

HOUSE No. 4490

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act PROVIDING FOR JOB CREATION BY SMALL BUSINESSES..

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 sums set forth
2 in section 2A, for the several purposes and subject to the conditions specified in this act, are
3 hereby made available, subject to the laws regulating the disbursement of public funds and
4 approval thereof.

5 SECTION 2A.

6 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE Office of the
7 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
28 following section:-

29 Section 22.(a) Except as otherwise limited under subsection (g), for the 12 calendar
30 months beginning on April 1, 2010 there shall be allowed as a refundable credit to a qualified
31 employer against the tax liability imposed under this chapter, \$2,500 for each full-time employee
32 hired 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 of 35
40 hours per week, or

41 (B) a salaried employee who was paid compensation during the taxable year for full-time
42 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 full-
47 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-profit or
50 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 employment of
53 such employees.

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

56 (1) The net increase in full-time Massachusetts employees, measured on an annual full-
57 time 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 March 31,
59 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 be
62 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
64 sustained 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 does not
66 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
70 shall not be 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
75 this section, a trade or business carried by related persons shall be treated as one business. The
76 commissioner may adopt rules for aggregation of related businesses or employers in order to

77 determine eligibility for the credit under this section. For purposes of this determination, the
78 employer's employees shall be deemed to include the employees of any individuals or entities
79 with which or to which the employer is related within the meaning of Internal Revenue Code
80 section 318, or as 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.
83 The 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
86 incentive period may apply for the credit with respect to that position, on or after the date of hire
87 of the 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
93 all 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-time
96 Massachusetts employees. If the commissioner receives qualifying credit applications that
97 would result, if granted, in credits exceeding \$50,000,000, the commissioner shall give priority
98 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, as
111 specified therein.

112 CREATE THE MASSACHUSETTS GROWTH CAPITAL CORPORATION BY
113 MERGING 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
119 Laws are 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
122 words “Massachusetts Community Development Finance Corporation” wherever they appear
123 and 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
125 “CDFC” 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
127 hereby amended by striking out the definition of “Community development corporation or
128 “CDC””, and inserting in its place the following definition:-

129 “Community Development Corporation” or “CDC”, a non-profit corporation organized
130 under 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
133 neighborhoods or municipalities, a region of the commonwealth, or a constituency that is
134 economically disadvantaged;

135 (b) has as its purpose to engage local residents and businesses to work together to
136 undertake community development programs, projects and activities which develop and improve
137 urban, 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
140 CDC's constituency, including low and moderate income people, is meaningfully represented on

141 the 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
151 amended by striking out the definition of “Corporation”, and inserting in its place the following
152 definition:-

153 “Corporation” or “GCC”, the Massachusetts Growth Capital Corporation established by
154 section 2.

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

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

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

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

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

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

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

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

175 “Target area” shall mean any contiguous geographic area in which the project is located
176 and which is either (1) an economic target area designated pursuant to section 3D of chapter
177 23A; (2) the service area of community development corporation; or (3) a zip code whose
178 current unemployment rate exceeds the state unemployment rate by at least twenty-five per cent
179 or whose mean household income is at or below 80 per cent of the state mean household income
180 as of the most recent decennial census.

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

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

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

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

196 (c) The corporation shall consist of 11 directors, 1 of whom shall be the secretary of
197 housing and economic development and who shall serve as chair, 1 of whom shall be the
198 undersecretary for business development, 1 of whom shall be the undersecretary of housing and
199 community development, and 1 of whom shall be the secretary of administration and finance, or
200 their respective designees. The governor shall appoint the remaining 7 members, 1 of whom shall
201 be experienced in community economic development and be employed by a community
202 development corporation as defined under this chapter, 1 of whom shall represent the

203 Massachusetts Association of Community Development Corporations, 1 of whom shall have
204 experience in venture capital or private equity, 1 of whom shall be an practicing or retired
205 attorney with relevant business financing experience, 1 of whom shall have relevant business
206 banking experience, 1 of whom shall be a small business owner, and 1 of whom shall be a
207 representative of organized labor. Each member appointed by the governor shall serve a term of
208 5 years, except that in making his initial appointments the governor shall appoint 2 members to
209 serve for a term of 3 years, 2 members for a term of 4 years, and 3 members for a term of 5
210 years.

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

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

223 (f) The corporation, its directors, officers, and employees shall be subject to sections 1 to
224 4, inclusive, of chapter 268A, except that the corporation may purchase from, sell to, borrow

225 from, loan to, contract with or otherwise deal with any person in which any director of the
226 partnership is in any way interested or involved; provided, however, that such interest or
227 involvement is disclosed in advance to the members of the board and recorded in the minutes of
228 the board; and provided, further, that no director having such an interest or involvement may
229 participate in any decision of the board relating to such person. Employment by the
230 commonwealth or service in any agency thereof shall not be deemed to be such an interest or
231 involvement.

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

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

243 (i) Directors shall not be liable to the commonwealth, to the agency or to any other
244 person as a result of their activities, whether ministerial or discretionary, as such directors,
245 except for willful dishonesty or intentional violations of the law. The corporation may purchase

246 liability insurance for directors, officers, and employees, and may indemnify said persons against
247 claims of others.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

352 30A. To participate in the activities of the Massachusetts capital growth corporation
353 established by chapter 40F, by making capital available for an investment or deposit in or grant
354 to the corporation, an affiliate or subsidiary of the corporation, or any fund managed by the
355 corporation.

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

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

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

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

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

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

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

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

405 CONTROLLING SMALL BUSINESS HEALTH CARE COSTS

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

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

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

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

427 (2) A carrier shall enroll any person who meets the requirements of an eligible individual,
428 including any person who meets the definition of eligible person as defined in section 2741 of
429 the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. section 300gg-41(b),
430 into a health benefit plan if such person requests coverage within 63 days after termination of
431 any prior creditable coverage. Coverage shall become effective within 30 days after the date of
432 application, subject to reasonable verification of eligibility.

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

446 (4) As a condition of continued offer of small group health benefit plans in the
447 commonwealth, a carrier that offers a plan that (i) provides or arranges for the delivery of health
448 care services through a closed network of health care providers; and (ii) as of the close of any
449 preceding calendar year, has a combined total of 5,000 or more eligible individuals, eligible
450 employees and eligible dependents, who are enrolled in health benefit plans sold, issued,
451 delivered, made effective or renewed to qualified small businesses or eligible individuals, shall
452 offer at least 1 product in the small group market that uses a reduced network of health care
453 providers. The base premium for the reduced network product shall be at least 10 percent lower
454 than the base premium of the most actuarially similar product with the carrier's most robust
455 network of providers.

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

459 Moratorium on New Mandated Benefits

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

462 Allow Commissioner to Adjust Rating Rules to Save Administrative Costs

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

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

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

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

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

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

482 Section 6. (a) Notwithstanding any general or special law to the contrary, the
483 commissioner may approve health insurance policies submitted to the division of insurance for
484 the purpose of being provided to eligible individuals or eligible small businesses. These health
485 insurance policies shall be subject to this chapter and may exclude coverages of mandated
486 benefits and may include networks that differ from those of a health plan's overall network. The
487 commissioner shall adopt regulations regarding eligibility criteria. These eligibility criteria shall
488 require that health insurance policies which exclude mandated benefits shall only be offered to
489 small businesses which did not provide health insurance to its employees as of April 1, 1992.
490 These eligibility criteria may require an employer contribution of at least 50 per cent of the
491 health insurance premium for employees. These eligibility criteria shall also provide that small
492 businesses shall not have any health insurance policies which exclude mandated benefits for
493 more than a 5-year period.

494 (b) Notwithstanding any general or special law to the contrary, the commissioner may
495 require carriers offering small group health insurance plans, including carriers licensed under
496 chapters 175, 176A, 176B or 176G, to file all changes to small group product base rates and to
497 small group rating factors at least 30 days before their proposed effective date. The
498 commissioner shall disapprove any proposed changes to base rates that are excessive,

499 inadequate, or unreasonable in relation to the benefits charged. The commissioner shall
500 disapprove any change to small group rating factors that is discriminatory or not actuarially
501 sound. Rate filing materials submitted for review by the Division shall be deemed confidential
502 and exempt from the definition of public records in clause Twenty-sixth of section 7 of chapter
503 4. The commissioner shall adopt regulations to carry out this section.

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

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

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

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

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

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

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

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

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

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

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

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

549 SECTION 32. Section 30 shall take effect on April 1, 2010. Subsection (b) of Section
550 30 shall cease to be effective on March 31, 2012.

551 UNEMPLOYMENT INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

599 An agency or instrumentality of the commonwealth shall not enter into, renew, or extend
600 a contract or agreement with any employer to provide goods, services, or physical space with a
601 maximum obligation or value greater than \$5,000 to such agency or instrumentality or authorize
602 any tax credit under chapters 62 and 63 in excess of \$5,000 unless the employer has submitted a

603 certificate of compliance issued by the department showing that it is current in all its obligations
604 relating to contributions, payments in lieu of contributions, and the fair share employer
605 contributions specified by section 188 of chapter 149.

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

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

615 (b) Any employer who is aggrieved by the imposition of a stop work order shall have 10
616 calendar days from the date of service to appeal the order. Any employer who timely files an
617 appeal shall be granted a hearing by the commissioner or his designee in accordance with
618 subsection (b) of section. The stop work order shall not be in effect during the pendency of any
619 timely filed appeal. Any stop work order shall be rescinded if the commissioner or his designee
620 finds at the hearing that the employer has no unpaid liability or has entered into and is complying
621 with a repayment agreement satisfactory to the commissioner; otherwise the stop work order
622 shall be effective immediately on the conclusion of the hearing and shall remain in effect until
623 such time as the employer makes such payment or enters into and complies with the repayment
624 plan. The commissioner shall by regulation, establish the criteria for compliance with the

625 payment plan, including but not limited to defining the duration, compliance, and minimum
626 number of payments needed before the employer is removed from the debarment list, but the
627 employer shall not bid on or perform any publicly funded activity during the aforementioned 10-
628 day period unless the superior court temporarily enjoins the order of debarment or suspension. A
629 stop work order shall be final at the expiration of 30 days from the date of the decision if no
630 action for judicial review of the decision is commenced under chapter 30A.

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

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

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

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

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

653 (h) Notwithstanding subsection (b), if any civil penalty imposed by an order issued by the
654 commissioner remains unpaid beyond the time period specified for payment in that subsection,
655 the penalty amount and any restitution order, together with interest thereon at the rate of 18 per
656 cent per annum, shall be a lien upon the real estate and personal property of the person who has
657 failed to pay the penalty. The lien shall take effect by operation of law on the day immediately
658 following the due date for payment of the fine, and, unless dissolved by payment, shall be
659 considered, as of that date, a tax due and owing to the commonwealth, which may be collected
660 through the procedures provided under chapter 62C. In addition to the foregoing, no officer of
661 any corporation which has failed to pay any such penalty may incorporate or serve as an officer
662 in any corporation which did not have a legal existence as of the date the fine became due and
663 owing to the commonwealth.

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

668 to or in excess of 8 times the individuals weekly benefit amount after the individual has left
669 work.

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

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

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

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

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

681 (b) For the purposes of this section, the term "allowance" means an amount payable in
682 lieu of regular benefits from the Unemployment Compensation Fund established under section
683 48 to an otherwise qualified individual participating in a self-employment assistance program as
684 defined in subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

736 (1) demographic characteristics of participants;

737 (2) satisfaction with the program;

738 (3) participation in the program;

739 (4) overall employment outcomes;

740 (5) impact on unemployment insurance benefits; and

741 (6) any recommendations on changes to the program.

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

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

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

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

755 Section 47B. (a) No employer shall discharge, discipline, penalize or in any manner
756 discriminate against any employee because the employee has filed a claim or instituted or caused
757 to be instituted any proceeding under this chapter, or has testified or is about to testify in any
758 such proceeding or because of the exercise by such employee on behalf of himself or others of
759 any right afforded by this chapter.

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

770 attorney's fees and costs. Any party aggrieved by the decision of the commissioner may appeal
771 the decision to the superior court under chapter 30A.

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

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

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

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

792 been rendered by the board of review or a court, and may apply to the board or court which
793 rendered the decision to revoke or modify the decision, and the board of review or court may
794 affirm, modify or revoke the decision.

795 SECTION 52. Notwithstanding subsection (i) of section 14 of chapter 151A of the
796 General Laws, for calendar year 2010, the experience rate of an employer qualifying for the rate
797 under subsection (b) of said section 14 shall be the rate which appears in the column designated
798 “E” in paragraph (1) of subsection (i) of said section 14.

799 SECTION 53. Sections 32, 33, 34, 35, 36, 37, 38 and 40 shall take effect on January 1,
800 2011.

801 EXTENSION OF CERTAIN PERMITS

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

804 “Approval”, means, except as otherwise provided in this section, any permit,
805 certificate, order excluding an enforcement order, license, certification, determination,
806 exemption, variance, waiver, building permit, or other approval or determination of rights from
807 any municipal, regional or state governmental entity, including any agency, department,
808 commission, or other instrumentality thereof, concerning the use or development of real
809 property, including certificates, licenses, certifications, determinations, exemptions, variances,
810 waivers, building permits, or other approvals or determination of rights issued or made pursuant
811 to chapter 21, chapter 21A excepting section 16, chapter 21D, sections 61 to 62H, inclusive, of
812 chapter 30, chapters 30A, 40, 40A to 40C, inclusive, 40R, 41, 43D, section 21 of chapter 81,

813 chapter 91, 131, 131A or 143, section 4 or 5 of chapter 249, or chapter 258 of the General Laws,
814 or chapter 665 of the acts of 1956; or any local bylaw or ordinance.

815 “Development”, means the division of a parcel of land into two or more parcels, the
816 construction, reconstruction, conversion, structural alteration, relocation or enlargement of any
817 building or other structure or facility, or of any grading, soil removal or relocation, excavation or
818 landfill or any use or change in the use of any building or other structure or land or extension of
819 the use of land.

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

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

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

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

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

831 (d) Nothing in this section shall affect the ability of any municipal, regional or state
832 governmental entity, including any agency, department, commission, or other instrumentality
833 thereof to revoke or modify a specific permit or approval, or extension thereof pursuant to this

834 section, when that specific permit or approval or the law or regulation under which the permit or
835 approval was issued contains language authorizing the modification or revocation of the permit
836 or approval.

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

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

849 INFRASTRUCTURE FINANCING

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

852 "Adjustment factor", for each fiscal year of the term of a given development program, the
853 product of the inflation factors for each fiscal year subsequent to the first fiscal year immediately
854 following the base date.

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

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

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

862 "Inflation factor", if the city or town has not included an election statement in its invested
863 revenue district development program, a ratio: (1) the numerator of which shall be the total
864 assessed value of all parcels of residential, commercial and industrial real estate that are assessed
865 at full and fair cash value for the current fiscal year minus the new growth adjustment factor for
866 the current fiscal year attributable to the residential, commercial and industrial real estate as
867 determined by the commissioner of revenue pursuant to paragraph (f) of section 21C of chapter
868 59; and (2) the denominator of which shall be the total assessed value for the preceding fiscal
869 year of all the parcels included in the numerator; provided, however, the ratio shall not be less
870 than 1. In the event that the proposed Invested Revenue District does not include residential
871 property, then the assessed value attributable to residential property shall not be included in
872 either the numerator or the denominator in calculating the inflation factor.

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

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

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

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

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

886 SMALL BUSINESS REGULATORY STATEMENTS

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

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

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

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

900 The notice shall also include an estimate of the proposed regulation's fiscal effect
901 including that on the public and private sector, for its first and second year, and a projection over
902 the first 5-year period, or a statement of no fiscal effect. Unless the proposed regulation has the
903 purpose of setting rates within the commonwealth, the notice shall also include a statement
904 considering the impact of the proposed regulation on small business. This statement of
905 consideration shall include, but not be limited, to a description of the projected reporting, record
906 keeping and other compliance requirements of the proposed regulations, the appropriateness of
907 performance standards versus design standards and an identification of all relevant regulations of
908 the adopting agency that may duplicate or conflict with the proposed regulation.

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