



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • ROOM 271
BOSTON, MASSACHUSETTS 02133
TEL: (617) 725-4030 • FAX: (617) 727-8290

DEVAL L. PATRICK
GOVERNOR

ATTACHMENT G

July 12, 2013

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, I am returning to you for amendment Section 45 of House Bill No. 3538, "An Act Making Appropriations for the Fiscal Year 2014 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."

Section 45 seeks to require that awarding authorities include price adjustment clauses in certain contracts so that if the price of fuel (diesel or gasoline), asphalt, concrete or steel varies by more than 5% per month the contract price can be adjusted accordingly. The Massachusetts Department of Transportation currently has the authority to include such provisions in its contracts. Section 45 extends that requirement to contracts for road, bridge, water and sewer projects of any awarding authority.

I am amenable to requiring price adjustment clauses for road, bridge, water and sewer projects by awarding authorities in addition to the Department of Transportation. This section, however, extends the requirement that contracts include price adjustment clauses to road, bridge, water and sewer projects awarded under Chapters 7C and 149 of the General Laws, which govern buildings and other vertical construction, and to contracts awarded under Chapter 25A of the General Laws, which concerns energy contracts, including wind

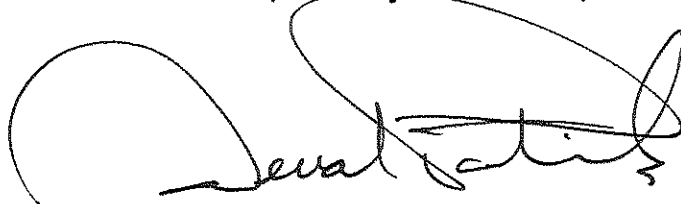
turbines and solar panel arrays. For vertical construction and energy projects, requiring a price adjustment clause is problematic, as those projects cannot be segmented in the same way that a horizontal construction project can. I note that for these projects, steel and concrete are generally ordered early in the construction process, so there is less risk that prices will fluctuate during the course of construction, and the use of asphalt for access roads, parking lots and sidewalks is incidental to the building or energy project. A fair balance can be achieved by eliminating the references to Chapters 7C, 25A and 149.

For these reasons, I recommend that Section 45 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 45. Chapter 30 of the General Laws is hereby amended by inserting after section 38 the following section:-

Section 38A. Contracts for road, bridge, water and sewer projects awarded as a result of a proposal or invitation for bids under section 39M of this chapter shall include a price adjustment clause for each of the following materials: fuel, both diesel and gasoline; asphalt; concrete; and steel. A base price for each material shall be set by the awarding authority or agency and shall be included in the bid documents at the time the project is advertised. The awarding authority or agency shall also identify in the bid documents the price index to be used for each material. The price adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds plus or minus 5 per cent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Smith", with a large, sweeping loop at the end.