

In the Year Two Thousand Eleven

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

CHAPTER 3A.

THE SUNSET ACT.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Advisory committee”, a committee, council, commission or other entity established under state law whose primary function is to advise a state agency.

“Agency”, an agency as defined in section 1 of chapter 29.

13 " Authority", an authority as defined in section 1 of chapter 29.

14 "Commission", the Sunset Advisory Commission established in section 3.

15 Section 3. (a) There shall be a Sunset Advisory Commission consisting of 3 members of
16 the senate, 1 of whom shall be appointed by the minority leader of the senate, 3 members of
17 house, 1 of whom shall be appointed by the minority leader of the house of representatives. The
18 president of the senate and the speaker of the house may serve as legislative appointees.

19 (b) Legislative members shall serve 2-year terms, conterminous with their service as
20 elected members of the legislature. If a legislative member ceases to be a member of the
21 legislature, the legislator's position shall be declared vacant, and the balance of the term filled by
22 another legislator appointed in the same manner as the previous appointee. If the president of the
23 senate or the speaker of the house serves on the commission, service continues until resignation
24 from the commission or until the individual ceases to hold the office.

25 (c) Members, other than the president of the senate and the speaker of the house,
26 who serve a full term may not be appointed to an immediately succeeding term; and

27 (d) The president of the senate and the speaker of the house shall make their
28 appointments before February 1 of each odd-numbered year.

29 (e) If a legislative member ceases to be a member of the house from which the member
30 was appointed, the seat held by that member shall be considered vacant.

31 (f) If a vacancy occurs, the appropriate appointing authority shall appoint a person to
32 serve for the remainder of the unexpired term in the same manner as the original appointment.

(g) The commission shall have a chair and a vice-chair as presiding officers. The chair and vice-chair positions must alternate every 2 years between the 2 membership groups appointed by the president of the senate and the speaker of the house. The chair and vice-chair shall not be from the same membership group. The president of the senate shall designate a presiding officer from the president's appointed membership group and the speaker shall designate the other presiding officer from the speaker's appointed membership group.

(h) Four members of the commission shall constitute a quorum. A final action or recommendation may not be made unless approved by a recorded roll call vote of a majority of members appointed by the president of the senate and the speaker of the house. All other actions by the commission shall be decided by a majority of the members present and voting, so long as a quorum is present.

(i) Subject to appropriation, each public member of the commission shall be entitled to reimbursement for actual and necessary expenses incurred in performing commission duties.

Section 4. The commission shall adopt rules necessary to carry out this chapter.

Section 5. Before July 1 of the odd-numbered year before the year in which an agency, advisory committee or authority subject to this chapter is abolished, the agency, advisory committee or authority shall report to the commission:

(1) information regarding the application to the agency, advisory committee or authority of the criteria set forth in section 9; and

(2) any other information that the agency, advisory committee or authority considers appropriate or that the commission requests.

54 Section 6. (a) Within 1 year of the appointment and qualification of the members of the
55 commission, and the organization of the commission staff, the commission shall assign sunset
56 dates for each agency, authority and advisory committee of the commonwealth, and shall notify
57 the head of such agency, authority and advisory committee of the date selected. The commission
58 shall then file legislation with the general court to implement the abolition schedule.

59 (b) Before January 1 of the year in which an agency, advisory committee or authority
60 subject to this chapter is scheduled to be abolished, the commission shall:

61 (1) review and take action necessary to verify the reports submitted by the agency,
62 advisory committee or authority under this chapter;

63 (2) consult the house and senate committees on post audit and oversight, the state
64 auditor, the inspector general and the state comptroller, or their successors, on the application to
65 the agency, advisory committee or authority of the criteria in section 9;

66 (3) conduct a review of the agency, advisory committee or authority based on the criteria
67 in section 9 and prepare a written report; and

68 (4) review the implementation of commission recommendations contained in the reports
69 presented to the legislature during the preceding legislative session and the resulting legislation.

70 (c) The written report prepared by the commission under clause (3) of subsection (b) shall
71 be a public record.

72 Section 7. (a) Before February 1 of the year in which an agency, advisory committee or
73 authority subject to this chapter and is to be abolished, the commission shall conduct public

74 hearings concerning, but not limited to, the application to the agency, advisory committee or
75 authority of the criteria in section 9.

76 (b) The commission may hold the public hearings after the review of the agency,
77 advisory committee or authority is complete and available to the public.

78 Section 8. (a) At each regular legislative session, the commission shall present to the
79 legislature and the governor a report on the agencies, authorities and advisory committees
80 reviewed.

81 (b) In the report the commission shall include:

82 (1) its findings under section 9;

83 (2) its recommendations under this chapter; and

84 (3) other information the commission considers necessary for a complete review of the
85 agency, advisory committee or authority.

86 Section 9. The commission and its staff shall consider the following criteria in
87 determining whether a public need exists for the continuation of a state agency, authority or
88 advisory committee or for the performance of the functions of the agency, authority or advisory
89 committee:

90 (1) the efficiency and effectiveness with which the agency, authority or advisory
91 committee operates;

92 (2) (a) an identification of the mission, goals, and objectives intended for the agency,
93 authority or advisory committee and of the problem or need that the agency, authority or
94 advisory committee was intended to address; and

95 (b) the extent to which the mission, goals and objectives have been achieved and
96 the problem or need has been addressed;

97 (3) (a) an identification of any activities of the agency, authority or advisory
98 committee in addition to those granted by statute and of the authority, agency or advisory
99 committee for those activities; and

100 (b) the extent to which those activities are needed;

101 (4) an assessment of authority of the agency, authority or advisory committee relating to
102 fees, inspections, enforcement and penalties;

103 (5) whether less restrictive or alternative methods of performing a function that the
104 agency, authority or advisory committee performs could adequately protect or provide service to
105 the public;

106 (6) the extent to which the jurisdiction of the agency, authority or advisory committee
107 and the programs administered by the agency, authority or advisory committee overlap or
108 duplicate those of other agencies, authorities or advisory committees, the extent to which the
109 agency, authority or advisory committee coordinates with those agencies, authorities or advisory
110 committees, and the extent to which the programs administered by the agency, authority or
111 advisory committee can be consolidated with the programs of other authorities, agencies or
112 advisory committees;

113 (7) the promptness and effectiveness with which the agency, authority or advisory
114 committee addresses complaints concerning entities or other persons affected by the agency,
115 authority or advisory committee, including an assessment of the agency's, authority's or advisory
116 committee's administrative hearings process;

117 (8) an assessment of the agency's, authority's or advisory committee's rulemaking
118 process and the extent to which the agency, authority or advisory committee has encouraged
119 participation by the public in making its rules and decisions and the extent to which the public
120 participation has resulted in rules that benefit the public;

121 (9) the extent to which the agency, authority or advisory committee has complied with:

122 (a) federal and state laws and applicable rules regarding equality of employment
123 opportunity and the rights and privacy of individuals; and

124 (b) state law and applicable rules of any state agency, authority or advisory committee
125 regarding purchasing guidelines and programs for historically underutilized businesses;

126 (10) the extent to which the agency, authority or advisory committee issues and enforces
127 rules relating to potential conflicts of interest of its employees and chapter 268A;

128 (11) the extent to which the agency or authority complies with chapters 66 and 66A and
129 follows records management practices that enable the agency to respond efficiently to requests
130 for public information;

131 (12) the effect of federal intervention or loss of federal funds if the agency, authority or
132 advisory committee is abolished;

133 (13) the extent to which the authority has issued bonds or otherwise incurred similar
134 long-term obligations, the amount of outstanding bonded indebtedness for which the authority is
135 responsible and the sustainability of another authority assuming responsibility for such long-term
136 obligations;

137 (14) whether the authority is responsible for a retirement system for its employees, and
138 the extent of the authority's obligations and available funding under such retirement system and
139 for other post-employment benefits for retired employees; and

140 (15) whether the agency, authority or advisory committee utilizes an open and
141 competitive bid process for third party contracts related to legal representation, bonds and fiscal
142 management.

143 Section 10. (a) In its report on an agency, authority or advisory committee, the
144 commission shall:

145 (1) make recommendations on the abolition, continuation or reorganization of each
146 affected agency, authority or advisory committee, and on the need for performance of the
147 functions of the agency, authority or advisory committee;

148 (2) make recommendations on the consolidation, transfer or reorganization of programs
149 within agencies or authorities not under review when the programs duplicate functions
150 performed in agencies or authorities under review;

151 (3) make recommendations to improve the operations of the agency, its policy body,
152 authority or advisory committee, including management recommendations that do not require a
153 change in the agency's or authority's enabling statute; and

(4) make recommendations to improve the efficiency and transparency in third party contract awards related to legal representation, bonds and fiscal management, including, but not limited to, recommending utilization of an open and competitive bid process.

(b) The commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the agency, authority or advisory committee, to be forwarded to the house and senate committees on ways and means and the executive office for administration and finance.

(c) The commission shall prepare drafts of legislation to carry out the commission's recommendations under this section.

(d) After the legislature acts on the report, the commission shall present to the secretary of administration and finance, the commission's recommendations that do not require a statutory change to be put into effect.

Section 11. In the 2-year period preceding the date scheduled for the abolition of a state agency, authority or advisory committee under this chapter, the commission may exempt certain agencies, authorities or advisory committees from the requirements of this chapter relating to staff reports, hearings, and reviews.

(a) The commission may only exempt an agency, authority or advisory committee that has been inactive for a period of 2 years preceding the date the agency, authority or advisory committee is scheduled for abolition or that has been rendered inactive by an action of the legislature.

(b) The commission's action in exempting an agency, authority or advisory committee under this section must be done by an affirmative record vote and must be decided by a majority of all members present and voting.

Section 12. During each legislative session, the staff of the commission shall monitor legislation affecting agencies, authorities and advisory committees that have undergone sunset review and shall periodically report to the members of the commission on proposed changes which would modify prior recommendations of the commission.

Section 13. An advisory committee, the primary function of which is to advise a particular agency or authority, shall be abolished on the date set for abolition of the agency or authority unless the advisory committee shall have been expressly continued by law.

Section 14. (a) During the annual session immediately before the abolition of an agency, authority or an advisory committee that is subject to this chapter, the legislature may continue the agency, authority or advisory committee for a period not to exceed 12 years.

(b) This chapter shall not prohibit the legislature from:

(1) terminating a state agency, authority or advisory committee subject to this chapter at a date earlier than that provided in this chapter; or

(2) considering other legislation relative to a state agency, authority or advisory committee subject to this chapter.

Section 15. (a) An agency, authority or advisory committee that is abolished in an odd-numbered year may continue in existence until June 30 of the following year to conclude its business. Unless the law provides otherwise, abolition does not reduce or otherwise limit the

195 powers and authority of the agency or authority during the concluding year. An agency or
196 authority is terminated and shall cease all activities at the expiration of the 1-year period. Unless
197 the law provides otherwise, all rules that have been adopted by the agency or authority expire at
198 the expiration of the 1-year period.

199 (b) An un-obligated or unexpended appropriation of an abolished agency or advisory
200 committee shall lapse on September 1 of the year after abolition.

201 (c) Except as provided by subsection (f) or as otherwise provided by law, all money
202 in a dedicated fund of an abolished state agency, authority or advisory committee on September
203 1 of the year after abolition shall be transferred to the General Fund. The part of the law
204 dedicating the money to a specific fund of an abolished agency becomes void on September 1 of
205 the year after abolition.

206 (d) Unless otherwise provided otherwise, an abolished state agency, authority or
207 advisory committee funded by the legislature may not spend or obligate any of the money
208 appropriated beyond 1 year from the date of abolition.

209 (e) Unless the governor designates an appropriate agency as prescribed by subsection
210 (f), property and records in the custody of an abolished state agency, authority or advisory
211 committee on September 1 of the year after abolition shall be transferred to the state archives. If
212 the governor designates an appropriate agency, the property and records shall be transferred to
213 the designated agency.

214 (f) The legislature recognizes the state's continuing obligation to pay bonded
215 indebtedness and all other obligations, including lease, contract, and other written obligations,
216 incurred by an agency or authority abolished under this chapter, and this chapter shall not impair

or impede the payment of bonded indebtedness and all other obligations, including lease, contract and other written obligations, in accordance with their terms. If an abolished agency or authority has outstanding bonded indebtedness or other outstanding obligations, including lease, contract or other written obligations, the bonds and all other obligations, including lease, contract and other written obligations shall remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract and other written obligations. The governor shall designate an appropriate agency or authority that shall continue to carry out all covenants contained in the bonds and in all other obligations, including lease, contract and other written obligations, to complete the construction of projects or the performance of other obligations, including lease, contract, and other written obligations. The designated agency or authority shall provide payment from the sources of payment of the bond under the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract and other written obligations, under their terms, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other obligations, including lease, contract and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract and other written obligations, shall remain with the comptroller or the previously designated trustees. If the proceedings do not provide that the funds remain with the comptroller or the previously designated trustees, the funds shall be transferred to the designated agency or authority.

Section 16. (a) The commission may issue a subpoena to compel the attendance of witnesses and the production of books, records, papers and other objects necessary or proper for

240 the purposes of the commission proceedings. The subpoena may be served on a witness at any
241 place in the commonwealth.

242 (b) If a majority of the commission directs the issuance of a subpoena, the chairman
243 shall issue the subpoena in the name of the commission.

244 (c) If the chairman is absent, the chairman's designee may issue a subpoena or other
245 process in the same manner as the chairman.

246 (d) If necessary to obtain compliance with a subpoena or other process, the
247 commission may issue attachments. The attachments may be addressed to and served by a
248 constable, sheriff or deputy sheriff in the commonwealth.

249 (e) Testimony taken under subpoena must be reduced to writing and given under oath
250 subject to the penalties of perjury.

251 (f) A witness who attends a commission proceeding under process shall be paid the
252 same fees and mileage paid witnesses in courts of the commonwealth.

253 Section 17. (a) The commission may request the assistance of agencies. When assistance
254 is requested, an agency or an agency officer shall reasonably assist the commission.

255 (b) In carrying out its functions under this chapter, the commission or its designated
256 staff member may inspect the records, documents and files of any agency or authority.

257 Section 18. (a) A working paper, including all documentary or other information,
258 prepared and maintained by the commission staff in performing its duties under this chapter or
259 other law to conduct an evaluation and prepare a report is exempted from the public disclosure
260 requirements of chapter 66.

(b) A record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this chapter or another law remains confidential and is exempted from the public disclosure requirements of chapter 66.

Section 19. If an employee is displaced because an agency, authority or advisory committee is abolished, reorganized or continued, the head of the agency, authority or advisory committee and the personnel administrator of the commonwealth shall make a reasonable effort to relocate the displaced employee. Except as otherwise expressly provided, abolition of an agency, authority or advisory committee shall not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of abolition.

Section 20. (a) Each bill filed in the legislature that would create a new agency, authority or advisory committee to an agency shall be reviewed by the commission.

(b) The commission shall review the bill to determine whether:

(1) the proposed functions of the agency, authority or committee could be administered by 1 or more existing agencies, authorities or advisory committees;

(2) the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

281 (4) the bill provides for adequate protection against conflicts of interest within the
282 agency, authority or advisory committee.

283 (c) On request, the commission shall forward a written comment on the legislation to
284 the author of the bill and to the presiding officer of the legislative committee to which the bill has
285 been referred.

286 Section 21. (a) The commission may accept from any source any grant, donation, gift or
287 other form of conveyance of land, money, other real or personal property or other item of value
288 made to the commonwealth or the commission for carrying out the purpose of this section and
289 sections 1 to 20, inclusive.

290 SECTION 2. Chapter 5 of the General Laws is hereby repealed.

291 SECTION 3. Chapter 6 of the General Laws is hereby amended by striking out section 5,
292 as appearing in the 2008 Official Edition, and inserting in place thereof the following section: -

293 Section 5. The governor may appoint such employees as may be necessary, who shall
294 hold office during the pleasure of the governor, and shall receive such salaries as may be
295 approved by the governor.

296 SECTION 4. Sections 6 to 7, inclusive, of said chapter 6 are hereby repealed.

297 SECTION 5. Section 10 of said chapter 6, as so appearing, is hereby amended by striking
298 out the last sentence.

299 SECTION 6. Section 11 of said chapter 6 is hereby repealed.

SECTION 7. Section 12 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words “and council, who shall approve such claims before they are sent to the comptroller”.

SECTION 8. Section 97 of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words “, with the advice and consent of the council”.

SECTION 9. Said section 97 of said chapter 6, as so appearing, is hereby further amended by striking out, in line 13, the words “commission on” and inserting in place thereof the following words:- secretary of.

SECTION 10. Section 1 of chapter 6A of the General Laws, as so appearing, is hereby amended by striking out the definition of “State agency” and inserting in place thereof the following definition:-

“State agency”, as defined in section 1 of chapter 29.

SECTION 11. Section 4 of said chapter 6A, as so appearing, is hereby amended by striking out, in lines 13 and 14, the words “sections two C, three, three A, four, nine B and twenty-nine of.”

SECTION 12. Said chapter 6A is hereby further amended by inserting after section 4 the following section:-

Section 4A. Each secretary shall establish a performance measurement system for the agencies within the executive office, which shall establish program goals, measure program performance against those goals and report publicly on progress to improve the effectiveness of the programs offered by the agencies within the executive office, service delivery and policy

321 decision-making. The performance measurement system shall require each agency to develop a
322 strategic plan for program activities and performance goals. Each executive office shall report
323 results from its performance measurement system to the office for performance management and
324 innovation in the executive office of administration and finance, established under section 4R of
325 chapter 7.

326 SECTION 13. Section 6 of said chapter 6A, as appearing in the 2008 Official Edition, is
327 hereby amended by striking out, in lines 1 and 2, the words “commissioner of administration”
328 and inserting in place thereof the following words:- secretary of administration and finance.

329 SECTION 14. Said section 6 of said chapter 6A, as so appearing, is hereby further
330 amended by striking out the last sentence and inserting in place thereof the following sentence:-
331 All such funds may be expended by the secretary, in accordance with chapter 29 and any rules or
332 regulations promulgated thereunder.

333 SECTION 15. Section 16 of said chapter 6A, as so appearing, is hereby amended by
334 striking out the seventh paragraph.

335 SECTION 16. Section 1 of chapter 7 of the General Laws, as so appearing, is hereby
336 amended by striking out the definitions of “Commissioner” and “Finance committee”.

337 SECTION 17. Said section 1 of said chapter 7, as so appearing, is hereby further
338 amended by adding the following definition:-

339 “Secretary”, the secretary of administration and finance.

340 SECTION 18. Said chapter 7 is hereby amended by striking out section 2, as so
341 appearing, and inserting in place thereof the following section:-

Section 2. There shall be an executive office for administration and finance, which shall serve directly under the governor.

SECTION 19. Section 3B of said chapter 7, as so appearing, is hereby amended by striking out the first 3 paragraphs.

SECTION 20. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking out in lines 26 to 28, inclusive, the words “Notwithstanding any other general or special law to the contrary, for the period beginning March first, nineteen hundred and ninety-one, the secretary of administration” and inserting in place thereof the following words:-
Each fiscal year, in accordance with a schedule promulgated by the secretary, the secretary:.

SECTION 21. Said section 3B of said chapter 7, as so appearing, is hereby further amended by striking out, in line 45, the words “of administration and finance”.

SECTION 22. The fourth sentence of the fourth paragraph of said section 3B of said chapter 7, as so appearing, is hereby amended by striking out the last sentence.

SECTION 23. Said chapter 7 is hereby further amended by inserting after section 3B the following 3 sections:-

Section 3D. The state purchasing agent shall supervise the state printing and all publications by the commonwealth shall be printed under his direction; provided, that the foregoing provisions shall not apply to topographic maps issued by state departments, to legislative printing or to publications required to be issued by the state secretary under sections two to four, inclusive, or under chapter ninety of the resolves of nineteen hundred and twenty or

any other special provision of law. All publications by the commonwealth shall be distributed under the direction of the state secretary unless otherwise provided.

Section 3E. All reports required to be made by permanent state departments, officers and commissions may, subject to the approval of the secretary of administration and finance and except as otherwise provided, be printed annually or otherwise published in electronic form.

Section 3F. Each state agency shall also provide 2 copies of its publication, as defined in section 39 of chapter 6 to the state secretary, 1 of which shall be retained for 2 years as a reference copy. The state secretary shall determine which publications are of sufficient public interest and may then either provide for electronic availability of such publications, reproduce the publications in appropriate quantities or acquire the publications in appropriate quantities directly from the issuing agency, at the cost of printing, for distribution by said secretary.

SECTION 24. Section 4 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The governor shall appoint the secretary of administration and finance.

SECTION 25. Said chapter 7 is hereby further amended by striking out section 4A, as so appearing, and inserting in place thereof the following section:-

Section 4A. The executive office for administration and finance shall include a division of capital asset management and maintenance, which shall be headed by a commissioner as provided in chapter 7B, and a department of revenue as provided in chapter 14. In addition, the executive office for administration and finance shall include the following divisions: human resources, information technology, fiscal affairs and operational services, which divisions shall develop policy and standards to govern the conduct of commonwealth secretariats, departments,

384 agencies, boards and commissions in each of these areas, and shall provide expertise and
385 centralized processing to said secretariats, departments, agencies, boards, commissions and other
386 entities of state government.

387 (a) The operational services division shall be headed by a state purchasing agent who
388 shall also serve as assistant secretary for operational services. The state purchasing agent shall
389 be appointed by the secretary with the approval of the governor. The state purchasing agent shall
390 give bond to the state treasurer in a sum fixed by the governor for the faithful performance of the
391 purchasing agent's duties and for the rendering of a proper account of all money entrusted to the
392 purchasing agent for the use of the commonwealth. The purchasing agent may establish within
393 the division such bureaus and other units as are deemed necessary by the commissioner of
394 administration to carry out the functions of the division. Such functions shall include, but not be
395 limited to, the management of the acquisition of all goods, supplies, equipment and services,
396 excepting the acquisition of such goods, supplies, equipment and services as otherwise provided
397 for in any general or special law or in any administrative rule or regulation promulgated by the
398 secretary, the provision of assistance and advice for such acquisitions, the administration of the
399 state and federal surplus property programs, the administration of the collective purchasing
400 program for the political subdivisions of the commonwealth, the administration and management
401 of reproduction facilities, the management of state acquired vehicles including the use and
402 maintenance of such vehicles and such other functions as the purchasing agent, with the approval
403 of the secretary, may from time to time deem necessary for the efficient and economical
404 administration of the work of said division. The operational services division may charge and
405 collect from statewide contractors a statewide contract administrative fee, to be established by

the executive office for administration and finance; provided, however, that such fee shall not exceed 1 per cent of the total value of a contract awarded to a statewide contractor.

(b) The human resources division shall be headed by a personnel administrator who shall also serve as assistant secretary for human resources. The personnel administrator shall be appointed by the secretary with the approval of the governor. Such personnel administrator shall be a person familiar with the principles and experienced in the methods and practices of personnel administration. The personnel administrator shall serve for a term of 4 years, which term shall end on June 30 of the first year of the term of the governor, except that the personnel administrator may be removed by the secretary, with the prior approval of the governor. A person so appointed shall serve until the qualification of the administrator's successor; provided, however, that in the case of a person appointed to fill a vacancy occurring during the prescribed term by reason of death, resignation or otherwise, the term of the successor in said office shall end on the next succeeding June 30 of the first year of the term of the governor. Within the human resources division shall also be the state office of affirmative action, the office of employee relations, the office of dispute resolution and the office of workers' compensation administration.

(c) The information technology division shall be headed by the chief information officer who shall also serve as assistant secretary for information technology. The chief information officer shall be appointed by the secretary. The chief information officer shall carry out such functions as the commissioner may deem necessary for the efficient and economical administration of information technology systems within the executive departments including, but not limited to, setting information technology standards, reviewing and approving secretariat and department information technology strategic plans, reviewing and approving the planning,

429 design, acquisition and operation of information technology systems, assessing the performance
430 of information technology systems and operations, managing central information technology
431 systems, and managing the commonwealth's mailing operations. The chief information officer
432 may establish such bureaus, offices and other functional units within the division as the chief
433 information officer deems appropriate.

434 The division shall include an office of geographic information through which the chief
435 information officer shall develop, maintain, update and distribute geographic information,
436 technology, data and services for use by state agencies, municipalities and the public. The office
437 shall coordinate all geographic information activities in state and local government, and shall
438 collect, manage and distribute geographic information maintained by state agencies and local
439 government agencies. It shall also provide technical services related to geographic information
440 to state agencies and municipalities. The chief information officer shall set standards for the
441 acquisition, management and reporting of geographical information and the acquisition, creation
442 or use of applications employing such information, by any executive department agency, and the
443 reporting of such information by municipalities.

444 (d) Except in the case of agencies named in section 4G, the secretary may also establish
445 within the executive office for administration and finance such other bureaus, sections and other
446 administrative units not otherwise established by law as may be necessary for the efficient and
447 economical administration of the work of said office and when necessary for such purpose, the
448 secretary may abolish any bureau, section or other unit or merge any 2 or more of them. The
449 secretary shall prepare and keep current a general statement of the organization of said office and
450 of the assignment of functions to its various administrative units, officials and employees. The

general statement shall be known as the Description of Organization of said office and shall be kept on file in said office. A copy shall be kept on file in the office of the governor.

(e) If a new governmental mandate effective on or after July 1, 2004 is imposed upon a contractor providing a social service program, as defined in section 274 of chapter 110 of the acts of 1993, to a governmental unit, as defined in said section 274 of said chapter 110, and compliance with such governmental mandate has or will have a material adverse financial impact on the contractor, except a contractor for goods or services related to special education as defined in section 1 of chapter 71B, the governmental unit shall negotiate a contract amendment with the contractor to increase the maximum obligation amount or unit price to offset the material adverse financial impact of the new governmental mandate; provided, that the contractor furnishes substantial evidence to the governmental unit of such material adverse financial impact along with a request to renegotiate based on a new governmental mandate.

For the purposes of this subsection, a "new governmental mandate" shall mean a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order or other governmental requirement that was not in effect when the contract was originally entered into and directly or indirectly imposes an obligation upon the contractor to take any action or to refrain from taking any action in order to fulfill its contractual duties.

For the purposes of this subsection, a "material adverse financial impact" shall mean: (1) an increase in the reasonable costs to the contractor in performing the contract of the lesser of: (i) 3 per cent of the maximum obligation amount or unit price of the contract; or (ii) \$5,000, in the aggregate as a result of all such mandates in effect during the contract year; or (2) an action that affects the core purpose and primary intent of the contract.

Any contractor aggrieved by a decision of a governmental unit denying or failing to negotiate a contract amendment to remedy a material adverse impact of a new governmental mandate under this section may appeal such adverse decision to the division of administrative law appeals under section 4H for a hearing and decision de novo on all issues. A contractor's request for contract amendment shall, for purposes of appeal, be deemed to have been denied if a determination is not received within 30 days of the governmental unit's receipt of the request. A contractor or governmental unit may appeal an adverse decision of the division of administrative law appeals to the superior court, Suffolk division, under chapter 30A.

SECTION 26. Section 4D of said chapter 7 is hereby amended by striking out the first 2 paragraphs, as amended by section 9 of chapter 56 of the acts of 2010, and inserting in place thereof the following 2 paragraphs:-

Except as otherwise provided by law, the secretary shall appoint all employees of the executive office for administration and finance. Unless otherwise provided by law, all such appointments shall be made in accordance with chapter 31; provided, however, that in staffing at any time said office, the secretary may, without regard to chapter 31 but subject to the approval of the governor, appoint such experts and other assistants in said office as the secretary shall deem necessary; provided, that no person while holding any such appointment shall be subject to section 9A of chapter 30. The secretary may, without regard to section 45 of chapter 30 or chapter 31, but subject to approval of the governor, appoint no more than 4 assistant secretaries. Each such assistant secretary shall be a person of ability and experience, shall devote the assistant secretary's entire time to the duties of the assistant secretary's office, and shall receive such salary as the commissioner shall determine, with the approval of the governor.

Subject to appropriation, the secretary may appoint and remove such additional assistants, technical consultants and other persons and may engage such technical and other assistance, as the work of said office may require. The secretary may expend such sums of money for expenses, including travelling expenses of officers and employees serving in said office, as may be appropriated for such expenses.

SECTION 27. Said chapter 7 is hereby further amended by striking out sections 4E and 4F, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 4E. In addition to any powers provided in chapter 6A, in making any examination or investigation authorized under this chapter, the secretary may require the production of books, papers, contracts and documents in the custody of any agency other than those within the executive office of administration and finance, which relate to any matter within the scope of such examination or investigation.

SECTION 28. Section 4G of said chapter 7, as so appearing, is hereby amended by striking out, in line 6, the words “the board of economic advisors.”

SECTION 29. Said chapter 7 is hereby amended by inserting after section 4Q the following section:-

Section 4R. There shall be within the executive office of administration and finance an office of performance management and innovation charged with overseeing and coordinating the output of the performance measurement systems developed by each executive office under section 4A of chapter 6A. The office shall report quarterly to the house and senate chairs of ways and means, the house and senate chairs of post-audit and oversight and the chairs of the joint

517 committee on state administration and regulatory oversight the results reported by the
518 performance measurement systems and progress on implementing the systems by each executive
519 office.

520 SECTION 30. Said chapter 7 is hereby further amended by striking out section 5, as
521 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

522 Section 5. The secretary may, with the consent of the governor, appoint a first deputy
523 commissioner of administration who shall also serve as undersecretary. The first deputy
524 commissioner shall be a person of ability and experience; shall serve at the pleasure of the
525 secretary; shall receive such salary as the secretary, with the approval of the governor, shall
526 determine, and, shall devote the first deputy commissioner's entire time to the duties of the first
527 deputy commissioner's office. The first deputy commissioner shall exercise such authority and
528 discharge such duties of the secretary as the secretary may delegate to the first deputy
529 commissioner; and in the absence or incapacity of the secretary or in the event of a vacancy in
530 the position of the secretary, the said first deputy commissioner shall act as the secretary until the
531 absence or incapacity shall have terminated or the vacancy shall have been filled.

532 SECTION 31. Sections 6B and 6E of said chapter 7 are hereby repealed.

533 SECTION 32. Section 7 of said chapter 7, as appearing in the 2008 Official Edition, is
534 hereby amended by striking out, in line 1, the words "commissioner of administration" and
535 inserting in place thereof the following word:- secretary.

536 SECTION 33. Said section 7 of said chapter 7, as so appearing, is hereby further
537 amended by striking out, in line 13, the word "commissioner" and inserting in place thereof the
538 following word:- secretary.

539 SECTION 34. Section 7A of said chapter 7, as so appearing, is hereby amended by
540 striking out, in line 1, the words “commissioner of administration is hereby authorized” and
541 inserting in place thereof the following words:- secretary may.

542 SECTION 35. Said section 7A of said chapter 7, as so appearing, is hereby further
543 amended by striking out, in line 5, the words “said commissioner” and inserting in place thereof
544 the following words:- the secretary.

545 SECTION 36. Section 8 of said chapter 7, as so appearing, is hereby amended by striking
546 out, in lines 2 and 3, the words “or of the council, or of the finance committee, the
547 commissioner” and inserting in place thereof the following words:- the secretary.

548 SECTION 37. Said chapter 7 is hereby further amended by striking out section 9, as so
549 appearing, and inserting in place thereof the following section:-

550 Section 9. On request of either branch of the general court or of the ways and means
551 committee of either branch, or of the governor, the secretary shall make a special examination of,
552 and give to them any information in the secretary’s possession relative to, any matter affecting
553 the management or finances of any department, officer, commission or undertaking which
554 receives an annual appropriation of money from the commonwealth, including annual
555 appropriations to be met by assessments.

556 SECTION 38. Section 9A of said chapter 7, as so appearing, is hereby amended by
557 striking out in lines 1, 16 and 48, each time they appear, the words “of administration and
558 finance”.

559 SECTION 39. Said section 9A of said chapter 7, as so appearing, is hereby further
560 amended by striking out, in lines 26 and 27, the words “provided in administrative bulletin 896
561 issued by the executive office of administration and finance” and inserting in place thereof the
562 following words:- established by the executive office for administration and finance through
563 administrative action.

564 SECTION 40. Said section 9A of said chapter 7, as so appearing, is hereby further
565 amended by striking out, in line 69, the words “division of capital asset management and
566 maintenance” and inserting in place thereof the following words:- operational services division.

567 SECTION 41. Said chapter 7 is hereby further amended by striking out sections 10 and
568 11, as so appearing, and inserting in place thereof the following 2 sections:-

569 Section 10. The secretary may make a special examination of the management or
570 finances of any department, officer, commission or undertaking which receives annual
571 appropriations of money from the commonwealth, including annual appropriations to be met by
572 assessments, and may report on the management or finances to the governor and to the general
573 court.

574 Section 11. (a) Whenever requested to make a special examination under section 9, or
575 after first obtaining the approval of the governor in making a special examination under the
576 preceding section, the secretary may require the attendance and testimony of witnesses and the
577 production of all books, papers, contracts and documents relating to the special examination.

578 (b) Witnesses shall be summoned in the same manner and shall be paid the same fees as
579 witnesses before the superior court.

(c) The secretary may prescribe rules and regulations for the conduct of hearings, and the secretary may administer oaths to witnesses or take their affirmation. If any person summoned and paid as a witness refuses to:

(1) attend;

(2) be sworn or to affirm;

(3) answer any question; or

(4) produce any book, contract, document or paper pertinent to the matter before the secretary, a justice of the supreme judicial or the superior court, upon application by the secretary, may issue an order requiring such person to appear before the secretary, and to produce his books, contracts, documents and papers and to give evidence touching the matter in question.

Failure to obey such an order of the court may be punished by the court as contempt of that court.

(d) A person summoned and paid who refuses to attend, or to be sworn or to affirm, or to answer any proper question, or to produce any book, contract, document or paper, pertinent to the matter before the secretary, and any person who willfully interrupts or disturbs any hearing, or who is disorderly at a hearing, shall be punished by a fine of not more than \$50 dollars or by imprisonment for not more than 1 month, or both.

(e) Upon application by the secretary, commissions to take depositions of persons outside the commonwealth may be issued by a justice of the supreme judicial or the superior court, to be used in hearings before the secretary and all laws and rules relating to such commissions in civil

actions shall apply to commissions issued under this section. This section shall not be construed to compel any person to give any testimony or to produce any evidence, documentary or otherwise, which may tend to incriminate that person.

SECTION 42. Section 14C of said chapter 7, as appearing in section 8 of chapter 131 of the acts of 2010, is hereby amended by striking out the definition of “Secretary”.

SECTION 43. Section 22 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 1, 77, 89 and 90, and 111, the words “commissioner of administration” and inserting in place thereof, in each instance, the following word:- secretary.

SECTION 44. Said section 22 of said chapter 7, as so appearing, is hereby further amended by striking out, in lines 14 and 116, the word “commissioner” and inserting in place thereof, in each instance, the following word:- secretary.

SECTION 45. Section 22B1/2 of said chapter 7 is hereby amended by striking out the definition of “State authority”, as most recently amended by section 10 of chapter 25 of the acts of 2009, and inserting in place thereof the following definition:-

“State authority”, as defined in section 1 of chapter 29.

SECTION 46. Section 22G of said chapter 7 is hereby amended by striking out the definition of “State authority”, as amended by section 11 of said chapter 25, and inserting in place thereof the following definition:-

“State authority”, as defined in section 1 of chapter 29.

SECTION 47. Section 28 of said chapter 7, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 6, 57 and 58, 65 and 66, and 72, the words

622 “commissioner of administration” and inserting in place thereof, in each instance, the following
623 word:- secretary.

624 SECTION 48. Said section 28 of said chapter 7, as so appearing, is hereby further
625 amended by striking out, in line 68, the word “industries” and inserting in place thereof the
626 following words:- workforce development.

627 SECTION 49. Section 28A of said chapter 7, as so appearing, is hereby amended by
628 striking out, in lines 8 and 9, the words “commissioner of administration” and inserting in place
629 thereof the following word:- secretary.

630 SECTION 50. Section 29 of said chapter 7, as so appearing, is hereby amended by
631 striking out in lines 1 and 2, the words “, including the board of education and the department of
632 education,”.

633 SECTION 51. Said section 29 of said chapter 7, as so appearing, is hereby further
634 amended by striking out, in line 18, the words “commissioner of administration” and inserting in
635 place thereof the following word:- secretary.

636 SECTION 52. Section 31A of said chapter 7, as so appearing, is hereby further amended
637 by striking out, in lines 2 and 3, the words “commissioner of administration” and inserting in
638 place thereof the following word:- secretary.

639 SECTION 53. Sections 38A1/2 to 43I, inclusive, of said chapter 7 are hereby repealed.

640 SECTION 54. Section 50 of said chapter 7, as appearing in the 2008 Official Edition, is
641 hereby amended by striking out, in line 2, the figure “4A” and inserting in place thereof the
642 following figure:- 49.

SECTION 55. Section 61 of said chapter 7, as appearing in section 2 of chapter 56 of the acts of 2010, is hereby amended by striking out the words “section 40N of chapter 7”, each time they appear, and inserting in place thereof the following words:- section 6 of chapter 7C.

SECTION 56. Section 1 of chapter 7A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There shall be an office of the comptroller which shall be an independent state agency.

SECTION 57. Section 2 of said chapter 7A, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words “commissioner of administration” and inserting in place thereof the following words:- secretary of administration and finance.

SECTION 58. Said chapter 7A is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section:-

Section 3. The comptroller shall examine all accounts and demands against the commonwealth excepting those for the salaries of the governor and the justices of the supreme judicial court, for the payrolls of the executive council and members of the general court, and those due on account of the principal or interest of a public debt. The comptroller may require paper or electronic affidavits that articles have been furnished, services rendered and obligations incurred, as claimed. Such paper or electronic affidavit for any office, department, commission and institution shall be made by the person authorized to incur such obligation. The comptroller shall make a certificate estimating the amount due and allowed on each account or demand and shall subsequently make available a report of the amounts and accounts so examined, the name of the person to whom such amount is payable and the account to which it is chargeable. The

665 comptroller shall keep copies of and transmit all such certificates to the governor, who, with the
666 advice and consent of the council, may issue his warrant to the state treasurer for the amount
667 therein specified as due.

668 This authority shall pertain to all accounts and funds of the commonwealth unless
669 specifically exempted by general or special law.

670 The comptroller may exclude from such certificate any amount otherwise due to any
671 person owing an overdue debt to the commonwealth or any agency of the commonwealth;
672 provided, however, that the head of such agency has filed with the comptroller a paper or
673 electronic affidavit specifying that such debt exists, the amount due and the name of the debtor.
674 Any such debt may be charged by the comptroller against any amount otherwise due from the
675 commonwealth to such debtor, subject to regulations promulgated by the comptroller. Such
676 regulations shall include, but not be limited to, the following requirements:

677 (1) that said agency issue 4 written notices to the debtor over a 120 day period prior to
678 requesting exclusion of such overdue amounts from such certificate;

679 (2) that such notices advise the debtor of the debtor's right to a hearing before said
680 agency, and;

681 (3) that, unless otherwise provided by law, said agency shall hold a hearing under chapter
682 30A upon timely written application of the debtor.

683 Said regulations may authorize the comptroller to waive requirements at the request of an
684 agency head provided that all waivers shall be in writing and state the reasons for such waivers.

685 The comptroller shall not include on such certificate any amount for any account for
686 which an appropriation is required under section 6 of chapter 29 if no such appropriation or no
687 allotment has been made or if the amount of such appropriation and allotment for the current
688 fiscal year is insufficient to meet the amount of the demand. The comptroller is prohibited from
689 making or authorizing any spending authority to make a journal entry, so-called, between
690 accounts if the account ultimately to be charged had insufficient monies to support the entry at
691 the time the amount being entered was expended, unless prior notification of the intent to make
692 such a journal entry, indentifying the accounts involved and the amount of the entry, is sent to
693 the house and senate committees on ways and means. The comptroller is further prohibited from
694 certifying any amounts for payment in the event that there is an interim period at the beginning
695 of a fiscal year prior to the final passage of the fiscal year appropriation act or any interim
696 appropriation act, subject to the condition that any amounts otherwise authorized by law to be
697 paid during such interim period may be so certified by the comptroller.

698 SECTION 59. Section 4 of said chapter 7A is hereby repealed.

699 SECTION 60. Section 5 of said chapter 7A, as appearing in the 2008 Official Edition, is
700 hereby amended by striking out the first sentence and inserting in place thereof the following
701 sentence:- All bills and vouchers on which money has been or may be paid from the treasury
702 upon the certificate of the comptroller or the warrant of the governor shall be kept as prescribed
703 by the office of the comptroller; and all departments, offices, commissions and institutions
704 authorized to make contracts under which money may be payable from the treasury shall submit
705 as directed by the comptroller, before payment, certified copies of the contracts.

706 SECTION 61. The last sentence of said section 5 of said chapter 7A, as so appearing, is
707 hereby amended by adding the following words:- and for the smallest possible issuance of
708 revenue anticipation notes necessary under section 47 of chapter 29.

709 SECTION 62. Section 6 of said chapter 7A is hereby repealed.

710 SECTION 63. Section 8 of said chapter 7A, as appearing in the 2008 Official Edition, is
711 hereby amended by inserting after the word “accounts”, in line 5, the following words:- ,
712 including adjustments for current or prior periods.

713 SECTION 64. Said chapter 7A is hereby further amended by striking out section 10, as
714 so appearing, and inserting in place thereof the following section:-

715 Section 10. The comptroller shall establish policies and procedures that require all
716 accounting statements included in reports of departments, offices and commissions to reconcile
717 to the official books and records of the commonwealth before the publication of such reports.
718 No such report shall be published by any such department, office or commission until such
719 statements are so confirmed.

720 SECTION 65. Section 11 of said chapter 7A, as so appearing, is hereby amended by
721 inserting after the word “equipped”, in line 1, the following words:- , subject to appropriation,.

722 SECTION 66. Section 13 of said chapter 7A, as so appearing, is hereby amended by
723 striking out, in lines 1 and 2, the words “commissioner of capital asset management and
724 maintenance”.

725 SECTION 67. Said chapter 7A is hereby further amended by striking out section 16 and
726 inserting in place thereof the following section:-

Section 16. The comptroller, in consultation with the secretary of administration and finance and the attorney general, shall administer the Liability Management and Reduction Fund established in section 2TT of chapter 29. The comptroller may appoint a liability manager of said fund whose compensation shall be paid out of said fund. The comptroller shall have the following powers and duties with respect to the fund:

(a) to use amounts in the fund to make payments or to purchase insurance coverage to make payments for the purposes set forth in said section 2TT of said chapter 29; provided, however, that any insurance coverage so purchased shall recognize and preserve the commonwealth's constitutional, statutory and common law rights, defenses, immunities and control including, without limitation, chapters 12 and 258;

(b) to determine a deductible amount, which an agency shall be directly responsible for making payment relative to a claim arising under said chapter 258 and which deductible shall be excluded from the computation of the premiums subsequently charged to such agency;

(c) to determine and assess not later than October 1 annually the premium amounts to be charged to each state agency; provided, however, that:

(1) premiums shall be set and adjusted based on factors including, but not limited to:

(A) a 5-year experience rating reflecting, without limitation, liability incurred by reasons of judgments, settlements and litigation costs for tort claims under said chapter 258;

(B) minimum-estimated-liability amounts for pending claims as to which presentment has been made under said chapter 258;

(C) the record of the agency regarding safety or other training programs designed to reduce litigation or to detect and defend against frivolous or insubstantial claims; and

(D) any extraordinary factors warranting an adjustment in the discretion of the comptroller;

(2) any disputes between agencies relative to their respective proportions of responsibility for any resolved or pending claim or disputes relative to the valuation or the appropriate nature of such claims shall be determined by the comptroller, in consultation with the attorney general; and

(3) the comptroller may pay rebates to agencies that reduce their resolved and pending claims totals below expected levels in a fiscal year and may assess surcharges on agencies experiencing unexpectedly high resolved and pending claims totals in a fiscal year;

(d) to make such other expenditures from the fund as are necessary, appropriate and reasonable for management and administration of the fund, including personnel costs; provided, however, that all direct and indirect costs for such employees shall be paid from the fund; and provided further, that the fund shall not be used directly or indirectly for the compensation of attorneys representing the commonwealth or its officers or employees.

The comptroller shall promulgate rules and regulations to effectuate the purposes of the fund including, but not limited to, the manner in which each agency shall be assessed a premium.

Documents indicating the estimated value of a particular pending claim shall not be public records and shall not be discoverable or admissible in evidence in any action.

SECTION 68. The General Laws are hereby amended by inserting after chapter 7B the following chapter:-

CHAPTER 7C

CAPITAL ASSET MANAGEMENT AND MAINTENANCE

Section 1. As used in this chapter and chapter 29 of the General Laws, the following words and terms shall have the following meanings, unless the context shall clearly indicate a different meaning or intent:

(a) “acquisition”, obtaining by gift, purchase, devise, grant, eminent domain, rental, rental-purchase, or otherwise;

(b) “addition, expansion and extension”, work which will result in an increase in the overall external dimension of a facility;

(c) “administering agency”, the public agency acting on behalf of a using agency;

(d) “alteration”, work required to modify or adjust the interior space arrangement or other physical characteristics of an existing facility so that it may be more effectively utilized for its presently designated functional purpose;

(e) “building authority”, the University of Massachusetts Building Authority, the Massachusetts State College Building Authority or any other building authority which may be established for similar purposes;

(f) “capital facility”, a public improvement such as a building or other structure; a utility, fire protection, and other major system and facility; a power plant facility and appurtenances; a

heating, ventilating, air conditioning or other system; initial equipment and furnishings for a new building or building added to or remodeled for some other use; a public parking facility; an airport or port facility; a recreational improvement such as a facility or development in a park or other recreational facility; or any other facility which, by statute or under standards as they may be prescribed from time to time by the commissioner of capital asset management and maintenance, according to the provisions of this section, may be defined as such, provided however that a highway improvement such as a highway, bridge or tunnel or other structure or building integral to the operation of the Central Artery/Ted Williams Tunnel Project in the city of Boston and the city of Cambridge; a transportation improvement such as a mass transportation or other public transit facility, but not including a department of transportation building in the Park Square area of the city of Boston, shall not be considered a capital facility as defined herein; provided further that an improvement in information technology shall not be a capital facility to the extent it does not result in the creation or expansion of tangible property;

(g) “capital facility project”, an undertaking by a public agency for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility.

(g ½) “building project”, a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided, however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water and highway systems shall not be subject to section 46.

809 (h) “construction”, new construction, alteration, renovation, rehabilitation or other
810 activity that is intended to result in a significant increase in internal usable space;

811 (i) “control and supervision”, authority to perform or contract for performance;

812 (j) “conversion”, work required to modify or adjust the interior space arrangement or
813 other physical characteristics of an existing facility so that it may be effectively utilized for a
814 new functional purpose;

815 (k) “energy audit”, in-depth engineering analysis of factors causing energy waste in
816 building that investigates the amount and cost of energy waste and compares the energy waste
817 with the expense of remedying the energy waste on a cost-effective basis;

818 (l) “energy conservation projects”, projects to promote energy conservation, including but
819 not limited to energy conserving modification to windows and doors; caulking and
820 weatherstripping; insulation, automatic energy control systems; hot water systems; plant and
821 distribution system modifications including replacement of burners, furnaces or boilers; devices
822 for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant
823 system conversions; replacement or modification of lighting fixtures; energy recovery systems;
824 and, cogeneration systems;

825 (m) “maintenance”, day-to-day, routine, normally recurring repairs and upkeep;

826 (n) “master plan”, a study or description of a complex or group of buildings or any large
827 or multi-faceted project which is intended to ensure that the various components of the complex
828 shall be compatible with each other, and that the project as a whole shall be compatible with its
829 surroundings;

830 (o) “oversight”, control and supervision, except for final approval of any contract, pre-
831 design or design document or any alteration or modification thereof, payment, certificate of
832 substantial completion, use and occupancy, or final acceptance;

833 (p) “planning”, in reference to a particular capital facility project, the preparation of a
834 master plan, study, program or similar report or analysis the purpose of which is to define the
835 content, cost, and schedule of the project so as to establish a frame of reference prior to design,
836 acquisition, construction, demolition, installation, or maintenance;

837 (q) “program”, a document which defines a capital facility project in terms of its content,
838 time, and cost so that it provides a clear and detailed frame of reference for the design and
839 implementation process, the preparation of such document involving the gathering of data and
840 the analysis of cost necessary to (i) the production of content, time and cost plans based on
841 criteria deriving from those originally defined by any study or similar report and as finally stated
842 within the body of the program itself and (ii) the evaluation of those plans in terms of such
843 criteria;

844 (r) “public agency”, a department, agency, board, commission, authority, or other
845 instrumentality of the commonwealth or political subdivision of the commonwealth or two or
846 more subdivisions thereof;

847 (s) “real property”, land, buildings, appurtenant structures and fixtures attached to
848 buildings or land, including where applicable, all interests in real property, whether created by
849 title, lease, easement or any other legal interest;

(t) “renovation”, work required to restore and modernize most or all of a facility in order that the facility may be effectively utilized for its designated functional purpose or to comply with current code requirements;

(u) “repair”, work required to restore a facility or system to such condition that it may continue to be approximately and effectively utilized for its designated purpose by overhaul, reprocessing or replacement of constituent parts or materials which have deteriorated by action of the elements or wear and tear in use;

(v) “state agency”, also referred to as “state department”, a legal entity of state government established by the General Court as an agency, board, bureau, department, office or division, of the commonwealth with a specific mission and may report to cabinet-level units of government known as executive offices or secretariats or may be independent divisions or departments. In sections 32 to 40, inclusive, state agency shall not include counties.

(w) “study”, a feasibility or other study to identify and evaluate alternative solutions to and recommend a solution to the needs and requirements defined by the public agency proposing a capital facility project which may involve a further definition of that agency’s needs and requirements, gather additional information on the nature of the project, develop and review potential solutions to those needs and requirements, evaluate the financial, environmental, and other aspects of such solutions, estimate the degree to which solutions do not fulfill proposed objectives and criteria, and recommend a means of project implementation and site acquisition;

(x) “using agency”, the public agency which will be the major user of a capital facility project or the occupant of a building project;

(y) “utility systems projects”, installation, extension or replacement of systems for the provision of sewer, water and electrical service, power plant facilities and appurtenances, heating, ventilating and air conditioning, elevators, fire escapes, sprinklers and automatic fire alarms and telephone communications;

The commissioner of capital asset management and maintenance, after review by interested public agencies who may seek to initiate capital facility projects, shall establish standards as to what shall constitute a capital facility and what shall be a capital expenditure for the purpose of defining what shall constitute a capital facility project.

Section 2. The commissioner of capital asset management and maintenance shall be appointed by the commissioner of administration, with the prior written approval of the governor, and may be removed in like manner. He shall be a person of ability and experience, shall be familiar with the principles of the systematic and coordinated planning of capital facilities and shall carry out such functions and duties as the commissioner may from time to time deem necessary for the efficient and economical administration of the capital assets of the commonwealth including, but not limited to, the systematic review of capital assets, the scheduling of routine and schedule maintenance repairs, tracking the deferred maintenance needs of capital assets and the coordinated planning of capital facilities in relation to the programmatic needs of state agencies. The commissioner shall devote his entire time to the duties of his office. No person holding such position shall be subject to the provisions of chapter 31 or section 9A of chapter 30.

Except as otherwise provided in this chapter or any other statute or appropriation act, the commissioner of capital asset management and maintenance shall be responsible for:

893 (a) integrated and coordinated planning and budgeting of capital facilities on an annual
894 and long-term basis;

895 (b) acquisition, allocation and disposition of real property;

896 (c) direction, control, supervision and oversight as to the planning, design, construction,
897 demolition, installation, repair and maintenance of specific capital facilities and capital facility
898 projects;

899 (d) efficient management of the operation of the division of capital asset management and
900 maintenance as a whole and the proper coordination of the work of and effective operation of
901 individual offices, bureaus, and other sections which might be located therein. The commissioner
902 may, subject to appropriation, appoint deputy commissioners and associate deputy
903 commissioners and legal counsel as appropriate and may authorize such deputy commissioners
904 or associate deputy commissioners or legal counsel to act in his stead in particular matters or
905 classes of matters.

906 (e) direction, control, supervision, planning and oversight of the scheduled maintenance
907 and repair needs of capital assets owned by the commonwealth.

908 The commissioner shall promulgate rules and regulations pursuant to the provisions of
909 chapter 30A.

910 The commissioner shall administer programs placed under his direction, undertake any
911 special studies and investigations and submit reports and render advice thereon as may be
912 requested by the commissioner of administration and as required by the general court.

913 The commissioner and his staff shall provide information to and cooperate with the
914 general court or any of its committees in connection with the development and analysis of any
915 long term capital facilities development plan or capital budget proposal.

916 The commissioner of capital asset management and maintenance may, in furtherance of
917 the function of his office, accept and receive funds, grants and services from the federal
918 government or its agencies, and from departments, agencies and instrumentalities of state and
919 local government or from private individuals, trusts and estates.

920 The commissioner may from time to time contract for professional services in connection
921 with the work of the division.

922 Section 3. The commissioner of capital asset management and maintenance shall advise
923 the governor and the commissioner of administration on the means and methods available to
924 coordinate capital facility project plans and programs of all public agencies and the federal
925 government in order to establish relative priorities and to avoid duplication and conflicts. He
926 shall create a central depository for planning documents as they relate to that end, and
927 amendments thereto and revisions thereof prepared by or for public agencies. Effective on the
928 effective date of this act, every public agency shall submit a list and description of such
929 documents as currently exist and as they are promulgated and upon the commissioner's request,
930 submit to him a copy thereof. The commissioner may by rule and regulation identify the
931 documents required to be submitted.

932 The division of capital asset management and maintenance, if it is not designated as the
933 state clearinghouse as provided for by the federal Intergovernmental Cooperation Act of nineteen
934 hundred and sixty-eight, as amended, and regulations promulgated pursuant thereto, shall be

935 notified in a timely manner by the agency designated as the state clearinghouse as to any capital
936 facility projects being reviewed by said agency. The commissioner of capital asset management
937 and maintenance shall review such projects in light of current long range capital facility plans
938 and other programs and policies of the commonwealth and submit his comments and
939 recommendations to the agency designated as the state clearinghouse.

940 Section 4. Except as otherwise provided in this section or by any other statute or
941 appropriation, the division of capital asset management and maintenance shall exercise
942 jurisdiction over capital facility projects to the extent provided below:

943 (1) Control and supervision of all building projects undertaken by any state agency,
944 except to the extent provided for by sections 5 and 26 and that the division shall exercise
945 oversight jurisdiction over building projects undertaken by a state agency that are financed or
946 funded from sources other than an appropriation or the issuance of bonds, notes or other
947 evidences of indebtedness of the commonwealth. Using agencies shall cooperate in any inquiries
948 or inspections conducted by the division of capital asset management and maintenance.

949 (2) Oversight as to building projects undertaken by any building authority, except to the
950 extent provided for by sections 5 and 26 of this chapter. Building authorities shall cooperate in
951 any inquiries or inspections conducted by the division of capital asset management and
952 maintenance to ensure conformity with all applicable standards and guidelines.

953 (3) For housing projects within the jurisdiction of the department of housing and
954 community development as defined by section 1 of chapter 121B, the division of capital asset
955 management and maintenance shall provide only for the establishment of minimum requirements
956 for record keeping and reporting by the department and operating agencies, as each is defined by

section 1 of chapter 121B, and review of and recommendation as to the standards and guidelines for, direction, control, and supervision of their building projects. The department and operating agencies shall cooperate with the division of capital asset management and maintenance, regarding inquiries and inspections conducted as to housing projects within their respective jurisdictions.

(4) For all capital facility projects of cities and towns for which specific approval or authorization by the general court or a state agency is otherwise required and for all capital facility projects of all other public agencies not included within the scope of paragraphs (1), (2), and (3), establishment of requirements for record keeping and reporting by the administering agency as to control and supervision of capital facility projects, so that the division of capital asset management and maintenance may assess the nature, scope and programs of all planned or current capital facility projects and fulfill its responsibilities as defined by this chapter and other relevant statutes. For the purposes of identifying agricultural lands, the commissioner shall utilize criteria established by the secretary of environmental affairs. Such criteria shall determine agricultural land according to past and present agricultural use, and according to the agricultural production suitability of land as defined by the standards of the United States Department of Agriculture Soil Conservation Service. For all capital facility projects or programs funded in whole or in part by federal funds, the record keeping and reporting requirements established pursuant to this paragraph and other relevant statutes may be satisfied by the federal requirements, but only to the extent that the state requirements duplicate the federal requirements or materially conflict with them. State and federal requirements shall be deemed to be materially conflicting only when it would be impossible or unduly burdensome to comply with both sets of requirements. Neither this provision nor any other provision of sections 1 through 32, inclusive,

and sections 32 through 40, inclusive, of this chapter is intended or shall be construed to limit the authority of any public agency — other than those specified in paragraphs (1) and (2) of this section — to control and supervise any capital facility project undertaken by that agency.

Section 5. The commissioner shall, in a manner and to the extent provided by this chapter, control and supervise any building project to be undertaken by a state agency or building authority when the estimated cost of the project exceeds \$250,000 and involves structural or mechanical work. The commissioner may, upon request of a state agency or building authority, delegate project control and supervision to that state agency or building authority over projects involving structural or mechanical work whose estimated cost is less than \$2,000,000 if the commissioner determines that the agency or authority has the ability to control and supervise such project. Except as otherwise provided in this section, any state agency or building authority shall control and supervise its own building projects when the estimated cost of such project is less than \$250,000, or if the project does not involve structural or mechanical work.

Section 6. (a) The general court finds that (1) the Massachusetts commission against discrimination conducted hearings and investigations which documented a history of discrimination against minorities and women in the commonwealth; (2) and in 1994, the executive office of transportation and construction produced a disparity study which documented a history of discrimination against minority and women owned businesses, in which the commonwealth's agencies were participants; (3) this discrimination against minorities and women currently affects the use of minority and women owned businesses in state contracting; (4) the commonwealth has a compelling interest in promoting the use of minority owned business and women owned businesses through the use of the available and qualified pool of minority and women owned businesses; (5) it is the policy of the commonwealth to promote

1003 equality in the market and, to that end, to encourage full participation of minority and women
1004 owned businesses in all areas of state contracting, including contracts for construction and design
1005 services.

1006 (b) As used in this section, the following words shall, unless the context clearly requires
1007 otherwise, have the following meanings:—

1008 “Affirmative marketing program”, a program of race and gender conscious goals to
1009 promote equality in, and to encourage the participation of, minority-owned businesses and
1010 women-owned businesses in contracts for capital facility projects and state assisted building
1011 projects;

1012 “Capital facility project”, shall have the same meaning as found in section 1 when the
1013 project is under the control of the division of capital asset management and maintenance;

1014 “Design services”, any of the following services provided by any designer, programmer,
1015 or construction manager in connection with any public building project:

1016 (i) preparation of master plans, studies, surveys, soil tests, cost estimates or
1017 programs;

1018 (ii) preparation of drawings, plans, or specifications, including, but not limited to,
1019 schematic drawings, preliminary plans and specifications, working plans and specifications or
1020 other administration of construction contracts documents;

1021 (iii) supervision or administration of a construction contract;

1022 (iv) construction management or scheduling.

1023 “Minority”, a person with a permanent residence in the United States who is American
1024 Indian, Black, Cape Verdean, Western Hemisphere Hispanic, Aleut, Eskimo, or Asian.

1025 “Minority-owned business”, any contracting or subcontracting business, or businesses
1026 that supply the contractors and subcontractors which is beneficially owned by one or more
1027 minority persons as follows:

1028 (i) the business must be at least 51 per cent owned by minority persons; in the
1029 case of a corporation having more than one class of stockholders, the ownership requirement
1030 must be met as to each class of stock;

1031 (ii) the minority owners shall demonstrate that they have dominant control over
1032 management;

1033 (iii) the business has not been established solely for the purpose of taking
1034 advantage of a special program which has been developed to assist minority businesses;

1035 (iv) in the case of a joint venture between a minority business meeting the
1036 requirements of clauses (i) to (iii), inclusive, and a non-minority business, the joint venture shall
1037 be found to be a minority business if the minority business meeting the requirements of said
1038 clauses (i) to (iii), inclusive, shall have more than one-half control over management of the
1039 project bid upon and shall have the right to receive more than one-half of the profits deriving
1040 from that project.

1041 “State assisted building project”, a construction project undertaken by a political
1042 subdivision of the commonwealth or 2 or more subdivisions thereof for the planning, acquisition,
1043 design, construction, demolition, installation, repair or maintenance of a capital facility and

1044 whose costs are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part,
1045 by the commonwealth;

1046 “State office of minority and women business assistance” or “SOMWBA”, shall have the
1047 same meaning as found in section 40 of chapter 23A.

1048 “Women-owned business”, any contracting or subcontracting business which is
1049 beneficially owned by one or more women meeting the requirements set forth in clauses (1) to
1050 (4), inclusive, of the definition of minority business, except that the terms “women”, “women
1051 owners”, and “women-owned business”, shall be substituted for the terms “minority” and
1052 “minority persons”, “minority owners”, and “minority business” appearing in the definition.

1053 (c) The commissioner, in consultation with the director of the state office of minority and
1054 women business assistance, may establish an affirmative marketing program to ensure the fair
1055 participation of minority-owned and women-owned businesses on capital facility projects and
1056 state assisted building projects. The affirmative marketing program shall establish participation
1057 goals for minority-owned and women-owned business in the capital facility projects and state
1058 assisted building projects. The participation goals for minority-owned business and women-
1059 owned business shall be based upon the broadest and most inclusive pool of available minority-
1060 owned businesses and women-owned businesses interested in and capable of performing
1061 construction work and design services on the capital facility projects, state funded building
1062 projects, and state assisted building projects; but, the commissioner may establish both statewide
1063 and regional participation goals based upon the availability of minority-owned businesses and
1064 women-owned businesses. The state office of minority and women business assistance, or its
1065 successor agency, shall create and maintain a current directory of certified minority-owned

1066 businesses and women-owned businesses which will serve as one source of information in
1067 determining the pool of available minority-owned businesses and women-owned businesses. The
1068 commissioner and the director of SOMWBA shall meet on a quarterly basis to determine the
1069 status of the implementation of the affirmative marketing program and what further steps both
1070 agencies consider necessary to achieve the purpose of this section.

1071 (d) Not later than January 15 of each year, the commissioner, in consultation with the
1072 director of state office of minority and women business assistance, shall establish participation
1073 goals for minority-owned businesses and women-owned businesses. The participation goals
1074 established pursuant to this section shall apply to capital facility projects and state assisted
1075 building projects. The participation goals shall be expressed as overall annual program goals
1076 which shall be applicable to the total dollar amount of contracts awarded for construction work
1077 and design services on capital facility projects and state assisted building projects for the
1078 calendar year. The commissioner shall publish in the central register, established under section
1079 20A of chapter 9, the participation goals for minority-owned businesses and for women-owned
1080 businesses on capital facility projects and state assisted building projects. The participation goals
1081 for minority owned businesses and women owned businesses shall remain in effect until revised
1082 participation goals are established and published pursuant to this paragraph. The participation
1083 goals for minority owned businesses and women owned businesses, developed before the
1084 effective date of this section, under any existing executive order and in effect as of the January
1085 preceding the effective date of this section shall remain in effect until January 15 of the
1086 following year. The participation goals for minority-owned businesses and women-owned
1087 businesses shall be revised as necessary every 2 years thereafter.

1088 (e) The commissioner, in consultation with the director of the state office of minority and
1089 women business assistance, shall develop a written procedure by which a public agency may, for
1090 an individual capital facility project, adjust the participation goals for minority-owned business
1091 and women-owned business based upon the actual availability of minority-owned businesses and
1092 women-owned businesses, the geographic location of the project, the scope of work of the capital
1093 facility project, or other relevant factors.

1094 (f) The commissioner shall develop a written, good faith efforts waiver procedure by
1095 which public agencies may determine, at any time before the award of a contract, that
1096 compliance with the goals is not feasible and by which public agencies may reduce or waive the
1097 goals for an individual contract.

1098 (g) In connection with the affirmative marketing program, the state office of minority and
1099 women business assistance shall regularly review and, where necessary, modify its certification
1100 process to ensure that it operates effectively, and shall report annually to the secretary of the
1101 executive office of administration and finance regarding these matters.

1102 (h) The commissioner shall be responsible for the overall management, monitoring, and
1103 enforcement of the affirmative marketing program, as the program relates to capital facility
1104 projects under the control of the division, established pursuant to this section. The commissioner
1105 may appoint a program director within the office of the commissioner to assist in program
1106 development, coordination and compliance. The program director shall also have responsibility
1107 for monitoring contract compliance within the division, addressing potential program violations
1108 and coordinating division enforcement activities with the state office of minority and women
1109 business assistance and the attorney general.

1110 (i) The commissioner shall by March 15 of each year submit to the joint committee on
1111 state administration, the senate committee on ways and means, the house committee on ways and
1112 means, the clerk of the house, and the clerk of the senate a report on the performance of the
1113 division's affirmative marketing program for the preceding year. The report shall, at a minimum,
1114 show the name and address of each such minority owned business and women owned business,
1115 its designation as a minority-owned or women-owned business, the contract or subcontract price,
1116 a description of the work performed on the contract by class of work, and project type, and shall
1117 show separately the total number of contracts awarded to minority-owned and women-owned
1118 businesses as a percentage of the total number of contracts awarded and as a percentage of the
1119 total contract price.

1120 (j) The commissioner shall promulgate regulations necessary to implement this section.

1121 Section 7. Except as otherwise provided in section 3 of chapter 211, the commissioner of
1122 capital asset management and maintenance shall: (1) be responsible for the acquisition, control
1123 and disposition of court facilities on behalf of the commonwealth, in the manner and to the
1124 extent provided in this chapter for other real property of the commonwealth; (2) provide facilities
1125 for the trial court, the appeals court and the supreme judicial court; (3) be responsible for
1126 planning and budgeting for such court facilities in the manner and to the extent provided in this
1127 chapter and in chapter 29 for capital facilities of state agencies; and (4) have jurisdiction over
1128 capital facility projects undertaken by the office of the chief administrative justice of the trial
1129 court for such court facilities in the manner and to the extent provided in this chapter and in
1130 chapter 149 for capital facility projects undertaken by state agencies. Notwithstanding any other
1131 general or special law to the contrary, all real property owned by the commonwealth for use as a
1132 courthouse, whenever such property was acquired, shall be held in the name of the

1133 commonwealth as provided in sections 32 and 33, and the division of capital asset management
1134 and maintenance shall hold the deeds to all such property as provided in section 39.

1135 There shall be within the division of capital asset management and maintenance a
1136 director of court facilities. The director of court facilities shall be appointed by the commissioner
1137 of capital asset management and maintenance with the advice of the chief administrative justice
1138 of the trial court and the approval of the commissioner of administration, and may be removed in
1139 like manner. Said position shall not be subject to section 9A of chapter 30 or chapter 31. Said
1140 director shall have the qualifications deemed necessary by said commissioner. Said director shall
1141 perform such duties of said commissioner with respect to court facilities as said commissioner
1142 shall assign, including at least the duty to respond to any inquiry from a county, city or town or
1143 from the office of the chief administrative justice of the trial court regarding court facilities.

1144 Section 8. The commissioner of capital asset management and maintenance shall:

1145 (1) develop and operate automated management and information systems and provide
1146 data processing services;

1147 (2) develop and maintain all necessary accounting and financial systems;

1148 (3) develop, justify and monitor internal operating budgets;

1149 (4) provide business services including central filing, printing, and reproduction,
1150 correspondence and word processing services;

1151 (5) develop and maintain all necessary systems to administer payments to those
1152 contracting for the provision of services and supply of materials;

1153 (6) develop and operate an accounting, reporting, and financial management system that
1154 will permit proper management of the capital facility program;

1155 (7) perform or contract for performance of research on innovative methods for the
1156 acquisition, planning, design, construction, demolition, installation, and repair and maintenance
1157 of capital facilities;

1158 (8) give counsel on all legal matters affecting capital facility projects provided that this
1159 provision shall not preclude the employment of counsel by any office within the division of
1160 capital asset management and maintenance;

1161 (9) approve project budgets and the award of contracts;

1162 (10) recommend and where appropriate, certify for disbursement monies appropriated or
1163 authorized for capital facility projects;

1164 (11) establish guidelines and requirements for the preparation and retention of records
1165 and reports pertaining to the nature, scope and progress of capital facility projects; and

1166 (12) perform such other acts to assure the proper management of the operation of the
1167 division of capital asset management and maintenance and the proper coordination of the work
1168 of and effective operation of the individual offices located therein.

1169 The commissioner shall, after providing an opportunity for the attorney general and other
1170 interested parties to comment, promulgate and from time to time revise uniform contract
1171 conditions appropriate to the type of service being rendered to be incorporated in all contracts for
1172 services of that type related to capital facility projects. Such uniform contract conditions may be

1173 supplemented by but shall take precedence over additional contract conditions for any particular
1174 capital facility project.

1175 The commissioner may from time to time establish within the division of capital asset
1176 management and maintenance such administrative units, in addition to the offices of
1177 programming, project management and facilities management and the bureau of state office
1178 buildings, necessary for efficient and economical administration of the work of said division; and
1179 when necessary for such purpose, he may abolish such unit or may merge any two or more of
1180 them. The said commissioner shall prepare and keep current a general statement of the
1181 organization of said division and of the assignment of functions to its various administrative
1182 units, officials, and employees. Said statement shall be known as the “description of
1183 organization” of said division, and shall be kept on file in said division.

1184 The commissioner shall develop quantitative performance measures for each individual
1185 office and other administrative units located therein and for the division as a whole. Using such
1186 measures, the commissioner shall once each year prepare and submit to the commissioner of
1187 administration a report on the performance of the individual offices and of the division as a
1188 whole, comparing that performance with that of the previous 3 years, the reasons for any change,
1189 and recommending changes in the operation of the division and its offices, as will improve their
1190 performance.

1191 The directors of individual offices and the heads of other administrative units located in
1192 the division shall, upon request by the commissioner conduct internal, operational, financial, and
1193 compliance audits.

Section 9. The commissioner shall, no less often than once every 3 months, prepare a comprehensive report on the progress of all capital facility projects subject to the jurisdiction of the division of capital asset management and maintenance as defined by section 5 but not including those for which a city or town is the administering agency. At the discretion of the commissioner, said reports may exclude capital facility projects with a total project cost of less than \$25,000 for which the administering agency is other than a state agency. Said report shall include, but not be limited to, a statement of the name of each project, the administering agency and the using agency, a brief current description of the project and any substantial changes in the description of the project during the past 3 months, the source of funds, the state of progress of the project, a summary of the total and major costs of the projects as originally estimated and as currently expended or currently estimated to be expended, the original project schedule and the current and estimated progress of the project, and such other information as the commissioner may require be included. Said report shall be submitted to the commissioner of administration and the clerks of the house of representatives and the senate and shall be a public document.

The commissioner of capital asset management and maintenance shall by February 15 of each year prepare a comprehensive annual report on the progress of all capital facility projects subject to the jurisdiction of the division of capital asset management and maintenance defined by section 4. At the discretion of the commissioner, said annual report need not include capital facility projects with a total project cost of less than \$25,000 for which the administering agency is other than a state agency. Said annual report shall constitute one of the four reports required by the previous paragraph of this section but shall contain in addition to the information required in the previous paragraph for each capital facility project, the following data: the authorizations for and sources of funds and expenditure and unencumbered balances thereof; identification of the

1217 designers and contractors who have contracted with the administering agency to provide
1218 materials or services therefor, the administering agency's project and contract numbers, the value
1219 of the contracts and the amount of money paid in accordance with the contracts; and such other
1220 information as the commissioner may require be included. The commissioner shall also include
1221 in said report a statement of the problems which have arisen in the capital facility procurement
1222 programs and procedures of public agencies and specific recommendations for administrative
1223 and legislative action which are necessary to remedy such problems. Said report shall be
1224 submitted to the commissioner of administration and the general court and shall be a public
1225 document available for general distribution.

1226 The commissioner shall by February 15 of each year prepare a comprehensive report
1227 including, but not limited to, an analysis of the utilization, cost and method of acquisition of real
1228 property acquired for the use of state agencies; the sale or rental of such real property and
1229 revenue realized therefrom; and problems which have arisen in the management of real property
1230 by the commonwealth, with specific recommendations for administrative and legislative action
1231 necessary to remedy such problems. Said report shall be submitted to the commissioner of
1232 administration, the joint committee on state administration, and the general court and shall be a
1233 public document available for general distribution.

1234 The commissioner shall develop and annually revise a proposed capital repair and
1235 maintenance plan for state buildings subject to the jurisdiction of the division of capital asset
1236 management and maintenance. The plan shall be based upon repair and maintenance schedules
1237 formulated for each building and group of buildings by the director of facilities management in
1238 accordance with the provisions of sections 24, 26, and 28. In addition to developing capital repair
1239 and maintenance schedules for state buildings, the plan shall analyze the costs and benefits of

1240 continuing minor repairs versus the costs and benefits of major renovation, rehabilitation, or
1241 replacement of the state buildings. The commissioner shall by February 15 of each year, submit
1242 the proposed capital repair and maintenance plan required by this paragraph to the house and
1243 senate ways and means committees and the chairmen of the joint committee on state
1244 administration.

1245 The commissioner shall keep an up-to-date record, by years and cumulatively, on all
1246 capital repair and maintenance projects completed, in process, or scheduled for the future, on all
1247 building projects subject to the jurisdiction of the division of capital asset management and
1248 maintenance.

1249 The commissioner shall, by February 15 of each year, prepare a report, by years and
1250 cumulatively, on all capital repair and maintenance projects completed, in process, or scheduled
1251 for the future, on all capital facility projects, said report shall include narrative statements
1252 indicating why such repairs or maintenance on such projects have been or will be postponed or
1253 cancelled. A copy of said report shall be sent to the house and senate committees on ways and
1254 means, and to the chairmen of the joint committee on state administration.

1255 The governor may, include in his capital outlay budget or request, a budget narrative
1256 statement, indicating why any and all repairs or maintenance on capital facility projects of the
1257 commonwealth, have been or will be postponed or cancelled.

1258 Upon completion of the final design of each state building project estimated to cost in
1259 excess of \$5,000,000, the commissioner shall prepare an analysis detailing the maintenance costs
1260 projected annually over the useful life of the building. The commissioner shall, by February 16
1261 of each year, prepare a report summarizing the annual maintenance costs projected for each

1262 building project described in this paragraph, for which final design was completed during the
1263 prior year. The report shall be filed with the chairmen of the joint committee on state
1264 administration and the agency responsible for the operation and maintenance of the building
1265 project.

1266 In subsequent fiscal years for which the maintenance report indicates that maintenance
1267 will be required, the agency responsible for the operation and maintenance of the building shall
1268 include the projected annual maintenance costs contained in the report in its annual budget
1269 request, provided that revisions to the maintenance costs originally projected by the
1270 commissioner shall be addressed in the agency's budget narrative.

1271 The commissioner shall be responsible for providing state agencies with comprehensive
1272 maintenance manuals for all new building projects constructed on behalf of an agency.

1273 Section 10. In order to assist himself in the performance of his functions the
1274 commissioner of capital asset management and maintenance shall establish an advisory council
1275 on capital asset management and maintenance which shall meet at such times as the
1276 commissioner shall set, but no less often than once every 3 months, to seek information, advice,
1277 and counsel as to the recommendation, establishment, and evaluation of priorities and schedules
1278 for the acquisition, planning, design, construction, demolition, installation, repair and
1279 maintenance of capital facilities. Such of the executive officers of public agencies directly
1280 responsible for the acquisition, planning, design, construction, demolition, installation, repair and
1281 maintenance of capital facilities or their designees as the commissioner may request shall attend
1282 those meetings.

1283 Section 11. There shall be located within the division of capital asset management and
1284 maintenance an office of programming headed by a director of programming. Said director shall
1285 be appointed by the commissioner of capital asset management and maintenance, with the prior
1286 written approval of the commissioner of administration, and may be removed in like manner.
1287 The position of director shall not be subject to the provisions of chapter 31 or section 9A of
1288 chapter 30.

1289 No person shall be appointed director of the office of programming unless he has
1290 extensive experience in the study and programming of buildings.

1291 The commissioner of capital asset management and maintenance shall be responsible for
1292 the exercise of all powers and the performance of all duties assigned by law to the office of
1293 programming, which shall be under his direction, control, and supervision.

1294 Section 12. Except as otherwise provided in this section or by any appropriation act, the
1295 director of programming shall, in the manner and to the extent provided by this section, have
1296 control and supervision of the study and programming of all capital facility projects of state
1297 agencies and building authorities.

1298 The director may appoint such deputies and other supervisory staff as the work of the
1299 office may require, subject to appropriation and the commissioner's approval. Such staff shall
1300 serve at the pleasure of the director and shall not be subject to chapter 31 or to section 9A of
1301 chapter 30. The director shall appoint, subject to the commissioner's approval, all other officers
1302 and employees of said office, including such programmers, architects, engineers, landscape
1303 surveyors, cost estimators, as he deems necessary to carry out the tasks assigned to the bureau.

1304 The director shall:

1305 (1) recommend to the commissioner rules and regulations, standards and guidelines for
1306 the preparation of master and other plans, studies, and programs for capital facility projects;

1307 (2) review and make a written evaluation to the commissioner as to specific project
1308 studies, programs and other predesign documents and their consistency with long range capital
1309 facilities development plans and capital facility budget requests;

1310 (3) upon request by using agencies, assist them in the development of specific project
1311 descriptions and proposals forming a part of those agencies' long range capital development
1312 plans and specific capital facility budget requests;

1313 (4) upon request of using agencies, and at his discretion, develop master and other plans,
1314 perform feasibility and other studies, or prepare programs for projects for which such plans,
1315 studies, and programs are authorized by the general court to be performed;

1316 (5) upon request by using agencies assist the staff of using agencies, and at the discretion
1317 of said director assist others providing such services to using agencies in their performance of
1318 plans, studies, or programs to assure conformity with the rules and regulations, standards and
1319 guidelines for such plans, studies, and programs;

1320 (6) provide guidance and assistance to other bureaus and sections or units within the
1321 division in the performance of their responsibilities as they relate to completed planning stages
1322 for projects;

1323 (7) recommend to the commissioner rules and regulations, standards for the conduct of
1324 post-occupancy evaluations of all projects for which the division of capital asset management
1325 and maintenance has performed or caused to be performed programming services, such post-

1326 occupancy evaluation to be based on the program so developed and appropriate in scope and
1327 detail to the type, cost and significance of the project being evaluated;

1328 (8) assist the commissioner in the evaluation of projects to determine the effectiveness of
1329 prior programming, planning, and budgeting decisions; and

1330 (9) conduct, with staff or consultants, post-occupancy evaluations for projects under the
1331 jurisdiction of the bureau of project management, the cost of which exceeds a fixed sum to be
1332 determined by the director, assume such other responsibilities as the commissioner may direct.

1333 The director shall create a depository for plans, studies, programs, and designs for
1334 building projects prepared for any using agency subject to the jurisdiction of the division of
1335 capital asset management and maintenance under section 4 of this chapter. Each such agency
1336 shall promptly send to the director a brief identification and description of each plan, study,
1337 program, and design after its completion. The designer selection board shall promptly send to the
1338 director a brief identification and description of any designs offered to it as part of any design
1339 competition administered by the board pursuant to section 49. Upon request by the director, the
1340 user agency or board shall send to him a copy of said plan, study, program, or design.

1341 Section 13. There shall be within the division of capital asset management and
1342 maintenance an office of project management headed by a director of project management.

1343 The director shall be appointed by the commissioner of capital asset management and
1344 maintenance with the approval of the commissioner of administration, and may be removed in
1345 like manner. Said position shall not be subject to section 9A of chapter 30 or chapter 31. No
1346 person shall be appointed director of said bureau unless at the time thereof he shall be registered
1347 by the commonwealth as an architect or professional engineer pursuant to the provisions of

1348 chapter 112 and shall have proven ability and extensive experience in the management of the
1349 design and construction of buildings.

1350 The director may appoint such deputies and other supervisory staff as the work of the
1351 office may require, subject to appropriation and the commissioner's approval. Such staff shall
1352 serve at the pleasure of the director and shall not be subject to chapter 31 or to section 9A of
1353 chapter 30. The director shall appoint, subject to appropriation and subject to the commissioner's
1354 approval, all other officers and employees of said office.

1355 The commissioner shall be responsible for the exercise of all powers and the performance
1356 of all duties assigned by law to said office, which shall be under his direction. The director shall
1357 advise the commissioner as to rules and regulations, standards and guidelines, and priorities and
1358 schedules to be established for the office and the division of capital asset management and
1359 maintenance.

1360 Section 14. The duties and responsibilities of the director shall include, but not be
1361 limited to, the following: review and comment on all long range capital facilities development
1362 plans and capital budget requests for building projects by any state agency or building authority
1363 for purpose of assisting in the development of schedules, cost estimates and projections; review
1364 of said plans and requests for technical feasibility; where appropriate, recommendation that a
1365 study or program be conducted; and recommendation to the commissioner of methods which
1366 might be used for the design and construction of new facilities or major additions to existing
1367 facilities.

1368 The methods recommended shall include the latest developments in construction as well
1369 as standard methods, for the purpose of insuring quality, timeliness and economy of construction,

1370 such techniques to include but not be limited to construction management, fast-tracked or phased
1371 construction, turnkey procurement and design and build procurement. The director shall also
1372 recommend to the commissioner the method for procuring design and construction services when
1373 an alternative construction method is recommended; such recommendation shall be in writing
1374 and contain the reasons for not complying with the standard selection and bidding laws provided
1375 that the legislature shall approve the method for procuring design and/or construction services
1376 for such project and provided that such procurement method shall comply with the policies and
1377 procedures of sections 44A through L, inclusive, of chapter 149, to the extent feasible.

1378 The director shall develop guidelines regarding the types of projects that would most
1379 benefit from use of alternative construction methods and shall periodically evaluate their
1380 effectiveness.

1381 The director, if otherwise permitted by statute or appropriation, may use a phased
1382 contracting procedure, provided that the contracts awarded can be accomplished (a) within the
1383 appropriation or authorization for the project or within the project cost limits specified by the
1384 appropriation or authorization and (b) in accordance with (i) any study or program which must
1385 be prepared in accordance with the provisions of section 59 or (ii) any other pre-design document
1386 which must be prepared in accordance with any other statute, appropriation or authorization or
1387 administrative directive consistent therewith.

1388 If the director considers it in the best interests of the commonwealth he may employ, in
1389 addition to the standard architectural and professional contractors, quantity surveyors, network
1390 scheduling consultants and cost estimators.

1391 The director shall recommend to the commissioner standards for conducting studies,
1392 programs, and designs; for real property acquisition in anticipation of construction, including the
1393 kind and extent of testing required; for contractor selection; and for project evaluation. He may
1394 recommend to the commissioner such additional standards and guidelines as he shall deem
1395 necessary or desirable to expedite the work of the office.

1396 The director shall hire such project managers, cost estimators, and architectural,
1397 engineering, and technical personnel as he deems appropriate to: (a) estimate and review project
1398 costs and schedules; (b) monitor design and construction standards; (c) perform design services;
1399 (d) review project designs to ensure that they meet the standards established for all projects; (e)
1400 provide technical assistance to using agencies; and (f) administer and supervise design and
1401 construction contracts.

1402 The director shall recommend to the commissioner standards and procedures to be
1403 followed by project managers in overseeing individual construction projects, including standards
1404 and procedures for scheduling of the performance of particular aspects of projects; forms to be
1405 used in reporting and processing of information regarding change orders and price adjustments,
1406 periodic payment, and other payments pursuant to approved progress schedules; and all other
1407 standards and procedures necessary to the efficient administration and oversight of individual
1408 construction projects, or required by statute or regulation.

1409 The director shall recommend to the commissioner standards for internal audits to be
1410 performed on individual projects. Such audits shall be performed at the direction of the director
1411 when he has determined that an individual change order is so large, or a series of change orders
1412 cumulatively are so substantial, that the project should be reviewed, or when he has determined

1413 that there have been significant individual or cumulative delays in progress on the project, or at
1414 such times as he deems necessary. Whenever a change order is approved the director shall state
1415 in writing the reasons for not requesting an audit.

1416 Section 15. The contract which the director shall make with the designer appointed under
1417 the preceding section shall provide, among other appropriate terms, that the designer shall, in
1418 consultation with the using agency and subject to that agency's approval, prepare plans and
1419 specifications for the building project for submission to said director for his approval and shall
1420 use standard contract documents and specifications which said director shall have prepared with
1421 the approval of the commissioner and made available within the office.

1422 No obligation shall be incurred or payment made for preparation of any plans or
1423 specifications for any building project without the prior approval of the commissioner; and in the
1424 case of a building project undertaken on behalf of the commonwealth, no plans or specifications
1425 shall be prepared until a special appropriation shall have been made therefor or for the project or
1426 until federal funds or assistance shall have been made available therefor. No other obligation
1427 shall be incurred or payment made in connection with any building project until such obligation
1428 or payment shall have been approved in accordance with sections 1 to 40, inclusive, and section
1429 60 and section 11 of chapter 35.

1430 Schematic, preliminary and working plans and specifications for each building project
1431 shall, following initial submission to the using agency for comment, be submitted by the designer
1432 to the director for his approval. In reviewing such plans and specifications, the duty of the
1433 director shall be to see that they are clear and complete and permit execution of the building
1434 project (a) within the appropriation or authorization for the project or within project cost limits

1435 specified by the appropriation or authorization and (b) in accordance with (i) any study or
1436 program prepared in accordance with the provisions of section 59 or (ii) any other pre-design
1437 document which must be prepared in accordance with any other statute, appropriation or
1438 authorization or administrative directive consistent therewith. When a phased construction
1439 technique is approved by the legislature, the director shall approve working plans and
1440 specifications at appropriate stages of the project.

1441 Following final approval of such plans and specifications, the director shall advertise in
1442 the central register published by the secretary of state pursuant to section 20 of chapter 9 and in
1443 such other publications as the commissioner shall direct, for applications to bid on or proposals
1444 for the performance of the work on the project; except that the commissioner may direct that the
1445 purchase of any materials, original equipment or original furnishings for the project shall be
1446 made under the provisions of sections 22 to 26, inclusive, of chapter 7. Subject to the prior
1447 approval of the commissioner and the applicable provisions of sections 44A to 44L, inclusive, of
1448 chapter 149 he shall award the contract or contracts for such work to the lowest responsible and
1449 eligible bidder; but no such contract on behalf of the commonwealth shall be awarded by him for
1450 a sum in excess of the amount which the comptroller shall certify to be available therefor. If the
1451 director shall knowingly award a contract in violation of any provisions of this section, he may
1452 be removed from office by the governor.

1453 The director shall be responsible for accepting or rejecting each project upon its
1454 completion and for directing final payment for work done thereon; provided, however, that if
1455 upon inspection of any project for acceptance he shall find that the plans, specifications,
1456 contracts or change orders for the project shall not have been fully complied with, he shall, until

1457 such compliance has been effected or adjustment satisfactory to him has been made, refuse to
1458 accept the project and direct such payment.

1459 Upon acceptance of the project, the director shall release the same to the using agency,
1460 unless the using agency objects to said release, in which case the director shall work with the
1461 using agency to remove the causes of the objection. The director shall not refuse to accept the
1462 project from the contractor and shall not refuse to direct final payment to the contractor because
1463 of the using agency's objections if the director has determined that the contractor has completed
1464 the project in accordance with contract.

1465 Section 16. The director shall appoint, for each project under the jurisdiction of the
1466 office of project management, a project manager, who shall oversee all planning, design and
1467 construction of the project or provide appropriate assistance to others as enumerated below. No
1468 person shall be appointed or employed as a project manager unless at the time thereof he shall be
1469 registered by the commonwealth as an architect or professional engineer under the provisions of
1470 chapter 112 or shall have a professional degree in a field providing equivalent experience and
1471 shall have at least 5 years experience in the construction and supervision of construction of
1472 buildings. Project managers employed by the bureau shall be exempt from the provisions of
1473 section 9A of chapter 30 and chapter 31.

1474 The terms, conditions and duration of their employment shall be established by the
1475 director subject to appropriation and the building projects to which he has been assigned by the
1476 director. He shall:

1477 (1) Assist and make recommendations to using agencies as to real property acquisition in
1478 anticipation of construction;

1479 (2) Assist by reviewing and making recommendations to using agencies as to the study,
1480 programs or other planning documents for the project;

1481 (3) Participate as a non-voting member of the designer selection board panel during the
1482 designer selection process for the particular building project to which the project manager has
1483 been assigned;

1484 (4) Represent the using agency in the designer selection, design and construction phases
1485 of the building project, the project manager having exclusive authority to make decisions in these
1486 areas, except as provided in sections 17 through 21, inclusive, after consultation with the using
1487 agency and consideration, before such decisions are made, of using agency recommendations;

1488 (5) During the design stage of each project to which he has been assigned, review and
1489 comment on said design or verify that said design has been reviewed by the authorities charged
1490 by law with enforcement responsibility, in order to insure that the design complies with all
1491 federal and state laws, rules, regulations and codes; insure to the extent feasible that the design is
1492 such as to specify a project that (a) can be accomplished within the appropriation or
1493 authorization for that project or within the project cost limits specified by the appropriation or
1494 authorization, and (b) can be accomplished in accordance with (i) any study or program which
1495 must be prepared in accordance with the provisions of section 59 or (ii) any other pre-design
1496 document which must be prepared in accordance with any other statute, appropriation or
1497 authorization or administrative directive consistent therewith; no building project shall be
1498 allowed to proceed to the construction stage until such reviews have been accomplished and
1499 compliance confirmed or certified;

1500 (6) Insure the preparation of time schedules which shall serve as control standards for
1501 monitoring performance of building projects; and

1502 (7) Assist in project evaluation including, but not limited to, written evaluations of the
1503 performance of the architect, engineers, contractors and other personnel, and evaluation of
1504 construction techniques and procurement mechanisms.

1505 Section 17. The words defined in this section shall have the meanings set forth below
1506 whenever they appear in sections 17 to 21, inclusive.

1507 “Change order” shall mean a written order not requiring the consent of the contractor,
1508 signed by the project manager and designated as an approved change order, directing the
1509 contractor to make changes in the work within the general scope of the contract, or, any written
1510 or oral order from the project manager which causes any change in the work, provided that the
1511 contractor gives the commonwealth written notice stating the date, circumstances, and source of
1512 the order and that the contractor regards the order as a change order.

1513 “Contract modification” shall mean any written alteration in plans or specifications,
1514 period of performance, price, quantity, or any other provision of the contract accomplished by
1515 mutual action of the parties to the contract.

1516 The project manager may at any time, subject to the requirements set forth herein and in
1517 section 39I of chapter 30, order changes in the work within the general scope of the contract,
1518 including but not limited to changes: (a) in the plans and specifications (including drawings and
1519 designs); (b) in the method or manner of performance of the work; (c) in the commonwealth
1520 furnished facilities, equipment, materials, services or site; or (d) in the schedule for performance
1521 of the work. All such orders shall be written and designated to be change orders. All change

1522 orders or other contract modifications shall require the approval of the director when: (a) the
1523 cumulative cost of all previously approved increases in the contract price exceeds 5 per cent of
1524 the original contracted construction cost of the project, or such other percentage or dollar amount
1525 or criteria as designated by regulations of the commissioner; or (b) the preliminary estimate of
1526 the change in the contract price resulting from the change order or contract modification is
1527 \$5,000 or more. The director may, after review of building projects for which the cumulative
1528 total of increases in the contract price has exceeded 5 per cent of the original contracted
1529 construction cost or such other percentage or dollar amount or criteria, direct the project manager
1530 as to those proposed changes, the preliminary estimated cost of which are under \$5,000, that
1531 shall require the director's approval.

1532 The commissioner shall promulgate regulations governing the procedures for obtaining
1533 preliminary estimates and giving notice to the contractor as to the necessity of obtaining the
1534 director's approval before any work pursuant to a change order or contract modification is
1535 commenced. Such procedures shall be designed so as to avoid delays in the progress of the
1536 project.

1537 The project manager may delegate to the resident engineer, subject to approval by the
1538 director and notice to parties in interest, his authority to process and approve change orders when
1539 authorized to do so by regulations of the commissioner.

1540 The provisions of section 20A of chapter 29 shall not apply to any change order request
1541 submitted and acted upon in accordance with sections 17 through 21, inclusive, of this chapter.

1542 Section 18. Any request for a change order shall be processed promptly, in compliance
1543 with regulations promulgated by the commissioner, and otherwise according to the requirements

of section 39P of chapter 30. Requests shall be submitted to the project manager, who shall, after consultation with the designer and the using agency, approve or disapprove the request. The project manager shall, after obtaining any other required approvals or disapprovals, notify in writing the designer, the using agency and the requesting party of the request and shall issue a written change order or written notice of disapproval to the contractor. If the approval or disapproval would result in a deviation, as defined by regulations of the commissioner from (a) any study or program which must be prepared in accordance with the provisions of section 59 or (b) any other pre-design document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith, the decision made shall be subject to appeal by the using agency to the commissioner of administration. Such appeal shall set forth in writing the reasons therefor and a copy thereof shall be furnished to the commissioner at the time the appeal is filed with the commissioner. The commissioner shall, within 10 days following the receipt of such appeal, render a written decision thereon, which shall be final and conclusive.

Section 19. If any change order under section 17 causes any change in the contractor's cost of performance of any work under the contract, whether or not that work is changed by any order, either the contractor or the project manager may request an equitable adjustment in the contract price. A request for such an adjustment shall be in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work or as soon thereafter as possible, and in any event within 30 days of receipt by the contractor of an approved change order or the mailing or furnishing to the commonwealth by the contractor of written notice that the contractor regards an order as a change order. Except for claims on defective specifications, no claim for any change under this section shall be allowed for any costs

1567 incurred more than 20 days before the contractor gives written notice as required by this section.
1568 In the case of defective specifications for which the commonwealth is responsible, the equitable
1569 adjustment shall include any cost reasonably incurred by the contractor in attempting to comply
1570 with such defective specifications.

1571 The project manager and the contractor shall by negotiation agree upon an equitable
1572 adjustment in the contract price before commencement of the pertinent work or as soon
1573 thereafter as possible. Notice of the adjustment shall be given to the Director. In the absence of
1574 agreement by the parties on an equitable adjustment in the contract price, the project manager
1575 shall unilaterally determine the costs attributable to the change order. Unilateral equitable
1576 adjustments of the project manager shall be reduced to writing and a copy mailed or otherwise
1577 furnished to the contractor. Such adjustments shall be final and conclusive unless, within 30 days
1578 from the date of receipt of such copy, the contractor mails or otherwise furnishes to the project
1579 manager a written appeal addressed to the commissioner, and otherwise complies with the
1580 requirements set forth in section 39Q of chapter 30. The provisions of said section shall govern
1581 further appeal to the division of hearing officers.

1582 Section 20. The contractor shall submit, in accordance with regulations of the
1583 commissioner, cost and pricing data to be used when negotiating adjustments for change orders
1584 or other contract modifications. Such cost and pricing data shall be based on generally accepted
1585 accounting principles and be in conformity with the guidelines promulgated by the
1586 commissioner. Cost estimators employed within the division of capital asset management and
1587 maintenance shall review and evaluate cost and pricing data submitted by the contractor.

1588 The contractor shall certify that, to the best of his knowledge and belief, the cost and
1589 pricing data submitted was accurate, complete, and current as of the date of submission. Any
1590 change order or contract modification under which a certificate is required shall contain a
1591 provision that the price to the commonwealth, including profit or fee, shall be adjusted to
1592 exclude any significant sums by which the commonwealth finds that such price was increased
1593 because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current
1594 as of the date of submission.

1595 The provisions of section 13 of chapter 258 of the General Laws, and the provisions of
1596 section 67A to section 67C, inclusive, of chapter 266, shall fully apply to the cost and pricing
1597 data certification requirements of this section.

1598 Section 21. Equitable adjustments in the contract price negotiated pursuant to section 19
1599 or as part of a contract modification shall be made in accordance with the following general
1600 principles. The commissioner shall promulgate regulations designed to implement the provisions
1601 of this section.

1602 1. Adjustments in the contract price shall be made to the maximum extent feasible on a
1603 fixed price basis prior to the execution of the change order or contract modification, if this can be
1604 done without adversely affecting the interests of the Commonwealth.

1605 2. Where a fixed price cannot be set due to difficulty in estimating the scope of the
1606 change ordered, adjustment may be made on a lump-sum guaranteed maximum price basis
1607 calculated by use of unit prices specified in the contract or agreed upon by the parties.

1608 3. Cost reimbursement or time-and-materials methods of price adjustment shall not be
1609 used, except where, in the written opinion of the commissioner, no other pricing method is

possible. When such pricing method is used, the contractor shall provide complete and accurate information disclosing the costs incurred in performing changes. The contractor shall maintain separate accounts, by job order or other suitable accounting procedure, of all segregable direct cost of work, both changed and not changed, allocable to the change. The commissioner shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs.

Section 22. There shall be assigned to every building project under the supervision of the office a resident engineer. Resident engineers may be hired as permanent employees subject to the provisions of chapter 31 or as consultants exempt from said chapter 31. No person shall be employed as a resident engineer unless at the time thereof he shall have had at least 10 years experience in the construction and supervision of construction of buildings, or shall have a degree in engineering, architecture or a field providing equivalent expertise and at least 5 years such experience.

The resident engineer shall represent the commonwealth daily on the site of construction projects and shall be responsible for checking, inspecting and reporting to the project manager on a regular basis both in writing and orally as to events at the construction site and shall send copies of written reports to the designer on a regular basis.

The project manager may delegate to the resident engineer, subject to approval by the director, notice in writing to all parties in interest, and limits otherwise imposed by this chapter, the authority to make decisions regarding plans, specifications, and materials; the authority to represent the project manager at job meetings; and the authority to order minor changes and make equitable adjustments in the contract price.

1632 The resident engineer shall report in writing to the project manager all problems,
1633 disputes, complaints or questions from or concerning designers, contractors or other personnel
1634 involved in the project.

1635 There shall be assigned to every project under the control and supervision of the office a
1636 cost estimator, who shall be responsible for reviewing all project costs. Cost estimators may be
1637 hired as permanent employees subject to the provisions of chapter 31 or as consultants exempt
1638 from said chapter 31.

1639 Cost estimators shall have proven ability and experience in construction cost estimating
1640 and shall be familiar with various approaches to cost estimating, including but not limited to
1641 conceptual and preliminary estimating designed to provide budget and planning guidance in the
1642 early stages of a project, labor-cost estimating, fair cost estimating prepared from completed
1643 plans and specifications, contractors' bid estimating and definitive or detailed estimating.

1644 The cost estimator, working in cooperation with using agencies requesting projects, shall
1645 provide estimates of the costs of proposed projects. He shall review all cost projections for
1646 studies, programs and designs, as well as contractors' cost estimates. The cost estimator shall
1647 review change order estimates, cost and pricing data, payment schedules and progress payment
1648 requests, and make recommendations to the project manager at the project manager's directive.

1649 Public agencies other than political subdivisions of the commonwealth that conduct
1650 building projects outside the jurisdiction of the division of capital asset management and
1651 maintenance as provided in section 4 may request assignment of a project manager, resident
1652 engineer or cost estimator employed by the office of project management. Such assignment shall
1653 be subject to approval by the commissioner. Any agency making use of the office's staff on a

1654 project outside the normal jurisdiction of the office shall reimburse the office for all expenses
1655 incurred, including salaries and overhead. The director shall recommend to the commissioner
1656 regulations governing fees to be paid by public agencies for use of the office's services on
1657 projects outside its normal jurisdiction.

1658 Section 23. The director may, with the approval of the commissioner and the governor,
1659 accept on behalf of the commonwealth any federal funds or assistance for financing the cost of
1660 plans and specifications for any project.

1661 If such funds or assistance shall be appropriated for aiding construction of any project,
1662 the director may, with like approval, apply for the same and may, with the approval of the
1663 governor, accept the same on behalf of the commonwealth. Any project so aided shall be
1664 executed in all respects subject to applicable federal laws and rules and regulations and also to
1665 the applicable provisions of this chapter not inconsistent therewith.

1666 Section 24. There shall be located within the division of capital asset management and
1667 maintenance an office of facilities management, headed by a director of facilities management.
1668 The director shall be appointed by the commissioner, with the approval of the commissioner of
1669 administration, and may be removed in like manner. Said office shall not be subject to section
1670 9A of chapter 30 or chapter 31. No person shall be appointed director of said office unless at the
1671 time thereof he shall be registered by the commonwealth as an architect or professional engineer
1672 pursuant to the provisions of chapter 112 and shall have proven ability and extensive experience
1673 in the management and oversight of operation, maintenance and repair of buildings.

1674 The director may appoint such deputies and other supervisory staff as the work of the
1675 office may require, subject to appropriation and the commissioner's approval. Such staff shall

1676 serve at the pleasure of the director and shall not be subject to chapter 31 or to section 9A of
1677 chapter 30. The director shall appoint, subject to the commissioner's approval, all other officers
1678 and employees of said office.

1679 The director shall develop, in cooperation with the commissioner and using agencies, an
1680 inventory of buildings owned or otherwise occupied by state agencies and building authorities.
1681 Said inventory may detail the age, condition, type of construction, and physical life expectancy
1682 of each building and its major structural components. The inventory shall be updated as repairs,
1683 replacements and alterations are performed. Said inventory shall be filed by the commissioner by
1684 February 15 yearly with the clerks of the house of representatives and senate, and with the joint
1685 committee on state administration, and shall be a public document available for general
1686 distribution. The director shall recommend to the commissioner standards and guidelines
1687 governing the type of information to be included in said inventory, which shall be properly
1688 coordinated with the real property inventory established and maintained pursuant to section 38.

1689 Section 25. The director shall control and supervise all projects allocated to the office of
1690 facilities management by the commissioner pursuant to section 5. All of said projects shall be
1691 subject to the procedures and requirements set forth in sections 13 through 23, except that the
1692 director may recommend to the commissioner regulations governing the extent of representation
1693 of the commonwealth by the resident engineer required on the site of construction projects. The
1694 director shall, consistent with sections 13 through 23, develop and recommend to the
1695 commissioner procedures and requirements for control and supervision of said projects
1696 commensurate with the specialized nature of those projects.

1697 Section 26. The director shall recommend to the commissioner standards and guidelines
1698 applicable to maintenance and repair. Said standards and guidelines shall be complied with by
1699 state agencies and building authorities. The director shall also develop maintenance and repair
1700 standards and guidelines for use by the department of housing and community development. Said
1701 standards and guidelines shall be advisory only.

1702 State agencies and building authorities shall certify to the director, once each year, that all
1703 maintenance and repair standards and guidelines have been complied with, or if the state agency
1704 or building authority has not so complied, the reasons for noncompliance. The director may
1705 order, in his discretion and without prior notice, inspection of state agency or building authority
1706 buildings, for the purpose of insuring compliance with maintenance and repair standards and
1707 guidelines. If the director finds that a state agency or building authority is not in compliance, he
1708 shall report such noncompliance to the commissioner, the head of the state agency or building
1709 authority, the commissioner of administration, and in the case of building authorities, the board
1710 of higher education and the board of trustees of the relevant institution. If a state agency or
1711 building authority fails within 3 months of such notification to comply with said standards and
1712 guidelines, the director shall recommend to the commissioner emergency measures that should
1713 be taken.

1714 The director may direct, subject to the approval of the commissioner, once a state agency
1715 or building authority is found to be not in compliance with maintenance and repair standards and
1716 guidelines, that the state agency or building authority report in detail to the director on a monthly
1717 basis the status, progress and problems of maintenance and repair operations at the state agency
1718 or building authority's facilities. The director shall recommend to the commissioner regulations
1719 to be adopted governing information to be included in the monthly report. The director shall

1720 make quarterly reports to the commissioner on the status of maintenance and repair operations at
1721 the relevant state agency or building authority. At such time as the commissioner determines,
1722 with the advice of the director, that maintenance and repair operations have come into
1723 compliance with all applicable standards and guidelines, the state agency or building authority
1724 shall be relieved of the necessity of making monthly detailed reports.

1725 Where it is deemed necessary, the commissioner, on the advice of the director, may
1726 recommend that the office assume supervision and control over maintenance and repair
1727 operations normally carried out by the state agency or building authority. The commissioner of
1728 administration, after consultation with the secretary of the executive office in which the relevant
1729 state agency or building authority is located, and, in the case of building authorities, after
1730 consultation with the board of trustees of the relevant institution, may order transfer of
1731 supervision and control of maintenance and repair operations to the commissioner. Upon making
1732 such order, the commissioner shall forthwith file a copy of said order with the budget director,
1733 the comptroller, the house and senate committees on ways and means, and the joint legislative
1734 committee on post audit and oversight of the general court, specifying the scope of the authority
1735 so transferred and the direction of said transfer. Said transfer may be for such period of time as
1736 the commissioner deems appropriate. Where the commissioner has so assumed control and
1737 supervision, the commissioner shall make quarterly reports to the commissioner of
1738 administration on the status of maintenance and repair operations at the affected state agency or
1739 building authority.

1740 Section 27. The director may, with the approval of the commissioner, initiate capital
1741 budget requests for building projects to be performed at one or more using agencies and
1742 controlled and supervised by the office of facilities management. Such projects may include, but

1743 not be limited to: (a) projects designed to alleviate, through a single undertaking or a series of
1744 undertakings, problems of a common nature encountered in buildings of more than one using
1745 agency; (b) projects to correct problems which require immediate attention, where the using
1746 agency has failed to include the project in its capital budget requests for the year, or has given
1747 such a request low priority; and (c) such other projects as the director may, with the approval of
1748 the commissioner, designate, including energy conservation projects, handicapped access
1749 projects, and fire, health and safety projects.

1750 Section 28. As used in this section, “using agencies” shall mean state agencies and
1751 building authorities.

1752 The director of facilities management shall: (1) develop, in cooperation with individual
1753 state agencies and building authorities, policies, standards, programs and schedules governing
1754 the performance of preventive maintenance; (2) develop preventive maintenance training
1755 programs for state agency and building authority personnel; (3) evaluate the status of preventive
1756 maintenance programs at each state agency and building authority; (4) review using agency
1757 maintenance operating budget requests together with maintenance reports submitted pursuant to
1758 section 3 of chapter 29 for the purpose of evaluating the priority, necessity, feasibility and
1759 appropriateness of said requests; (5) review using agency capital budget requests for repair
1760 projects and make recommendations to the commissioner as to those projects of each using
1761 agency that should be given funding priority; (6) recommend to the commissioner standards and
1762 guidelines for the control and supervision of repair projects controlled and supervised by using
1763 agencies; (7) advise the commissioner as to those methods available for the repair of
1764 deteriorating buildings, including the costs and benefits of continuing minor repairs versus the
1765 costs and benefits of major renovation or rehabilitation; (8) advise the commissioner as to

1766 maintenance and repair difficulties encountered in using agency buildings that may be due to
1767 faulty design or construction of new facilities; (9) advise the commissioner as to the feasibility
1768 and costs of renovating or rehabilitating for state use structures that have been certified historic
1769 landmarks, as provided by sections 26 to 27C of chapter 9, that have been listed in the National
1770 Register of Historic Places, as provided by 16 U.S.C. 470a, or that have been designated
1771 landmarks by the local governing authority; (10) advise the commissioner as to changes in
1772 operations and maintenance costs and operational and repair difficulties that may result from
1773 using agency proposals for alteration or conversion of existing facilities; and (11) assist using
1774 agencies in evaluating maintenance and repair problems and devising and implementing
1775 solutions.

1776 Section 29. (a) The commissioner shall require a state agency that initiates the
1777 construction of a new facility owned or operated by the commonwealth or a renovation of an
1778 existing facility owned or operated by the commonwealth when the renovation costs exceed
1779 \$25,000 and includes the replacement of systems, components or other building elements which
1780 affect energy or water consumption to design and construct or renovate the facility in a manner
1781 that minimizes the life-cycle cost of the facility by utilizing energy efficiency, water
1782 conservation or renewable energy technologies under the following criteria:

1783 (1) the state agency shall utilize alternate technologies when the life-cycle cost analysis
1784 conducted under subsection (b) shows that such systems are economically feasible;

1785 (2) each new educational facility, including a municipal educational facility financed
1786 through the school building assistance program, for which the projected demand for hot water
1787 exceeds 1,000 gallons per day or which operates a heated swimming pool, shall be constructed,

1788 whenever economically and physically feasible, with a solar or other renewable energy system as
1789 the primary energy source for the domestic hot water system or swimming pool of the facility;

1790 (3) the division of capital asset management and maintenance or the state agency shall, in
1791 the design, construction, equipping and operation of such facilities, coordinate these efforts with
1792 the department of energy resources in order to maximize reliance on, and the benefits of,
1793 renewable energy research and investment activities; and

1794 (4) all higher education construction projects shall, at a minimum incorporate the MA-
1795 CHPS Green Schools Guidelines standards or an equivalent standard.

1796 (b) The division of capital asset management and maintenance or the state agency
1797 initiating the construction or renovation of a facility as described in subsection (a) shall conduct
1798 a life-cycle cost analysis of any such facility's proposed design that evaluates the short-term and
1799 long-term costs and the technical feasibility of using alternate technologies to provide lighting,
1800 heat, water heating, air conditioning, refrigeration, gas or electricity. In calculating life-cycle
1801 costs, a state agency shall include the value of avoiding carbon emissions, creating renewable
1802 energy certificates and other environmental and associated benefits created from the utilization
1803 of alternate technologies, as applicable. This value shall be equal to the bid price of the published
1804 market value of any such benefit and shall increase or decrease at a projected rate determined by
1805 the department of energy resources. To calculate life-cycle costs, a state agency shall use a
1806 discount rate equal to the rate that the commonwealth's tax-exempt long-term bonds are yielding
1807 at the time of said calculation and shall assume that the cost of fossil fuels and electricity will
1808 increase at the rate of 3 per cent per year above the estimated rate of inflation or at a rate
1809 determined by the department of energy resources.

1810 (c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued
1811 thereunder, the division of capital asset management and maintenance may procure energy
1812 management services jointly with a state agency or a building authority that is procuring energy
1813 or related services. Said sections 11C and 11I shall apply to the extent feasible as determined by
1814 the commissioner of energy resources.

1815 (d) For purposes of this section, the term “economically feasible” shall mean that the cost
1816 of installing and operating an alternate technology is lower than the cost of installing and
1817 operating the energy, energy-using technology or water-using technology that would otherwise
1818 be installed, as determined by a life-cycle cost analysis.

1819 (e) The division of capital asset management and maintenance or the state agency
1820 initiating the construction or renovation of a facility subject to the requirements of subsection (a)
1821 shall file with the department of energy resources a report detailing the agency’s compliance
1822 with this section with respect to each such facility.

1823 (f) The department of energy resources shall issue an annual report to the general court
1824 detailing the compliance record of all state agencies with the construction and renovation
1825 provisions of this section.

1826 Section 30. The director of facilities management shall make provision, as part of
1827 development of an inventory of buildings owned or otherwise occupied by state agencies or
1828 building authorities pursuant to section 24, for evaluation of the energy consumption of each
1829 building and its major energy using systems. The director may, with the approval of the
1830 commissioner and subject to appropriation or allocation, hire consultants for the purpose of
1831 performing energy audits designed to determine the need for energy conservation projects.

1832 The director shall recommend to the commissioner standards and guidelines governing
1833 energy conservation maintenance and operating procedures.

1834 The director shall in conjunction with the commissioner of Energy Resources set
1835 priorities and energy efficiency standards for all state buildings and conduct energy audits of said
1836 buildings. The bureau may contract with professional consulting firms to perform the energy
1837 audits.

1838 All energy conservation projects within the jurisdiction of the division of capital asset
1839 management and maintenance as defined by section 4, including projects funded out of any
1840 lump-sum energy conservation fund or account, shall be fully subject to the provisions of this
1841 chapter except that alternative energy property program projects authorized pursuant to section
1842 11 of chapter 25A shall not be subject to sections 11 and 12, sections 13 through 23, inclusive,
1843 and sections 24 through 28, inclusive, and section 30 of this chapter.

1844 Section 31. The division of capital asset management and maintenance shall evaluate the
1845 potential for increasing the energy efficiency in each building owned by an authority or state
1846 agency, or leased by such authority or agency for at least a 10 year period. Energy efficiency
1847 measures, as used in this section shall include, but not be limited to, heating, air-conditioning,
1848 lighting, water, and electric systems powered by coal, electricity, natural gas, oil.

1849 The annual energy cost savings realized by each authority or agency shall be retained in
1850 that the authority or agency utility account and applied to additional energy efficiency measures
1851 in subsequent years.

1852 Actions taken by the division of capital asset management and maintenance in
1853 accordance with provisions of this section shall be coordinated with ongoing energy conservation

1854 projects in state-owned or leased buildings. Buildings which have been scheduled for
1855 comprehensive energy conservation improvements before the effective date of this act may, upon
1856 approval of the commissioner of energy resources, be exempted from the provisions of this
1857 section. Utility programs offering energy auditing services shall be used whenever appropriate.

1858 The term “authority” used in this section shall not include authorities of cities or towns,
1859 such as local housing projects.

1860 Section 32. Real property, record title to which is held in the name of a state agency or
1861 the board of trustees of a state agency or similar board of a state agency, shall be deemed to be
1862 real property of the commonwealth. No deed or other instrument shall be required to effect the
1863 transfer to the commonwealth of title to such real property, but the land court department of the
1864 trial court shall, upon petition of the division of capital asset management and maintenance, issue
1865 in the name of the commonwealth a certificate of title to any real property, title to which is
1866 registered under chapter 185 in the name of a state agency or the board of trustees of a state
1867 agency or similar board of a state agency. Notwithstanding any general or special law to the
1868 contrary, no person shall acquire any rights by prescription or adverse possession in any lands or
1869 rights in lands held in the name of the commonwealth.

1870 The commissioner of capital asset management and maintenance shall exercise the
1871 powers stated in this chapter, notwithstanding the delegations which the general court has made
1872 pertaining to the acquisition, control, and disposition of real property, including sections 28 of
1873 chapter 15; section 2 of chapter 15D; section 19 of chapter 16; sections 1, 14B and 27 of chapter
1874 19; section 7 of chapter 19A; sections 14 to 16, inclusive, of chapter 20; sections 9A, 13, 17A,
1875 17B, and 30 of chapter 21; sections 2 and 9 of chapter 21A; sections 8 and 26 of chapter 23A;

1876 section 7 of chapter 23B; section 41 of chapter 29; sections 4 and 5 of chapter 29A; sections 11,
1877 12, 25, 26, and 27 of chapter 75; sections 8, 9, 18, 19, and 22 of chapter 75A; sections 8, 13, and
1878 14 of chapter 75B; sections 7, 7A, 7C, 7D, 7E, 7G, 7H, 7L, 7M, 11, 13A, and 13B of chapter 81;
1879 section 7 of chapter 82; section 4 of chapter 83; section 39B of chapter 90; sections 2, 3, 5, and 6
1880 of chapter 91; sections 9A, 13, 33, 34, 77 to 85, inclusive, 87, and 88 of chapter 92; sections
1881 62R, 83, and 86 of chapter 111; section 5 of chapter 111B; section 8 of chapter 115A; sections 1
1882 and 2 of chapter 120; section 5 of chapter 122; sections 39 and 43 of chapter 123; section 10 of
1883 chapter 124; section 2 of chapter 147; sections 31 and 32 of chapter 184; provided, however, that
1884 the commissioner shall acquire, control and dispose of real property in accordance with the terms
1885 and purposes of the aforementioned provisions. The commissioner shall not make any
1886 acquisition of real property on behalf of a state agency by eminent domain or make any such
1887 delegation of power to acquire real property by eminent domain to any state agency unless such
1888 state agency is otherwise authorized by law to exercise the power of eminent domain. The
1889 commissioner may delegate to state agencies responsibility for the acquisition, control, and
1890 disposition of real property as provided for in this chapter; except that the commissioner may not
1891 delegate responsibility for determining that property is surplus to state needs as required in
1892 section 33. When responsibility is delegated to a state agency, the written approval of the
1893 commissioner shall be required before the transaction is completed, and a copy of said written
1894 approval shall be sent to the joint committee on state administration.

1895 For the purposes of sections 33 through 40 inclusive, the term “emergency” shall mean
1896 any situation caused by unforeseen circumstances which render currently used real property
1897 unusable or unavailable for the purposes intended and which creates an immediate need for other
1898 real property to preserve the health or safety of persons or property.

1899 Section 33. The commissioner of capital asset management and maintenance shall be
1900 responsible for the acquisition, control and disposition of real property in the manner and to the
1901 extent provided in this chapter. The commissioner may delegate such responsibility to an
1902 administrator, who has 10 years of experience in the management of commercial, industrial,
1903 institutional or public real property. When responsibility is delegated to an administrator the
1904 written approval of the commissioner shall be required before such transaction is finalized.

1905 The commissioner shall acquire interest in real property on behalf of the commonwealth
1906 for the use of state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-
1907 purchase or otherwise.

1908 In acquiring buildings for the use of state agencies, first consideration shall be given to
1909 any structures that have been certified as historic landmarks as provided by sections 26 through
1910 27C inclusive of chapter 9, that have been listed in the National Register of Historic Places as
1911 provided by 16 U.S.C. section 470a (1974) or that have been designated historic landmarks by
1912 local historic commissions, unless use of such buildings would not be feasible in terms of costs
1913 and requirements when compared with other available properties.

1914 Notwithstanding any laws to the contrary, real property acquired for the use of state
1915 agencies shall be held in the name of the commonwealth.

1916 The commissioner shall assist in the preparation and shall approve of plans for the
1917 organization of all space within and around buildings and appurtenant structures used by state
1918 agencies, and shall assign the use of space within and around the state house, subject to such
1919 rules as the committee on rules of the 2 branches acting concurrently may adopt, in accordance
1920 with the provisions of sections 10, 16A and 17 of chapter 8 the John W. McCormack State

1921 Office Building; the Leverett Saltonstall State Office Building; the Springfield Office Building;
1922 the Pittsfield Office Building; the Erich Lindemann Building; the Charles F. Hurley Building;
1923 any real property acquired for the use of state agencies, the greater part of which is not needed by
1924 any one state agency; and any other real property assigned by law to the division of capital asset
1925 management and maintenance.

1926 The commissioner, with the written approval of the commissioner of administration, may
1927 transfer use of, and responsibility for maintenance of, buildings, including equipment therein,
1928 within or between state agencies. No such transfer within or between state agencies which
1929 involves either a change in the purposes for which such building is currently used or a change in
1930 use in excess of 50 per cent of the usable floor space, shall be made without the prior approval of
1931 the general court. Any such transfer shall be based on a determination, made by the
1932 commissioner with the advice of the executive heads of affected agencies and secretaries of the
1933 executive offices in which such agencies are located, that such property is not needed, is under
1934 utilized, or is not being put to optimum use under current conditions. The commissioner shall
1935 notify the house and senate committees on ways and means and the representatives to the general
1936 court from the city or town in which such real property is located not less than 30 days prior to
1937 the final authorization of any transfer which does not require the approval of the general court,
1938 and such transfer shall only be made when the general court is in session except as provided
1939 hereafter. Such transfer may be made when the general court is not in session, and the 30 day
1940 notification requirement may be waived, only if the commissioner certifies in writing that an
1941 emergency exists; provided that, any such transfer may be authorized for a period not to exceed 6
1942 months, and provided further, that the commissioner shall submit his certification to and notify

1943 the house and senate ways and means committees of such transfer at the earliest possible
1944 opportunity.

1945 The commissioner may, after notification to and with the advice of the executive heads of
1946 state agencies and secretaries of the executive offices, determine that real property is not needed
1947 for the use of any state agency. If he determines that such property is surplus to both the current
1948 and foreseeable needs of state agencies, the commissioner shall determine whether any other
1949 public agency has a current or foreseeable direct public use for the property. For the purposes of
1950 determining whether property is surplus to direct public use, direct public use is defined in this
1951 section as use of property for a public agency's own operations, but does not include conveyance
1952 by such agency of any interest in the property to another party, but does include lease of the
1953 property by local housing authorities to public housing tenants.

1954 When property is determined to be surplus, to either current state or current direct public
1955 uses, but not to foreseeable state or foreseeable direct public uses, the commissioner shall take
1956 such action as is necessary to ensure that any disposition of the property is temporary and
1957 maintains the commissioner's ability to make such property available to a state agency or other
1958 public agency at such time as it is needed.

1959 If the commissioner determines that the property is not needed for current or foreseeable
1960 state or direct public use as defined above and that the property should be disposed of, he shall
1961 declare that the property is available for disposition and shall identify restrictions, if any, on the
1962 property's use and development necessary to comply with established state and local plans and
1963 policies, and he shall send written notification of such to the house and senate committees on
1964 ways and means, and the joint committee on state administration.

1965 The commissioner may convene an advisory committee to advise him on reuses and to
1966 recommend reuse restrictions for property declared surplus. If an advisory committee is
1967 convened, the commissioner shall invite the representatives to the general court from the city or
1968 town in which the property is located to serve on the committee. The commissioner shall prepare
1969 a preliminary report on his findings, which shall include both his recommendation, and those of
1970 the advisory committee if established, for reuse restrictions for the property.

1971 The commissioner shall conduct a public hearing to consider potential reuses and reuse
1972 restrictions for the surplus property and to review the commissioner's preliminary report if the
1973 property exceeds two acres or if the commissioner determines that a hearing should be held for a
1974 smaller parcel. If he determines to conduct a hearing, the commissioner shall provide notice in
1975 the central register of the public hearing at least 60 days prior to (1) notification to the house and
1976 senate committees on ways and means and the joint committee on state administration, of a
1977 temporary disposition of property to a public agency for less than 5 years for a direct public use,
1978 or (2) submission of a request to the general court for authority to otherwise dispose of real
1979 property as provided in this section. A notice of the public hearing shall also be placed, at least
1980 once each week for the 4 consecutive weeks preceding the hearing, in newspapers with sufficient
1981 circulation to inform the people of the affected locality. The hearing shall be held in the locality
1982 in which the property is located no sooner than 30 days and no later than 35 days after the notice
1983 is published in the central register.

1984 The commissioner may, with the written approval of the commissioner, enter into
1985 agreements for the direct public use of surplus real property by public agencies other than state
1986 agencies, for a term not to exceed 5 years. Such agreement shall prohibit subsequent conveyance
1987 of interest in the property by the public agency to another party. The commissioner shall notify

1988 the house and senate committees on ways and means and the joint committee on state
1989 administration 30 days prior to the final authorization of any such agreement. The notification
1990 shall include the commissioner's report on recommended reuse restrictions. In no event shall any
1991 such agreement be made when the general court is not in session.

1992 The commissioner shall establish the value of surplus property through procedures
1993 customarily accepted by the appraising profession as valid for determining property value. The
1994 value shall be calculated both for: (1) the highest and best use of the property as currently
1995 encumbered; and (2) uses and encumbrances defined by the commissioner.

1996 The commissioner may, with the approval of the commissioner, request from the general
1997 court authorization to dispose of state real property determined to be surplus to state agency
1998 needs: (1) to public agencies of the commonwealth other than state agencies for direct public
1999 uses, over a period exceeding 5 years, (2) to a public agency of the commonwealth other than a
2000 state agency, for uses other than direct public uses, and (3) to an individual, entity, or the federal
2001 government; or any extension of any agreement for such use beyond a cumulative period of 5
2002 years. Accompanying his request for authorization to dispose of property, the commissioner shall
2003 submit his report including a description of the property, its current use, structures, and
2004 approximate metes and bounds, the value of the property and recommended restrictions, if any,
2005 on reuses of the property. The commissioner shall also request authorization to negotiate real
2006 property disposition agreements with parties to be selected by the commissioner after he
2007 evaluates competitive proposals. Disposition agreements subsequently negotiated by the
2008 commissioner shall be consistent with the reuse restrictions approved by the general court.

2009 Notwithstanding the provisions of this section, leases for agricultural purposes on land
2010 owned by the commonwealth shall be made for a term of not more than 5 years, and the renewal
2011 date for such leases shall not be less than 1 year prior to the end of the lease period. Holders of
2012 such leases shall be given the opportunity to renew such leases for a consideration equal to the
2013 current lease amount plus an escalation amount to be established annually by the commissioner
2014 for application to all such leases.

2015 The commissioner shall monitor compliance with disposition agreements.

2016 The commissioner shall develop regulations governing the conditions under which he
2017 will recommend to the general court that a public agency, including but not limited to the
2018 government land bank, receive title to surplus property for other than direct public use.

2019 For bills which authorize the sale, transfer, or other disposition of any state-owned real
2020 property filed by persons other than the commissioner of capital asset management and
2021 maintenance, the clerk of the house of representatives and the clerk of the senate shall, within 10
2022 days of the filing, forward a copy of said bill to the commissioner. Within 90 days of the receipt
2023 of said copy, the commissioner shall submit in writing a report to the commissioner of
2024 administration, the legislative committee before which the bill is pending, and the joint
2025 committee on state administration together with a recommendation for either the approval or the
2026 disapproval of the bill and his reasons therefor.

2027 If the commissioner is recommending the approval of a bill proposing the disposition of a
2028 parcel exceeding two acres, said report shall include: (1) a description of the property including
2029 its current use, structures, and approximate metes and bounds; (2) the value of the property,
2030 determined through procedures customarily accepted by the appraising profession as valid for

2031 such purposes, calculated both for (a) the highest and best use of the property as currently
2032 encumbered and (b) uses and encumbrances that would be imposed by the bill if enacted; (3) all
2033 current and foreseeable direct public uses identified by following the division's procedures for
2034 such purposes as they apply to the property to be disposed (4) other potential public and private
2035 uses of the property; and (5) any other information the general court may require.

2036 The commissioner shall expeditiously review and recommend approval or disapproval of
2037 any proposal to the general court for the sale, rental or other disposition of real property acquired
2038 on behalf of state agencies, and shall dispose of real property as mandated by the general court.
2039 All legislation submitted to the general court by the division of capital asset management and
2040 maintenance requesting authorization to convey or transfer real property under its jurisdiction
2041 shall be accompanied by a full report outlining the division's reasons for pursuing said
2042 conveyance or transfer.

2043 Section 34. (a) When authorized by the general court to sell, rent or otherwise dispose of
2044 real property, the commissioner shall proceed in accordance with the provisions of this section,
2045 provided that any action or determination required hereunder which the commissioner has
2046 undertaken within 18 months prior to enactment of the authorization to dispose of the property
2047 need not be repeated if the commissioner (1) files, as provided in subsection (b), a report fully
2048 describing such action or determination, a copy of which shall be sent to the clerks of the senate
2049 and the house of representatives, and the joint committee on state administration, and (2) certifies
2050 under penalties of perjury that such report is accurate and that the action or determination
2051 described therein was undertaken within 18 months prior to the date of enactment of the
2052 authorization to dispose of the property.

2053 The commissioner shall, after notification to and with the advice of the executive heads
2054 of state agencies and secretaries of the executive offices, determine whether such property is
2055 surplus to both current and foreseeable needs of state agencies. If the commissioner determines
2056 that the property is not surplus to either current or foreseeable needs of state agencies, he shall
2057 make no disposition that is inconsistent with such determination.

2058 If the commissioner determines that such property is surplus to both the current and
2059 foreseeable needs of state agencies, he shall provide written notice, for each city or town in
2060 which the property is located, to the city manager in the case of a city under Plan E form of
2061 government, the mayor and city council in the case of all other cities, the chairman of the board
2062 of selectmen in the case of a town, the county commissioners, the regional planning agency, and
2063 the members of the general court. The commissioner shall set forth in such notice a description
2064 of the property; a declaration that the property is surplus to the needs of state agencies and that
2065 subject to the approval of the commissioner the property is available to any other public agency
2066 for a direct public use; and a statement that, if so requested by any public official or body entitled
2067 under this section to receive such notice, a public hearing will be conducted in the city or town
2068 where such property is located, to assist the commissioner in determining whether any other
2069 public agency has a current or foreseeable direct public use for the property. Following such
2070 hearing, if any, but in no event earlier than 30 days following the notice, the commissioner shall
2071 determine whether any other public agency has a current or foreseeable direct public use for the
2072 property. If he determines that the property is not surplus to either current or foreseeable direct
2073 public uses of public agencies, he shall make no disposition that is inconsistent with such
2074 determination.

2075 When the property is determined to be surplus to either current state or current direct
2076 public uses, but not to foreseeable state or foreseeable direct public uses, the commissioner shall
2077 take such action as is necessary to ensure that any disposition of the property is temporary and
2078 maintains the commissioner's ability to make such property available to a state agency or other
2079 public agency at such time as it is needed.

2080 If the commissioner determines that the property is surplus to both current and
2081 foreseeable direct public uses of public agencies, he may dispose of the property to a public
2082 agency for other than direct public use, or to an individual or entity, provided that any such
2083 disposition shall be subject to the provisions of section 36.

2084 If the commissioner determines that the property is not needed for current or foreseeable
2085 state or direct public use and that the property should be disposed of, either temporarily or
2086 permanently, he shall declare that the property is available for disposition and shall determine
2087 appropriate reuse restrictions. The commissioner shall ensure that any rental agreement, and in
2088 the case of a conveyance a deed or separate disposition agreement as deemed appropriate by the
2089 commissioner, shall set forth all such reuse restrictions; shall provide for effective remedies on
2090 behalf of the commonwealth, including if deemed appropriate by the commissioner that title to
2091 the property, or such lesser interest as is the subject of the disposition agreement, shall revert to
2092 the commonwealth in the event of a violation of any such reuse restriction; and shall provide, in
2093 the case of a disposition to a public agency for a direct public use, that the title to the property, or
2094 such lesser interest as is the subject of the disposition agreement, shall revert to the
2095 commonwealth in the event the property is no longer utilized for such direct public use.

2096 In determining reuse restrictions, the commissioner shall conform to all such restrictions
2097 pertaining to the property which may have been mandated by the general court, and may adopt
2098 additional restrictions, taking account of established state and local plans and policies. The
2099 commissioner shall conduct a public hearing to consider reuse restrictions if the property exceeds
2100 two acres or if the commissioner determines that a hearing should be held for a smaller parcel.
2101 Notice of the public hearing shall be placed at least once each week for 4 consecutive weeks
2102 preceding the hearing, in newspapers with sufficient circulation to inform the people of the
2103 affected locality. The hearing shall be held in the locality in which the property is located no
2104 sooner than 30 days and no later than 35 days after notice thereof is published in the central
2105 register.

2106 The commissioner shall establish the value of the property, through procedures
2107 customarily accepted by the appraising profession as valid for determining property value, for
2108 both the highest and best use of the property as currently encumbered and under the reuse
2109 restrictions as determined pursuant to this section.

2110 No agreement for the rental or other disposition of state-owned real property, and no
2111 deed, executed by or on behalf of the commonwealth, shall be valid unless such agreement or
2112 deed contains the following declaration, signed by the commissioner:

2113 The undersigned certifies under penalties of perjury that I have fully complied with the
2114 provisions of sections 34 and 36 of this chapter in connection with the property described
2115 herein.

2116 It shall be the policy of the commonwealth that the commissioner shall not sell, rent, or
2117 dispose of any real property including but not limited to granting the right to lay, construct,

2118 maintain, or operate pipelines through, over, across, or under land, water, park, reservation or
2119 highway of the commonwealth, its agencies or its political subdivisions, to any person doing
2120 business in or with Burma (Myanmar). The commissioner may sell, rent, or dispose of said
2121 property or grant said rights to said person only after certifying in writing to the speaker of the
2122 house of representatives and president of the senate that such action is essential to protect the
2123 health and safety of the public.

2124 (b) The commissioner shall maintain, for a period of at least 6 years next following
2125 enactment of an authorization by the general court to dispose of real property, a file containing a
2126 copy of each document necessary to establish fulfillment of the requirements of subsection (a).
2127 Such file shall be open to public inspection.

2128 Section 35. The commissioner of capital asset management and maintenance shall
2129 suggest to the budget director, as part of his recommendation for the annual appropriation for
2130 space rentals provided for by section 3 of chapter 29, the maximum rate to be paid for the rental
2131 of space by type and geographical area and the maximum percentage to be paid for the escalation
2132 of all such rental costs. The budget director shall consider the suggestions of the commissioner in
2133 recommending the approval of such costs by the general court, as part of the annual
2134 appropriations act.

2135 The commissioner may rent, for the use of state agencies, through lease, tenancy-at-will
2136 or other rental agreement for a term not exceeding 10 years, premises outside of the state house
2137 or other buildings owned by the commonwealth. If the term of the rental agreement under which
2138 premises are being used for the purposes of a particular activity by any state agency expires
2139 between the beginning of a fiscal year and the effective date of an appropriation act for such

2140 fiscal year and no appropriation for rent for said premises has been made and if the general court
2141 has not provided otherwise, the commissioner may rent for such purposes the same or different
2142 premises, for a term not exceeding 5 years, obligating the commonwealth to pay no greater
2143 amount of rent for any period than was paid for a corresponding period under the expiring
2144 agreement.

2145 No charges for rentals provided for in this section shall exceed the maximum rate plus
2146 escalation cost approved by the general court. Further, the commissioner shall notify the house
2147 and senate committees on ways and means 30 days prior to the final authorization of any such
2148 rental agreement and such agreement shall only be made when the general court is in session,
2149 except as provided hereafter. Such agreement may be made when the general court is not in
2150 session, and the 30 day notification requirement may be waived, only if the commissioner
2151 certifies in writing that an emergency exists; provided that, any such agreement shall be
2152 authorized for a period not to exceed 6 months, and provided further, that the commissioner shall
2153 submit his certification to and notify the house and senate ways and means committees of such
2154 agreement at the earliest possible opportunity.

2155 Notwithstanding the time limitation of this section or of any other law, the commissioner
2156 may enter into rental-purchase agreements for the purchase or construction of premises to be
2157 occupied by the division of employment and training outside of the state house or other buildings
2158 owned by the commonwealth, provided, that the costs incident to such rental-purchase
2159 agreements, including amortization, shall be borne by the federal government. After expiration
2160 of the period of amortization in each such instance, the commonwealth shall not charge the
2161 department of employment and training with rent of such premises, provided the federal
2162 government shall bear the cost of service to and maintenance of such premises.

2163 The secretary of administration and finance shall report quarterly to the house and senate
2164 committees on ways and means any lease, tenancy-at-will or other rental agreement, or any
2165 extensions thereof, made pursuant to this section; provided, however that said quarterly report
2166 shall include, by agency, the amount and location of such rental space, any new or additional
2167 space, the duration of the lease or agreement, the cost per square foot of such rental space, any
2168 increase or decrease in said cost, and the cost of the preceding lease or agreement.

2169 Section 36. At least 30 days before opening proposals for the acquisition by purchase or
2170 rental of real property for the use of state agencies from an individual or entity, or for the sale or
2171 rental of real property used by state agencies (1) to a public agency other than a state agency for
2172 other than a direct public use, or (2) to an individual or entity, the commissioner of capital asset
2173 management and maintenance shall advertise in the central register published by the state
2174 secretary pursuant to section 20 of chapter 9 stating therein the need for or availability of such
2175 property, and inviting submission of such proposals. The advertisement shall specify the
2176 geographical area, terms and requirements of the proposed transaction, and shall state the time
2177 and place for the submission of such proposals and for the opening thereof. In advertising for the
2178 rental of real property for use as an area welfare office, the geographical area specified in the
2179 advertisement shall include all municipalities serviced by the welfare office. In case of the rental
2180 or sale of over two thousand five hundred square feet of real property, such advertisement shall
2181 also be placed at least once each week for 4 consecutive weeks in newspapers with a circulation
2182 sufficient to inform the people of the affected locality. The last publication shall occur at least 8
2183 days preceding the day for opening proposals.

2184 The advertising requirement may be shortened or waived if (1) the commissioner certifies
2185 in writing that an emergency exists, a copy of such written certification shall be sent to the joint

2186 committee on state administration, provided that every reasonable effort be made to seek
2187 competitive proposals, and provided that the commissioner shall disclose his reasons for
2188 declaring the emergency in the central register at the earliest opportunity; or (2) in the case of a
2189 proposed acquisition, if the commissioner determines that such advertising will not be beneficial
2190 to the commonwealth's interest because of the unique qualities or location of the property
2191 needed, provided that the commissioner shall set forth in writing his reasons for such
2192 determination, relating such unique requirements to the property proposed to be acquired, and
2193 that such determination and the reasons therefor shall be published in the central register not less
2194 than 30 days before any binding agreement to acquire such property is executed, together with
2195 the name of the parties having a beneficial interest in the property pursuant to section 38, the
2196 location and size of the property, and the proposed purchase price or rental terms.

2197 No agreement on behalf of the commonwealth for the rental of real property for the use
2198 of state agencies from an individual or entity shall be valid unless such agreement contains the
2199 following declaration, signed by the commissioner:

2200 The undersigned certifies under penalties of perjury that I have fully complied with the
2201 advertising requirements of section 36 of this chapter in connection with the property described
2202 herein.

2203 The commissioner shall also place notification in the central register of the individual or
2204 firm selected as party to any such real property transaction, and the amount of such transaction.
2205 In no instance in which the state retains responsibility for maintenance of the property shall the
2206 terms provide for payment of less than the maintenance costs. If the commissioner decides to
2207 dispose of the property at a price less than any of its values established pursuant to the provisions

2208 of section 34, the commissioner shall include a justification for such decision in the notice and
2209 shall disclose the difference between the calculated value and the price received.

2210 After the execution of a rental or sale agreement completing such transaction, all
2211 proposals relating thereto shall be retained by the commissioner and shall be open to inspection
2212 by the public until the expiration of such agreement or 6 months from the date thereof,
2213 whichever occurs first, and may thereafter be destroyed by him.

2214 Section 37. At least 120 days prior to any purchase, sale, rental, lease, transfer, or
2215 significant change in use of one or more acres of real property by the commonwealth on behalf
2216 of state agencies, the commissioner of capital asset management and maintenance shall notify in
2217 writing, for each city or town in which the real property is located: the city manager in the case
2218 of a city under Plan E form of government, the mayor and the city council in the case of all other
2219 cities, the chairman of the board of selectmen in the case of a town, the county commissioners,
2220 the regional planning agency, and the members of the general court. Such 120 day notification
2221 requirement may be shortened if: (1) the public officials referred to above agree to reduce the
2222 120 day period upon the request of the commissioner; or (2) the commissioner certifies in
2223 writing that an emergency exists, provided that commissioner shall submit his certification to and
2224 notify the appropriate local officials of any such transaction at the first possible opportunity. The
2225 notice shall include a statement of the present use, the reason for the proposed action, and the
2226 proposed use of the property. The commissioner shall at least 60 days prior to any such purchase,
2227 sale, rental, lease, transfer, or significant change in use of one or more acres of real property,
2228 cause a public hearing to be held, after giving timely notice, in the city or town where such real
2229 property is located for the purpose of disclosing the conditions or reasons for the proposed
2230 action.

2231 Section 38. No agreement to rent or to sell real property to or to rent or purchase real
2232 property from a public agency, and no renewal or extension of such agreement, shall be valid and
2233 no payment shall be made to the lessor or seller of such property unless a statement, signed,
2234 under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the
2235 case of a corporation by a duly authorized officer thereof giving the true names and addresses of
2236 all persons who have or will have a direct or indirect beneficial interest in said property with the
2237 commissioner of capital asset management and maintenance. The provisions of this section shall
2238 not apply to any stockholder of a corporation the stock of which is listed for sale to the general
2239 public with the securities and exchange commission, if such stockholder holds less than 10 per
2240 cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the
2241 case of an agreement to rent property from a public agency where the lessee's interest is held by
2242 the organization of unit owners of a leasehold condominium created under chapter 183A, and
2243 time-shares are created in the leasehold condominium under chapter 183B, the provisions of this
2244 section shall not apply to an owner of a time-share in the leasehold condominium who (i)
2245 acquires the time-share on or after a bona fide arms length transfer of such time-share made after
2246 the rental agreement with the public agency is executed and (ii) who holds less than 3 per cent of
2247 the votes entitled to vote at the annual meeting of such organization of unit owners.

2248 A disclosure statement shall also be made in writing, under penalty of perjury, during the
2249 term of a rental agreement in case of any change of interest in such property, as provided for
2250 above, within 30 days of such change.

2251 Any official elected to public office in the commonwealth, or any employee of the
2252 division of capital asset management and maintenance disclosing beneficial interest in real
2253 property pursuant to this section, shall identify his position as part of the disclosure statement.

2254 The commissioner shall notify the state ethics commission of such names, and shall make copies
2255 of any and all disclosure statements received available to the state ethics commission upon
2256 request.

2257 The commissioner shall keep a copy of each disclosure statement received available for
2258 public inspection during regular business hours.

2259 Section 39. The commissioner of capital asset management and maintenance shall
2260 establish and maintain a comprehensive inventory of the real property owned, rented or
2261 otherwise occupied by public agencies. Such inventory shall include a detailed description of the
2262 allocation, utilization and condition of real property used by state agencies and a general
2263 description of the size, type and use of real property under the jurisdiction of other public
2264 agencies. The real property inventory shall be published annually for distribution to state
2265 agencies and regional planning agencies, shall be filed by February 15 each year with the clerk
2266 of the house of representatives and the senate and the joint committee on state administration and
2267 shall be a public document available for general distribution.

2268 The division of capital asset management and maintenance shall be the central depository
2269 for all certificates of title, copies of deeds, records of sale, rental agreements and other pertinent
2270 records relating to real property acquired for the use of state agencies. All such documents shall
2271 be public records and shall be open to inspection by the public during regular business hours.

2272 The commissioner may delegate responsibility for the housing and care of such original
2273 records to a state agency if such records are necessary for the daily operation of said agency. A
2274 state agency requesting the delegation of such responsibility shall demonstrate to the

2275 commissioner that such records will be adequately maintained and housed. In case of such
2276 delegation, copies of essential records shall be deposited with the division.

2277 All public agencies shall cooperate with the division in providing the information
2278 required by this section.

2279 Section 40. The commissioner of capital asset management and maintenance shall
2280 establish rules and regulations for the acquisition, utilization and disposition of real property,
2281 which shall be applicable to state agencies and which shall be recommended to counties and
2282 building authorities and which shall be filed with the clerks of the house of representatives and
2283 the senate and the joint committee on state administration. The commissioner shall review rules
2284 and regulations promulgated by the director of housing and community development for the
2285 acquisition, utilization and disposition of real property and shall recommend approval or
2286 disapproval of such rules and regulations to said director. The commissioner may, at his
2287 discretion, delegate responsibility for the establishment of rules and regulations for the
2288 acquisition, utilization and disposition of real property, subject to his approval, to state agencies
2289 with special needs and a proven capability to promulgate such rules and regulations.

2290 Such rules and regulations shall, at a minimum, provide for:

2291 (a) a determination of the amount and type of real property needed to accommodate
2292 functions performed by agencies of the commonwealth;

2293 (b) a standard format for rental agreements and rental specifications;

2294 (c) current fair market rentals by geographical area;

2295 (d) methods of procurement and evaluation of service contracts for state-owned and
2296 rented real property;

2297 (e) procedures and criteria for determining when real property is not needed, is
2298 underutilized, or is not being put to optimum use;

2299 (f) rates to be charged in the rental of real property to public and federal agencies and
2300 private individuals and entities;

2301 (g) the method of procurement of independent determinations of property value, the
2302 number of such determinations, and the review of such determinations required before real
2303 property may be sold, purchased, or rented;

2304 (h) procedures to be employed in determining prices and terms for the sale, rental, or
2305 purchase of real property and certification required for proof of such procedures;

2306 (i) the satisfaction of requirements for the acquisition and disposition of real property as
2307 mandated by law and regulation;

2308 (j) the organization of space within buildings to maximize utilization;

2309 (k) a standard format for the disclosure of beneficial interest as mandated by section 38;
2310 and

2311 (l) the type and method of collection of information to be included in the real property
2312 inventory established by section 39.

2313 All such rules and regulations shall be filed in accordance with and subject to the
2314 provisions of section 2 by the commissioner of the division of capital asset management and
2315 maintenance

2316 Section 41. No department of the commonwealth shall occupy, or make any expenditure
2317 for the maintenance of, any land, buildings or other state-owned or state-occupied facilities or
2318 other property other than that under its control or jurisdiction. No department of the
2319 commonwealth shall authorize or otherwise allow the use by any private agency of such land,
2320 buildings or facilities under its control or jurisdiction unless such use or expenditure shall have
2321 been approved by the general court after recommendation by the commissioner of
2322 administration. Use without such approval shall be deemed to be a violation of this section, and
2323 the user shall pay a civil penalty at the rate of \$10 per square foot annually for the period of such
2324 use.

2325 Section 42. The director of facilities management shall report quarterly to the house and
2326 senate committees on ways and means any lease negotiated or any agreement providing for a
2327 tenancy at will or other rental of space, and any renewal or extension thereof, which has been
2328 signed by the executive or administrative head of a state department, court, commission or board
2329 or which has been approved by the state superintendent of state office buildings and by the
2330 commissioner of administration; provided, however, that said quarterly report shall include by
2331 agency, the amount and location of such rental space, any new or additional space, the duration
2332 of the lease or agreement, the cost per square foot of such rental space, any increase or decrease
2333 in said cost, and the cost of the preceding lease or agreement.

2334 Section 43. Upon the receipt of the commission of notice under section 6B of chapter 38
2335 that a site evaluation will be made to determine if skeletal remains are American Indian, the
2336 commission may designate a representative to be present when said site evaluation is made. If
2337 the state archaeologist and commission determine that said remains are American Indian, the
2338 owner of the land whereon the remains were discovered, the state archaeologist, the commission
2339 and other interested parties shall determine whether prudent and feasible alternatives exist to
2340 avoid, minimize or mitigate harm to the Indian burial site. If it is not prudent and feasible to
2341 preserve the remains in the original Indian burial site then the state archaeologist shall excavate
2342 and recover the remains under the supervision of the commission on Indian affairs. The
2343 commission and state archaeologist shall then consult to determine how the remains shall be
2344 disposed.

2345 The final plan or agreement, which shall be in writing, may include provisions for
2346 preservation in situ; or the conducting of additional scientific and archaeological research and
2347 investigation with the approval of the commission on Indian affairs, or the immediate
2348 reinterment of the remains or with the consent of the site's owner, or the execution of a
2349 preservation restriction pursuant to section 32 of chapter 184. If it is determined that the remains
2350 are to be reinterred it shall be the responsibility of the commission on Indian affairs to conduct
2351 the reinterment.

2352 The state archaeologist and commission shall consult to determine whether a skeletal
2353 analysis shall be made; said analysis must be completed within 1 year of the date of approval. If
2354 more than 1 year is required to conduct said analysis, the commission and state archaeologist
2355 shall consult to determine whether the 1 year may be extended. If they fail to agree on whether
2356 the skeletal analysis shall be extended for more than 1 year, they shall each designate three

2357 qualified persons who shall meet and make a recommendation to the commission on Indian
2358 affairs on whether a skeletal analysis of the remains shall be made. The commission shall make
2359 the final decision on whether a skeletal analysis of the remains shall be conducted for longer than
2360 1 year. It will be the responsibility of the commission on Indian affairs to reinter the remains
2361 when the skeletal analysis is completed.

2362 Section 44. (a) Sections 44 to 58, inclusive, shall: ensure that the commonwealth
2363 receives the highest quality design services for all its public building projects; provide for
2364 increased confidence in the procedures followed in the procurement of design and design related
2365 services; promote consistency in the methods of procurement of design and design related
2366 services for all public building projects in the commonwealth; foster effective broad-based
2367 participation in public work within the design professions; provide safeguards for the
2368 maintenance of the integrity of the system for procurement of designers' services within the
2369 commonwealth;

2370 (b) All words defined by section 1 which appear herein shall have the meanings set forth
2371 in said section 1. The words defined in this section shall have the meanings set forth below
2372 whenever they appear in sections 44 to 58, inclusive, unless the context in which they are used
2373 clearly requires a different meaning, or a different definition is prescribed for a particular section
2374 or provision.

2375 “Designer”, an individual, corporation, partnership, sole proprietorship, joint stock
2376 company, joint venture, or other entity engaged in the practice of architecture, landscape
2377 architecture, or engineering, which satisfies the following:

2378 (i) if an individual, the individual is a registered architect, landscape architect, or
2379 engineer;

2380 (ii) if a partnership, a majority of all the partners are persons who are registered
2381 architects, landscape architects, or engineers;

2382 (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority
2383 of the directors or a majority of the stock ownership and the chief executive officer are persons
2384 who are registered architects, landscape architects, or engineers, and the person to have the
2385 project in his or her charge is registered in the discipline required for the project;

2386 (iv) if a joint venture, each joint venturer satisfies the requirements of this section.

2387 “Programmer”, any designer or any other individual, corporation, partnership, sole
2388 proprietorship, joint stock company, joint venture, or other entity engaged in the preparation of
2389 architectural facility programs or studies.

2390 “Construction manager”, any designer or any other corporation, partnership, individual,
2391 sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of
2392 construction management or construction scheduling.

2393 “Design services”, any of the following services provided by any designer, programmer,
2394 or construction manager in connection with any public building project:

2395 (i) preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

2396 (ii) preparation of drawings, plans, or specifications, including but not limited to
2397 schematic drawings, preliminary plans and specifications, working plans and specifications or
2398 other administration of construction contracts documents;

2399 (iii) supervision or administration of a construction contract;

2400 (iv) construction management or scheduling.

2401 “Applicant”, any person or entity applying to perform design services, the principal
2402 personnel responsible for the provision of such services for the project, and the persons who will
2403 be the principal staff for the project.

2404 “Public agency”, a department, agency, board, commission, authority, or other
2405 instrumentality of the commonwealth or political subdivision of the commonwealth or two or
2406 more subdivisions thereof other than cities and towns, and any agency, unit, authority, or
2407 instrumentality thereof but not including the State College Building Authority or the University
2408 of Massachusetts Building Authority.

2409 “Director”, the director of the office of project management, or in the case of agencies
2410 subject to the provisions of section 4B of chapter 7, the chief executive official of the agency or
2411 his designee.

2412 “Commissioner” and “division”, the commissioner and the division of capital asset
2413 management and maintenance.

2414 “Board”, the designer selection board.

2415 “Continued services”, authorization for a designer who has been appointed for one stage
2416 of a project to act as the designer for a succeeding stage or stages of the same project.

2417 “Extended services”, authorization for a designer who has been appointed to provide
2418 design services for a project to act as designer for work to be done on another project not
2419 originally included in that designer’s contract.

2420 Section 45. (a) There shall be located within the executive office for administration and
2421 finance a designer selection board, consisting of 11 members. Eight members shall be appointed
2422 by the governor, 3 of whom shall be registered architects, 3 of whom shall be registered
2423 engineers, and 2 of whom shall be representatives of the public who are not architect designers,
2424 engineers or construction contractors. Three additional members shall be appointed as follows: 1
2425 registered architect by the Massachusetts State Association of Architects, 1 registered engineer
2426 by the government affairs council of design professional and 1 general contractor by the
2427 associated general contractor. The board shall be expanded from the present 5 members to 11
2428 members according to the following schedule: 1 additional architect, 1 additional engineer, and
2429 the 1 general contractor shall be appointed by the designated body within 90 days of the effective
2430 date of this section; another additional public representative shall be appointed within 1 year
2431 thereafter. Members shall be appointed for terms of 2 years and may be reappointed for no more
2432 than 1 successive 2 year term. The members shall annually select 1 member to be the
2433 chairperson. The director shall designate a representative, who shall be the project manager in
2434 the case of a project under the jurisdiction of the office of project management, to act as a
2435 nonvoting member of the board for each project under his jurisdiction under consideration by the
2436 board. No provision of this section shall operate to reduce the tenure of members of the board
2437 serving at the time of the effective date of this section, except that the director of bureau of
2438 building construction shall cease to so serve upon the effective date of this section.

2439 (b) Members of the board shall be reimbursed for all necessary expenses incurred in the
2440 discharge of their official duties.

2441 (c) The board shall be provided with a suitable office by the executive office for
2442 administration and finance. The board shall employ an executive director who shall be a

2443 registered architect or engineer registered in the commonwealth and such other staff or
2444 consultants as it may deem necessary, subject to appropriation, for the board. The board and its
2445 staff may travel within and without the commonwealth.

2446 Section 46. (a) The board shall have jurisdiction over the selection of all designers,
2447 programmers, and construction managers performing design services in connection with any
2448 building project for all public agencies within the provisions of paragraphs (1), (2), and (4) of
2449 section 4, except those public agencies within the provision of section 54, and the procedures
2450 promulgated by any agency of the commonwealth for such selection by any housing authority
2451 subject to paragraph (3) of said section, unless a specific exemption from the board's jurisdiction
2452 is provided under this section.

2453 (b) The board shall grant an exemption for 2 years from its jurisdiction to each public
2454 agency within the provisions of paragraphs (3) and (4) of section 4, but in no event to any public
2455 agency within the provisions of paragraphs (1) and (2) of said section 4, if the agency has filed a
2456 written application for an exemption pursuant to subparagraph (c) of this section; provided,
2457 however, that the board shall withhold an exemption if the board determines that the designer
2458 selection procedure proposed by the public agency does not substantially incorporate the
2459 procedures required in section 45 to 53, inclusive, and section 56, or that the selection of finalists
2460 will not be made with the advice of design professionals or that the procedure proposed by the
2461 public agency does not satisfy the purposes of sections 44 to 58, inclusive, as set forth in said
2462 section 44, or that withholding such an exemption is in the best interest of the commonwealth;
2463 provided, however, that nothing in this section shall be interpreted to require the establishment of
2464 a board as prescribed in section 45 or to waive or in any way diminish the requirements imposed
2465 by any other provision of the General Laws. No withholding of an exemption shall take effect

2466 until the board shall have specified in writing the reasons for withholding an exemption and any
2467 changes in the agency's procedures which are required before an exemption will be granted. An
2468 agency granted an exemption or renewal thereof from the jurisdiction of the board shall, during
2469 any period such exemption or renewal is in effect, advertise for designers, select any designers to
2470 perform any design services, and continue or extend the services of any designers in accordance
2471 with the agency's last written designer selection procedures approved by the board in conformity
2472 with this section.

2473 (c) An application by a public agency for exemption from the jurisdiction of the board
2474 pursuant to this section must be verified by the agency director under the penalties of perjury,
2475 and must contain:

2476 (i) a detailed description of the designer selection process and the written designer
2477 selection procedures which the agency proposes to use;

2478 (ii) a statement that the agency's proposed designer selection process substantially
2479 incorporates the procedures required of the board in sections 45 to 53, inclusive, and section 56;

2480 (iii) a statement that the agency's projects are not subject to the jurisdiction of the
2481 division of capital planning and operations; and

2482 (iv) any other information required by the board.

2483 (d) An exemption shall be renewed by the board on a biennial basis if:

2484 (i) the board finds that the requirements of subparagraph (b) herein are met at the time of
2485 the renewal;

2486 (ii) the agency director files a verified application for renewal containing a description of
2487 any proposed changes in its designer selection procedure; and

2488 (iii) the agency director had filed a semi-annual report containing:

2489 a list of all contracts for designer services awarded by the agency since its last
2490 application, including for each project the name and address of any designer awarded such
2491 contracts, a brief description of the project, the estimated, or if available, the final construction
2492 cost for the project, and the estimated or, if available, final fee paid to the designer; and
2493 certification that all contracts so listed were awarded by the procedure described in the agency's
2494 last application.

2495 (e) Subject to the provisions of paragraph (f), a contract for design services shall be
2496 exempt from jurisdiction of the board if: (i) the design fee under the contract is less than
2497 \$10,000; or (ii) the estimated construction cost of the project for which the design services are
2498 required is less than \$100,000; or (iii) the contract is for the fabrication or installation of modular
2499 buildings procured in accordance with the provisions of section 44E of chapter 149; or (iv) the
2500 contract is for the demolition of buildings. Projects consisting of energy management services
2501 procured in accordance with section 11C of chapter 25A and regulations promulgated thereunder
2502 shall be exempt from the jurisdiction of the board.

2503 (f) The following types of projects, and contracts for design services for such projects,
2504 shall not be exempt from the board's jurisdiction:

2505 (i) Contracts for continued or extended services on projects over which the board
2506 otherwise has jurisdiction;

2507 (ii) Projects otherwise subject to the jurisdiction of the board for which an agency or the
2508 division intends to use its own staff to perform design services, except projects within Class I, as
2509 defined by subparagraph (d) of section 49, unless the board determines that the agency or the
2510 division has the capability with its existing staff to perform those services on the project in
2511 question, applying the same criteria as are used for selection of consultant designers.

2512 Section 47. (a) Each contract for designer services for a project subject to the jurisdiction
2513 of the board shall be publicly advertised by the board in a newspaper of general circulation in the
2514 area in which the project is located or to be located, and in the central register established under
2515 section 20A of chapter 9, and in such places as the board requires by regulation, at least 2 weeks
2516 before the deadline for filing applications; provided, however, that each contract for designer
2517 services for a project whose estimated cost of construction is not less than ten thousand nor more
2518 than \$25,000 shall not be required to be advertised in a newspaper of general circulation but shall
2519 be required to be advertised in the central register.

2520 (b) The public notice required by subparagraph (a) shall contain:

2521 (i) a description of the project, including the specific designer services sought, the time
2522 period within which the project is to be completed, and, if available, the estimated construction
2523 cost;

2524 (ii) if there is a program for the project, a statement of when and where the program will
2525 be available for inspection for applicants, and when and where a briefing session will be held for
2526 applicants, if one is required by the board's regulations and if there is not a program for the
2527 project, a statement to the effect;

2528 (iii) the qualification required of applicants for the projects;

2529 (iv) the categories of designers' consultants, if any, for which applicants must list the
2530 names of consultants which the applicant may choose to use;

2531 (v) whether the fee has been set or will be negotiated, and if the fee has been set, the
2532 amount of the fee.

2533 Section 48. (a) No designer, programmer, or construction manager may file an
2534 application for any project subject to the board's jurisdiction unless having first filed with the
2535 board a written statement containing the following information:

2536 (i) certification that the applicant legal entity, if applying to perform design services other
2537 than preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or
2538 construction manager as defined in paragraph (b) of section 44;

2539 (ii) the names and addresses of all partners, if a partnership, of all officers, directors and
2540 all persons with an ownership interest of more than 5 per cent in the applicant if not a
2541 partnership;

2542 (iii) the registration number and status of each such person in every jurisdiction in which
2543 such person has ever been registered as an architect, landscape architect or engineer;

2544 (iv) a list of all projects for all public agencies within the commonwealth for which the
2545 applicant has performed or has entered into a contract to perform design services within the 5
2546 year period immediately preceding the filing of the information required in this section;

2547 (v) a list of all current projects for which the applicant is performing or is under contract
2548 to perform any design services; and

2549 (vi) if the applicant is a joint venture, the information required in this section shall be
2550 required for each joint venturer, as well as for the joint venture itself.

2551 (b) The board shall keep a permanent record of the statements filed pursuant to this
2552 section and shall require the statements to be made current on a regular basis, and that statements
2553 pursuant to subparagraph (v) and (vi) of paragraph (a) be current with each application filed.

2554 (c) An applicant to perform design, programming or construction management services
2555 on a project must file, in addition to the statement required under paragraph (a), a written
2556 application as prescribed by the board, relating to the applicant's experience, ability, and
2557 qualifications.

2558 (d) The board and its staff shall be allowed access to all records of all public agencies
2559 concerning any applicant, or any project for which the applicant performed any services, for the
2560 purpose of verifying information submitted by the applicant, or for the purpose of evaluating the
2561 applicant's experience, ability and qualifications.

2562 (e) Every application or statement filed pursuant to this section shall be sworn to under
2563 penalties of perjury. A designer, programmer or construction manager who has been determined
2564 by the board to have filed materially false information under this section shall be disqualified by
2565 the board from further consideration for any project for such time as the board determines is
2566 appropriate.

2567 (f) The board shall not advertise for designers nor select any finalists to perform any
2568 design services other than the preparation of master plans, studies, surveys, soil tests, cost
2569 estimates, or programs unless the deputy commissioner certifies that it is appropriate to do so and

2570 either that a program defining the design services required has been prepared, and has been
2571 approved by the division, or that no program is required by the division.

2572 (g) The division of capital asset management and maintenance in consultation with the
2573 board shall develop a standard designer evaluation form that shall be completed by every public
2574 agency, as defined in section 44A of chapter 149, upon completion of the work under a design
2575 contract under its control, and submitted to the division and the board for the designer's
2576 qualification file. The official from the public agency or the owner's representative as described
2577 in section 44A of said chapter 149 shall certify that the information contained on the designer
2578 evaluation form represents, to the best of his knowledge, a true and accurate analysis of the
2579 designer's performance record on the contract. The public agency shall mail a copy of the
2580 designer evaluation form to the designer who may, within 30 days, submit a written response to
2581 the division and board disputing any information contained in the form and setting forth any
2582 additional information concerning the building project or the oversight of the building
2583 construction contract by the public agency as may be relevant to the evaluation of the designer's
2584 performance on the contract. The division and board shall attach any such response to the
2585 evaluation form for inclusion in the designer's qualification file. No public employee or public
2586 employer, as defined in section 1 of chapter 258, and no person shall be liable for an injury or
2587 loss to a designer as a result of the completion of a designer evaluation form as required by this
2588 section unless the individual completing such evaluation form has been found by a superior court
2589 of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is
2590 commenced by a designer against any person who has completed a designer evaluation form as
2591 required by this section seeking to recover damages resulting from injury caused by such
2592 evaluation, the public agency for whom such evaluation form was completed or the

2593 commonwealth, if such evaluation was completed for a state agency, shall provide for the legal
2594 representation of such person. Such public agency or the commonwealth, where an evaluation
2595 was completed for a state agency, shall also indemnify such person from all personal financial
2596 losses and expenses including, but not limited to, legal fees and filing costs, if any, in an amount
2597 not to exceed \$1,000,000, but no such person shall be indemnified for losses other than legal fees
2598 and filing costs under this section if such person is found by a court or a jury to have acted in a
2599 willful, wanton or reckless manner.

2600 The awarding authority shall provide the designer with a written preliminary evaluation
2601 at the completion of the schematic phase of the project for informational purposes.

2602 Any public agency that fails to complete and submit the designer evaluation form,
2603 together with any written response by any designer, to the division within 70 days of the
2604 completion of a project shall be ineligible for the receipt of any public funds disbursed by the
2605 commonwealth for the purposes of public building or public works projects.

2606 Section 49. (a) The board shall adopt written applicants' criteria for selection of
2607 semifinalists and finalists based upon information obtained under section 48 for each project.
2608 The criteria shall include:

2609 (i) prior similar experience;

2610 (ii) past performance on public and private projects;

2611 (iii) financial stability;

2612 (iv) identity and qualifications of the consultants who will work with the applicant on the
2613 project; and

2614 (v) any other criteria that the board considers relevant for any project.

2615 (b) Semifinalists may be chosen for each project.

2616 The board shall select at least three finalists from among all the applicants, or from the
2617 semifinalists selected under this section, and in doing so may require all the applicants or the
2618 semifinalists to:

2619 (i) appear for an interview before the board;

2620 (ii) present a written proposal to the board; or

2621 (iii) participate in a design competition held by the board.

2622 (c) The board shall transmit a list of the chosen finalists to the commissioner. No person
2623 or firm debarred pursuant to section 44C of chapter 149 or disqualified pursuant to section 47
2624 shall be so included as a finalist. The board shall transmit to the commissioner all material made
2625 or received relating to such recommendation.

2626 The list shall rank the finalists in order of qualification and include a record of the final
2627 vote of the board on the selection; and include a written statement explaining the board's reasons
2628 for its choice and its ranking of the finalists.

2629 (d) The board may delegate its powers and duties under paragraph (b) of section 47,
2630 paragraphs (c) and (d) of section 48, paragraphs (a) and (b) of section 50 and sections 51 and 52
2631 to panels of less than all the board members. A panel of not less than 6 members shall be
2632 required for selection of designers under this section, 4 of whom shall be architects or engineers,
2633 including at least 1 architect and 1 engineer on that panel.

2634 (e) For the purposes of chapter 268A and subject to the penalties therein, no member of
2635 the board shall participate in the selection of a designer as a finalist or semifinalist for any
2636 project if the member or any member of his immediate family:

2637 (i) has a direct or indirect financial interest in the award of the design contract to any
2638 applicant;

2639 (ii) is currently employed by, or is a consultant to or under contract to an applicant.

2640 (iii) is negotiating or has an arrangement concerning future employment or contracting
2641 with any applicant; or

2642 (iv) has an ownership interest in, or is an officer or director of, any applicant.

2643 Section 50. (a) In the selection of a designer when the fee for design services has been
2644 set by the commissioner prior to the selection process, the commissioner shall appoint a designer
2645 from among the list transmitted to him or her under section 49. If the commissioner appoints any
2646 designer other than the one ranked first by the board, he or she shall file a written justification of
2647 the appointment with the board.

2648 (b) When the fee for design services is to be negotiated, the commissioner shall review
2649 the list transmitted by the board, and may exclude any designer from the list if a written
2650 explanation of the exclusion is filed with the board. The commissioner shall then appoint a
2651 designer based on successful fee negotiation. The commissioner or persons designated by him or
2652 her shall first negotiate with the first ranked designer remaining on the list. Should the
2653 commissioner be unable to negotiate a satisfactory fee with the first ranked designer within 30
2654 days, negotiations shall be terminated and negotiations undertaken with the remaining designers,

2655 one at a time, in the order in which they were ranked by the board, until an agreement is reached.
2656 In no event may a fee be negotiated which is higher than a maximum fee set by the
2657 commissioner prior to selection of finalists. Should the commissioner be unable to negotiate a
2658 satisfactory fee with any designer initially selected as a finalist by the board, the board shall
2659 recommend additional finalists in accordance with the provisions of this chapter. The
2660 commissioner may require a finalist with whom a fee is being negotiated to submit a fee proposal
2661 and include with it such information as the commissioner requires to provide current cost and
2662 pricing data on the basis of which the designer's fee proposal may be evaluated.

2663 (c) All fees shall be stated in designer's contracts and in any subsequent amendment
2664 thereto as a total dollar amount. Contracts may provide for equitable adjustments in the event of
2665 changes in scope or services.

2666 (d) Notwithstanding the provisions of any general or special law to the contrary, all
2667 public entities within the commonwealth, agencies and authorities of the commonwealth and
2668 municipal entities within the commonwealth, including departments, boards, committees or
2669 commissions shall be entitled to withhold up to 5 per cent of contract fees earned and invoiced as
2670 part of professional service contracts, during the life of the contract. Withheld fees shall be held
2671 for not longer than 2 invoice periods when the contractor is permitted to invoice monthly, or
2672 until successful completion of the next contract phase or stage when the contractor is permitted
2673 to invoice by project phase or stage. When the work covered by the contract is completed, all
2674 remaining withheld fees shall be paid to the contractor within 2 months from the date of
2675 completion. If the withholdings are not paid to the contractor within the stipulated time limit, the
2676 amount of the withholding in arrears shall be increased at a 12 per cent annual rate.

(e) Notwithstanding the provisions of any general or special law to the contrary, agencies and authorities of the commonwealth and municipal entities within the commonwealth, including departments, boards, committees or commissions, shall pay all outstanding withheld fees on professional service contracts, when the withholding has been held for longer than 2 invoice periods for active contracts, or that remains withheld on contracts which have been completed, or for which the work of the contractor has been completed.

Section 51. (a) When the board has required that applicants list consultants which the applicants may employ, in no event shall a consultant be used who is debarred pursuant to section 44C of chapter 149 and any change in or addition to the consultants named in the application and allowed by the board upon appointment must be approved by the commissioner and reported to the board, along with a written statement by the designer or construction manager of the reasons for the change.

(b) If the designer's or construction manager's fee is negotiated, the designer or construction manager must file a truth-in-negotiations certificate prior to being awarded the contract by the commissioner, which must be incorporated into the contract. The certificate must contain:

(i) a statement that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and

(ii) an agreement that the original contract price and any additions to the contract may be adjusted within 1 year of completion of the contract to exclude any significant amounts if the commissioner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

2699 (c) The board may specify other special conditions or requirements in selecting a
2700 particular applicant as a finalist. If any change is made by the applicant after appointment
2701 relating to such special conditions or requirements, the change must be approved by the
2702 commissioner and reported to the board along with a written statement by the appointee of the
2703 reasons for the change.

2704 (d) Every contract for design services awarded under sections 44 to 58, inclusive, shall
2705 include the following:

2706 (i) certification that the designer or construction manager has not given, offered or agreed
2707 to give any person, corporation or other entity any gift, contribution or offer of employment as an
2708 inducement for, or in connection with, the award of the contract for design services;

2709 (ii) certification that no consultant to or subcontractor for the designer or construction
2710 manager has given, offered or agreed to give any gift, contribution or offer of employment to the
2711 designer or construction manager, or to any other person, corporation, or entity as an inducement
2712 for, or in connection with, the award to the consultant or subcontractor of a contract by the
2713 designer or construction manager;

2714 (iii) certification that no person, corporation or other entity, other than a bona fide full
2715 time employee of the designer or construction manager, has been retained or hired by the
2716 designer or construction manager to solicit for or in any way assist the designer or construction
2717 manager in obtaining the contract for design services upon an agreement or understanding that
2718 such person, corporation or other entity be paid a fee or other consideration contingent upon the
2719 award of the contract to the designer; and

2720 (iv) certification with respect to contracts which exceed \$10,000 or which are for the
2721 design of a building for which the budgeted or estimated construction costs exceed \$100,000 that
2722 the designer has internal accounting controls as required by subsection (c) of section 39R of
2723 chapter 30 and that the designer has filed and will continue to file an audited financial statement
2724 as required by subsection (d) of said section 39R.

2725 (e) A public agency shall not enter into a contract for design services unless the public
2726 agency or the designer has obtained professional liability insurance covering negligent errors,
2727 omissions and acts of the designer or of any person or business entity for whose performance the
2728 designer is legally liable arising out of the performance of the contract. The total amount of such
2729 insurance shall at a minimum equal the lesser of \$1,000,000 or 10 per cent of the project's
2730 estimated cost of construction, or such larger amounts as the public agency may require, for the
2731 applicable period of limitations. A designer required by the public agency to obtain all or a
2732 portion of such insurance coverage at his own expense shall furnish a certificate or certificates of
2733 insurance coverage to the public agency prior to the award of the contract. For purposes of this
2734 paragraph only, "public agency" shall have the meaning set forth in section 1.

2735 At the request of the director, a consultant employed by a designer subject to this
2736 paragraph shall obtain and maintain a liability insurance policy covering negligent errors,
2737 omissions and acts of such consultant or of any person or business entity for whose performance
2738 the consultant is legally liable arising out of the performance of the contract for consultant
2739 services. The consultant shall furnish a certificate or certificates of such insurance coverage to
2740 the division in the case of a consultant hired by a designer selected pursuant to section 49 or to a
2741 public agency not subject to the jurisdiction of said board prior to the employment of such
2742 consultant by the designer. A liability insurance policy maintained under this paragraph shall

2743 provide for coverage of such type and duration and in such amount as the public agency shall
2744 require.

2745 (f) A designer, construction manager, or programmer who has been determined by the
2746 board to have provided materially false statements or information under this section shall be
2747 disqualified by the board from future work on any project for such time as the board determines
2748 is appropriate.

2749 (g) Contracts for design service may include a requirement that the designer be
2750 responsible for overseeing the construction phase of the project.

2751 (h) Awarding authorities in cities and towns may allow a designer who conducted a
2752 feasibility study to continue with the design of a project; but, nothing herein shall prohibit the
2753 awarding authorities from commissioning, at the discretion of the awarding authorities, an
2754 independent review, by a knowledgeable and competent individual or business doing such work,
2755 of the feasibility of the designer's work to insure its reasonableness and its adequacy before
2756 allowing the designer to continue on the project.

2757 (i) Contracts for design services shall include a provision that the designer or his
2758 consultants shall not be compensated for any services involved in preparing changes that are
2759 required for additional work that should have been anticipated by the designer in the preparation
2760 of the bid documents, as reasonably determined by the executive head of the public agency
2761 responsible for administering the design contract. For the purpose of this paragraph, "public
2762 agency" shall have the meaning as set forth in section 1.

2763 Section 52. The commissioner may appoint a designer to perform continued or extended
2764 services if the following conditions are met:

2765 (i) a written statement is filed with the board explaining the reasons for the continuation
2766 or extension of services;

2767 (ii) the program for the design services is filed with the board if one is required by the
2768 regulations of the division; and

2769 (iii) the board approves the appointment of the designer for continued or extended
2770 services and states the reason therefor.

2771 Section 53. (a) Whenever the health or safety of any persons will be endangered because
2772 of the time required for the selection of a designer, programmer or construction manager by the
2773 procedures prescribed by sections 44 to 58, inclusive, or whenever a deadline for action is set on
2774 a project by any court or federal agency which cannot be met if those selection procedures are
2775 followed, the commissioner may declare that an emergency situation exists.

2776 (b) If the commissioner declares that an emergency situation exists, finalist selection may
2777 be made by the board by expedited procedures adopted by regulation by the board.

2778 Section 54. (a) Every contract for design services for any building construction,
2779 reconstruction, alteration, remodeling, or repair estimated to exceed \$100,000 by any city, town,
2780 or agency, board, commission, authority or instrumentality thereof, other than housing
2781 authorities and projects requesting funding from the Massachusetts School Building Authority
2782 shall be awarded only after a selection procedure adopted in writing, prior to publication
2783 requesting applications, complying with the purposes and intent of sections 44 to 58, inclusive,
2784 and the following requirements:

2785 (i) the provisions of section 47 regarding public notice;

2786 (ii) the establishment of uniform requirements of information to be submitted by all
2787 applicants, a uniform procedure for the evaluation of all applications to a group of not fewer than
2788 3 finalists, the opportunity to be afforded equally to all finalists to provide additional information
2789 to or appear before the selection body, and a procedure for the submission of a fee proposal and
2790 the negotiation of fees between the awarding authority and the selected applicant with whom the
2791 fee is being negotiated consistent with the provisions of subsection (b) of section 50;

2792 (iii) that a written explanation of the reasons for selection including the recorded vote if
2793 any was taken be made public and accompany the notification of award in the awarding
2794 authority's records;

2795 (iv) the provisions of paragraph (c) of section 50 regarding the designation of fees in the
2796 contract;

2797 (v) that nothing in this section shall be interpreted to require the establishment of a board
2798 or to waive or reduce the requirements of any other applicable law or regulation.

2799 (b) The board shall publish guidelines to assist public agencies not within the board's
2800 jurisdiction in the establishment of a professional and objective designer selection procedure,
2801 including a model application form, consistent with the provisions and intent of sections 44 to
2802 58, inclusive. The board shall publish a standard designer selection form which shall be used by
2803 all cities, towns and public agencies not within the board's jurisdiction; but, before publishing
2804 the standard form, the board shall seek input from the cities, towns and other public agencies not
2805 within the board's jurisdiction. Any fee guidelines promulgated by the board shall be
2806 accompanied by a recommended basic scope of designer's services that shall reflect the work
2807 associated with the fee guidelines. From time to time, and no less frequently than every 3 years,

2808 the board shall review and revise the fee schedule based upon prevailing costs at the time of such
2809 review and revision.

2810 (c) Any city, town or other public agency not otherwise subject to the jurisdiction of the
2811 board may request the board to exercise jurisdiction regarding the selection of applicants to
2812 perform design services for a specified period of time or for a specified project. In such cases, all
2813 provisions of sections 44 to 58, inclusive, shall apply to the board, the applicants and the public
2814 agency so requesting.

2815 (d) Notwithstanding the provisions of subsection (a), a city, town, or agency, board,
2816 commission, authority or instrumentality thereof may procure modular buildings in accordance
2817 with section 44E of chapter 149.

2818 (e) Notwithstanding the provisions of subsection (a), a city, town, or agency, board,
2819 commission, authority or instrumentality thereof may procure energy management services in
2820 accordance with section 11C of chapter 25A and regulations promulgated thereunder.

2821 Section 55. The board, any public agency exempted under section 46 and all other
2822 governmental units engaged in the selection of applicants to perform design services but not
2823 otherwise subject to the board's jurisdiction shall keep the following records:

2824 (i) all information supplied by or obtained about each applicant;

2825 (ii) all actions taken by the board or agency relating to any project;

2826 (iii) any other records related to designer selection required by the division.

2827 The records of public agencies exempted under section 46 or not otherwise subject to the
2828 jurisdiction of the board shall be available for inspection by the board or the division.

2829 Section 56. The board shall submit an annual report to the division of capital asset
2830 management and maintenance listing all finalists selected by the board and all awards made
2831 pursuant to the provisions of sections 44 to 58, inclusive, a summary of the activities and other
2832 actions of the board and its staff, and such other items as the board deems appropriate.

2833 Section 57. The board shall independently adopt procedures and regulations as necessary
2834 to implement the requirements of sections 44 to 58, inclusive. Such procedures and regulations
2835 may vary according to the class of project.

2836 Section 58. (a) For the purposes of this section the following words shall have the
2837 following meanings unless the context clearly requires otherwise:-

2838 "Agency", the Massachusetts Department of Transportation, the Massachusetts Port
2839 Authority and the Massachusetts Bay Transportation Authority.

2840 "Architectural and engineering services", (i) professional services of an architectural or
2841 engineering nature, as defined by state law, which are required to be performed or approved by a
2842 person licensed, registered or certified to provide those services as described herein; (ii)
2843 professional services of an architectural or engineering nature performed by contract that are
2844 associated with research planning, development, design, investigations, inspections, tests,
2845 evaluations, consultations, program management, value engineering, construction, alteration or
2846 repair of real property; and (iii) such other professional services of an architectural or
2847 engineering nature, or incidental services, which members of the architectural and engineering
2848 professions and individuals in their employ may logically or justifiably perform, including
2849 studies, investigations, surveying and mapping, soil tests, construction phase services, drawing
2850 reviews, evaluations, consultations, comprehensive planning, program management, conceptual

2851 designs, plans and specifications, soils engineering, cost estimates or programs, preparation of
2852 drawings, plans or specifications, supervision or administration of construction contracts,
2853 construction management or scheduling, preparation of operation and maintenance manuals and
2854 other related services.

2855 "Firm", an individual, firm, partnership, corporation, association or other legal entity
2856 authorized by law to practice the professions of architecture, engineering, land surveying,
2857 landscape architecture, environmental science, planning or program management.

2858 "Public works project", a capital improvement project or a design, study, plan, survey or
2859 new or existing program activity of an agency, including the development of new or existing
2860 programs that require architectural, engineering or related professional services; provided,
2861 however, that "public works project" shall not include a public building construction project
2862 undertaken under chapters 7, 149 and 149A.

2863 "Related professional services", (i) professional services, including land surveying,
2864 landscape architecture, environmental science and planning, which are required to be performed
2865 or approved by a person licensed, registered or certified to provide such services as described
2866 herein; (ii) professional services performed by contract that are associated with research,
2867 planning, development, design, investigations, inspections, surveying and mapping, tests,
2868 evaluations, consultations, comprehensive planning program management, value engineering,
2869 construction, alteration or repair of real property; and (iii) such other professional services, or
2870 incidental services, which members of the related professions as described herein and individuals
2871 in their employ may logically or justifiably perform, including master plans, studies, surveys,
2872 soil tests, cost estimates or programs, preparation of drawings, plans or specifications,

2873 supervision or administration of construction contracts, construction management or scheduling,
2874 conceptual designs, plans and specifications, construction phase services, soils engineering,
2875 drawing reviews, cost estimating, preparation of operation and maintenance manuals and other
2876 related services; provided, however, that nothing herein shall be construed to constitute a
2877 regulation or oversight of any designated firms or identified professionals' services.

2878 (b) For those agencies that prequalify architectural, engineering and related services, the
2879 agency shall require firms engaged in the lawful practice of their profession to submit a
2880 statement of qualifications and performance data every 2 years to the agency pursuant to the
2881 terms and schedule as determined by the agency. Agencies that prequalify shall have the option
2882 of selecting firms from their prequalified list of firms based on the agency policies and without
2883 further publically advertising the selection.

2884 (c) Whenever a public works project requiring architectural, engineering or related
2885 professional services is to be advertised by an agency, the agency shall provide not less than 14
2886 days advance notice published in a professional services bulletin or advertised on the official
2887 agency website setting forth the public works project and services to be procured. The
2888 professional services bulletin shall be made available to each firm that requests the information.
2889 The professional services bulletin shall include a description of each public works project and
2890 shall state the time and place for an interested firm to submit a statement of qualifications and, if
2891 required by the public notice, a letter of interest and technical proposal. If the agency determines
2892 that a sole source selection of a qualified firm is in the best interest of the agency, then the public
2893 notice provisions of this subsection shall not apply.

2894 (d) An agency shall evaluate the firms submitting statements of qualifications, taking into
2895 account qualifications, letters of interest and technical proposals, and the agency may consider,
2896 but shall not be limited to considering, ability of professional personnel, past record and
2897 experience, performance data on file, willingness to meet time requirements, location, workload
2898 of the firm and any other qualifications based on factors that the agency may determine in
2899 writing are applicable. The agency may conduct discussions with, and require presentations by,
2900 firms deemed to be the most qualified regarding their qualifications, approach to the public
2901 works project and ability to furnish the required services. An agency shall not, prior to selecting
2902 a firm for negotiation, seek formal or informal submission of verbal or written estimates of costs
2903 or proposals in terms of dollars, hours required, percentage of construction cost or any other
2904 measure of compensation.

2905 (e) (1) An agency shall select architects, engineers and related professional firms on
2906 the basis of qualifications for the type of professional services required, and on technical
2907 proposals, if submitted. An agency may solicit or use pricing policies and proposals or other
2908 pricing information to determine consultant compensation only after the agency has selected a
2909 firm and initiated negotiations with the selected firm.

2910 (2) The procedures that an agency creates for the screening and selection of firms
2911 shall be within the sole discretion of the agency and may be adjusted to accommodate the
2912 agency's scope, schedule and budget objectives for a particular public works project.

2913 (3) The decision of an agency that has complied with this chapter shall be final
2914 and binding.

2915 (f) (1) The agency and the selected firm shall discuss and refine the scope of services
2916 for the public works project and shall negotiate conditions including, but not limited to,
2917 compensation level and performance schedule based on scope of services. The compensation
2918 level paid shall be reasonable and fair to the agency as determined solely by the agency. In
2919 making such determination, the agency shall take into account the estimated value of the services
2920 to be rendered and the scope, complexity and professional nature thereof.

2921 (2) If the agency and the selected firm are unable for any reason to negotiate a
2922 contract at a compensation level that is reasonable and fair to the agency, the agency shall, in
2923 writing, formally terminate negotiations with the selected firm. The agency shall then negotiate
2924 with the second ranked most qualified firm. The negotiation process shall continue in this
2925 manner through successive ranked firms until an agreement is reached or the agency terminates
2926 the consultant contracting process.

2927 (g) This section shall not apply to the procurement of architectural, engineering and
2928 related professional services by agencies: (i) when an agency determines in writing that it is in
2929 the best interest of the agency to proceed with the immediate selection of a firm; (ii) in
2930 emergencies when immediate services are necessary to protect the public health and safety; or
2931 (iii) when these services are to be provided as part of a design-build project pursuant to sections
2932 14 to 21, inclusive, of chapter 149A.

2933 (h) Each agency shall evaluate the performance of each firm upon completion of a
2934 contract. The evaluation shall be made available to the firm which may submit a written
2935 response.

2936 Section 59. Every appropriation or authorization for the design or construction of a
2937 building project for which a state agency is the using agency shall be deemed to require the
2938 satisfactory completion of a study or program before any services for the design or construction
2939 of such project may be contracted for, performed by contract or otherwise, or funds allotted,
2940 encumbered or expended therefor, unless such appropriation or authorization specifically states
2941 that no such study or program need or shall be done.

2942 No provider of design services for any building project for which a state agency is the
2943 using agency shall be selected by the designer selection board or by the administering agency
2944 and no design services shall be performed for or by such administering agency for any building
2945 project for which the satisfactory completion of a study program is required prior to the design or
2946 construction of that project, unless and until: (a) said study, program or where appropriate, both,
2947 have been satisfactorily completed; (b) the using agency certifies in writing to the commissioner
2948 of capital asset management and maintenance that the study, program, or where appropriate both,
2949 correspond to the current needs of that agency, including its current long term capital facilities
2950 development plan; (c) the commissioner requests that one or more of the directors of the office of
2951 programming, office of project management, or office of facilities management review the study
2952 or program, or where appropriate, both, and the director or directors certify in writing to the
2953 commissioner that the study, program, or where appropriate both, reflect the using agency's
2954 needs as stated, that they provide an accurate estimate of the project requirements, cost and
2955 schedule, that the project can be accomplished within the appropriation or authorization for that
2956 project, and recommends proceeding with design, construction, or where appropriate, both; and
2957 (d) the commissioner of capital asset management and maintenance certifies in writing to the
2958 commissioner of administration that the study, program, or where appropriate both, are in

2959 conformity with the scope and purpose of the appropriation or authorization for the project and
2960 legislative intent in regard to long range capital facility plans for the using agency, and approves
2961 proceeding with design, construction, or where appropriate, both.

2962 If either the director or directors whose review is requested or the commissioner of
2963 capital asset management and maintenance should fail to so certify, recommend, or approve, the
2964 commissioner shall forthwith send notice of his decision and the reasons therefor to the
2965 commissioner of administration and to the house and senate ways and means committees.

2966 Section 60. No allotment, encumbrance, or expenditure of funds appropriated or
2967 authorized for the design of a capital facility project shall be approved by the comptroller unless
2968 the executive head of the agency administering the project--or other person provided for by
2969 statute--certifies in writing that the design work is or shall be such as to specify a project that can
2970 be accomplished (a) within the appropriation or authorization for the project or within the project
2971 cost limits specified by the appropriation or authorization and (b) without substantial deviation
2972 from any (i) study or program which must be prepared in accordance with the provisions of
2973 section 59 of this chapter or (ii) any other pre-design document which must be prepared in
2974 accordance with any other statute, appropriation or authorization or administrative directive
2975 consistent therewith. In no event shall the design work be such as would result in a change in the
2976 number of square feet to be constructed in the project of more than 10 per cent from the number
2977 specified in the study, program or other pre-design document referred to in (b)(i) and (b)(ii).

2978 No state agency--as defined by section 1 --administering a capital facility project shall
2979 enter into any contracts or incur any other obligations or cause to be performed design services
2980 for that project if such would result in the completion of a project which cannot be accomplished

2981 (a) within the appropriation or authorization for the project or within the project cost limits
2982 specified by the appropriation or authorization and (b) without substantial deviation for (i) any
2983 study or program which must be prepared in accordance with the provisions of section 59 of this
2984 chapter or (ii) any other pre-design planning document which must be prepared in accordance
2985 with any other statute, appropriation or authorization or administrative directive consistent
2986 therewith. In no event shall the design work be such as would result in a change in the number of
2987 gross square feet to be constructed in the project of more than ten per cent from the number
2988 specified in the study, program or other pre-design document referred to in (b)(i) and (b)(ii).

2989 Section 61. No allotment, encumbrance, or expenditure of funds appropriated or
2990 authorized for the construction of a capital facility project shall be approved by the comptroller
2991 unless the executive head of the agency administering the project—or other person provided for
2992 by statute—certifies in writing that the construction work can be accomplished (a) within the
2993 appropriation or authorization for the project and (b) without substantial deviation from (i) any
2994 study or program which must be prepared in accordance with the provisions of section 59 of this
2995 chapter or (ii) any other pre-design document which must be prepared in accordance with any
2996 other statute, appropriation or authorization or administrative directive consistent therewith. In
2997 no event shall the construction work be such as would result in a change in the number of square
2998 feet to be constructed in the project of more 10 ten per cent from the number specified in the
2999 study, program or other predesign document referred to in (b)(i) and (b)(ii).

3000 No state agency—as defined by section 1—administering a facility administering project
3001 shall enter into any contracts or incur any obligations or cause to be performed construction of
3002 that project if such would result in the completion of a project which cannot be accomplished (a)
3003 within the appropriation or authorization for the project and (b) without substantial deviation

3004 from (i) any study or program which must be prepared in accordance with the provisions of
3005 section 59 of this chapter or (ii) any other pre-design document which must be prepared in
3006 accordance with any other statute, appropriation or authorization or administrative directive
3007 consistent therewith. In no event shall the construction work be such as would result in a change
3008 in the number of square feet to be constructed in the project of more than 10 per cent from the
3009 number specified in the study, program or other predesign document referred to in (b)(i) or
3010 (b)(ii).

3011 Section 62. The governor and the commissioner of capital asset management and
3012 maintenance in their long range capital facilities development plans and capital budget requests
3013 and the secretaries of the various executive offices in their review and recommendations with
3014 regard to such plans and requests may include among them plans and requests for one or more
3015 contingency, or other lump-sum or reserve accounts, including but not limited to planning,
3016 design and construction contingency, preventive maintenance, emergency repair, energy
3017 conservation, life-safety, and architectural barrier funds or accounts. Each shall include in their
3018 plans and request recommendations as to the purpose of such funds or accounts and the priorities
3019 and procedures for allocating the monies kept therein.

3020 The commissioner of capital asset management and maintenance shall forthwith establish
3021 priorities and procedures for allocating such funds in conformity with the terms of the
3022 appropriation authorizing them and legislative intent in regard to long range capital facilities
3023 development plans. The commissioner shall forthwith submit copies of the priorities and
3024 procedures so established to the commissioner of administration and to the house and senate
3025 ways and means committees.

3026 Unless otherwise provided for in the appropriation authorizing such funds or accounts or
3027 other applicable law and in conformity therewith and the priorities and procedures established by
3028 the commissioner of capital asset management and maintenance, the monies kept therein shall
3029 not be allocated unless and until:

3030 (a) the using agency, whether or not it is the agency requesting the funds for the proposed
3031 project, certifies in writing to the commissioner of capital asset management and maintenance
3032 that the project corresponds to the current needs of the using agency, including its current long
3033 range capital facilities development plan;

3034 (b) the commissioner requests that one or more of the directors of the office of
3035 programming, office of project management, or the office of facilities management review the
3036 project proposal, and the director or directors certify in writing to the commissioner of capital
3037 asset management and maintenance that the project proposal reflects the agency's needs as
3038 stated, that it provides an accurate estimate of the project requirements, cost and schedule, and
3039 that the project can be accomplished within the limits of the funds requested;

3040 (c) The commissioner of capital asset management and maintenance certifies in writing to
3041 the commissioner of administration and to the house and senate ways and means committee that
3042 the project proposal has been evaluated in conformity with the terms of the appropriation or
3043 authorization of the fund or account and the priorities and procedures promulgated by him
3044 pursuant thereto and approves the allocation.

3045 The commissioner of capital asset management and maintenance shall, upon his
3046 certification, file copies of the project proposal and other supporting documents, his certification
3047 and those of the director or directors whose review is requested and the agency requesting such

3048 funds with the commissioner of administration and with the house and senate ways and means
3049 committees.

3050 If either the director or directors whose review is requested or the commissioner of
3051 capital asset management and maintenance should fail to give the aforementioned certifications
3052 or approvals, the commissioner shall forthwith send notice of his decision and the reasons
3053 therefor to the commissioner of administration and to the house and senate ways and means
3054 committees.

3055 The commissioner of capital asset management and maintenance shall by February 15 of
3056 each year prepare and submit to the commissioner of administration and to the general court a
3057 report containing separate sections summarizing the disposition and the status of the funds or
3058 accounts and descriptions of all projects for which monies from such fund have been allocated.

3059 Section 63. There is established and set up on the books of the commonwealth a separate
3060 fund, consisting of monies appropriated to the fund by the general court and income derived
3061 from the investment of monies appropriated to the fund, known as the capital facility planning
3062 fund.

3063 Allocation of monies from such fund shall be made according to the provisions of section
3064 62 of this chapter. The purpose of the capital facility planning fund shall be to provide monies
3065 for the planning of capital facility projects by state agencies other than counties. Priority in the
3066 allocation of monies from such fund shall be given to projects:

3067 (i) which are included in any long range capital facilities development plan previously
3068 approved by the general court or in any master plan, consistent with such long range plans,
3069 previously approved by the commissioner of capital asset management and maintenance or

3070 (ii) whose rapid progress is indicated by statutes which provide for capital facility
3071 projects to advance specific agency programs, goals or objectives; and for which the delay in
3072 seeking monies through the normal capital budget process provided for by this chapter would
3073 cause a serious loss in use of the proposed capital facility if it were unavailable or cause a
3074 percentage increase in total project cost substantially larger than that for other projects at a
3075 comparable stage of development.

3076 Monies from the capital facility planning fund may be allocated, in accordance with
3077 priorities stated above, for the preparation of environmental impact reports to comply with the
3078 requirements of chapter 12 and chapter 30.

3079 Monies from the capital facility fund may be allocated, in accordance with the priorities
3080 stated above, for options to purchase land or buildings which will be used for capital facility
3081 projects specifically identified in the allocation request.

3082 If monies spent on a capital facility project are allocated from the capital facility planning
3083 fund and the funds for the acquisition of a site for or the design or design and construction of
3084 such project are appropriated or authorized then a sum of money equal to that allocation shall be
3085 deducted from the amount so appropriated or authorized and returned to the capital facility
3086 planning fund.

3087 In no case shall a request for monies or monies be allocated for projects for which a
3088 similar request is currently being considered according to the capital budget process for the
3089 current fiscal year provided for by this chapter or which was so considered during the capital
3090 budget process for the previous fiscal year and failed to receive an appropriation or
3091 authorization.

3092 Requests for monies from the capital facility planning fund may be made by state
3093 agencies other than counties and only after approval of such requests by the secretary of the
3094 executive office in which that agency is located, except in the case of a public institution of
3095 higher learning, only after approval by the board of higher education.

3096 Section 64. Each public agency other than a city or town shall prepare a long range
3097 capital facilities development plan. Such plan shall include projections at least 5 years from the
3098 date of submission of the plan. Each such public agency shall revise the plan annually or at such
3099 other time as the commissioner of capital asset management and maintenance may require, or as
3100 otherwise mandated by statute or appropriation act. Each plan or revision thereof shall be
3101 submitted to the commissioner at such time or according to such schedule as he shall specify.
3102 Each state agency the authorization of which is otherwise required for capital facility projects of
3103 one or more cities and towns shall include in its plan required by this section and its capital
3104 facility budget request required by section 66 the information about such projects specified by
3105 those sections. The state agency may request from cities and towns the information needed to
3106 complete the above-mentioned plan and budget and said information shall be promptly submitted
3107 to the state agency. To the maximum extent feasible the commissioner and state agencies shall
3108 coordinate the timing and content of their requests for information to minimize duplication of
3109 reporting. In the case of local operating agencies as defined in section 1 of chapter 121B, any
3110 such plan, revision, capital facility budget, or capital facility budget requests required by this
3111 section or section 66 of this chapter shall be prepared and submitted by the department of
3112 housing and community development.

3113 After consultation with the governor and the commissioner of administration, the
3114 commissioner shall, in a timely manner, prepare and send to public agencies a capital facility

3115 planning policy statement to inform in the formulation of their long range capital facilities
3116 development plans and capital facility budget requests.

3117 The commissioner may at his discretion provide guidance and technical assistance to
3118 those public agencies lacking sufficient resources to prepare such plans. He shall specify the
3119 information required, the manner or preparation of the plan, and the form in which it is to be
3120 provided.

3121 Section 65. In formulating requirements for the information to be provided in long-range
3122 capital facilities development plans, the commissioner of capital asset management and
3123 maintenance shall require at least the following: the history, legislative authority and major
3124 responsibilities of the public agency as defined by law and by administrative rule, regulation or
3125 directive; the programs being carried out by each as they affect capital facility needs; an
3126 appraisal of the responsibilities, objectives and current programs and evaluation of the factors
3127 expected to influence future programs; tabulations of the numbers of people served by and
3128 staffing the agency and its subunits; a detailed description of the land and facilities currently
3129 owned, leased or used by the agency to the extent that such description has not previously been
3130 submitted to the commissioner as part of the real property inventory maintained by him and an
3131 estimate of their utilization in relation to current and future programs.

3132 In formulating requirements for each long-range capital facilities development plan, the
3133 commissioner shall require at least the following: a determination of the capital facility needs
3134 based on the programs, population to be served, and the adequacy of existing facilities; a
3135 proposed capital facility project schedule and an explanation of the relationship between the need
3136 for each project and the stated programs; a summary of the schedule of needs for funds; a

3137 tabulation of the estimated staffs required for such new or modified programs and facilities; a
3138 tabulation of such projects showing the effect upon staffing, operating, and maintenance
3139 expenses; and a description of the geographic and spatial location of the facility relative to other
3140 facilities or land of the agency or its subunits.

3141 In formulating requirements for any revisions of long-range capital facilities development
3142 plans the commissioner shall require at least the following: a statement of the changes in the
3143 agency's responsibilities, objectives and programs; revised estimates of institutional population
3144 and staff, and geographic and spatial descriptions of capital facilities; and changes in capital
3145 facility requirements as they would have effect at least 5 years from the date of submission.

3146 Section 66. Each public agency other than cities and towns shall prepare and submit to
3147 the commissioner of capital asset management and maintenance in addition to its long-range
3148 capital facilities development plan or revision thereof, an annual capital facility budget at such
3149 time as the said commissioner shall require.

3150 In preparing both long-range capital facilities development plans and revisions thereof
3151 and capital facility budget requests, the agency shall provide timely public notice of such
3152 proposed plans and requests and reasonable opportunity for potential users and staff of the
3153 facilities controlled or to be controlled by the agency to comment thereon.

3154 The long-range capital facility development plans and capital facility budget requests
3155 submitted by the agency to the division of capital asset management and maintenance shall
3156 contain a summary of those comments and a statement of the extent to which they are reflected
3157 in the proposed plans and requests.

3158 The commissioner may provide guidelines to agencies for soliciting and reporting on
3159 such views.

3160 The commissioner may, at his discretion, provide guidance and technical assistance to
3161 agencies without sufficient resources to prepare capital facility budget requests. He shall specify
3162 the information being sought, how it might be prepared and the form in which it is to be
3163 provided.

3164 The commissioner shall provide for a format and content of long-range capital facilities
3165 development plans and capital facility budget requests which is, to the maximum extent feasible,
3166 consistent with that provided for the operating budget by the director of the fiscal affairs division
3167 within the executive office for administration and finance.

3168 Any public agency may include among its capital facility budget requests, ones for
3169 appropriations or authorizations for a class or classes of similar or related capital facility
3170 projects. Such request shall include a statement of a) how the class of projects is defined; b) the
3171 reasons for requesting appropriations or authorizations for a class of projects rather than
3172 individual projects; c) the priorities and procedures for allocating the appropriated or authorized
3173 monies among the class of possible projects, making reference to and submitting copies of any
3174 studies, surveys, plans, analyses and other documents from which criteria for allocation are to be
3175 derived; and d) a proposed initial allocation of the appropriated or authorized monies based on
3176 the suggested priorities, procedures and criteria.

3177 In formulating requirements for capital facility budget requests for individual projects,
3178 the commissioner shall include at least the following: (a) a concise title description of the
3179 project; (b) the location of the project and its site in relation to any existing facilities in close

proximity; (c) the estimated schedule for completion of the project including the dates upon which the design and construction of the project are estimated to be commenced and completed and the facility occupied or used; (d) a description of the project and what it involves, appending any planning documents, accurate summaries of design documents and any other documents prepared for or pertaining to that project, if not previously submitted to the commissioner; (e) the useful life of the project before replacement would be necessary; (f) the current status of the plans and site for the project; (g) the status of utilities required for the project; (h) the relationship of the project to the long range capital facilities development plan; (i) the total project cost; (j) the effect of the proposed project on annual operating costs (including maintenance costs); (k) the proposed source of funds; (l) an explanation of the need for the proposed project. The description of the project shall identify any and all previously approved appropriations or authorizations pertaining to the proposed or earlier phases of the project; the phase or phases approved, in progress, and completed, the estimated or final cost of each phase of the project through completion, and the sum of money permitted to be expended on the project as so approved. To assist his staff and user agencies in preparation and review of long-range plans and requests, the commissioner shall establish a file of approved appropriations and authorizations of all projects pertaining to each state-owned capital facility. The total project cost shall include at least the following items: the cost of all real estate, properties, rights and easements acquired, utility services, site development; the cost of construction and the initial furnishing thereof; all architectural and engineering and legal expenses, the cost of surveys and plans and specifications; and such other expenses as are necessary or incident to determining the feasibility or practicability of any project. The estimate of the total project cost shall be based on the assumption that the project will be undertaken and completed according to the estimated

3203 schedule. Included in the estimate shall be a statement of its accuracy. The estimate of the effect
3204 of the proposed project on annual operating costs shall be based on the estimated date of use or
3205 occupancy of the facility. In the proposal for source of funds, there shall be included a statement
3206 of what federal funds are potentially available, what efforts are necessary and have been or must
3207 be made to obtain them, or why they cannot be obtained.

3208 Section 67. Copies of the proposed plans and requests shall be submitted simultaneously
3209 to the commissioner of capital asset management and maintenance, the secretaries of all
3210 executive offices, the director of the fiscal affairs division within the executive office for
3211 administration and finance, the state treasurer, and the commissioner of the department of
3212 revenue, and the house and senate ways and means committees. The secretaries shall submit to
3213 the commissioner of capital asset management and maintenance a report on the consistency of
3214 any public agency's plans and requests with the programs and policies of the executive office on
3215 which it is located, except in the case of a public institution of higher learning, the board of
3216 higher education, including the secretary's recommendations as to those plans and requests. Prior
3217 to making their reports, each secretary shall conduct public hearings, for which he shall give 5
3218 days public notice prior thereto, on his analysis and recommendations as to those plans and
3219 requests. Any secretary, when requested by said commissioner of capital asset management and
3220 maintenance, shall submit to him a report on the impact of the specific statutory mission of the
3221 secretariat of the plans and request of any public agencies not located within his secretariat. Each
3222 secretary shall furnish to the house and senate committees on ways and means and the legislative
3223 committees on post audit and oversight of the general court, copies of all such plans, requests,
3224 and reports.

3225 The director of the bureau of programming, director of the office of project management
3226 or the director of the office of facilities management, as said commissioner of capital asset
3227 management and maintenance directs, shall report to him as to the technical feasibility, cost, and
3228 schedule of proposed building projects; the technical, financial, and related requirements for the
3229 operation and maintenance of such buildings upon completion of the proposed projects; where
3230 relevant, the efficacy and efficiency of the proposed project in relation to current and projected
3231 available space and current and projected standards for the allocation and utilization of space; the
3232 accuracy and adequacy of any planning and design documents and any other documents prepared
3233 in relation to the stated needs, and as to any other matters which the commissioner of capital
3234 asset management and maintenance may require relative to his evaluation of such plans and
3235 requests. At the request of said commissioner of capital asset management and maintenance, the
3236 head of the public agency which administers or would administer a capital facility project, other
3237 than a building project, or consultants hired by him for that purpose, or members of said
3238 commissioner's staff shall report to him as to the technical feasibility, cost and schedule of that
3239 project; the technical, financial, and related requirements for the operation and maintenance of
3240 such facilities upon completion of the proposed projects; where relevant, the proposed project in
3241 relation to current and projected available facilities of a similar kind; the accuracy and adequacy
3242 of any planning documents, accurate summaries of design documents and any other documents
3243 prepared in relation to stated needs, and as to any other matters which said commissioner may
3244 require relative to his evaluation of such plans and requests.

3245 The director of the fiscal affairs division within the executive office for administration
3246 and finance shall report in writing to said commissioner of capital asset management and
3247 maintenance on the impact of proposed agency plans and requests, based on the stated and

3248 projected overall agency programs, on the agency's operating budgets for the next 5 years or for
3249 such longer period as said commissioner shall request. The commissioner of the department of
3250 revenue shall report in writing to said commissioner of capital asset management and
3251 maintenance on the impact of proposed agency plans and requests on their requirements for and
3252 production of revenue for at least the next 5 years or for such longer period as said commissioner
3253 of capital asset management and maintenance shall request. The reports of the director of the
3254 fiscal affairs division within the executive office for administration and finance and the
3255 commissioner of the department of revenue shall be sent to the state treasurer. The state treasurer
3256 may if requested by said commissioner of capital asset management and maintenance report in
3257 writing to said commissioner on the impact of all plans and requests, separately and as a whole
3258 on the financial health of the commonwealth and make such recommendations as to the form and
3259 nature of the financing as he deems necessary.

3260 Copies of the proposed plans and requests shall in a timely manner be submitted to each
3261 of the regional planning agencies established pursuant to the provisions of chapter 40B for their
3262 review. They shall submit to said commissioner of capital asset management and maintenance a
3263 statement of their comments and recommendations, including those of cities and towns in the
3264 region which are affected by such plans and requests.

3265 Said commissioner of capital asset management and maintenance may request such other
3266 reports from public agencies as said commissioner may deem necessary to fulfill his
3267 responsibilities for the integration and coordination of capital facility projects.

3268 Section 68. The commissioner of capital asset management and maintenance shall study
3269 and review all long range capital facility development plans and capital facility budget requests

3270 and reports pertaining thereto filed with him as provided by sections 64, 65, 66, and 67, and shall
3271 make such investigations as will enable him to prepare a capital facility budget for the governor.
3272 The commissioner shall include in such budget an integrated and comprehensive long range
3273 capital facilities development plan and capital facility budget request and such other
3274 recommendations as the governor shall determine upon. The capital facility budget shall embody
3275 all plans, estimates, requests, and recommendations submitted to the commissioner in accordance
3276 with sections 64, 65, 66, and 67. The capital facility budget shall be classified and designated to
3277 present at least the same kind and quality of information as are required of plans and requests by
3278 sections 64, 65, 66, and 67. The commissioner shall include an evaluation of the proposed plan
3279 and budget request in terms of the capital facilities planning policy statement and any revisions
3280 thereof he proposes.

3281 The governor in his capital facility budget and the commissioner of capital asset
3282 management and maintenance, in his recommendation to the governor of a capital facility
3283 budget, shall include in such requests for each building project contained therein, for which the
3284 using agency is a state agency, a recommendation as to the need for and where appropriate, a
3285 request for, a study and program as a prerequisite to contracting for, performance of, or allotment
3286 or expenditure of funds for any design or construction-related activities. If a study or program is
3287 not recommended the governor and commissioner shall include the reasons therefor. They shall
3288 also include a recommendation as to the mode of procurement of such facility, including but not
3289 limited to, sequential, construction management, turnkey, design/build procurement, and the
3290 phasing of such procurement, including but not limited to approval of design and construction
3291 stages as separate or combined phases, which will most efficiently, economically and best serve
3292 the interests of the commonwealth. When an alternative mode of procurement is recommended,

3293 the governor and commissioner shall also recommend the method by which design and
3294 construction services shall be procured for such project, provided that such method shall be
3295 compatible with the policies and procedures for the selection of designers in sections 44 to 58,
3296 inclusive, and with the policies and procedures for the selection of contractors in sections 44A to
3297 44H, inclusive of chapter 149, to the extent feasible. If the governor or the commissioner should
3298 recommend a mode of procurement other than the sequential mode or a phasing of procurement
3299 other than approval of design and construction as a combined phase, each shall state in detail the
3300 reasons therefor.

3301 Furthermore, their requests shall contain a statement as to the expected useful life of the
3302 facility from the date of construction, renovation, acquisition, or other procurement; a statement
3303 of the proposed source of funds; where relevant, a recommendation as to the form and
3304 scheduling of financing of said project; and a recommendation as to the date upon which the
3305 authorization for the expenditure of the funds should expire. If the governor or the commissioner
3306 of capital asset management and maintenance should recommend a means and form of financing
3307 of the project such that the term of repayment exceed the expected useful life of the project, the
3308 governor and commissioner shall state in detail the reasons therefor. The governor and the
3309 commissioner shall transmit therewith a statement showing the total indebtedness proposed to be
3310 incurred for each capital facility project and the fund to be charged therefor, and the total cost of
3311 financing said project according to the recommended form and scheduling of such financing. The
3312 governor and the commissioner shall also transmit therewith a statement relative to the condition
3313 of the state debt, including an analysis of the impact of the proposed capital facility budget,
3314 including the long range capital facilities plan, on the financial health of the commonwealth.

3315 Such statement shall, where appropriate, include reference to the impact of obligations of public
3316 agencies which are guaranteed by or are contingent liabilities of the commonwealth.

3317 Section 69. The governor's and the commissioner of capital asset management and
3318 maintenance capital facility budget shall include provision for establishment of a design and
3319 construction contingency reserve account, the purpose of which shall be to provide monies for
3320 the design and construction of capital facility projects by state agencies which, because of
3321 unforeseeable circumstances, not within the contemplation of the using or the administering
3322 agency, and for justifiable reasons, would cause the project cost to exceed the sums then
3323 appropriated or authorized therefor. Allocation of monies from such reserve account shall be
3324 made according to the provisions of section 62. Priority in the allocation of monies from such
3325 account shall be given to projects for which the delay in seeking monies through the normal
3326 capital budget process provided for by this chapter would cause a serious loss in use of the
3327 capital facility if it were unavailable when needed or cause a percentage increase in total project
3328 cost substantially larger than that for other projects at a comparable stage of progress.

3329 In no case shall a request for monies be made or monies be allocated for projects for
3330 which a similar request is currently being considered according to the capital budget process for
3331 the current fiscal year provided for by this chapter, or which was so considered during the capital
3332 budget process for the previous fiscal year and failed to receive an appropriation or
3333 authorization. Further, in no case shall a request for monies be made or monies be allocated if as
3334 a result of the review provided for by section 62 the commissioner of capital asset management
3335 and maintenance finds (a) that the proposal for use of such monies will result in a substantial
3336 deviation from any study or program for the project most recently approved by him or from any
3337 design for the project most recently approved by the administering agency or (b) that the

3338 proposal for use of such monies will result in a cumulative increase in the number of gross
3339 square feet to be constructed in the project in excess of 10 per cent of the number most recently
3340 specified in an appropriation or authorization for the project.

3341 Requests for monies from the design and construction contingency reserve account may
3342 be made by state agencies which are the using agencies of those projects.

3343 In establishing priorities and procedures for allocation of monies from the design and
3344 construction reserve account pursuant to section 62, the commissioner of capital asset
3345 management and maintenance shall establish specific limits for the amount of money which may
3346 be allocated from the account for any particular project, the amount which may be allocated for
3347 the construction of any particular project excluding price inflation contingencies, and the amount
3348 which may be allocated for the construction of any particular project for price inflation
3349 contingencies. In no event shall the cumulative amount allocated from the account to any one
3350 capital facility project exceed 10 percentum of the total cost specified by the appropriation or
3351 authorization for that project.

3352 Section 70. The governor's and the commissioner of capital asset management and
3353 maintenance capital facility budget shall include provisions for establishment of an emergency
3354 repair reserve account, the purpose of which shall be to provide monies for the performance of
3355 repair projects of such a nature that funding through the capital budget process provided for by
3356 this chapter would be burdensome. Allocation of monies from such reserve accounts shall be
3357 made according to the provisions of section 62. Priority in the allocation of monies from such
3358 fund shall be given as follows:

3359 (1) top priority shall be given to funding requests for projects designed to remedy clear
3360 and present dangers to the health and safety of the users of the facility in question;

3361 (2) secondary priority shall be given to funding requests for projects which would prevent
3362 imminent destruction or damage of property or equipment beyond reasonable repair; and

3363 (3) third priority shall be given to funding requests for projects, that would restore use of
3364 a facility or part of a facility to its user, where the loss of use has seriously disrupted the agency's
3365 program functions.

3366 In no case shall a request for monies be made or monies be allocated for projects for
3367 which a similar request was considered during the capital budget process for the previous year as
3368 provided for by this chapter, and which failed to receive an appropriation or authorization.

3369 Requests for monies from the emergency repair reserve account may be made by state
3370 agencies other than counties and by the office of facility management.

3371 Section 71. The governor shall submit to the general court annually within 3 weeks after
3372 the general court convenes in regular session a budget including an operating budget and a
3373 capital facility budget and long range capital facilities development plan. In the first year of the
3374 term of office of a governor who has not served in the preceding year, the governor shall
3375 recommend the budget within 8 weeks after the convening of the general court. The
3376 recommendations contained therein shall, to the fullest possible extent, conform with the
3377 programs of the several offices and departments as defined by the commissioner of
3378 administration with the advice of the agency heads or other officers responsible for the
3379 administration thereof and long range capital facilities development plans as defined by the
3380 commissioner of capital asset management and maintenance. The budget shall also include

3381 definite recommendations of the governor for financing the expenditures recommended, and the
3382 relative amounts to be raised from ordinary revenue, direct taxes or loans. All appropriations
3383 based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be
3384 designated the general appropriation bill. With the budget the governor shall submit to the
3385 general court statements detailing and explaining his reasons for recommending any increase in,
3386 decrease in, or deletion from the budgetary recommendations (a) of any department office,
3387 commission, or institution, or other public agency, or in the case of a department, office,
3388 commission or institution within any executive office established by chapters 6A and 7 of the
3389 secretary of such executive office, (b) of the general court, (c) of the judiciary, and (d) of the
3390 commissioner of capital asset management and maintenance. The governor shall also submit
3391 such other messages, statements of supplemental data relative to the budget as he deems
3392 expedient and, from time to time during the session of the general court may submit
3393 supplemental messages on recommendations relative to appropriations, revenues and loans.
3394 Upon submission of the budget to the general court, the governor shall, through the executive
3395 office for administration and finance, make available to the public all material relevant to said
3396 budget, including all supporting documents pertinent thereto. This shall include at least the
3397 mailing, at the time of submission of the Governor's budget and subsequently the House and
3398 Senate Ways and Means budgets, of (a) copies of these budgets to the state house library, and to
3399 the state office building in Springfield, (b) copies of all reports, statements, recommendations, or
3400 evaluations required by sections 3, 3A, 4, 5, 5B, 6 of chapter 29, and 67, 68, or 73 of this chapter
3401 to the state house library. They shall be placed on public display and made available for
3402 reproduction during business hours.

3403 All information required under this section to be filed with or as part of the budget by the
3404 governor, and which is not contained within the budget as filed or within accompanying
3405 documents filed at the same time, shall be filed by the governor within the following 14 days and
3406 shall be accompanied by a detailed statement explaining the failure to provide the material at the
3407 time the budget was submitted.

3408 In the event that the governor determines from information supplied by the executive
3409 office for administration and finance, from the tax revenue resolution established pursuant to
3410 section 5B of chapter 29, or from any other competent source that the tax revenues or non-tax
3411 revenues supporting the general appropriation bill have materially decreased, or that
3412 appropriations or statutory amendments that would provide funding to support recommended
3413 levels of appropriations have materially changed from the time the general appropriation bill was
3414 originally submitted, he shall submit to the general court by message recommended corrective
3415 amendments to his original budget submission to ensure that total appropriations recommended
3416 in the general appropriation bill do not exceed total revenues supporting said bill. Such message
3417 shall be submitted to the general court within 15 days from the date of such determination.

3418 Section 72. All requests and recommendations for appropriations or authorizations for
3419 expenditures by the commonwealth, other than those submitted by the governor to the general
3420 court pursuant to section 2 of Article LXIII of the Amendments to the Constitution, shall be
3421 submitted by the governor to the general court; shall be classified to show the request of each
3422 officer having charge of an office, department or undertaking, including the priorities assigned to
3423 each program by said officer, the recommendation of the secretary of the executive office within
3424 which such office, department or undertaking shall be, the recommendation of the governor, and
3425 the prior year appropriation, if any; and shall indicate the number, if any, of permanent positions

3426 proposed to be authorized for an office, department or undertaking and the number of persons to
3427 be served or the number of actions to be taken by such office, department or undertaking.

3428 All such requests and recommendations as they pertain to capital facility projects shall
3429 also be studied by the commissioner of capital asset management and maintenance with
3430 reference to any current long range capital facility development plans proposed in accordance
3431 with the requirements of sections 64, 65, 66 and 67. The commissioner in his study shall
3432 consider the effects upon the policies, programs, and priorities with regard to which he is
3433 required to report in accordance with section 73 and with reference to any other matters which
3434 the commissioner requires to be reported to him in his review and evaluation of capital facility
3435 budget requests by public agencies in accordance with the provisions of sections 64, 65, 66, 67
3436 and 68. After such review and study, the commissioner shall promptly prepare and submit his
3437 recommendations to the general court.

3438 The commissioner of capital asset management and maintenance shall promptly review
3439 any petition, motion or amendment introduced in either chamber of the general court which
3440 makes a provision for a capital facility project. During such review the commissioner shall study
3441 the necessity, desirability, and relative priority of such capital facility project by reference to any
3442 current long range capital facilities development plans proposed in accordance with the
3443 requirements of sections 64, 65, 66, 67, and 68. The commissioner in his study shall consider the
3444 effects upon the policies, programs, and priorities with regard to which he is required to report in
3445 accordance with section 73, and with reference to any other matters which the commissioner
3446 requires to be reported to him in his review and evaluation of capital facility budget requests by
3447 public agencies in accordance with the provisions of sections 64, 65, 66, 67, and 68. After such
3448 review and study the commissioner shall promptly prepare and forward his recommendation on

3449 the petition, motion, or amendment to the chamber in which it was introduced and where it is
3450 pending.

3451 Section 73. The commissioner of capital asset management and maintenance shall, each
3452 year, no later than 30 days after the governor submits the budget in accordance with the
3453 provisions of section 71, submit to the governor and to the general court a report which shall
3454 include, but not be limited to, the following: an evaluation of the effect of the capital facility
3455 budget, and the implementation of the proposed long range capital facilities development plan
3456 upon important policies, programs, and priorities mandated by the general court or established by
3457 the governor in accordance with law such as impact on the environment, energy conservation,
3458 preventative maintenance, architectural barriers, and the effective coordination of such policies,
3459 programs, and priorities with those of the federal government to assure the maximum benefit to
3460 the commonwealth from such federal programs.

3461 No later than an additional 30 days thereafter, the commissioner shall submit to the
3462 governor and to the general court a similar report on the impact of and the progress made in the
3463 implementation of long range capital facilities plans and previously authorized capital facility
3464 projects.

3465 SECTION 69. Section 1 of chapter 9 of the General Laws, as appearing in the 2008
3466 Official Edition, is hereby amended by striking out, in lines 4 and 6, each time they appear, the
3467 words “and council”.

3468 SECTION 70. Said chapter 9 is hereby further amended by striking out section 4, as so
3469 appearing, and inserting in place thereof the following 10 sections:-

3470 Section 4. The secretary shall appoint, and may remove, a competent person to be known
3471 as supervisor of public records. Said supervisor, under the supervision of the secretary, shall
3472 perform the duties required of the supervisor by law, and such other duties as the secretary
3473 determines.

3474 Section 4A. The state secretary shall, at the close of each regular session of the general
3475 court, collate and cause to be printed in a single volume the following:

3476 (1) All acts and resolves passed at such session.

3477 (2) All amendments to the constitution referred at such session to the next general court
3478 and all such amendments acted upon at such session and to be submitted to the people at the next
3479 state election.

3480 (3) All acts and resolves passed at any special session of the general court, except a
3481 general revision of the statutes, and not theretofore published in any preceding annual volume.

3482 (4) In the volume of the year immediately following a state election, all constitutional
3483 amendments and proposed laws approved by the people at said election.

3484 (5) A statement in bold type at the conclusion of each law as printed, or in a postscript at
3485 the end of the volume with a suitable reference to each law, as to which a petition asking for a
3486 referendum has been filed prior to the publication of the volume, with a sufficient number of
3487 signatures to procure its submission to the people, together with a recital of the pertinent
3488 provisions of Article XLVIII of the Amendments to the Constitution.

3489 (6) In the volume of the year immediately following a state election, a statement showing
3490 what constitutional amendments, proposed laws and laws were submitted to the people at said

election, with the aggregate vote on each such measure, both affirmative and negative, arranged in such detail as the state secretary may determine.

(7) A table of changes in the general statutes and an index, to be prepared as provided in section 51 of chapter 3; provided, however, the state secretary may, in his discretion, cause the table of changes to be printed in a separate volume and not in the single volume.

Section 4B. The state secretary shall cause up to 10,000 copies of said volume to be printed each year and shall, immediately after their publication, distribute such copies as the secretary determines.

Section 4C. The state secretary shall also, at the close of each regular session of the general court, publish in pamphlet form up to 20,000 copies, of the acts and resolves passed and of any proposed amendments to the constitution passed during such session. The secretary may also apportion the copies among the clerks of the several cities and towns, to be delivered by the clerks to inhabitants who apply for a copy.

The secretary shall also, as soon as any act or resolve is passed, send a copy of the act or resolve to the following: each state department, officer, board or commission whose duties are affected by the act or resolve, the clerks of the several cities and towns, for the use of the inhabitants of those cities and towns, the justices, clerks and registers of courts, district attorneys, sheriffs, justices of the peace authorized to issue warrants and take bail, county law libraries and all incorporated law libraries and branch libraries maintained by them; provided, however, upon written request approved by the secretary, additional copies may be distributed to the above list and to any other public officials whose duties in the secretary's opinion require the use of such

3512 copies. The secretary may also send copies to such persons as apply for an act or resolve,
3513 charging not less than the cost of producing and distributing the copy.

3514 Section 4D. The state secretary shall print from time to time during the session of the
3515 general court a cumulative table of changes in the general statutes, up to the date of publication,
3516 to be prepared by the counsel to the senate and the counsel to the house of representatives.

3517 Section 4E. The state secretary shall furnish to each city and town of the commonwealth,
3518 to be preserved in a public place in the city or town, 1 copy of each of such report included in the
3519 public document series as the city or town clerk may apply for. The state secretary shall furnish 1
3520 copy of each report to such public and other libraries as may apply for the reports. If the
3521 supervisor of public records shall report to the state secretary that a city or town is unable to
3522 properly care for and use the documents, the state secretary may discontinue sending the reports
3523 to that town.

3524 Each member of the general court and of the executive department, the clerk of each
3525 branch of the general court and each reporter assigned to either branch may, upon a written,
3526 signed request delivered to the state secretary, receive a copy of any such document. Ten copies
3527 shall be placed in the state library for the use of the library and for exchange.

3528 Section 4F. The state secretary shall annually procure copies of the proceedings of the
3529 annual encampments of the departments of Massachusetts, Grand Army of the Republic, United
3530 Spanish War Veterans, The American Legion, Disabled American Veterans of the World War,
3531 Marine Corps League, American Veterans of World War II, AMVETS, Italian American War
3532 Veterans of the United States, Incorporated, Jewish War Veterans of the United States, Veterans
3533 of Foreign Wars of the United States, Polish-American Veterans of Massachusetts, Inc., and

3534 Veterans of World War I of the U.S.A., held in that year, with the general and special orders,
3535 circulars and other papers forming parts thereof, and shall cause the same to be kept as parts of
3536 the records of the commonwealth. The state secretary shall annually cause copies thereof,
3537 including in the case of those relating to the Grand Army of the Republic the portraits of the
3538 department officers and staff and of the executive committee of the national encampment, to be
3539 printed and bound; and shall cause 1 printed and bound copy of each to be sent to each city or
3540 town library in the commonwealth. The state secretary shall also send 1 copy of each volume
3541 relating to the Grand Army of the Republic to each Grand Army post, 1 copy of the volume
3542 relating to the United Spanish War Veterans to each camp of Spanish War Veterans, 1 copy of
3543 the volume relating to The American Legion to each post of The American Legion, 1 copy of the
3544 volume relating to the Disabled American Veterans of the World War to each chapter of the
3545 Disabled American Veterans of the World War, 1 copy of the volume relating to the Marine
3546 Corps League to each detachment of the Marine Corps League, 1 copy of the volume relating to
3547 the American Veterans of World War II, AMVETS to each post of the American Veterans of
3548 World War II, AMVETS, 1 copy of the volume relating to the Italian American War Veterans of
3549 the United States, Incorporated to each post of the Italian American War Veterans of the United
3550 States, Incorporated, 1 copy of the volume relating to the Jewish War Veterans of the United
3551 States to each post of the Jewish War Veterans of the United States, 1 copy of the volume
3552 relating to the Veterans of Foreign Wars to each post of the Veterans of Foreign Wars of the
3553 United States, 1 copy of the volume relating to the Polish-American Veterans of Massachusetts,
3554 Inc. to each post of the Polish-American Veterans of Massachusetts, Inc. and 1 copy of the
3555 volume relating to the Veterans of World War I of the U.S.A. to each barracks of the Veterans of

3556 World War I of the U.S.A., in the commonwealth. The state secretary shall cause the other
3557 copies of each to be distributed in the same manner as the annual report of the state secretary.

3558 Section 4G. The state secretary shall furnish to every city and town the reports of the
3559 decisions of the supreme judicial court from time to time, as published, and shall furnish to every
3560 town hereafter incorporated a full set of said decisions, the index-digest of those decisions, a
3561 copy of the General Laws, and copies of all such books and documents in the secretary's office
3562 as shall have been previously furnished to towns by the commonwealth; but the clerk of such
3563 town shall first file with the secretary a certificate that the town has made suitable provision for
3564 the preservation and convenient use of such books and documents.

3565 Section 4H. A city or town which has once been furnished with such books and
3566 documents shall not again be supplied with the same at the expense of the commonwealth.
3567 Towns may effect insurance on the books and documents for their own benefit.

3568 Section 4I. The state secretary shall, in the distribution of laws and documents to
3569 members of the general court, effect such exchanges among members as they shall direct; and
3570 the secretary may employ such additional clerical or other assistance as may be necessary for the
3571 purpose. Copies of the laws and documents apportioned to members of the general court which
3572 remain undisposed of for 3 months after the end of the year in which they were issued shall
3573 revert to the commonwealth and be subject to general distribution.

3574 SECTION 71. Section 5 of said chapter 9, as so appearing, is hereby amended by striking
3575 out, in line 4, the words "sixty-six as the governor and council may approve" and inserting in
3576 place thereof the following figure:- 66.

3577 SECTION 72. Section 19 of said chapter 9, as so appearing, is hereby amended by
3578 striking out, in lines 1 and 2, the words “, having first obtained authority from the governor and
3579 council,”.

3580 SECTION 73. Section 5 of chapter 10 of the General Laws, as so appearing, is hereby
3581 amended by striking out, in lines 1 and 2, the words “, with the consent of the governor and
3582 council, may appoint, and, with such consent, may for cause remove,” and inserting in place
3583 thereof the following words:- may appoint and may for cause remove.

3584 SECTION 74. Section 5B of said chapter 10 is hereby repealed.

3585 SECTION 75. Section 5C of said chapter 10, as so appearing, is hereby amended by
3586 striking out, in lines 1 and 2, the words “with the advice of the council”.

3587 SECTION 76. Said section 5C of said chapter 10, as so appearing, is hereby further
3588 amended by striking out, in line 6, the words “, with the advice of the council,”.

3589 SECTION 77. Section 6 of said chapter 10 is hereby repealed.

3590 SECTION 78. Section 9 of said chapter 10, as appearing in the 2008 Official Edition, is
3591 hereby amended by inserting after the word “general”, in line 2, the following words:- and the
3592 house and senate committees on ways and means.

3593 SECTION 79. Said chapter 10 is hereby further amended by striking out sections 9A and
3594 10 and inserting in place thereof the following 2 sections:-

3595 Section 9A. A debt statement shall be forwarded on a quarterly basis to the state
3596 treasurer, comptroller and the house and senate committees on ways and means by those
3597 agencies of the commonwealth and authorities identified by the comptroller under subsection (c)

3598 of section 12 of chapter 7A, having authority to issue notes or bonds. Said debt statement shall
3599 be certified by an authorized official of said agency or authority. Such debt statement shall
3600 include authorized, unissued and outstanding bonds and notes of the authority or agency as of the
3601 first day of each quarter. Said debt statement shall include the debt service requirements of both
3602 principal and interest for the subsequent 24 month period and an estimate of the date and
3603 principal amount of bonds and notes to be sold in the subsequent 12 month period. Said debt
3604 statement shall be filed under rules and regulations prescribed by the state treasurer.

3605 Section 10. The state treasurer shall annually, on the second Wednesday in September,
3606 report to the general court a statement of the transactions of the department of the state treasurer
3607 for the preceding fiscal year, including a specific statement of all warrants remaining unpaid and
3608 of the names of the persons in whose favor they are drawn.

3609 SECTION 80. Said chapter 10 is hereby further amended by inserting after section 10A
3610 the following section:-

3611 Section 10B. The state treasurer, in consultation with the secretary of administration and
3612 finance and the comptroller, shall prepare and submit to the house and senate committees on
3613 ways and means on or before the last day of August, November, February and May official cash
3614 flow projections for the current fiscal year and for the fiscal quarters beginning October 1,
3615 January 1, April 1 and July 1, respectively. Included in said projections shall be actual spending
3616 and revenue through the latest possible date for inclusion in the projections, estimated spending
3617 and revenue, along with assumptions used to derive those estimates, a comparison of actual
3618 spending and revenue with previous estimates of spending and revenue for those months, an
3619 analysis of the variances identified in that comparison and identification of any cash flow gaps.

3620 Variance reports, which compare actual revenues and spending with planned revenues and
3621 spending, shall be produced weekly by the treasurer and distributed to the comptroller's division,
3622 the department of revenue, and the executive office for administration and finance. All data
3623 required by the treasurer's office for production of annual and quarterly cash flow projections and
3624 weekly variance reports shall be submitted by state agencies, including the state lottery, in a
3625 timely fashion, on or before deadlines established by the treasurer's office. To assist in the
3626 preparation of the weekly variance reports, the department of revenue shall be responsible for
3627 providing estimates of tax revenue receipts, by tax category as identified in section 1A of the
3628 general appropriation act and the office of the comptroller for providing estimates of agency
3629 spending and non-tax revenue receipts. Compilations of such variance reports shall be distributed
3630 monthly to the comptroller's division, the department of revenue, the executive office for
3631 administration and finance and the house and senate committees on ways and means. The
3632 executive office for administration and finance and the treasurer's office shall jointly develop and
3633 approve annual and quarterly cash management plans to address gaps identified by cash flow
3634 projections and variance reports. Said management plans shall clearly identify the roles to be
3635 played by short-term borrowing, investment policy, expenditure controls and revenue
3636 management in providing necessary cash.

3637 The state treasurer shall semi-annually report to the house and senate committees on
3638 ways and means and the joint committee on revenue the lending and banking institutions into
3639 which the cash deposits of the commonwealth are being deposited.

3640 SECTION 81. Section 11 of said chapter 10 is hereby repealed.

3641 SECTION 82. Section 24 of said chapter 10, as appearing in the 2008 Official Edition, is
3642 hereby amended by inserting after the word “an”, in line 35, the following word:- audited.

3643 SECTION 83. Said section 24 of said chapter 10, as so appearing, is hereby further
3644 amended by inserting after the word “advisable”, in line 38, the following words:- , which shall
3645 be made available electronically to the general public not later than the earliest date established
3646 for reports in section 12 of chapter 7A.

3647 SECTION 84. Said section 24 of said chapter 10, as so appearing, is hereby further
3648 amended by striking out the last paragraph.

3649 SECTION 85. Section 24A of said chapter 10 is hereby amended by striking out
3650 subsection (b), as so appearing, and inserting in place thereof the following subsection:-

3651 (b) The revenues derived from the sale of multi-jurisdictional tickets or shares shall be
3652 apportioned under section 25.

3653 SECTION 86. Section 25 of said chapter 10, as so appearing, is hereby amended by
3654 striking out clause (c) and inserting in place thereof the following clause:- (c) the balance shall
3655 be used to fund budgeted aid to cities and towns as provided in section 18C of chapter 58,
3656 subject to appropriation.

3657 SECTION 87. Said chapter 10 is hereby further amended by inserting after section 26 the
3658 following section:-

3659 Section 26A. (a) The director shall operate and administer an office of performance
3660 management and innovation that shall, without limitation, administer this section. All
3661 departments of the commission shall report to the office of performance management and

3662 innovation with regard to setting goals and establishing performance measures to improve the
3663 commission and the departments' operations.

3664 (b) The director shall establish a performance measurement system for the departments of
3665 the commission, which shall establish program goals, measure program performance against
3666 those goals and report publicly on progress to improve the effectiveness of the state lottery.

3667 (c) The office of performance management and innovation shall be charged with
3668 evaluating the goals and measures established by the commission and its departments and
3669 monitoring the results reported. The office shall recommend changes to proposed goals and
3670 measures as are appropriate to align goals and measures with the strategic priorities of the
3671 commission and the director. The office shall report regularly to the public on the commission's
3672 and its departments' progress toward achieving stated goals. The office shall be responsible for
3673 reporting publicly and transparently and making all reports available through an on-line system.

3674 The director shall use the performance criteria established under this section to determine
3675 the quality of service of all private entities that perform services on behalf of the commission.
3676 The results of such performance measures shall be criteria used in negotiating any contracts.

3677 SECTION 88. The second paragraph of section 35 of said chapter 10, as appearing in the
3678 2008 Official Edition, is hereby amended by striking out clause (c) and inserting in place thereof
3679 the following clause:-

3680 (c) For budgeted aid to cities and towns as provided in section 18C of chapter 58, subject
3681 to appropriation;

3682 SECTION 89. Section 37 of said chapter 10, as so appearing, is hereby amended by
3683 striking out, in lines 31 and 32, the words “Local Aid Fund established under the provisions of
3684 section 2D of chapter 29” and inserting in place thereof the following words:- State Lottery
3685 Fund.

3686 SECTION 90. Said chapter 10 is hereby further amended by striking out section 39, as so
3687 appearing, and inserting in place thereof the following section:-

3688 Section 39. Any organization operating or conducting a game under section 38 shall file a
3689 return with the commission, on a form prepared by it, within 10 days after such game is held or
3690 within such further time as the commission may allow, and shall pay with the return a tax of 5
3691 per cent of the gross receipts derived from such game. All such returns shall be public records.
3692 All sums received by said commission from the tax imposed by this section as taxes, interest on
3693 those sums, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded on those
3694 sums, together with any interest or costs paid on account of such refunds, shall be paid into the
3695 treasury of the commonwealth and shall be credited to the State Lottery Fund.

3696 SECTION 91. Section 2 of chapter 11 of the General Laws, as so appearing, is hereby
3697 amended by striking out, in lines 1 and 2, the words “, with the consent of the governor and
3698 council,”.

3699 SECTION 92. Said section 2 of said chapter 11, as so appearing, is hereby further
3700 amended by striking out, in line 4, the words “, with the consent of the governor and council”.

3701 SECTION 93. Section 5 of said chapter 11, as so appearing, is hereby amended by
3702 striking out in line 1, the words “, subject to confirmation by the governor,”.

3703 SECTION 94. Section 1 of chapter 14 of the General Laws, as so appearing, is hereby
3704 amended by inserting after the word “administration”, in line 4, the following words:- and
3705 finance.

3706 SECTION 95. Section 1A of said chapter 14, as so appearing, is hereby amended by
3707 inserting after the word “administration”, in line 6, the following words:- and finance.

3708 SECTION 96. Section 3 of said chapter 14, as so appearing, is hereby amended by adding
3709 the following words:- and finance.

3710 SECTION 97. The General Laws are hereby amended by striking out chapter 29 and
3711 inserting in place thereof the following chapter:-

3712 CHAPTER 29

3713 STATE FINANCE

3714 Section 1. All words and terms defined by section 1 of chapter 7C and appearing in this
3715 chapter, except for the phrases “state agency” and “state authority”, shall have the meaning
3716 defined therein, unless the context shall indicate another meaning or intent.

3717 As used in this chapter, the following words shall, unless the context requires otherwise,
3718 have the following meanings:--

3719 “Account”, a separate 8-digit number designated in the state accounting system to
3720 separately record budgetary, bond, federal or trust funds.

3721 “Agency head” or “department head”, the administrative head of a state agency,
3722 department, board, bureau, office or division of the commonwealth who has been authorized

3723 through legislation to obligate and expend funds, comply with legislative mandates, and make
3724 any certifications or approvals required under this chapter or other state or federal laws or
3725 regulations requiring an agency head certification or approval.

3726 “Allotment”, that portion of an appropriation that may be spent by a department for a
3727 specified period as determined by the governor or the secretary of administration and finance
3728 under section 9B.

3729 “Appropriation”, the authorization by the general court with the approval of the governor,
3730 or by overriding his objection thereto, of the expenditure of budgeted revenues from a specified
3731 fund for a specified purpose up to a specified maximum amount for a specified period of time.

3732 “Balanced budget”, a condition of state finance in which the following requirements are
3733 met:

3734 (i) the consolidated net surplus at the end of the fiscal year is greater than or equal
3735 to one-half of 1 per cent of state tax revenues for such fiscal year; and

3736 (ii) the amount transferred to the stabilization fund under subsection (a) of section
3737 5C is greater than or equal to 1/2 of 1 per cent of state tax revenue for such fiscal year.

3738 “Bond authorization”, authorization by the legislature under section 3 of article LXII of
3739 the Amendments to the Constitution to borrow money.

3740 “Bond fund”, a fund of the commonwealth into which bond revenues are deposited and
3741 from which spending may occur.

3742 “Bond revenues”, the proceeds of bonds issued by the commonwealth and the interest
3743 earned thereon.

3744 “Budget director”, the administrative head of the fiscal affairs division within the
3745 executive office for administration and finance.

3746 “Budgetary funds”, state funds which are subject to appropriation as provided in section
3747 6.

3748 “Budgeted revenues”, all income in the budgetary funds from state taxes, departmental
3749 revenues, including retained revenues, federal reimbursements, and transfers of budgeted
3750 revenues among funds, but not including federal grants.

3751 “Capital appropriation”, an authorization by the general court of the expenditure of bond
3752 revenues, with the approval of the governor or by legislative override of a gubernatorial
3753 objection thereto.

3754 “Consolidated net surplus”, the sum of the undesignated balances in the budgetary funds,
3755 except funds established by section 2H and section 2I and by section 2C of chapter 131.

3756 “Deficiency”, a condition of state finance in which expenditures during a fiscal year are
3757 expected to exceed the appropriation that authorizes those expenditures.

3758 “Departmental revenues”, all income from state agency fees, whether established under
3759 section 3B of chapter 7 or otherwise, lottery receipts, fines, assessments, charges or court
3760 judgments, including retained revenues and the earnings on all state revenues.

3761 “Direct appropriation”, a first-time appropriation of budgeted revenues, from sources
3762 other than retained revenues.

3763 “Direct debt”, the sum of the principal amounts of all direct debt issued by the
3764 commonwealth for the purposes of financing state projects and purposes, including obligations

3765 for leases for capital projects, except debt issued on a short-term basis in anticipation of receipts
3766 from taxes and other sources.

3767 “Federal grant”, any financial assistance available to a state agency from the United
3768 States government, either directly or through an intermediary, including a project, formula, or
3769 block grant, a subvention, a subsidy, an augmentation, or a state plan but excluding federal
3770 reimbursements.

3771 “Federal reimbursements”, financial assistance provided pursuant to Titles XVIII or XIX
3772 of the Social Security Act or other reimbursements received for state entitlement expenditures
3773 and credited to the General Fund, or other federal financial assistance from the United States
3774 government for direct payments to individuals, or for other purposes as provided for in section
3775 2ZZZ, section 34 of chapter 90, chapter 92, and section 48 of chapter 151A.

3776 “Fund”, an accounting entity established by general or special law to record all financial
3777 resources or revenues, together with all related expenditures or liabilities, that have been
3778 segregated for a particular purpose including, but not limited, to a grouping of related accounts
3779 into which resources have been further segregated for specific activities and purposes.

3780 “Line-item”, a separate unit of appropriation identified by an 8-digit number representing
3781 a specific spending account authorized for a specific purpose and a defined amount.

3782 “Prior appropriation continued” or “PAC”, the re-appropriation of unexpended and
3783 unencumbered monies from one fiscal year for the following fiscal year.

3784 “Retained revenue”, income of a state agency or other public instrumentality, derived
3785 from its operations and which, by law, such agency or instrumentality may expend for a

3786 particular purpose up to a specified limit, without further appropriation, which would otherwise
3787 be subject to direct appropriation.

3788 “Retained revenue line-item”, a line-item which allows a state agency or other public
3789 instrumentality to use retained revenue during the fiscal year in which such revenue is received
3790 to maintain all or a portion of its operations.

3791 “Revenue account”, a unique account established by the comptroller to record the
3792 collection of revenue by a state agency.

3793 “Secretary”, the officer in charge of each executive office established by chapter 6A or
3794 chapter 7 and the supreme judicial court.

3795 “State agency” or “state department”, a legal entity of state government established by the
3796 General Court as an agency, board, bureau, department, office or division of the commonwealth
3797 with a specific mission, which may either report to cabinet-level units of government, known as
3798 executive offices or secretariats, or be independent divisions or departments.

3799 “State authority” a body politic and corporate constituted as a public instrumentality of
3800 the commonwealth and established by an act of the General Court to serve an essential
3801 governmental function; provided, however, that state authority shall not include: (1) a state
3802 agency; (2) a city or town; (3) a body controlled by a city or town; or (4) a separate body
3803 politic for which the governing body is elected, in whole or in part, by the general public or by
3804 representatives of member cities or towns.

3805 “State revenue”, inflows from tax and nontax sources that, by law, shall be accounted and
3806 reported to a fund.

3807 “State tax revenues”, the revenues of the commonwealth from every tax, surtax, receipt,
3808 penalty and other monetary exaction and interest in connection therewith including, but not
3809 limited to, taxes and surtaxes on personal income, excises and taxes on retail sales and use,
3810 meals, motor vehicle fuels, businesses and corporations, financial institutions, insurance
3811 companies, public utilities, alcoholic beverages, tobacco, inheritances, estates, deeds, room
3812 occupancy and pari-mutuel wagering, but excluding revenues collected by the state from local
3813 option taxes for further direct distribution to cities and towns.

3814 “Surplus”, a condition of state finance in which an appropriation is expected to exceed
3815 expenditures from that appropriation during a fiscal year.

3816 “Tax expenditures”, state tax revenue foregone as a direct result of the provisions of any
3817 general or special law which allows exemptions, deferrals, deductions from or credits against
3818 taxes imposed on income, businesses and corporations, financial institutions, insurance and sales
3819 but excluding revenue foregone as a direct result of any general or special law which allows a
3820 personal income tax exemption.

3821 “Trust”, an account or fund into which are deposited monies held by the commonwealth
3822 or state agencies in a trustee capacity and which must be expended in accordance with the terms
3823 of the trust.

3824 Section 2. There shall be a General Fund of the commonwealth, into which all revenue
3825 payable to the commonwealth shall be paid, except revenue required by law to be paid into a
3826 fund other than the General Fund and revenue for or on account of sinking funds, trust funds, or
3827 trust deposits, which funds shall be maintained and the revenue applied in accordance with law
3828 or the purposes of the fund.

3829 All such revenue shall be deposited in and credited to the General Fund or other state
3830 funds during the fiscal year in which it is received. In the event that a question arises as to the
3831 correct year to credit the receipt of revenues, the comptroller shall make a determination as to the
3832 correct fiscal year and the determination of the comptroller shall be conclusive. Every source of
3833 state revenue shall be classified according to a schedule of revenue accounts promulgated by the
3834 comptroller. The commonwealth's receipt of such revenue shall be documented in accordance
3835 with rules and regulations promulgated by the comptroller.

3836 Section 2B. There shall be established and set up on the books of the commonwealth a
3837 separate fund, to be known as the Federal Capital Improvement Fund. Money received from the
3838 federal government on account of projects financed in whole or in part by appropriations
3839 authorized to be charged to said fund shall be credited to said fund.

3840 Section 2C. All income from federal grants which shall include grants in aid and
3841 subventions, received by any department, institution, board, commission, agency, officer or
3842 employee of the commonwealth from the federal government, whether directly or through an
3843 intermediary, other than grants for capital improvements as provided in section 2B, shall be paid
3844 into the treasury of the commonwealth and credited to a separate special revenue fund to be
3845 known as the General Federal Grants Fund. Each such grant shall be kept in a separate account
3846 and subject to the provisions of law regulating the disbursement of public funds and the approval
3847 thereof.

3848 Section 2H. There shall be established and set up on the books of the commonwealth a
3849 separate fund to be known as the Commonwealth Stabilization Fund, consisting of amounts
3850 transferred to the fund in accordance with section 5C and income derived from the investment of

3851 amounts so transferred. The purpose of the fund shall be to create and maintain a reserve to
3852 which any available portion of a consolidated net surplus in the operating funds shall be
3853 transferred and from which appropriations may be made for the following purposes: (1) to
3854 replace the state and local loss of federal funds; (2) to avoid or minimize the commonwealth's
3855 issuance of revenue anticipation notes as certified by the state treasurer and the secretary of
3856 administration and finance, as long as any amount transferred under this clause is reimbursed by
3857 the General Fund to the Stabilization Fund before the consolidated net surplus is calculated under
3858 section 5C for the fiscal year in which the transfer is made, upon a written finding by the
3859 secretary of administration and finance and the treasurer that the loss of investment revenues to
3860 the Stabilization Fund would not exceed the interest costs incurred by the commonwealth in
3861 issuing revenue anticipation notes, which finding shall be delivered to the house and senate
3862 committees on ways and means and the comptroller at least 5 business days before the date
3863 assigned for a transfer under this clause; or (3) for any event which threatens the health, safety or
3864 welfare of the people or the fiscal stability of the commonwealth or any of its political
3865 subdivisions. Such event or events, as determined by the general court, shall include, but not be
3866 limited to, a substantial decline in economic indicators which result in severe reductions in state
3867 revenues or state financial assistance to local governmental units or court ordered or otherwise
3868 mandated assumptions by the commonwealth of programs or costs of programs previously borne
3869 by local governmental units. The determination by the general court to transfer and appropriate
3870 for any such purpose shall be made, after a hearing before the joint committee on ways and
3871 means and a comprehensive analysis of alternative legislative action and revenue sources, and
3872 upon a finding that the transfer and appropriation will not adversely affect the overall fiscal

3873 health of the commonwealth, taking into account indicators of future economic performance and
3874 conditions affecting state revenues.

3875 In the event that the amount remaining in the fund at the close of a fiscal year exceeds 15
3876 per cent of budgeted revenues, as confirmed by the comptroller in the statutory basis financial
3877 report for the immediately preceding fiscal year, the amounts so in excess shall be transferred to
3878 the Tax Reduction Fund established by section 2I.

3879 Section 2I. There shall be established and set up on the books of the commonwealth a
3880 separate fund to be known as the Tax Reduction Fund, consisting of amounts transferred to the
3881 fund in accordance with section 2H and income derived from the investment of amounts so
3882 transferred. The purpose of the fund shall be to maintain a reserve which shall be used only to
3883 reduce personal income taxes as provided herein.

3884 On or before October 31, the comptroller shall certify to the governor the total amount in
3885 the Tax Reduction Fund as shown in the financial report of the comptroller for the preceding
3886 fiscal year. A temporary increase in the amounts of the personal exemption allowable on the
3887 income tax shall be provided, subject to appropriation, for the taxable year ending on the
3888 succeeding December 31 to the extent that the amount in the Tax Reduction Fund equals an
3889 integer multiple of 5 per cent of the amount of the personal income taxes which will not be
3890 collected for said taxable year on account of such personal exemptions. The commissioner of
3891 revenue shall calculate the amount of the temporary increase, if any, in such personal exemptions
3892 for said taxable year. The comptroller shall transfer the amount equal to such integer multiple of
3893 5 per cent of the amounts not collected due to such personal exemptions from the Tax Reduction
3894 Fund to the General Fund.

3895 Section 2L. There shall be established and set up on the books of the commonwealth a
3896 separate fund, to be known as the Water Pollution Abatement Revolving Fund, consisting of
3897 amounts credited to the fund in accordance with chapter 29C. The fund shall be administered in
3898 accordance said chapter 29C by the board of trustees of the water pollution abatement trust
3899 created thereunder and shall be held in trust exclusively for the purposes and the beneficiaries
3900 described therein. The state treasurer shall be treasurer-custodian of the fund and shall have the
3901 custody of its monies and securities.

3902 Section 2O. When authorized by a vote taken by the yeas and nays of two-thirds of each
3903 house of the general court present and voting thereon, including any authorization in effect as of
3904 July 1, 2009, the state treasurer, upon the request of the governor, may issue bonds of the
3905 commonwealth as hereinafter provided. Any such bonds shall be special obligations of the
3906 commonwealth payable solely from monies credited to the Commonwealth Transportation Fund
3907 established pursuant to section 2ZZZ; provided, however, that notwithstanding any general or
3908 special law to the contrary, including without limitation section 60A, such bonds shall not be
3909 general obligations of the commonwealth. Bonds may be issued in such manner and on such
3910 terms and conditions as the state treasurer may determine in accordance with this paragraph and,
3911 to the extent not inconsistent with this paragraph, provisions of the General Laws for the
3912 issuance of bonds of the commonwealth. Bonds may be secured by a trust agreement entered
3913 into by the state treasurer, with the concurrence of the secretary of administration and finance
3914 and the secretary of transportation, on behalf of the commonwealth, which trust agreement may
3915 pledge or assign all or any part of monies credited to the Commonwealth Transportation Fund
3916 and rights to receive the same, whether existing or coming into existence and whether held or
3917 thereafter acquired, and the proceeds thereof. The state treasurer may, with the concurrence of

3918 the secretary of administration and finance and the secretary of transportation, enter into
3919 additional security, insurance or other forms of credit enhancement which may be secured on a
3920 parity or subordinate basis with the bonds. A pledge in any such trust agreement or credit
3921 enhancement agreement shall be valid and binding from the time such pledge shall be made
3922 without any physical delivery or further act, and the lien of such pledge shall be valid and
3923 binding against all parties having claims of any kind in tort, contract or otherwise, whether such
3924 parties have notice thereof or not. Any such pledge shall be perfected by filing of the trust
3925 agreement or credit enhancement agreement in the records of the state treasurer and no filing
3926 need be made under chapter 106. Any such trust agreement or credit enhancement agreement
3927 may establish provisions defining defaults and establishing remedies and other matters relating to
3928 the rights and security of the holders of the bonds or other secured parties as determined by the
3929 state treasurer, including provisions relating to the establishment of reserves, the issuance of
3930 additional or refunding bonds, whether or not secured on a parity basis, the application of
3931 receipts, monies or funds pledged pursuant to such agreement , the regulation of the custody,
3932 investment and application of monies and such other matters deemed necessary or desirable by
3933 the state treasurer for the security of such bonds. Any such bonds shall be deemed to be
3934 investment securities under chapter 106, securities in which any public officer, fiduciary,
3935 insurance company, financial institution or investment company may properly invest funds and
3936 securities which may be deposited with any public custodian for any purpose for which the
3937 deposit of bonds is authorized by law. Any such bonds, the transfer thereof and the income
3938 therefrom, including profit on the sale thereof, shall at all times be exempt from taxation by and
3939 within the commonwealth.

3940 The provisions hereof relating to bonds shall also be applicable to the issuance of notes
3941 insofar as such provisions may be appropriate therefor.

3942 In order to increase the marketability of any such bonds or notes issued by the
3943 commonwealth and in consideration of the acceptance of payment for any such bonds or notes,
3944 the commonwealth covenants with the purchasers and all subsequent holders and transferees of
3945 any such bonds or notes that while any such bond or note shall remain outstanding, and so long
3946 as the principal of or interest on any such bond or note shall remain unpaid: (i) no pledged funds
3947 shall be diverted from the Commonwealth Transportation Fund; (ii) in any fiscal year of the
3948 commonwealth and until an appropriation has been made which is sufficient to pay the principal,
3949 including sinking fund payments, of and interest on all such bonds and notes of the
3950 commonwealth and to provide for or maintain any reserves, additional security, insurance or
3951 other forms of credit enhancement required or provided for in any trust agreement securing any
3952 such bonds or notes, no pledged funds shall be applied to any other use; and (iii) so long as such
3953 revenues are necessary, as determined by the state treasurer in accordance with any applicable
3954 trust agreement or credit enhancement agreement, for the purposes for which they have been
3955 pledged, and notwithstanding any general or special law to the contrary, the rates of the fees
3956 collected pursuant to sections 33 and 34 of chapter 90 and of the excises imposed in chapters
3957 64A, 64E and 64F shall not be reduced below the amount in effect at the time of issuance of any
3958 such bond or note.

3959 Section 2Q. There shall be established and set up on the books of the commonwealth a
3960 separate fund to be known as the Intragovernmental Service Fund. There shall be credited to
3961 such fund all revenues generated through the charging of any state agency for services provided

3962 by another state agency including, but not limited to, charges levied by the human resources
3963 division for workers' compensation chargeback.

3964 Amounts credited to said fund shall be expended subject to appropriation.

3965 Section 2V. There shall be established and set up on the books of the commonwealth a
3966 separate fund to be known as the Dairy Equalization Fund. There shall be credited to such fund
3967 all monies payable pursuant to sections 10, 11 and 12 of chapter 94A and any interest earned on
3968 monies within the fund. Amounts credited to said fund shall be made available by the state
3969 treasurer, without further appropriation, exclusively for the purposes of said chapter 94A, only
3970 after receipt of notice certified by the commissioner of the department of food and agriculture
3971 that amounts are due pursuant to said chapter 94A. Said commissioner shall file quarterly reports
3972 with the house and senate clerk and the house and senate committees on ways and means
3973 regarding the distribution of monies from the fund.

3974 Section 2W. There shall be established and set up on the books of the commonwealth a
3975 separate fund to be known as the Water Pollution Abatement and Drinking Water Projects
3976 Administration Fund. There shall be credited to said fund any amounts transferred pursuant to
3977 sections 5 and 18 of chapter 29C and any income derived from the investment of amounts
3978 credited to said fund. Amounts credited to said fund shall be held in an expendable trust and the
3979 department of environmental protection shall report monthly all amounts credited to said fund
3980 and all expenditures by subsidiary on the Massachusetts management and accounting reporting
3981 system, so-called. Said amounts shall be used solely for the administration of the provisions of
3982 section 27A of chapter 21 and section 18 of said chapter 29C.

Section 2Z. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Sewer Rate Relief Fund. The fund shall consist of all amounts credited to the fund and any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust and used solely for the purposes of this section. Amounts credited to the fund shall be available to mitigate sewer rate increases due to debt service obligations created by issuing eligible indebtedness. For the purposes of this section, eligible indebtedness shall mean debt issued on or after January 1, 1990, which has a final date of maturity more than 5 years after the date of issuance and which is incurred, wholly or in substantial part, to finance or refinance the cost of planning, design or construction of a water pollution abatement project, or part thereof, required to be constructed to meet the provisions of the Federal Water Pollution Control Act, 33 U.S.C. sections 1251 et seq., and sections 26 to 53, inclusive, of chapter 21, or any wastewater collection or transportation project related thereto. Eligible indebtedness shall not include any indebtedness for which the issuer has received assistance provided from state grants. Notwithstanding this section, eligible indebtedness shall include indebtedness incurred to finance the Metrowest Water Supply Tunnel and the Chicopee Valley Aqueduct Redundancy Project. Eligible indebtedness shall include indebtedness incurred pursuant to loan agreements under the provisions of chapter 275 of the acts of 1989 which exceeded \$50,000,000 by June 30, 1995, and the debt service attributable thereto for any year, for purposes of this section, shall be the net obligation borne by the issuer after application of any credits, subsidies or assistance, however characterized, provided under the provisions of the aforementioned laws. No city, town, district, commission, agency, authority, board or other instrumentality of the commonwealth or any of its political subdivisions which is responsible for the ownership or operation of wastewater treatment projects and is

4006 authorized to finance all or any part of the cost thereof through the issuance of eligible
4007 indebtedness, in this section called an issuer, shall receive relief authorized by this section in
4008 excess of 20 per cent of its annual debt service obligations due to eligible indebtedness. The
4009 division of local services of the department of revenue, in consultation with the department of
4010 environmental protection, shall develop guidelines to certify an issuer' eligible indebtedness and
4011 shall create a process to distribute funds equitably to eligible issuers, in order to mitigate
4012 extraordinary increases in sewer costs. Funds disbursed in any fiscal year shall be disbursed on
4013 or before March 31 of the fiscal year. The board, office or commission responsible for setting
4014 sewer charges in each city, town, district or commission that either receives aid itself or is a
4015 member of a regional entity that receives aid pursuant to this section shall certify to the division
4016 of local services that it has reduced sewer charges to reflect its share of any such aid. No
4017 expenditure shall cause the fund to be in deficit at the end of the fiscal year.

4018 Section 2JJ. There shall be established and set up on the books of the commonwealth a
4019 separate fund to be known as the Child Care Quality Fund. There shall be credited to said Fund
4020 revenues received from the sale of Invest in Children distinctive registration plates issued
4021 pursuant to subsection (b) of section 2E of chapter 90. Amounts credited to said fund shall be
4022 available for expenditure by the commissioner of early education and care for providing grants to
4023 not for profit child care organizations for the purpose of improving child care services including,
4024 but not limited to, teacher training, training and education of consumers and parents, the
4025 purchase of educational curricula and materials, specialized training for bilingual and bicultural
4026 providers and consumers and technical assistance for acquiring accreditation by the National
4027 Association for the Education of Young Children.

4028 Section 2QQ. There shall be established and set up on the books of the commonwealth a
4029 separate fund, to be known as the Drinking Water Revolving Fund, consisting of amounts
4030 credited to the fund in accordance with chapter 29C. The fund shall be administered in
4031 accordance with the provisions of said chapter 29C by the board of trustees of the water pollution
4032 abatement trust created thereunder and shall be held in trust exclusively for the purposes and the
4033 beneficiaries described therein. The state treasurer shall be treasurer and custodian of the fund
4034 and shall have the custody of its moneys and securities.

4035 Section 2RR. (a) There is hereby established and set up on the books of the
4036 commonwealth a separate fund to be known as the Workforce Training Fund, in this section
4037 called the Fund. There shall be credited to the Fund the workforce training contributions
4038 required by section 14L of chapter 151A.

4039 (b) Subject to appropriation, the commissioner, which in this section shall have the
4040 meaning assigned by section 1 of chapter 151A, shall make expenditures from the Fund for the
4041 following purposes:

4042 (1) To provide grants to employers, employer groups, labor organizations and
4043 training providers for projects to provide education and training to existing employees and newly
4044 hired workers. In determining who shall receive grants, the commissioner shall consider the
4045 following criteria:

4046 (i) whether the project will increase the skills of low-wage, low-skilled workers;
4047 ii) whether the project will create or preserve jobs at wages sufficient to support a family;

4048 (iii) whether the project will have a positive economic impact on a region with high
4049 levels of unemployment or a high concentration of low-skilled workers;

4050 (iv) whether the employer has made a commitment to provide significant private
4051 investment in training during the duration of the grant and after the grant has expired;

4052 (v) whether the project will supplement, rather than replace, private investments in
4053 training;

4054 (vi) whether the employer is a small business that lacks the capacity to provide adequate
4055 training without such assistance;

4056 (vii) whether the project will provide residents of the commonwealth with training for
4057 jobs that could otherwise be filled only by residents of other nations; and

4058 (viii) whether the project is consistent with the workforce development blueprint
4059 prepared by the regional employment board.

4060 (ix) whether the employer has recently or plans to locate its business in the
4061 commonwealth and employ residents of the commonwealth who will benefit from training,
4062 provided that said employer shall not receive funds until said employer has located its business
4063 in the commonwealth.

4064 Such grants shall be for amounts not to exceed \$1,000,000 and shall be for a term
4065 not to exceed two years.

4066 (2) To provide technical assistance to increase training opportunities available to
4067 employees. The commissioner may provide this direct technical assistance by using existing
4068 institutions such as regional employment boards, community colleges, labor organizations,

4069 administrative entities for service delivery areas under the federal Job Training Partnership Act,
4070 and other entities that have expertise in providing technical assistance regarding employee
4071 training or with employees of the department of labor and workforce development or of the
4072 Commonwealth Corporation. Such expenditures shall not exceed \$3,000,000 each year and the
4073 commissioner shall demonstrate that each dollar expended generates not less than \$5 in private
4074 investment in job training.

4075 (c) The commissioner shall adopt regulations to carry out the purposes of this section,
4076 including the criteria set forth in paragraph (1) of subsection (b). The commissioner may
4077 contract with a private organization to carry out some or all of the commissioner's duties
4078 provided in this section.

4079 (d) Not later than September 1 of each year, the commissioner shall file a report in
4080 writing with the joint committee on commerce and labor and the house and senate committees on
4081 ways and means concerning the grants made in the fiscal year ending on the preceding June 30,
4082 together with such recommendations and additional information as the commissioner considers
4083 appropriate.

4084 (e) Documentary materials or data made or received by an employee of the division of
4085 employment and training, to the extent that such materials or data consist of trade secrets or
4086 commercial or financial information regarding the operation of a business conducted by an
4087 applicant for a grant from the fund established by this section, shall not be public records and
4088 shall not be subject to section 10 of chapter 66.

4089 (f) The director, in consultation with the secretary of economic development, shall adopt
4090 regulations to carry out the purposes of this section, including the criteria set forth in paragraph

4091 (1) of subsection (b). The regulations shall provide for a rolling applications process and shall
4092 allow employers with plans to locate in the commonwealth and employ commonwealth residents
4093 to apply for grants. The director may contract with a private organization to carry out some or
4094 all of the director's duties provided in this section.

4095 The board may require a match or co-investment from participating organizations;
4096 provided, however, that in determining the amount of any match, the board shall establish
4097 different requirements for organizations based on the size of the organization, its profit or not-
4098 for-profit status and financial capacity.

4099 (g) Documentary materials or data made or received by an employee of the department of
4100 workforce development, or by an employee of the division of employment and training, to the
4101 extent that such materials or data consist of trade secrets or commercial or financial information
4102 regarding the operation of a business conducted by an applicant for a grant from the fund
4103 established by this section, shall not be public records and shall not be subject to section 10 of
4104 chapter 66.

4105 (h) The director shall, in accordance with section 328 of chapter 127 of the acts of 1999,
4106 prepare a performance evaluation of the workforce training grants awarded under this section.
4107 The evaluation shall assess the effectiveness of each grant awarded in terms of the: (1)
4108 development of employee skills; (2) increase in employee wages; (3) improvement in employee
4109 retention rates; (4) improvement of employee productivity; (5) impact on employer's business;
4110 and (6) impact on regional economy, including reduction of regional unemployment levels. As a
4111 condition of receiving a grant under this section, the director shall require employers to provide,
4112 within a time frame following the end of the grant period as established by the director, such

4113 information and data determined by the director to be necessary to complete the performance
4114 evaluation.

4115 (i) The director shall make no grant under this section to any person or entity from the
4116 Fund, nor shall any technical assistance be provided by the department out of the proceeds of the
4117 Fund, to any person or entity unless the person or entity applies for and receives a certificate of
4118 tax in good standing with the department of revenue with respect to all tax types for which it
4119 should be registered and for which it is obligated to file reports or returns. A certified copy of
4120 the certificate shall be presented to the director before the issuance of any grant under this
4121 section and before the department provides any technical assistance to any person or entity.

4122 (j) There is hereby established a board to be known as the Workforce Training Fund
4123 Advisory Board, consisting of 9 members, who shall be citizens of the commonwealth, to be
4124 appointed by the governor. Of the 9 members: 3 members shall be persons representing
4125 businesses or employers; 3 shall be persons representing employees or employees of labor
4126 organizations, 2 of whom shall be selected from a list of 5 recommended by the President of the
4127 Massachusetts AFL-CIO; and 3 shall be persons representative of the public, 2 of whom shall
4128 have expertise or experience in workforce training and 1 of whom shall represent a non-profit
4129 workforce training provider. The governor shall designate as chairman of the advisory board 1
4130 of the members appointed as representative of the public. Members shall serve for a term of 6
4131 years. Of the members originally appointed, 1 employer representative and 1 employee
4132 representative shall serve for a term of 4 years, and 1 employer representative and 1 employee
4133 representative shall serve for a term of 6 years; and thereafter, as their terms expire, the governor
4134 shall appoint members for terms of 6 years. Vacancies shall be filled by appointment by the
4135 governor for the remainder of the unexpired term. All members shall serve until the qualification

4136 of their respective successors. Members shall serve without compensation. The advisory board
4137 shall advise the director of the department of workforce development on the administration of the
4138 workforce training fund grant program including, but not limited to, reviewing and making
4139 recommendations on grant requirements and selection criteria and reviewing grant applications
4140 and making recommendations relative to grant awards. The advisory board shall, from time to
4141 time, submit recommendations to the legislature on any legislative changes it deems necessary
4142 for the successful operation of the program.

4143 (k) To provide technical assistance to increase training opportunities available to
4144 employees. The director may provide this direct technical assistance by using existing
4145 institutions such as local workforce investment boards, community colleges, labor organizations,
4146 administrative entities for service delivery areas under the federal Workforce Investment Act, or
4147 its successor statute, and other entities that have expertise in providing technical assistance
4148 regarding employee training or with employees of the departments of labor and workforce
4149 development or of the Commonwealth Corporation. Such expenditures shall not exceed
4150 \$3,000,000 each year and the director shall demonstrate that each dollar expended generates not
4151 less than \$5 in private investment in job training. Of the \$3,000,000, not less than \$75,000 shall
4152 be provided annually to the Workforce Investment Board Association to support the activities of
4153 business, labor, education, youth councils and community members in leading regional
4154 workforce development systems; each of the 16 workforce investment boards shall receive
4155 \$75,000 annually; and each of the 16 workforce investment boards shall receive \$20,000
4156 annually for youth councils.

4157 Section 2TT. There is hereby established and set up on the books of the commonwealth a
4158 separate fund to be known as the Liability Management and Reduction Fund. The purposes of

4159 said fund shall be to provide: (1) insurance coverage to state agencies by charging premiums to
4160 such agencies for the payment of judgments and settlements and the commonwealth's
4161 investigation and litigation costs in connection with tort claims under chapter 258; (2) services to
4162 reduce the number and size of claims against agencies including, but not limited to, risk
4163 reduction training programs and incentive payments of not more than \$1,000 for effective risk
4164 reduction suggestions; and (3) such other services and activities as the comptroller shall
4165 determine are desirable to create financial and other incentives for agencies to reduce the
4166 commonwealth's tort and other monetary liability, including litigation costs; provided, however,
4167 that on or before July 1, 1999, any and all proceeds of said fund shall be used exclusively for the
4168 purposes outlined in clause (2). The fund shall consist of premiums charged to agencies, any
4169 amounts appropriated for the purposes of the fund and interest income from investments made by
4170 the state treasurer of amounts in the fund. Monies in the fund shall be expended by the
4171 comptroller under section 16 of chapter 7A, without further appropriation, for the purposes of the
4172 fund.

4173 The comptroller shall submit not later than December 31 of each year to the house and
4174 senate committees on ways and means, the secretary of administration and finance and the
4175 attorney general a report of the activities of the fund. The report shall include a financial
4176 statement which accounts for the revenues, expenditures and changes in fund balance for the
4177 preceding fiscal year. The comptroller shall also submit to said committees and officials, not
4178 later than October 1, 1998 and not later than October 1 of each fiscal year thereafter, a financial
4179 plan presenting all expected and proposed revenues and other financial sources, expenditures and
4180 other financial uses, net gain or loss from operations and changes in fund balance. The first such
4181 report shall make specific recommendations relative to any proposed decrease in the

4182 appropriation in the settlements and judgments account, and any corresponding increase in the
4183 appropriation to particular agencies, as a result of the experience rating established by the
4184 comptroller pursuant to subparagraph (c) of section 16 of chapter 7A. All such reports shall also
4185 specify the number and duties of employees of the fund, if any, the amount of any direct
4186 appropriation requested or expected and any other information relevant to the achievement of the
4187 purposes of the fund. The comptroller may at any time recommend in such reports statutory
4188 changes necessary to expand the scope of said section 16 of said chapter 7A and this section in
4189 order to cover claims other than those asserted under chapter 258.

4190 Section 2ZZ. (a) There is hereby established and set up on the books of the
4191 commonwealth a separate nonlapsing, revolving fund to be known as the Catastrophic Illness in
4192 Children Relief Fund, hereinafter called the fund. The fund shall be administered by The
4193 Catastrophic Illness in Children Relief Fund commission established pursuant to chapter 111K
4194 and shall be credited with monies received pursuant to sections 6, 9 and 10 of said chapter 111K.

4195 (b) The state treasurer, ex officio, shall be the custodian of the fund and shall receive,
4196 deposit and invest all monies transmitted to the treasurer under this section and shall credit
4197 interest and earnings on the fund to said fund.

4198 (c) The state treasurer shall adopt rules and regulations in accordance with chapter 30A
4199 on procedures for the collection of the fee established under section 9 of said chapter 111K.

4200 Section 2AAA. There shall be established and set up on the books of the commonwealth
4201 a separate fund to be known as the Health Insurance Portability and Accountability Act Fund.
4202 The purpose of the fund shall be to provide agencies under the executive office of health and
4203 human services with funding to meet the costs of compliance with the federal Health Insurance

4204 Portability and Accountability Act of 1996, HIPAA. There shall be credited to said fund
4205 revenues from federal reimbursements from Title XIX and Title XXI of the Social Security Act
4206 attributable to funds spent for HIPAA compliance and any other federal reimbursements, grants,
4207 premiums, gifts or other contributions received for HIPAA compliance. Amounts credited to the
4208 fund shall be held as an expendable trust and shall not be subject to further appropriation. No
4209 expenditure made from the fund shall cause the fund to be in deficit at the close of any fiscal
4210 year.

4211 The secretary of health and human services may allocate amounts in said fund to agencies
4212 within said executive office to meet the costs of compliance with HIPAA if the amounts
4213 otherwise available are insufficient for such purpose, in accordance with an allocation plan to be
4214 filed in advance with the secretary of administration and finance and the house and senate
4215 committees on ways and means. The secretary of health and human services shall also file a
4216 quarterly report with the house and senate committees on ways and means containing detailed
4217 information on each agency under the executive office of health and human services including,
4218 but not limited to, the following: (a) year-to-date expenditures from said fund and estimated
4219 year-end expenditures; (b) the status of HIPAA compliance; (c) steps necessary to attain full
4220 compliance with HIPAA and the estimated associated costs; and (d) year-to-date revenues
4221 credited to said fund and estimated year-end receipts.

4222 Section 2DDD. There shall be established and set up on the books of the commonwealth,
4223 a separate fund to be known as the Department of Fire Services Hazardous Materials
4224 Emergency Mitigation Response Recovery Trust Fund, consisting of any monies appropriated to
4225 the fund by the general court, any monies recovered pursuant to chapter 21K of the General
4226 Laws, any monies received from fines and any income derived from the investment of monies

4227 transferred, appropriated or recovered by the fund, not to exceed \$250,000 in any fiscal year.
4228 Amounts credited to the fund shall be available for expenditure, without prior appropriation, by
4229 the state fire marshal, as head of the department of fire services, who shall act as trustee, solely
4230 for the mitigation of hazardous materials emergency response incidents throughout the
4231 commonwealth and the reimbursement of all other reasonable related costs to hazardous
4232 materials mitigation emergency response member departments, cities, and towns responding to
4233 said incidents or for other reasonable expenditures necessary to implement the provisions of said
4234 chapter 21K. The department of fire services may incur expenses and the comptroller may certify
4235 amounts for payment in anticipation of expected receipts. Monies deposited in the trust fund that
4236 are unexpended at the end of the fiscal year, provided that said monies do not exceed \$250,000,
4237 shall not revert to the General Fund and any funds in excess of \$250,000 shall revert to the
4238 General Fund and be made available for appropriation. No expenditures from said fund shall be
4239 authorized that would cause said fund to be deficient at the end of any fiscal year.

4240 Section 2FFF. There is hereby established and set up on the books of the commonwealth
4241 an expendable trust to be known as the Dam Safety Trust. There shall be credited to the trust all
4242 receipts and revenues generated through agreements executed between the department of
4243 environmental management and public or private entities for dam safety purposes, and all fines,
4244 costs, expenses, and interest imposed pursuant to sections 44 to 48A, inclusive, of chapter 253.
4245 The amounts credited to the trust shall be available for expenditure subject to appropriation, by
4246 the department of environmental management up to an amount of \$250,000 each fiscal year for
4247 the costs associated with the operations of the office of dam safety within the department, but
4248 such expenditures shall be solely for the purposes stated in this section and no funds shall be
4249 transferred from the trust to any other fund. The comptroller may assess the trust for fringe and

4250 overhead costs pursuant to section 5D and section 6B. If the amount credited to the trust exceeds
4251 \$250,000, the excess amount shall be deposited into the General Fund. No expenditure made
4252 from the fund shall cause the fund to become deficient at any point during the fiscal year.

4253 Section 2GGG. Notwithstanding any general or special law to the contrary, the division
4254 of medical assistance and the department of public health shall deposit all monies collected as
4255 civil monetary penalties from nursing homes participating in the Medicaid program authorized
4256 by Title XIX of the Social Security Act into a separate expendable trust fund which shall be
4257 designated and known as the Commonwealth of Massachusetts Civil Monetary Penalties Fund.
4258 Monies collected as civil monetary penalties from nursing homes shall include both monies
4259 collected from Medicaid-only facilities, known as nursing facilities, and the commonwealth
4260 portion of funds collected from dually participating facilities, known as skilled nursing facilities
4261 or nursing facilities, for noncompliance with sections 1919(b), 1919(c) and 1919(d) of the Social
4262 Security Act and monies collected from individuals pursuant to sections 1919(b)(3)(B)(ii)(I),
4263 1919(b)(3)(B)(ii)(II) and 1919(g)(2)(A)(i) of the Social Security Act. The department may
4264 expend monies from this fund without further appropriation in accordance with this section. The
4265 department shall administer the fund in accordance with law including, without limitation,
4266 section 1919(h)(2)(A)(ii) of the Social Security Act. The department shall expend monies in the
4267 fund for measures to protect the health and property of nursing home residents in nursing home
4268 facilities found by the department or the secretary of health and human services to be deficient
4269 including, without limitation, the following: (i) nursing facility staff training and education; (ii)
4270 technical assistance for troubled facilities; (iii) dissemination of best practice models for quality
4271 of care issues, such as malnutrition and dehydration; (iv) state operation of facilities pending
4272 correction of deficiencies or closure; (v) reimbursement of facility residents for lost personal

4273 funds or property; and (vi) costs of relocating residents from 1 facility to another. No expenditure
4274 shall cause the fund to be in deficit at the end of the fiscal year.

4275 Section 2HHH. There shall be set up on the books of the commonwealth a separate fund
4276 to be known as the Open Space Acquisition Revolving Fund. There shall be credited to the fund
4277 all revenues or other financing sources directed to the fund by appropriation, any income derived
4278 from the investing of all amounts credited to the fund and the monies from the repayment of
4279 loans from the fund. Monies credited to the fund may be expended by the department of
4280 environmental management, without further appropriation, for loans to cities and towns for the
4281 acquisition of open space under section 3E of chapter 21.

4282 Section 2III. There shall be established and set up on the books of the commonwealth a
4283 separate fund to be known as the Agricultural Resolve and Security Fund, the funds of which
4284 shall be expended for the purpose of fostering agriculture, as defined in section 1A of chapter
4285 128, in the commonwealth and for furthering other purposes of the department of food and
4286 agriculture as set forth in any general or special law including, but not limited to, agricultural
4287 education, support for sustainable agriculture and pollution prevention, agricultural integrated
4288 pest management programs, agricultural land preservation, control of animal diseases and
4289 emergency preparedness.

4290 The Agricultural Resolve and Security Fund may receive monies from: (1) gifts, grants
4291 and donations from public or private sources; (2) federal reimbursements and grants-in-aid; and
4292 (3) any interest earned from the fund. The state treasurer shall receive, deposit and invest funds
4293 held in such a manner as to ensure the highest interest rate available consistent with the safety of
4294 the fund. The books and records of the fund shall be subject to an annual audit by the state

4295 auditor. The department may expend such funds, subject to appropriation, and no expenditure
4296 from the fund shall cause it to be in deficiency at the close of a fiscal year. The commissioner of
4297 food and agriculture shall report annually to the house and senate committees on ways and
4298 means and the joint committee on natural resources and agriculture on income received into the
4299 fund and the sources of that income, any expenditure from the fund and their purposes and fund
4300 balances.

4301 Section 2JJJ. (a) There shall be established on the books of the commonwealth a separate
4302 fund to be known as the Registers Technological Fund for the benefit of the registers of deeds
4303 under the control of the state secretary. This fund shall consist of the amounts specified in and
4304 collected pursuant to section 31 of chapter 9. The state treasurer shall deposit these amounts into
4305 the fund, which shall be expended solely for the purposes of automation, modernization,
4306 operation and technological improvements at the registries of deeds. The state secretary for the
4307 benefit of the registers under his control, shall submit a spending plan to the clerks of the house
4308 of representatives and senate, who shall refer the plan to the house and senate committees on
4309 ways and means and house and senate committees on post audit and oversight. In preparing the
4310 plan, the secretary shall consult with the commonwealth' chief information officer and require
4311 that the projects and purchases funded through disbursements in this section shall be consistent
4312 with the enterprise information technology strategy, plan and information technology standards
4313 adopted by him. All such monies shall be used to purchase information technology systems that
4314 are interoperable with other like systems that are used or will be used by all registries. The plan
4315 shall include, but not be limited to, the cost and description of all intangible, personal and real
4316 property to be purchased or services to be received and any and all personnel changes for the
4317 automation, modernization, operation and technological improvements. If the general court takes

4318 no final action relative to the plan within 30 days after the date on which the plan is first referred
4319 to those committees, the state treasurer shall disburse the funds according to the plan.

4320 (b) In conjunction with the preparation of the commonwealth' comprehensive annual
4321 financial report, the comptroller shall prepare and issue an annual report detailing the revenue
4322 and expenditure of the fund.

4323 Section 2KKK. (a) There shall be established on the books of the commonwealth a
4324 separate fund for the counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth and Nantucket,
4325 to be known as the County Registers Technological Fund, for the benefit of the registers of deeds
4326 under the control of the governments of those counties. The fund shall consist of the amounts
4327 specified in and collected pursuant to section 41 of chapter 36. The state treasurer shall deposit
4328 these amounts into the fund, which shall be expended, subject to section 40 of said chapter 36,
4329 solely for the purposes of automation, modernization, operation and technological improvements
4330 at the registries of deeds. Each such register shall submit a spending plan to the clerks of the
4331 house of representatives and senate, who shall refer the plan to the house and senate committees
4332 on ways and means and house and senate committees on post audit and oversight. In preparing
4333 the plan, the register shall consult with the commonwealth' chief information officer and the
4334 state secretary and require that the projects and purchases funded through disbursements in this
4335 section shall be consistent with the enterprise information technology strategy, plan information
4336 and technology standards adopted by him. All such monies shall be used to purchase information
4337 technology systems that are interoperable with other like systems that are used or will be used by
4338 all registries. The plan shall include, but not be limited to, the cost and description of all
4339 intangible, personal and real property to be purchased or services to be received for the
4340 automation, modernization, operation and technological improvements. If the general court takes

4341 no final action relative to the plan within 30 days after the date on which the plan is first referred
4342 to those committees, the state treasurer shall disburse the funds according to the plan.

4343 (b) In conjunction with the preparation of the commonwealth' comprehensive annual
4344 financial report, the comptroller shall prepare and issue an annual report detailing the revenue
4345 and expenditure of the fund.

4346 Section 2LLL. There is hereby established and set up on the books of the commonwealth
4347 a separate fund to be known as the Firearms Fingerprint Identity Verification Trust Fund.
4348 Amounts credited to such fund shall be available, without further appropriation, to the
4349 department of state police for the purposes of financing fingerprint identification verifications
4350 with the fingerprint records maintained by the Federal Bureau of Investigations or any other
4351 federal agency for the verification of firearms license applicant identities. \$25 of the fee assessed
4352 under sections 122, 122B, 129B, 131, 131A, 131F, and 131H of chapter 140 of the General Laws
4353 shall be deposited into the fund. The funds shall be utilized for the sole purpose of making
4354 payments charged to the department by the Federal Bureau of Investigations or other entity for
4355 fingerprint identification verification.

4356 Section 2MMM. (a) There is hereby established and set up on the books of the
4357 commonwealth a separate fund to be known as the Massachusetts Science, Technology
4358 Engineering, and Mathematics Grant Fund, hereinafter referred to as the Pipeline Fund, to which
4359 shall be credited any appropriations, bond proceeds or other monies authorized by the general
4360 court and specifically designated to be credited thereto, and any additional funds designated by
4361 the corporation for deposit into the Pipeline Fund, including any pension funds, federal grants or
4362 loans, or private donations made available to the chancellor of higher education for deposit into

4363 the fund. The board of higher education shall hold the Pipeline Fund in an account or accounts
4364 separate from other funds or accounts. Amounts credited to the Pipeline Fund shall be used by
4365 the chancellor of higher education, in consultation with the Massachusetts Development Finance
4366 Agency, the Massachusetts Technology Park Corporation and the Robert H. Goddard Council on
4367 Science, Technology Engineering, and Mathematics Education, established pursuant to section
4368 4A of chapter 15A (in this section, the “council”).

4369 (b) The public purpose of the Pipeline Fund shall be to increase the number of students
4370 who participate in programs that support careers in fields related to science, technology,
4371 engineering and mathematics. In furtherance of this public purpose, and in a manner consistent
4372 with the recommendations of the council, the chancellor of higher education, in consultation with
4373 the commissioner of education and the president of the University of Massachusetts, shall
4374 employ the Pipeline Fund through grants and other disbursements and activities that are
4375 calculated to increase the number of qualified science, technology, engineering and mathematics
4376 teachers and to improve the science, technology, engineering and mathematics educational
4377 offerings available in public and private schools. The grants and other disbursements and
4378 activities may involve, without limitation, the University of Massachusetts, state universities and
4379 community colleges, business and industry partnerships, workforce investment boards, private
4380 colleges and universities, and public and private school districts to further the purposes of the
4381 Pipeline Fund. The grants and other disbursements and activities may support, without
4382 limitation: (i) the development and use of innovative curricula, courses and programs in science,
4383 technology, engineering and mathematics for new teachers and in-service teachers that provide
4384 appropriate science, technology, engineering and mathematics content, and instruction in
4385 innovative ways to teach science, technology, engineering and mathematics including, but not

4386 limited to, the use of hands on, experimental learning and e-learning, that are consistent with the
4387 Massachusetts standards and curriculum frameworks established pursuant to sections 1D and 1E
4388 of chapter 69; (ii) the development of a science, technology, engineering and mathematics
4389 network to create, implement, share and make broadly and publicly available the best practices
4390 and innovative programs relative to science, technology, engineering and mathematics
4391 instruction and expanding and maintaining student interest in science, technology, engineering
4392 and mathematics studies and careers; (iii) effective ways to teach science, technology,
4393 engineering and mathematics; (iv) give priority to grants that provide effective course and
4394 curricula for in-service teachers in low income schools or school districts; and (v) summer
4395 programs for high school students, with appropriate stipends, that would allow interested and
4396 motivated students to intern in private or nonprofit corporations or in public programs that are in
4397 a position to further their interest, knowledge and experience in these fields; provided, that
4398 priority for the summer programs shall be given to students in groups that are presently
4399 underrepresented in these fields including, but not limited to, persons of color, women, and those
4400 whose native language is not English; provided further, that not more than 20 per cent of the
4401 fund shall be awarded to any 1 single institution and not more than 5 per cent of the fund shall be
4402 expended pursuant to clause (v).

4403 (c) There shall be under Commonwealth Medicine at the University of Massachusetts
4404 medical school and the department of education's office for mathematics, science and technology
4405 engineering, the Massachusetts Academy for Life Sciences. The Massachusetts Academy for
4406 Life Sciences, subject to appropriation from the Pipeline Fund, shall establish a program which
4407 shall consist of mobile science labs with 1 mobile lab assigned and designated for each of the
4408 following 5 regions: western Massachusetts, central Massachusetts, metropolitan Boston,

4409 northeastern Massachusetts and southeastern Massachusetts. The mission of the Massachusetts
4410 Academy for Life Sciences shall be to encourage students to consider careers in life sciences and
4411 healthcare by participating in enhanced science courses through the use of the mobilelabs.

4412 (d) The board of higher education shall, in consultation with the council, promulgate
4413 policies, rules and regulations for the administration and implementation of subsections (a) and
4414 (b). The chancellor of higher education shall file any policies, rules and regulations with the
4415 joint committee on education, the joint committee on higher education, the joint committee on
4416 economic development and emerging technologies and the joint committee on labor and
4417 workforce development for review and comment at least 30 days before the effective date of the
4418 policies, rules or regulations.

4419 (e) The chancellor of higher education shall file a quarterly report with the house and
4420 senate committees on ways and means, the joint committee on economic development and
4421 emerging technologies, the joint committee on labor and workforce development, the joint
4422 committee on education, and the joint committee on higher education on the following: (i) a list
4423 of grant recipients, (ii) the associated grant amounts, (iii) the amounts of non-state funding
4424 leveraged as a result of the grants, (iv) the purposes of the grants, (v) an annual statement of cash
4425 inflows and outflows detailing the sources and uses of funds, (vi) a forecast of future payments
4426 based on current binding obligations, and (vii) a detailed breakdown of the purposes and
4427 amounts of administrative costs charged to the fund.

4428 Section 2NNN. There shall be established and set up on the books of the commonwealth
4429 a separate fund to be known as the Roche Community Rink Fund. There shall be credited to
4430 such fund revenues generated from fees, fines, leases, gifts, grants, interest earned on any monies

4431 within this fund or any other revenue sources at the Roche Community Rink, formerly the Bryant
4432 Rink, in the West Roxbury section of the city of Boston. Revenues credited to the fund shall be
4433 used, not subject to appropriation, for operational costs, capital improvements, equipment and
4434 maintenance of said rink, including the costs of personnel, but no expenditure shall be made
4435 from the fund that shall cause the fund to be in deficit at the close of a fiscal year.

4436 Section 2000. There is hereby established and set up on the books of the commonwealth
4437 a separate fund to be known as the Commonwealth Care Trust Fund, in this section called the
4438 trust fund. There shall be credited to the trust fund: (a) all contributions collected under section
4439 188 of chapter 149, (b) all revenue from surcharges imposed under section 18B of chapter 118G,
4440 (c) any transfers from the Health Safety Net Trust Fund, established by section 57 of chapter
4441 118E, (d) revenue deposited from penalties collected under chapter 111M. Amounts credited to
4442 the trust fund shall be expended without further appropriation for programs designed to increase
4443 health coverage, including a program of subsidized health insurance provided to low-income
4444 residents of the commonwealth under chapter 118H and rate increases to certain Medicaid
4445 providers and supplemental payments to certain publicly operated or public-service hospital
4446 entities, as determined by law. Money from the trust fund may be transferred to the
4447 Uncompensated Care Trust Fund, established by section 18 of chapter 118G, or any successor
4448 fund, as necessary to provide payments to acute hospitals and community health centers for
4449 reimbursable health services. Not later than January 1, the comptroller shall report an update of
4450 revenues for the current fiscal year and prepare estimates of revenues to be credited to the trust
4451 fund in the subsequent fiscal year. The comptroller shall file this report with the secretary of
4452 administration and finance, the office of Medicaid, the joint committee on health care financing,
4453 and the house and senate committees on ways and means. If revenues credited to the trust fund

4454 are less than the amounts estimated to be credited to the trust fund, the comptroller shall duly
4455 notify the secretary, office and committees that this revenue deficiency shall require
4456 proportionate reductions in expenditures from the revenues available to support programs
4457 appropriated from the trust fund.

4458 Section 2PPP. There is hereby established and set up on the books of the commonwealth
4459 a separate fund to be known as the Essential Community Provider Trust Fund, in this section
4460 called the trust fund. There shall be credited to the trust fund: (a) any funds that may be
4461 appropriated or transferred for deposit into the trust fund; and (b) any income derived from
4462 investment of amounts credited to the trust fund. In conjunction with the preparation of the
4463 commonwealth' annual financial report, the comptroller shall prepare and issue an annual report
4464 detailing the revenues and expenditures of the trust fund. The comptroller shall certify payments,
4465 including payments during the accounts payable period, in anticipation of revenues, including
4466 receivables due and collectibles during the months of July and August, from the trust fund for the
4467 purpose of making authorized expenditures. The health safety net office shall administer the trust
4468 fund and disburse funds from the trust fund for the purpose of payments to acute hospitals and
4469 community health centers under clause (6) of subsection (b) of section 35 of chapter 118G and
4470 any further regulations promulgated by the office.

4471 Section 2QQQ. There shall be established on the books of the commonwealth the
4472 Medical Assistance Trust Fund, which shall be administered by the secretary of health and
4473 human services. Funds from the trust fund may be expended for supplemental Medicaid
4474 payments to qualifying providers under an approved state plan or federal waiver. Amounts
4475 credited to the trust fund shall not be subject to further appropriation.

4476 Section 2RRR. There is hereby established and set up on the books of the commonwealth
4477 a separate fund to be known as the Department of Developmental Services Trust Fund, in this
4478 section called the trust fund, administered by the secretary of health and human services. There
4479 shall be credited to the trust fund: (a) any receipts from the assessment collected under section 27
4480 of chapter 118G, including transfers by the department of developmental services of amounts
4481 sufficient to pay the assessment for public facilities, (b) any federal financial participation
4482 received by the commonwealth as a result of expenditures funded by such assessments, and (c)
4483 any interest thereon. The secretary may authorize expenditures of amounts from such trust fund
4484 without further appropriation. The comptroller shall transfer to the trust fund no later than the
4485 first business day of each quarter, the amounts indicated by the department of developmental
4486 services to provide the appropriate payment adjustments for operating the intermediate care
4487 facilities for the mentally retarded and the community residences serving individuals with mental
4488 retardation. The comptroller shall establish procedures necessary to effectuate this section,
4489 including procedures for the proper transfer, accounting, and expenditures of funds. The
4490 comptroller may make payments in anticipation of receipts and shall establish procedures for
4491 reconciling overpayments and underpayments from the trust fund. The secretary shall report
4492 semi-annually to the house and senate committees on ways and means on the revenue and
4493 expenditure activity within the trust fund.

4494 Section 2SSS. There is hereby established and set up on the books of the commonwealth
4495 a separate fund to be known as the Educational Rewards Grant Program Fund, hereinafter
4496 referred to as the fund. The fund shall provide, without further appropriation, grants to students
4497 in accredited post-secondary certificate or vocational technology programs or associate degree
4498 programs in targeted high-demand occupations. The department of workforce development and

4499 the board of higher education in consultation with the Massachusetts Workforce Board
4500 Association, the state workforce investment board, the reach higher initiative and the workforce
4501 accountability task force established pursuant to section 11 of chapter 23H shall determine the
4502 eligible high demand occupations. If a Bachelor' degree program is needed for a profession in
4503 critical demand, it may be added to the eligible programs. Of the appropriation for grants, up to
4504 1/3 may be used for students enrolled as full-time students and at least 2/3 of the total grant
4505 amount shall be reserved for students enrolled 1/2 time or less. Grant recipients shall be limited
4506 to dislocated workers or those with incomes at or below 200 per cent of the federal poverty level
4507 or other standards or criteria as may be established by the department and the board in
4508 consultation with the workforce accountability task force established pursuant to section 11 of
4509 chapter 23H. Grants from the program fund shall be a maximum of \$3,000 and shall be used to
4510 fund tuition, fees and books; provided, however, that up to 30 per cent of the grant amount may
4511 be applied to fund living expenses. The grant program shall serve as a last resort, after other
4512 federal and state grants have been exhausted. The department of workforce development and the
4513 board of higher education shall jointly administer the grant program.

4514 Section 2TTT. (a) There is hereby established and set up on the books of the
4515 commonwealth a separate fund known as the CITI Fund for the continuation of the
4516 Commonwealth Information Technology Initiative, or CITI, statewide. The University of
4517 Massachusetts shall hold the CITI Fund in an account or accounts separate from other funds or
4518 accounts. Amounts credited to the CITI Fund shall be used by the President of the University of
4519 Massachusetts or his designee, in accordance with subsection (b) and in consultation with the
4520 advisory board established in subsection (d).

4521 b) The public purpose of the CITI Fund shall be to provide funding for a collaborative
4522 approach to information technology education through a series of open competitions for grants to
4523 K-20 educational institutions in the areas of: (1) educator development - to ensure that K-20
4524 faculty in all public higher education institutions and elementary and secondary schools have the
4525 skills to teach courses that meet industry' current and future information technology needs; (2)
4526 curriculum enhancement - to update existing courses and programs of computer science,
4527 management information systems and computer engineering in public higher education and to
4528 update academic discipline courses to facilitate the acquisition of knowledge through the
4529 understanding and application of information technology in the K-12 level; (3) IT across the
4530 curriculum - to implement the integration of information technology education into all aspects of
4531 non-technical disciplines and areas of study; and (4) regional cooperation - create
4532 geographically-based alliances among schools and industry to leverage faculty, courses and other
4533 resources for information technology education.

4534 c) The president of the University of Massachusetts shall, no later than July 1, annually
4535 report to the house and senate committees on ways and means, the joint committee on economic
4536 development and emerging technologies, the joint committee on labor and workforce
4537 development, the joint committee on education and the joint committee on higher education. The
4538 report shall include: (i) a list of grant recipients; (ii) the associated grant amounts; (iii) the
4539 amounts of nonstate funding leveraged as a result of the grants, including in-kind and other non-
4540 cash contributions; (iv) the purposes of the grants; (v) an annual statement of cash inflows and
4541 outflows detailing the sources and uses of funds; (vi) a forecast of future payments based on
4542 current binding obligations; and (vii) a detailed breakdown of the purposes and amounts of
4543 administrative costs charged to the fund.

4544 d) There shall be an advisory board for the CITI Fund which shall consist of 12 members,
4545 8 of whom shall be appointed by the governor - of which at least 2 shall be employed by a public
4546 institution of higher education in the commonwealth, at least 2 shall be employed at a public
4547 school for grades K-12 and at least 2 shall be employed by a corporation based in the
4548 commonwealth. One member shall be appointed by the speaker of the house, 1 member shall be
4549 appointed by the minority leader of the house of representatives, 1 member shall be appointed by
4550 the president of the senate and 1 member shall be appointed by the minority leader of the senate.
4551 The advisory board shall meet at least quarterly or when called by the president of the University
4552 of Massachusetts.

4553 Section 2UUU. (a) There is hereby established and set up on the books of the
4554 commonwealth a separate fund to be known as the Massachusetts Board of Higher Education
4555 Scholar-Internship Match Fund, hereafter referred to as the Scholar/Internship Match Fund. The
4556 board of higher education shall hold the Scholar-Internship Match fund in an account separate
4557 from other funds or accounts. Amounts credited to the Scholarship/Internship Match Fund shall
4558 be used, without further appropriation, by the chancellor of higher education or her designee, in
4559 accordance with the purpose set forth in this section and in consultation with participating
4560 industry and public higher education institutions. An amount not to exceed \$100,000 shall be
4561 spent each year to promote the existence of the Scholar-Internship Match Fund with the goal of
4562 attracting and maximizing industry participation.

4563 b) The public purpose of the Scholar-Internship Match Fund shall be to provide a match
4564 for industry scholarships given to Massachusetts students going on to study for a post-secondary
4565 degrees at Massachusetts public higher education institutions. The amount to be matched through

4566 the Scholar-Internship Match Fund shall not exceed \$5,000 per student, contingent upon
4567 receiving a corresponding industry scholarship or internship of up to the same amount.

4568 c) The chancellor of higher education shall, not later than July 1, annually report to the
4569 house and senate committees on ways and means, the joint committee on economic development
4570 and emerging technologies, the joint committee on labor and workforce development, the joint
4571 committee on education and the joint committee on higher education. The report shall include:
4572 (i) a list of matching scholarship recipients; (ii) the associated match amount; (iii) the amounts of
4573 non-state funding as a result of the match; (iv) the purposes of the match; (v) whether there was
4574 an internship associated with the industry match; (vi) an annual statement of cash inflows and
4575 outflows detailing the sources and uses of funds; (vii) a forecast of future payments based on
4576 current binding obligations; and (viii) a detailed account of the purposes and amount of
4577 administrative costs charged to the fund. The chancellor shall include in annual report a detailed
4578 5 year legislative review of the Scholar-Internship Match Fund for consideration for
4579 recapitalization.

4580 Section 2VVV. (a) There shall be established and set upon the books of the
4581 commonwealth a separate fund to be known as the international education and foreign language
4582 grant program fund, hereinafter referred to as the international education fund, to which shall be
4583 credited any appropriations, bond proceeds or other monies authorized by the general court and
4584 specifically designated to be credited thereto and additional funds designated for deposit to the
4585 international education fund, including any pension funds, federal grants or loans, or private
4586 donations made available to the commissioner of education for such purpose. The Commissioner
4587 of Education shall hold the international education fund in an account or accounts separate from
4588 other funds or accounts. Amounts credited to the international education fund shall be used by

4589 the commissioner of education, in consultation with the chairman of the board of higher
4590 education, and the global education advisory council to carry out the purposes of subsection (b).

4591 b) The public purpose of the international education fund shall be to increase the number
4592 of Massachusetts students, teachers, administrators and education policymakers participating in
4593 international studies, international exchange programs, and other activities that advance cultural
4594 awareness and promote mutual understanding and respect for citizens of other countries. In
4595 furtherance of this public purpose and in consultation with the chairman of the board of higher
4596 education and the global education advisory council, the Commissioner of Education shall
4597 employ the international education fund in support of programs and activities that advance
4598 cultural awareness, including the awarding of grants to local or regional school districts that use
4599 the funds to support international education programs and promote the study of foreign
4600 languages, including programs that establish foreign language and two-way bi-lingual education
4601 classes, teacher training, and curriculum development to encourage students, teachers,
4602 administrators and educational policy makers to participate in international studies, international
4603 exchange programs and other activities.

4604 Section 2WWW. (a) There is hereby established and set up on the books of the
4605 commonwealth a separate fund to be known as the Workforce Competitiveness Trust Fund,
4606 hereinafter called the fund. The fund shall be administered by the department of workforce
4607 development which shall contract with the Commonwealth Corporation to administer the fund.
4608 The objectives of the fund shall include, but shall not be limited to, the following: supporting, in
4609 conjunction with other private, public and philanthropic resources, the development and
4610 implementation of employer and worker responsive programs to enhance worker skills, incomes,
4611 productivity and retention and to increase the quality and competitiveness of Massachusetts

4612 firms; training and helping the unemployed find suitable employment; improving employment
4613 opportunities for low-income individuals and low wage workers; improving wages to a level
4614 sufficient to support a family or to place individuals on a career path leading to such employment
4615 and wages; training vulnerable youths to master basic academic skills, including the attainment
4616 of a high school degree and encouraging students to advance educationally and receive post-
4617 secondary degrees at colleges or post-secondary vocational schools or beyond; developing
4618 occupational skills and becoming employed in jobs that have career potential; and training older
4619 workers for new occupations. The department shall utilize these projects to improve the
4620 workforce development system by integrating employer and worker needs more fully into
4621 program design and delivery. The department shall support, through grants, partnership programs
4622 and planning, grant applications from the following eligible applicants to provide an integrated
4623 continuum of education and training: employers and employer associations; local workforce
4624 investment boards; labor organizations; community-based organizations, including adult basic
4625 education providers; institutions of higher education; vocational education institutions; one-stop
4626 career centers; local workforce development entities; and nonprofit education, training or other
4627 service providers. The fund shall leverage employer, public, philanthropic and other
4628 contributions and shall be available as a state match for federal funds that meet the requirements
4629 of the fund. The fund shall be an expendable trust fund and not subject to appropriation. Grants
4630 from the fund shall be offered on a competitive basis for a maximum of 3 years and shall not
4631 exceed \$500,000.

4632 b) The director of workforce development shall appoint an advisory committee to
4633 represent significant constituencies and beneficiaries of the fund including, but not limited to,
4634 high growth or critical industries; the workforce development system; public education; adult

4635 basic education; the department of transitional assistance; public higher education; labor;
4636 community-based organizations and nonprofit education, training or other service providers; and
4637 advocates of customer populations, including representatives of education, training and the one-
4638 stop career center provider coalitions, including a minimum of 2 labor representatives selected
4639 by the President of the Massachusetts AFL-CIO and 2 representatives of the Massachusetts
4640 Workforce Board Association. The director shall serve as chair of the committee. The committee
4641 shall supply constituent focused labor market information, review general programmatic
4642 parameters and guidelines, assist with the identification of issues and barriers to the fund'
4643 efficiency and effectiveness and the dissemination of relevant information about the fund and
4644 support the general oversight of the fund' implementation. The committee shall meet from time
4645 to time, but not less frequently than quarterly.

4646 c) The Commonwealth Corporation shall be the administrator of the fund and shall
4647 maintain the fund as a separate fund and shall cause it to be audited by an independent
4648 accountant on an annual basis in accordance with generally-accepted accounting principles.

4649 d) There shall be credited to the fund any revenue from appropriations or other monies
4650 authorized by the general court and specifically designated to be credited to the fund, and any
4651 gifts, grants, private contributions, investment income earned on the fund' assets and all other
4652 sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General
4653 Fund.

4654 e) Partnership programs may include costs for support services including, but not limited
4655 to, transportation and childcare, to eliminate barriers to participation in the training program. For

4656 any unionized employer participating as a partner in a grant application, the impacted union shall
4657 be an active participant in the design and implementation of the grant.

4658 f) A competitive grant program shall be established that provides support to partnerships
4659 and eligible applicants as described above, and that leverages applicant co-investment of at least
4660 30 per cent of the grant amount from employers, philanthropic and public or private
4661 organizations. The period of grant operations may be up to 3 years in duration. Grants may be
4662 targeted to specific populations, such as educationally or economically disadvantaged youth,
4663 low-income, low-skilled and low-wage workers, disabled citizens or industries that are deemed
4664 to be of critical consequence to the commonwealth. Special grant programs and funding
4665 allocations shall be determined by the committee and shall be distributed by a regionally-based
4666 competitive bid process, which shall require the defining of economic regions based on labor
4667 market factors as determined by the committee. Each municipality shall be accounted for in a
4668 designated region. A formula for regional distribution shall be created and competition for
4669 formula grant funds shall occur within each identified region and shall be subject to the rules and
4670 regulations established by the committee in consultation with regional partners. Respondents to
4671 the local competitions shall notify, in writing, the region' workforce investment board of their
4672 intent to respond to the request for proposals. A planning grant may be offered to define
4673 employer needs; to make necessary curriculum and other programmatic improvements to align
4674 with employer and worker needs; to determine the feasibility of a proposed workforce
4675 development intervention; to plan for and coordinate strong partnerships among stakeholders; to
4676 identify educational and skill needs of workers and program participants; to link training
4677 initiatives with employer-based career ladders; and to develop case management and additional
4678 support services that would address barriers to participation.

4679 g) A portion of the grant fund shall be used to support the current and future labor force
4680 needs of the healthcare industry. This portion of the fund shall support projects that address
4681 barriers and gaps in the healthcare workforce development pipeline. Small planning and needs
4682 assessment grants may be offered. A project grant program shall be designed by Commonwealth
4683 Corporation in consultation with a Healthcare subcommittee of the fund committee, which shall
4684 include, at a minimum, appointments made by the following organizations: the Massachusetts
4685 Hospital Association; the Massachusetts Extended Care Federation; the Home and Health Care
4686 Association of Massachusetts; the Massachusetts Workforce Board Association; and the
4687 Massachusetts AFL-CIO, as well as representatives of the other mandatory advisory committee
4688 constituencies.

4689 h) A portion of the grant fund shall be used to support the current and future labor force
4690 needs of the travel and tourism industry. This portion of the grant fund shall be used to support
4691 the development of career ladder and wage improvement strategies, including employee
4692 ownership and profit-sharing strategies, within the travel and tourism industry. Small planning
4693 and needs assessment grants may be offered. A project grant program shall be designed by
4694 Commonwealth Corporation in consultation with the travel and tourism advisory committee,
4695 which shall include the primary industry associations that represent the industry in the
4696 commonwealth or, in their absence, a cohort of relevant industry employers, as well as
4697 representatives of the other mandatory advisory committee constituencies.

4698 i) Project grants shall be for a maximum of 3 years, shall be competitively based and
4699 shall not exceed \$500,000. The committee shall determine how to apportion the grant fund
4700 between the healthcare industry, the travel and tourism industry and the general grant program;

4701 provided, however, that not more than 7.5 per cent of the funds appropriated in this subsection
4702 may be expended for the administration of each grant.

4703 j) The director of workforce development shall annually, not later than December 31,
4704 report to the secretary of administration and finance, the house and senate committees on ways
4705 and means, the joint committee on community development and small business, the joint
4706 committee on education, the joint committee on economic development and emerging
4707 technologies, the joint committee on labor and workforce development and the joint committee
4708 on public health on the status of grants awarded under this section, including the number of
4709 educational and eligible service providers receiving grants; the number of participants receiving
4710 services; the number of participants placed in employment; the salary and benefits that
4711 participants receive after placement; the cost per participant; and job retention or promotion rates
4712 1 year after training ends.

4713 k) The establishment of the Workforce Competitiveness Trust Fund, or any other worker
4714 training fund, shall not be determined to replace, displace or serve as a substitute for the
4715 Workforce Training Fund established in section 2RR.

4716 Section 2XXX. There shall be established and set upon the books of the commonwealth a
4717 separate fund to be known as the District Local Technical Assistance Fund. Amounts credited to
4718 the fund shall be administered by the division of local services within the department of revenue
4719 which shall determine that the funds are used for activities consistent with the purpose of this act
4720 and the Massachusetts management and accounting reporting system. The amounts shall be
4721 used, without further appropriation, solely for the administration and implementation of this
4722 section.

4723 The fund shall be a separate and expendable trust fund administered by the division of
4724 local services within the department of revenue. There shall be credited to the fund, revenue
4725 from appropriations or other monies authorized by the general court and specifically designated
4726 to be credited to the fund and investment income earned on the fund' assets, and all other
4727 sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General
4728 Fund, and shall be allocated to the regional planning agencies the following fiscal year pursuant
4729 to the formula established in the third paragraph.

4730 One hundred per cent of the monies deposited in the district local technical assistance
4731 fund, but not more than \$2,800,000 in the aggregate in any fiscal year, shall be used by the
4732 department of housing and community development to provide grants to regional planning
4733 agencies for technical assistance to municipalities and to develop a state-wide permitting model.
4734 The department shall grant each regional planning district created under chapter 40B or by
4735 special act a fixed base allocation of \$150,000, except that the metropolitan area planning
4736 council shall receive a base allocation of \$200,000, the Martha' Vineyard commission shall
4737 receive a full annual allocation of \$100,000, and the Nantucket Planning and Economic
4738 Development Commission shall receive an annual allocation of \$50,000. One-half of the
4739 remainder of the annual disbursement of net cash proceeds to the department of housing and
4740 community development for technical assistance grants under this section shall be allocated
4741 among said entities based on the percentage of the commonwealth' population served by each
4742 entity, with the other half allocated based on the percentage of the commonwealth' communities
4743 served by each entity. Each regional planning agency receiving the funds shall provide matching
4744 resources of not less than 10 per cent, no more than 1/2 of which may be in-kind services, and
4745 shall annually file with the department of housing and community development, the house and

4746 senate committees on ways and means and constituent local governments a report detailing their
4747 expenses and program activities.

4748 Technical assistance services funded by these grants shall be provided at the request of a
4749 municipality in any subject within regional planning expertise, including but not limited to:
4750 zoning and permitting; economic development; land use planning, conservation planning, and
4751 water resources; municipal management; public safety planning and emergency response;
4752 transportation; data management, information technology, geographic information systems,
4753 statistical trends and modeling; and other land use and smart growth issues.

4754 Section 2YYY. There shall be established and set up on the books of the commonwealth
4755 a separate fund, to be known as the Courts Capital Project Fund, hereinafter in this section
4756 referred to as the fund. The fund shall be credited: (i) the portion of any net cash proceeds from
4757 the conveyance, lease or other disposition of any surplus court facilities vacated and determined
4758 to be surplus by the commissioner of capital asset management and maintenance as a result of or
4759 in anticipation of the construction of new court facilities or the consolidation of court facilities in
4760 the cities of Cambridge, Lowell, Salem and Worcester; (ii) any appropriations; (iii) bond
4761 proceeds; or (iv) other monies authorized by the general court and specifically designated to be
4762 credited thereto. The comptroller shall disburse amounts in the fund at the direction of the
4763 secretary of administration and finance, without further appropriation, for the purpose of paying
4764 costs of, or paying down any portion of the debt incurred to pay costs related to the acquisition,
4765 temporary leasing or the construction of any replacement court facilities. The inspector general
4766 of the commonwealth shall make an annual oversight inquiry and report on the Capital Courts
4767 Project Fund and its disbursements. Said report shall be provided to the clerks of the house of

4768 representatives and senate, chairs of house and senate committees on ways and means and chairs
4769 of the joint committee on bonding, capital expenditures, and state assets.

4770 Section 2ZZZ. (a) There shall be established and set up on the books of the
4771 commonwealth a separate fund to be known as the Commonwealth Transportation Fund, which
4772 shall be used exclusively for financing transportation-related purposes. There shall be credited to
4773 the fund all fees received by the registrar of motor vehicles pursuant to section 34 of chapter 90,
4774 all receipts paid into the treasury of the commonwealth and directed to be credited to the
4775 Commonwealth Transportation Fund pursuant to chapters 64A, 64E, 64F and any other
4776 applicable general or special law and all amounts appropriated into the fund by the general court.
4777 The fund shall be subject to appropriation and shall be used for transportation related expenses of
4778 the executive office of transportation or any successor agency or authority, including to pay or
4779 reimburse the General Fund for payment of debt service on bonds issued by, or otherwise
4780 payable pursuant to a lease or other contract assistance agreement by, the commonwealth for
4781 transportation purposes.

4782 (b) Notwithstanding subsection (a), the crediting of receipts from the tax imposed
4783 pursuant to chapter 64A to the fund shall not affect the obligations of the commonwealth relating
4784 to notes issued pursuant to sections 9 to 10D, inclusive, of chapter 11 of the acts of 1997 and the
4785 pledge of receipts from the portion of the tax per gallon imposed pursuant to said chapter 64A
4786 equal to 10 cents per gallon, to secure the payment of such bonds under the circumstances
4787 described in the trust agreements relating to such notes is hereby ratified and confirmed in all
4788 respects and shall remain in full force and effect as long as any such notes issued as of July 1,
4789 2009 remain outstanding in accordance with their terms and secured by funds in the fund.

(c) In addition to those revenues credited to the fund pursuant to subsection (a) there shall be credited to the fund all monies received by the commonwealth equal to .385 percent of the receipts from sales, as defined by chapter 64H, and .385 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property, or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of section 10 of chapter 152 of the acts of 1997 or within the meaning of said subsection (b 1/2); provided, however, that if in a fiscal year the amount credited to the fund under this subsection is less than \$275,000,000, then the comptroller shall transfer an amount from the General Fund to make up the difference between the amount credited to the fund and \$275,000,000, not later than September 1 of the following fiscal year.

(d) Not less than the following amounts shall annually be distributed from the fund to the Massachusetts Bay Transportation Authority and regional transit authorities:

(1) \$160,000,000 to the Massachusetts Bay Transportation Authority or any fund controlled by the authority in each fiscal year; and

(2) \$15,000,000 to regional transit authorities organized under chapter 161B or predecessor statutes in each fiscal year.

Section 2AAAA. There shall be established and set up on the books of the commonwealth a separate fund to be known as the State Athletic Commission Fund, hereinafter in this section referred to as the fund, to be administered by the department of public safety. The fund shall consist of any monies from licensing fees or other fees and fines collected pursuant to

4812 sections 32 to 35, inclusive, sections 40, 40A and 42 of chapter 147 and section 12 of chapter
4813 265. The amounts credited to the fund shall be available for expenditure without further
4814 appropriation by the department of public safety up to an amount not to exceed \$200,000 each
4815 fiscal year for the costs of operating and administering the state athletic commission; provided,
4816 however, that if the amount credited to the fund exceeds \$200,000, the excess amount shall be
4817 deposited into the General Fund. For the purposes of accommodating discrepancies between the
4818 receipt of retained revenues and related expenditures, the department may incur expense and the
4819 comptroller may certify for payment amounts not to exceed the lower of this authorization or the
4820 most recent revenue estimate as reported in the state accounting system.

4821 Section 2BBBB. There shall be established and set up on the books of the commonwealth
4822 a separate fund to be known as the Commonwealth Substance Abuse Prevention and Treatment
4823 Fund. The fund shall be credited with all sales tax revenues collected from the sale of alcoholic
4824 beverages under chapter 64H which are not part of the dedicated sales tax revenue amount
4825 described in section 35T or section 35BB of chapter 10. Amounts credited to the fund shall be
4826 expended, subject to appropriation, to support substance abuse treatment and prevention services.

4827 Section 3. Every officer having charge of any state agency which receives a periodic
4828 appropriation from the commonwealth, including all periodic appropriations to be met from
4829 budgeted revenues shall annually, on or before a date set by the secretary of administration and
4830 finance submit to the budget director statements (1) showing in detail the amounts appropriated
4831 for the preceding and the current fiscal years; (2) the interchanges during the preceding fiscal
4832 year between the object classes established in accordance with section 27; (3) the deficiencies
4833 and surpluses, if any, in appropriations for the latest complete fiscal year and for the current
4834 fiscal year; (4) estimates of the amounts required for the operations of state agencies and

4835 programs for the ensuing fiscal year, with an explanation of any increased appropriations
4836 recommended and with citations of the statutes relating thereto, a statement indicating the
4837 priorities assigned to each program by said officer; and (5) statements showing in detail the
4838 revenue of the state agency in his charge for the latest complete fiscal year, and the revenue and
4839 estimated revenue thereof for the current fiscal year, and his estimated revenue from the same or
4840 any additional sources for the ensuing fiscal year, with his recommendations as to any changes in
4841 the management, practices, rules, regulations or laws governing such state agency which would
4842 cause an increase or cause a decrease in revenue from operations, fees, taxes or other sources, or
4843 which would facilitate the collection thereof; (6) together with such other information on the
4844 expenditures, revenues, activities, output or performance of any such state agency as may be
4845 required by rule or regulation of the secretary of administration and finance, and any other
4846 information, including the priorities assigned to each program by said officer, required at any
4847 time by the budget director. Every such officer shall also submit to the budget director a
4848 statement showing in detail the number of permanent, temporary, and part-time positions
4849 authorized for the state agency in his charge, categorized by whether those positions are funded
4850 by appropriation, bond authorizations, federal grants, trust funds or other funding sources and the
4851 volume of work performed in the latest complete fiscal year, and justifying his request for
4852 permanent, temporary and part-time positions in the ensuing fiscal year in relation to the volume
4853 of work expected to be performed by the state agency.

4854 All such statements, recommendations and estimates shall, to the fullest possible extent,
4855 conform with the programs of the state agency as defined by the secretary of administration and
4856 finance, with the advice of the officers responsible for the administration thereof and the officer

4857 making the submission to the budget director. The estimates submitted shall not include any
4858 estimate for any new or special purpose or object not authorized by statute.

4859 Section 3A. Any officer having charge of any state agency which receives a periodic
4860 appropriation from the commonwealth, or any officer of a state authority, shall upon the request
4861 of any standing committee of the house or senate, or of any joint standing committee of the
4862 general court, furnish in writing to such committee, in a format prescribed by such committee,
4863 any information requested by such committee that is necessary for the committee to perform its
4864 duties. The information shall include, but not be limited to, historical, current or proposed
4865 operational costs funded through any appropriation, bond authorizations, federal grants, trust
4866 funds or other funding sources, the officer' estimate of the cost of proposed legislation affecting
4867 activities which are or would be under his supervision, estimates of and reasons for any
4868 supplemental funding that is projected to be needed during the fiscal year, estimates of revenue
4869 collections, estimates of proposed changes in fees or taxes, and any other such information as
4870 may be required by the committee. Such estimates shall be provided to such committee within 10
4871 days of the receipt of such a request by the officer. If the officer fails to respond within 10 days,
4872 the matter shall be referred to the house or senate committee on post audit and oversight which
4873 shall, in conjunction with the committee that originally requested the information, determine if
4874 further action is necessary.

4875 Section 3B. The Massachusetts Bay Transportation Authority and the several regional
4876 transit authorities shall annually, on or before September fifteenth, submit to the state budget
4877 director, the joint committee on transportation, the house and senate committees on ways and
4878 means, and the Massachusetts Bay Transportation Authority advisory board (1) statements
4879 showing planned expenditures for the current fiscal year and the subsequent fiscal year;

4880 provided, however, that said statements shall detail planned expenditures according to program
4881 and to the expenditure classification plan promulgated by the state comptroller pursuant to the
4882 provisions of section 27; and (2) a statement detailing the number of full time equivalent
4883 employees of the authority for the current fiscal year and an estimate of the number of full time
4884 equivalent employees for the subsequent fiscal year. The state budget director and the state
4885 comptroller are hereby authorized and directed to establish such procedures as they deem
4886 necessary to implement and enforce the provisions of this section.

4887 Section 4. Every officer having charge of any state agency who, in his annual reports or
4888 otherwise, recommends or petitions for the expenditure of money by the commonwealth from
4889 any source of revenue, including expenditures to be met by assessments or from bond revenues
4890 or trust funds, for any purpose not covered by the estimates required to be submitted under
4891 section 3, shall, annually, on or before a date set by the secretary of administration and finance,
4892 submit detailed estimates thereof to the budget director, together with any other information
4893 required by said budget director.

4894 Section 5B. The secretary of administration and finance, with the approval of the
4895 governor, shall on or before October 15 of every year, prepare estimates of budgeted revenues
4896 which in his judgment will be available for both the current year and for the annual budget for
4897 the ensuing fiscal year. In making such estimates he shall take into account existing taxes, the
4898 probable economic growth within the state, anticipated federal fund receipts, the anticipated
4899 growth in wages and salaries, departmental and other revenue based on existing laws, the
4900 transfers of capital gains income tax revenue required by section 5G and amounts available to be
4901 transferred into budgetary funds. Such estimates shall be delivered to the house and senate
4902 committees on ways and means and shall be made available to the general public in a

4903 conspicuous manner on the commonwealth's official website within 14 days of submission of
4904 such revisions to the governor.. He shall accompany any revision of previous estimates with
4905 explanations of any changes in his estimates for specific sources of revenue.

4906 In estimating revenues available for the current year, he shall include the amount certified
4907 by the comptroller under the provisions of section 5C as available from the consolidated net
4908 surplus in the operating funds at the close of the preceding fiscal year and not in excess of $\frac{1}{2}$ of 1
4909 per cent of the total state tax revenues in such fiscal year. In estimating revenues to be available
4910 for the annual budget for the ensuing fiscal year, he shall include an amount of any anticipated
4911 consolidated net surplus in operating funds not in excess of $\frac{1}{2}$ of 1 per cent of the estimated total
4912 state tax revenues for the current fiscal year.

4913 The commissioner of revenue shall annually prepare and present with the governor's
4914 proposed budget actual tax expenditures which occurred during the preceding fiscal year, and
4915 estimates of tax expenditures which in his judgment will occur during the current fiscal year and
4916 the ensuing fiscal year. Such estimates of tax expenditures shall be prepared to facilitate a
4917 comparison of increases or decreases from actual collections of the preceding fiscal year the
4918 estimates of such revenue for the then current fiscal year. Such estimates shall also compare
4919 actual tax expenditures during the preceding fiscal year to estimates previously presented for that
4920 fiscal year by the commissioner of revenue under this paragraph.

4921 On or before January 15, the secretary of administration and finance shall meet with the
4922 house and senate committees on ways and means and shall jointly develop a consensus tax
4923 revenue forecast for the budget for the ensuing fiscal year which shall be agreed to by the
4924 secretary and said committees. In developing such a consensus tax revenue forecast, the

4925 secretary and said committees, or subcommittees of said committees, are hereby authorized to
4926 hold joint hearings on the economy of the commonwealth and its impact on tax revenue
4927 forecasts; provided, however, that in the first year of the term of office of a governor who has
4928 not served in the preceding year, said parties shall agree to the consensus tax revenue forecast
4929 not later than January 31 of said year. Said consensus tax estimate shall be net of the amount
4930 necessary to transfer, from the General Fund to the Commonwealth's Pension Liability Fund, to
4931 amortize the unfunded liability of the system according to the schedule established pursuant to
4932 paragraph (1) of section 22C of chapter 32, and of the amounts transferred to the MBTA State
4933 and Local Contribution Fund under section 35T of chapter 10, and to the School Modernization
4934 and Reconstruction Trust Fund under section 35BB of chapter 10. Said consensus tax estimate
4935 shall also include an estimate of taxes collected pursuant to chapter 62 for capital gains income,
4936 as defined therein, and shall be net of any transfers of capital gains income tax revenue projected
4937 to be required by section 5G. Said consensus tax revenue forecast shall be included in a joint
4938 resolution and placed before the members of the general court for their consideration. Such joint
4939 resolution, if passed by both branches of the general court, shall establish the maximum amount
4940 of tax revenue which may be considered for the general appropriation act for the ensuing fiscal
4941 year.

4942 Section 5C. The comptroller shall annually, on or before October 31, certify to the
4943 secretary of administration and finance the amount of the consolidated net surplus in the
4944 budgetary funds at the close of the preceding fiscal year. The amounts so certified shall be
4945 disposed as follows:

4946 a) an amount equal to 1/2 of 1 per cent of total state tax revenue in the preceding fiscal
4947 year shall be available to be used as revenue for the current fiscal year and 1/2 of 1 per cent of

4948 the total state tax revenue in the preceding fiscal year shall be transferred to the Stabilization
4949 Fund.

4950 b) 1/2 of any remaining amount of such consolidated net surplus after amounts made
4951 available in clause (a) shall be transferred to the Stabilization Fund, and 1/2 of any remaining
4952 amount of such consolidated net surplus after amounts made available in clause (a) shall be
4953 transferred to the Commonwealth's State Retiree Benefits Trust Fund; and

4954 c) all transfers specified in this section shall be made from the undesignated fund
4955 balances in the budgetary funds proportionally from those undesignated fund balances, but no
4956 such transfer shall cause a deficit in any of those funds; provided, however, that prior to
4957 certifying the consolidated net surplus in accordance with this section, the comptroller shall, to
4958 the extent possible, eliminate deficits in any fund contributing to the surplus by transferring
4959 positive fund balances from any other fund contributing to the surplus.

4960 Section 5D. The comptroller shall determine, based on procedures established by the
4961 secretary of administration and finance, the amount expended during the fiscal year from each
4962 fund, other than the General Fund, for indirect costs and for the compensation of state personnel.
4963 On the basis of said determination, the comptroller shall charge each fund an amount for indirect
4964 costs and for fringe benefit costs attributable to compensation paid from the other funds, based
4965 on an indirect costs rate and on a fringe benefit rate to be set annually by said secretary. The
4966 amount so charged shall be credited to the General Fund; Upon approval of the secretary, and
4967 subject to regulations established by him, the amount of indirect costs, either in whole or in part,
4968 charged to an account may be waived. The costs of fringe benefits shall be recovered in cash.

4969 The comptroller shall make charges to recover the commonwealth' indirect costs and the
4970 cost of fringe benefits provided to or on behalf of any person paid compensation by a state
4971 agency, authority or public institution of higher education, or by any entity otherwise directly or
4972 indirectly receiving state funds, from any source other than a direct expenditure of an
4973 appropriation charged to a state fund subject to the preceding paragraph. The comptroller may
4974 establish such systems of periodic charges or billings as he considers necessary and appropriate
4975 to ensure the recovery of these costs. Any bill rendered for the purpose of recovery of these costs
4976 shall be payable to the comptroller within 30 days after receipt of the bill and all amounts so paid
4977 shall be credited to the General Fund.

4978 Section 5F. Every officer having charge of any state agency which receives a periodic or
4979 other appropriation from the commonwealth, shall annually, on or before a date set by the
4980 secretary of administration and finance submit to the budget director a department financial plan
4981 for the current fiscal year and, at such times as specified by said secretary, revisions to said
4982 department financial plan; provided, however, that said officer shall also submit said financial
4983 plans to the chairmen of the house and senate committees on ways and means.

4984 The department financial plan shall include statements, in a form prescribed by the
4985 budget director, showing in detail (1) amounts proposed to be expended from each account for
4986 each month in the current fiscal year; (2) amounts projected to be received in each revenue
4987 account, other than revenue from state taxes, federal grants or proceeds of bonds issued by the
4988 commonwealth, for each month in the current fiscal year; and, (3) such other information on the
4989 expenditures, revenues, activities, output or performance of the state agency as required by the
4990 budget director.

4991 The budget director shall provide to the treasurer and comptroller information from
4992 department financial plans for the purpose of developing estimates and projections of monthly,
4993 quarterly and annual cash flow required under section 10B of chapter 10, and for the purpose of
4994 preparing monthly reports of planned and actual expenditure and planned and actual revenue for
4995 each major state program, department, and executive or other constitutional office.

4996 Section 5G. After each quarter, the department of revenue shall certify to the state
4997 comptroller the amount of tax revenues estimated to have been collected during the preceding
4998 quarter from capital gains income. If the department of revenue certifies that the amount of tax
4999 revenues estimated to have been collected from capital gains income exceeds \$1,000,000,000 in
5000 a fiscal year, the comptroller shall transfer quarterly any such amount that exceeds
5001 \$1,000,000,000 collected during that fiscal year to the Commonwealth Stabilization Fund
5002 established by section 2H. The \$1,000,000,000 threshold established in the preceding sentence
5003 shall be adjusted annually to reflect the most recently available annual changes in personal
5004 income of Massachusetts residents, as calculated and published by the Bureau of Economic
5005 Analysis. This transfer shall be made before the certification of the consolidated net surplus for
5006 the previous fiscal year as provided in section 5C. The department of revenue shall report by
5007 November 30 to the state comptroller, the executive office for administration and finance and the
5008 house and senate committees on ways and means tax revenues estimated to have been collected
5009 during the preceding fiscal year from capital gains income. The Comptroller shall not make
5010 adjustment to amounts previously transferred if the capital gains revenue reported on November
5011 30 differs from the amounts estimated during the preceding fiscal year.

5012 5 per cent of any amount transferred to the Commonwealth Stabilization Fund under this
5013 section shall then be transferred from the Commonwealth Stabilization Fund to the State Retiree
5014 Benefits Trust Fund established in section 24 of chapter 32A.

5015 Section 6. The budget director shall study and review all estimates and requests for
5016 appropriations and other authorizations for expenditures of state funds filed with him as provided
5017 by sections three and four, and shall make such investigations as will enable him to prepare an
5018 operating budget for the governor, setting forth such recommendations as the governor shall
5019 determine. The governor may call upon the comptroller for information relative to finances and
5020 for assistance in the preparation of the operating budget. The operating budget shall embody all
5021 estimates, requests and recommendations for appropriations, distributions of state revenues and
5022 other authorizations for expenditures by the commonwealth in accordance with existing law,
5023 other than for capital facility projects and prior-year appropriations, but including those from
5024 retained revenue line-items and those from federal grants, as submitted by each officer having
5025 charge of any state agency which receives a periodic appropriation from the commonwealth. The
5026 budget recommendations of the governor shall not assume future continuing appropriation of the
5027 unspent balances of current or previous appropriations.

5028 The operating budget shall be set out in accordance with the provisions of section 6D and
5029 classified and designated so as to show separately estimates and recommendations for: (a)
5030 expenses for administration, operation and maintenance; (b) deficiencies or surpluses in
5031 appropriations for former years; (c) interest on the public debt and sinking fund and serial bond
5032 requirements; and (d) all requests and proposals for expenditures for new programs and other
5033 undertakings; and shall include in detail definite recommendations of the governor relative to the
5034 amounts which should be appropriated therefor. The operating budget shall show the estimated

5035 state revenue of each state agency. The operating budget shall indicate the number of positions
5036 proposed to be authorized for each state agency or such other public instrumentality for the
5037 ensuing fiscal year, the number of positions for each state agency in the current and ensuing
5038 fiscal years and such other information as may be held to explain the anticipated results of the
5039 proposed appropriations.

5040 Section 6B. (a) The comptroller, in consultation with the secretary of administration and
5041 finance, shall promulgate regulations which shall not be subject to chapter 30A to govern notice
5042 requirements for applications for federal grants by a state agency and the receipt and expenditure
5043 of federal funds. Such requirements shall, at a minimum, include:

5044 1) reference to the federal statutory authority under which the action is proposed;

5045 2) a description of the substance of the application;

5046 3) a fiscal statement setting forth:

5047 i) the projected grant budget per year including the number of personnel to be funded
5048 with federal funds;

5049 ii) the estimated amount of cash match, inkind match or other monies to be supplied by
5050 the state and any other source from which such match will be required, and a description of the
5051 federal allocation formula and matching requirements including whether the grant is distributed
5052 to the commonwealth on the basis of a federally specified formula or on the basis of the federal
5053 grantor' discretion and a description of the federal constraints placed on the agency' discretion to
5054 use the grant; and

5055 iii) the duration of the grant, the number of fiscal years the agency has been receiving
5056 assistance and the number of fiscal years in which assistance can be expected to continue under
5057 the program, and a statement as to the priority of the program alongside other state or federally
5058 funded programs, including whether the agency would request that all or part of the program be
5059 funded out of the General Fund in the event federal funds are reduced or discontinued.

5060 To avoid any inconsistency or duplication in review, notices given under this
5061 section shall be coordinated with other notice requirements for project or plan proposals in
5062 connection with federal aid including those required under Circular A-95 of the United States
5063 Office of Management and Budget.

5064 b) Upon official notification to a state agency from a federal department or agency of
5065 approval of a state plan or application for federal funds, the state agency shall notify the
5066 secretary of administration and finance and the comptroller promptly of the amount, duration,
5067 payment schedule and other attendant financial terms and conditions. Such notification shall be
5068 for the purposes of appropriate recording. The comptroller shall report to the house and senate
5069 committees on ways and means within 15 days after the last day of each quarter of the fiscal year
5070 detailing, by agency, the status of federal funds applied for, received, and expended.

5071 c) Pursuant to section 6 the budget director shall include all federal grants received or
5072 anticipated by state agencies as a part of the budget.

5073 d) No state agency shall establish new, or expand existing programs involving federal or
5074 other non-state monies beyond the scope of those already established, recognized, and approved
5075 by the general court, until the program and the projected or actual availability of money is
5076 submitted to the budget director for recommendation to the general court as provided in section

6. No state agency may make expenditures from any federal grant unless such expenditures are made pursuant to specific appropriations of the general court and allotment thereof, said allotment to be made by the comptroller upon receipt of federal grant funds.

Pursuant to section 2C, all such expenditures shall be charged to the General Federal Grants Fund. Notwithstanding the amount of the appropriation for a specific federal grant, the amount so expended from such federal grant shall not exceed the amount actually received and deposited in the General Federal Grants Fund for such federal grant. To the extent not precluded by the terms and conditions under which federal monies are made available by the United States government, a state agency shall use federal grants in accordance with any policies or priorities established by the general court for the activity being assisted.

e) If federal grant monies become available to the state for expenditure, as provided for in subsection (a), and the availability of such monies could not reasonably have been anticipated and included in the budget approved by the general court for the fiscal year in question, the treasurer may accept such monies on behalf of the state and the department head may make expenditures of such monies as are authorized by federal and state law. Upon application for, and receipt of, such monies, the department head shall submit to the house and senate committees on ways and means a statement:

1) describing the proposed federal expenditures in the same manner as described in the budget document; and

2) explaining why the availability of such federal grants and the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the budget enacted for that particular fiscal year.

5099 f) Each spending agency in receipt of federal grant monies shall at the commencement of
5100 each fiscal year, and no later than July thirty-first, and any agency which has not previously been
5101 in receipt of a federal grant shall, upon notification of grant approval, authorize the comptroller
5102 upon his receipt of notice of a federal grant award to initiate such procedures as are established
5103 by the secretary of administration and finance to transfer from the federal grant account to the
5104 General Fund for the costs of fringe benefits, indirect costs and space use charges related to each
5105 federal grant received by that spending agency. Upon approval by the secretary, and subject to
5106 regulations established by him, the amount of indirect costs, either in whole or in part, charged to
5107 a federal grant may be utilized to comply with federal requirements for in kind contributions.
5108 The costs of fringe benefits must, in all cases, be recovered in cash. The comptroller shall not
5109 allow expenditures for the payment of salaries to be made from any federal grant account for
5110 which he has not been authorized to charge the full amount of fringe benefits to the account.
5111 Notwithstanding any provision of general or special law to the contrary, this paragraph shall
5112 apply to all state agencies; provided, however, that any institution of higher learning shall be
5113 exempt from those charges associated with indirect costs, as described in the following
5114 paragraph.

5115 g) Any portion of a federal grant received by an institution of higher learning which,
5116 according to the conditions of said federal grant, is to be paid for or to cover any overhead
5117 expenses, indirect costs, supporting services or facilities, or for any purpose other than the direct
5118 object of the grant, may be transferred in whole or in part to separate accounts and expended
5119 without appropriation for the support of a computer or computers, of another research grant, or
5120 of publishing programs under the exclusive control of such institution, or for faculty research or
5121 research and scholarly work under the supervision of members of the faculty of such institution.

5122 h) No individual, corporation or other organization utilizing grants shall be permitted to
5123 occupy or use land, buildings, equipment or facilities of the commonwealth or use the services of
5124 any officer or employee of the commonwealth during his regular working hours unless there is a
5125 written agreement, approved by the secretary, between said individual, corporation or other
5126 organization and said officer or employee, that the commonwealth will be reimbursed for such
5127 occupancy or use; provided, however, that upon recommendation of any department, institution,
5128 board, commission, agency or employee setting forth good and sufficient reasons, this
5129 requirement may be waived in whole or in part by the secretary on a particular project or
5130 projects. All such reimbursements shall be paid into the state treasury. Notice of such waiver
5131 shall be filed with the state auditor.

5132 i) Federal grants shall not be used to supplement the regular salary or compensation of
5133 any officer or employee of the commonwealth for services performed during his regular working
5134 hours.

5135 j) The following are excluded from subsections (a), (d) and (e):

5136 1) federal grant funds coming to institutions of higher education, including
5137 research grants;

5138 2) research grants to individuals, agencies or institutions not exceeding fifty
5139 thousand dollars in annual amount and not creating new, or expanding existing, programs or
5140 commitments of state resources;

5141 3) any federal grant funds not exceeding five thousand dollars in annual amount;
5142 and

5143 4) federal grant funds made available to the state for costs and damages resulting
5144 from natural disasters, civil disobedience, or other occurrences of sufficient severity to have
5145 occasioned the declaration by the governor of a state of emergency.

5146 Section 6C. In addition to information required by section 6 to be included in the budget
5147 submitted by the governor, said budget shall also include the following information:

5148 a) a description of and the amount of expenditure by state agencies from trust funds and
5149 bond funds anticipated for the subsequent fiscal year; and

5150 b) a narrative description accompanied by appropriate fiscal statements which shall
5151 reconcile the amounts for state revenues and expenditures for the previous fiscal year as
5152 presented by the budget director in the governor' budget with the amounts of state revenues and
5153 expenditures for the previous fiscal year as presented by the comptroller in the annual financial
5154 report of the commonwealth..

5155 Section 6D. Each appropriation contained in the general appropriations or any
5156 supplemental appropriations acts shall include the following information: (a) the line-item
5157 number of the appropriation; (b) the purpose of the appropriation and other restrictive language;
5158 and (c) the amount of the appropriation or the maximum expenditure allowed, set out in numeric
5159 figures. No appropriation otherwise set out in any act shall be valid and the comptroller shall not
5160 allow monies to be expended on any appropriation not conforming to the requirements herein
5161 established.

5162 The general appropriations act shall include the following sections: (a) section 1 which
5163 shall include the enacting clause and general appropriation language; (b) section 1B which shall
5164 set forth the budgeted revenues appropriated in the budget according to category (state tax

5165 revenue, federal reimbursements, departmental revenues and budgeted transfers), by department,
5166 and identifying, by department, budgeted revenues that are restricted for the purpose of
5167 supporting retained revenue line-items; (c) section 2 which shall include all direct appropriations
5168 and authorizations to retain revenue; (d) section 2B which shall include all appropriations from
5169 the Intragovernmental Service Fund; (e) section 2D which shall include all appropriations of
5170 federal grants; and (f) section 2E, which shall set forth appropriations to support transfers to
5171 funds other than budgetary funds.

5172 Supplemental and deficiency appropriations acts shall include, if necessary, the following
5173 sections: (a) section 2 which shall include direct appropriations and authorizations to retain
5174 revenue which do not require changes to the purpose of the appropriation or other restrictive
5175 language; (b) section 2A which shall include direct appropriations and authorizations to retain
5176 revenue which require new language regarding the purpose of the appropriation or other
5177 restrictive language; (c) section 2B which shall include all appropriations from the
5178 Intragovernmental Service Fund; and (d) section 2C which shall include all authorizations to
5179 continue a prior appropriation.

5180 The provisions of this section shall apply to all appropriations of commonwealth funds,
5181 including direct appropriations, retained revenue authorizations, federal grant appropriations,
5182 accounts with prior appropriations continued and appropriations from the Intragovernmental
5183 Service Fund.

5184 Section 6E. The governor shall recommend, the general court shall enact, and the
5185 governor shall approve a general appropriation bill which shall constitute a balanced budget for

5186 the commonwealth. No supplementary appropriation bill shall be approved by the governor
5187 which would cause the state budget for any fiscal year not to be balanced.

5188 Section 7H. The governor shall submit to the general court annually within 3 weeks after
5189 the general court convenes in regular session a budget including an operating budget and a
5190 capital facility budget and long range capital facilities development plan. In the first year of the
5191 term of office of a governor who has not served in the preceding year, the governor shall
5192 recommend the budget within 8 weeks after the convening of the general court. The
5193 recommendations contained therein shall, to the fullest possible extent, conform with the
5194 programs of the several offices and departments as defined by the secretary of administration and
5195 finance with the advice of the agency heads or other officers responsible for the administration
5196 thereof and long range capital facilities development plans as defined by the commissioner of
5197 capital asset management and maintenance. The budget shall also include definite
5198 recommendations of the governor for financing the expenditures recommended.

5199 All appropriations based upon the budget to be paid from budgeted revenues shall be
5200 incorporated in a single bill to be designated the general appropriation bill, set out in conformity
5201 with section 6D. With the budget the governor shall submit to the general court statements
5202 detailing and explaining his reasons for recommending any increase in, decrease in, or deletion
5203 from the budgetary recommendations (a) of any department office, commission, or institution, or
5204 other public agency, or in the case of a department, office, commission or institution within any
5205 executive office established by chapters 6A and 7 of the secretary of such executive office, (b) of
5206 the general court, and (c) of the judiciary.

5207 The governor shall also submit such other messages, statements of supplemental data
5208 relative to the budget as he deems expedient and, from time to time during the session of the
5209 general court may submit supplemental messages on recommendations relative to appropriations,
5210 revenues and loans. Such statements of supplemental data shall include, at a minimum,
5211 statements of projected health care cost trends, caseload eligibility and enrollment trends,
5212 anticipated debt service costs and future growth in payments to fund the commonwealth's
5213 liability for pensions and the commonwealth's liability for retiree health care over the next 5
5214 fiscal years. Upon submission of the budget to the general court, the governor shall, through the
5215 executive office for administration and finance, make available to the public all material relevant
5216 to said budget, including all supporting documents pertinent thereto. This shall include at least
5217 the electronic or other distribution, at the time of submission of the Governor's budget and
5218 subsequently the House and Senate Ways and Means budgets, of (a) copies of these budgets to
5219 the state house library, and to the state office building in Springfield, (b) copies of all reports,
5220 statements, recommendations, or evaluations required by sections 3, 4, 5B, 5D, 6, 7 or any
5221 related reports required by any chapter of the general laws to the state house library. They shall
5222 be placed on public display and made available for reproduction during business hours.

5223 Any information which is required to be filed under this section or section 6, either with
5224 the budget by the governor, or as a part thereof, and which is not contained within the budget as
5225 filed or within accompanying documents filed at the same time, shall be filed by the governor
5226 not later than 14 days following the required filing date; provided, however, that such
5227 information shall be accompanied by a detailed statement explaining the failure to provide the
5228 information at the time the budget was submitted.

5229 In the event that the governor determines from information supplied by the executive
5230 office for administration and finance, from the tax revenue resolution established pursuant to
5231 section 5B, or from any other competent source that the tax revenues or non-tax revenues
5232 supporting the general appropriation bill have materially decreased, or that appropriations or
5233 statutory amendments that would provide funding to support recommended levels of
5234 appropriations have materially changed from the time the general appropriation bill was
5235 originally submitted, he shall submit to the general court by message recommended corrective
5236 amendments to his original budget submission to ensure that total appropriations recommended
5237 in the general appropriation bill do not exceed total revenues supporting said bill. Such message
5238 shall be submitted to the general court within 15 days from the date of such determination.

5239 Section 7I. All requests and recommendations for appropriations or authorizations for
5240 expenditures by the commonwealth, other than those submitted by the governor to the general
5241 court pursuant to section 2 of Article LXIII of the Amendments to the Constitution, shall be
5242 submitted by the governor to the general court; shall be classified to show the request of each
5243 officer having charge of an office, department or undertaking, including the priorities assigned to
5244 each program by said officer, the recommendation of the secretary of the executive office within
5245 which such office, department or undertaking shall be, the recommendation of the governor, and
5246 the prior year appropriation, if any; and shall indicate the number, if any, of permanent positions
5247 proposed to be authorized for an office, department or undertaking and the number of persons to
5248 be served or the number of actions to be taken by such office, department or undertaking.

5249 Section 7L. A law making an appropriation for expenses of the commonwealth shall not
5250 contain provisions on any other subject matter. As used in this section, expenses of the
5251 commonwealth shall include expenses of the executive, legislative, and judicial departments,

5252 interest, payments on the public debt, local aid, and other items of expense authorized or required
5253 by existing law.

5254 Section 7M. The Speaker of the House and the President of the Senate may transfer
5255 funds, as needed, among items of appropriation for the House of Representatives and the Senate,
5256 respectively.

5257 Section 7N. The speaker of the house of representatives and the president of the senate,
5258 acting jointly, may transfer funds, as needed, among the items of appropriation for joint
5259 legislative expenses.

5260 Section 7O. The speaker of the house of representatives and the president of the senate,
5261 acting jointly, may transfer funds, as needed, from the items of appropriation for joint legislative
5262 expenses to the items of appropriation for the house of representatives and the senate.

5263 Section 9B. Any monies made available by appropriation to state agencies under the
5264 control of the governor or a secretary, but not including the courts, the office of the governor and
5265 the office of the lieutenant governor, shall be expended only in such amounts as may be allotted
5266 as provided in this section. The secretary of administration and finance shall allot to each such
5267 state agency the amount which it may expend for each month out of the sums made available to
5268 it by appropriation or otherwise, taking into account the programmatic needs of the program
5269 supported by the appropriation and the cash-flow needs of the commonwealth. The initial
5270 allotment shall be the result of dividing the annual sum available for expenditure by twelve,
5271 unless the full legislative objective of an appropriation would be accomplished, without
5272 amendment, by a lesser allotment than that required by the formula. The secretary may allot a
5273 greater amount than required by the formula provided, however, that the total amount allotted

5274 during the fiscal year will not exceed the amount available through appropriation or otherwise.
5275 If a greater allotment is authorized under the preceding sentence, the secretary shall document on
5276 the state's accounting system the reasons why the greater allotment was authorized, and why the
5277 resulting expenditure will not exceed the amount available through appropriation or otherwise.
5278 Not less than 15 days prior to the initial allotment of such greater amount from any appropriation
5279 for which a supplemental appropriation will become necessary if current rates of spending
5280 continue, the secretary of administration and finance shall file with the house and senate
5281 committees on ways and means a report containing the following information: (1) the amount of
5282 the appropriation which the secretary proposes to allot; and (2) a detailed corrective action plan
5283 to prevent a deficiency in the account or accounts involved; a request for a supplemental or
5284 deficiency appropriation, if such corrective action plan would not eliminate the deficiency or
5285 would violate the legislative objective of the appropriation; or a statement explaining why
5286 neither a corrective action plan nor a supplemental appropriation is necessary.

5287 If so designated, the secretary of administration and finance shall designate such member
5288 or members of his office as may be approved by the governor to exercise the foregoing powers in
5289 the absence of said secretary.

5290 Whenever the officer in charge of each such state agency requests a supplemental
5291 allotment, he shall submit to the budget director, in such form and at such times as he shall
5292 prescribe, such information as may be required by the secretary of administration and finance;
5293 provided, that before any such information relating to such a state agency has been so submitted
5294 to the budget director, it shall first be submitted to the secretary having charge of such state
5295 agency who shall review the same and make such additions thereto, deletions therefrom and
5296 modifications therein as he deems appropriate.

5297 Section 9C. Whenever, in the opinion of the secretary of administration and finance,
5298 budgeted revenues as determined by him from time to time during any fiscal year under section
5299 5B will be insufficient to meet all of the expenditures authorized to be made from any budgetary
5300 fund, , he shall within 5 days notify in writing the governor and the house and senate committees
5301 on ways and means of the amount of such probable deficiency of revenue and the governor shall,
5302 within 15 days after such notification, reduce allotments under section 9B, and submit in writing
5303 a report stating the reason for and effect of such reductions, or submit to the general court
5304 specific proposals to raise additional revenues by a total amount equal to such deficiency. Any
5305 action challenging the legality of an allotment reduction pursuant to this section shall be
5306 commenced in the supreme judicial court for Suffolk county.

5307 Whenever the governor reduces allotments under the preceding paragraph, the governor
5308 shall notify the house and senate committees on ways and means in writing 15 days before any
5309 alterations to the original allotment reduction plan. Any alterations to the original allotment
5310 reduction plan that would seek to increase an allotment must provide an equal reduction in other
5311 allotments or propose to raise additional revenues to total the amount of the allotment increase.

5312 As an alternative to the submission of such proposals to raise additional revenues and to
5313 the extent funds are available, the governor may recommend an appropriation equal to such
5314 deficiency from the Commonwealth Stabilization Fund in the manner provided in section 2H.

5315 Section 9D. Whenever it appears probable to any officer having charge of any office,
5316 department or undertaking, that amounts to be received from the federal government or any other
5317 sources for the purposes of such office, department or undertaking will be less than the amounts
5318 previously estimated to be received from such sources, such officer shall immediately notify the

5319 secretary of administration and finance and the house and senate committees on ways and means
5320 of such anticipated decrease in estimated revenue, and the secretary of administration and
5321 finance shall include such decrease in revenue in the secretary's determination of budgeted
5322 revenues under section 5B and the deficiency, if any, reported under the previous section.

5323 Section 9E. Whenever it appears to any officer having charge of any office, department
5324 or undertaking that any appropriation therefor will be insufficient to meet all of the expenditures
5325 required in the current fiscal year by any provisions of law, rule, regulation or order not subject
5326 to his control, he shall immediately notify the secretary of administration and finance and the
5327 house and senate committees on ways and means of the estimated amount of such additional
5328 requirements, and such amount shall be added by the secretary to any deficiency reported under
5329 section 9C unless, prior to such report, such provisions are changed to make the estimated
5330 additional expenditures unnecessary.

5331 Section 9F. On or before the fifth day of each month, the comptroller shall notify the
5332 secretary of administration and finance and each officer having charge of an office, department
5333 or undertaking which receives a periodic appropriation, of the amount and per cent of each such
5334 appropriation which had been expended at the close of the preceding month for that month and
5335 for the year-to-date, of the amount available for each such appropriation and of the amount and
5336 per cent of each appropriation, if any, for the same purpose expended during the corresponding
5337 period in the preceding fiscal year.

5338 Section 9G. Sums made available by appropriation or otherwise to offices, departments
5339 or undertakings for studies, plans, designs, construction, acquisition, purchase or repair of capital
5340 facilities, of highway improvement facilities, such as a highway, bridge or tunnel, and of

5341 transportation improvement facilities, such as a mass transportation or other public transit
5342 facility, shall be expended only in such amount as may be allotted for expenditure from time to
5343 time by the secretary of administration and finance or said secretary's approved designee. The
5344 officer in charge of each office, department or undertaking shall submit to the secretary, in such
5345 form and at such times as he shall prescribe, such information as may be required by him for
5346 making such allotments; provided that before any such information relating to an office,
5347 department or undertaking within any of the executive offices established by chapter 6A of the
5348 General Laws has been so submitted, it shall first be submitted to the secretary having charge of
5349 such executive office, who shall review the same and make such additions thereto, deletions
5350 therefrom and modifications therein as he deems appropriate.

5351 The secretary of administration and finance is hereby authorized and directed to issue
5352 directives governing expenditure from bond authorizations; such directives shall include, but not
5353 be limited to, the following: (1) such measures as determined by said secretary to be necessary to
5354 regulate the rate of expenditure from any or all bond authorizations, and (2) such measures as
5355 determined by said secretary to be necessary to ensure compliance with such directives,
5356 including requiring prior written approval of said secretary before the award of contract or
5357 grants.

5358 Section 12. Appropriations by the general court shall be made for the fiscal year unless
5359 otherwise specifically provided therein.

5360 Section 12A. Beginning June first of any year, obligations may be incurred against
5361 appropriations for items to be delivered or for services to be rendered on or after the beginning of

5362 the next fiscal year; provided, however, that said obligations are in accordance with law and the
5363 amounts thereof do not exceed one-twelfth of that appropriation for the current fiscal year.

5364 Where the allotment of an appropriation is a condition precedent to expenditure, the
5365 obligations shall not exceed the amount allotted for said appropriation; provided, however, that
5366 during the month of June the comptroller may prepare warrants and the state treasurer may
5367 advance funds to the department of transitional assistance for the purpose of making payments
5368 on and after July first as authorized by chapter 658 of the acts of 1967; and provided further that
5369 said payments are in accordance with law and the amounts thereof do not exceed the amount of
5370 the appropriation, provided, however, that no funds shall be expended until such funds have been
5371 appropriated. The certified copies of the schedules provided for in section 27 shall be filed with
5372 the comptroller and the budget director as of June 1. Where the allotment of an appropriation is
5373 required by law, such allotment shall be made as of June 1.

5374 Notwithstanding any general or special law to the contrary, in order to comply with the
5375 Social Security Act, the state treasurer may transfer to the United States Treasury before July
5376 funds necessary to make July 1 Supplemental Security Income payments to commonwealth
5377 benefit recipients.

5378 Section 12B. Notwithstanding the provisions of any general or special law to the
5379 contrary, and in accordance with generally accepted accounting principles, the fiscal year for the
5380 payment of classified personal services shall be the fiscal year established by clause ninth of
5381 section 7 of chapter 4.

5382 Section 13. Encumbrances outstanding on the records of the comptroller' office at the
5383 close of the fiscal year may be applied to the payment thereof in the two months immediately
5384 succeeding such fiscal year.

5385 Section 15. An appropriation shall supersede an earlier one made for the same object.

5386 Section 16. Payments authorized by appropriation acts shall be made from budgeted
5387 revenue, if no other provision is expressly made therefor.

5388 Section 17. An appropriation act shall not be construed to require a payment to a person
5389 with whom the commonwealth has an unadjusted account. The governor, upon receiving
5390 satisfactory information that money is illegally withheld from the commonwealth by any person,
5391 shall instruct the state treasurer to withhold all payments to him until he pays such account.

5392 Section 18. Except as otherwise provided, no money shall be paid by the commonwealth
5393 without a warrant from the governor drawn in accordance with an appropriation then in effect,
5394 and after the demand or account to be paid has been certified by the comptroller; provided, that
5395 the principal and interest on all public debts shall be paid when due without any warrant and that
5396 no appropriation shall be required for the payment of principal or income of funds held in trust
5397 by the commonwealth, or of sinking funds to meet maturing bonds, or of treasury notes issued
5398 for duly authorized temporary loans, or of corporation and other taxes collected by the
5399 commonwealth for distribution to towns, or for the investment of such funds as the state treasurer
5400 is duly authorized to invest, or for payments authorized by law out of the several prison
5401 industries funds, or for refunds of taxes or penalties or for refunds or payments of interest or
5402 costs lawfully made pursuant to the provisions of chapters 58 to 65A, inclusive; and, provided,
5403 further, that the governor may, without an appropriation, draw his warrant for the payment of his

5404 own salary and the salaries of the justices of the supreme judicial court. No certificate shall be
5405 required from the comptroller for payment of the pay rolls of the members of the council and
5406 general court, or for the traveling and other expenses of members of the general court as
5407 provided in section 9B of chapter 3.

5408 Section 19A. Whenever a provision of a general appropriation act provides that transfers
5409 shall be made from a fund, account or receipts, of a specific sum, a percentage of payments, or a
5410 sum equivalent to payments, such transfers of a specific sum shall be made upon the effective
5411 date of such act, and all other such transfers shall be made monthly unless otherwise provided,
5412 except that at the close of a fiscal year, the amount equivalent to payments in a continuing
5413 account shall be construed to mean the amount of such appropriation.

5414 Section 20. No account or demand requiring the certificate of the comptroller or warrant
5415 of the governor shall be paid from an appropriation unless it has been authorized and approved
5416 by the head of the department, office, commission or institution for which it was contracted; nor
5417 shall any appropriation be used for expenses unless properly approved vouchers therefor have
5418 been filed with the comptroller. No such voucher shall be submitted by such head nor shall any
5419 such approval be given by such head unless sufficient funds are allotted for such purposes at the
5420 time the voucher is submitted or the approval is given.

5421 Section 20A. No order for, or claim for payment for, extra work or materials, furnishings
5422 or equipment, in addition to an existing contract for the construction or repair of any structure or
5423 of public works of any nature whatsoever or for equipment or furnishings, shall be approved by
5424 any official, board, department or commission on behalf of the commonwealth until one week
5425 after notice of intention to act upon such order or claim shall have been filed by him or it with

5426 the comptroller; provided, that, in the case of any such order estimated to involve a cost of less
5427 than fifteen thousand dollars and in the case of any such order necessitated by extreme
5428 emergency involving the health or safety of persons or damage to property or to work in
5429 progress, notice of the approval of such order may be filed after the work has been commenced
5430 or completed, but such notice shall be so filed as soon as practicable, with a brief statement as to
5431 the character of the extreme emergency, if any, and in any event such notice shall be filed before
5432 final payment is made on the contract to which the order or claim for extra work or payment
5433 relates. The foregoing requirements shall not apply to change in quantities of work or materials
5434 covered at unit prices by an item or items in any such original contract, nor to work, other than
5435 extra work, for which payment is specifically provided in the contract or specifications. Every
5436 notice under this section shall contain the number or other designation of such contract, together
5437 with the title and date thereof, and a statement of the amount of the accepted bid and of the
5438 estimated total cost based on the bid prices of such contract, and of the total amount of orders or
5439 claims previously approved for payment, and of the character and location of work proposed or
5440 included under each such order or claim, and of the estimated cost or amount under each such
5441 order or claim. Said notices shall be entered by the comptroller upon a docket and shall be open
5442 to public inspection.

5443 No such order or claim shall be split or divided for the purpose of evading any provision
5444 of this section.

5445 Section 20C. Any commercial vendor to whom any state agency of the commonwealth is
5446 liable for late penalty interest under the provisions of section twenty-nine B shall, prior to
5447 payment of said interest, submit to said state agency an invoice for said interest in accordance
5448 with applicable rules and regulations of the comptroller.

5449 Section 22. Except as otherwise expressly provided, no greater sum from an
5450 appropriation shall be drawn from the treasury at any one time than is necessary to meet
5451 expenses then incurred.

5452 Section 23. Any officer authorized to expend money in behalf of the commonwealth may
5453 have money advanced to him from the treasury for such purposes, in such sums and subject to
5454 such rules and regulations as the comptroller may determine.

5455 The state treasurer shall manage all cash, funds, or investments under the control or
5456 jurisdiction of any state agency, other than nonappropriated funds held by a public institution of
5457 higher education. "State agency" in this section shall mean any department, office, commission,
5458 committee, council, board, division, bureau, institution, office or other agency within the
5459 executive or legislative department, excluding, however, the Massachusetts Bay Transportation
5460 Authority, , and the Massachusetts Port Authority. Funds shall be deemed to be under the
5461 control of a state agency from the date of the initial deposit into any commonwealth account until
5462 the date a check or draft drawn on a commonwealth account clears the disbursing bank.

5463 The state treasurer shall provide for the funding of checks or drafts drawn by any state
5464 officer, department, institution or other agency which has received proper authority to expend
5465 money on behalf of the commonwealth.

5466 Section 23A. Subject to provisions of sections 24 and 25, the comptroller shall provide
5467 for payments by officers receiving advances pursuant to this chapter and to section twenty of
5468 chapter 18B, to eligible organizations under contract with the commonwealth to provide social,
5469 educational or rehabilitative services. Said payments shall be made in accordance with a
5470 schedule to be included in each such contract, on the basis of projected expenses or services and

5471 shall be adjusted monthly and at the end of each contract, pursuant to the submission of a
5472 voucher or other claim for payment, to reflect the actual cost or extent of services rendered.

5473 The comptroller shall establish rules and regulations governing the eligibility of providers
5474 to receive such payments including but not limited to, proper incorporation and recording with
5475 the secretary of state, and compliance with all applicable state and federal laws. Each such
5476 eligible provider shall, at the end of each billing period, submit timely, complete and accurate
5477 documentation prepared in accordance with the terms of its contract and with requirements of the
5478 comptroller. Any violation of the provisions of this paragraph shall result in ineligibility for such
5479 payments for a period of 2 years from the date of disqualification. Prior to reinstatement of
5480 eligibility, a provider must submit proof of ability to comply with the requirements of this
5481 section and with any regulations promulgated pursuant to this section. The comptroller shall
5482 promulgate rules and regulations necessary to carry out the provisions of this section.

5483 Section 24. Such officers shall certify that the amount is needed for immediate use, and,
5484 as specifically as may be, the purposes for which the expenditure is required. The certificate shall
5485 bear the approval of the officer or department having the supervision of such expenditure and,
5486 when filed with the comptroller, his certificate and the warrant and payment shall follow as in
5487 case of claims against the commonwealth.

5488 Section 25. Such officers shall, within 30 days after receipt of an advance, file with the
5489 comptroller a detailed statement of the amounts expended subsequent to the previous accounting,
5490 approved by the officer or department authorized to supervise such expenditure, with vouchers
5491 therefor if they can be obtained. All advances so made shall be accounted for and vouchers
5492 therefor filed with the comptroller before the close of the fiscal year.

5493 Section 26. Expenses of offices and departments for compensation of officers, members
5494 and employees and for other purposes shall not exceed the appropriations made therefor by the
5495 general court or the allotments made therefor by the governor. No obligation incurred by any
5496 officer or servant of the commonwealth for any purpose in excess of the appropriation or
5497 allotment for such purpose for the office, department or institution which he represents, shall
5498 impose any liability upon the commonwealth nor shall any liability be imposed upon the
5499 commonwealth under a subsequent appropriation by any ongoing commitment against a current
5500 year appropriation.

5501 Section 27. Notwithstanding any general law to the contrary, no department, office,
5502 commission and institution shall incur an expense, increase a salary, or employ a new clerk,
5503 assistant or other subordinate, unless an appropriation by the general court and an allotment by
5504 the secretary of administration and finance, sufficient to cover the expense thereof, shall have
5505 been made. As soon as possible after the general appropriation bill or any other appropriation bill
5506 has the force of law conformably to the constitution, the budget director shall file with the house
5507 and senate committees on ways and means and the comptroller a schedule identifying the amount
5508 of each subsidiary account, if any, within every appropriation that shall be made available to
5509 departments, offices, commission or institutions within the state's central accounting system.

5510 Section 27B. No state agency, excepting the departments of the attorney general, state
5511 auditor, state secretary, and state treasurer, shall initiate any encumbrance or make any
5512 expenditure of funds, whether appropriated or not, for the lease or purchase of data processing or
5513 reproduction equipment or systems unless:

5514 (1) if appropriated funds are to be used, a prior request therefor has been made to the
5515 budget director under sections 3 or 4, and at least 30 days written notification has been given to
5516 the house and senate committees on ways and means;

5517 (2) the officer in charge of the agency has certified that funds are specifically available
5518 for the purpose;

5519 (3) in the case of a department, office, commission, board or institution within any of the
5520 executive offices established by chapters 6A and 7, the secretary having charge of such executive
5521 office has approved in writing the encumbrance or expenditure, and

5522 (4) the secretary of administration and finance has approved in writing said encumbrance
5523 or expenditure.

5524 The secretary of administration and finance shall establish rules and regulations
5525 governing the lease or purchase of data processing or reproduction equipment or systems and the
5526 procedure for requesting approval thereof as required by this section.

5527 The secretary of administration and finance shall notify the house and senate committees
5528 on ways and means and the house and senate committees on post audit and oversight of the
5529 general court of any approval granted by him under this section.

5530 Section 27C. Notwithstanding any provision of any special or general law to the contrary:

5531 (a) Any law taking effect on or after January 1, 1981 imposing any direct service or cost
5532 obligation upon any city or town shall be effective in any city or town only if such law is
5533 accepted by vote or by the appropriation of money for such purposes, in the case of a city by the
5534 city council in accordance with its charter, and in the case of a town by a town meeting, unless

5535 the general court, at the same session in which such law is enacted, provides, by general law and
5536 by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental
5537 local administration expenses and unless the general court provides by appropriation in each
5538 successive year for such assumption.

5539 (b) Any law taking effect on or after January 1, 1981 granting or increasing exemptions
5540 from local taxation shall be effective in any city or town only if the general court, at the same
5541 session in which such law is enacted, provides by general law and by appropriation for payment
5542 by the commonwealth to each city and town of any loss of taxes resulting from such exemption.

5543 (c) Any administrative rule or regulation taking effect on or after January 1, 1981 which
5544 shall result in the imposition of additional costs upon any city or town shall not be effective until
5545 the general court has provided by general law and by appropriation for the assumption by the
5546 commonwealth of such cost, exclusive of incidental local administration expenses, and unless the
5547 general court provides by appropriation in each successive year for such assumption.

5548 (d) Any city or town, any committee of the general court, and either house of the general
5549 court by a majority vote of its members, may submit written notice to the division of local
5550 mandates, established under section 6 of chapter 11 of the general laws, requesting that the
5551 division determine whether the costs imposed by the commonwealth by any law, rule or
5552 regulation subject to the provisions of this section have been paid in full by the commonwealth in
5553 the preceding year and, if not, the amount of any deficiency in such payments. The division shall
5554 make public its determination within 60 days after such notice.

5555 (e) Any city or town, or any 10 taxable inhabitants of any city or town may in a class
5556 action suit petition the superior court alleging that under the provisions of subsections (a), (b)

5557 and (c) of this section with respect to a general or special law or rule or regulation of any
5558 administrative agency of the commonwealth under which any city or town is required to expend
5559 funds in anticipation of reimbursement by the commonwealth, the amount necessary for such
5560 reimbursement has not been included in the general or any special appropriation bill for any year.
5561 Any city or town, or any ten taxable inhabitants of any city or town may in a class action suit
5562 petition the superior court alleging that under the provisions of subsections (a), (b) and (c) of this
5563 section with respect to any general or special law, or rule or regulation of any administrative
5564 agency of the Commonwealth which imposes additional costs on any city or town or which
5565 grants or increases exemptions from local taxation, the amount necessary to reimburse such city
5566 or town has not been included in the general or any special appropriation bill for any year. The
5567 determination of the amount of deficiency provided by the division of local mandates under
5568 subsection (d) of this section shall be prima facie evidence of the amount necessary. The superior
5569 court shall determine the amount of the deficiency, if any, and shall order that the said city or
5570 town be exempt from such general or special law, or rule or regulation of any administrative
5571 agency until the commonwealth shall reimburse such city or town the amount of said deficiency
5572 or additional costs or shall repeal such exemption from local taxation.

5573 (f) Any of the parties permitted to submit written notice to the division of local mandates
5574 under subsection (d) of this section may submit written notice to the division requesting that the
5575 division determine the total annual financial effect for a period of not less than 3 years of any
5576 proposed law or rule or regulation of any administrative agency of the commonwealth. The
5577 division shall make public its determination within 60 days of such notice.

(g) Notwithstanding the provisions of subsection (a), (b) and (c), any city or town shall be allowed to accept the provision of any law, rule or regulation specified by said subsections whether or not such law, rule, or regulation is funded by the commonwealth.

(h) This section shall apply to regional school districts and educational collaboratives organized pursuant to section 4E of chapter 40, to the same extent as it applies to cities and towns. A regional school district may accept a law, rule or regulation by vote of its school committee, and an educational collaborative by vote of its board of directors.

(i) This section shall not apply to any costs to cities and towns or exemptions to local taxation resulting from a decision of any court of competent jurisdiction, or to any law, rule or regulation enacted or promulgated as a direct result of such a decision.

Section 28. The cost of printing and publishing any publication issued by or on behalf of the commonwealth by any office or department shall be paid from the appropriation for such office or department.

Section 29. Any subsidiary account set up as prescribed in a schedule referred to in section 27, on the books of any department, office, commission or institution, receiving an appropriation from the commonwealth, may be increased or decreased by the interchange with any other such subsidiary account within the same appropriation account by the officer in charge of such department, office, commission or institution upon his certification to the budget director that such interchange is required to incur obligations to meet statutory responsibilities under general or special law where funds are otherwise not available, unless otherwise provided by general or special act. For any certification requesting a transfer to a subsidiary account that has not been established within a schedule prescribed under said section 27, the officer must include

5600 the reasons for the new subsidiary account. Every such certification shall include a statement of
5601 the details of the necessity of the transfer and of the probable consequences if the said
5602 interchange should not be made. An officer making any such certification shall file forthwith a
5603 copy thereof within the central accounting system in accordance with policies and procedures
5604 adopted by the secretary of administration and finance.

5605 The secretary of administration and finance may establish regulations or policies
5606 governing the interchange of funds under this section.

5607 Section 29A. The secretary of administration and finance shall make, and may from time
5608 to time amend, rules and regulations governing the use of consultants in all departments, offices,
5609 boards, agencies, commissions and institutions. Such rules and regulations shall be open to
5610 public inspection shall not be subject to the provisions of chapter 30A. No person employed by
5611 the commonwealth as a consultant shall directly or indirectly supervise another temporary or
5612 permanent employee of the commonwealth. Consultant contracts, whether written with
5613 organizations or individuals, shall not be used as substitutes for state positions. The secretary
5614 shall submit quarterly to the house and senate committees on ways and means and the house and
5615 senate committees on post audit and oversight a report which identifies all existing consultant
5616 contracts by agency, for all accounts established or maintained by the comptroller, including but
5617 not limited to appropriations, for federal grants, bond authorizations, revolving accounts,
5618 retained revenue line-items, and trust accounts. Said report shall identify each contract, its
5619 duration, its maximum dollar obligation, the name of the contractor, and the services performed
5620 by the contractor.

5621 Section 29B. The secretary of administration and finance shall make, and may from time
5622 to time amend, rules and regulations governing the procurement and administration of contracts
5623 with organizations providing social, rehabilitative, health, or special education services. Such
5624 rules and regulations shall not be subject to the provisions of chapter 30A. No person employed
5625 by an organization providing social, rehabilitative, health, or special education services as
5626 defined above shall directly or indirectly supervise a temporary or permanent employee of the
5627 commonwealth. Such contracts shall not be written or used by any department, office, agency,
5628 board, commission or institution of the commonwealth to procure full or part-time personal
5629 services, or equipment to be used by such department, office, agency, board, commission or
5630 institution, or any goods or services not required in the direct provision by the contractor of
5631 social, rehabilitative, health, or special education services to populations being served by the
5632 contracting department, office, agency, board, commission, or institution.

5633 Section 29C. Except as otherwise provided for by law, the general court or any agency of
5634 the executive or judicial branches of the government which acquires property or services from a
5635 commercial vendor, including both profit and not for profit corporations, excluding state
5636 employees, recipients of public assistance, cities and towns and other municipal forms of
5637 government, but which does not make full payment by the required payment date for each such
5638 complete and appropriate item of property or service delivered in accordance with an applicable
5639 purchase order contract, shall be liable for late penalty interest to said commercial vendor on the
5640 amount which is due in accordance with the following provisions:

5641 (a) that the required payment date shall be the date on which payment is due under the
5642 terms of the contract for the provision of said property or services; or, if a specific date on which
5643 payment is due is not established by contract, not more than 45 days after receipt of a properly

5644 authorized, approved and submitted invoice for the amount of payment due, unless the usual and
5645 customary time for payment is longer;

5646 (b) that the late penalty interest provided for under this section shall be computed at a rate
5647 to be set semi-annually by the secretary of administration and finance on January first and July
5648 first of each year; provided, however, that said rate shall be equal to the discount rate charged on
5649 said dates by the Federal Reserve Bank of Boston;

5650 (c) that the provisions of this section shall apply to any late penalty interest which may be
5651 due in accordance with the provisions of this section;

5652 (d) that the provisions of this section shall not apply to the delivery of any property or
5653 services made at the beginning of any fiscal year unless a general appropriation act is in effect
5654 for said fiscal year. Upon the passage of a general appropriation act, a required payment date
5655 may be set or the 45 day period as provided in clause (a) may be commenced;

5656 (e) that, within 15 days after the date on which any invoice is received, state agencies
5657 notify any such commercial vendors of any defect or impropriety in such invoice which would
5658 prevent the running of the time period.

5659 Any state agency required to pay interest under the provisions of this section shall pay
5660 any amount required out of funds appropriated for the administration or operation of the program
5661 for which the interest was incurred.

5662 The secretary of administration and finance shall, not more than 60 days after the
5663 conclusion of each fiscal year, file with the house and senate committees on ways and means a
5664 summary report on any interest penalties made under this section during the preceding fiscal

5665 year. Such report shall include the number, amounts, frequency of interest penalty payments, and
5666 reasons such interest payments were made, summarized by state agency and secretariat, where
5667 applicable.

5668 A copy of rules and regulations promulgated pursuant to this section, or any amendment
5669 or repeal of any such rules and regulations, shall be filed with the house and senate committees
5670 on ways and means at least 30 days prior to implementation.

5671 Section 29D. Notwithstanding any provision of law to the contrary, the officer having
5672 charge of any state agency is hereby authorized to retain the services of one or more private
5673 persons, companies, associations or corporations for the purpose of collection of debts owed to
5674 the commonwealth, other than those covered by section 3A of chapter 14, pursuant to
5675 agreements between the comptroller and said private persons, companies, associations or
5676 corporations. No state agency shall assign the account of any debtor to a private collection
5677 agency until such debtor has been sent a notice, at least 30 days prior thereto, of the intention of
5678 the agency to so assign the collection of such unpaid account of such debtor.

5679 The comptroller shall from time to time enter into agreements with one or more private
5680 persons, companies, associations or corporations for the provision of debt collection services on
5681 behalf of state agencies. No such agreement shall be entered into unless proposals for the same
5682 have been invited by public notice published in at least 1 newspaper once a week for at least 2
5683 consecutive weeks and the last publication to be at least one week prior to the time specified for
5684 the opening of said proposals. All such proposals shall be opened in public. The comptroller may
5685 reject any or all of such proposals. Any such agreement shall provide, in the discretion of the
5686 comptroller, the manner in which the compensation for such services will be paid. Under

5687 standards established by the comptroller, such compensation may be added to the amount of the
5688 debt and collected as part thereof by the contractor; deducted and retained by the contractor from
5689 the amount of debt collected; or paid by the commonwealth from the amount of debt collected
5690 without further appropriation therefor.

5691 The comptroller shall, as part of his annual report under section 12 of chapter 7A, list all
5692 private persons, companies, associations or corporations with whom the comptroller has
5693 agreements for collection services during the fiscal year and the amount of debts collected by
5694 and the compensation paid to each such person, company, association or corporation.

5695 Section 29E. Notwithstanding any general or special law to the contrary, the comptroller
5696 may enter into contracts or interdepartmental service agreements for the purpose of identifying
5697 and pursuing increased revenue collection, cost avoidance, the maximum reimbursement
5698 opportunities for certain federally assisted and other programs of the commonwealth and any
5699 other reimbursements of overpayments or other revenues. The contractor payments, or oversight
5700 costs or fees related to this section shall be paid from the revenues or reimbursements collected,
5701 or as otherwise considered appropriate by the comptroller, without further appropriation, and the
5702 comptroller shall establish accounts and procedures within the affected departments as he
5703 considers appropriate and necessary to accomplish the revenue generation purposes of this
5704 section. The comptroller shall notify, in writing, the house and senate committees on ways and
5705 means 60 days before entering into any contract authorized pursuant to this section. The
5706 comptroller shall report on said projects as a part of his annual report under section 12 of chapter
5707 7A.

5708 Section 29F. (a) As used in this section the following words shall, unless the context
5709 requires otherwise, have the following meanings:--

5710 “Affiliates”, entities which are affiliates of each other when either directly or indirectly
5711 one concern or individual controls or has the power to control another, or when a third party
5712 controls or has the power to control both.

5713 “Commissioner”, the commissioner of the division of capital asset management and
5714 maintenance or his designee within such division.

5715 “Contractor”, any person that has furnished or seeks to furnish supplies or services under
5716 a contract with a public agency or with a person under a contract with a public agency.

5717 “Debarment”, an exclusion from public contracting or subcontracting for a reasonable,
5718 specified period of time commensurate with the seriousness of the offense.

5719 “Person”, any natural person, business, partnership, corporation, union, committee, club
5720 or other organization, entity or group of individuals.

5721 “Public agency”, a department, agency, board, commission, authority, activity or
5722 instrumentality of the commonwealth, or of any political subdivision of the commonwealth, or of
5723 two or more subdivisions thereof.

5724 “Public contract”, a contract for the furnishing of supplies or services to any public
5725 agency.

5726 “Secretary”, the head of an executive office established under chapter 6A or a designee
5727 thereof within such executive office, or the secretary of administration and finance appointed
5728 pursuant to section 4 of chapter 7 or a designee within the executive office.

5729 “Suspension”, the temporary disqualification of a contractor who is suspected upon
5730 adequate evidence of engaging or having engaged in conduct which constitutes grounds for
5731 debarment.

5732 (b) The secretary of administration and finance shall establish and maintain a
5733 consolidated list of contractors to whom public contracts shall not be awarded and from whom
5734 offers, bids, or proposals shall not be solicited.

5735 The list shall show at a minimum the following information: (1) the names of those
5736 persons debarred or suspended in alphabetical order with appropriate cross reference where more
5737 than one name is involved in a single debarment or suspension; (2) the basis of authority for
5738 each debarment or suspension, including the secretary or other official who imposed the
5739 debarment or suspension; (3) the extent of restrictions imposed; (4) the termination date of each
5740 debarment or suspension; and (5) in the case of a suspension, the hearing date, if and when set,
5741 for debarment proceedings.

5742 The secretary of administration and finance shall cause the list to be kept current by the
5743 issuance of notices of additions and deletions. The list shall be published on a periodic basis,
5744 together with notices of additions and deletions therefrom, in the goods and services bulletin and
5745 the central register published by the state secretary and in such other publications as the secretary
5746 of administration and finance shall designate. The secretary of administration and finance shall
5747 also forward said list to the inspector general, the attorney general, and the state auditor. A
5748 secretary or the commissioner, as the case may be, upon imposing a debarment or suspension or
5749 removing a suspension shall forthwith notify the secretary of administration of all information
5750 required for inclusion on such list.

(c) Debarment may be imposed for the following causes but debarment shall be imposed in all causes where debarment is required by law:

(1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses: (i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; (ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the contractor's present responsibility as a public contractor; (iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals; (iv) a violation of state or federal laws regulating campaign contributions; (v) a violation of chapter 268A; (vi) a violation of any state or federal law regulating hours of labor, prevailing wages, minimum wages, overtime pay, equal pay, child labor, or worker's compensation; (vii) a violation of any state or federal law prohibiting discrimination in employment; or (viii) repeated or aggravated violation of any state or federal law regulating labor relations or occupational health or safety; or (ix) repeated or aggravated violation of any state or federal law protecting the environment; or (x) a violation of federal law prohibiting the employment of unauthorized aliens; or

(2) substantial evidence, as determined by a secretary or the commissioner, of any of the following acts: (i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or regulation; (iii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more public contracts, provided that such failure to perform or unsatisfactory performance has

5774 occurred within a reasonable period of time preceding the determination to debar and provided
5775 further that such failure to perform or unsatisfactory performance was not caused by factors
5776 beyond the contractor's control; (iv) a record of health and safety or environmental violations of
5777 a sufficient frequency and severity so as to evidence a pattern of noncompliance with existing
5778 state and federal laws, or any rules and regulations applicable thereto; (v) any other cause
5779 affecting the responsibility of a contractor which the secretary or the commissioner determines to
5780 be of such serious and compelling nature as to warrant debarment. Notwithstanding any other
5781 provision of this section, any contractor debarred or suspended by any agency of the United
5782 States shall by reason of such debarment or suspension be simultaneously debarred or suspended
5783 under this section, with respect to non-federally aided contracts; the secretary or the
5784 commissioner may determine in writing that special circumstances exist which justify
5785 contracting with the affected contractor. The secretary or the commissioner shall give written
5786 notice to the secretary of administration and finance of any such determination.

5787 (d) No contractor may be suspended unless a secretary or the commissioner has first
5788 informed the contractor by written notice of the proposed suspension mailed by registered or
5789 certified mail to the contractor's last known address, except when the secretary or the
5790 commissioner determines that immediate suspension is necessary to prevent serious harm to the
5791 commonwealth, in which case the suspension shall take effect immediately upon signing by the
5792 secretary or the commissioner of an order of suspension, and notice shall be mailed to the
5793 contractor at the earliest opportunity. The notice shall inform the contractor of the reasons for
5794 the proposed suspension and shall state that the contractor may within 14 days respond in writing
5795 and may in such response request a hearing. The secretary or the commissioner may extend the
5796 period for response at the request of the contractor. The secretary or the commissioner shall

5797 determine whether to impose the suspension or, in the case of an emergency suspension imposed
5798 prior to notice to the contractor, whether to continue the suspension after reviewing the
5799 contractor's response, if any, and making such investigation as the secretary or the commissioner
5800 determines is necessary and appropriate. An indictment, or any information or other filing by a
5801 public agency charging a criminal offense, for any of the offenses listed in paragraph (1) of
5802 subsection (c) shall constitute adequate evidence to support a suspension.

5803 If the contractor requests a hearing, and the suspension is not based on an indictment, the
5804 secretary or the commissioner shall conduct a hearing according to the rules for the conduct of
5805 adjudicatory hearings established by the secretary of administration and finance pursuant to
5806 chapter 30A. Such hearing shall be initiated within thirty days of the imposition of the
5807 suspension, unless the contractor requests that the hearing be delayed. Officers and employees
5808 of the office of the inspector general and records of said office shall not be subject to subpoena
5809 for such hearing, if in the opinion of the inspector general production of records or testimony
5810 would prejudice any pending investigation by said office.

5811 A suspension shall not exceed 12 months unless a pending administrative or judicial
5812 proceeding in which the contractor is a party may result in a conviction or final adjudication of
5813 an offense listed in paragraph (1) of subsection (c).

5814 (e) No contractor may be debarred under this section unless a secretary or the
5815 commissioner proposing the debarment has first informed the contractor by written notice of the
5816 proposed debarment mailed by registered or certified mail to the contractor's last known address.
5817 The notice shall inform the contractor of the reasons for the debarment and shall state that the
5818 contractor will be afforded an opportunity for a hearing if the contractor so requests within

5819 fourteen days of receipt of the notice. A hearing requested under this subsection shall be
5820 conducted by the secretary or the commissioner within 60 days of receipt of the request, unless
5821 the secretary or the commissioner grants additional time therefor at the request of the contractor.
5822 The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings
5823 established by the secretary of administration and finance pursuant to chapter 30A. A debarment
5824 shall not be imposed until (i) 14 days after receipt by the contractor of notice of the proposed
5825 debarment if no hearing is requested, or (ii) the issuance of a written decision by the secretary or
5826 the commissioner which makes specific findings that there is sufficient evidence to support the
5827 debarment and that debarment for the period specified in the decision is required to protect the
5828 integrity of the public contracting process. A contractor shall be notified forthwith of the
5829 decision by registered or certified mail, and of the contractor's right to judicial review in the
5830 event that the decision is adverse to the contractor. If a suspension precedes a debarment, the
5831 suspension period shall be considered in determining the debarment period.

5832 (f) A debarment or suspension may include all known affiliates of a contractor. The
5833 decision to include a known affiliate within the scope of a debarment or suspension shall be
5834 made on a case-by-case basis, after giving due regard to all relevant facts and circumstances.
5835 The offense or act of an individual justifying suspension, or the evidence justifying a suspension,
5836 may be imputed to the entity with which the individual is connected when such offense or act
5837 occurred in connection with the individual's performance of duties for or on behalf of the entity
5838 or with the knowledge, approval, or acquiescence of the entity or one or more of its principals.
5839 The entity's acceptance of the benefits derived from the conduct shall be evidence of such
5840 knowledge, approval, or acquiescence. The offense or act of an entity justifying debarment, or
5841 the evidence justifying a suspension, may be imputed to any officer, director, shareholder,

partner, employee or other individual associated with the entity who participated in, knew of, or had reason to know of the entity's act. An entity or individual shall not be suspended or debarred except in accordance with the procedures set forth in this section, provided that a public agency may reject a bid or proposal from any contractor when the public agency reasonably determines that such contractor is not responsible or eligible.

(g) In determining whether to debar a contractor, or the period of a debarment, all mitigating facts and circumstances shall be taken into consideration. Except as precluded by law, a debarment may be removed or the period thereof may be reduced by the secretary or the commissioner who imposed the debarment or suspension upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management, or the elimination of the cause for which the debarment was imposed.

(h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids, or proposals to any public agency, nor shall any public agency solicit or consider offers, bids, or proposals from, nor execute, renew, or extend any contract with, a debarred or suspended contractor, and a contractor shall not contract for supplies or services from a debarred or suspended subcontractor on any public contract.

(i) The secretary of administration and finance shall by regulation drawn up in consultation with each secretary and the commissioner provide for, upon the request of any secretary or the commissioner the timely commencement by, the removal to, or consolidation at the executive office of administration and finance of debarment or suspension proceedings. Such

5864 regulations also shall provide that the contractor against whom debarment or suspension
5865 proceedings have been initiated may apply to the secretary of administration for consolidation of
5866 such proceedings at the executive office for administration and finance. Such proceedings shall
5867 be conducted by the secretary of administration and finance or his designee in accordance with
5868 the provision of this section.

5869 Section 29G. Notwithstanding the provisions of any general or special law to the
5870 contrary, the officer having charge of a state agency is hereby authorized to retain the services of
5871 private persons, companies, associations or corporations for the purpose of recoupment of
5872 overcharges to the commonwealth for utility expenses including, but not limited to, electric, gas,
5873 water and sewer expenses, pursuant to agreements between the operational services division
5874 within the executive office for administration and finance and any such private persons,
5875 companies, associations or corporations. The state purchasing agent of the operational services
5876 division shall, from time to time, enter into agreements with private persons, companies,
5877 associations or corporations for the provision of overcharge recoupment services on behalf of
5878 state agencies. No such agreement shall be entered into unless proposals for the same have been
5879 invited by public notice published in such manner as the state purchasing agent shall direct to
5880 ensure the widest possible cost-effective dissemination of the notice, for at least 2 consecutive
5881 weeks prior to the time specified for the opening of said proposals. All such proposals shall be
5882 opened in public. Said state purchasing agent may reject any and all proposals. Any such
5883 agreements shall provide, in the discretion of said state purchasing agent, the manner in which
5884 compensation for such services shall be paid. Under regulations established by said state
5885 purchasing agent, such compensation may be deducted and retained from the recoupment of
5886 overcharges or paid by the commonwealth from existing expenditure accounts without additional

5887 appropriation therefrom; provided, further, that said state purchasing agent is authorized and
5888 directed to allow access to such agreements by political subdivisions of the commonwealth,
5889 including but not limited to towns, cities, counties, local housing authorities, and any other
5890 instrumentalities. Said state purchasing agent shall report to the comptroller annually a list of all
5891 private persons, companies, associations or corporations with whom said state purchasing agent
5892 has agreements for recoupment of overcharges during the fiscal year, and the amount of
5893 overcharges recouped and the compensation paid to each such person, company, association, or
5894 corporation. Said comptroller shall include and disclose this information as part of the annual
5895 report under section 12 of chapter 7A.

5896 Section 29H. (a) Except as otherwise provided by law, the comptroller may assess late
5897 charge rates, in addition to any other late fees or interest provided by law, against any person,
5898 entity or contractor owing an overdue payment to the commonwealth, or to a city, town housing
5899 or other authority or entity as provided under section 8 of chapter 7A, subject to the following
5900 provisions:-

5901 1) that the required payment date shall be the date on which payment is due under the
5902 laws, rules or regulations administered by the comptroller or other entity authorized to charge a
5903 late fee or interest; and

5904 2) that notice of intent to assess and collect late charges through debt collection, intercept,
5905 or other legal process shall be provided to the debtor prior to collection.

5906 b) The comptroller may adopt rules and regulations to implement this section.

5907 c) The comptroller shall deposit all late fees and interest that the comptroller collects on
5908 behalf of the commonwealth in the revenue account that pertains to the original accounts

5909 receivable, and shall retain and expend all other late charges assessed under this section without
5910 further appropriation, in consultation with the information technology division of the executive
5911 office for administration and finance, for the costs of electronic revenue collection options,
5912 including intercept, that increase revenue and debt collection within the commonwealth.

5913 d) The comptroller shall include in the annual financial report a summary report on any
5914 late charges collected under this section during the preceding fiscal year. The report shall include
5915 the number, amounts, and frequency of late charges collected, summarized by state agency and
5916 secretariat, where applicable.

5917 Section 29I. The comptroller shall develop and implement a payment system and
5918 regulations for interdepartmental fiscal transactions including interdepartmental service
5919 agreements and interdepartmental chargebacks. The chargeback system and regulation shall
5920 require state agencies that purchase legislatively authorized goods or services from approved
5921 chargeback departments to remit fiscal obligations within 30 days of receipt of notice of said
5922 obligation. The comptroller shall submit periodic reports on request to the house and senate
5923 committees on ways and means listing those agencies which do not meet the 30 day payment
5924 schedule. Said report shall also include but not be limited to the identification of the agency
5925 receiving said goods or services and the agency providing said goods or services; provided, that
5926 said identification includes the name of the agency and the item number, the goods or services
5927 provided, and the amount of outstanding obligation. The comptroller is authorized to take such
5928 action as he deems necessary to ensure compliance with the payment obligations under this
5929 section.

5930 Section 29J. Notwithstanding section 50 of chapter 3, or any other general or special law
5931 to the contrary, a state agency or state authority shall not use state funds to pay for an executive
5932 or legislative agent, as defined in section 39 of said chapter 3, unless the executive or legislative
5933 agent is a full-time employee of the state agency or state authority.

5934 Section 30. No officer or board shall insure any property of the commonwealth without
5935 special authority of law.

5936 Section 31. The comptroller, in consultation with the personnel administrator and the
5937 secretary of administration and finance, may establish a centralized payroll system and may
5938 include therein salaries payable by the commonwealth, for all classified services in any agency
5939 of the commonwealth and for teachers and supervisors employed in any school or college in any
5940 department of the commonwealth and any salary payable by the commonwealth to a person
5941 holding a statutory position.

5942 Such centralized payroll system shall conform to such rules and regulations as the
5943 secretary of administration and finance, with the approval of the state treasurer, the comptroller,
5944 and the personnel administrator, may from time to time make. Such rules and regulations shall
5945 not be subject to the provisions of chapter 30A. Notwithstanding any other general or special
5946 law to the contrary, and in accordance with section 148 of chapter 149, to ensure the timely
5947 payment of wages and related payroll charges for work authorized by a spending authority and
5948 performed by employees, the comptroller shall have full authority to mandate the payment of
5949 such wages and payroll charges and prescribe, regulate and direct any spending authority to take
5950 the appropriate actions necessary to properly account for payroll charges, to ensure that payroll

5951 accounts are not in deficit at the close of the fiscal year and any other actions necessary to
5952 support sound fiscal management including appropriation, allotment or other funding limits.

5953 The comptroller shall require certification from each spending authority that each
5954 employee receiving a salary under the warrant is being paid for duties performed directly for the
5955 employing agency and not for duties performed for another state agency.

5956 The state treasurer or other state official authorized to expend money on behalf of the
5957 commonwealth may pay any salary, wages or other compensation to any person in the service of
5958 the commonwealth by means of deposits to employee bank accounts, provided, employees have
5959 expressly authorized said deposits.

5960 The state treasurer or other state official authorized to expend money on behalf of the
5961 commonwealth may pay any retirement benefit due to any retired employee in the state system
5962 or retired teachers in the teachers retirement system by means of deposits to such retired person's
5963 bank account, provided, the retired persons have expressly authorized said deposits.

5964 The comptroller or other state official authorized to expend money on behalf of the
5965 commonwealth may comply with administrative wage garnishments for child support, student
5966 loans, state or federal tax liens, court order bankruptcy orders or other garnishments as
5967 determined by the comptroller which name the commonwealth as employer and mandating
5968 deductions under state or federal law for employees of the commonwealth in amounts not more
5969 than the percentage allowable under state or federal law or a greater amount as authorized by the
5970 employee, provided that the Commonwealth shall not use state resources or be compelled to
5971 comply with voluntary private garnishments or trustee process orders. For the purposes of this
5972 section, the term "employee" shall mean "employee" as defined in section 1 of chapter 32.

5973 Section 31A. (a) Upon the death of a state employee who is eligible for vacation under
5974 the rules of the director of personnel and standardization, or judge, justice or any other employee
5975 of the courts of the commonwealth who is eligible for vacation, payment shall be made in an
5976 amount equal to the vacation allowance as earned in the vacation year prior to the employee's
5977 death but which had not been granted, and, in addition, that portion of the vacation allowance
5978 earned in the vacation year during which the employee died, up to the time of his separation from
5979 the payroll; provided, that no monetary or other allowance has already been made therefor. The
5980 bureau of personnel and standardization may, upon request of the appointing officer of the
5981 deceased employee, authorize the payment of such compensation upon the establishment of a
5982 valid claim therefor, in the following order of precedence.

5983 First: To the surviving beneficiary or beneficiaries, if any, lawfully designated by the
5984 employee under the state employees' retirement system;

5985 Second: If there be no such designated beneficiary, to the estate of the deceased.

5986 The chief administrative justice of the trial court of the commonwealth may, upon request
5987 of the appointing officer of the deceased employee, authorize the payment of such compensation
5988 for the court system upon the establishment of a valid claim therefor, in the same order of
5989 precedence.

5990 b) Employees who are eligible for vacation under the rules of said personnel
5991 administrator and whose services are terminated by dismissal through no fault or delinquency of
5992 their own, or by retirement, shall be paid or at the option of the employee, entitled to a
5993 contribution to a qualified retirement plan established in the employee's name under section
5994 401(a) of the Internal Revenue Code and under chapter 32 an amount equal to the vacation

5995 allowance as earned in the vacation year prior to such dismissal or retirement which had not been
5996 granted, and, in addition, that portion of the vacation allowance earned in the vacation year
5997 during which such dismissal or retirement occurred, up to the time of separation; provided, that
5998 no monetary or other allowance has already been made therefor.

5999 c) Employees who are eligible for vacation under the rules of said administrator and
6000 whose services were terminated for reasons other than those defined in subsections (a) or (b)
6001 shall be paid or at the option of the employee, entitled to a contribution to a qualified retirement
6002 plan established in the employee' name under section 401(a) of the Internal Revenue Code and
6003 under chapter 32 an amount equal to the vacation allowance credited but not granted to them as
6004 of the final date of the next preceding vacation year; provided, that no monetary or other
6005 allowance has already been made therefor.

6006 d) Managers and employees, except employees covered under the provisions of chapter
6007 150E, currently in the employment of the commonwealth who retire and who have accrued
6008 unused sick-leave credits shall be paid or at the option of the employee, entitled to a contribution
6009 to a qualified retirement plan established in the employee' name under section 401(a) of the
6010 Internal Revenue Code and under chapter 32 an amount equal to 20 per cent of the value of such
6011 credits computed by multiplying the number of days of sick-leave available times the daily rate
6012 of salary compensation received by the manager or employee at the time of his retirement;
6013 provided, however, that such payment for unused sick-leave shall not affect the amount of
6014 retirement allowance available to such manager or employee.

6015 Section 31B. Teachers in institutions of the commonwealth having weekly payrolls, at the
6016 option of the department within which such institutions are established, may be paid weekly.

6017 Section 31C. Any officer or employee of the commonwealth, employed in a non-teaching
6018 position in any school or college within any department of the commonwealth, whose regular
6019 service is rendered between September 1 and June 30, may be granted the vacation leave to
6020 which he is entitled either during the period of his regular service, or after the expiration of said
6021 period, as is determined by the employing authority of such officer and employee. Funds made
6022 available by appropriation for the payment of personal services required in the operation and
6023 maintenance of such schools shall be available for the payment of vacations, which, under the
6024 authority of this section, are granted to be taken after the termination of the period of regular
6025 service of an officer or employee subject to this section.

6026 Section 31D. Whenever an officer or employee or former officer or employee of the
6027 commonwealth dies, and the commonwealth owes him any sum or sums, by reason of services
6028 rendered or by reason of the terms of his employment, the comptroller may issue such sums to
6029 the beneficiaries designated to the employee under section 31A. Payments made as provided in
6030 this section shall discharge the liability of the commonwealth to all persons with respect to such
6031 sum or sums.

6032 Section 31E. Notwithstanding the provisions of any general or special law to the
6033 contrary, a state employee, during working hours and at such times as are approved by his
6034 supervisor and in accordance with regulations promulgated hereunder, may, without loss of
6035 salary, provide voluntary services at a public elementary, secondary, or vocational-technical
6036 school to assist the improvement of a student' or school' educational program; provided,
6037 however, that said voluntary services do not exceed the equivalent of one work day per month.
6038 There shall be no requirement that the employee have a child as a student in the school or school
6039 district. Said services shall not be compensated by a school.

6040 Section 32. Any check issued by the state treasurer or by any agent or agency of the
6041 commonwealth, other than checks issued in payment of obligations of the state board of
6042 retirement and the teachers' retirement board, which is not presented for payment within one
6043 year from its date shall be payable only at the office of the state treasurer. On the thirtieth day of
6044 June in each year the comptroller shall transfer to the abandoned property fund all funds which
6045 are identified by the state treasurer as funds of the commonwealth which have remained in the
6046 unclaimed check fund for at least one year. On such date, the comptroller also shall refund to the
6047 unemployment compensation fund and to each applicable account of monies separately
6048 accounted for by the comptroller as other than commonwealth monies, such amounts which in
6049 the opinion of the state treasurer represent all monies of such unemployment compensation fund
6050 or such account which have remained in the unclaimed check fund for at least one year. All
6051 checks issued in payment of obligations of the state board of retirement and the teachers'
6052 retirement board shall be payable only in accordance with the provisions of subdivision (3) of
6053 section 11 of chapter 32.

6054 Section 32A. No wage or salary which is or shall be due from the commonwealth shall be
6055 payable later than 6 years after the same has or shall become due, and the obligation of the
6056 commonwealth to pay such wage or salary or otherwise to pay for the services rendered by the
6057 person to whom the wage or salary is or shall be due shall not be enforceable if the wage or
6058 salary is not claimed within six years after the same has or shall become due; provided,
6059 however, that section 32 shall be applicable and controlling in the case of any wage or salary
6060 represented by a check issued by the state treasurer or by any agent or agency of the
6061 commonwealth. On the thirtieth day of June in each year the comptroller shall transfer to the
6062 General Fund so much of the balance then in the unclaimed wage fund as, in the opinion of the

6063 state treasurer, shall not be needed for payments during the ensuing fiscal year from the said
6064 unclaimed wage fund. On such date the comptroller also shall refund to the unemployment
6065 compensation fund and to each applicable account of monies separately accounted for by the
6066 comptroller as other than commonwealth monies, such amount of the said balance as the state
6067 treasurer shall advise him shall represent all unclaimed wages or salaries from monies of the said
6068 fund or such account, respectively, the payment of which shall have been outlawed in accordance
6069 with this section during the fiscal year ending on such date.

6070 Section 34. (a) State officers, departments, institutions and other agencies may, with the
6071 written consent of the state treasurer, deposit a portion of the public monies in their possession in
6072 national banks, federal savings banks, and federal savings and loan associations, lawfully doing
6073 business within the commonwealth, and in trust companies, savings banks and cooperative banks
6074 chartered under the laws of the commonwealth. The state treasurer shall publish a list of
6075 qualified banks and shall transmit that list at least once every 6 months to the governor. The state
6076 treasurer shall not include on the list a state-chartered bank having a descriptive rating as
6077 described in clauses (d) or (e) of the sixth paragraph under section 14 of chapter 167 or any
6078 federally insured depository institution having an assigned rating of (C) or (D) under section
6079 807(b)(2) of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.

6080 b) A state treasurer who knowingly makes a deposit in violation of subsection (a) shall be
6081 guilty of misconduct and maladministration in his office within the meaning of the constitution,
6082 any other officer who knowingly makes a deposit in violation of subsection (a) shall be guilty of
6083 misconduct and maladministration in his office, and a depository institution knowingly receiving
6084 a deposit in violation of subsection (a) shall be disqualified from receiving such monies for the
6085 period of 3 years from the date of the deposit.

6086 c) All interest received on any deposits under this section shall be paid to the
6087 commonwealth.

6088 Section 35. No bond or security belonging to the commonwealth shall be transferred
6089 except with the written approval of the governor. A note, bond, mortgage or other security which
6090 has been made to the state treasurer by name may be assigned, transferred or discharged by him
6091 or by any successor in office.

6092 Section 36. If the state treasurer is authorized to discharge a mortgage held by the
6093 commonwealth, he may instead thereof assign it; but such assignment shall not impose upon the
6094 commonwealth any liability, express or implied.

6095 Section 37. Real estate acquired by the commonwealth by foreclosure may, with the
6096 approval of the governor and council, be conveyed by the state treasurer upon payment of the
6097 amount of the mortgage debt with the interest and expenses accrued thereon.

6098 Section 38. With the exception of funds used in connection with a deferred compensation
6099 program for state employees, and funds of the state employees' retirement system or the
6100 teachers' retirement system, all funds over which the commonwealth has exclusive control shall
6101 be invested by the state treasurer as follows:

6102 (a) In the public funds of the United States or of the District of Columbia or of this
6103 commonwealth, or in the legally authorized bonds of any other state of the United States, other
6104 than a territory or dependency thereof, which has not within the 20 years prior to the making of
6105 such investment defaulted in the payment of any part of either principal or interest of any legal
6106 debt.

6107 (b) In repurchase agreements secured by United States Treasury obligations or United
6108 States Treasury obligations bearing a maturity date not later than one year.

6109 (c) In the bonds or notes of a county, city or town of this commonwealth. (d) In shares of
6110 beneficial interest issued by money market funds registered with the Securities and Exchange
6111 Commission under the Investment Company Act of 1940, as amended, operated in accordance
6112 with section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the
6113 highest possible rating from at least 1 nationally recognized statistical rating organization. The
6114 purchase price of shares of beneficial interest purchased pursuant to this section shall not include
6115 a commission charged by the money market funds.

6116 (e) In any other security that qualifies for inclusion in a fund operated in accordance with
6117 section 270.2a-7 of Title 17 of the Code of Federal Regulations, as amended.

6118 (f) In investment agreements or guaranteed investment contracts rated, or with a financial
6119 institution whose senior long-term debt obligations are rated, or guaranteed by a financial
6120 institution whose senior long-term debt obligations are rated, at the time the agreement or
6121 contract is entered into, in 1 of the 2 highest rating classifications by a nationally recognized
6122 rating service if the agreements or contracts do not exceed 1 year in duration.

6123 (g) In investment agreements with a corporation whose principal business is to enter into
6124 the agreements if: the corporation and the investment agreements of the corporation are each
6125 rated in 1 of the 2 highest rating classifications by a nationally-recognized rating service; the
6126 commonwealth has an option to terminate each agreement in the event that the rating is
6127 downgraded below the 2 highest rating classifications; and the agreements or contracts do not
6128 exceed 1 year in duration.

6129 (h) In the promissory notes of an industrial, commercial, finance, banking, railroad or
6130 public utility corporation conducting business in this state when such notes mature not later than
6131 one year subsequent to their respective dates of issue; provided, however, that, at the time of any
6132 such investment, (1) such corporation has capital stock, premium thereon and surplus of at least
6133 \$25,000,000, (2) the securities of such corporation are eligible for investment by life insurance
6134 companies authorized to do business in the commonwealth, and (3) all outstanding debt
6135 obligations of such corporation which have any rating from two or more standard rating services
6136 are rated within the three highest classifications established by at least two such rating services,
6137 or, if none of the outstanding debt obligations of such corporation has any rating from two such
6138 rating services, that such outstanding debt obligations are rated at the time of investment within
6139 the three highest classifications established by at least two such rating services, or the notes of
6140 such corporation at the time of investment are rated prime by the National Credit Office;
6141 provided, further, that the commonwealth' investment in the notes of any one company shall not
6142 exceed twenty per cent of the capital and surplus of such company.

6143 (i) In bankers acceptances and bills of exchange eligible for purchase by federal reserve
6144 banks and which have been accepted by a bank, a trust company, a private banker or an
6145 investment company, or by a banking corporation which is organized under the laws of the
6146 United States or of any state thereof and which is a member of the federal reserve system.

6147 The state treasurer may purchase with a portion of the State Lottery Fund, as established
6148 and defined in section 35 of chapter 10, from insurance companies lawfully doing business in the
6149 commonwealth, annuities payable to the commonwealth to be used for payment of lottery prizes.
6150 Such annuities shall not be subject to the provisions of section 118 of chapter 175 limiting
6151 payment of annuities to individuals, and shall, to the extent that such annuities are payable to the

6152 commonwealth, be exempt from taxation under section 20 of chapter 63. Contracts for the
6153 purchase of such annuities shall be subject to competitive bidding and shall be awarded to the
6154 lowest responsible bidder. All such bids and contracts shall be public records.

6155 The state treasurer may also purchase with a portion of the said State Lottery Fund,
6156 bonds, notes, shares in combined investment funds or other interest bearing obligations in
6157 accordance with the standards set forth in subdivision (3) of section 23 of chapter 32.

6158 Funds in connection with a deferred compensation program for state employees may be
6159 invested by the treasurer pursuant to section 64; provided, however, that such funds, whether or
6160 not invested, shall remain in the sole control of the treasurer, and may be used by the
6161 commonwealth at any time and for any purpose.

6162 The treasurer may lend securities purchased from funds authorized by this section,
6163 provided that at the time of the execution of the loan at least one hundred per cent of the market
6164 value of the security lent shall be secured by cash or securities guaranteed by the United States
6165 government or any agency of the United States government. At all times during the term of each
6166 such loan the collateral shall be equal to not less than 95 per cent of the full market value of the
6167 security and said collateral shall not be more than \$100,000 less than the full market value of the
6168 security.

6169 Section 38A. Notwithstanding any contrary provision of law, the state treasurer may
6170 establish one or more combined investment funds for the purpose of investing funds of the
6171 commonwealth, trust funds, and funds under the custody of agencies, authorities, commissions,
6172 boards, political subdivisions and other public units within the commonwealth; provided, that the
6173 state treasurer shall adopt appropriate accounting procedures from which the exact interest of

6174 such funds so combined for investment can be determined. The state treasurer may adopt such
6175 rules and regulations as may be necessary to administer the provisions of this section. The
6176 management of any fund established under this paragraph shall be competitively procured not
6177 later than once every 7 years.

6178 The state treasurer is authorized to sell to all agencies, authorities, commissions, boards,
6179 political subdivisions and other public units within the commonwealth, participation units in any
6180 such combined investment fund. Such participation units issued by the treasurer are made legal
6181 investments for all the funds under the custody of such agencies, authorities, commissions,
6182 boards, political subdivisions and other public units within the commonwealth. With the advice
6183 of the investment advisory council, the state treasurer shall adopt rules and regulations as may be
6184 necessary to administer the provisions of this section.

6185 The state treasurer may invest any funds established under this section in only those
6186 instruments permitted within this chapter or chapter 32.

6187 Section 38B. There shall be in the office of the state treasurer a deferred compensation
6188 committee, consisting of three members, one of whom shall be appointed by the governor, shall
6189 represent the employees who contract with the state treasurer for a deferred compensation
6190 program under section 64, and shall be chairman, one of whom shall be appointed by the
6191 commissioner of insurance, and one of whom shall be appointed by the state treasurer. Said
6192 committee shall meet from time to time and shall oversee the operation of the day to day
6193 operation of the deferred compensation program. The members of said committee shall serve
6194 without compensation, but shall be reimbursed for expenses necessarily incurred in the
6195 performance of their duties.

6196 Section 38C. In connection with or incidental to the acquisition or carrying of any
6197 investment or program of investment or carrying of bonds or notes, the state treasurer, after
6198 consultation with the finance advisory board, may enter into such contracts as he may determine
6199 to be necessary or appropriate to place the investment or obligation of the commonwealth, as
6200 represented by the bonds or notes, investment or program of investment and the contract or
6201 contracts, in whole or in part, on such interest rate or cash flow basis as he may desire, including
6202 without limitation interest rate swap agreements, insurance agreements, forward payment
6203 conversion agreements, futures, contracts, contracts providing for payments based on levels of,
6204 or changes in, interest rates or stock or other indices, contracts to exchange cash flows or a series
6205 of payments and contracts to hedge payment, rate, spread or similar exposure, including without
6206 limitation interest rate floors or caps, options, puts and calls. Such contracts shall contain such
6207 payment, security, default, remedy and other terms and conditions as the state treasurer, after
6208 consultation with the finance advisory board, may deem appropriate and shall be entered into
6209 with such party or parties as the state treasurer, after consultation with the finance advisory
6210 board, may select, after giving due consideration, where applicable, for the creditworthiness of
6211 the counterparty or counterparties, including any rating by a nationally recognized rating agency
6212 or any other criteria as may be appropriate. Scheduled, periodic payments to be made by the
6213 commonwealth pursuant to any such contract in existence on August 1, 2008 or any such
6214 contract related to bonds or notes of the commonwealth which shall be entered into by the state
6215 treasurer after August 1, 2008 shall constitute general obligations of the commonwealth to which
6216 the full faith and credit of the commonwealth shall have been pledged.

6217 Section 39. When the commonwealth holds any bond, note or certificate of indebtedness
6218 payable to bearer and issued by a county, city, town or district or any domestic corporation, such

6219 county, city, town, district or corporation shall, at the request of the state treasurer, issue in
6220 exchange therefor a bond, note or certificate of the same effect, payable to the commonwealth by
6221 name. The commonwealth shall pay the expense involved in making such exchange. Any county,
6222 city, town, district or corporation neglecting or refusing to comply with this section shall be
6223 punished by a fine of not more than \$50.

6224 Section 40. No deposit required to be made by any corporation in trust with the state
6225 treasurer, or any part thereof, shall consist of a mortgage upon real estate or of a loan upon
6226 personal notes or of notes secured by collateral. He may receive, as a part of such deposit, money
6227 or certificates of deposit, or certified checks on any approved state depository, and may hold the
6228 same without interest until it may reasonably be invested in a proper legal security.

6229 Section 41. The state treasurer shall have the custody and keep a separate account of all
6230 notes, bonds and mortgages belonging to the commonwealth, and shall receive all money
6231 accruing therefrom. All deeds and instruments conveying real estate to the commonwealth shall,
6232 when recorded, be deposited with and safely kept by him. Such records shall not include those
6233 pertaining to real property acquired for the use of state agencies, pursuant to sections 32, 33 and
6234 39 of chapter 7C.

6235 Section 44. The income or any surplus of funds belonging to or in the custody of the
6236 commonwealth shall, unless otherwise provided, be added to the principal.

6237 Section 45. No securities shall hereafter be purchased for any sinking fund which do not
6238 mature on or prior to the maturity date of the indebtedness on account of which said sinking fund
6239 was established.

6240 Section 46. The state treasurer, instead of selling any securities, belonging to any fund
6241 over which the commonwealth has exclusive control, to meet maturing liabilities, may transfer
6242 them to any other such fund upon terms and conditions approved by the governor and council.

6243 Section 47. The state treasurer may borrow at any time during the fiscal year, in
6244 anticipation of the receipts for that year, such sums of money as may be necessary for the
6245 payment of ordinary demands on the treasury, and other legal obligations, including guaranties,
6246 of the commonwealth, and may issue notes therefor. Money so borrowed and notes so issued
6247 may be at such rates of interest as shall be found necessary. He shall repay any sums borrowed
6248 under this section as soon after said receipts are paid as is expedient, but in any event before the
6249 close of the fiscal year in which the same were borrowed.

6250 Notes issued under and pursuant to this section may bear on their face a statement that if
6251 principal and interest thereon are not paid when due said notes will be accepted thereafter at face
6252 value plus accrued interest to the date of such acceptance as payment to that extent of taxes owed
6253 by the bearer to the commonwealth under chapters 62, 62B, 63, or 63B. Notes bearing such
6254 legend shall be accepted in payment of such taxes, including penalty and interest thereon, at face
6255 value plus accrued interest by all persons responsible for collecting taxes but shall otherwise be
6256 payable in accordance with their terms as provided in the first paragraph of this section.

6257 Section 48. Bonds issued by the commonwealth shall be signed by the state treasurer or a
6258 deputy treasurer and approved by the governor. Notes issued by the commonwealth shall be
6259 signed by the state treasurer or a deputy treasurer, approved by the governor, and countersigned
6260 by the comptroller or a deputy comptroller or an assistant to the comptroller.

6261 Section 48A. Facsimiles of the signature of the governor on original issues or transfers of
6262 bonds or notes of the commonwealth shall have the same validity and effect as his written
6263 signature, and facsimiles of the seal of the commonwealth may be used on bonds and notes of the
6264 commonwealth and shall have the same validity and effect as though said seal were impressed
6265 thereon. Interest coupons, if any, attached to any bond or note of the commonwealth may bear
6266 the facsimile signature of the state treasurer. If any officer whose signature or a facsimile of
6267 whose signature appears on any notes, bonds or coupons shall cease to be such officer before the
6268 delivery of, and receipt of proceeds from the borrowing evidenced by, such notes or bonds, such
6269 signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if such
6270 officer had remained in office until such delivery and receipt of proceeds.

6271 Section 48B. Any official statement prepared in connection with the sale of any bonds or
6272 notes of the commonwealth and all advertising of such bonds and notes, the interest on which is
6273 excludable from gross income for federal income tax purposes under the provisions of section
6274 103 of the Internal Revenue Code (26 USC 103), shall include a reference to the collateral tax
6275 consequences which may result under section 86 of said Code (26 USC 86) to the holders of
6276 such bonds or notes who are recipients of social security benefits.

6277 Section 49. The aggregate principal amount of bonds, if any, of any issue of
6278 commonwealth bonds stated to mature in any year may vary from the aggregate principal amount
6279 of bonds of such issue stated to mature in any other year. The state treasurer may agree at or
6280 prior to the time such issue of bonds is issued with the holders of bonds of such issue or with a
6281 trustee, which shall be a trust company or bank with trust powers doing business in the
6282 commonwealth, for the benefit of such holders to establish a sinking fund for such issue of
6283 bonds, to make deposits into such sinking fund according to a schedule theretofore established

6284 by the state treasurer and to use the monies in such sinking fund only for (a) the payment of
6285 principal of or interest on, or purchase, at a price not to exceed par of, the bonds of such an issue
6286 or (b) the payment of principal of or interest on, or purchase, at a price not to exceed par of, the
6287 bonds of any one or more specified maturities of such an issue. The full faith and credit of the
6288 commonwealth is pledged to the making of payments to any such sinking fund. Withdrawals
6289 from any such sinking fund for the payment of principal of or interest on such bonds, or for the
6290 purchase thereof as permitted by this paragraph, may be made without further appropriation or
6291 authorization by any officer of the commonwealth. Pending their application for such purpose,
6292 monies in any such sinking fund shall be held by the state treasurer or such trustee and invested
6293 in (i) direct obligations of, or obligations the payment of the principal and interest of which are
6294 unconditionally guaranteed by, the United States of America; (ii) obligations of the Federal
6295 National Mortgage Association, Government National Mortgage Association, Federal Financing
6296 Bank, Federal Intermediate Credit Banks, Federal Bank for Cooperatives, Federal Land Banks,
6297 Federal Home Loan Banks, Farmers Home Administration, Export-Import Bank of the United
6298 States, Student Loan Marketing Association, United States Postal Service, Tennessee Valley
6299 Authority or Federal Home Loan Mortgage Corporation or by any other agency or corporation
6300 which has been or is hereafter created pursuant to an act of Congress of the United States as an
6301 agency or instrumentality of the United States of America; (iii) housing authority bonds issued
6302 by public agencies or municipalities and fully secured as to the payment of both principal and
6303 interest by a pledge of annual contributions under an annual contributions contract or contracts
6304 with the United States of America or project notes issued by public agencies or municipalities
6305 and fully secured as to the payment of both principal and interest by a requisition or payment
6306 agreement with the United States of America; (iv) interest-bearing time deposits or certificates of

6307 deposit of banking institutions or trust companies organized under the laws of any state of the
6308 United States or any national banking association, provided that such deposits or certificates
6309 shall be continuously and fully secured by obligations described in clauses (i) to (iii), inclusive,
6310 having a market value, exclusive of accrued interest, at least equal to the aggregate amount of
6311 such deposits and certificates; (v) any of the securities described in clauses (i) to (iii), inclusive,
6312 which are subject to repurchase agreements with any bank or trust company organized under the
6313 laws of any state of the United States or any national banking association; or (vi) obligations that
6314 have been advance refunded or defeased prior to their maturity, that are fully and irrevocably
6315 secured as to principal and interest by moneys or securities described in clauses (i) to (iii),
6316 inclusive, held in trust for the payment thereof, and that are not callable prior to maturity except
6317 at the option of the holder thereof. Securities purchased as an investment of monies credited to
6318 any sinking fund shall be deemed at all times to be a part of such sinking fund. Notwithstanding
6319 any provision in any act authorizing all or part of an issue of commonwealth bonds to the effect
6320 that such bonds shall be issued upon the serial payment plan or to the effect that the maturities
6321 thereof shall be so arranged that the amounts payable in the several years of the period of
6322 amortization, other than the final year, shall be as nearly equal as in the opinion of the state
6323 treasurer it is practicable to make them or to any similar effect, the provisions of this paragraph
6324 shall apply to any issue of commonwealth bonds made after January first, nineteen hundred and
6325 eighty unless the act authorizing such issue expressly states that the provisions of this paragraph
6326 shall not apply to such issue.

6327 Bonds of the commonwealth may be issued as registered bonds or as bearer bonds, with
6328 or without coupons, as the state treasurer may deem best. Such bonds shall bear interest at such
6329 rate or rates, including rates variable from time to time according to an index, banker' loan rate

6330 or otherwise, as the state treasurer, with the approval of the governor, shall fix. The provisions of
6331 this paragraph shall apply to any bonds issued after January first, nineteen hundred and eighty-
6332 two unless the act authorizing such issue expressly states that the provisions of this paragraph
6333 shall not apply.

6334 Registered bonds may be uncertificated. Books shall be maintained by or on behalf of the
6335 state treasurer specifying the persons entitled to uncertificated bonds, and the rights represented
6336 thereby shall be registered upon such books. A true copy of the official actions of the
6337 commonwealth relating to such bonds shall be kept by or on behalf of the state treasurer, a copy
6338 of which, verified to be such by an authorized officer, shall be admissible before any court of
6339 record, administrative body or arbitration panel without further authentication.

6340 Bonds or notes of the commonwealth which are subject to the requirement imposed by
6341 Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth that the
6342 governor recommend the term thereof to the general court shall not be issued, and monies to
6343 finance projects authorized to be financed by such bonds or notes shall not be advanced in
6344 anticipation of the issuance thereof, until legislation has been enacted upon such term
6345 recommendation.

6346 Unless otherwise specifically provided, a provision in any statute authorizing the state
6347 treasurer to issue and sell bonds of the commonwealth shall authorize him to issue and sell such
6348 bonds in such denominations as he shall determine to be in the best interests of the
6349 commonwealth, and any requirement that the maturities thereof be so arranged that the amounts
6350 payable in the several years of the period of amortization other than the final year shall be as
6351 nearly equal as in the opinion of the state treasurer it is practicable to make them shall mean that

6352 the amounts so payable shall be as nearly equal considering the denominations of the bonds
6353 issued and sold as in the opinion of the state treasurer it is practicable to make them.

6354 Bonds issued pursuant to two or more bond authorization acts may be consolidated for
6355 the purpose of sale and issued, sold, printed, and delivered as a single bond issue despite the
6356 requirement of any bond authorization act requiring or designating a particular total for bonds
6357 issued pursuant to that act. Notwithstanding any requirement of any such act that bonds issued
6358 thereunder shall bear any particular designation, bonds consolidated pursuant to this section shall
6359 be designated on their face "Consolidated Loan of" followed by the year of issue and the series
6360 thereof in such year. Notwithstanding the provisions of this section, the state treasurer shall
6361 separately account for the bonds issued under and the proceeds received from bond sales under
6362 the particular authorizing act. In connection with any such consolidated issue, the state treasurer
6363 shall specify at the time of issuance (i) the amount of proceeds to be allocated to each bond
6364 authorization act or section thereof, in which case allocation of proceeds shall occur at the time
6365 of issuance, or (ii) the various sections of bond authorization acts to which proceeds of the issue
6366 may be allocated as expenditures are made pursuant to the authorizations referenced in such
6367 sections, in which case allocation of proceeds shall occur at such later time or times as such
6368 expenditures shall occur, or (iii) any combination of the foregoing. In lieu of allocating proceeds
6369 in accordance with clause (ii), the state treasurer may allocate proceeds of the issue to
6370 expenditures incurred under 1 or more bond authorization acts not specified at the time of
6371 issuance, including without limitation bond authorization acts enacted after the time of issuance,
6372 so long as the term limitations contained in the substituted bond authorization acts and the
6373 related term recommendations of the governor are not inconsistent with the term of the
6374 consolidated issue.

6375 Notwithstanding any general or special provision of law to the contrary, a provision in
6376 any statute authorizing the state treasurer to issue and sell bonds of the commonwealth providing
6377 that such bonds shall bear interest at such rate as the state treasurer, with the approval of the
6378 governor, shall fix; or a provision of similar import, shall be construed to provide that such bonds
6379 shall bear interest at such rate or rates as the state treasurer, with the approval of the governor,
6380 shall fix.

6381 Unless otherwise specifically provided, a provision in any act authorizing the state
6382 treasurer to issue and sell bonds of the commonwealth shall authorize him, with the approval of
6383 the governor, to issue and sell bonds subject to call for redemption at any time or from time to
6384 time, with or without premium, as he determines to be in the best interest of the commonwealth.
6385 The provisions of this section shall apply to all bonds issued after the effective date of this act.

6386 Bonds or notes of the commonwealth may be sold at par, premium or discount and may
6387 be sold as instruments the principal amount of which either remains constant or increases during
6388 the life of the instrument. Whenever bonds or notes are issued under a statute to which the
6389 provisions of this paragraph apply, the amount issued shall be deemed to be the net proceeds of
6390 the issue,; provided that the state treasurer may determine to apply all or a portion of any
6391 premium received on the sale of any such bonds or note, without appropriation, to the costs of
6392 issuance thereof or other financing costs related thereto or to the payment of the principal thereof
6393 or sinking fund installments with respect thereto, in which case the amount of any premium so
6394 applied shall not be included in the amount of the issue. The provisions of this paragraph shall
6395 apply to any bonds or notes issued after January first, nineteen hundred and eighty-eight unless
6396 the act authorizing such issue expressly states that the provisions of this paragraph shall not
6397 apply.

6398 In connection with the issuance of bonds and notes of the commonwealth which are
6399 intended to qualify for tax exemption under the Internal Revenue Code of 1986, and to induce
6400 the purchase of such bonds and notes, the state treasurer may covenant on behalf of the
6401 commonwealth with the purchasers or with the holders from time to time of such bonds or notes
6402 or with a trustee or trustees for the benefit of such holders with respect to compliance with the
6403 requirements of said Internal Revenue Code relative to such tax exemption, including without
6404 limitation compliance with provisions relating to the use of proceeds by private parties, the
6405 investment of proceeds and the payment of rebate, so-called, to the federal government. Any
6406 such covenant may appear on the bonds or notes or may be included in a separate contract or
6407 trust indenture, a copy of which shall be available for public inspection at the office of the state
6408 treasurer. Any right of a holder of a bond or note in respect of any such covenant may be
6409 enforced as a claim against the commonwealth.

6410 A provision in any act authorizing the state treasurer to issue and sell bonds of the
6411 commonwealth shall also authorize the state treasurer, without any further authorization, to
6412 borrow from time to time on the credit of the commonwealth such sums of money as may be
6413 necessary for the purpose of making payments for the purposes for which such bonds are
6414 authorized and to issue and renew, from time to time, notes of the commonwealth therefor in
6415 anticipation, of such bonds, bearing interest payable at such time and at such rates as shall be
6416 fixed by the state treasurer. The notes shall be issued and may be renewed one or more times for
6417 such terms not exceeding three years, as the governor may recommend to the general court
6418 pursuant to Section 3 of Article LXII of the Amendments to the Constitution of the
6419 Commonwealth. The provisions of this paragraph; (i) shall apply to all bond authorization acts in
6420 effect as of July 1, 1999 and all bond authorization acts validly enacted after such date, unless

6421 any particular act expressly states that the provisions of this paragraph shall not apply; and (ii)
6422 shall constitute authority to issue notes in anticipation of such bonds in addition to and not in
6423 limitation of any authority to issue notes in anticipation of bonds contained in any bond
6424 authorization act.

6425 Section 49A. Notwithstanding any other provisions of the laws of the commonwealth,
6426 whenever the state treasurer is authorized to issue and sell bonds of the commonwealth and he
6427 determines to issue and sell all or a portion of such bonds in denominations of less than five
6428 thousand dollars (minibonds), he may issue and sell such minibonds at public or private sale,
6429 maturing in such amounts and upon such dates, at such interest rate or rates, payable at such time
6430 and in such manner, at par or at discount, in bearer or registered form, and upon such other terms
6431 and conditions, all as he shall determine to be in the best interests of the commonwealth;
6432 provided that (1) not more than fifty million dollars principal amount of minibonds shall be sold
6433 by the state treasurer in any one fiscal year; (2) no minibond shall mature more than five years
6434 after its date; (3) no one sale to a purchaser of minibonds shall be in an aggregate principal
6435 amount equal to or greater than five thousand dollars; and (4) each minibond shall provide that it
6436 shall be redeemed by the commonwealth upon due presentation by an appropriate person on any
6437 business day after one year from its date of sale by the state treasurer at such price as the state
6438 treasurer shall determine according to a schedule established with respect to each issue of
6439 minibonds prior to the sale thereof. The state treasurer may adopt regulations with respect to the
6440 issuance and sale of minibonds. A facsimile of the signature of the state treasurer on minibonds
6441 shall have the same validity and effect as his written signature. Sections forty-five, forty-nine,
6442 and fifty-three of this chapter shall not apply to the issuance of minibonds.

6443 Section 49B. In addition to any other security provided by laws, bonds and notes of the
6444 commonwealth may, in the discretion of the state treasurer, be secured or supported, in whole or
6445 in part, by insurance or by lines or letters of credit or other credit or liquidity facilities provided
6446 by any bank, trust company or other financial institution.

6447 The state treasurer may enter into agreements with brokers for the placement of any such
6448 commonwealth notes issued as commercial paper.

6449 Section 49C. (a) In issuing bonds of the commonwealth, pursuant to the provisions of law
6450 applicable thereto, the state treasurer is authorized, pursuant to the conditions set forth in this
6451 section, to set aside and issue portions of said bonds in such form as shall be appropriate for the
6452 purposes of the college opportunity program, as defined in section 5A of chapter 15C, or for the
6453 purposes of such other college savings programs as may be established pursuant to paragraph
6454 (f1/2) of section 5 of said chapter 15C.

6455 b) Before issuing any bonds in a fiscal year for the use of a college savings program, the
6456 state treasurer shall prepare a report establishing the maximum amount of bonds to be issued in
6457 that year for use of such programs. Said report, and any subsequent amendment thereto which
6458 revises said maximum amount, shall include the state treasurer' reasons for determining that it is
6459 prudent for the commonwealth to authorize use of such bonds to the stated extent, in light of the
6460 anticipated future interest and principal payments on such bonds, as compared to the anticipated
6461 interest and principal payments on commonwealth bonds not issued in connection with such
6462 programs, and in light of available financial arrangements to limit or control the commonwealth'
6463 potential costs of meeting its obligations on such bonds, and in light of such other considerations
6464 as the state treasurer shall deem relevant. The state treasurer shall file copies of said report, and

6465 of any amendments thereto, with the Educational Financing Authority, the secretary of
6466 administration and finance, and the house and senate ways and means committees.

6467 c) For the purposes of issuing bonds to support college savings programs, the state
6468 treasurer shall have, in addition to his other powers and duties, the following additional powers
6469 and duties:

6470 i) To employ financial, marketing, legal and other consultants and advisors for the
6471 purpose of consulting with the commonwealth on the implementation and ongoing
6472 administration of the savings programs and to enter into contracts and agreements necessary in
6473 connection therewith.

6474 ii) To enter into appropriate agreements or arrangements with banks or other financial
6475 institutions or with other departments or agencies of the commonwealth or other public entities
6476 to provide protection for the commonwealth from risks associated with the variable interest rate
6477 on such bonds, and to provide liquidity for purchasers of such bonds in the event of
6478 extraordinary circumstances which require them to have access to their capital, including but not
6479 limited to interest rate swap agreements, interest rate caps, liquidity facilities, futures
6480 agreements, letters of credit and similar arrangements, including provisions regarding the
6481 custody of commonwealth funds and the maintenance of collateral and other security for the
6482 commonwealth' obligations thereunder.

6483 iii) To establish procedures to ensure that interest on such bonds is and remains
6484 excludable from the gross income of the owners thereof for federal income tax purposes.

6485 iv) To establish a schedule of fees and charges, including premiums in connection with
6486 the sale of such bonds, sufficient to provide for the estimated costs of the program incurred by

6487 the commonwealth, including the costs of any agreements or arrangements entered into pursuant
6488 to paragraph (ii) and reasonable amounts to allow the commonwealth to self-insure against
6489 possible variations in interest rates on such bonds; provided that the difference in anticipated
6490 future interest and principal payments on such bonds as compared to the anticipated interest and
6491 principal payments on commonwealth bonds not issued in connection with such programs shall
6492 not exceed five million dollars per year. Any such fees or charges shall be received by the state
6493 treasurer impressed with a trust on behalf of the participants in such college savings programs
6494 and shall be deposited in a separate fund. The amounts in said fund, including any income earned
6495 on amounts therein, shall be expended by the state treasurer, without appropriation, solely for the
6496 commonwealth' cost of operating such college savings programs, including without limitation
6497 the costs of agreements or arrangements entered into pursuant to paragraph (ii) and the costs of
6498 self-insuring against variations in interest rates on such bonds.

6499 v) To take such further actions and establish such further procedures as shall be
6500 appropriate to carry out the purposes of the savings programs.

6501 d) All bonds, or units of participation therein, issued pursuant to this section shall be
6502 subject to the following provisions:

6503 i) Any payment received by a purchaser of such bonds or units of participation in
6504 accordance with the provisions of this section and chapter 15C and the interest or other income
6505 earned in connection therewith shall be exempt from all taxation by the commonwealth and any
6506 of its political subdivisions, including income, commonwealth, transfer, inheritance, death and
6507 personal property taxes.

6508 ii) The bonds and units of participation are hereby made securities in which
6509 administrators, guardians, executors, trustees, fiduciaries, and others authorized to invest in
6510 bonds of the commonwealth may properly and legally invest funds and shall be exempt from
6511 qualification and registration under the securities laws of the commonwealth.

6512 iii) The commonwealth hereby covenants and agrees to take all steps reasonably
6513 necessary to provide that interest on said bonds and units of participation whenever paid or
6514 accrued shall be excluded from the gross income of any person having an interest therein under
6515 the Internal Revenue Code of 1986 as amended from time to time.

6516 e) The provisions of section fifty-three shall not apply to the sale of any bonds issued in
6517 connection with college savings programs.

6518 Section 50. The state treasurer shall annually in December certify to the budget director
6519 the amount necessary to provide for serial and sinking fund payments with respect to any bonds
6520 or notes of the commonwealth for the fiscal year beginning on July first following.

6521 Section 53. Whenever there is to be an issue of bonds or notes of the commonwealth
6522 maturing at a time later than three years from their dates, excepting such bonds or notes as are to
6523 be issued for the investment of cash in any of the sinking or other established funds of the
6524 commonwealth, the state treasurer shall solicit bids for the purchase thereof, and shall provide
6525 reasonable notice to the public of such solicitations. The state treasurer may reserve the right to
6526 reject any or all bids. If no bid is accepted, the whole or any part of the loan may be awarded to
6527 any person. Compliance with the provisions of this section may be waived with respect to an
6528 issue of bonds or notes upon the approval of the finance advisory board, established under the
6529 provisions of section ninety-seven of chapter six.

6530 Section 53A. The state treasurer is hereby authorized, upon request of the governor, to
6531 issue and sell refunding bonds of the commonwealth in an amount to be specified by the
6532 governor from time to time for the purpose of paying, at maturity or upon acceleration or
6533 redemption, any bonds of the commonwealth then outstanding, including the payment of any
6534 redemption premium thereon and any interest accrued or to accrue to the date of maturity,
6535 acceleration or redemption of such bonds; provided, however, that the state treasurer shall not
6536 issue any such refunding bonds unless he shall find that the present value, discounted at such rate
6537 as he shall deem appropriate, of the principal and interest payments due on the refunding bonds
6538 is less than the present value, discounted at such rate, of the principal and interest payments to be
6539 paid, from the proceeds of such refunding bonds and investment earnings thereon, on the bonds
6540 to be refunded. In addition to and without compliance with the foregoing, the state treasurer may,
6541 upon request of the governor, issue and sell refunding bonds of the commonwealth in an amount
6542 to be specified by the governor from time to time for the purpose of substituting fixed-rate bonds
6543 for variable-rate bonds or 1 form of variable-rate bonds for another. The proceeds of any
6544 refunding bonds authorized by this section may also be used to purchase bonds in lieu of paying
6545 such bonds at maturity or redemption, through a tender offer or otherwise, whereupon the state
6546 treasurer may declare the purchased bonds to be paid in full. Such refunding bonds may be
6547 issued at such time prior to the maturity, acceleration or redemption of the bonds to be refunded
6548 thereby as the state treasurer, with the approval of the governor, may deem advisable. The
6549 issuance of such bonds, the security therefor, the maturities and other details thereof, the rights of
6550 the holders thereof and the rights, duties and obligations of the commonwealth with respect
6551 thereto shall be governed by the provisions of this chapter which relate to the issuance of bonds,
6552 insofar as such provisions may be appropriate therefor. Without limiting the generality of the

6553 foregoing, the provisions of section forty-nine applicable to sinking funds established with
6554 trustees shall apply to the deposit of refunding bond proceeds with a trustee except that such
6555 proceeds shall be held for the benefit of the holders of the bonds to be refunded thereby. All
6556 bonds issued by the commonwealth as aforesaid shall be designated on their face General
6557 Obligation Refunding Bonds or Special Obligation Refunding Bonds, as appropriate, and shall
6558 be issued for such maximum term of years, not exceeding thirty years, as the governor may
6559 recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the
6560 Constitution of the Commonwealth, provided, however, that the bonds of any particular issue
6561 shall mature not later than five years after the date of final maturity of the bonds being refunded
6562 by such issue; and provided, further, that the debt service on such refunding bonds shall be
6563 charged to the various budgeted funds of the commonwealth in proportion to the principal
6564 amounts being refunded.

6565 The state treasurer shall file a report with the house and senate committees on ways and
6566 means no later than thirty days after the sale of any refunding bonds issued pursuant to this
6567 section. Said report shall include written documentation of compliance with the provisions of this
6568 section, including, but not limited to, the issue or issues to be refunded, the projected dollar
6569 savings and the projected present value savings.

6570 Section 54. The state treasurer may require each bidder submitting a proposal pursuant to
6571 section 53, as a condition precedent to the consideration of such bidder' proposal, to submit a
6572 good faith deposit or otherwise secure such bidder' proposal, in such manner and amount as the
6573 state treasurer shall determine to be appropriate.

6574 Section 55. The state treasurer may annually expend such sums as the general court shall
6575 appropriate for the purpose of providing for and advertising sales of bonds for the direct debt of
6576 the commonwealth and for the purpose of preparing and paying for bond books necessary for
6577 such sales.

6578 Section 56. Funds from a sale of specific bonds or other securities which have reverted at
6579 the close of a fiscal year, in accordance with the provisions of the act authorizing the
6580 expenditures to be financed by the sale of said bonds or other securities, or in accordance with
6581 the provisions of section fourteen shall first be transferred in the succeeding fiscal year or years
6582 on the books of account of the commonwealth, without appropriation, to the fund which is liable
6583 for the maturities on said bonds or other securities but only in such amount as is necessary to
6584 meet the specific bonds or other securities matured and paid from said fund, if any, in a fiscal
6585 year. When such transfers are no longer required to meet such maturities any balance of said
6586 funds remaining, after setting aside a sufficient amount to cover any such bonds or other
6587 securities which have matured but have not been presented for payment, shall be transferred,
6588 without appropriation, on the books of account of the commonwealth to the fund from which
6589 said bonds or other securities were paid.

6590 Section 58. The state treasurer may, upon terms and regulations prescribed by the
6591 governor and council, issue, in denominations of not less than one thousand dollars, registered
6592 bonds in exchange for any coupon bonds of the commonwealth, which, with the exception of the
6593 coupons, shall be in conformity with the laws authorizing the issue of such coupon bonds. He
6594 shall mutilate and retain the bonds so received in exchange. The comptroller shall certify such
6595 registered bonds; and he and the state treasurer shall each keep a register of their dates, numbers
6596 and amounts, the names of the persons to whom they were issued, when they are payable, and for

6597 what bonds they were issued in exchange. The state treasurer may also, upon the same terms and
6598 regulations, issue in substitution for mutilated, defaced or endorsed bonds presented to him other
6599 bonds of like or equivalent issues.

6600 Section 59. If it appears to the governor and council that any interest-bearing bond of the
6601 commonwealth identified by number and description has, without bad faith upon the part of the
6602 owner, been lost or destroyed, wholly or in part, they shall, under regulations and with
6603 restrictions as to time and retention for security or otherwise prescribed by them, order the state
6604 treasurer to issue a registered duplicate of such bond, payable at the same time, bearing the same
6605 rate of interest as the bond lost or destroyed, and so marked as to show the number and date of
6606 the original bond. If such bond was of a class or series which has been called in for redemption
6607 before the application for a reissue, it shall be paid, with such interest only as would have been
6608 paid if the bond had been presented in accordance with such call.

6609 Section 60. The owner of such bond shall surrender so much thereof as may remain, if
6610 any, and shall give to the state treasurer a bond in double the amount of said lost or destroyed
6611 bond and of the interest which would accrue until the principal is due and payable, with a
6612 sufficient surety, a resident of the commonwealth, approved by the governor and council,
6613 conditioned to indemnify and save harmless the commonwealth from any claim on account of
6614 said lost or destroyed bond.

6615 Section 60A. Unless otherwise specifically provided, provisions contained in any act
6616 heretofore or hereafter enacted by a vote, taken by the yeas and nays of two-thirds of each house
6617 of the general court present and voting thereon, and approved by the governor, authorizing the
6618 state treasurer to issue and sell bonds or notes of the commonwealth or authorizing the

6619 commonwealth to borrow money requiring that the principal of and interest on such bonds or
6620 notes shall be (i) paid by or from a particular fund or funds of the commonwealth now existing or
6621 hereafter created, (ii) part of the debt and expenses of a particular district, or (iii) assessed by
6622 particular methods, or other provisions or words of similar import, shall not affect the status of
6623 such bonds and notes as general obligations of the commonwealth to which the full faith and
6624 credit of the commonwealth is pledged for the payment of principal and interest when due. All
6625 bonds and notes executed in accordance with the provisions of this chapter shall be deemed to be
6626 general obligations of the commonwealth to which its full faith and credit is pledged for the
6627 payment of principal and interest when due, unless specifically provided on the face of such
6628 bond or note to the contrary. All bonds or notes of the commonwealth executed in accordance
6629 with the provisions of this chapter shall have all of the qualities and incidents of negotiable
6630 instruments under the Uniform Commercial Code.

6631 There is hereby established a direct debt limit for the commonwealth which shall apply to
6632 any direct bonds issued whose issuance would cause the sum of the principal amounts of all
6633 direct bonds issued by the commonwealth and then outstanding to exceed the limit set herein;
6634 provided, however, that bonds for the payment or redemption of which, either at or prior to
6635 maturity, refunding bonds shall have been issued, shall be excluded in the computation of
6636 outstanding bonds; and provided, further, that the principal amount of bonds issued at a discount
6637 shall be the original net proceeds of such bonds. For the fiscal year starting July 1, 2011, such
6638 limit shall be \$17,070,000,000. For each subsequent fiscal year, the limit shall be the lesser of:
6639 (a) the product of the limit established for the previous fiscal year and 1.05; or (b) the product of
6640 the limit established for the previous fiscal year and the ratio of the value of the implicit price
6641 deflator for state and local government purchases for the preceding fiscal year to such value for

the fiscal year 2 years prior. The calculation described in this paragraph shall be announced by the treasurer not later than September 30 of any year. The preceding paragraph shall not apply to direct bonds in excess of the direct debt limit. The treasurer is authorized to issue regulations enforcing the provisions of this paragraph. Under no circumstances shall the provisions of this paragraph be interpreted to impair any bond covenants or other guarantees to bond holders relative to any such bonds or notes issued prior to July 1, 1990.

Section 60B. A. In this section, the following words shall have the following meanings.

1. "Committee", the capital debt affordability committee established under this section.

2. (a) "Tax supported debt", direct debt, as further described and limited in the first sentence of the second paragraph of section 60A; and other forms of debt, including state agency capital leases supported in whole or part by State tax revenues and debt of the department of transportation, and other units of commonwealth government which, in the opinion of the committee, are supported directly or indirectly by state tax revenues.

(b) "Tax supported debt", includes debt issued by the department of transportation under chapter 6C that is secured by a pledge of future federal aid from any source.

B. This section applies only to tax supported debt. This section shall not be construed to affect the authority of the Governor to submit any bills under the procedures established in amendments 62 or 63 to the Constitution of Massachusetts, or the authority of the General Court to continue its independent analysis of commonwealth debt affordability or to consider bills that authorize commonwealth debt or appropriations bills under amendments 62 or 63 to the Constitution of Massachusetts.

6664 C. There shall be within the executive office of administration and finance, but not
6665 subject to its supervision or control, a capital debt affordability committee consisting of the
6666 following voting members: the secretary of administration and finance who shall chair the
6667 committee, the treasurer, the comptroller, the secretary of transportation, one individual
6668 appointed by the governor who shall be an expert in public finance and who shall be a resident of
6669 the commonwealth and employed by a public or private institution of higher education, and 2
6670 individuals appointed by the treasurer who shall be experts in state public finance , and who shall
6671 be residents of the commonwealth and not employed by state government, either as a state
6672 employee or as an independent contractor. The house and senate chairs of the committees on
6673 bonding, capital expenditures and state assets and the committees on ways and means shall be
6674 nonvoting members of the committee. Any voting member may delegate his appointment. Each
6675 individual appointed by the secretary or treasurer shall serve terms established by the appointing
6676 authority, but not longer than 4 years. Each appointed individual may serve a second or
6677 subsequent terms, and each appointed individual may continue to serve after his term expires if
6678 desired by the appointing authority.

6679 D. The chairman shall call meetings of the committee as needed to perform its duties.

6680 E. The committee shall review on a continuing basis the size and condition of the
6681 commonwealth tax supported debt as well as other debt of any authority of the commonwealth
6682 that is determined to be a component unit of the commonwealth by the comptroller under
6683 subsection (c) of section 12.of chapter 7A.

6684 (1) On or before September 10 of each year, the committee shall submit to the governor
6685 and the general court the committee's estimate of the total amount of new commonwealth debt
6686 that prudently may be authorized for the next fiscal year.

6687 (2) In making its estimate, the committee shall consider:

6688 (a) the amount of State bonds that, during the next fiscal year:

6689 (i) will be outstanding; and

6690 (ii) will be authorized but unissued;

6691 (b) the capital program prepared by the secretary of administration and finance;

6692 (c) capital improvement and school construction needs during the next 5 fiscal years, as
6693 projected by the Massachusetts School Building Assistance Authority;

6694 (d) projections of debt service requirements during the next 10 fiscal years;

6695 (e) the criteria that recognized bond rating agencies use to judge the quality of issues of
6696 state bonds;

6697 (f) any other factor that is relevant to:

6698 (i) the ability of the state to meet its projected debt service requirements for the next 5
6699 fiscal years; or

6700 (ii) the marketability of state bonds;

6701 (g) the effect of authorizations of new state debt on each of the factors set out in this
6702 subsection;

6703 (h) Identification of pertinent debt ratios, such as debt service to General Fund revenues,
6704 debt to personal income, debt to estimated full-value of property, and debt per capita.

6705 (i) A comparison of the debt ratios prepared for subparagraph (h) with the comparable
6706 debt ratios for the 5 other states in New England, New York and 5 other states the committee
6707 determines to offer a fair comparison to the commonwealth.

6708 (j) A description of the percentage of the state's outstanding general obligation bonds
6709 constituting fixed rate bonds, variable rate bonds, bonds that have an effective fixed interest rate
6710 through a hedging contract, and bonds that have an effective variable interest rate through a
6711 hedging contract. The report shall also include, for each outstanding hedging contract, a
6712 description of the hedging contract, the outstanding notional amount, the effective date, the
6713 expiration date, the name and ratings of the counterparty, the rate or floating index paid by the
6714 state and the rate or floating index paid by the counterparty, and a summary of the performance
6715 of the state's hedging contracts in comparison to the objectives for which the hedging contracts
6716 were executed.

6717 (k) the amount of issuances, debt outstanding, and debt service requirement of other
6718 classes of commonwealth tax supported debt as well as other debt of commonwealth units.

6719 (3) The estimate of the committee shall be advisory, and shall not bind the governor or
6720 the general court.

6721 F. On or before October 15 of each year, after considering the current estimate of the
6722 committee, the governor shall determine:

6723 (1) the total authorizations of new commonwealth debt that the governor considers
6724 advisable for the next fiscal year; and

6725 (2) the preliminary allocation of new commonwealth debt for capital facility projects;

6726 Section 61. The comptroller or any other person authorized to approve claims for
6727 materials, supplies or other articles furnished to, or for service or labor performed for, the
6728 commonwealth, may, before approving any such claim, require the claimant to certify on oath
6729 that all the articles have been furnished, for which the claim has been made, or that the service or
6730 labor has been performed, and that no commission, discount, bonus, present or reward of any
6731 kind has been received or promised or is expected on account of the same.

6732 Section 63. If a department, commission, board, officer, employee or agent of the
6733 commonwealth is about to expend money or incur obligations purporting to bind the
6734 commonwealth for any purpose or object or in any manner other than that for and in which such
6735 department, commission, board, officer, employee or agent has the legal and constitutional right
6736 and power to expend money or incur obligations, the supreme judicial or superior court may,
6737 upon the petition of not less than twenty-four taxable inhabitants of the commonwealth, not more
6738 than six of whom shall be from any one county, determine the same in equity, and may, before
6739 the final determination of the cause, restrain the unlawful exercise or abuse of such right and
6740 power.

6741 Section 64. The state treasurer, on behalf of the commonwealth, may contract with an
6742 employee to defer a portion of that employee's compensation and may, for the purposes of
6743 funding a deferred compensation program for the employee, established in accordance with the
6744 United States Internal Revenue Code, the "Code", invest the deferred portion of the employee's

6745 income in a life insurance or annuity contract, mutual fund, a bank investment trust, and/or
6746 additional investment alternatives available under the program. The treasurer, before making the
6747 investment, shall solicit bids from fund managers, investment managers, and insurance
6748 companies authorized to conduct business within the commonwealth pursuant to chapter 175,
6749 mutual fund managers, and banks, which bids shall be sealed, and opened at a time and place
6750 designated by the treasurer. A bid submitted by an insurance company, mutual fund, bank
6751 investment trust or other fund manager or investment manager, to fund the deferred
6752 compensation program shall, where applicable, clearly indicate the interest rate which shall be
6753 paid on the deferred funds, the commissions which will be paid to the salesmen, the load
6754 imposed for the purpose of administering the funds, mortality projections, expected payouts, tax
6755 implications for participating employees and other information as the treasurer may require. Any
6756 contract entered into between an employee and the commonwealth pursuant to this section shall
6757 include the information in terms the employee can reasonably be expected to understand.

6758 As used in this section the word "employee" shall have the same meaning as "employee"
6759 in section 1 of chapter 32 and shall include members of the state police temporarily assigned to
6760 and paid by the Massachusetts Department of Transportation, the Massachusetts Port Authority
6761 or any other board, agency, commission or authority to which they may be temporarily assigned
6762 and by which they are paid, and consultants and independent contractors who are natural persons
6763 paid by the commonwealth.

6764 An employee may defer compensation; provided, however, that such deferral does not
6765 exceed the maximum allowable under the appropriate provisions of the Code, as amended and in
6766 effect for the taxable year, and appropriate regulations thereunder.

6767 Such deferred compensation program shall be in addition to and not a part of the
6768 retirement program or pension system as provided under said chapter 32 and any other benefit
6769 program provided by law for such employee. Any compensation deferred under such a plan
6770 shall continue to be included as regular compensation, as defined in section 1 of said chapter 32,
6771 for the purpose of computing the retirement and pension benefits earned by any such employee,
6772 but any compensation so deferred shall not be included in the computation of any taxes withheld
6773 on behalf of any such employee.

6774 The state treasurer, on behalf of the commonwealth, shall contract with every person,
6775 who is receiving compensation from the commonwealth for services performed for the
6776 commonwealth and who is not eligible for membership or has exercised an option not to
6777 participate in the state retirement system set forth in chapter 32, to defer a portion of that person's
6778 compensation, and shall invest the deferred portion of that person's income in a deferred
6779 compensation program established in accordance with said Code. For persons holding positions
6780 which would have rendered the holder of the position eligible for participation in the
6781 commonwealth's deferred compensation program on November 5, 1990, the state treasurer shall
6782 contract for plan years prior to January 1, 1993, to defer 6 per cent of that person's regular
6783 compensation, as defined in section 1 of chapter 32 for the period subsequent to December 31,
6784 1945, but no greater than the maximum deferral allowable for that person pursuant to the
6785 provisions of said Code for government deferred compensation programs. For persons holding
6786 positions which would not have rendered the holder of the position eligible for participation in
6787 the commonwealth's deferred compensation program on November 5, 1990, the state treasurer
6788 shall contract to defer 7 ½ per cent of that person's regular compensation, as defined in said
6789 section 1 of said chapter 32 for the period subsequent to December 31, 1945, but no greater than

6790 the maximum deferral allowable for that person pursuant to the provisions of said Code for
6791 government deferred compensation programs.

6792 Notwithstanding the provisions of this section, the state treasurer need not contract with
6793 any part-time, seasonal or temporary employee not required by said Code to participate in a
6794 public retirement system. All contracts formed with part-time, seasonal or temporary employees
6795 pursuant to the provisions of the previous paragraph shall entitle the employee to a single-sum
6796 distribution of the employee's deferrals plus reasonable interest.

6797 Nothing in this section shall be construed to create or grant any rights not previously
6798 enjoyed under chapter 32A or chapter 150E.

6799 Section 64A. The state treasurer of the commonwealth, on behalf of the commonwealth,
6800 may contract with an employee to make contributions for and in the name of such employee,
6801 from amounts otherwise payable to the employee as current compensation, to an Individual
6802 Retirement Account ("IRA") by such employee established in accordance with the U.S. Internal
6803 Revenue Code, (the "Code"). The participating employee may invest that portion of his income
6804 so contributed to an IRA in an annuity contract, mutual fund, bank investment trust or other
6805 investment authorized by the Code. Before making such deduction, the treasurer shall be
6806 required to solicit bids from insurance companies authorized to conduct business within the
6807 commonwealth pursuant to chapter 175, mutual fund managers, and banks, which bids shall be
6808 sealed, and opened at a time and place designated by the treasurer. Any bid submitted by an
6809 insurance company, mutual fund, or bank investment trust seeking investment of the IRA
6810 contribution shall, where applicable, clearly indicate the interest rate which shall be paid on the
6811 invested funds, any commissions which will be paid to the salesmen, any load imposed for the

6812 purpose of administering the funds, expected payouts, tax implications for participating
6813 employees and such other information as the treasurer may require. Upon the treasurer's
6814 determining which provider offers the product or products most beneficial to the employee in
6815 each category for which bids were solicited, the treasurer may offer such employee the
6816 opportunity to establish an IRA with 1 or more such providers. The employee who wishes to
6817 invest his IRA funds with any such provider, or combination of providers, may authorize the
6818 treasurer to deduct from amounts otherwise payable to the employee, at one time or on a periodic
6819 basis, amounts to be paid into the employee's IRA. If the employee so elects, the treasurer shall
6820 pay to the providers the amount designated by the employee, in the name of the employee, to the
6821 employee's IRA. Amounts so paid to the providers for the employee's IRA account shall belong
6822 exclusively to the employee. Except as otherwise provided herein, the treasurer may restrict an
6823 employee's right to contract to have contributions made to an IRA through deductions and
6824 payments by the treasurer, to those providers selected as the result of the competitive bidding
6825 process outlined herein, but the authority conferred upon the treasurer shall not be construed to
6826 restrict or limit the right of any employee to establish one or more IRAs with such banks,
6827 insurance companies, or similar authorized institutions as the employee may choose in any
6828 manner other than through an authorized deduction by the treasurer of a portion of the employees
6829 compensation as outlined herein. Any contract entered into between an employee and the
6830 commonwealth pursuant to this section shall include all information in terms the employee can
6831 reasonably be expected to understand.

6832 As used in this section the word "employee" shall have the same meaning as "employee"
6833 in section 1 of chapter 32 and shall include members of the state police temporarily assigned to
6834 and paid by the Massachusetts Department of Transportation, the Massachusetts Port Authority

6835 or any other board, agency, commission or authority to which they may be temporarily assigned
6836 and by which they are paid, and consultants and independent contractors who are natural persons
6837 paid by the commonwealth.

6838 An employee may contribute a portion of his compensation to an IRA under the program
6839 outlined herein so long as such contribution, for an employee who is single, is the lesser of
6840 \$2,000 or 100 per cent of his compensation for a taxable year, and, for an employee who is
6841 married, the contribution is the lesser of \$2,250 or 100 per cent of his compensation for a taxable
6842 year. If an employee has any compensation deferred under a deferred compensation plan for
6843 employees of the commonwealth, if one is established by the treasurer under section 64, then the
6844 aggregate amount of such deferred compensation deduction and amounts contributed to such
6845 employee's IRA shall not exceed the limits imposed upon such combined deduction and
6846 contribution by the Code.

6847 Notwithstanding any provisions to the contrary, the treasurer shall not be required to
6848 solicit bids to invest the contributed portion of an employee's income into the employee's IRA
6849 provided: (a) the treasurer is authorized by the employee to pay that portion of the employee's
6850 compensation into the employee's IRA in the same investment products as provided through a
6851 deferred compensation or IRA plan for employees of the commonwealth administered by the
6852 state treasurer, or a deferred compensation plan for employees of the city or town administered
6853 by the treasurer, provided such plan resulted from the solicitation of bids in accordance with
6854 bidding requirements comparable to those required under this section; or (b) the treasurer is
6855 authorized by the employee to pay that portion of the employee's compensation into the
6856 employee's IRA in the investment products offered pursuant to a deferred compensation plan or
6857 an IRA investment option program developed through a competitive selection process, provided

6858 that such plan or program resulted from the solicitation of bids by a group of any combination of
6859 3 or more city, town, county or public authority treasurers acting as a "Common Group" for
6860 purposes of soliciting such proposals in accordance with bidding requirements comparable to
6861 those required under this section.

6862 Such IRA plan shall be in addition to and not a part of the retirement program or pension
6863 system as provided under said chapter 32 and any other benefit program provided by law for
6864 such employee. Any compensation contributed by the employee to his IRA under such a plan
6865 shall continue to be included as regular compensation, as defined in section 1 of said chapter 32,
6866 for the purpose of computing the retirement and pension benefits earned by any such employee,
6867 but any compensation so contributed shall not be included in the computation of federal taxes but
6868 shall be included in the computation of state taxes withheld on behalf of any such employee.

6869 Section 64B. The treasurer or, if there is no treasurer, the chief financial officer by
6870 whatever name that person is called, on behalf of any political subdivision, body politic and
6871 corporate, or public instrumentality created by the commonwealth or any county, city or town or
6872 group thereof by whatever name the body is called, including without limitation, an agency,
6873 authority, board, corporation or district, including also without limitation, any regional school,
6874 police, fire, refuse or sewage district, and hereinafter referred to as a "governmental body,"
6875 which is not otherwise subject to any general or special law authorizing deferred compensation
6876 contracts with its employees, may contract with an employee of such governmental body to defer
6877 a portion of an employee' compensation and may, for the purposes of funding a deferred
6878 compensation program for said employee, established in accordance with the U.S. Internal
6879 Revenue Code, (the "Code") invest the deferred portion of the employee' income in a life
6880 insurance or annuity contract, mutual fund, or a bank investment trust. The treasurer or chief

6881 financial officer shall, before making any such investment, solicit bids from insurance companies
6882 authorized to conduct business within the commonwealth pursuant to chapter 175, mutual fund
6883 managers, and banks, which bids shall be sealed, and opened at a time and place designated by
6884 the treasurer or chief financial officer. Any bid submitted by an insurance company, mutual fund,
6885 or bank investment trust to fund the deferred compensation program shall, where applicable,
6886 clearly indicate the interest rate which shall be paid on the deferred funds, any commissions
6887 which will be paid to the salesmen, any load imposed for the purpose of administering the funds,
6888 mortality projections, expected payouts, tax implications for participating employees and such
6889 other information as the treasurer or chief financial officer may require. Any contract entered
6890 into between an employee and the governmental body pursuant to this section shall include all
6891 such information in terms the employee can reasonably be expected to understand.

6892 As used in this section the word “employee” shall have the same meaning as the word
6893 “employee” in section 1 of chapter 32 and shall include consultants and independent contractors
6894 who are natural persons paid by the governmental body.

6895 Notwithstanding any general or special law to the contrary, the treasurer or chief financial
6896 officer shall not be required to solicit bids to invest the deferred portion of an employee’ income
6897 provided: (a) the treasurer or chief financial officer elects to invest such funds in the same
6898 investment products as are provided through the deferred compensation plan for employees of
6899 the commonwealth administered by the state treasurer, provided such plan resulted from the
6900 solicitation of bids in accordance with bidding requirements comparable to those required under
6901 this section; or (b) the treasurer or chief financial officer elects to invest such funds in the
6902 investment products offered pursuant to a plan developed through a competitive process,
6903 provided that such plan resulted from the solicitation of bids by a group of any combination of 3

6904 or more city, town, county or public authority treasurers or treasurers or chief financial officers
6905 of governmental bodies covered by this section acting as a “Common Group” for purposes of
6906 soliciting such proposals in accordance with bidding requirements comparable to those required
6907 under this section.

6908 An employee may defer compensation; provided, however, that such deferral does not
6909 exceed the maximum allowable under the appropriate provisions of the Code, as amended and in
6910 effect for the taxable year, and appropriate regulations thereunder.

6911 Such deferred compensation program shall be in addition to and not a part of any
6912 retirement program or pension system as provided under said chapter 32 and any other benefit
6913 program provided by law for such employee. Any compensation deferred under such a plan
6914 shall continue to be included as regular compensation, as defined in section 1 of said chapter 32,
6915 for the purpose of computing any retirement and pension benefits earned by any such employee,
6916 but any compensation so deferred shall not be included in the computation of any taxes withheld
6917 on behalf of any such employee.

6918 Section 64C. The treasurer or, if there is no treasurer, the chief financial officer, by
6919 whatever name that person is called, of any political subdivision, body politic and corporate, or
6920 public instrumentality created by the commonwealth or by any county, city, or town or group
6921 thereof by whatever name the body is called, including without limitation an agency, board,
6922 authority, corporation or district, including, also without limitation, any regional school, police,
6923 fire, refuse or sewage district, hereinafter referred to as a “governmental body,” which is not
6924 subject to a general or special law authorizing deferred compensation contracts with its
6925 employees, may contract with an employee of that governmental body to make contribution for

6926 and in the name of such employee, from amounts otherwise payable to the employee as current
6927 compensation, to an Individual Retirement Account (“IRA”) by such employee established in
6928 accordance with the U.S. Internal Revenue Code, (the “Code”). The participating employee may
6929 invest that portion of his income so contributed to an IRA in an annuity contract, mutual fund,
6930 bank investment trust or other investment authorized by the Code. Before making such
6931 deduction, the treasurer or chief financial officer shall be required to solicit bids from insurance
6932 companies authorized to conduct business within the commonwealth pursuant to chapter 175,
6933 mutual fund managers and banks, which bids shall be sealed and opened at a time and place
6934 designated by the treasurer or chief financial officer. Any bid submitted by an insurance
6935 company, mutual fund, or bank investment trust seeking investment of the IRA contribution
6936 shall, where applicable, clearly indicate the interest rate which shall be paid on the invested
6937 funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of
6938 administering the funds, expected payouts, tax implications for participating employees and such
6939 other information as the treasurer or chief financial officer may require. Upon the treasurer’ or
6940 chief financial officer’ determining which provider offers the product or products most beneficial
6941 to the employee in each category for which bids were solicited, the treasurer or chief financial
6942 officer may offer such employee the opportunity to establish an IRA with one or more such
6943 providers. The employee who wishes to invest his IRA funds with such provider, or combination
6944 of providers, may authorize the treasurer or chief financial officer to deduct from amounts
6945 otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the
6946 employee’ IRA. If the employee so elects, the treasurer or chief financial officer shall pay to the
6947 providers the amount designated by the employee, in the name of the employee, to the employee’
6948 IRA. Amounts so paid to the providers for the employee’ IRA account shall belong exclusively

6949 to the employee. Except as otherwise provided herein, the treasurer or chief financial officer may
6950 restrict an employee' right to contract to have contributions made to an IRA through deductions
6951 and payments by the treasurer or chief financial officer, to those providers selected as the result
6952 of the competitive bidding process outlined herein, but the authority conferred upon the treasurer
6953 or chief financial officer shall not be construed to restrict or limit the right of any employee to
6954 establish one or more IRAs with such banks, insurance companies, or similar authorized
6955 institutions as the employee may choose in any manner other than through an authorized
6956 deduction by the treasurer or chief financial officer of a portion of the employee' compensation
6957 as outlined herein. Any contract entered into between an employee and the governmental body
6958 pursuant to this section shall include all information in terms the employee can reasonably be
6959 expected to understand.

6960 As used in this section the word "employee" shall have the same meaning as the word
6961 "employee" in section 1 of chapter 32 and shall also include consultants and independent
6962 contractors who are natural persons paid by the governmental body.

6963 An employee may contribute a portion of his compensation to an IRA under the program
6964 outlined herein so long as such contribution, for an employee who is single, is the lesser of
6965 \$2,000 or 100 per cent of his compensation for a taxable year, and, for an employee who is
6966 married, the contribution is the lesser of \$2,250 or 100 per cent of his compensation for a taxable
6967 year, such dollar amount to be adjusted to reflect any applicable amendments to the code adopted
6968 from time to time. If an employee has any compensation deferred under a deferred compensation
6969 plan for employees of the governmental body, if one is established by the treasurer or chief
6970 financial officer under section 64B, then the aggregate amount of such deferred compensation

6971 deduction and amounts contributed to such employee' IRA shall not exceed the limits imposed
6972 upon such combined deduction and contribution by the Code.

6973 Notwithstanding any provisions to the contrary, the treasurer or chief financial officer
6974 shall not be required to solicit bids to invest the contributed portion of an employee' income into
6975 the employee' IRA provided: (a) the treasurer or chief financial officer is authorized by the
6976 employee to pay that portion of the employee' compensation into the employee' IRA in the same
6977 investment products as are provided through a deferred compensation or IRA plan for employees
6978 of the commonwealth administered by the state treasurer or a deferred compensation plan for
6979 employees of the governmental body administered by the treasurer or chief financial officer,
6980 provided such plan resulted from the solicitation of bids in accordance with bidding requirements
6981 comparable to those required under this section; or (b) the treasurer or chief financial officer is
6982 authorized by the employee to pay that portion of the employee' compensation into the
6983 employee' IRA in the investment products offered pursuant to a deferred compensation or IRA
6984 plan developed through a competitive selection process, provided that such plan resulted from
6985 the solicitation of bids by a group of any combination of 3 or more city, town, county or public
6986 authority treasurers or treasurers or chief financial officers of government bodies covered by this
6987 section acting as a "Common Group" for purposes of soliciting such proposals in accordance
6988 with bidding requirements comparable to those required under this section.

6989 Such IRA plan shall be in addition to and not a part of any retirement program or pension
6990 system as provided under said chapter 32 and any other benefit program provided by law for
6991 such employee. Any compensation contributed by the employee to his IRA under such a plan
6992 shall continue to be included as regular compensation, as defined in section 1 of said chapter 32,
6993 for the purpose of computing any retirement and pension benefits earned by any such employee,

6994 but any compensation so contributed shall not be included in the computation of federal taxes but
6995 shall be included in the computation of state taxes withheld on behalf of any such employee.

6996 Section 64D. Any governmental body, as defined in section 64B, may require any person,
6997 who is receiving compensation from the governmental body for services performed and who is
6998 not a member of a retirement system as provided under chapter 32 or any other retirement system
6999 which meets the requirements of Section 3121(b)(7)(F) of the Internal Revenue Code and the
7000 regulations promulgated thereunder, to participate in the deferred compensation program
7001 established with regard to the governmental body, or tax sheltered annuity or any other defined
7002 contribution plan. The treasurer, or if there is no treasurer, the chief financial officer by whatever
7003 name that person is called, on behalf of a governmental body which has accepted the provisions
7004 of this section shall contract with any person, who is receiving compensation from the
7005 governmental body for services performed for the governmental body and who is not eligible for
7006 membership in the retirement system set forth in said chapter 32 that pertains to the
7007 governmental body, to withhold from that person' compensation at least such amounts as are
7008 necessary to provide the minimum level of benefits required to qualify said deferred
7009 compensation program, tax sheltered annuity or other defined contribution plan as a retirement
7010 system for said person as defined under said Section 3121(b)(7)(F) of said Code and the
7011 regulations promulgated thereunder but no greater than permitted under other provisions of the
7012 Internal Revenue Code.

7013 All contracts formed with part-time, seasonal or temporary employees pursuant to the
7014 provisions of the first paragraph shall entitle the employee to a single-sum distribution of the
7015 employee' deferral plus reasonable interest.

7016 A governmental body may accept the provisions of this section by a majority vote of the
7017 selectmen for a town, the city council for a city, the county council for a county, the district
7018 members in a district, the members of the authority in an authority, and the governing body, by
7019 whatever name and in whatever form composed, in any other political subdivision, body politic
7020 and corporate, or public instrumentality created by the commonwealth.

7021 Any governmental body already requiring, on the effective date of this act, participation
7022 in a public retirement system for persons who are receiving compensation from the governmental
7023 body for services performed and who are not members of a retirement system as provided under
7024 said chapter 32 shall be deemed to have accepted this section without the requirement of a
7025 majority vote of the selectmen for a town, the city council for a city, the county council for a
7026 county, the district members in a district, the members of the authority in an authority, and the
7027 governing body, by whatever name and in whatever form composed, in any other political
7028 subdivision, body politic and corporate, or public instrumentality created by the commonwealth.

7029 Section 65. The secretary having charge of any of the executive offices established by
7030 chapters 6A and 7 may by rule or regulation not inconsistent with the law delegate to 1 officer
7031 within the office of the secretary, in whole or in part, the authority to exercise in his name any
7032 power, or to discharge in his name any duty conferred upon such secretary by sections 27A, 27B,
7033 29, and 29A; sections 24C, 25B, 36 and paragraph (5A) of section 46 of chapter 30; and section
7034 15, section 15F, section 16A, and section 16B of chapter 31.

7035 The secretary of administration and finance shall from time to time make a random
7036 examination of approvals granted and actions taken by such secretary or his designee identified
7037 in the preceding paragraph, under the provisions of the aforementioned sections, in order to

determine the extent of compliance with the provisions of such sections and the rules or regulations established thereunder. Following any such examination, the secretary of administration and finance may, after consultation with the secretary, by order transfer from such officer to the secretary of administration and finance, for such period of time as said secretary deems appropriate, the authority to give such approvals or to take such actions. Upon making such order, the secretary of administration and finance shall forthwith file a copy of said order with the budget director, the comptroller, and the house and senate committees on ways and means, specifying the scope of the authority so transferred and the duration of said transfer.

Section 66. Any officer or employee who knowingly violates, authorizes or directs another officer or employee to violate of this chapter, or any rule or regulation promulgated thereunder, or any other law relating to the incurring of liability or expenditure of public funds, shall be punished by a fine of not more than \$1,000 or by imprisonment in a jail or house of correction for not more than 1 year, or both.

Section 71. This chapter shall not be construed to affect the obligation of the state treasurer to withhold from the receipts, distributions, reimbursements or other assistance payable to any city, town or other local governmental unit under any reimbursement, grant, assistance or other local aid program any amount determined in accordance with section 10 of chapter 44 A or any amount certified to the state treasurer as owing to a public instrumentality of the commonwealth pursuant to paragraph (b) of section 10 of chapter 372 of the acts of 1984 or paragraph (d) of section 10 or section 11 of chapter 29 C, or any similar provision relative to local aid intercepts.

7059 SECTION 98. Chapter 58 of the General Laws, as so appearing, is hereby amended by
7060 striking out section 18C and inserting in place thereof the following section:-

7061 Section 18C.(a) In this section, “budgeted aid” shall mean unrestricted aid to cities and
7062 towns, including proceeds from the state lottery established under chapter 10, payments in lieu of
7063 taxes from the commonwealth to cities and towns and education aid to cities and towns under
7064 chapter 70.

7065 (b) In fiscal year 2012 and each fiscal year thereafter, the state treasurer shall, subject to
7066 appropriation but not subject to allotment under section 9B of chapter 29, distribute budgeted aid
7067 to cities and towns. The distribution shall be made in 12 equal payments, on or before the last
7068 day of each month.

7069 Notwithstanding clause Forty-first of section 7 of chapter 4 or any other general or
7070 special law to the contrary, the commissioner of revenue or any official responsible for a local
7071 reimbursement or assistance program reported by said commissioner under section 25A shall
7072 use, as appropriate, the most recent city and town population estimates of the United States
7073 Bureau of the Census in calculating distributions or assessments under local reimbursement or
7074 assistance programs. Such distribution programs shall include, but not be limited to, the chapter
7075 70 school aid program, and aid to regional public libraries. Such assessments shall include, but
7076 not be limited to, air pollution control districts, the metropolitan area planning council, the old
7077 colony planning council, the Massachusetts Bay Transportation Authority and any other entity
7078 for which said commissioner is required to give notice under said section 25A.

7079 (c) This section shall not be construed to prohibit the distribution of other state
7080 government payments to cities and towns that are not budgeted aid through one or more of the

monthly payments to cities and towns. Nor shall this section be construed to prohibit the deduction from distributions to satisfy amounts owed to the state by cities and towns under section 20A or any other general or special law.

SECTION 99. Section 2 of chapter 62F of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definitions of “Cumulative net state tax revenues,” “Cumulative permissible tax revenues,” “Permissible revenue growth rate,” and “Permissible tax revenue.”.

SECTION 100. Section 6A of said chapter 62F is hereby repealed.

SECTION 101. Chapter 81 of the General Laws is hereby amended by inserting after section 8A the following 2 sections:-

Section 8B. The commissioner of highways or the commissioner of the department of conservation and recreation shall require that any person proposing to bid on any work, excepting the construction, reconstruction, repair or alteration of buildings, to be awarded by the division of highways or by the department of conservation and recreation, respectively, and the commissioner of highways shall require that any person proposing to bid on any such work to be awarded by a municipality under section 34 of chapter 90, submit a statement under the penalties of perjury setting forth his qualifications to perform such work. Such statement shall be in such detail and form and shall be submitted at such times as such commissioner may prescribe under rules promulgated by said division or commission, respectively, subject to the requirements of chapter 30A. Such rules may require such information as may be necessary to implement this section and may establish a basis for the classification and maximum capacity rating of bidders which shall determine the class and aggregate amount of work such bidders are qualified to

7103 perform. The statement shall set forth, among other matters that may be prescribed by the rules,
7104 the proposed bidders' financial resources, his current bonding capacity, his experience, the
7105 number and kinds of equipment which he has for use on such work, and the number, size and
7106 completion dates of other construction jobs, whether in this state or another state, which he has
7107 under contract. The information contained within such statement, together with other relevant
7108 available information and the proposed bidder' past performance on work of a similar nature,
7109 may be considered by said division or commission in determining whether or not the proposed
7110 bidder is qualified to perform any specific work for which proposals to bid are invited.

7111 Based on information received and available and on past performance of the prospective
7112 bidder on work of a similar nature, each such commissioner, acting through a prequalification
7113 committee consisting of engineering personnel of said division or commission, respectively, to
7114 be appointed by him, shall determine the class and aggregate amount of work that a prospective
7115 bidder is qualified to perform, and shall limit a proposed bidder to such class and aggregate
7116 amount of work as he may be qualified to perform. Said aggregate amount of work shall not be
7117 less than the amount of the bidder' current bonding capacity, as verified to the commissioner'
7118 satisfaction, by a surety company incorporated pursuant to section 105 of chapter 175, or
7119 authorized to do business in the commonwealth under section 106 of said chapter 175, and
7120 satisfactory to the commissioner; provided, however, that if there is more than 1 surety company,
7121 the surety companies shall be jointly and severally liable. Said division or commission shall limit
7122 the bid proposals to be furnished to a prospective bidder to such bidders as are determined by its
7123 commissioner to have the classification and capacity rating to perform the work required.

7124 Any such statement filed with either such commissioner by a prospective bidder shall be
7125 confidential, and shall be used only by the division of highways or the department of

7126 conservation and recreation, as the case may be, in determining the qualifications of such
7127 prospective bidder to perform work for said division or commission, or for a municipality under
7128 the provisions of said section 34. No information contained in such statement shall be imparted
7129 to any other person without the written consent of said bidder.

7130 If any prospective bidder fails to file the statement required by this section, or if, in the
7131 judgment of the commissioner, the prospective bidder is not qualified to carry out the work
7132 required under a contract which is proposed to be awarded, the commissioner shall refuse to
7133 furnish such prospective bidder with bid proposals for such work and shall reject any bid by such
7134 prospective bidder for such work.

7135 Only persons filing the statement required herein shall be authorized as prime contractors
7136 and then only as to the class and aggregate amount of work which their qualifications warrant.

7137 Any bidder qualified as authorized herein shall be promptly notified by the
7138 commissioner.

7139 Any prospective bidder who is aggrieved by any decision or determination of the
7140 prequalification committee or the commissioner which affects his right to bid may file a new
7141 application for qualification at any time, or within fifteen days after receiving notice of such
7142 decision the applicant may request in writing a hearing before an appeal board to reconsider his
7143 application or qualifications. The appeal board in the division of highways shall consist of the
7144 commissioner, the associate commissioners and the chief engineer of highways, or their
7145 designees, and the appeal board in the department of conservation and recreation shall consist of
7146 the commissioner, the associate commissioners, and the director or chief engineer of the division
7147 involved, or their designees.

7148 Any bidder or prospective bidder who so requests shall be granted a hearing by such
7149 appeal board at which he may submit any and all additional information or evidence bearing
7150 upon his finances, current bonding capacity, experience or other qualifications which may be
7151 relevant thereto. Such hearing shall be held without delay and the board shall promptly render its
7152 decision after taking into consideration all relevant information or evidence submitted relating to
7153 the bidder' qualifications. The appeal board may modify, amend or reverse any previous decision
7154 of the prequalification committee or the commissioner with respect to the qualification of the
7155 applicant or may sustain such previous decision. Such hearing shall be deemed to be an
7156 adjudicatory proceeding, and any bidder or prospective bidder who is aggrieved by the decision
7157 of the appeal board shall have a right to judicial review under said chapter 30A.

7158 The commissioner of highways or the commissioner of the department of conservation
7159 and recreation shall not consider any bid filed with him by any person for any contract to be
7160 awarded by said division or commission, respectively, who has not been qualified as required by
7161 the rules promulgated by said division or commission, and any such bid of any unqualified
7162 bidder may be rejected without being opened. No contract shall be awarded to any bidder not
7163 qualified to bid thereon at the time fixed for receiving bids.

7164 Any person, firm or corporation who knowingly and willfully makes, or causes to be
7165 made, any false or fraudulent statement in any application for qualification filed with such
7166 department or commission as required herein shall, upon final conviction, be disqualified from
7167 submitting bids on contracts advertised by the division or commission for a period of one year
7168 following the date of said conviction.

7169 This section shall not apply to any prospective bidder the aggregate amount of whose
7170 work with said division of highways or with the department of conservation and recreation,
7171 including the amount of his proposal, is less than \$50,000.

7172 Section 8C. Any contract for the resurfacing, maintenance, minor reconstruction, or
7173 minor repair of any major state highway or numbered route within the city of Boston, between
7174 said city and state highway route 128, of state highway route 3 as far south as the junction of
7175 state highway route 139, on which the average daily traffic exceeds 70,000 vehicles per day, and
7176 any contract for the maintenance, minor reconstruction, or minor repair of state highway route
7177 128 between its junction with state highway route 3 in the town of Braintree and its junction with
7178 U.S. route 1 in the town of Lynnfield, to be awarded by the division of highways, the department
7179 of conservation and recreation, or by a municipality under section 34 of chapter 90 shall, unless
7180 such contract involves the performance of emergency work as hereinafter described, provide that
7181 no work shall be performed between the hours of 6:30 and 9:00 ante meridian on lanes inbound
7182 to the city of Boston or between the hours of 4:00 and 6:00 post meridian on lanes outbound
7183 from the city of Boston, Monday through Friday, except holidays. No such work, except
7184 emergency work, shall be performed on such a highway or route by a public employee during
7185 such hours. As used in this section emergency work shall include only those projects
7186 immediately necessary to insure the safety of persons using such highways or routes.

7187 SECTION 102. Each executive office shall comply with the requirements of section 4A
7188 of chapter 6A of the General Laws, as inserted by section 12 of this act, and section 4R of
7189 chapter 7 of the General Laws, as inserted by section 29 of this act not later than July 1, 2012.
7190 Such compliance shall be documented in reports by each executive office to the house and senate
7191 committees on ways and means, the house and senate committees on post-audit and oversight

7192 and the joint committee on state administration and regulatory oversight not later than July 1,
7193 2012.

7194 SECTION 103. The state lottery commission shall comply with the requirements of
7195 section 26A of chapter 10 of the General laws, as inserted by section 87 of this act, not later than
7196 July 1, 2012. Such compliance shall be documented in a report by the state lottery commission to
7197 the house and senate committees on ways and means, the house and senate committees on post-
7198 audit and oversight and the joint committee on state administration and regulatory oversight not
7199 later than July 1, 2012.

7200 SECTION 104. The comptroller shall promulgate the schedule of revenue accounts, as
7201 required in section 2 of chapter 29 of the General Laws, as inserted by section 97, not later than
7202 June 30, 2012.

7203 SECTION 105. Any appropriation previously available for expenditure in multiple fiscal
7204 years under section 14 of chapter 29 of the General Laws shall not be available after June 30,
7205 2011.

7206 SECTION 106. The state treasurer shall competitively procure any fund established
7207 under section 38A of chapter 29 of the General Laws, as inserted by section 97, not later than
7208 September 30, 2011.

7209 SECTION 107. Sections 82 and 83 shall take effect for the fiscal year ending on June 30,
7210 2011.

7211 SECTION 108. Section 98 shall take effect for the fiscal year starting on July 1, 2012.

7212 SECTION 109. Except as otherwise specified, this act shall take effect on July 1, 2011.