ATTACHMENT D

July 28, 2022

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 6, 176, and 184 of House Bill No. 5050, “An Act Making Appropriations for the Fiscal Year 2023 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

These sections would establish parameters for the collection, tabulation, and public reporting of demographic data related to race or ethnicity by state agencies, effective January 1, 2024. State agencies would be required to collect data on specific racial and ethnic groups tied to U.S. Census Bureau categorization. These sections would also require that individuals have the option to choose more than one ethnic group, write in their own , or choose aggregate categories and would require agencies to make public anonymized demographic data in compliance with state or federal law. These sections would also direct the Executive Office for Administration and Finance (A&F) to establish regulations and guidelines on the collection of demographic data under this law by January 1, 2023. Subsequently, A&F would be required to file an annual report on the progress of agency data collection efforts and conduct at least one public hearing annually.

The collection of racial and ethnic data in an accurate, coordinated, and confidential manner is vital to identifying and reducing racial and ethnic disparities and ensuring that all residents of the Commonwealth can equitably benefit from the robust services and supports our government agencies provide. I therefore support the coordinated collection of racial and ethnic demographic data and agree that individuals should retain the control and flexibility to designate the racial and ethnic identity with which they identify. I also support the continued protection of personal information collected by state agencies.

However, the scope and timeline of these sections must be adjusted. The data collection requirements set forth in this proposal will in some instances conflict with existing and planned data standards in use and under development by numerous state agencies. Moreover, tying all Commonwealth agency demographic data collection to U.S. Census Bureau categorizations creates unnecessary and duplicative data collection efforts, for which the Commonwealth will incur substantial expense. Additionally, requiring the Secretary of Administration and Finance to promulgate regulations and create standardized forms and formats for data collection, reporting, and written disclosures will prove unworkable due to the variety of programs and services Commonwealth agencies provide. Further, where many Commonwealth programs are administered in partnership with the federal government or must be administered in compliance with federal rules and standards, our data collection standards must comport with those various federal frameworks. Finally, the timeframe for implementation of the requirements is not realistic in light of the myriad and complex technology systems that would require configuration work to execute these requirements.

For these reasons, I recommend that Section 6 be amended by striking out the section and inserting in place thereof the following section:-

SECTION 6. Said chapter 6A of the General Laws is hereby further amended by adding the following section:-

Section 105. (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Government agency”, any state agency, quasi-state agency, subdivision of a state agency, or board, commission or any other entity created by the commonwealth.

“Personal identifying information”, information: (i) that directly identifies an individual, including name, address, social security number or other identifying number or code; (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, which shall include indirect identification which can compile an identity, such as a combination of gender, race, birth date, geographic indicator and other descriptors; or (iii) that permits the physical or online contacting of a specific individual.

(b) Every government agency that collects demographic data as to the race or ethnicity of residents of the commonwealth shall, to the extent feasible, use separate collection and tabulations for the following:

(i) each major Asian group, as reported by the United States Census Bureau, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Laotian, Cambodian, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, Nepalese, Burmese, Tibetan and Thai;

(ii) each major Pacific Islander group, as reported by the United States Census Bureau, including, but not limited to, Native Hawaiian, Guamanian, Samoan, Fijian and Tongan;

(iii) each other Asian or Pacific Islander group;

(iv) each major Black or African American group, as reported by the United States Census Bureau, including, but not limited to, African American, Jamaican, Haitian, Nigerian, Ethiopian, Cape Verdean and Somali;

(v) each major Latino group, as reported by the United States Census Bureau, including, but not limited to, Mexican, Puerto Rican, Cuban, Salvadoran, Dominican and Colombian; and

(vi) each major white or Caucasian group, as reported by the United States Census Bureau, including, but not limited to, German, Irish, English, Italian, Polish, Portuguese and French.

(c) Each government agency shall, to the extent feasible, allow individuals to choose more than 1 group, write in their own group or choose the aggregate category.

(d) Except for personal identifying information, which shall be deemed confidential, each government agency shall make the data available to the public in accordance with state and federal law. This information may be maintained in either paper, electronic or other media form. To prevent identification of individuals, the information may be aggregated into data categories at a state, county, city, census tract or ZIP code level to facilitate comparisons, identify disparities and to be included in studies and reports. This subsection shall not be construed to prevent any other government agency from posting data collected on the agency’s website, in a manner prescribed in this section.

(e)(1) The secretary of administration and finance shall issue guidelines on the collection of demographic data, which shall include, but not be limited to: (i) forms for information collection; (ii) expanding the categories of race or ethnicity; (iii) formats for agencies to make data publicly available and to update said data on an annual basis; (iv) methods to ensure no personal identifying information is publicly released; (v) forms for written disclosure to the individual filling the form out that information collection is voluntary; (vi) procedures to ensure that nonparticipation in information collection shall have no impact on an individual’s eligibility for state services; and (vii) annual cost impact and review of the successfulness of collecting information.

(2) Annually, not later than August 1, the secretary of administration and finance shall file a report on the progress of data collection with the clerks of the house of representatives and senate and the joint committee on state administration and regulatory oversight.

(f) All data collected by government agencies shall be subject to both state and federal privacy laws, including, but not limited to, Title 13 of the United States Code and section 2 of chapter 93H.

And I further recommend that Section 176 be amended by striking out the section in its entirety.

And I further recommend that Section 184 be amended by striking out the section in its entirety and inserting in place thereof the following section:-

SECTION 184. Section 6 shall take effect on January 1, 2025.

Respectfully submitted,

Charles D. Baker

Governor