

HOUSE No. 4541

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Reorganizing Certain Agencies of the Executive Department.

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

1 SECTION 1. Section 16G of chapter 6A of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by striking out, in clause (b), the words “the trade office and
3 the office of minority and women business assistance”, and inserting in place thereof the
4 following words:-and the trade office.

5 SECTION 2. Chapter 7 of the General Laws is hereby amended by adding the following
6 sections:-

7 Section 57. It is the policy of the commonwealth to promote and facilitate the fullest
8 possible participation by all citizens in the affairs of the commonwealth. Minority, women and
9 veterans business enterprises frequently face special handicaps and problems in achieving viable
10 economic status. Various public and private programs have been initiated to assist minority,
11 women and veterans business enterprises, where applicable, to achieve economic viability,
12 though many businesses have not been adequately informed of these programs because of
13 inadequate coordination and communication efforts, with the result that many services available
14 are never adequately delivered to those who need them. The state government, as the biggest

15 business in the commonwealth of Massachusetts, has a special responsibility to see that all
16 available services and programs are put to the best use. These steps are necessary to guarantee
17 the fullest participation by all citizens of the commonwealth in the economy of the state and to
18 guarantee the fullest benefits to citizens of programs and services available for assistance.

19 Section 58. As used in sections 59 to 61 of this chapter, the following words shall have
20 the following meanings, unless a contrary intent is clearly indicated:-

21 “Certified business enterprise” and “certified business”, a business certified pursuant to
22 section 61.

23 “Director”, the director of the supplier diversity office.

24 “Minority business enterprise” or “MBE”, for the purpose of receipt of services from
25 SDO, means a business enterprise that is owned and controlled by one or more socially or
26 economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic
27 economic circumstances or background or other similar cause. Such persons include, but are not
28 limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians,
29 American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of
30 chapter 7, the term “minority owned business” shall have the same meaning as “minority
31 business enterprise”.

32 “Office”, the supplier diversity office as established by section 61.

33 “SDO”, the supplier diversity office as designated by section 61. The office shall be the
34 successor to the office of minority and women business assistance.

35 “Secretary”, the secretary of the executive office for administration and finance.

36 “State purchasing agent”, the head of the operational services division of the executive
37 office for administration and finance.

38 “Veteran business enterprise” or “VBE”, a business enterprise that is both owned and
39 controlled by 1 or more veterans, as defined in section 7 of chapter 4, who has invested in an
40 ongoing business free of conversion rights.

41 “Women business enterprise” or “WBE”, for the purpose of receipt of services from SDO
42 means a business enterprise that is both owned and controlled, by one or more women who have
43 invested in an ongoing business free of conversion rights. For purposes of section 61 and of
44 section 40N of chapter 7, the term “women owned business” shall have the same meaning as
45 “women business enterprise.”

46 Section 58. There shall be a supplier diversity office which shall be an office within the
47 operational services division of the executive office for administration and finance.

48 Section 59. SDO shall have a director and such other specialists as may be authorized.
49 The director shall have all necessary authority, subject to the direction, control and supervision
50 of the state purchasing agent, to utilize existing staff within the operational services division to
51 effect the purposes of sections 57 to 61, inclusive, and shall have the authority to seek such
52 funds, public or private, as may be available and needed to carry out the intent of those sections.

53 Section 61. (a) SDO shall adopt regulations and policies for the establishment and
54 management of the office’s certification process, including regulations and policies governing
55 the streamlining, approval, denial or revocation of any such certification.

56 (b) SDO shall seek to develop and maintain a directory of certified minority, women and
57 veteran businesses within the commonwealth, and shall, from time to time, notify such
58 businesses of the programs and services available to them, whether from public or private
59 sources, or from local, state or federal agencies.

60 (c) SDO may, subject to approval by the state purchasing agent, establish its own
61 programs and policies and seek from any official or agency of the commonwealth or its political
62 subdivisions, information and assistance necessary to carry out its functions and duties; and all
63 officials, agencies or political subdivisions of the commonwealth shall supply such information
64 or assistance.

65 (d) SDO shall receive assistance from state agencies including, where consistent with
66 existing law, commitments that such agencies do a limited amount of contracting and
67 subcontracting with minority or women or veteran businesses. SDO shall assist minority, and
68 women and veteran businesses in making use of any special programs which may be operated by
69 the state or by various departments and agencies of the federal government.

70 (e) SDO, through the state purchasing agent, shall coordinate its activities with those of
71 other offices, and shall assist minority and women and veteran businesses in their dealings with
72 federal agencies and with state departments and agencies. SDO shall also provide assistance to
73 all cabinet secretaries and departments, in evaluating economic activities of their offices to
74 determine how their offices may be of assistance in providing fair opportunities for minority and
75 women businesses.

76 (f) SDO may work with banks, insurance companies, and other private businesses in the
77 commonwealth to encourage the formation of seed money for facilitating the starting-up and

78 expansion of minority and women businesses. SDO may provide assistance to minority and
79 women businesses in their efforts to obtain loan money and operating capital from private and
80 public lenders.

81 (g) SDO may seek to increase the amount of financial assistance available to minority
82 and women businesses from private financial institutions; and may, from time to time, sponsor
83 conferences, workshops or other informational programs.

84 (h) SDO shall seek to encourage voluntary assistance programs by which nonminority
85 and non-women business employees are loaned to minority and women businesses or by which
86 minority and women business persons are taken into viable business ventures to acquire training
87 and experience in managing business affairs.

88 (i) SDO may encourage state contract awarding authorities to seek to increase the
89 incidence of joint ventures between nonminority state contractors and minority and women and
90 veteran contractors, by specifically pointing out that such arrangements would constitute one
91 method of partially meeting affirmative action requirements imposed upon both nonminority
92 state contractors and the state. The director of affirmative action shall be kept informed of
93 actions taken under this provision. SDO shall follow advertisements for construction work by
94 public bodies in the commonwealth, shall notify minority and women and veteran general
95 contractors and subcontractors of the bid opening dates for the approximate amount of the
96 contract and subcontract work being bid, may assist them in securing bonds and in bidding for
97 that construction work and shall initiate a program to help qualified minority persons and women
98 to get started as small business firms in the construction field by helping to arrange joint ventures
99 with qualified general contractors and subcontractors and by arranging for administrative and

100 accounting assistance to help them carry out their subcontract and general contract obligations
101 during the period of contract performance.

102 (j) SDO shall, through the state purchasing agent, submit an annual report to the general
103 court on the minority and women businesses which it assists, the type of services which it
104 renders, the difficulties it encounters. The report may include recommendations for legislative or
105 executive action.

106 (k) SDO shall, after notice and an opportunity to be heard, impose administrative
107 penalties on an applicant for certification or recertification that knowingly provides false or
108 misleading information on its application or in support of its application for certification or
109 recertification as a minority- or women- or veteran-owned business, or on a person who fails to
110 comply with any provision of any regulation or approval issued or adopted by the agency or of
111 any law which the agency has the authority or responsibility to enforce.

112 (l) The director shall consult with the commissioner of capital asset management and
113 maintenance on the establishment of an affirmative marketing program pursuant to section 40N
114 of chapter 7. The affirmative marketing program shall be established for the purpose of ensuring
115 the fair participation of minority-owned and women-owned businesses on capital facility projects
116 and state assisted building projects. The affirmative marketing program shall establish
117 participation goals for minority-owned and women-owned business on capital facility projects
118 and state assisted building projects. Participation goals for minority-owned business and
119 women-owned business shall be based upon the broadest and most inclusive pool of available
120 minority-owned businesses and women-owned businesses interested in and capable of
121 performing construction work and design services on such capital facility projects and state

122 assisted building projects. The director and the commissioner of capital asset management and
123 maintenance shall meet on a quarterly basis to determine the status of implementation of the
124 affirmative marketing program and what further steps both agencies deem necessary to achieve
125 the purposes of section 40N of chapter 7 and this subsection. For purposes of this subsection, the
126 terms “capital facility project” and “state assisted building project” shall have the same meanings
127 as found in section 40N of chapter 7.

128 (m) In connection with the affirmative marketing program established pursuant to section
129 40N of chapter 7, SDO shall regularly review and, where necessary, modify its certification
130 process to ensure that it operates effectively, and shall report annually to the secretary of the
131 executive office for administration and finance regarding these matters.

132 (n) SDO shall be responsible for the overall management, monitoring, and enforcement
133 of the affirmative marketing program as it relates to minority owned businesses and women
134 owned businesses participation on state assisted building projects. The director may appoint a
135 program director to assist in program development, coordination of program operations and
136 compliance with program goals and objectives. The program director shall also have
137 responsibility for monitoring compliance regarding minority owned businesses and women
138 owned businesses participation on state assisted building projects, addressing program violations
139 and coordinating enforcement activities.

140 (o) The director shall develop a written procedure by which participation goals, for an
141 individual state assisted building project, may be adjusted for minority-owned businesses,
142 women-owned businesses or both; but, the adjustment shall be based upon the actual availability

143 of minority-owned businesses and women-owned businesses, the geographic location of the
144 project, the scope of work of the capital facility project or other relevant factors.

145 (p) The director shall develop a written waiver procedure by which, at any time before
146 the award of a contract, it may be determined that compliance with the participation goals is not
147 feasible and by which the participation goals on a state assisted building project may be reduced
148 or waived. Waiver shall be granted only upon a showing that good faith efforts have been made
149 to comply with the participation goals.

150 (q) The director and the commissioner of capital asset management and maintenance
151 shall by March 15 of each year submit to the joint committee on state administration and
152 regulatory oversight, the senate committee on ways and means, the house committee on ways
153 and means, the clerk of the house, and the clerk of the senate a report on the performance of the
154 affirmative marketing program for the preceding year. The report shall, at a minimum, show the
155 name and address of each such minority owned business and women owned business, its
156 designation as a minority-owned or women-owned business, the contract or subcontract price, a
157 description of the work performed on the contract by class of work, and project type, and shall
158 show separately the total number of contracts awarded to minority-owned and women-owned
159 businesses as a percentage of the total number of contracts awarded and as a percentage of the
160 total contract price.

161 (r) The director shall adopt regulations necessary to implement this subsection.

162 SECTION 3. Section 1 of chapter 23A of the General Laws, as so appearing, is hereby
163 amended by striking out, in clause (b), the words “and the office of minority and women
164 business assistance and all entities within that office.”

165 SECTION 4. Sections 39 to 44, inclusive, of chapter 23A of the General Laws are hereby
166 repealed.

167 SECTION 5. Notwithstanding any general or special law to the contrary, the phrase
168 “office of minority and women business assistance”, wherever it appears in a general or special
169 law, shall mean the supplier diversity office.

170 SECTION 6. (a) Notwithstanding any general or special law to the contrary, this section
171 shall facilitate the orderly transfer of employees, proceedings, rules and regulations, property and
172 legal obligations of the following functions of state government from the state office of minority
173 and women business assistance as the transferor agency, to the operational services division as
174 the transferee agency;

175 (b) To the extent that employees of the transferor agency, including those who were
176 appointed immediately before the effective date of this act and who hold permanent appointment
177 in positions classified under chapter 31 of the General Laws or have tenure in their positions as
178 provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold
179 confidential positions, are transferred to the respective transferee agency, such transfers shall be
180 effected without interruption of service within the meaning of said section 9A of said chapter 31,
181 without impairment of seniority, retirement or other rights of the employee, and without
182 reduction in compensation or salary grade, notwithstanding any change in title or duties resulting
183 from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and
184 benefits, and without change in union representation or certified collective bargaining unit as
185 certified by the state division of labor relations or in local union representation or affiliation. Any
186 collective bargaining agreement in effect immediately before the transfer date shall continue in

187 effect and the terms and conditions of employment therein shall continue as if the employees had
188 not been so transferred. The reorganization shall not impair the civil service status of any such
189 reassigned employee who immediately before the effective date of this act either holds a
190 permanent appointment in a position classified under chapter 31 of the General Laws or has
191 tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding
192 any other general or special law to the contrary, all such employees shall continue to retain their
193 right to collectively bargain pursuant to chapter 150E of the General Laws and shall be
194 considered employees for the purposes of said chapter 150E. Nothing in this section shall be
195 construed to confer upon any employee any right not held immediately before the date of said
196 transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension,
197 discharge, layoff, or abolition of position not prohibited before such date.

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

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

206 (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other
207 property, both personal and real, including all such property held in trust, which immediately

208 before the effective date of this act are in the custody of the transferor agency shall be transferred
209 to the transferee agency.

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

213 ELIMINATION OF FAD

214 SECTION 7. Section 4 of chapter 7 of the General Laws, as appearing in the 2008
215 Official Edition, is hereby amended by adding the following paragraph:-

216 The secretary shall appoint a budget director. She shall be a person of ability and
217 experience and shall devote her entire time to the duties of her office. The budget director may
218 establish, with the approval of the secretary, administrative units that she deems appropriate. The
219 budget director shall prepare and maintain financial plans and, under the general direction of and
220 on behalf of the governor, shall prepare operating budget recommendations for all departments,
221 offices, commissions and institutions which receive periodic appropriations from the
222 commonwealth. These plans and recommendations shall be prepared according to the
223 requirements of chapter 29. Subject to the approval of the secretary, the budget director shall
224 design and install, and may revise from time to time, a financial planning and budgeting system,
225 including the requisite forms, procedures, information, computer software and such other
226 attributes as she considers necessary.

227 SECTION 8. Section 4A of said chapter 7, as so appearing, is hereby amended by
228 striking out clause (c).

229 SECTION 9. Section 4D of said chapter 7, as so appearing, is hereby amended by
230 striking out, in line 11, the word "three" and inserting in place thereof the following numeral:- 4.

231 TRANSFER OF "CORE" FUNCTIONS OF MASSGIS FROM EOEEA TO ITD

232 SECTION 10. Clause (d) of section 4A of chapter 7 of the General Laws, as appearing in
233 the 2008 Official Edition, is hereby amended by inserting after the first paragraph the following
234 paragraph:-

235 The division shall include an office of geographic information through which the chief
236 information officer shall develop, maintain, update and distribute geographic information,
237 technology, data and services for use by state agencies, municipalities and the public. The office
238 shall coordinate all geographic information activities in state and local government, and shall
239 collect, manage and distribute geographic information maintained by state agencies and local
240 government agencies. It shall also provide technical services related to geographic information to
241 state agencies and municipalities. The chief information officer shall set standards for the
242 acquisition, management, and reporting of geographical information, and the acquisition,
243 creation or use of applications employing such information, by any executive department agency,
244 and the reporting of such information by municipalities.

245 SECTION 11. Section 4B of chapter 21A of the General Laws is hereby repealed.

246 SECTION 12. (a) Notwithstanding any general or special law to the contrary, this section
247 shall facilitate the orderly transfer of employees, proceedings, rules and regulations, property and
248 legal obligations of the following functions of state government from the office of geographic
249 and environmental information, as the transferor agency, to the information technology division,
250 as the transferee agency; but the employees, proceedings, rules and regulations, property and

251 legal obligations and functions of the transferor agency that are engaged in developing and
252 maintaining data and applications specific to the executive office for energy and environmental
253 affairs and its agencies shall not be subject to this transfer.

254 (b) To the extent that employees of the transferor agency, including those who were
255 appointed immediately before the effective date of this act and who hold permanent appointment
256 in positions classified under chapter 31 of the General Laws or have tenure in their positions as
257 provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold
258 confidential positions, are transferred to the respective transferee agency, such transfers shall be
259 effected without interruption of service within the meaning of said section 9A of said chapter 31,
260 without impairment of seniority, retirement or other rights of the employee, and without
261 reduction in compensation or salary grade, notwithstanding any change in title or duties resulting
262 from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and
263 benefits, and without change in union representation or certified collective bargaining unit as
264 certified by the state division of labor relations or in local union representation or affiliation. Any
265 collective bargaining agreement in effect immediately before the transfer date shall continue in
266 effect and the terms and conditions of employment therein shall continue as if the employees had
267 not been so transferred. The reorganization shall not impair the civil service status of any such
268 reassigned employee who immediately before the effective date of this act either holds a
269 permanent appointment in a position classified under chapter 31 of the General Laws or has
270 tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding
271 any other general or special law to the contrary, all such employees shall continue to retain their
272 right to collectively bargain pursuant to chapter 150E of the General Laws and shall be
273 considered employees for the purposes of said chapter 150E. Nothing in this section shall be

274 construed to confer upon any employee any right not held immediately before the date of said
275 transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension,
276 discharge, layoff, or abolition of position not prohibited before such date.

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

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

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

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

292 SECTION 13. Sections 10, 11 and 12 shall take effect on July 1, 2010.

293 SECTION 14. Sections 1 to 9, inclusive, of this act shall take effect as soon as it has the
294 force of law under subsection (c) of section 2 of Article LXXXVII of the Amendments to the
295 Constitution.