

HOUSE No. 4303

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

AN ACT IMPLEMENTING FISCAL STABILITY MEASURES FOR FISCAL YEAR 2010..

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 certain unanticipated obligations of the commonwealth, to provide for an
2 alteration of purpose for current appropriations, and to meet certain requirements of law, the
3 sums set forth in section 2A are hereby appropriated from the General Fund unless specifically
4 designated otherwise in this section, for the several purposes and subject to the conditions
5 specified in this section, and subject to the laws regulating the disbursement of public funds for
6 the fiscal year ending June 30, 2010. These sums shall be in addition to any amounts previously
7 appropriated and made available for the purposes of those items.

8 **SECTION 2A.**

9 **EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

10 Department of State Police

11 8100-0515 For the estimated expenses of hiring, equipping and training state police
12 recruits to maintain the strength of the state police; provided, that 100 per cent of the amount
13 appropriated in this item shall be imposed as a policy surcharge and collected and remitted to the

14 commissioner of insurance in accordance with section 116E of chapter 6 of the General Laws
15 \$3,200,000

16 Municipal Police Training Committee

17 8200-0210 For the expanded annual training programs for veteran and reserve
18 municipal police officers and expanded recruit training conducted by the municipal police
19 training committee, including development and delivery of distance learning programs for
20 municipal police officers, and development and execution of a standards and evaluations
21 program for training courses and instructors of or certified by the committee; provided, that
22 notwithstanding any general or special law to the contrary, the training fee for new recruits of
23 municipal police departments and those law enforcement officers employed by agencies of the
24 commonwealth who exercise police powers, including but not limited to environmental police
25 officers and campus police officers of the University of Massachusetts and state colleges who
26 exercise police powers, shall be covered by this item; and provided further, that 100 per cent of
27 the amount appropriated in this item, including fringe benefit charges, shall be imposed as a
28 policy surcharge and collected and remitted to the commissioner of insurance in accordance with
29 section 116E of chapter 6 of the General Laws \$3,100,000

30 End Suffolk County Holidays

31 SECTION 3. Clause Eighteenth of section 7 of chapter 4 of the General Laws, as
32 appearing in the 2008 Official Edition, is hereby amended by striking out the second sentence.

33 Insurance Surcharge for Training by Municipal Police Training Committee

34 SECTION 4. Chapter 6 of the General Laws is hereby amended by inserting after section
35 116E the following section:-

36 Section 116F. (a) Sums for the estimated expenses of providing annual in-service
37 specialized and statutorily-mandated training programs conducted by the municipal police
38 training committee for veteran and reserve municipal police officers and for those officers
39 employed by agencies of the commonwealth who exercise police powers and receive this
40 training from the municipal police training committee, including but not limited to
41 environmental police officers and campus police officers of the University of Massachusetts and
42 state colleges who exercise police powers, shall be paid to the commissioner of insurance by
43 property and casualty insurance companies writing motor vehicle insurance policies in the
44 commonwealth by means of a policy surcharge imposed upon the policyholder of any private
45 passenger automobile policy issued by any property and casualty insurance company writing
46 motor vehicle insurance policies in the commonwealth. These programs shall include new
47 recruit training provided by the municipal police training committee; development and delivery
48 of distance learning programs by the municipal police training committee; a standards and
49 evaluations program for training courses and instructors of or certified by the municipal police
50 training committee; the development and updating of training programs including curricula by
51 the municipal police training committee, hiring, equipping, and training new state police recruits;
52 and the development and operation of a state police cadet program including the hiring,
53 equipping, and training of state police cadets, subject to appropriation, and the estimated cost of
54 fringe benefits associated with this training hiring and employment. The amount of any
55 surcharge shall be separately stated on either a billing or policy declaration sent to an insured.
56 The rate of the policy surcharge shall be determined and adjusted annually by the commissioner

57 of insurance to a rate sufficient to generate a surcharge to fund the expenses estimated by the
58 secretary of public safety and security for the purposes described above.

59 (b) The policy surcharge shall be collected and remitted to the commissioner of insurance
60 by the property and casualty insurance companies writing motor vehicle insurance policies in the
61 commonwealth on a quarterly basis on or before the twenty-fifth day of the month succeeding
62 the end of the quarter in which it is collected. Any company failing or refusing to collect and
63 remit to the commissioner of insurance any policy surcharge or whose surcharge payments are
64 not postmarked by the due dates for quarterly filing shall be liable for a penalty of up to \$100 for
65 each day of delinquency, to be assessed by the commissioner of insurance. The estimated costs
66 shall include an amount equal to the cost of fringe benefits as established by the secretary of
67 administration and finance under section 5D of chapter 29. Any surcharge collected in a fiscal
68 year but not expended by the municipal police training committee or department of state police
69 for the purposes set forth in this section shall be retained by the commonwealth for use by the
70 municipal police training committee or department of state police. The retained surcharge shall
71 be credited against the amounts required to be collected under this section in the following year,
72 and those required payments shall be reduced by the amount of this credit.

73 Shared Services for Executive Offices

74 SECTION 5. Chapter 6A of the General Laws is hereby amended by inserting after
75 section 7 the following section:-

76 Section 7A. Each secretary may, notwithstanding any general or special law to the
77 contrary, identify administrative processing activities and functions common to the state agencies
78 within the executive office and may designate such functions as core administrative processing

79 functions. To improve administrative efficiency and preserve fiscal resources, the secretary may
80 direct that core administrative processing functions be performed by the executive office or by
81 one or more state agencies designated by the secretary to perform those functions. Common
82 activities and functions that may be designated as core administrative processing functions
83 include without limitation human resource functions including payroll processing; information
84 technology services; leasing and facility management services; financial management services,
85 such as budgeting, procurement, contract management, and accounts payable/receivable
86 functions; and other administrative processing functions. Upon designation of a function as a
87 core administrative processing function, the secretary may direct that employees of each state
88 agency who perform those functions be transferred to the executive office or to any state agency
89 designated by the secretary to perform core administrative processing functions. Nothing in this
90 section shall waive the responsibility of each agency head to certify obligations and expenditures
91 for appropriations and other legally available funds of the agency pursuant to section 3 of chapter
92 7A, the responsibilities of an agency head pursuant to state finance law including but not limited
93 to sections 19, 20, 24, 26 and 27 of chapter 29, and the responsibility of an agency head to certify
94 work by employees of the agency pursuant to section 31 of chapter 29. An agency head may not
95 delegate agency head signature authorization to any individual who is not an employee of the
96 agency. The executive office or any state agencies designated to perform core administrative
97 processing functions may charge the state agencies that receive such services for the reasonable
98 costs of providing the services. Any employee transfers that occur in connection with the
99 consolidation of core administrative processing functions within the executive office or state
100 agencies shall not: (a) impair the civil service status of any such transferred employee who
101 immediately before the effective date of this act either holds a permanent appointment in a

102 position classified under chapter 31 or has tenure in a position by reason of section 9A of chapter
103 30; or (b) impair or change an employee's status, rights, or benefits under chapter 150E.

104 Owner Controlled Insurance Program for Construction Projects

105 SECTION 6. Chapter 30 of the General Laws is hereby amended by inserting after
106 section 39S the following section:-

107 Section 39T. Notwithstanding section 8 of chapter 268A, the following agencies may
108 implement competitively procured owner controlled insurance programs, and may permit the
109 use of contractor controlled insurance programs, on projects having estimated construction costs
110 equal to or greater than \$50,000,000: (a) the division of capital asset management and
111 maintenance, (b) the department of highways, (c) the Massachusetts Port Authority, the
112 Massachusetts Water Resources Authority, (d) the Massachusetts State Colleges Building
113 Authority, and (e) the University of Massachusetts Building Authority.

114 Improve “Qualifications Based Selection” for Transportation Construction Procurements

115 1

116 SECTION 7. Clause (32A) of subsection (b) of section 1 of chapter 30B of the General
117 Laws, inserted by section 41 of chapter 25 of the acts of 2009, is hereby amended by inserting
118 after the word “professionals” the following words:- , except as provided in section 21.

119 SECTION 8. Section 21 of said chapter 30B, as appearing in section 45 of said chapter
120 25, is hereby amended by striking out subsections (b), (c), (d) , (e), (f), (g), (h), (i) and (j) and
121 inserting in place thereof the following subsections:-

122 (b) For those agencies that prequalify architectural, engineering, and related services, the
123 agency shall require firms engaged in the lawful practice of their profession to submit a
124 statement of qualifications and performance data every 3 years to the agency pursuant to the
125 terms and schedule as determined by the agency. Agencies that prequalify have the option of
126 selecting a firm or firms from their prequalified list of firms based on the agency policies and
127 without further publicly advertising the selection.

128 (c) Whenever a public works project requiring architectural, engineering or related
129 professional services is to be advertised by an agency, the agency shall provide no less than 14
130 days advance notice published in a professional services bulletin or advertised on the official
131 agency website setting forth the public works project and services to be procured. The
132 professional services bulletin shall be made available to each firm that requests the information.
133 The professional services bulletin shall include a description of each public works project and
134 shall state the time and place for an interested firm to submit a statement of qualifications and, if
135 required by the public notice, a letter of interest and technical proposal. If the agency determines
136 that a sole source selection of a qualified firm is in the best interest of the agency, then the public
137 notice provisions of this subsection shall not apply.

138 (d) An agency shall evaluate the firms submitting statements of qualifications, taking into
139 account qualifications, letters of interest and/or technical proposals, and the agency may
140 consider, but shall not be limited to considering, ability of professional personnel, past record
141 and experience, performance data on file, willingness to meet time requirements, location,
142 workload of the firm and any other qualifications based on factors that the agency may determine
143 in writing are applicable. The agency may conduct discussions with and require presentations by
144 firms deemed to be the most qualified regarding their qualifications, approach to the public

145 works project and ability to furnish the required services. An agency shall not, before selecting a
146 firm for negotiation, seek formal or informal submission of verbal or written estimates of costs or
147 proposals in terms of dollars, hours required, percentage of construction cost or any other
148 measure of compensation.

149 (e)(1) An agency shall select architects, engineers and related professional firms on the
150 basis of qualifications for the type of professional services required, and on technical proposals,
151 if submitted. An agency may solicit or use pricing policies and proposals or other pricing
152 information to determine consultant compensation only after the agency has selected a firm and
153 initiated negotiations with the selected firm.

154 (2) The procedures that an agency creates for the screening and selection of firms shall be
155 within the sole discretion of the agency and may be adjusted to accommodate the agency's scope,
156 schedule and budget objectives for a particular public works project.

157 (3) The decision of an agency that has complied with this chapter shall be final and
158 bonding.

159 (f)(1) The agency and the selected firm shall discuss and refine the scope of services for
160 the public works project and shall negotiate conditions including, but not limited to,
161 compensation level and performance schedule based on scope of services. The compensation
162 level paid shall be reasonable and fair to the agency as determined solely by the agency. In
163 making such determination, the agency shall take into account the estimated value of the services
164 to be rendered and the scope, complexity and professional nature thereof.

165 (2) If the agency and the selected firm are unable for any reason to negotiate a contract at
166 a compensation level that is reasonable and fair to the agency, the agency shall, in writing,

167 formally terminate negotiations with the selected firm. The agency shall then negotiate with the
168 second ranked most qualified firm. The negotiation process shall continue in this manner through
169 successive ranked firms until an agreement is reached or the agency terminates the consultant
170 contracting process.

171 (g) This chapter shall not apply to the procurement of architectural, engineering, and
172 related professional services by agencies: (i) when an agency determines in writing that it is in
173 the best interest of the agency to proceed with the immediate selection of a firm; (ii) in
174 emergencies when immediate services are necessary to protect the public health and safety, or;
175 (iii) when these services are to be provided as part of a design-build project, pursuant to sections
176 14 through 21 of chapter 149A.

177 (h) Each agency shall evaluate the performance of each firm upon completion of a
178 contract. That evaluation shall be made available to the firm which may submit a written
179 response.

180 Commonwealth Corporation and Economic Stabilization Trust GIC Participation

181 SECTION 9. Section 2 of chapter 32A of the General Laws, as appearing in the 2008
182 Official Edition, is hereby amended by inserting after the word "Center", in line 13 the following
183 words: - Commonwealth Corporation, Economic Stabilization Trust

184 Clarify Tax Laws for Condominium Associations 1

185 SECTION 10. Chapter 62 of the General Laws is amended by inserting after section 5A
186 the following section:-

187 Section 5C. An unincorporated association within the definition of and electing to be
188 treated as a homeowners association under section 528(c) of the Code for a taxable year shall be
189 subject to tax under this chapter on its income as a resident individual for the taxable year. Its
190 gross income shall be calculated under paragraph (a) of section 2 of this chapter, and its taxable
191 income shall be defined as in section 528(d)(1) and (3) of the Code, to the extent consistent with
192 the law of the commonwealth. Such associations shall not be allowed the deductions or
193 exemptions under section 3. The modifications under section 528(d)(2) of the Code shall not
194 apply in determining taxable income for purposes of this chapter.

195 Tax Administration #1: Partnership Audits

196 SECTION 11. Chapter 62C of the General Laws is hereby amended by inserting after
197 section 24 the following section:-

198 Section 24A. (a) Tax treatment of pass-through entity items is established at the entity
199 level. The commissioner may audit, in a unified proceeding, a pass-through entity whose
200 members or indirect owners are subject to tax under chapters 62 or 63. Pass-through items of
201 entities subject to unified audit procedures must be treated consistently by the pass-through
202 entity and all members or indirect owners of the pass-through entity, except to the extent that a
203 taxpayer member or indirect owner makes a declaration of inconsistency with its original return.
204 For purposes of chapter 62C, the entity is a taxpayer.

205 (b) The statute of limitations for assessing tax with respect to a pass-through entity item
206 for an entity's taxable year shall not expire before the later of (i) 3 years after the later of the date
207 on which the entity's return for the taxable year was filed, or the last day for filing the entity's
208 return for that year, without extensions, or (ii) an assessment period established in section 26

209 applicable to a taxpayer member or indirect owner. Subsections (d) and (h) of section 26 shall
210 apply to returns filed by a pass-through entity. A member or indirect owner of a pass-through
211 entity may file a request for an adjustment of tax attributable to any pass-through entity item for
212 a taxable year within 3 years after the later of the date on which the entity's return for the taxable
213 year was filed, or the last day for filing the entity's return for that year, without extensions; such
214 request may not be filed, however, after the commissioner has issued a final entity administrative
215 adjustment. Partial or full denial of a request for adjustment of tax will be treated as a refusal to
216 abate or refund tax under section 39.

217 (c) Assessment of a deficiency attributable to any pass-through entity item against
218 members or indirect owners of entities subject to unified audit proceedings is made only after
219 entity-level proceedings are complete. Matters determined in a unified audit proceeding are not
220 subject to dispute by the individual members or indirect owners. The commissioner shall
221 establish by regulation the types of pass-through entities subject to unified audit proceedings
222 (which may include, without limitation, partnerships and S corporations), and the requirements
223 imposed on these entities, including the designation of a tax matters partner. Insofar as
224 practicable, these requirements shall be based on federal rules.

225 Tax Administration #2: Interest Charge on Installment Sales 1

226 SECTION 12. Said chapter 62C of the General Laws is hereby further amended by
227 inserting after section 32 the following section:-

228 Section 32A. (a) If an obligation from an installment transaction to which subsections (a)
229 to (c) of section 453A of the Code applies is outstanding as of the close of any taxable year, the
230 tax imposed by chapter 62 or 63 for such taxable year shall be increased by the amount of

231 interest equal to the product of the applicable percentage of the deferred tax liability determined
232 under Code section 453A(c) adjusted for Massachusetts differences, including use of the
233 applicable tax rate under chapter 62 or 63, as the case may be, multiplied by the underpayment
234 rate in effect under subsection (a) of section 32.

235 (b) In the case of any installment obligation to which paragraph (2)(B) of subsection
236 453(l) of the Code applies, the tax imposed by chapter 62 or 63 for any tax year in which
237 payment on such obligation is received shall be increased by an amount of interest determined as
238 follows: the amount of tax for such taxable year attributable to such payments on installment
239 obligations to which this subsection applies shall be multiplied by the underpayment rate
240 determined under subsection (a) of section 32 in effect at the time of sale, which rate shall be
241 applied for the period beginning on the date of sale and ending on the date such payment is
242 received.

243 (c) The commissioner may issue rules or regulations analogous to those under sections
244 453A and 453 adjusted to reflect Massachusetts differences or to otherwise take account of
245 Massachusetts tax laws.

246 Tax Administration #3: Confidentiality of Internal DOR Settlement Communications

247 SECTION 13. Section 37C of said chapter 62C of the General Laws, as appearing in the
248 2008 Official Edition, is hereby amended by adding the following subsection:-

249 (g) Communications between or among department of revenue employees or
250 contractors with regard to proposed or completed settlements under this section shall
251 be confidential and not subject to disclosure to the taxpayer or any other party, but such

252 communications may be disclosed to the attorney general in conjunction with the review or
253 reporting of settlements as provided in this section.

254 Clarify Tax Laws for Condominium Associations 2

255 SECTION 14. Section 68C of chapter 63 of the General Laws, as appearing in the 2008
256 Official Edition, is hereby amended by striking out clause (9) and inserting in its place the
257 following two clauses:-

258 (9) an unincorporated entity within the definition of and electing to be treated as a
259 homeowners association under section 528(c) of the Code and subject to tax for the taxable year
260 as provided in section 5C of chapter 62; or

261 (10) a business corporation otherwise expressly exempted from the excise under this
262 chapter by any other general law.

263 Used Car Values

264 SECTION 15. Section 4 of Chapter 64I of the General Laws, as appearing in the 2008
265 Official Edition, is hereby amended by striking out the second paragraph and inserting in place
266 thereof the following paragraph:-

267 Notwithstanding this section, the excise imposed by section 2 upon the storage, use or
268 other consumption of motor vehicles or trailers shall be paid by the purchaser to the registrar of
269 motor vehicles in the manner prescribed by the commissioner. The vendor thereof shall not add
270 the tax to the sales price and shall not collect the tax from the purchaser. The vendor thereof
271 shall, however, furnish to the purchaser, the registrar and the commissioner a sworn statement of
272 the sale upon a form prescribed by the commissioner, giving such information as the

273 commissioner may require for the determination of such tax. For purposes of such determination,
274 the sales price of any motor vehicle, except a motor vehicle purchased from a vendor registered
275 under this chapter who is regularly engaged in the business of making sales at retail of such
276 motor vehicles, shall be the actual amount paid by the purchaser to the vendor for said motor
277 vehicle or the clean trade-in value of said motor vehicle, whichever is greater regardless of the
278 actual condition of the vehicle. "Clean trade-in value" for a motor vehicle shall mean the clean
279 trade-in value or equivalent or successor values listed in the National Automobile Dealers
280 Association used car guide or other value guides whether published in print or electronically or
281 default values as determined jointly by the commissioner and registrar. The commissioner may
282 establish rules and regulations for accepting values below these values based on the condition of
283 the vehicle at the time of sale or other factors as may be appropriate.

284 Tax Administration #4: Updated Chart for Use Tax Reported on Form 1 – 1

285 SECTION 16. Section 4A of chapter 64I of the General Laws, as appearing in the 2008
286 Official Edition, is hereby amended by striking out the table appearing in lines 26 – 32 and
287 inserting in place thereof the following table:-

288	MA AGI Per Return	Use Tax Liability
289	\$0 - \$25,000	\$ 0.00
290	\$25,001 - \$40,000	\$20.00
291	\$40,001 - \$60,000	\$31.00
292	\$60,001 - \$80,000	\$44.00
293	\$80,001 - \$100,000	\$56.00

294 Above \$100,000 (Multiply MA AGI by .000625)

295 Improve “Qualifications Based Selection” for Transportation Construction Procurements

296 2

297 SECTION 17. Section 8A of chapter 81 of the General Laws is hereby repealed.

298 Municipal Red Light Cameras

299 SECTION 18. Chapter 90 of the General Laws is hereby amended by inserting after

300 section 20A1/2 the following section:-

301 Section 20A3/4. (a) Notwithstanding any general or special law to the contrary, any city
302 or town may, upon the acceptance of this section and in accordance with section 2 of chapter 85,
303 employ a “monitoring system” along any portion of any way within its control and may adopt
304 local measures imposing a monetary penalty on the owner of a motor vehicle for failure by its
305 operator to comply with the laws, codes, regulations, by-laws, ordinances, rules or other forms of
306 legislation governing the traffic control signals in the city or town in which the monitoring
307 system is located.

308 (b) (1) As used in this section, the following words shall have the following meanings:

309 “Local measure”, an ordinance, rule, by-law, code or regulation adopted by any city or
310 town, establishing a schedule of monetary penalties imposed on the owner or owners of a motor
311 vehicle for failure by its operator to comply with the laws, ordinances, rules, by-laws, codes,
312 regulations or other forms of legislation governing the traffic control signals in the city or town
313 in which the monitoring system is located.

314 “Traffic control signal”, a signaling device positioned at a road intersection, pedestrian
315 location or other location for the purpose of indicating through a series of colors (Red – Yellow –
316 Green) the correct moment to stop and begin driving.

317 “Monitoring system”, an automated motor vehicle sensor device installed to work in
318 conjunction with a traffic control signal that produces 2 or more film or digital camera based
319 photographs or other recorded images of each motor vehicle at the time it is used or operated in a
320 manner that is in violation of the traffic control signal at which the automated monitoring system
321 is located.

322 “Violation”, the failure of an operator of a motor vehicle to comply with the laws, codes,
323 regulations, by-laws, ordinances, rules or other forms of legislation governing the traffic control
324 signals at which a traffic control signal violation monitoring system is located.

325 (2) Photographs from a monitoring system must, at a minimum, record the rear of the
326 motor vehicle, with at least 1 image clearly recording the motor vehicle immediately before the
327 violation of the traffic control signal and at least 1 image recording the motor vehicle passing
328 through the intersection in violation of the traffic control signal. Additionally, at least 1 image
329 must clearly identify the registration plate of the motor vehicle;

330 (3) To the extent practicable, any monitoring system shall use necessary technologies to
331 ensure that photographs produced by the monitoring system shall not include a frontal view
332 photograph of the motor vehicle that is in violation of the traffic control signal or images that
333 identify the operator, the passengers, or the contents of the vehicle, but no notice of liability
334 issued under this section shall be dismissed solely because a photograph or photographs allow

335 for the identification of the operator, passengers, or contents of a vehicle as long as the city or
336 town has made a reasonable effort to comply with this paragraph.

337 (4) Any city or town shall clearly indicate the presence and usage of a monitoring system
338 at each intersection where a monitoring system is in use by signage clearly visible to traffic
339 approaching from all directions. Such signage shall be established at each system location for at
340 least 30 days before the city or town issues citations under this section. The signage shall remain
341 at each system location as long as a monitoring system is in operation.

342 (5) A penalty imposed by a local measure for a violation of this section shall not be
343 considered a criminal conviction and shall not be made part of the operating record of the person
344 upon whom the liability is imposed, nor shall the imposition of a penalty be used for insurance
345 rating purposes in providing motor vehicle insurance coverage.

346 (6) The compensation paid to the manufacturer or vendor of the traffic control signal
347 monitoring system deployed as a means of promoting traffic safety as authorized by this section
348 shall not be based upon the number of traffic citations issued or any portion or percentage of the
349 fine generated by the citations. The compensation paid to the manufacturer or vendor of the
350 equipment shall be based upon the value of the equipment and the services provided in support
351 of the traffic control signal monitoring system.

352 (7) Before a monitoring system may be installed, the traffic control signal installation
353 must comply with the standards set forth in the Manual on Uniform Traffic Control Devices and
354 by the Institute of Transportation Engineers. If it is determined that the traffic control signal is
355 not in compliance with these standards, it shall be the responsibility of the city or town installing
356 the monitoring system to bring the traffic control signal into compliance. Verification that the

357 traffic control signal meets these standards shall be made by a professional engineer registered in
358 the commonwealth.

359 (8) If a city or town makes a determination to cease the operation of a monitoring system
360 at a particular location, the administrator of the monitoring system within the city or town shall
361 notify the department of highways 30 days before removing the monitoring system equipment
362 from that location.

363 (c)(1) A certificate, or a facsimile thereof sworn to or affirmed by a police officer or other
364 law enforcement officer authorized to issue motor vehicle citations for violations of traffic laws,
365 stating that based upon inspection of the photographs, or other recorded images produced by a
366 monitoring system, the vehicle was in violation of this section, shall be prima facie evidence of
367 the facts contained therein. Any photographs or other recorded information produced by a
368 monitoring system evidencing the violation shall be available for inspection in any proceeding to
369 adjudicate the liability for the violation of a local measure adopted under this section.

370 (2) For each violation of this section, the owner or owners of a vehicle shall be jointly
371 and severally liable for the penalty imposed by a local measure, but no owner of a vehicle shall
372 be liable for a penalty imposed under this section where the operator of the vehicle has been
373 convicted of the underlying violation under a citation issued in accordance with section 2 of
374 chapter 90C. The maximum penalty that may be imposed under this section shall be \$100 for
375 each violation.

376 (3) A penalty imposed by a local measure may, if so provided in the local measure, be
377 increased by up to 33 1/3% if the penalty remains unpaid in excess of 45 days after a notice of

378 violation has been issued consistent with the procedures established in this section and there has
379 been no request for a hearing under paragraph (3) of subsection (d).

380 (d)(1) Upon the determination of a violation of a local measure through the use of a
381 monitoring system, it shall be the duty of the chief of police of the city or town, or any designee
382 of the chief, to send to the owner or owners of the vehicle a notice to appear before the parking
383 clerk of the city or town in which the violation occurred at any time during regular office hours.
384 The notice shall require the owner or owners to appear not later than 45 days after the date the
385 notice to appear was sent. The notice shall be addressed to the registered owner or owners of
386 any motor vehicle identified in any photographs produced by the monitoring system as evidence
387 of a violation of this section and shall be mailed by first class mail, post marked no later than 14
388 days after the date of the alleged violation, inclusive of Sundays and holidays. In the case of any
389 motor vehicle registered under the laws of another state or country, if the address is unavailable,
390 it shall be sufficient for the parking clerk to mail the notice of violation to the official in the state
391 or country having charge of the registration of the motor vehicle. The notice shall be considered
392 sufficient notice, and a certificate of the chief of police or the chief's designee mailing the notice
393 stating that it has been mailed in accordance with this section shall be deemed prima facie
394 evidence thereof and shall be admissible in any judicial or administrative proceeding as to the
395 facts contained therein. The chief or the chief's designee shall retain and safely preserve a copy
396 of the notice of violation and shall at a time no later than the beginning of the next business day
397 of the city or town after mailing the notice to the owner or owners, deliver another copy to the
398 parking clerk before whom the owner or owners have been notified to appear. The parking clerk
399 shall maintain a docket of all such notices to appear.

400 The notice shall contain but not be limited to the following information:

401 (i) a citation for the violation, which shall include the name and address of the person or
402 persons liable as an owner or owners for the violation of this section, the registration number and
403 state of issuance of the registration number of the vehicle involved in the violation, the date, time
404 and location of the violation, the specific violation charged, the amount of the penalty for the
405 violation, and the date by which the penalty shall be paid;

406 (ii) a copy of the recorded image showing the vehicle in violation of the traffic signal;

407 (iii) the identification number of the camera that recorded the violation or other document
408 locator number;

409 (iv) a copy of the certificate or affidavit of the police officer under paragraph (1) of
410 subsection (c);

411 (v) a schedule of fines for the violation as established by the city or town;

412 (vi) instructions for the return of the notice including but not limited to the following
413 text:—

414 “This notice and the required payment may be returned in person, by mail, or by a duly
415 authorized agent. A hearing to contest liability may be obtained upon the written request of the
416 registered owner. Failure to pay the penalty or to contest liability within 45 days of issuance of
417 this notice is an admission of liability and may result in a default judgment being entered against
418 the owner to whom the violation has been issued and/or non-renewal or suspension of the license
419 to drive and the certificate of registration of the registered owner.”

420 (vii) an affidavit form approved by the parking clerk for the purpose of complying with
421 paragraph (4).

422 (viii) a statement explaining the procedure to adjudicate the violation by mail under
423 paragraph (5).

424 (2) Any person notified to appear before the parking clerk, as provided in this section,
425 may appear before the parking clerk, or his designee, and confess the offense charged, either
426 personally or through a duly authorized agent or by mailing to the parking clerk the notice
427 accompanied by the fine provided therein, such payment to be made only by postal note, money
428 order or check made out to the parking clerk. Payment of the penalty established shall operate as
429 a final disposition of the case.

430 (3) Should any person notified to appear hereunder fail to appear and, if a penalty is
431 provided hereunder, to pay the same, or if the person requests a hearing to contest liability, the
432 parking clerk shall forthwith schedule the matter before a person referred to in this section as a
433 hearing officer. The hearing officer shall be the parking clerk of the city or town in which the
434 violation occurred or any other person or persons that the parking clerk may designate. Written
435 notice of the date, time and place of the hearing shall be sent by first-class mail to the registered
436 owner or owners. The hearing shall be informal, the rules of evidence shall not apply and the
437 decision of the hearing officer shall be final subject to judicial review as provided by section 14
438 of chapter 30A. Within 21 days of the hearing, the hearing officer shall send by first class mail
439 to the registered owner or owners the decision of the hearing officer, including the reasons for
440 the outcome.

441 (4) Any owner to whom a notice of violation has been issued shall not be liable for a
442 violation of this section (a) if the violation was necessary to allow the passage of an emergency
443 vehicle; (b) if the violation was necessary in order to protect the property or person of another;

444 (c) if the violation was incurred while participating in a funeral procession; (d) if the violation
445 was incurred during a period of time in which the motor vehicle was reported to the police
446 department of any state, city or town as having been stolen and had not been recovered before
447 the time the violation occurred; (e) if the operator of the motor vehicle was operating the motor
448 vehicle under a rental or lease agreement and the owner of the motor vehicle is a rental or leasing
449 company; (f) if the operator of the motor vehicle was convicted of the underlying violation under
450 a citation issued in accordance with section 2 of chapter 90C; (g) if the violation was necessary
451 to comply with an order of a law enforcement officer or of a flagger directing traffic flow; (h) if
452 the vehicle was subject to the exceptions granted to an authorized emergency vehicle under
453 section 7B of chapter 89; or (i) if the violation was necessary to comply with any other law or
454 regulation governing the operation of a motor vehicle at the intersection. An owner disputing a
455 violation under this subsection shall, within 45 days of issuance of the notice, provide the
456 parking clerk with an affidavit signed under the pains and penalties of perjury in a form approved
457 by the parking clerk, as provided for in clause (vii) of paragraph (1) of this subsection stating (1)
458 the reason for disputing the violation; (2) the full legal name and address of the owner of the
459 motor vehicle; (3) the names and addresses of all witnesses supporting the owner's defense and
460 the specifics of their knowledge; and where applicable (4) the signed statements from witnesses.
461 The affidavit shall be filed with the request for a hearing.

462 (5) Any person notified to appear before the parking clerk, as provided in this paragraph,
463 may without waiving his right to a hearing before the parking clerk or hearing officer as provided
464 by this subsection, and also without waiving judicial review under section 14 of chapter 30A,
465 challenge the validity of the violation notice and receive a review and disposition of the violation
466 from the parking clerk or a hearing officer by mail. The owner may, upon receipt of the notice to

467 appear, send a signed statement explaining his objections to the violation notice as well as signed
468 statements from witnesses, police officers, government officials and any other relevant parties.
469 Photographs, diagrams, maps and other documents may also be sent with the statements. Any
470 statements or materials sent to the parking clerk for review shall have attached the person's name
471 and address as well as the citation number and the date of the violation. The parking clerk or
472 hearing officer shall, within 21 days of receipt of this material, review the material and dismiss
473 or uphold the violation and notify, by mail, the owner or owners of the disposition of the written
474 review. If the outcome of the written review is adverse to the owner or owners, the parking clerk
475 or hearing officer shall explain the reasons for the outcome on the notice. The review and
476 disposition handled by mail shall be informal, the rules of evidence shall not apply, and the
477 decision of the parking clerk or hearing officer based upon the written materials shall be final,
478 unless the owner invokes the hearing provisions under this section or judicial review under
479 section 14 of chapter 30A.

480 (6) If any person fails to appear before the hearing officer in accordance with the notice,
481 or fails to receive a favorable adjudication of the hearing from a hearing officer and fails to pay
482 the fine within 30 days of the date that the hearing officer has mailed notice of the decision of the
483 hearing officer, the parking clerk shall notify the registrar of motor vehicles, who shall place the
484 matter on record. Upon notification to the registrar of 2 or more notices under this section or
485 sections 20A or 20A½ from the parking clerk of the city or town, or state authorities or
486 agencies, the registrar shall not issue or renew or may suspend the owner's license to operate a
487 motor vehicle or motor vehicle registration until after notification from the parking clerk of each
488 city, agency or authority, from whom the registrar received notification, that all fines, taxes and
489 penalties owed by the owner under this section have been disposed of in accordance with law.

490 Upon such notification to the registrar, an additional charge of \$20 payable to the registrar but
491 collected by the city or town, and an additional charge of \$20 payable to and collected by the city
492 or town, shall be assessed against the registered owner of the motor vehicle. It shall be the duty
493 of the parking clerk to notify the registrar forthwith that the case has been so disposed, but
494 certified receipt of full and final payment from the parking clerk of the city or town, or state
495 agency or authority issuing the violation shall also serve as legal notice to the registrar that the
496 violation has been disposed of in accordance with law. The certified receipt shall be printed in a
497 form approved by the registrar of motor vehicles.

498 (7) Upon the accumulation by an owner of 2 or more outstanding notices under this
499 section or sections 20A or 20A½ on account of violations of any statute, ordinance, order, rule or
500 regulation relating to the operation, control or parking of motor vehicles in a particular city or
501 town, notwithstanding any notification to the registrar, the parking clerk of the city or town may
502 notify the chief of police or director of traffic and parking of the city or town that the vehicle
503 bearing the registration to which the notices have been issued shall be removed and stored or
504 otherwise immobilized by a mechanical device at the expense of the registered owner of the
505 vehicle until all fines, taxes and penalties owed by the owner either under this section, or
506 otherwise arising out of the parking or usage of the owner's motor vehicle, have been disposed
507 of in accordance with law. No vehicle shall be removed, stored, or otherwise immobilized unless
508 the owner of the motor vehicle shall have received 10 days prior notification by mail that the
509 motor vehicle may be removed, stored, or immobilized without further notification. It shall be
510 sufficient for the parking clerk to mail, postage prepaid, the notification to the last known
511 address of the registered owner. It shall be sufficient for the parking clerk, in the case of a motor

512 vehicle registered in another state or country, to mail notification to the official in the state or
513 country having charge of the registration of the motor vehicle.

514 (e)(1) Other than for purposes of enforcement of a violation of this section or for
515 purposes of an owner defending a violation of this section, photographs or records taken or
516 created under this section may only be obtained under an order by a court of competent
517 jurisdiction.

518 (2) Photographic and other recorded information obtained through the use of monitoring
519 systems authorized in this section that do not identify a violation shall be destroyed within 90
520 days of the date the image was recorded, unless otherwise ordered by a court of competent
521 jurisdiction. All photographic and other recorded information that identifies a violation shall be
522 destroyed within 1 year of final disposition of proceedings related to the enforcement or defense
523 of a violation, unless otherwise ordered by a court of competent jurisdiction. Each city and town
524 utilizing 1 or more monitoring systems shall file notice annually with the secretary of state that
525 these records have been destroyed in accordance with this paragraph.

526 (3) The administrator of the monitoring system within any city or town accepting this
527 section shall also submit an annual report to the Massachusetts Department of Transportation
528 regarding the use and operation of the monitoring system. This annual report shall contain data
529 on the number of citations issued under this section at each particular intersection, and of those
530 citations, shall detail the number paid without a request for a hearing; the number found
531 responsible after a hearing; and the number dismissed after a hearing. In addition, the report shall
532 also include the cost to maintain each monitoring system and the amount of revenue obtained
533 from each monitoring system.

534 (4) The Massachusetts Department of Transportation shall, within 180 days of the
535 effective date of this section, adopt rules and regulations for the orderly operation and
536 standardization of the section. The administrator of the monitoring system within any city or
537 town accepting this section shall comply with these rules and regulations for the orderly
538 operation and standardization of this section, including but not limited to rules and regulations
539 which may pertain to the comparison of pre- and post-monitoring system installation crash
540 conditions to verify the effectiveness of the system.

541 DYS Juvenile Detention Reform

542 SECTION 19. Section 68B of chapter 119 of the General Laws, as appearing in the 2008
543 Official Edition, is hereby amended by striking out the second sentence and inserting in place
544 thereof the following sentence:- Nothing in this section shall prevent the department from using
545 or providing alternative placements and employing alternative measures which in the
546 department’s discretion will reasonably assure the appearance of the children before the court.

547 Reduce Governor’s Appropriation

548 SECTION 20. Item 0411-1000 of section 2 of chapter 27 of the acts of 2009 is hereby
549 amended by striking out the figure “\$4,952,646” and inserting in place thereof the following
550 figure:- \$4,605,961.

551 Reduce Short-Term Debt Service Appropriation

552 SECTION 21. Item 0699-9100 of section 2 of chapter 27 of the acts of 2009 is hereby
553 amended by striking out the figure “\$52,104,529” and inserting in place thereof the following
554 figure:- \$27,931,384.

555 Reduce PILOT

556 SECTION 22. Item 1233-2400 of said section 2 of said chapter 27 is hereby amended by
557 striking out the figure “\$27,270,000” and inserting in place thereof the following figure:-
558 \$16,500,000.

559 Eliminate Watershed Payment

560 SECTION 23. Item 2800-0101 of said section 2 of said chapter 27 is hereby amended by
561 striking out the words "; and provided further, that the department shall continue to make
562 payments pursuant to chapter 307 of the acts of 1987 for the use of certain land".

563 Transfer RAFT funds to MRVP

564 SECTION 24. (A) Item 7004-9024 of said section 2 of said chapter 27 is hereby amended
565 by striking out the figure “\$29,997,061” and inserting in place thereof the following figure:-
566 \$32,897,061.

567 (B) Item 7004-9316 of said section 2 of said chapter 27 is hereby amended by striking out
568 the figure “\$3,060,000” and inserting in place thereof the following figure:- \$160,000.

569 Reduce Municipal Quinn Bill Funding

570 SECTION 25. Item 8000-0040 of said section 2 of said chapter 27 is hereby amended by
571 striking out the figure “\$10,000,000” and inserting in place thereof the following figure:-
572 \$5,000,000.

573 DPS Retained Revenue Ceiling Increase

574 SECTION 26. Said section 2 of said chapter 27 is hereby further amended by striking out
575 item 8315-1020 and inserting in place thereof the following item:-

576 8315-1020 For the department of public safety, which may expend not more than
577 \$2,478,869 in revenues collected from fees for annual elevator and amusement park ride
578 inspections; provided, that funds shall be expended for the operation of the department and to
579 address the existing elevator inspection backlog; provided further, that the department shall make
580 efforts to employ inspectors who will perform overnight and weekend inspections as their
581 regular work shift; provided further, that the department may collect and retain reimbursement
582 for overtime costs associated with overnight and weekend inspections; provided further, that the
583 department shall provide a full waiver of the inspection fee for an individual who requires a
584 wheelchair lift as a medical necessity and whose annual income does not exceed the maximum
585 allowable federal SSI benefit, or \$7,236 a year, whichever is greater; and provided further, that
586 notwithstanding any general or special law to the contrary, for the purpose of accommodating
587 timing discrepancies between the receipt of retained revenues and related expenditures, the
588 department may incur expenses and the comptroller may certify for payment amounts not more
589 than the lesser of this authorization or the most-recent revenue estimate as reported in the state
590 accounting system \$2,478,869

591 Sweep Trust Fund Balance

592 SECTION 27. Clause (b) of chapter 64 of the acts of 2009 is hereby amended by striking
593 out the figure “\$7,000,000” and inserting in place thereof the following figure:- \$22,100,000.

594 Transfer to Medical Security Trust Fund

595 SECTION 28. Notwithstanding any general or special law to the contrary, the secretary
596 of administration and finance may direct the comptroller to transfer not more than \$30 million
597 from the General Fund to the Medical Security Trust Fund, established under subsection (k) of
598 section 14G of chapter 151A of the General Laws, in fiscal year 2010, to be available to pay for
599 health insurance coverage provided under that section if the unemployment health insurance
600 contributions required under the section will be inadequate to fund the health insurance
601 coverage. The secretary of administration and finance may later direct the comptroller to
602 transfer not more than \$30 million from the Medical Security Trust Fund to the General Fund to
603 repay the General Fund for the transfer authorized by the preceding sentence.

604 Expanded Allotment and 9C Authority

605 SECTION 29. During fiscal year 2010, the power of the governor or the secretary of
606 administration and finance to allot funds under section 9B of chapter 29 of the General Laws
607 shall extend to any monies appropriated by the general court. The procedures in section 9C of
608 said chapter 29 shall apply to allotments under this section.

609 Line-item Transferability

610 SECTION 30. Notwithstanding any general or special law to the contrary, the secretary
611 of administration and finance may authorize the transfer of funds from any item of appropriation
612 for fiscal year 2010 for any executive branch agency to any other item of appropriation for that
613 agency or within its executive office. No transfer authorized by this section shall exceed 5 per
614 cent of the amount appropriated for an item. The secretary of administration and finance shall
615 notify the house and senate committees on ways and means 15 days before a transfer pursuant to
616 this section.

617 Use FY09 Surplus for FY10

618 SECTION 31. Notwithstanding any general or special law to the contrary, the
619 comptroller shall, on or before June 30, 2010, transfer \$60,000,000 to the General Fund from the
620 Commonwealth Stabilization Fund, including the amounts transferred to the Commonwealth
621 Stabilization Fund by clause (ii) of section 1 of chapter 56 of the acts of 2009, but the
622 comptroller shall instead transfer a lesser amount if the secretary of administration and finance so
623 requests in writing. The comptroller, in consultation with the secretary, may take the overall
624 cash flow needs of the commonwealth into consideration in determining the timing of this
625 transfer of funds. The comptroller shall provide a schedule of transfers to the secretary and to
626 the house and senate committees on ways and means.

627 Tax Amnesty Program

628 SECTION 32. (a) Notwithstanding any general or special law to the contrary, the
629 commissioner of revenue shall establish a tax amnesty program during which all penalties that
630 could be assessed by the commissioner for the failure of the taxpayer to: (i) timely file any
631 proper return for any tax type and for any tax period; (ii) file proper returns which report the full
632 amount of the taxpayer's liability for any tax type and for any tax period; (iii) timely pay any tax
633 liability; or (iv) pay the proper amount of any required estimated payment toward a tax liability
634 shall be waived without the need for any showing by the taxpayer of reasonable cause or the
635 absence of willful neglect. The waiver of a taxpayer's liability under this section shall apply if
636 the taxpayer files returns, makes payments as required by the commissioner or otherwise comes
637 into compliance with the tax laws of the commonwealth as required by the commissioner
638 pursuant to the tax amnesty. The scope of the amnesty program in terms of the particular tax

639 types and periods covered, including any limited look-back period for unfiled returns, shall be
640 determined by the commissioner.

641 (b) The amnesty program shall be established for a period of 2 consecutive months within
642 fiscal year 2010 to be determined by the commissioner, such period to expire not later than June
643 30, 2010, and all required payments shall be made on or before June 30, 2010, in order for the
644 amnesty to apply. If a taxpayer fails to pay the full liability before June 30, 2010, the
645 commissioner shall retain any payments made and shall apply said payments against the
646 outstanding liability, and the provisions of the tax amnesty program, other than the additional
647 penalty authorized by section 2, shall not apply.

648 (c) The commissioner's authority to waive penalties during the amnesty period shall not
649 apply to any taxpayer who, before the start date of the amnesty program selected by the
650 commissioner, was the subject of a tax-related criminal investigation or prosecution. The
651 amnesty program shall not authorize the waiver of interest or any amount treated as interest. The
652 commissioner may offer tax amnesty to those taxpayers who have either any unpaid self-
653 assessed liability or who have been assessed a tax liability, whether before or after their filing of
654 a return, which assessed liability remains unpaid.

655 (d) To the extent that a taxpayer within the scope of the amnesty program as determined
656 by the commissioner and wishing to participate in the amnesty program has postponed the
657 payment of an assessment of tax, interest and penalty under the authority of subsection (e) of
658 section 32 of chapter 62C of the General Laws, the taxpayer shall waive in writing all rights
659 under said subsection (e) to further delay the payment of the tax and interest portions of the
660 assessment. The tax and interest portions of the assessment shall be payable in full from the date

661 of the commissioner's notice of assessment. Upon payment by the taxpayer of the tax and
662 interest of the outstanding assessment, the commissioner shall waive all penalties associated with
663 that assessment. The taxpayer and the commissioner shall then proceed with all administrative
664 appeal rights that the taxpayer wishes to pursue with respect to the assessment.

665 (e) Amnesty shall not apply to those penalties which the commissioner would not have
666 the sole authority to waive including, but not limited to, fuel taxes administered under the
667 International Fuel Tax Agreement or under the local option portions of taxes or excises collected
668 for the benefit of cities, towns or state governmental authorities.

669 (f) The commissioner shall maintain records of the amnesty provided under this section
670 including, but not limited to: (i) the number of taxpayers provided with amnesty; (ii) the types of
671 tax liability, for which amnesty was provided and, for each type of liability, the amount of tax
672 liability collected; and the amount of penalties foregone by virtue of the amnesty program; and
673 (iii) the total outstanding tax liability for amnesty eligible taxpayers at the conclusion of this
674 program, after the collection of all funds under this section. The commissioner shall file a report
675 detailing such information with the clerks of the house of representatives and the senate, the joint
676 committee on revenue, the house and senate committees on ways and means, the minority leader
677 of the house and the minority leader of the senate, not later than September 1, 2010; provided,
678 however, that such report shall not contain information sufficient to identify an individual
679 taxpayer or the amnesty that an individual taxpayer was provided under this section.

680 (g) A taxpayer who is eligible for the amnesty program based upon the criteria
681 established by the commissioner and who fails to come forward under this program and make
682 payments before June 30, 2010 shall, in addition to all other penalties provided by chapter 62C,

683 be subject to an additional penalty not to exceed \$500 per taxpayer, which shall be calculated
684 and assessed according to rules determined by the commissioner and which may be subject to de
685 minimis or other exceptions that the commissioner may consider appropriate. This penalty shall
686 be subject to chapter 62C and shall be added to and become part of the tax due. The
687 commissioner may waive the penalty provided by this subsection for reasonable cause as
688 provided in subsection (f) of section 33 of chapter 62C.

689 Study Commission on Police Higher Education

690 SECTION 33. (a) There shall be a special commission to study higher education for
691 police officers. The commission shall consider new career incentive programs and shall review
692 hiring requirements to determine whether new or revised educational requirements should be a
693 condition of hiring.

694 (b) The commission shall consist of the secretary of education and the secretary of
695 public safety and security, or their designees, who shall co-chair the commission, a
696 representative of the human resources division, a representative of the Massachusetts Municipal
697 Association, and the chairs of the joint committee on public safety or their designees, and a
698 member appointed by the governor.

699 (c) The commission shall report not later than January 4, 2010, to the governor and the
700 clerks of the senate and house of representatives.

701 Tax Administration #2: Interest Charge on Installment Sales 2

702 SECTION 34. Section 12 shall be effective for tax years beginning on or after January 1,
703 2010 with respect to installment obligations outstanding as of the close of the tax year.

704 Clarify Tax Laws for Condominium Associations 3

705 SECTION 35. Sections 10 and 14 shall apply to taxable years beginning on or after
706 January 1, 2009.

707 Tax Administration #4: Updated Chart for Use Tax Reported on Form 1 – 2

708 SECTION 36. Section 16 shall be effective for tax years beginning on or after January 1,
709 2010.