massachusetts tax laws include in the unitary group foreign companies that have no business operations in the United States; income that is already taxed in foreign countries; income that is exempt from federal taxation because of treaties; and income not taxed by the federal government. This technical corrections bill ensures that the aforementioned categories of income are not taxable in Massachusetts. In addition, this language ensures that regardless of which entities comprise a unitary group, only the United States-source income of such entities, as defined in the Internal Revenue Code, is taxable in Massachusetts, putting US companies on par with foreign companies doing business outside the United States which are excluded from the combined return.

SECTION 6. This provision adds the terms "United State-Source Income" and "United States-Source Apportionment Factors" to the definitional section of the combined reporting provisions.

SECTION 7. This provision clarifies the statutory language to allow for the liberal sharing of carryforwards, including use of loss carryforwards by utility companies and financial institutions. Prior to the adoption of combined reporting, Massachusetts law did not allow loss carryforwards by financial institutions or utility corporations, however, this vestige of the separate entity reporting state is not compatible with the combined reporting regime, does not adhere to the recommendations of the Special Tax Commission and accordingly should be disregarded in favor of a liberal sharing of losses among all group members.

SECTION 8. Chapter 173 of the Acts of 2008 included a requirement that the Department of Revenue study the use and revenue impact of adoption of a affiliated group election provision and in this regard requires taxpayers to provide such information as the commissioner may request for purposes of that analysis including information relating to tax filings in other jurisdictions. This provision clarifies the types of information DOR can request from taxpayers. By referencing the most recently filed Federal Form 851, recomputed to account for entities that are more than 50 percent owned by members of the affiliated group, taxpayers will provide DOR with all the necessary information in the most efficient way possible. This will reduce the compliance burden for businesses and not allow DOR unrestricted access to taxpayers' confidential filing information in other states.

SECTION 9. This provision restores the ability of business corporations that have nexus with Massachusetts and are not members of a unitary group to elect to report their income on an

aggregated basis using separate company income computations and separate company apportionment. This election was repealed when the unitary reporting provisions were adopted in 2008.

SECTION 10. This provision amends the tax code related to utilities corporations to make clear that such utilities will now be able to deduct certain losses on their combined return.

REVISED Bill Text for HB2694 (HD1697) of 2009-2010 Session
An Act Making Technical Corrections to the Combined Reporting Law

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION1. Clause sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by deleting paragraph (3) and inserting in place thereof the following new paragraph:-

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that has its usual place of business in the commonwealth, is engaged in manufacturing in the commonwealth or in research and development in the commonwealth, is a disregarded entity, as defined in section 30 of chapter 63, and whose sole member is a business corporation, as defined in paragraph 1 of section 30 of chapter 63, all property owned by such corporation other than the following:--real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement pursuant to the provisions of the forty-fourth clause or a cogeneration facility as defined herein, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be defined as any electrical generating unit having power production capacity which, together with any other power generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating, or cooling purposes. This clause as it applies to a research and development corporation as defined in section 42B of said Chapter 63, shall take effect only upon its acceptance by any city or town.

SECTION 2. Paragraph two of Section 19 of Chapter 62C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by deleting the first sentence and replacing it with the following new sentence:- "An extension of six months for filing any return required by section eleven or twelve shall be allowed any corporation if, in such manner and at such time as the commissioner may prescribe, such corporation files a request, in such form as the commissioner may require, and pays, on or before the date prescribed for payment of the tax, the amount of tax reasonably estimated to be due under this chapter; but this extension may be terminated at any time by the commissioner by mailing to the corporation notice of such determination at least ten days

prior to the date for termination fixed in such notice; provided, further that in the case of taxpayer subject to section 32B of Chapter 63 that is required to file a return required by section 11 or 12, an extension of seven months for filing such return shall be allowed."

SECTION 3. Section 1 of chapter 63 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out clause (b) in the definition of "net income" and inserting in place thereof the following clause:- losses sustained in other taxable years, except to the extent the financial institution may deduct such losses pursuant to section 32B;

SECTION 4. Paragraph (a) of section 32B of said chapter 63 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- With respect to the elimination of dividends, dividends paid among affiliates shall be eliminated irrespective of whether the dividends were paid from earnings and profits generated during tax years in which the affiliates filed on a separate entity or combined basis for Massachusetts purposes.

SECTION 5. Section 32B of the Chapter 63 of the General Laws, as so appearing, is hereby further amended by striking Subsection (c)(3) in its entirety and replacing it with the following new paragraphs:-

32B(c)(3) The members of a combined group subject to tax under this chapter may elect to determine their apportioned share of the taxable net income or loss of the combined group pursuant to a worldwide election under which each taxpayer member, wherever located, shall take into account the income and apportionment factors of all the members includible in the combined group. If the members do not so elect, the combined group shall determine its share of the taxable net income or loss of the combined group on a water's edge basis under which each member shall take into account only income or loss and apportionment factors of only the members that are described in any one or more of the following categories:-

(i) any member incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States but including only the United States source income or loss and the United States apportionment factors of any member where at least 80 per cent of the gross income or loss from all sources of the member in the tax year is active foreign business income as defined in Internal Revenue Code Section 861 (c)(1)(B);

(ii) any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is 20 per cent or more; or

(iii) any member that earns more than 20 per cent of its income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of that income and the apportionment factors related thereto. A worldwide election shall be effective only if made on a timely-filed, original return for a taxable year by the members of the combined group

subject to tax under this chapter. A worldwide election shall be binding for and applicable to the taxable year for which it is made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the commissioner.

(iv) Notwithstanding any of the above, to the extent that a member's income is subject to the provisions of a federal income tax treaty, such income is not taxable for Massachusetts purposes and thus is not required to be included in the combined group's taxable income. A member shall not include in the combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty.

SECTION 6. Said Section 32B of Chapter 63 of the General Laws, as so appearing, is herby further amended by inserting in Subsection (d) paragraph(1) the following new definitions:-

"United States Source Income or Loss," income and loss from sources within the United States as determined under Internal Revenue Code Section 861.

"United States Apportionment Factors," the apportionment factors that are attributed to United States income and loss.

SECTION 7. Subsection (f) of said section 32B of said chapter 63 of the General Laws, as so appearing, is hereby amended by striking out clause (iii) and inserting in place thereof the following clause:- (iii) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attributable to the activities of the combined group's unitary business, which shall provide for the liberal sharing of such attributes among each member of the group, including financial institutions and utility corporations irrespective of any limitation on the deduction for losses sustained in other taxable years that is otherwise imposed under section 1 or 52A of this chapter, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date; it being understood that the research credit allowed under section 38M could be shared before such effective date without regard to whether the corporation generating the credit and the corporation using it participated in a combined return prior to the year of utilization; and

SECTION 8. Subsection (g) of said section 32B of said chapter 63 of the General Laws, as so appearing, is hereby further amended by striking out clause (iii) and inserting in place thereof the following clause:- (iii) The commissioner shall study the use and revenue impact of the affiliated group election provided by this subsection in the first 3 years in which the election is available and shall provide a report to the clerks of the house of representatives and the senate who shall forward the same to the house of representatives and the senate committees on ways and means and to the joint committee on revenue not later than March 15, 2013. Any taxpayer participating in an affiliated group election under this subsection shall provide to the commissioner a copy of its most recently filed Federal Form 851, recomputed to account for entities owned more than 50 per cent by members of the affiliated group, and a copy of the most recent federal corporate tax return(s) filed by members of the affiliated group, provided that the report by the commissioner shall

include only aggregate information, and shall not identify information relating to particular taxpayers.

SECTION 9. Chapter 63 of the General Laws as appearing in the 2008 Official Edition is hereby amended by inserting after Section 32E the following new section:-

Section 32F. If two or more business corporations participated in the filing of a consolidated return of income to the federal government, the net income measure of their excises imposed under section 39 may, at their election, be assessed upon their combined net income, in which case the excise shall be assessed to all said corporations and collected from any one or more of them. Where such election is made, each and every member of the consolidated group subject to taxation under section 39 shall be included in such return of combined net income.

Such corporations may not make the election if they are members of a combined group under section 32B.

The combined net income shall be determined as follows: (a) the taxable net income of each such corporation apportioned to this commonwealth pursuant to the provisions of sections 32B and 38 shall first be determined and (b) the taxable net income of each such corporation, as so determined, shall then be added together and shall constitute their combined net income taxable under this chapter.

Any election made pursuant to this section shall be made on or before the due date, including any extension of time, for the filing of the return required under this chapter and chapter 62C of each member of the group so participating. Corporations electing to file a combined return under this section must continue to file such a combined return for each succeeding taxable year unless and until they receive the written prior approval of the commissioner to file separate returns of income. Such approval shall be granted only if a valid business purpose, other than a reduction of tax, exists for the request.

SECTION 10. Subsection (1)(b) of section 52A of said chapter 63 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out clause (ii) and inserting in place thereof the following clause:- (ii) losses sustained in other taxable years, except to the extent the utility corporation may deduct such losses pursuant to section 32B;

So called – "Global Warming Solutions Act"

Massachusetts now has the most stringent and aggressive emissions cap of any state or nation, mandating an 80% reduction in greenhouse emissions (CO2) by 2050.

"While reducing green house gasses is a noble cause, the entire cost of solving this global problem should not fall on the back of Massachusetts, while other states and nations continue to emit many times what we emit, while selling their products here in the Commonwealth," said John Regan, AIM's Executive Vice President-Government Affairs.

"Existing stringent state regulations governing emissions already cause Massachusetts business consumers to pay the highest costs for electricity in the continental United States at an average cost of 15.4 cents per KWH as compared to other states such as Arizona and North Carolina that have average prices per KWh of 8.32 and 7.53 cents respectively," Regan noted.

During the legislature's debate of this legislation, AIM members sent 4000 plus messages to members of the Senate regarding S. 2531, AIM members pointed out that companies and residents are leaving the state because of the lack of economic opportunity, partially caused by feel good legislation that discourages the generation of new investments in the state's economy, and which places an enormous cost disadvantage to employers who remain here and must compete in the global market place.

AIM Legislation: An Act Enhancing the Global Warming Solutions Act

All regulations proposed pursuant to Chapter 298 of the Acts of 2008 by any executive agency shall first be submitted to the Clerk of the Massachusetts House of Representatives for review by the Joint Legislative Committee on State Administration and Regulatory Oversight and the Joint Committee on Telecommunications, Utilities and Energy. Said proposal shall also include a cost/benefit analysis of said regulations, taking into account economic impact on the residents and businesses of the Commonwealth, including low-income residents. Within 30 days of such referral, one or both Committees may conduct a hearing and shall issue a report to the issuing agency which may contain comments and recommendations.

AIM Letter to the Massachusetts Department of Environmental Protection

June 1, 2009

Massachusetts Department of Environmental Protection
Bureau of Waste Prevention
One Winter Street, 6th Floor
Boston, MA 02108

Attn: Stacy DeGabriele

Re: Proposed Statewide Greenhouse Gas Emissions Level: 1990 baseline and 2020 Business as Usual Projection

Dear Ms. DeGabriele:

On behalf of Associated Industries of Massachusetts (AIM), I would like to thank the Department for this opportunity to present our views regarding the proposed Statewide Greenhouse Gas Emissions Level: 1990 baseline and 2020 Business as Usual Projection.

AIM is the largest general trade association in Massachusetts representing more than 6,500 companies in both the manufacturing and non-manufacturing sectors in the Commonwealth, all of whom will be impacted by these proposed regulations.

AIM attended three of the informational sessions relating to this proposal and has been actively engaged in climate debate discussion in Massachusetts and nationally. In addition to being a co-sponsor of Governor Patrick's Clean Energy Challenge, a program which encourages businesses to reduce their greenhouse gas emissions by 10 percent over the next three years, we are also a member of the newly formed Energy Efficiency Advisory Council, charged with reinvigorating the state's utility sponsored energy efficiency programs. Recently, we signed, along with several environmental groups, a letter to the Congressional delegation asking that at least 25% of any funds gained from a federal cap and trade carbon program be returned to the states for energy efficiency activities.

The proposed regulations are the result of the Global Warming Solutions Act (GWSA) signed by Governor Patrick in 2008. The Act requires 80 percent reduction in statewide emissions of greenhouse gases by 2050, with a 2020 target of reductions between 10-25 percent, based on 1990 emissions. The Act also requires the development of a statewide 1990 greenhouse gas emission baseline and a projection of greenhouse gas emissions in a "business as usual scenario" for 2020 to determine targeted reductions.

Prior to making our comments, AIM would like to reiterate our belief that these mandated state-only reductions will not only harm our economy, but there is ample evidence to suggest that laws and regulations of this type actually increase the amount of CO2 emitted worldwide as productions and or operations move out of state (or are not located or expanded here) because of high energy costs brought about by these well-intentioned programs.

Unfortunately, many areas with lower energy costs (some half of what Massachusetts pays) generally use fuels with higher CO2 emissions, essentially increasing such emissions for the same unit of output. Because greenhouse gas emissions are an international problem, any greenhouse gases emitted anywhere in the world has the exact same impact. Massachusetts is hurt in two ways – first, we lose the jobs and tax revenue; second, we lose an opportunity to ensure lower CO2 emissions. The recent exodus of several companies due to high energy costs, including one that left because they could burn coal in another state instead of natural gas to heat their buildings, are evidence that these stories and the economic harm to the Commonwealth are not anecdotal.

It is particularly disheartening to hear activists and others (including the authors of the Global Warming Solutions Act) say that Massachusetts' commercial and industrial sectors or electric generation sectors are the problem in Massachusetts because they are not doing their part to reduce global warming emissions. Not only are prominent companies in Massachusetts part of the Governor's Clean Energy Challenge as mentioned earlier, but DEP's own background document (as well as recently released EPA data) shows that the opposite is true! The proponents of such claims should understand the sources of CO2 in Massachusetts.

Table 1 of DEP's background document (Massachusetts GHG Emissions by Sector for 1990, 1995, 2000 and 2005) shows that the only sector to increase emissions since 1990 is the transportation sector. And, according to Figure 2, (Massachusetts Baseline and Business as Usual (BAU) Projection of GHG Emissions 1990-2020 by Sector) the transportation sector is the only sector whose GHG emissions are expected to grow further by 2020 - the first deadline of this law. In fact, according to this data, the transportation sector will emit more than double the next highest sector – electrical generation - by 2020 and will dwarf the other sectors.

Second, these tables show that in the industrial sector, traditionally an easy target for reductions of any pollutant, emissions of greenhouse gases will continue their downward trend to extremely low levels, a trend we expect to accelerate as energy intensive industries abandon this area due to high costs. Indeed, other DEP data is confirming this trend and if more recent industrial data was used, the emissions might even be lower. Since the 2007 DEP data of major sources of air emissions was released, 6 companies have moved out of the area (of about 40 on the DEP list). Ironically, none went out of business; their corporate parent just decided it was more profitable to move production to other states.

Third, data from EPA indicate that Massachusetts is already one of the lowest emitters of greenhouse gases per megawatt hour of electrical production (http://www.epa.gov/cleanenergy/documents/egridzips/eGRID2007V1_1_year05_GHGOutputRates.pdf). For the year 2005, EPA emission rates indicate that Massachusetts emits approximately 927 pounds of CO2 per MwH of electricity produced, comparing favorably with California and some areas where hydropower is the dominant generation source. By contrast, the areas around Arizona and Texas emit about 1300 pounds per MwH and areas around Virginia and the Carolinas emit over 1100 pounds per MwH, making any migration of companies to those areas from Massachusetts particularly onerous from an environmental viewpoint.

Finally, the data shows that Massachusetts, for the reasons described above and others, has already lowered its per capita CO2 emissions and has actually already accomplished what in most states would be considered admirable reductions. According to Table 1, Massachusetts' CO2 emissions have only increased about 2% since 1990. However, census data for Massachusetts show that population has increased about 7% indicating that Massachusetts has become more efficient (and lost more heavy industry) than many parts of the country.

Table 1 and Figure 2 of the background document and the EPA candidly document why the Global Warming Solutions Act was ill-advised and not needed in Massachusetts. With the C&I sector declining (through migration out of state or through enhanced energy efficiency or other programs) and the electrical generation sector also declining due to the Regional Greenhouse Gas Initiative, potential federal cap and trade programs on CO2 and increases in renewable power, additional reductions will be difficult to achieve from these sectors without enormous costs, far higher cost than would be borne by other states in order to achieve similar reductions.

AIM has reviewed the 1990 baseline calculations for consistency with other data, namely from the Federal Energy Information Administration and found them to be consistent with these other data

sources, although we have no practical way of independently verifying the data. However, since the 1990 baselines will be used to determine policy decisions going forward as to where reductions may be focused, we believe Table 1 as presented in the background document, while accurate overall, distorts the true source of emissions and leaves DEP with information that is not detailed enough for future policy decisions.

For instance, the division of emissions into sectors such as commercial, residential, industrial, electrical generation, while convenient, may be misleading. As part of the Energy Efficiency Advisory Council, AIM has struggled with this same outdated nomenclature as we try to discuss appropriate energy reduction strategies for each sector.

The commercial sector often includes residential multifamily housing, including low-income. Likewise, commercial may also include municipal or even state owned buildings, which again could also include residential buildings. Therefore, strategies for reducing emissions must begin with a more accurate characterization and identification of sources as programs developed for "commercial" sectors may be more appropriately categorized in the residential sector and the outreach for municipal and state buildings may also be different that the others. DEP may want to start a task force to work with the utilities and others for better information.

Although we suggest that the sectors be refined, the likelihood is that the overall baseline calculations will not change significantly and urge the department to maintain these baseline levels so that there is a fixed and certain point to the regulations.

AIM does not believe that emissions generated from products coming into Massachusetts should be included in any calculation. This would present a huge challenge to DEP and would at best be an estimate. Also, since many of the products are consumer related, the practical ability of DEP to regulate or count any products based on their greenhouse gas emissions would be nightmarish and possibly run into federal preemption. If that were to be the case then the emission from products exported to other states or countries (especially those with laws such as ours) would need to be subtracted, an incredible burden.

Thank you for allowing us to make these comments and we look forward with working with you on this program in the future.

Sincerely,

Robert A. Rio, Esq.
Senior Vice President and Counsel
Government Affairs

September 9, 2009

Ms. Susan Leavitt
Department of Energy Resources

RE: Straw Proposal of Solar Carve out of Massachusetts RPS

Dear Ms. Leavitt:

I am writing in opposition to the recent DOER straw proposal for a solar carve-out of the Massachusetts Renewable Portfolio Standard (RPS) that was discussed at an August 26, 2009 DOER informational stakeholder meeting. AIM is the largest trade association in Massachusetts, with over 6,500 members, many of whom will be impacted by this proposal.

The straw proposal would add an additional element to the current (and increasing) Massachusetts Renewable Portfolio Standard (RPS) that would require a certain percentage to be met exclusively through the use of solar renewable energy certificates (S-RECs). This solar program is authorized (but not required) in the Green Communities Act (GCA) and has been initiated due to the Governor's pledge to install 250 megawatts of solar power by 2017.

The Green Communities Act brought with it a promise of coordination among programs and agencies and perhaps lower rates. Instead, it has resulted in a plethora of uncoordinated, conflicting and experimental programs, all paid by ratepayers in investor owned utilities.

For instance, there are current dockets before the state Department of Public Utilities (DPU) related to smart grid, net metering, long-term contracting for renewables, energy efficiency and a general rate increase pertaining to the Administration supported decoupling of utilities (decoupling allows utilities to raise rates to make up for reductions in power use among ratepayers). Some dockets are even related to solar energy - Western Massachusetts Electric Company (WMECO) was recently granted approval to increase rates in order to construct and own 6 megawatts of solar installations, which will cost ratepayers over 40 million dollars, the first of many expected increases for utility owned-solar installations.

In addition, there are automatic changes embedded in the GCA that will increase the RPS percentages and establish portfolio standards for other alternatives. Totaled, they will likely result in a 30-40% increase in distribution costs for customers in investor-owned utilities, adding billions to the cost of electricity over the next three years. This does not include expected increases in transmission or fuel costs.

Many of these programs should be labeled what they are - a tax on the ratepayers of Massachusetts that add costs and transfers money to favored industries without public debate. With these costs embedded in distribution charges for many years, it is unlikely that Massachusetts will give up its distinction of having the highest electricity prices in the United States.

Even more distressing, the Administration defines "green technology" and "green jobs" in such a way that only certain programs meet the definition of "green". For instance, there are several

companies that recycle newsprint in Massachusetts that have sought assistance from the Commonwealth and we understand there is a company in Southeastern Massachusetts that makes energy efficient windows that is closing, yet we are aware of no particular effort under the Governor's green initiatives to help either, though both operate with proven technologies and have a proven green track record in Massachusetts.

In this proposal, DOER makes it very clear that ratepayer concerns are not a priority. On page 3 of the document given out at the August Stakeholder meeting, the term "minimizing ratepayer impacts" is *last* on the list of Goals and Objectives of the program.

This is not surprising given the subsidy costs envisioned in the program for the price of the S-RECs. Ironically, this proposal comes out at a time when the price of RECs under the current RPS is falling. The proposal envisions an allowable Alternative Compliance Payments (ACP) for solar (S-ACP) of 700 dollars per MWh in 2010, over *ten times* the current ACP and *over 20 times* the cost of current RECs trading on the open market and about *40 times* the current cost of nonrenewable power. Even S-ACP costs in 2020 would be almost 10 times the *current* cost of today's non-solar RECs.

Not surprisingly, the DOER eliminates any projection of how much money this will save ratepayers, even in the long term. Over the next ten years the program will receive subsidies that will guarantee high electricity rates for everyone. Under no scenario will this program reduce or moderate power costs.

Given the high costs of this program, we also wonder what studies DOER is relying on to determine its benefit. For instance: How many jobs will be created with the hundreds of millions of dollars in additional subsidies that this program contemplates? How many jobs will be lost in other sectors of the economy when this and other rate increases impact industries? How much would electricity prices have to rise to to even make this program cost effective? What is the environmental benefit of this program versus other program or alternatives?

In addition, AIM questions whether this program is actually needed. The Wall Street Journal recently reported that prices for solar installations are falling and in Massachusetts there is a vibrant market for solar installation owned by third parties. One AIM member recently installed solar panels using a third party to finance and install the panels, only agreeing to a long term contract for the power. By using existing subsidies the company was able to fashion a deal that did not burden the ratepayer any more than current subsidies allow. Time and time again, it has been shown that rebates and mandates drive costs higher. Experience in other countries has shown that once rebates and price supports are removed, prices for renewable energy technologies actually are reduced significantly, as companies begin to be subject to the same competitive markets as their customers. DOER should be looking for ways to facilitate more of these market- based programs.

DOER envisions that long-term contracting for S-RECs will mitigate ratepayer impacts, provided they stay below the S-ACP. Again, DOER is favoring investors over ratepayers (see page 14 of

August 26 document which states that establishing long-term contracts for S-RECs will shift risks from "PV investors to utilities/ratepayers").

AIM has advocated that in the matter of long term contracting for renewables a source blind approach be used. Whatever the cheapest renewables are should be used – that will drive down the cost. Under this DOER proposal, even contracting at slightly below the S-ACP will not be any bargain for the ratepayer. With the S-ACP rates at 700 dollars per MWh (declining only to 311 dollars in 2020) the S-ACP will, according to the DOER document, add millions to the RPS costs. Long-term contracts below the ACP are simply not the goal that should be used to determine whether or not a program meets the cost-effective definition. It does not mitigate costs to ratepayers. And it does not create economically sustainable industries or jobs.

AIM supports renewable energy and energy efficiency. Many of our members are related to the new green economy and AIM serves on the Energy Efficiency Advisory Group, a group established by the Green Communities Act to monitor spending of ratepayer funds collected for energy efficiency. However, a vibrant "green" sector depends on an overall vibrant economy to fund these programs. Sadly, companies, (including green companies) are deciding that it is cheaper to manufacturer the technologies in other countries than it is to manufacture them here.

AIM is disheartened that DOER appears to have minimized the concerns of ratepayers (who fund all these programs) in order to satisfy its own priorities. Ironic, considering the DOER, in a recent legislative maneuver, is now completely funded by the ratepayer funds previously earmarked for energy efficiency (a diversion accomplished with no discussion with the Energy Efficiency Advisory Group of the impact of this change). Other than meeting the Governor's goal, there appears to be little reason to drive up these electricity rates even higher to subsidize a particular technology.

The role of DOER should note simply be to carry out any Administration request, but to fully vet what these cost. Success is not just taxing one group to benefit another and counting the jobs created. Rather, DOER should be the agency that impartially analyzes the costs and benefits of these proposals and reports to ratepayers the results *before* programs are approved. With the Green Communities Act, the Legislature and the DOER have embarked upon program after program, not waiting for one to be approved and tested before another is dreamed up. Over time, what we have are massively compartmentalized programs that are in some cases contradicting others.

This solar carve-out should be put on hold until an economic and cost benefit analysis can be performed. Market forces which have resulted in reduction in renewable power prices should be allowed to operate without additional mandates or excessive subsidies. We urge the DOER to rethink their priorities, putting the ratepayer first and then deciding which programs can be implemented to carry out any goals of the commonwealth.

We appreciate the opportunity to comment on this straw proposal.

Should you have any questions please do not hesitate to contact me at 617-262-1180.

Sincerely,

Robert A. Rio, Esq.
Senior Vice President and Counsel

aim
Government Affairs & Public Policy

2012 | Regulatory Review Initiative

April 24, 2012

April Anderson Lamoureux , Assistant Secretary for Economic Development
Executive Office of Housing & Economic Development
One Ashburton Place, Room 2101
Boston, MA 02108

Re: AIM's Suggestions for Regulatory Review

Overview

When asked "How can Massachusetts improve the regulatory environment?", employers routinely respond with bottom line challenges and burdens related to the overall costs associated with compliance in arenas that directly impact their business operations, i.e. health care costs, electricity, taxation, workers compensation, employment law and unemployment insurance.[1] AIM members will highlight issues, which are overly burdensome, duplicative, outdated or outright punitive in nature and which often arise from legislation as well as regulation.

AIM submits the following suggestions for Governor Patrick's state wide regulatory initiative with the goal of improving the Massachusetts business climate.

Statewide Agency Reform:

1. Online One Stop Shop - Add "Regulatory Reform" to Governor Patrick's Massachusetts Transparency Website. Through this portal provide customers with an online "one stop shop" for regulations. This portal would provide residents and employers with a fully searchable database of all current regulations and proposed regulations. The portal would also allow individuals to sign up for electronic newsletters and RSS feeds for every state agency. The site would also provide a mechanism to track ongoing regulatory reform efforts and provide individuals with a way to provide ongoing feedback on regulatory reform.

2. Highlight best practices for small business impact statements, communications, engagement, education and outreach efforts for regulated community.

3. Ensure that all agencies allow for electronic filing

4. Streamline agency operations by focusing on the customer experience for any service of agency function.

[1] http://blog.aimnet.org/AIM-IssueConnect/bid/53019/Does-Massachusetts-Have-a-Business-Regulation-Problem

Healthcare:

1. Eliminate the duplicative medical security trust fund and merge it with the Health Connector's Commonwealth Care Program, the state's primary health insurance program for uninsured adults who meet income and other eligibility requirements;

2. Impose a moratorium on health insurance benefit mandates and cost benefit analysis for any new proposed mandates.

3. Amend Minimum Creditable Coverage to allow deductibles to keep pace with medical inflation;

4. Change the Fair Share Contribution statute to exempt employees with spousal or other healthcare coverage; and

5. Repeal section 304 of Chapter 149 of the Act of 2004, which requires the Executive Office of Health and Human Services to produce a list of employers who have 50 or more employees using public health assistance each year.

Employment Law:

1. Fix the Personnel Records Statute: Pass clarifying language that would answer many of the questions posed by employers and employees around the issue of what exactly triggers the notification requirement under the new personnel records law. Specifically, the ambiguity lies in the question of what is considered to be part of the personnel record.

2. Fix Treble Damages statute: Pass the House approved Fiscal Year 13 budget proposal which included a provision that would limit the treble damages statute to "willful" violations of the wage and hour statute. The change would remove the threat of automatic punitive damages for employers who make honest mistakes understanding the complex state wage laws or who are involved in good-faith compensation disputes.

3. Fix Independent Contractor Statute: Pass legislation that would provide relief to individuals and employers that want to engage in legitimate independent contractor relationships. The current Massachusetts independent contractor statute conflicts with federal law and prohibits many opportunities for job creation.

4. Reform adjudicatory process for the Massachusetts Commission Against Discrimination (MCAD): Pass legislation to improve the operation of the MCAD and its ability to provide timely due process and equity for all parties by requiring guidelines and standardized procedures.

Taxation:

The administration and enforcement of the Commonwealth's tax laws continue to pose a challenge for many business taxpayers. Massachusetts Department of Revenue (DOR) is well-known for its aggressive interpretation of statutes and focus on revenue maximization. While streamlining regulations may be part of the solution, there are many other issues on the tax policy front that need to be addressed.

First and foremost, to improve the DOR, we need to change the mindset of many senior staff who believes that the agency is always right, maximizing revenue is always appropriate and that DOR should help make the law in addition to implementing it. Contributing to this problem is the deference that the Legislature gives to the DOR. Because there is no institutional expertise in the legislature and our tax laws have become increasingly more complicated, legislators rely on DOR to tell them what good tax policy is.

Several laws enacted in recent years have given the Commissioner of Revenue unfettered discretion to determine parts of the law and its interpretation. The combined reporting statue is the most recent example. Another troubling phenomenon is the trend by DOR to propose changes to the law if the Courts side with taxpayers in litigation. For example, when a court found that the work product of tax professionals prepared on behalf of a taxpayer client was not subject to disclosure in litigation, the DOR filed legislation to change it.

These are some changes to statutes that would provide more balance between DOR and the taxpayer:

1. Encouraging the Settlement of Cases in the Litigation Pipeline
2. Require Dynamic Analysis of tax policy
3. Encourage independent analysis of tax issues by another state agency such as the State Auditor.
4. Equalized Interest Payments
5. Four Equal Quarterly Payments for Estimated Taxes
6. Reduce and standardize fees for the purpose of incorporating and filing annual online reports by corporations, Limited Partnership (LP), Limited Liability Partnership (LLP) and Limited Liability Corporation (LLC). LP, LLP and LLC's are considered to be unduly high.
7. Require all DOR rules and regulations to include a business impact statement

Environment

1. Lamp Recycling - In 2007 the DEP adopted regulations implementing the lamp recycling law. The regulations took the most restrictive approach possible and rejected industry efforts to allow significant flexibility so that industry could avoid fines if the state failed to achieve a designated recycling rate. While we are trying to amend the underlying statutory requirement, in the event that we do not succeed another approach would be to amend those initial regulations.

2. Prevent overly burdensome storm water regulations: In 2009, DEP proposed statewide stormwater regulations. The proposed regulations unfairly imposed on commercial and industrial facilities the bulk of the cost and burden of reducing phosphorous in stormwater discharges. The estimated compliance costs associated with the state's draft regulations were in the billions of dollars. The draft regulations went well beyond what other states have adopted for their stormwater regulatory programs. DEP did not undertake any cost/benefit analysis that could have been used to determine if (i) the cost of the proposed program would achieve a comparable level of environmental benefit or (ii) there were other less costly regulatory approaches to managing stormwater discharges. After significant pushback from the business community, the state regulations were put on hold. Since that time, EPA issued draft MS-4 permits and a draft RDA General Permit for the communities of Milford, Franklin and Bellingham. EPA's initiatives target phosphorus in stormwater and have many of the same water quality goals as DEP's proposed program. For these reasons, DEP should hold off on moving forward with any stormwater regulations until the impact of EPA's initiatives take effect. This would ensure that commercial and industrial facilities regulated under both permitting programs would not be burdened with redundant or inconsistent regulatory requirements.

3. Department of Public safety Steam Boiler and hoisting licenses: The DPS laws and regulations as they pertain to steam boiler licensing and hoisting requirements are often outdated and overlap or are inconsistent with federal law. The DPS should review and update these licensing laws and regulations with an eye toward streamlining, including consistency with nearby states. Massachusetts licensing requirements for these two areas are far more stringent than neighboring states and in some cases have been outdated due to technological changes in the industry.

4. Endangered Species Enforcement - The Massachusetts Endangered Species program needs to be reformed and the program needs to operate within the confines of the statute that the legislative passed in 1990 so that developers and other can have a predictable process.

   The 1990 Endangered species statute granted the Natural Heritage and Endangered Species Program (NH) to set aside areas in the Commonwealth as "significant habitat", a designation used to protect the habitats of species that are considered endangered or threatened. When designating a certain piece of land significant habitat, NH must notify the land owner, hold a public hearing, record its findings and pay just compensation. Since 1990, the Natural Heritage Program has gone beyond its legislative mandate, designating thousands of acres as "priority habitat" which has no grounding in statute. In effect this circumvents the rules that this

legislature established and often times halts development and requires expensive consulting costs to prove that there are no endangered species in the area.

5. Department of Environmental Protection (DEP) – Regulatory change – currently new gas stations are not exempted from Stage II vapor recovery systems. The states of CT[2], NY, ME, NH and VT have already exempted new stations from Stage II.

Other Regulations: Directly below are comments that were submitted by AIM members and may require additional research. AIM is ready to work with the administration and AIM members to identify the necessary details for these suggested items for regulatory review.

1. Local permitting for business expansion is onerous
2. Onerous record keeping and disclosure regulations for pharmaceutical companies
3. Extremely vague lobbying and reporting requirements
4. Ever changing Building Codes and lack of notification
5. New sprinkler requirements for commercial and new homes
6. Recent HVAC regulations and licensing – overextended qualification periods for construction trade licensing makes it difficult for smaller firms to train new people to enter the trades.
7. Review of Department of Public Safety and DCAM regulations that conflict with federal law. Most often state regulations are more burdensome and conflict with OSHA or HUD standards including:

[2] In a press release by the state of CT, stated "The responsible elimination of these now obsolete vapor recovery systems is a good example of how we are striving to leverage the benefits of new technology to reduce the regulatory costs of our clean air programs," said DEEP Commissioner Daniel C. Esty. "These and other efforts to modernize the regulatory process – while still maintaining high environmental standards – will help make Connecticut a less costly place to do business and a better place to live."

- Section 310 CMR 6.02 – Requires that training is site and equipment specific
- Section 310 CMR 6.R 6.03 Performance evaluation is only valid for 2 years, when OSHA is valid for 3 years.
- Section 310 CMR 6.06 Requires far more rigorous inspections and documentation than OSHA

8. 780 CMR 901.5.1 and Chapter 13 section 103.7 that effectively saddle architects and engineers with liability as "super inspectors" and responsible for subcontractors liability.

9. Extensive time and overly burdensome process for state bidding and contracting with the State Purchasing & Operational Services

10. Provide oversight and or analysis of DEP's application of the toxic use reduction act (TURA)

11. Rideshare Regulation 310 CMR 7.16 The difficult parts of the regulation are the convoluted reporting requirements and the need for burdensome / questionable value biennial employee surveys of where employees (and contractors working on site) have to track and submit their commute info for a given week and data must be obtained from at least 50% of the site population to be valid. An employer's submittal was rejected by DEP in the past because it had data on slightly less than 50% of the site population. There are alternatives to get around the survey, but they have been even more difficult to do. In order to get >50% response, a major promotion of the survey is required.

12. Lack of harmonization of plumbing regulations, causing conflict and inconsistent application between state plumbing codes (interior building) and the state BOH regulations, which govern the exterior issues outside of a building.

13. Gateway Cities: Revitalize and Encourage the Redevelopment of Brownfield Sites
    a. Revise Regulatory Definition of Background to Expedite Cleanup of Brownfield Sites - The concept of "Background" in the Massachusetts Contingency Plan is important for those who are involved in the actual clean-up of disposal sites, since the 21E statute and the MCP require that any such remediation have, as its goal, the reduction of contaminant concentrations to this level. In 1993, DEP significantly limited the concept of background contamination. With no basis in either legislative text or history, DEP eliminated from consideration the majority of situations that would meet the statutory definition of background. DEP's narrow definition of "background" in the MCP is particularly problematic at brownfield sites. In many older urban and industrialized areas of the Commonwealth, elevated levels of various common contaminants are widespread. These "background" contaminants can rarely be attributed to a particular release, source or "disposal site," and appear to be precisely the situation the Legislature had in mind in enacting the statutory background concept. Yet, under DEP's current MCP definition of "background," sites containing historic fill and other instances of such widespread contamination are subject to the provisions of the MCP, and require at least some response actions (assessment and/or remediation). The cost

and time required to go through this process, which for most urban development projects results in no real net benefit, present yet another obstacle to the successful redevelopment of Brownfield sites. We urge DEP to revise the definition of "background" in the MCP to be consistent with the broad definition of "background" in the statute. Eliminating the need to assess and remediate such typical widespread contaminants in urban and industrialized areas would expedite and reduce the cost of brownfields redevelopment in the Commonwealth, without adding additional risks to the environment. Passage of S. 340, *An Act to Revitalize Urban Centers*, would address this issue.

b. Allow for Permanent Solution at Brownfield Sites with Active Systems- We also urge DEP to expand the existing regulatory definition of Permanent Solution contained in the MCP to include a disposal site with an active remedial system whose purpose is to mitigate vapor intrusion. Under the existing regulatory definition, it is simply not possible to achieve closure for sites with an active remedial system, and without such an endpoint, financing - already difficult in the present economy – becomes nearly impossible. Once a Permanent Solution has been achieved, it would be possible to close out the site, as is the case with other sites subject to the requirements of the MCP. Passage of S. 339, *An Act to Advance the Redevelopment of Brownfields*, would also address this issue.

14. Building code regulations, etc.
    a. State building codes and challenges associated with rainwater use / grey water reuse (having to dye the water a different color), wind turbines (especially the fall zones including roadways), etc.
    b. Historic commission requirements that prevent efficiency measures (new windows, adding exterior insulation that would slightly change dimensions, solar on roof), etc.
    c. A lot of the air quality permitting gets in the way of distributed generation of power; nobody wants to run their generators, even if their generators are cleaner and more efficient than some of our other centralized power options. Eased air permits in terms of run hours (still strict about air pollutants) for generation equipment.

15. Use of generators / co-generation units as primary power and grid as back-up / emergency power. To do so would only be cost-effective if they didn't need to also provide an emergency generator, which would require regulation re-interpretation. The logic is this:

    d. Current System: Grid power primary, emergency generator back-up

        i. Pros: Have reliable power and a back up that is there just in case, though it is almost never used

ii. Cons: Owners spend a lot of money on a generator that doesn't get used and the overall system efficiency isn't very good – we need to build more large power plants

e. Proposed System: Co-generation primary power (at least for a portion of the building including life safety), grid power back-up

i. Pros: More efficient overall, still just as much redundancy built into system, essentially the same cost of equipment as the current system, reduce need for new power plants and ease congestion of distribution system

ii. Cons: Regulations would need to be change, emissions would shift from centralized to local

16. Timeliness of Workers Compensation Claims: Review the administration and timeliness of Workers Compensation claims in the following three specific areas as described by statute – (M.G.L. 152 Section 10A) A. Conciliation to Conference B. Conference to Hearing and C. Hearing decision due date. For all three events, the workers compensation statute calls for no more than 28 days between each of the separate events listed above. For all parties involved, the time it takes for a decision at each of these events is excessive and costly. The lack of timeliness and decision making is a serious concern.