

House No. 4490

Message from His Excellency the Governor recommending legislation relative to An Act providing for job creation by small businesses.

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

2/11/2010

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal entitled, “An Act Providing for Job Creation by Small Businesses.” I urge prompt passage of this important legislation to encourage small businesses to hire new workers and to help accelerate economic growth across the Commonwealth.

The bill provides a tax credit for small businesses to create thousands of new jobs. Small businesses that create and retain new jobs this year will receive a \$2,500 tax credit for each net new job they create.

This legislation also reduces business costs by freezing unemployment insurance rates for all Massachusetts businesses, by proposing essential long-term reforms of our unemployment insurance system, and by including tools for easing the burden of health care costs on small businesses.

Finally, the bill consolidates the Commonwealth’s resources for debt and equity financing for small businesses in a new Massachusetts Growth Capital Corporation.

I urge your prompt and favorable consideration of this legislation.

Sincerely,

DEVAL L. PATRICK,

Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act PROVIDING FOR JOB CREATION BY SMALL BUSINESSES. .

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to provide for job creation by small businesses, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1 To provide for a program of job creation and economic development, the
2 sums set forth in section 2A, for the several purposes and subject to the conditions specified in
3 this act, are hereby made available, subject to the laws regulating the disbursement of public
4 funds and approval thereof.

5 SECTION 2A.

6 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

7 *Office of the Secretary*

8 1100-7400 For the recapitalization of the Massachusetts Growth Capital Corporation

9

10\$25,000,000

11 6001-0817.. For the recapitalization of the grant program to provide for commercial and
12 residential transportation and infrastructure development, improvements and various capital
13 investment projects under the Growth Districts Initiative established by the executive office of
14 housing and economic development; provided, that the secretary of housing and economic
15 development, in consultation with the secretary of the Massachusetts department of
16 transportation, shall adopt, amend or continue regulations or guidelines regarding this program;
17 provided further, that annually not later than December 31, the secretary of housing and
18 economic development shall issue a written report to the clerks of the senate and house of
19 representatives, the chairs of joint committee on bonding, capital expenditures and state assets,
20 the chairs of the joint committee on transportation, the chairs of the joint committee on economic
21 development and emerging technologies, and the chairs of the senate and house committees on
22 ways and means, which shall include detailed descriptions of infrastructure improvement
23 projects funded pursuant to this program and all funds expended for this
24 purpose.....
25\$50,000,000

26 SMALL BUSINESS JOBS CREATION TAX CREDIT

27 SECTION 3. Chapter 62B of the General Laws is hereby amended by adding the following
28 section:-

29 Section 22.(a) Except as otherwise limited under subsection (g), for the 12 calendar months
30 beginning on April 1, 2010 there shall be allowed as a refundable credit to a qualified employer
31 against the tax liability imposed under this chapter, \$2,500 for each full-time employee hired
32 during such period that results in a net increase in full-time Massachusetts employees, as

33 specified in subsection (c), where the net increase in the employer's full-time Massachusetts
34 employees is maintained for at least 12 months.

35 (b) For purposes of this section:

36 (1) "Incentive period" means the 12-month period beginning April 1, 2010.

37 (2) "Full-time Massachusetts employee" means an employee who is paid wages reported
38 under chapter 62E for employment in the commonwealth and who is either:

39 (A) paid wages by the qualified employer for services of not less than an average
40 of 35 hours per week, or

41 (B) a salaried employee who was paid compensation during the taxable year for
42 full-time employment by the qualified employer;

43 but, without limitation, partners, independent contractors and household employees shall
44 not be treated as employees within the meaning of this definition.

45 (3) "Qualifying full-time employee" means a full-time Massachusetts employee hired
46 during the incentive period whose hire results in a net increase in a qualified employer's
47 full-time Massachusetts employees.

48 (4) "Employer" means, generally, an employer subject to either chapter 62B or chapter
49 151A, under rules determined by the commissioner. "Employer" may include a non-
50 profit or for-profit organization but shall not include governmental units.

51 (5) "Qualified employer" means an employer that, as of March 31, 2010, employed a total
52 of 50 or fewer full-time employees, determined without regard to the location of
53 employment of such employees.

54 (c) The net increase in full-time Massachusetts employees of a qualified employer shall be
55 determined as follows:

56 (1) The net increase in full-time Massachusetts employees, measured on an annual full-time
57 equivalent basis, shall be the total number of full-time Massachusetts employees of the
58 employer, minus the total number of full-time Massachusetts employees employed on
59 March 31, 2010 by the employer, subject to the aggregation rules of subsection (f).

60 (2) For purposes of the calculation set forth in paragraph (1), employers that begin doing
61 business in this state during the incentive period, as determined by the commissioner, shall
62 be treated as having zero Massachusetts employees on March 31, 2010.

63 (3) The net increase in the number of full-time Massachusetts employees must be sustained
64 continuously for at least 1 year, starting with the date of hire of a qualifying full-time
65 Massachusetts employee during the incentive period. However, eligibility for the credit
66 does not depend on the continuous employment of any particular individual.

67 (4) Generally, overtime hours shall not be considered in determining the number of an
68 employer's full-time equivalent employees.

69 (d) Any deduction otherwise allowed under chapter 62 or chapter 63 for wages paid shall not be
70 reduced by the amount of the credit allowed under this section.

71 (e) Amounts withheld by an employer shall be credited against the individual income tax
72 liability of employees under chapter 62, and the employees' credit for such withholding shall not
73 be affected by any refundable credit received by an employer.

74 (f) For purposes of determining whether an employer is a qualified employer under this section,
75 a trade or business carried by related persons shall be treated as one business. The commissioner
76 may adopt rules for aggregation of related businesses or employers in order to determine
77 eligibility for the credit under this section. For purposes of this determination, the employer's
78 employees shall be deemed to include the employees of any individuals or entities with which or
79 to which the employer is related within the meaning of Internal Revenue Code section 318, or as
80 otherwise determined by the commissioner.

81 (g) Eligibility for the credit shall be determined as follows:

82 (1) An employer shall become eligible for the credit on a first-come-first-served basis. The
83 date on which an application is properly submitted to the commissioner shall determine the
84 applicant's priority in claiming the credit.

85 (2) A qualified employer that has hired a qualifying full-time employee during the incentive
86 period may apply for the credit with respect to that position, on or after the date of hire of the
87 qualifying full-time employee, beginning April 1, 2010, and not before such date of hire.
88 Except as otherwise provided by the commissioner, the date of hire shall be the first day on
89 which the employee begins providing services for wage compensation.

90 (3) A qualified employer may apply for the credit for more than one qualifying full-time
91 employee, on or after the date of hire of each qualifying full-time employee.

92 (4) Notwithstanding any other provision of this section, the cumulative dollar amount of all
93 credits available under this section shall not exceed \$50,000,000. Credits, up to the
94 \$50,000,000 maximum, shall be distributed beginning April 1, 2012, to qualifying employers
95 that have made valid applications and can verify a continuous one-year net increase in full-
96 time Massachusetts employees. If the commissioner receives qualifying credit applications
97 that would result, if granted, in credits exceeding \$50,000,000, the commissioner shall give
98 priority to qualifying applications based on the date of receipt of the completed application.

99 (h) The commissioner may prescribe rules, guidelines or procedures regarding, without
100 limitation, the definition of employer, the application process, limitation on total credits
101 allowable, determination of hiring date and application date, and guidelines necessary to
102 determine whether an employer is part of a related group for purposes of determining a qualified
103 employer, as needed to carry out the purposes of this section. The commissioner may require
104 that applications be submitted in electronic form. The commissioner may disallow applications
105 to the extent that she determines, under the facts of a particular case, that there has been no bona
106 fide sustained increased in Massachusetts employment.

107 (1) A credit shall not be conferred under this section for an employee hired after April 1,
108 2012.

109 (2) Amounts paid under this section shall be paid without interest and shall be subject to
110 offset under chapters 62C and 62D for any unpaid tax or other obligations of the employer,
111 as specified therein.

112 CREATE THE MASSACHUSETTS GROWTH CAPITAL CORPORATION BY MERGING
113 THE CDFC, EST, AND MTDC

114 SECTION 4. Notwithstanding any general or special law to the contrary, the terms
115 “Massachusetts Community Development Finance Corporation”, “Economic Stabilization
116 Trust”, or “Massachusetts Technology Development Corporation”, wherever any of them
117 appears in a general or special law, shall mean the Massachusetts Growth Capital Corporation.

118 SECTION 5. Sections 8, 9, 10, 11, 12, 13, 14, and 15 of chapter 23D of the General Laws are
119 hereby repealed.

120 SECTION 6. Chapter 40G of the General Laws is hereby repealed.

121 SECTION 7. Chapter 40F of the General Laws is hereby amended by striking out the words
122 “Massachusetts Community Development Finance Corporation” wherever they appear and
123 inserting in place thereof the following words:- Massachusetts Growth Capital Corporation.

124 SECTION 8. Said chapter 40F is hereby further amended by striking out the word “CDFC”
125 wherever it appears and inserting in place thereof the following word:- GCC.

126 SECTION 9. Section 1 of said chapter 40F, as appearing in the 2008 Official edition, is hereby
127 amended by striking out the definition of “Community development corporation or “CDC””, and
128 inserting in its place the following definition:-

129 “Community Development Corporation” or “CDC”, a non-profit corporation organized under
130 chapter 180 of the General Laws, designated as a 501(c)(3) tax-exempt organization by the
131 Internal Revenue Service and which:

132 (a) focuses a substantial majority of its efforts on serving one or more specific neighborhoods or
133 municipalities, a region of the commonwealth, or a constituency that is economically
134 disadvantaged;

135 (b) has as its purpose to engage local residents and businesses to work together to undertake
136 community development programs, projects and activities which develop and improve urban,
137 rural and suburban communities in sustainable ways that create and expand economic
138 opportunities for low and moderate income people;

139 (c) demonstrates to the department of housing and community development that the CDC's
140 constituency, including low and moderate income people, is meaningfully represented on the
141 board of directors of the organization. In making this determination, the department shall
142 consider the following criteria (1) the percentage, if any, of the board is elected by the general
143 membership; (2) the percentage of the board members are residents of the service area; (3) the
144 percentage of board members that are people of low or moderate income; (4) the racial and
145 ethnic composition of the board in comparison to the racial and ethnic composition of the
146 community being serve; (5) other mechanisms, including committees, membership meetings,
147 that the organization uses to ensure that their constituency has a meaningful role in the
148 governance and direction of the organization; and (6) other criteria as determined by the
149 department.

150 SECTION 10. Said section 1 of said chapter 40F, as so appearing, is hereby further amended by
151 striking out the definition of "Corporation", and inserting in its place the following definition:-

152 "Corporation" or "GCC", the Massachusetts Growth Capital Corporation established by section
153 2.

154 SECTION 11. Said section 1 of said chapter 40F, as so appearing, is hereby further amended by
155 inserting after the definition of "Costs of projects" the following 2 definitions:-

156 “Equity investment” shall include any of the following types of investment activity: (a) a
157 purchase of stock, (b) a purchase of a partnership interest, (c) a purchase of a limited liability
158 company membership interest, or (d) a loan made on such terms that it has sufficient
159 characteristics of equity.

160 “Financial products” shall include loans, equity investments and other similar financing activities
161 including the purchase of loans originated by a certified community development financial
162 institution, the provision of loan guarantees, or the provision of surety bond guarantees.

163 SECTION 12. Said section 1 of said chapter 40F, as so appearing, is hereby further amended by
164 striking out the definition of “Primary employment”.

165 SECTION 13. Said section 1 of said chapter 40F, as so appearing, is hereby further amended by
166 striking out the definition of “Project” and inserting in place thereof the following 2 definitions:-

167 “Project”, shall mean making available financial products to small businesses or non-profit
168 corporations.

169 “Small business”, shall mean any business that has less than 250 full-time equivalent employees.

170 SECTION 14. Said section 1 of said chapter 40F, as so appearing, is hereby further amended by
171 striking the definition of “Target area” and inserting in place thereof the following:-

172 “Target area” shall mean any contiguous geographic area in which the project is located and
173 which is either (1) an economic target area designated pursuant to section 3D of chapter 23A; (2)
174 the service area of community development corporation; or (3) a zip code whose current
175 unemployment rate exceeds the state unemployment rate by at least twenty-five per cent or

176 whose mean household income is at or below 80 per cent of the state mean household income as
177 of the most recent decennial census.

178 SECTION 15. Said chapter 40F is hereby amended by striking out section 2 and inserting in
179 place thereof the following:-

180 Section 2. (a) There shall be a body politic and corporate to be known as the Massachusetts
181 Growth Capital Corporation or GCC. The GCC is hereby constituted a public instrumentality and
182 the exercise by the GCC of the powers conferred by this chapter shall be deemed to be the
183 performance of an essential governmental function.

184 The GCC is hereby placed in the executive office of housing and economic development but
185 shall not be subject to the supervision and control of any executive office, department, division,
186 commission, board, bureau or agency except to the extent and in the manner provided by law.

187 (b) The purpose of the GCC is to provide financing and technical assistance to small businesses
188 in order to: promote economic prosperity and job creation in every region of the commonwealth;
189 create, develop and sustain economically diverse communities in urban, rural and suburban areas
190 of the commonwealth; and, support low and moderate income people having access to a full
191 range of economic opportunities.

192 (c) The corporation shall consist of 11 directors, 1 of whom shall be the secretary of housing and
193 economic development and who shall serve as chair, 1 of whom shall be the undersecretary for
194 business development, 1 of whom shall be the undersecretary of housing and community
195 development, and 1 of whom shall be the secretary of administration and finance, or their
196 respective designees. The governor shall appoint the remaining 7 members, 1 of whom shall be
197 experienced in community economic development and be employed by a community

198 development corporation as defined under this chapter, 1 of whom shall represent the
199 Massachusetts Association of Community Development Corporations, 1 of whom shall have
200 experience in venture capital or private equity, 1 of whom shall be an practicing or retired
201 attorney with relevant business financing experience, 1 of whom shall have relevant business
202 banking experience, 1 of whom shall be a small business owner, and 1 of whom shall be a
203 representative of organized labor. Each member appointed by the governor shall serve a term of
204 5 years, except that in making his initial appointments the governor shall appoint 2 members to
205 serve for a term of 3 years, 2 members for a term of 4 years, and 3 members for a term of 5
206 years.

207 (d) Any person appointed to fill a vacancy in the office of a member shall be appointed in a like
208 manner and shall serve for only the unexpired term. Any member shall be eligible for
209 reappointment. Any member may be removed from his appointment by the governor only for
210 good cause. The directors shall annually elect one of their members as vice-chairman and
211 designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer
212 shall keep a record of the proceedings of the corporation and shall be the custodian of all books,
213 documents, and papers filed with the corporation, the minute books of the corporation and of its
214 official seal.

215 (e) Six of the directors of the corporation shall constitute a quorum and 6 affirmative votes shall
216 be necessary for the transaction of business or the exercise of any power or function of the
217 corporation. Each director shall be entitled to reimbursement for his actual and necessary
218 expenses incurred in the performance of his official duties.

219 (f) The corporation, its directors, officers, and employees shall be subject to sections 1 to 4,
220 inclusive, of chapter 268A, except that the corporation may purchase from, sell to, borrow from,
221 loan to, contract with or otherwise deal with any person in which any director of the partnership
222 is in any way interested or involved; provided, however, that such interest or involvement is
223 disclosed in advance to the members of the board and recorded in the minutes of the board; and
224 provided, further, that no director having such an interest or involvement may participate in any
225 decision of the board relating to such person. Employment by the commonwealth or service in
226 any agency thereof shall not be deemed to be such an interest or involvement.

227 (g) The president of the corporation shall be appointed and his salary established by the board of
228 directors. The president shall be the chief administrative and operational officer of the
229 corporation and shall direct and supervise administrative affairs and the general management of
230 the corporation. The president may employ other employees designated by the board of directors,
231 shall attend meetings of the board of directors, shall cause copies to be made of all minutes and
232 other records and documents of the corporation and shall certify that such copies are true copies,
233 and all persons dealing with the corporation may rely upon such certification.

234 (h) All officers and employees of the corporation having access to its cash and negotiable
235 securities shall give bond to the corporation at its expense in such amounts and with such surety
236 as the board may prescribe. The persons required to give bond may be included in one or more
237 blanket or scheduled bonds.

238 (i) Directors shall not be liable to the commonwealth, to the agency or to any other person as a
239 result of their activities, whether ministerial or discretionary, as such directors, except for willful

240 dishonesty or intentional violations of the law. The corporation may purchase liability insurance
241 for directors, officers, and employees, and may indemnify said persons against claims of others.

242 (j) Any documentary materials, data, or conversations made or received by any directors or
243 employee of the corporation and consisting of, or to the extent that such materials, data, or
244 conversations consist of, trade secrets or commercial or financial information regarding the
245 operation of any business conducted by an applicant for assistance which the corporation is
246 empowered to render or regarding the competitive position of such applicant in a particular field
247 of endeavor, shall not be public records of the corporation and specifically shall not be subject to
248 section 10 of chapter 66. Any discussion or consideration of such trade secrets or commercial or
249 financial information may be held by the directors in executive session closed to the public
250 notwithstanding chapter 30A, but the purpose of any such executive session shall be set forth in
251 the official minutes of the corporation and no business which is directly related to such purpose
252 shall be transacted nor shall any vote be taken in such an executive session.

253 SECTION 16. Section 3 of chapter 40F, as so appearing, is hereby amended by striking clauses
254 (o) through (r) and inserting in place thereof following 14 clauses:-

255 (o) Receive and accept from any federal or state agency and any other public or private entity,
256 grants, loans or advances for or in aid of the purposes of this chapter, and receive and accept
257 contributions from any source of either money, property, labor or other things of value, to be
258 held, used and applied for said purposes.

259 (p) Create, issue, buy and sell stock and other capital participation instruments; to hold such
260 stock and capital participation instruments and to underwrite the creation of a capital market for
261 these securities.

262 (q) Provide and pay for such advisory services and technical assistance as may be necessary or
263 desirable to carry out the purposes of this act.

264 (r) Make loans or grants to, or otherwise finance or invest in any business to further the purposes
265 of this chapter; provided however, that such financing complies with this chapter; and further
266 provided that such loans or grants may be made to community development corporations or other
267 community based nonprofit entities for the purpose of such corporations or entities providing
268 financing to businesses.

269 (s) Provide loan guarantees to public or private entities for the purpose of causing such entities to
270 provide financing to any business, in furtherance of the purposes of this chapter.

271 (t) Establish and collect such fees, charges, and interest rates as the corporation determines to be
272 reasonable.

273 (u) Require, by contract in any financing agreement, or otherwise, specific operational activities,
274 financial actions, or management changes, as conditions for the receipt of any loan, financing, or
275 investment from the trust.

276 (v) Buy, hold and sell qualified securities.

277 (w) Finance, conduct, or cooperate in financing or conducting technological, business, financial,
278 or other investigations which are related to or likely to lead to business and economic
279 development by making and entering into contracts and other appropriate arrangements,
280 including the provision of grants, loans, and other forms of assistance.

281 (x) Solicit, study, and assist in the preparation of, business plans and proposals of new or
282 established small businesses suitable for support by the corporation.

283 (y) Provide technical assistance and training programs to small businesses, with a focus on
284 serving existing and new businesses with 50 employees or fewer and small businesses located in
285 target areas or participating in a project, as defined by this chapter.

286 (z) Participate as a general partner or limited partner in a limited partnership; and to participate
287 as a member or manager in a limited liability company.

288 (aa) In addition to the powers enumerated in paragraph (p), create and issue shares which any
289 person, firm or corporation may purchase. Each share issued shall be in the form of non-voting
290 common stock with each share having a par value of 10 dollars. The total value of the shares
291 issued shall not exceed 25 million dollars.

292 (bb) Exercise any other powers or rights or responsibilities of a corporation organized under
293 chapter 156B.

294 Under no circumstances shall any debt obligation issued pursuant to this section, stock or capital
295 participation instrument created pursuant to this section or share issued pursuant to this section,
296 shall be or become an indebtedness or obligation of the commonwealth, and it shall be plainly
297 stated on the face of each bond, capital participation instrument, share or other evidence of
298 indebtedness that it does not constitute an indebtedness or obligation of the Commonwealth of
299 Massachusetts but is payable solely from the revenues or income of the Massachusetts growth
300 capital corporation.

301 SECTION 17. Section 4 of chapter 40F, as so appearing, is hereby amended by striking out the
302 third, fourth, and fifth paragraphs.

303 SECTION 18. Said chapter 40F is hereby further amended by inserting section 4A the following
304 3 sections:-

305 Section 4B. The GCC, subject to the restrictions as set forth in this section, may participate in a
306 project. The GCC shall find and incorporate in the official records of the GCC that:

307 (a) the project will be of a public benefit such that:

308 (1)The project is reasonably expected to support or promote community economic
309 development, revitalization, or stability, or the creation or expansion of a business sector
310 whose success will enhance the economic development of a target area as defined by this
311 chapter, or gateway municipalities, as defined by section 3A of chapter 23A; or

312 (2)The project will enhance the quality of life and promote employment opportunities for
313 low and moderate income residents of the commonwealth; or,

314 (3)The project will promote the creation or retention of jobs; or,

315 (4)The project will support the creation or retention of jobs or businesses in the
316 manufacturing and emerging technologies sectors.

317 Thirty percent of all GCC financing over a 3-year period shall be invested in projects under
318 clauses (1) or (2), but the board of directors may amend this percentage by a 2/3 vote.

319 (b) The GCC determines that its participation is necessary because funding for the project is
320 unavailable in the traditional capital markets.

321 (c) Provision has been made in contract for adequate reporting of financial and other data to the
322 GCC. Such provisions may include a requirement for an annual or other periodic audit of the
323 project books.

324 Such findings when adopted by the GCC shall be conclusive.

325 Section 4C. The department of housing and community development shall certify non-profit
326 organizations as community development corporations consistent with criteria set forth in section
327 1 and shall establish and maintain a list of organizations that have been certified as CDCs.
328 These organizations must be recertified at least once every 4 years.

329 Section 4D. The GCC shall file an annual report on December 15 of each year with the
330 governor, the speaker of the house of representatives, the president of the senate, the chairs of the
331 house and senate committees on ways and means, the chairs of the joint committee on housing,
332 and the chairs of the joint committee on community development and small business, detailing
333 the following:

334 (a) a list of certified CDCs in the commonwealth;

335 (b) a summary of programs, initiatives or partnerships operated by the GCC that provide
336 funding to support CDCs and their programs, projects and initiatives, and otherwise help
337 CDCs advance the purposes of this chapter; and

338 (c) recommendations, if any, for action that would enhance the ability of CDCs to advance
339 the purposes of this chapter.

340 SECTION 19. Section 14 of chapter 167 of the General Laws, as so appearing, is hereby
341 amended by striking out, in line 22, the words “and 30” and inserting in place thereof the
342 following words:-, 30 and 30A.

343 SECTION 20. Section 2 of chapter 167F of the General Laws, as so appearing, is hereby
344 amended by inserting after paragraph 30 the following paragraph:-

345 30A. To participate in the activities of the Massachusetts capital growth corporation established
346 by chapter 40F, by making capital available for an investment or deposit in or grant to the
347 corporation, an affiliate or subsidiary of the corporation, or any fund managed by the
348 corporation.

349 SECTION 21. Section 8 of chapter 324 of the acts of 1987 is hereby repealed.

350 SECTION 22. Notwithstanding any general or special law to the contrary, the comptroller shall
351 promptly transfer \$15,000,000 of the Emerging Technology Fund, established pursuant to
352 chapter 141 of the acts of 2003, to the Commonwealth Capital Growth Corporation, established
353 pursuant to chapter 40F of the General Laws.

354 SECTION 23. (a) Notwithstanding any general or special law to the contrary, this section shall
355 facilitate the orderly transfer of employees, proceedings, rules and regulations, property and legal
356 obligations of the following functions of state government from the Community Development
357 Finance Corporation, the Economic Stabilization Trust, and the Massachusetts Technology
358 Development Corporation as the transferor agencies, to the Massachusetts Growth Capital
359 Corporation, as the transferee agency;

360 (b) To the extent that employees of the transferor agency, including those who were appointed
361 immediately before the effective date of this act and who hold permanent appointment in
362 positions classified under chapter 31 of the General Laws or have tenure in their positions as
363 provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold
364 confidential positions, are transferred to the respective transferee agency, such transfers shall be
365 effected without interruption of service within the meaning of said section 9A of said chapter 31,
366 without impairment of seniority, retirement or other rights of the employee, and without
367 reduction in compensation or salary grade, notwithstanding any change in title or duties resulting
368 from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and
369 benefits, and without change in union representation or certified collective bargaining unit as
370 certified by the state division of labor relations or in local union representation or affiliation. Any
371 collective bargaining agreement in effect immediately before the transfer date shall continue in
372 effect and the terms and conditions of employment therein shall continue as if the employees had
373 not been so transferred. The reorganization shall not impair the civil service status of any such
374 reassigned employee who immediately before the effective date of this act either holds a
375 permanent appointment in a position classified under chapter 31 of the General Laws or has
376 tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding
377 any other general or special law to the contrary, all such employees shall continue to retain their
378 right to collectively bargain pursuant to chapter 150E of the General Laws and shall be
379 considered employees for the purposes of said chapter 150E. Nothing in this section shall be
380 construed to confer upon any employee any right not held immediately before the date of said
381 transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension,
382 discharge, layoff, or abolition of position not prohibited before such date.

383 (c) All petitions, requests, investigations and other proceedings appropriately and duly brought
384 before the transferor agency or duly begun by the transferor agency and pending before it before
385 the effective date of this act, shall continue unabated and remain in force, but shall be assumed
386 and completed by the transferee agency.

387 (d) All orders, rules and regulations duly made and all approvals duly granted by the transferor
388 agency, which are in force immediately before the effective date of this act, shall continue in
389 force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in
390 accordance with law, by the transferee agency.

391 (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other
392 property, both personal and real, including all such property held in trust, which immediately
393 before the effective date of this act are in the custody of the transferor agency, shall be
394 transferred to the transferee agency.

395 (f) All duly existing contracts, leases and obligations of the transferor agency shall continue in
396 effect but shall be assumed by the transferee agency. No existing right or remedy of any
397 character shall be lost, impaired or affected by this act.

398 CONTROLLING SMALL BUSINESS HEALTH CARE COSTS

399 Offering More Affordable Options: Plans with Reduced Networks of Providers;
400 also Create Open Enrollment Periods for Individuals Buying Coverage on Their Own

401

402 SECTION 24. Section 4 of chapter 176J of the General Laws, as appearing in the 2008 Official
403 Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the
404 following subsection:-

405 (a)(1) Every carrier shall make available to every eligible individual and every small business,
406 including an eligible small group or eligible individual, a certificate that evidences coverage
407 under a policy or contract issued or renewed to a trust, association or other entity that is not a
408 group health plan, as well as to their eligible dependents, every health benefit plan that it
409 provides to any other eligible individual or eligible small business. No health benefit plan may be
410 offered to an eligible individual or an eligible small business unless it complies with this chapter.
411 Upon the request of an eligible small business or an eligible individual, a carrier must provide
412 that group or individual with a price for every health benefit plan that it provides to any eligible
413 small business or eligible individual. Except under the conditions set forth in paragraph (3) of
414 subsection (a) and paragraph (2) of subsection

415 (b), every carrier shall enroll any eligible small business or eligible individual which
416 seeks to enroll in a health benefit plan. Every carrier shall permit every eligible small
417 business group to enroll all eligible persons and all eligible dependents; provided that the
418 commissioner shall promulgate regulations which limit the circumstances under which
419 coverage must be made available to an eligible employee who seeks to enroll in a health
420 benefit plan significantly later than he was initially eligible to enroll in a group plan.

421 (2) A carrier shall enroll any person who meets the requirements of an eligible individual,
422 including any person who meets the definition of eligible person as defined in section 2741 of
423 the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. section 300gg-41(b),

424 into a health benefit plan if such person requests coverage within 63 days after termination of
425 any prior creditable coverage. Coverage shall become effective within 30 days after the date of
426 application, subject to reasonable verification of eligibility.

427 (3) A carrier shall enroll an eligible individual who does not meet the requirements of paragraph
428 (2) into a health benefit plan during the mandatory open enrollment period commencing June 1
429 and ending June 30 or during the mandatory open enrollment period commencing December 1
430 and ending December 31. A carrier may hold additional open enrollment periods provided that
431 the carrier accepts all eligible individuals seeking enrollment during these additional periods. All
432 coverage is to become effective on the first day of the month following enrollment. The
433 commissioner shall promulgate regulations for the open enrollment periods permissible under
434 this section. With respect to Trade Act/Health Coverage Tax Credit Eligible Persons, a carrier
435 may impose a pre-existing condition exclusion or waiting period of no more than 6 months
436 following the individual's effective date of coverage if the Trade Act/Health Coverage Tax
437 Credit Eligible Person has had less than 3 months of continuous health coverage before
438 becoming eligible for the HCTC; or a break in coverage of over 62 days immediately before the
439 date of application for enrollment into the qualified health plan.

440 (4) As a condition of continued offer of small group health benefit plans in the commonwealth, a
441 carrier that offers a plan that (i) provides or arranges for the delivery of health care services
442 through a closed network of health care providers; and (ii) as of the close of any preceding
443 calendar year, has a combined total of 5,000 or more eligible individuals, eligible employees and
444 eligible dependents, who are enrolled in health benefit plans sold, issued, delivered, made
445 effective or renewed to qualified small businesses or eligible individuals, shall offer at least 1

446 product in the small group market that uses a reduced network of health care providers. The base
447 premium for the reduced network product shall be at least 10 percent lower than the base
448 premium of the most actuarially similar product with the carrier's most robust network of
449 providers.

450 SECTION 25. Paragraphs (1) and (2) of Section 24 shall take effect on April 1, 2010.
451 Paragraph (3) of Section 24 shall take effect on June 1, 2010. Paragraph (4) of Section 24 shall
452 take effect on July 1, 2010.

453 Moratorium on New Mandated Benefits

454 SECTION 26. It shall be the policy of the general court to impose a moratorium on all new
455 mandated health benefit legislation until July 1, 2012.

456 Allow Commissioner to Adjust Rating Rules to Save Administrative Costs

457 SECTION 27. Section 3 of said chapter 176J, as so appearing, is hereby amended by adding the
458 following 2 subsections:-

459 (f) The commissioner may conduct an examination of the rating factors used in the small group
460 health insurance market in order to identify whether any expenses or factors inappropriately
461 increase the cost in relation to the risks of the affected small group. The commissioner may
462 adopt changes to the small group regulation each July 1 for rates effective each subsequent
463 January 1 to modify the derivation of group base premium rates or of any factor used to develop
464 individual group premiums.

465 (g) For small group base rate factors applied between July 1, 2010 and June 30, 2012, a carrier
466 must limit the effect of the application of any single or combination of rate adjustment factors
467 identified in paragraphs (2) to (6), inclusive of subsection (a) used in the calculation of any
468 individual's or small group's premium so that the final annual premium charged to an individual
469 or small group does not increase by more than an amount established annually by the
470 commissioner by regulation.

471 SECTION 28. Section 26 shall take effect on July 1, 2010.

472 Strengthen DOI's Authority to Review Rates: Require Advance Filings of Small Group Health
473 Insurance Rates

474 SECTION 29. Said chapter 176J is hereby further amended by striking out section 6 and
475 inserting in place thereof the following section:-

476 Section 6. (a) Notwithstanding any general or special law to the contrary, the commissioner may
477 approve health insurance policies submitted to the division of insurance for the purpose of being
478 provided to eligible individuals or eligible small businesses. These health insurance policies shall
479 be subject to this chapter and may exclude coverages of mandated benefits and may include
480 networks that differ from those of a health plan's overall network. The commissioner shall adopt
481 regulations regarding eligibility criteria. These eligibility criteria shall require that health
482 insurance policies which exclude mandated benefits shall only be offered to small businesses
483 which did not provide health insurance to its employees as of April 1, 1992. These eligibility
484 criteria may require an employer contribution of at least 50 per cent of the health insurance
485 premium for employees. These eligibility criteria shall also provide that small businesses shall

486 not have any health insurance policies which exclude mandated benefits for more than a 5-year
487 period.

488 (b) Notwithstanding any general or special law to the contrary, the commissioner may
489 require carriers offering small group health insurance plans, including carriers licensed under
490 chapters 175, 176A, 176B or 176G, to file all changes to small group product base rates and to
491 small group rating factors at least 30 days before their proposed effective date. The
492 commissioner shall disapprove any proposed changes to base rates that are excessive,
493 inadequate, or unreasonable in relation to the benefits charged. The commissioner shall
494 disapprove any change to small group rating factors that is discriminatory or not actuarially
495 sound. Rate filing materials submitted for review by the Division shall be deemed confidential
496 and exempt from the definition of public records in clause Twenty-sixth of section 7 of chapter
497 4. The commissioner shall adopt regulations to carry out this section.

498 (c) For small group base rate changes filed to be effective any time in the period between July 1,
499 2010 and June 30, 2012, inclusive, if a carrier files for an increase in a small group product's
500 base rate over the prior year's base rate by an amount that is more than 150 per cent of the prior
501 calendar year's percentage increase in the consumer price index for medical care services, as
502 identified by the division of health care finance and policy, or if a carrier files an initial base rate
503 request that is greater than the average base rate for actuarially equivalent policies offered by
504 other small group carriers by more than 150 per cent of the prior calendar year's base premium
505 rate, such carrier's rate, in addition to being subject to all other provisions of this chapter, shall
506 be presumptively disapproved as excessive by the commissioner as set forth in this subsection.

507 (1) A carrier must communicate to all employers and individuals covered under any small
508 group product that the proposed increase has been presumptively disapproved and is
509 subject to a hearing at the division of insurance.

510 (2) The commissioner shall conduct a public hearing and shall advertise it in newspapers
511 in Boston, Brockton, Fall River, Pittsfield, Springfield, Worcester, New Bedford, and
512 Lowell, or shall notify such newspapers of the hearing.

513 (3) The commissioner shall adopt regulations to specify the scheduling of the hearings
514 required pursuant to this subsection.

515 SECTION 30. Section 28 shall take effect on July 1, 2010.

516 SECTION 31. Chapter 118G of the General Laws is hereby amended by inserting after section
517 15 the following section:-

518 Section 15A. (a) No contract for payment for hospital, physician group practice, or imaging
519 services between a provider and a carrier as defined by chapter 176O for medical, diagnostic or
520 therapeutic services shall take effect until submitted to the division of health care finance and
521 policy. The contract must be submitted by the provider to the division for review at least 30 days
522 before the proposed effective date of the contract. The division shall review such contracts to
523 determine whether provider payments under the contract, adjusted for volume and patient acuity,
524 would increase by more than the twelve month change of the Consumer Price Index for Medical
525 Care Services as of December 31 of the preceding year. The division may schedule a public
526 hearing on any proposed or existing contract.

527 (b) Any contract under which provider payments increase by an amount in excess of the
528 applicable Consumer Price Index for Medical Care Services shall be presumptively disapproved.
529 The division may conduct a hearing on any contract that is presumptively disapproved and will
530 approve or disapprove the contract based on its findings following the hearing.

531 (c) The division, in consultation with the division of insurance, shall adopt regulations in
532 accordance with chapter 30A to specify the criteria for contract review.

533 (d) Except as specifically provided otherwise by the division, information submitted to the
534 division under this section shall not be a public record under clause Twenty-sixth of section 7 of
535 chapter 4 or chapter 66.

536 (e) This section shall also apply to any contract in effect before April 1, 2010, for services
537 provided on or after April 1, 2010. The parties shall be afforded 30 days to renegotiate any
538 affected terms of these contracts.

539 (f) Providers may not shift costs to other health care payers as a result of the requirements in this
540 section. The division may adopt regulations to specify monitoring activities and enforcement
541 provisions, including financial penalties, for violation of this section.

542 SECTION 32. Section 30 shall take effect on April 1, 2010. Subsection (b) of Section 30 shall
543 cease to be effective on March 31, 2012.

544 UNEMPLOYMENT INSURANCE

545 SECTION 33. Section 2RR of chapter 29 of the General Laws, as appearing in the 2008
546 Official Edition, is hereby amended by inserting after the word “Training”, in line 3, the
547 following word:- Trust.

548 SECTION 34. Said section 2RR of chapter 29, as so appearing, is hereby further amended by
549 striking out, in lines 6 and 7, the words “Subject to appropriation, the commissioner, which in
550 this section shall have the meaning assigned by section 1 of chapter 151A” and inserting in place
551 thereof the following words:- The commissioner, which in this section shall have the meaning
552 assigned by section 1 of chapter 151A, shall be the trustee of the Fund and, without further
553 appropriation.

554 SECTION 35. Sections 3A, 20A and 25 of chapter 175 of the acts of 1998 are hereby repealed.

555 SECTION 36. Notwithstanding any general or special law to the contrary, for the fiscal year
556 2010, workforce training contributions required by section 14L of chapter 151A of the General
557 Laws that exceed \$10,000,000 shall be credited to the General Fund. Contributions not
558 exceeding \$10,000,000 for fiscal year 2010 shall continue to be credited to the Workforce
559 Training Trust Fund, established by section 2RR of chapter 29 of the General Laws.

560 SECTION 37. Section 1 of chapter 151A of the General Laws, as appearing in the 2008 Official
561 Edition, is hereby amended by inserting after the word “quarter”, in line 318, the following
562 words:- ; and provided further, that, if the wages reported are for 2 quarters and such deeming
563 renders the individual ineligible for unemployment benefits, the weekly wage shall be equal to
564 1/26 of the total wages reported.

565 SECTION 38. Section 6 of said chapter 151A, as so appearing, is hereby amended by adding
566 after subsection (x) the following subsection:-

567 (y) services performed by an officer of a corporation, a person who has more than a 5 per cent
568 equitable or debt interest in the corporation, or a family member of such officer or person, as
569 defined in paragraph (7) of subsection (k) of section 14N, except that this subsection shall not
570 include services as defined in section 3309(a) of the Internal Revenue Code.

571 SECTION 39. Section 14 of said chapter 151A, as so appearing, is hereby amended by striking
572 out paragraph (4) of subsection (a) and inserting in place thereof the following paragraph:-

573 (4) “Unemployment insurance taxable wage base”, with respect to calendar years beginning on
574 or after January 1, 2011, the term “unemployment insurance taxable wage base” shall mean
575 \$20,900. The unemployment insurance taxable wage base shall be adjusted annually by the
576 same percentage increase or decrease as the increase or decrease in the average annual wage
577 calculated for all employees covered by this chapter, as set forth in subsection (a) of section 29.

578 SECTION 40. Said section 14 of said chapter 151A, as so appearing, is hereby further amended
579 by inserting after the first sentence of subsection (f) the following sentence:-

580 All employers electing to be covered under section 14A shall also be subject to a reasonable
581 solvency charge as established by the commissioner.

582 SECTION 41. Said section 14 of chapter 151A, as so appearing, is hereby further amended by
583 inserting after the word “unit”, in line 288, the following words:- and the transferee continues
584 such organization, trade or business.

585 SECTION 42. Section 14L of said chapter 151A, as so appearing, is hereby amended by
586 inserting after the word “Training”, in lines 11 to 12, the following word:- Trust.

587 SECTION 43. Subsection (b) of section 19A of said chapter 151A, as so appearing, is hereby
588 amended by adding the following sentence:-

589 An agency or instrumentality of the commonwealth shall not enter into, renew, or extend a
590 contract or agreement with any employer to provide goods, services, or physical space with a
591 maximum obligation or value greater than \$5,000 to such agency or instrumentality or authorize
592 any tax credit under chapters 62 and 63 in excess of \$5,000 unless the employer has submitted a
593 certificate of compliance issued by the department showing that it is current in all its obligations
594 relating to contributions, payments in lieu of contributions, and the fair share employer
595 contributions specified by section 188 of chapter 149.

596 SECTION 44. Said chapter 151A of the General Laws is hereby further amended by inserting
597 after section 19A the following section:-

598 Section 19B. (a) Whenever an employer has failed to pay when due any amount required of such
599 employer under this chapter, the commissioner or his designee may serve a stop work order on
600 the employer, requiring the cessation of all business operations at the place of employment or job
601 site. The order shall take effect immediately upon its service on the employer, unless the
602 employer provides evidence, satisfactory to the commissioner or his designee, of having made
603 such payment or having entered into and is complying with a repayment agreement satisfactory
604 to the commissioner.

605 (b) Any employer who is aggrieved by the imposition of a stop work order shall have 10
606 calendar days from the date of service to appeal the order. Any employer who timely files an

607 appeal shall be granted a hearing by the commissioner or his designee in accordance with
608 subsection (b) of section. The stop work order shall not be in effect during the pendency of any
609 timely filed appeal. Any stop work order shall be rescinded if the commissioner or his designee
610 finds at the hearing that the employer has no unpaid liability or has entered into and is complying
611 with a repayment agreement satisfactory to the commissioner; otherwise the stop work order
612 shall be effective immediately on the conclusion of the hearing and shall remain in effect until
613 such time as the employer makes such payment or enters into and complies with the repayment
614 plan. The commissioner shall by regulation, establish the criteria for compliance with the
615 payment plan, including but not limited to defining the duration, compliance, and minimum
616 number of payments needed before the employer is removed from the debarment list, but the
617 employer shall not bid on or perform any publicly funded activity during the aforementioned 10-
618 day period unless the superior court temporarily enjoins the order of debarment or suspension. A
619 stop work order shall be final at the expiration of 30 days from the date of the decision if no
620 action for judicial review of the decision is commenced under chapter 30A.

621 (c) Any law enforcement agency in the commonwealth shall, at the request of the commissioner,
622 render any assistance necessary to carry out this section, including but not limited to preventing
623 any employee or other persons from remaining at a place of employment or job site after a stop
624 work order has taken effect.

625 (d) Any employee affected by a stop work order under this section shall be paid for the first 10
626 days lost under the order, and any time lost under this section not exceeding 10 days shall be
627 considered time worked under chapter 149.

628 (e) If an employer fails to comply with the requirements set forth in a stop work order, the
629 commissioner may order the cessation of all or the relevant portion of the work on the project
630 site. In addition, any employer failing to comply with the requirements set forth in the stop work
631 order shall be prohibited from contracting, directly or indirectly, with the commonwealth or any
632 of its agencies or political subdivisions or from performing any work as a contractor or
633 subcontractor, for a period of up to 3 years from the date of issuance of such order. Any
634 debarment under this section shall also apply to all affiliates of the employer, as well as any
635 successor company or corporation that the commissioner, upon investigation, determines not to
636 have a true independent existence apart from that of the violating employer.

637 (f) In cases when the decision of the commissioner or his designee is to debar the employer, the
638 debarment shall not take effect until 10 days after the issuance of the order, provided the
639 employer has filed an appeal under subsection (b).

640 (g) If any person fails to comply with the requirements set forth in any order issued by the
641 commissioner under this section, the commissioner may apply for a criminal complaint or seek
642 indictment for the violation of the appropriate section of this chapter.

643 (h) Notwithstanding subsection (b), if any civil penalty imposed by an order issued by the
644 commissioner remains unpaid beyond the time period specified for payment in that subsection,
645 the penalty amount and any restitution order, together with interest thereon at the rate of 18 per
646 cent per annum, shall be a lien upon the real estate and personal property of the person who has
647 failed to pay the penalty. The lien shall take effect by operation of law on the day immediately
648 following the due date for payment of the fine, and, unless dissolved by payment, shall be
649 considered, as of that date, a tax due and owing to the commonwealth, which may be collected

650 through the procedures provided under chapter 62C. In addition to the foregoing, no officer of
651 any corporation which has failed to pay any such penalty may incorporate or serve as an officer
652 in any corporation which did not have a legal existence as of the date the fine became due and
653 owing to the commonwealth.

654 SECTION 45. Section 25 of said chapter 151A, as so appearing, is hereby amended by striking
655 out, in lines 112-114, the words, “and in each of said weeks has earned an amount equivalent to
656 or in excess of the individuals’ weekly benefit amount after the individual has left work” and
657 inserting in place thereof the following words:- and has earned an amount equivalent to or in
658 excess of 8 times the individuals weekly benefit amount after the individual has left work.

659 SECTION 46. Said section 25 of said chapter 151A, as so appearing, is hereby further amended
660 by striking out the eighth and ninth paragraphs of subsection (e).

661 SECTION 47. Subsection (b) of section 29 of said chapter 151A, as so appearing, is hereby
662 amended by adding the following sentence:-

663 Nothing in this subsection shall permit a reduction of benefits solely because an individual quits
664 a subsidiary part-time job during his or her base period.

665 SECTION 48. Said chapter 151A of the General Laws is hereby further amended by inserting
666 after section 30B the following section:-

667 Section 30D. (a) The department may establish and operate a self-employment assistance
668 program as authorized under subsection (t) of section 3306 of the Internal Revenue Code. The
669 commissioner may adopt regulations to implement this section.

670 (b) For the purposes of this section, the term “allowance” means an amount payable in lieu of
671 regular benefits from the Unemployment Compensation Fund established under section 48 to an
672 otherwise qualified individual participating in a self-employment assistance program as defined
673 in subsection (c).

674 (c) For the purposes of this section, the term "self-employment assistance program" means a
675 program under which:

676 (1) individuals who meet the requirements described in this subsection are eligible
677 to receive an allowance in lieu of regular unemployment benefits for the purpose
678 of assisting these individuals in establishing a business and becoming self-
679 employed;

680 (2) the allowance payable to individuals under subsection (a) is payable in the
681 same amount, at the same interval, on
682 the same terms, and subject to the same conditions, as regular unemployment
683 benefits, except:

684 (i) requirements relating to active search for work, availability for work,
685 and refusal to accept work, are not applicable to such individuals;

686 (ii) requirements relating to disqualifying income are not applicable to
687 income earned from self-employment entered into by such individuals as a
688 result of their participation in self-employment assistance programs as
689 defined in this section; and

690 (iii) such individuals are considered to be unemployed for the purposes of
691 laws applicable to unemployment benefits, as long as the individuals meet
692 the requirements applicable under this section;

693 (d) Individuals may receive the allowance described in subsection (b) if the individuals:

694 (1) are eligible to receive regular unemployment benefits or would be eligible to receive
695 these benefits except for the requirements set forth in subparagraphs (i) and (ii) of
696 paragraph (2) of subsection (c). For purposes of this section, regular unemployment
697 benefits do not include additional and extended benefits;

698 (2) are identified under a worker profiling system within the first 5 weeks of the initial
699 filing of the claim as individuals likely to exhaust regular unemployment benefits;

700 (3) are participating in self-employment assistance activities affiliated with the University
701 of Massachusetts small business development centers, or their successor organizations, as
702 certified by the department of workforce development;

703 (4) are actively engaged on a full-time basis in activities, which may include training,
704 relating to the establishment of a business and becoming self-employed;

705 (5) are not individuals who have previously participated in self-employment assistance
706 programs under this section; and

707 (6) the aggregate number of individuals receiving the allowance under the program does
708 not at any time exceed 5 per cent of the number of individuals receiving regular
709 unemployment benefits at such time.

710 (e) The sum of any allowance paid under this section, excluding dependency allowances, and
711 regular benefits paid under this chapter for any benefit year shall not exceed the maximum
712 amount of benefits paid under subsection (a) of section 30 with respect to that benefit year.

713 (f) Each self-employment assistance program applicant shall provide at a minimum, in such
714 form and at such time as the commissioner may prescribe, the following information:

715 (1) a description of the proposed self-employment;

716 (2) a description of the applicant's knowledge of and experience in self-
717 employment or the applicant's knowledge of and experience with the particular
718 product to be manufactured, produced, processed, distributed or sold or service to
719 be provided;

720 (3) the names and addresses of the applicant's previous employers during the 2
721 years immediately preceding the date of applying for regular unemployment
722 insurance benefits;

723 (4) a description of the applicant's work activity and the applicant's previous
724 employer's activity at the work locations to which the applicant was assigned
725 during this 2 year period; and

726 (5) any other information that the commissioner may require.

727 (g) Not later than 3 years after the establishment of the self-employment assistance program, the
728 commissioner shall review and evaluate the performance of the program based on, but not
729 limited to the following criteria:

730 (1) demographic characteristics of participants;

- 731 (2) satisfaction with the program;
- 732 (3) participation in the program;
- 733 (4) overall employment outcomes;
- 734 (5) impact on unemployment insurance benefits; and
- 735 (6) any recommendations on changes to the program.

736 (h) Any allowances paid under this section shall be charged to employers as provided under
737 section 14 or section 14A, whichever is applicable, relating to the charging of regular
738 unemployment benefits.

739 SECTION 49. Section 46 of said chapter 151A, as amended by section 82 of chapter 27 of the
740 acts of 2009, is hereby further amended by inserting after subsection (i) the following
741 subsection:-

742 (k) Notwithstanding any general or special law to the contrary, the commissioner may
743 participate in the Joint Enforcement Task Force on the Underground Economy and Employee
744 Misclassification established by Executive Order Number 499 and may share information
745 secured under this chapter with members of the Task Force as specified in section 2 of the
746 executive order for the purpose of fulfilling the mission of the Task Force.

747 SECTION 50 Said chapter 151A of the General Laws is hereby further amended by inserting
748 after section 47A the following section:-

749 Section 47B. (a) No employer shall discharge, discipline, penalize or in any manner discriminate
750 against any employee because the employee has filed a claim or instituted or caused to be

751 instituted any proceeding under this chapter, or has testified or is about to testify in any such
752 proceeding or because of the exercise by such employee on behalf of himself or others of any
753 right afforded by this chapter.

754 (b) Any employee who believes that he has been discharged, disciplined, penalized, or otherwise
755 discriminated against by any person in violation of this section may file a complaint with the
756 commissioner alleging violation of subsection (a). Upon receipt of any such complaint, the
757 commissioner or the commissioner's authorized representative shall hold a hearing. After the
758 hearing, the commissioner shall send each party a written copy of the commissioner's decision.
759 The commissioner may award the employee all appropriate relief including rehiring or
760 reinstatement to the employee's previous job, payment of back wages, and reestablishment of
761 employee benefits to which the employee otherwise would have been eligible if the employee
762 had not been discharged, disciplined, penalized, or discriminated against. Any employer who
763 has been found to have violated subsection (a) shall be liable to pay the employee's reasonable
764 attorney's fees and costs. Any party aggrieved by the decision of the commissioner may appeal
765 the decision to the superior court under chapter 30A.

766 (c) The commissioner may request the attorney general to bring an action in the superior court
767 for injunctive relief requiring compliance with any award, decision, or judgment issued by the
768 commissioner under this section.

769 (d) Nothing in this section shall prohibit the commissioner from referring this matter to the
770 attorney general for prosecution under section 47.

771 SECTION 51. Section 71 of said chapter 151A of the General Laws, as so appearing, is hereby
772 amended by striking out the second paragraph and inserting in place thereof the following

773 paragraph:-

774 Notice of any such redetermination shall be promptly given to the parties entitled to
775 notice of the original determination, in the manner prescribed in this chapter with respect to
776 notice of an original determination. If the amount of benefits would be increased upon such
777 redetermination, an appeal from the redetermination solely with respect to the matters involved
778 in such increase may be filed in the manner and subject to the limitations provided in sections 39
779 and 40.. If the amount of benefits would be decreased upon such redetermination, the matters
780 involved in the decrease shall be subject to review in connection with an appeal by the claimant
781 thereon or from any determination upon a subsequent claim for benefits which may be affected
782 in amount or duration by the redetermination. Any proposed decrease or increase of the amount
783 of benefits based upon the redetermination shall not take effect if any party seeks timely review
784 in accordance with subsection (b) of section. Subject to the same limitations and for the same
785 reasons, the commissioner may reconsider the determination in any case in which a decision has
786 been rendered by the board of review or a court, and may apply to the board or court which
787 rendered the decision to revoke or modify the decision, and the board of review or court may
788 affirm, modify or revoke the decision.

789 SECTION 52. Notwithstanding subsection (i) of section 14 of chapter 151A of the General
790 Laws, for calendar year 2010, the experience rate of an employer qualifying for the rate under
791 subsection (b) of said section 14 shall be the rate which appears in the column designated "E" in
792 paragraph (1) of subsection (i) of said section 14.

793 SECTION 53. Sections 32, 33, 34, 35, 36, 37, 38 and 40 shall take effect on January 1, 2011.

794

EXTENSION OF CERTAIN PERMITS

795 SECTION 54. (a) As used in this section, the following words shall have the following
796 meanings:

797 “Approval”, means, except as otherwise provided in this section, any permit, certificate,
798 order excluding an enforcement order, license, certification, determination, exemption, variance,
799 waiver, building permit, or other approval or determination of rights from any municipal,
800 regional or state governmental entity, including any agency, department, commission, or other
801 instrumentality thereof, concerning the use or development of real property, including
802 certificates, licenses, certifications, determinations, exemptions, variances, waivers, building
803 permits, or other approvals or determination of rights issued or made pursuant to chapter 21,
804 chapter 21A excepting section 16, chapter 21D, sections 61 to 62H, inclusive, of chapter 30,
805 chapters 30A, 40, 40A to 40C, inclusive, 40R, 41, 43D, section 21 of chapter 81, chapter 91,
806 131, 131A or 143, section 4 or 5 of chapter 249, or chapter 258 of the General Laws, or chapter
807 665 of the acts of 1956; or any local bylaw or ordinance.

808 “Development”, means the division of a parcel of land into two or more parcels, the
809 construction, reconstruction, conversion, structural alteration, relocation or enlargement of any
810 building or other structure or facility, or of any grading, soil removal or relocation, excavation or
811 landfill or any use or change in the use of any building or other structure or land or extension of
812 the use of land.

813 “Tolling Period”, means the period beginning January 1, 2008 and continuing through
814 January 1, 2011.

815 (b) For any approval in effect or existence during the tolling period, in addition to the lawful
816 term of the approval, the approval shall be extended for a period of 3 years.

817 (c) Nothing in this section shall be deemed to extend:

818 (1) any permit or approval issued by the government of the United States or any agency
819 or instrumentality thereof, or to any permit or approval by whatever authority issued of
820 which the duration of effect or the date or terms of its expiration are specified or
821 determined by or pursuant to law or regulation of the federal government or any of its
822 agencies or instrumentalities; or

823 (2) any permit, license, privilege or approval issued by the division of fisheries and
824 wildlife pursuant to chapter 131 for hunting, fishing or aquaculture.

825 (d) Nothing in this section shall affect the ability of any municipal, regional or state
826 governmental entity, including any agency, department, commission, or other
827 instrumentality thereof to revoke or modify a specific permit or approval, or extension
828 thereof pursuant to this section, when that specific permit or approval or the law or
829 regulation under which the permit or approval was issued contains language authorizing
830 the modification or revocation of the permit or approval.

831 (e) If any approval tolled pursuant to this section is based upon the connection to a
832 sanitary sewer system, the approval's extension shall be contingent upon the availability
833 of sufficient capacity, on the part of the treatment facility, to accommodate the
834 development whose approval has been extended. If sufficient capacity is not available,
835 those permit holders whose approvals have been extended shall have priority with regard
836 to the further allocation of gallonage over those approval holders who have not received
837 approval of a hookup before the effective date of this section. Priority regarding the
838 distribution of further gallonage to any permit holder who has received the extension of
839 an approval pursuant to this Act shall be allocated in order of the granting of the original
840 approval of the connection.

841 (f) Nothing in this section shall be construed or implemented in such a way as to modify
842 any requirement of law that is necessary to retain federal delegation to, or assumption by,
843 the commonwealth of the authority to implement a federal law or program.

844 INFRASTRUCTURE FINANCING

845 SECTION 55. Section 1 of chapter 40Q of the General Laws, as appearing in the 2008 Official
846 Edition, is hereby amended by inserting the following definition:-

847 “Adjustment factor”, for each fiscal year of the term of a given development program, the
848 product of the inflation factors for each fiscal year subsequent to the first fiscal year immediately
849 following the base date.

850 SECTION 56. Said section 1 is hereby further amended by striking out in the definition of
851 “Development program”, clause (8) and inserting in its place the following clause:-

852 (8) the duration of the program which shall not exceed the longer of (i) 30 years from the date of
853 designation of the district or (ii) 30 years from project stabilization (as defined in the
854 development program).

855 SECTION 57. Said section 1 is hereby amended by striking out the definition of “Inflation
856 factor” and inserting in place thereof the following definition:

857 "Inflation factor", if the city or town has not included an election statement in its invested
858 revenue district development program, a ratio: (1) the numerator of which shall be the total
859 assessed value of all parcels of residential, commercial and industrial real estate that are assessed
860 at full and fair cash value for the current fiscal year minus the new growth adjustment factor for

861 the current fiscal year attributable to the residential, commercial and industrial real estate as
862 determined by the commissioner of revenue pursuant to paragraph (f) of section 21C of chapter
863 59; and (2) the denominator of which shall be the total assessed value for the preceding fiscal
864 year of all the parcels included in the numerator; provided, however, the ratio shall not be less
865 than 1. In the event that the proposed Invested Revenue District does not include residential
866 property, then the assessed value attributable to residential property shall not be included in
867 either the numerator or the denominator in calculating the inflation factor.

868 SECTION 58. Said section 1 is hereby further amended by striking out in the definition of
869 “Invested revenue district development program” between subparagraphs (6) and (7) the word
870 “and”.

871 SECTION 59. Said section 1 is hereby further amended by inserting in the definition of
872 “Invested revenue district program” after clause (7) the following clause:-

873 , and (8) if applicable, a statement of the city or town electing that the original assessed value not
874 be increased by the adjustment factor.

875 SECTION 60. Said section 1 is hereby further amended by striking out the definition of
876 “Original assessed value” and inserting in its place the following definition:-

877 "Original assessed value", the aggregate assessed value of the invested revenue district as of the
878 base date. If the city or town has not included an election statement in its investment district
879 development program, the original assessed value in any year shall be equal to the original
880 assessed value as of the base date multiplied by the adjustment factor for that fiscal year.

881

SMALL BUSINESS REGULATORY STATEMENTS

882 SECTION 61. Section 2 of chapter 30A of the General Laws, as so appearing, is hereby
883 amended by inserting after the third paragraph the following paragraph:-

884 The notice shall also include an estimate of the proposed regulation’s fiscal effect including that
885 on the public and private sector, for its first and second year, and a projection over the first 5-
886 year period, or a statement of no fiscal effect. Unless the proposed regulation has the purpose of
887 setting rates within the commonwealth, the notice shall also include a statement considering the
888 impact of the proposed regulation on small business. This statement of consideration shall
889 include, but not be limited, to a description of the projected reporting, record keeping and other
890 compliance requirements of the proposed regulations, the appropriateness of performance
891 standards versus design standards and an identification of all relevant regulations of the adopting
892 agency that may duplicate or conflict with the proposed regulation.

893 SECTION 62. Section 3 of said chapter 30A, as so appearing, is hereby amended by inserting
894 after the third paragraph the following paragraph:-

895 The notice shall also include an estimate of the proposed regulation’s fiscal effect
896 including that on the public and private sector, for its first and second year, and a projection over
897 the first 5-year period, or a statement of no fiscal effect. Unless the proposed regulation has the
898 purpose of setting rates within the commonwealth, the notice shall also include a statement
899 considering the impact of the proposed regulation on small business. This statement of
900 consideration shall include, but not be limited, to a description of the projected reporting, record
901 keeping and other compliance requirements of the proposed regulations, the appropriateness of

902 performance standards versus design standards and an identification of all relevant regulations of
903 the adopting agency that may duplicate or conflict with the proposed regulation.

904 SECTION 63. Section 5 of said chapter 30A, as so appearing, is hereby amended by striking out
905 the second paragraph.