

**HOUSE . . . . . No. 3382**

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to transportation finance.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to immediately make available monies for transportation financing in the fiscal year beginning July 1, 2013, and to make certain changes in law, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1           SECTION 1. To provide for certain unanticipated obligations of the commonwealth, and  
2 to meet certain requirements of law, for fiscal year 2014 the sums set forth in section 2 are  
3 hereby appropriated for the several purposes and subject to the conditions specified in said  
4 section 2 and subject to laws regulating the disbursement of public funds. For the purpose of  
5 making available in fiscal year 2014 balances of appropriations which otherwise would revert on  
6 June 30, 2013, the unexpended balances of the maintenance appropriations listed below, not to  
7 exceed the amount specified below for each item, are hereby re-appropriated for the purposes of  
8 and subject to the conditions stated for the corresponding item in section 2 of the general  
9 appropriation act for fiscal year 2014. Amounts in this section are re-appropriated from the fund  
10 or funds designated for the corresponding item in section 2 of the general appropriation act;  
11 provided, however, that for items which do not appear in section 2 of the general appropriation  
12 act, the amounts in this section are re-appropriated from the fund or funds designated for the  
13 corresponding item in section 2 of this act or in prior appropriation acts.

14           SECTION 2.

15           1595-6367 For the transportation performance and asset management advisory  
16 council to assist with the development of a statewide integrated performance management  
17 system pursuant to sections 12 and 12A of chapter 6C of the General  
18 Laws.....\$100,000

19 SECTION 3. Clause (18) of section 3 of chapter 6C of the General Laws, as appearing in  
20 the 2010 Official Edition, is hereby amended by striking out the words “the department shall”, in  
21 line 73, and inserting in place thereof the following words:- prior to revising the toll structure,  
22 the department shall publish a report on its website that sets forth the fiscal alternatives that were  
23 examined in lieu of revising the toll structure and detail the reasons why such alternatives were  
24 not viable fiscal options, the department shall then.

25 SECTION 4. Subsection (b) of section 4 of chapter 6C of the General Laws, as so  
26 appearing, is hereby amended by inserting after the words “tools and facilities”, in line 46, the  
27 following words:- ; provided that no less than \$100,000,000 shall annually be spent on repairs  
28 and improvements to municipal ways and bridges.

29 SECTION 5. Chapter 6C of the General Laws is hereby amended by adding the  
30 following new section:-

31 Section 11A. The secretary shall, after conducting a series of public hearings, prepare  
32 and publish on the website of the department a comprehensive long term capital plan for the 10  
33 succeeding fiscal years. The plan shall be developed consistent with projected federal, state and  
34 local funds and shall identify sources and uses for those funds. The plan shall also incorporate  
35 scenario analysis planning that accounts for future spending needs and life-cycle financing. It  
36 shall also set forth estimates and costs for the optimal long-term preservation of each major  
37 transportation system component, including the need for long term comprehensive system  
38 management, maintenance and operations.

39 SECTION 6. Chapter 6C of the General Laws is hereby amended by adding the  
40 following section:-

41 Section 12A. (a) As used in this section, the following words shall, unless the context  
42 clearly requires otherwise, have the following meanings:-

43 ”Performance and asset management system”, a permanent, comprehensive and  
44 integrated system, developed by the department pursuant to section 12 , that requires the  
45 operation, maintenance, upgrade, and expansion of all transportation assets, that are cost-  
46 effectively administered throughout their lifecycle, by continuously updating physical inventory,  
47 condition assessments, and performance information. The system shall establish goals, metrics,  
48 and outcomes measuring transportation performance, as required by section 6.

49 “Council”, the transportation performance and asset management advisory council  
50 created under this section.

51 “Local transportation agency”, the city, town, or other governmental entities’ department  
52 of transportation or public works that has jurisdiction over the transportation assets in that city,  
53 town or entity that receives state or federal funding.

54 “Transportation assets”, capital assets, including but not limited to, any city, town, county  
55 or state highway, road, street, pavement, and parkway, facilities, structures, construction and  
56 maintenance equipment, vehicles, real estate, materials, corporate data and information, and any  
57 equipment, rolling stock, infrastructure, and facilities for use in public transportation, and ground  
58 and water transportation facilities and equipment and any rights-of-way, bridges, tunnels,  
59 railroad highway crossings, drainage structures, signs, guardrails.

60 (b) In order to provide a coordinated, unified effort on the stewardship and performance  
61 of transportation assets within the commonwealth, there shall be a transportation performance  
62 and asset management advisory council charged with advising the board on the creation of an  
63 integrated statewide performance and asset management system, as required by section 12.

64 The council shall consist of the secretary, who shall serve as chair, and the following  
65 members as appointed by the secretary: 2 members of the board, 2 members from the  
66 Massachusetts Municipal Association, 2 members from different regional planning agencies, 1  
67 member from the construction industry, and 1 member from a business association. Each  
68 member shall be appointed for a term of 3 years. The council may appoint a technical assistance  
69 panel, to serve in an advisory, non-binding capacity, comprised of transportation planning,  
70 construction and engineering associations. The council shall determine the scope of research and  
71 assign projects to the technical assistance panel as necessary in the development of statewide  
72 policies. The department shall provide the council with qualified administrative staff and the  
73 regional planning agencies may provide qualified technical assistance to the council.

74 (c) The council shall review the performance measurement criteria required for the  
75 performance management and asset system pursuant to subsection (b) of section 6 and the  
76 comprehensive state transportation plan required under section 11A. The council shall make a  
77 report to the board on the following: improvements that can be made to ensure comprehensive  
78 multi-modal transportation planning and analysis, and additional performance metrics, such as  
79 enterprise-wide measures across modes, contract management, procurement, project controls,  
80 financials, organizational and prioritization outcomes, and economic development impacts. The  
81 council shall make recommendations on the processes and necessary tools needed to implement  
82 a strategy for a statewide performance and asset management system.

83 (d) The council shall present minimum standards and guidelines delineating standardized  
84 data and information that shall be contained in an integrated performance and asset management  
85 system, including the complete integration of transit, highway, aeronautics, water and port assets,  
86 and the possible inclusion of municipal roadways. The minimum standards shall include the  
87 keeping of accurate and uniform records of real transportation assets, the mileage and condition  
88 of each road and bridge system under various jurisdictions, the receipts and disbursements of  
89 road, street, and transit funds, a multiyear compilation of projects anticipated to be contracted for  
90 or by the department, or local transportation agencies that are funded in whole or in part with  
91 state or federal funds, and any other categories established by the council. The council shall

92 recognize the differences in local, regional, or other agencies' circumstances and nothing in this  
93 section shall prohibit a local transportation agency or other governmental agency from using a  
94 separate asset management process on any eligible system. All quality control standards and  
95 protocols shall, at a minimum, be consistent with any existing federal requirements and  
96 regulations and existing government accounting standards.

97 (e) On or before October 1, the council shall produce an annual progress report on the  
98 performance and asset management system to the house and senate committees on ways and  
99 means and the joint committee on transportation.

100 SECTION 7. Chapter 6C of the General Laws is hereby amended by adding the  
101 following section:-

102 Section 34A. (a) The department shall develop, operate, and maintain a searchable  
103 database, available on the department's website and accessible to the public at no cost, that shall  
104 contain pertinent information regarding all construction projects for which the department has  
105 expended funds during the preceding 5 fiscal years.

106 (b) The following information, without limitation, shall be made available and made  
107 searchable with respect to each such project:

108 (i) location and street name, including a brief description of the work to be performed;

109 (ii) all project identifying numbers used within the department or with respect to any  
110 federal or state grant or funding program, including without limitation any contract numbers,  
111 Transportation Incentive Program numbers, or Transportation Infrastructure Finance and  
112 Innovation Act or other federal aid numbers;

113 (iii) all contractors, engineers, architects, and other service professionals who have  
114 performed work on the project;

115 (iv) all amounts expended, including payee and date of disbursement with respect to each  
116 disbursement;

117 (v) total projected and actual cost;

118 (vi) projected and actual start and completion dates;

119 (vii) projected and actual milestone dates and details;

120 (viii) identification and a brief description of any issues, factors, or other causes that have  
121 affected or are anticipated to affect the projected cost and completion date of any project; and

122 (ix) the names and contact information of the project manager within the department or  
123 other department personnel with oversight authority.

124 (c) Such project totaling \$1,000,000 or more shall be assigned its own web page. In  
125 addition to the information required by subsection (b), the project web page shall also contain  
126 links to pertinent project documents, including without limitation any work progress reports, that  
127 are subject to disclosure under section 10 of chapter 66.

128 (d) Each project web page shall be updated at regular intervals, but in no event less than  
129 once every 7 days.

130 (e) The department shall devise and make accessible to the public by means of the  
131 department's website all of the performance metrics maintained by the department's office of  
132 performance management and innovation. These metrics shall include at least those metrics  
133 included in the report produced by the transportation performance and asset management  
134 advisory council. Such metrics shall be updated monthly and shall be made available in a format  
135 that allows for historical comparison of each metric.

136 SECTION 8. Section 39 of Chapter 6C of the General Laws is hereby amended by adding  
137 the following section:-

138 The division shall create an internal project controls unit to oversee all statewide program  
139 projects in line with the department's performance management system. The administrator shall  
140 establish and implement project controls to ensure that projects carried out under this chapter  
141 shall be done in the most efficient possible manner. The unit shall be subject to section 29A of  
142 chapter 29.

143 SECTION 9. Section 2ZZZ of chapter 29 is hereby amended by striking out subsection  
144 (c), as appearing in section 137 of chapter 165 of the acts of 2012, and inserting in place thereof  
145 the following subsection:-

146 (c) In addition to those revenues credited to the fund under subsection (a), there shall be  
147 credited to the fund, after distribution to the funds established in sections 35T and 35BB of  
148 chapter 10, the net of monies received by the commonwealth from the imposition of certain  
149 taxes levied pursuant to sections 3, 25 and 26 of chapter 64H and sections 4, 26 and 27 of  
150 chapter 64I as excises upon the sale and use at retail of tangible property or of services, and upon  
151 the storage, use or other consumption of tangible property, or of services, including interest  
152 thereon or penalties, but not including any portion of the taxes that constitute special receipts  
153 within the meaning of subsection (b1/2) of section 10 of chapter 152 of the acts of 1997 or within  
154 the meaning of said subsection (b1/2).

155 SECTION 10. Clause sixteenth of section 5 of chapter 59 of the General Laws, as  
156 appearing in the 2010 Official Edition, is hereby amended in paragraph (1) by striking out "or  
157 (d)" and inserting in place thereof the following words:- (d) a telephone company subject to  
158 chapter 166, or (e).

159 SECTION 11. Said clause sixteenth of section 5 of chapter 59 of the General Laws, as so  
160 appearing, is hereby amended by striking out, in lines 238 and 239, the words “fifty-two A”.

161 SECTION 12. Paragraph (d) of section 2A of chapter 63 of the General Laws, as so  
162 appearing, is hereby amended by striking our subparagraph (xi) and inserting in place thereof the  
163 following subparagraph:-

164 (xi) The numerator of the receipts factor includes receipts from sales other than sales of  
165 tangible personal property not otherwise apportioned under this section to the extent that those  
166 receipts would be included in the numerator of a corporation's sales factor as determined  
167 pursuant to subsection (f) of section 38. For purposes of the receipts sourced pursuant to this  
168 subparagraph, subparagraph (xiii) of subsection (d) shall not apply.

169 SECTION 13. Section 38 of said chapter 63, as amended by section 31 of chapter 194 of  
170 the acts of 2011, is hereby amended by striking out subsection (f) and inserting in place thereof  
171 the following subsection:-

172 (f)(1) The sales factor is a fraction, the numerator of which is the total sales of the  
173 corporation in this commonwealth during the taxable year, and the denominator of which is the  
174 total sales of the corporation everywhere during the taxable year. As used in this subsection,  
175 unless specifically stated otherwise, "sales" means all gross receipts of the corporation, including  
176 deemed receipts from transactions treated as sales or exchanges under the Code, except interest,  
177 dividends, and gross receipts from the maturity, redemption, sale, exchange or other disposition  
178 of securities, provided, however, that "sales" shall not include gross receipts from transactions or  
179 activities to the extent that a non-domiciliary state would be prohibited from taxing the income  
180 from such transactions or activities under the Constitution of the United States. Sales of tangible  
181 personal property are in this commonwealth if (i) the property is delivered or shipped to a  
182 purchaser within this commonwealth regardless of the free on board point or other conditions of  
183 the sale; or (ii) the corporation is not taxable in the state of the purchaser and the property was  
184 not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for  
185 the transaction of business owned or rented by the corporation outside this commonwealth.  
186 "Purchaser", as used in clauses (i) and (ii) of this paragraph, shall include the United States  
187 government.

188 (2) Sales, other than sales of tangible personal property, are in this commonwealth if the  
189 corporation's market for the sale is in this commonwealth. The corporation's market for a sale is  
190 in the commonwealth and the sale is thus assigned to the commonwealth for the purpose of this  
191 section: (i) in the case of sale, rental, lease or license of real property, if and to the extent the  
192 property is located in this commonwealth; (ii) in the case of rental, lease or license of tangible  
193 personal property, if and to the extent the property is located in this commonwealth; (iii) in the  
194 case of sale of a service, if and to the extent the service is delivered to a location in this  
195 commonwealth; (iv) in the case of lease or license of intangible property, including a sale or

196 exchange of such property where the receipts from the sale or exchange derive from payments  
197 that are contingent on the productivity, use, or disposition of the property, if and to the extent the  
198 intangible property is used in this commonwealth; (v) in the case of the sale of intangible  
199 property, other than as referenced in clause (iv), where the property sold is a contract right,  
200 government license or similar intangible property that authorizes the holder to conduct a business  
201 activity in a specific geographic area, if and to the extent that the intangible property is used in or  
202 otherwise associated with this commonwealth; but any sale of intangible property, not otherwise  
203 described in this clause or clause (iv) is excluded from the numerator and the denominator of the  
204 sales factor.

205 (3) For the purposes of this subsection: (i) in the case of sales other than sales of tangible  
206 personal property if the state or states to which sales should be assigned cannot be determined, it  
207 shall be reasonably approximated; (ii) in the case of sales other than sales of tangible personal  
208 property if the taxpayer is not taxable in a state to which a sale is assigned, or if the state or states  
209 to which such sales should be assigned cannot be determined or reasonably approximated, such  
210 sale shall be excluded from the numerator and denominator of the sales factor; (iii) the  
211 corporation shall be considered to be taxable in the state of the purchaser if tangible personal  
212 property is delivered or shipped to a purchaser in a foreign country; (iv) sales of tangible  
213 personal property to the United States government or any agency or instrumentality thereof for  
214 purposes of resale to a foreign government or any agency or instrumentality thereof are not sales  
215 made in the commonwealth; (v) in the case of the sale, exchange or other disposition of a capital  
216 asset, as defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or  
217 business, including a deemed sale or exchange of such asset, "sales" are measured by the gain  
218 from the transaction; (vi) "security" means any interest or instrument commonly treated as a  
219 security as well as other instruments which are customarily sold in the open market or on a  
220 recognized exchange, including, but not limited to, transferable shares of a beneficial interest in  
221 any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness,  
222 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies,  
223 and repurchase and futures contracts; (vii) in the case of a sale or deemed sale of a business, the  
224 term "sales" does not include receipts from the sale of the business "goodwill" or similar  
225 intangible value, including, without limitation, "going concern value" and "workforce in place";  
226 (viii) to the extent authorized pursuant to the life sciences tax incentive program established by  
227 section 5 of chapter 23I, a certified life sciences company may be deemed a research and  
228 development corporation for purposes of exemptions under chapters 64H and 64I; and (ix) in the  
229 case of a business deriving receipts from operating a gaming establishment or otherwise deriving  
230 receipts from conducting a wagering business or activity, income-producing activity shall be  
231 considered to be performed in this commonwealth to the extent that the location of wagering  
232 transactions or activities that generated the receipts is in this commonwealth.

233 (4) Notwithstanding the foregoing, mutual fund sales as defined in subsection (m), other  
234 than the sale of tangible personal property, shall be assigned to this commonwealth to the extent

235 that shareholders of the regulated investment company are domiciled in this commonwealth by  
236 multiplying the taxpayer's total dollar amount of sales of such services on behalf of each  
237 regulated investment company by a fraction, the numerator of which shall be the average of the  
238 number of shares owned by the regulated investment company's shareholders domiciled in this  
239 commonwealth at the beginning of and at the end of the regulated investment company's taxable  
240 year that ends with or within the taxpayer's taxable year, and the denominator of which shall be  
241 the average of the number of shares owned by the regulated investment company shareholders  
242 everywhere at the beginning of and at the end of the regulated investment company's taxable  
243 year that ends with or within the taxpayer's taxable year. A separate computation shall be made  
244 to determine the sale for each regulated investment company, the sum of which shall equal the  
245 total sales assigned to the commonwealth.

246 (5) The commissioner shall adopt regulations to implement this subsection. This  
247 subsection shall not affect the commissioner's authority under subsection (j).

248 SECTION 14. Paragraph (3) of subsection (f) of section 38 of chapter 63 of the General  
249 Laws is hereby amended by striking out clause (viii).

250 SECTION 15. Section 52A of said chapter 63 is hereby repealed.

251 SECTION 16. Section 68C of said chapter 63, as appearing in the 2010 Official Edition,  
252 is hereby amended by striking out clause (3).

253 SECTION 17. Section 1 of chapter 64A of the General Laws, as so appearing, is hereby  
254 amended by striking out, in line 98, the figure "21" and inserting in place thereof the following  
255 figure:- 24.

256 SECTION 18. The definition of "tax per gallon" in section 1 of chapter 64A of the  
257 General Laws, as so appearing, is hereby amended by inserting after the words "cents per gallon"  
258 the following words: , annually adjusted by the Consumer Price Index as defined in section 1 of  
259 the Internal Revenue Code.

260 SECTION 19. The first paragraph of section 6 of chapter 64C of the General Laws, as so  
261 appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof  
262 the following 2 sentences:-

263 Every licensee who is required to file a return under section 16 of chapter 62C shall, at  
264 the time of filing such return, pay to the commissioner an excise equal to 150 1/2 mills plus any  
265 amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so sold  
266 during the calendar month covered by the return; but cigarettes with respect to which the excise  
267 under this section has once been imposed and has not been refunded, if paid, shall not be subject  
268 upon a subsequent sale to the excise imposed by this section. Each unclassified acquirer shall, at  
269 the time of filing a return required by section 16 of chapter 62C, pay to the commissioner an



270 excise equal to 150 1/2 mills plus any amount by which the federal excise tax on cigarettes is less  
271 than 8 mills for each cigarette so imported or acquired and held for sale or consumption, and  
272 cigarettes, with respect to which such excise has been imposed and has not been refunded, if  
273 paid, shall not be subject, when subsequently sold, to any further excise under this section.

274 SECTION 20. Said section 6 of said chapter 64C, as so appearing, is hereby further  
275 amended by striking out the second paragraph and inserting in place thereof the following  
276 paragraph:-

277 Notwithstanding the other provisions of this section, the excise imposed by this section  
278 shall equal 160 per cent of the price paid by such licensee or unclassified acquirer to purchase  
279 smokeless tobacco so sold, imported, or acquired.

280 SECTION 21. Said chapter 64C is hereby further amended by inserting after said section  
281 6 the following section:-

282 Section 7 1/2. (a) As used in this section, the following words shall, unless the content  
283 clearly indicates otherwise, have the following meanings:-

284 "Counter", a device contained in, attached to, or forming part of, an RYO machine,  
285 performing in accordance with the manufacturer's specifications, that is designed to accurately  
286 count, and is accurately counting, the number of products rolled and wrapped by a machine.

287 "High volume machine", an RYO machine that is capable of rolling and wrapping  
288 tobacco into more than 10 products per minute.

289 "Low volume machine", an RYO machine that is not capable of rolling and wrapping  
290 tobacco into more than 10 products per minute.

291 "Product", a roll of tobacco or substance containing tobacco that is wrapped in any  
292 substance, including but not limited to paper or tobacco, in order to make the tobacco suitable for  
293 smoking.

294 "Retailer", a retailer of cigarettes, cigars, smokeless tobacco, smoking tobacco or other  
295 tobacco products.

296 "RYO machine", a mechanical device, by whatever manufacturer made and by whatever  
297 name known, that is designed to roll and wrap tobacco into products.

298 (b) No retailer shall possess on its retail premises or otherwise make available to its retail  
299 customers, with or without a fee, an RYO machine, whether such RYO machine is owned by the  
300 retailer or another party, unless the retailer has first obtained a license under this section for each  
301 RYO machine that it so possesses or makes available. A retailer who possesses or otherwise  
302 makes available an RYO machine without first obtaining a license for the RYO machine under  
303 this section shall be subject to a civil penalty of not more than \$10,000 for the first offense and

304 not more than \$25,000 for each subsequent offense, in the case of low volume machines, or a  
305 civil penalty of not more than \$50,000 for the first offense and \$100,000 for each subsequent  
306 offense, in the case of high volume machines. Any RYO machine on the retail premises of an  
307 unlicensed retailer or made available to the customers of an unlicensed retailer shall be subject to  
308 seizure or forfeiture under subsection (g), whether or not the RYO machine is owned by the  
309 unlicensed retailer.

310 (c) The commissioner may license a retailer to possess on its retail premises and make  
311 available to its customers 1 or more RYO machines, as specified by the license, if the  
312 commissioner determines that the retailer is in good standing with regard to all state tax  
313 obligations for taxes subject to chapter 62C, and if the retailer pays the applicable fees before  
314 issuance of the license. Each license so issued or a copy of it shall be displayed on or  
315 immediately adjacent to the licensed RYO machine. Each license shall apply only to a specified  
316 retail location and a specified RYO machine, but a licensee may replace 1 high volume machine  
317 at a specific retail location with another high volume machine at that location or may replace 1  
318 low volume machine at a specific retail location with another low volume machine at that  
319 location, upon prior written notice to the commissioner. The licensing of RYO machines is  
320 retained exclusively by the commonwealth, and no city, town or other political subdivision of the  
321 commonwealth may license such use.

322 (d) The fee for each license issued under this section shall be \$25,000 per calendar year  
323 for each high volume machine and \$5,000 per calendar year for each low volume machine. The  
324 fee shall not be pro-rated for any period less than a year. Each license shall expire automatically  
325 on December 31 of each year. The licensee must apply for a new license for the following year.  
326 Licenses shall not be transferable or assignable except as expressly provided in this section.

327 (e) The applicant for a license under this section shall file with the commissioner an  
328 application in the form that the commissioner requires, and shall pay the license fee with the  
329 application. The commissioner shall refund the fees paid, subject to any offsets as may be  
330 provided with respect to debts collectible under chapter 62C, to the extent that a requested  
331 license is not issued. The commissioner shall investigate the prior activities of the applicant and  
332 may deny the application for any of the reasons set forth in clauses (1) to (8), inclusive, of  
333 section 67. The commissioner shall grant or deny a license within 90 days after the date of  
334 application. If the commissioner fails to act within that time, the license shall be deemed denied.  
335 An applicant aggrieved by the refusal of the commissioner to grant a license may, within 60 days  
336 after the date of notice of the refusal or deemed denial, appeal to the appellate tax board, whose  
337 decision shall be final. Licenses shall be subject to suspension or revocation during a calendar  
338 year as provided in section 68.

339 (f) Every licensee shall keep and preserve suitable records relating to the licensee's  
340 purchase of the tobacco contained in a product, including the price and date of the purchase and  
341 the name of the vendor, and each such invoice must clearly indicate whether the excise due

342 under section 7B has been paid by the licensee's vendor or will be paid by the licensee. Every  
343 licensee shall also provide access to its records, as prescribed by section 25 of chapter 62C and  
344 the regulations thereunder. For the purposes of this section, the term "records" shall include a  
345 counter. The commissioner shall revoke the license of any licensee who fails to maintain  
346 accurate records as provided in this section or who refuses to make its records available to the  
347 commissioner or the commissioner's designee.

348 (g) Any person who owns, leases, or is in control or possession of, and is determined by  
349 the commissioner to have, a faulty or inoperative counter or a machine without a counter, or who  
350 refuses to allow the commissioner or the commissioner's designee access to a counter and the  
351 data recorded by the counter, or who intentionally damages, tampers with, removes and does not  
352 replace, or renders sporadically or permanently inoperative, a counter, or who falsifies the data  
353 recorded by a counter, shall be punished by a fine of not more an \$50,000 or by imprisonment  
354 for not more than 1 year, or both.

355 (h) In addition to the other remedies provided by this section, the commissioner or the  
356 commissioner's designee or the state police may seize, seal, or otherwise render inoperative an  
357 RYO machine for which a required license has not been issued or where counters or records  
358 regarding a licensed RYO machine have not been maintained as required by this chapter or  
359 chapter 62C.

360 (i) It shall be unlawful for any person, whether located within or without the  
361 commonwealth, to sell, lease, loan, give, exchange, or otherwise transfer or deliver an RYO  
362 machine to a retailer unless the retailer has a license for that RYO machine.

363 (j) Nothing in this section shall apply to a person who owns, leases, or is in control or  
364 possession or control of a low volume machine that is used only for that person's personal use or  
365 to that low volume machine itself.

366 SECTION 22. Section 7B of chapter 64C of the General Laws, as appearing in the 2010  
367 Official Edition, is hereby amended by striking out the figure "30", in line 40, and inserting in  
368 place thereof the following figure:- 40.

369 SECTION 23. Section 1 of chapter 64H of the General Laws, as so appearing, is hereby  
370 amended by inserting after the definition of "Commissioner" the following definition:-

371 "Computer system design services", the planning, consulting or designing of computer  
372 systems that integrate computer hardware, software or communication technologies and are  
373 provided by a vendor or a third party.

374 SECTION 24. Said section 1 of said chapter 64H, as so appearing, is hereby amended by  
375 striking out, in line 240, the words "item: telecommunication services" and inserting in place  
376 thereof the following words:- items: telecommunications services, computer system design

377 services and the modification, integration, enhancement, installation or configuration of  
378 standardized software.

379 SECTION 25. Section 36 of chapter 465 of the Acts of 1956, as amended by section 128  
380 of chapter 25 of the acts of 2009, is hereby amended by striking said section in its entirety and  
381 inserting in place thereof the following:-

382 Section 36. (a) There shall be an advisory board to the authority consisting of a voting  
383 representative of each of the following cities and towns: Braintree, Bedford, Brookline,  
384 Cambridge, Chelsea, Cohasset, Concord, Everett, Hingham, Hull, Lexington, Lincoln,  
385 Malden, Melrose, Medford, Milton, Nahant, Quincy, Revere, Somerville, Weymouth, and  
386 Winthrop; provided further, that the city of Boston shall have eight voting  
387 representatives,

388 one of whom shall be a resident of the Beacon Hill section of the city of Boston, one of  
389 whom shall be a resident of the South End section of the city of Boston, one of whom  
390 shall

391 be a resident of the East Boston section of the city of Boston, one of whom shall be a  
392 resident

393 of the Dorchester or Roxbury sections of the city of Boston, one of whom shall be a  
394 resident

395 of the Charlestown section of Boston, one of whom shall be a resident of the South  
396 Boston

397 section of the city of Boston, one of whom shall be a resident of the Roslindale or Hyde  
398 Park

399 sections of the city of Boston, and one of whom shall be a resident of the West Roxbury  
400 or Jamaica Plain sections of the city of Boston. The members of the advisory board shall

401 consist of the chief executive officer thereof; provided however, that any chief executive  
402 officer, by writing filed with the authority, may appoint a permanent designee to serve in  
403 his

404 stead as a member of said advisory board until the expiration of each term of office of the  
405 designating chief executive officer or the earlier vacancy of the office of the designating

406 chief executive officer; provided further, that if the chief executive officer of the city of  
407 Boston opts to serve as the representative for the city of Boston to the advisory board, he  
408 shall be deemed to represent the forgoing sections of the city of Boston; provided further  
409 that  
410 a permanent designee shall be versed in at least one of the following three disciplines:  
411 environmental affairs, community and airport relations or public health. For the purpose  
412 of this  
413 section, the term "chief executive officer" shall mean the person designated as the chief  
414 executive officer under the provisions of a local charter or laws having the force of a  
415 charter,  
416 and otherwise the mayor in every city and the chairman of the board of selectmen or  
417 president of the town council, as the case may be, in every town.

418 (b) Except as otherwise prescribed in this section, each voting representative shall cast  
419 one vote on the advisory board. Each voting representative of the several sections of the  
420 city  
421 of Boston as listed in paragraph (a) shall cast one vote. Wherein the chief executive  
422 officer  
423 of the city of Boston shall opt to serve as the representative to the advisory board for the  
424 city  
425 of Boston, he shall cast eight votes.

426 (c) Said advisory board may act at a regular periodic meeting called in accordance with  
427 its by-laws; or at a special meeting called by the authority; or if a majority of board  
428 members  
429 choose to do so. Except as specially provided in paragraph (f), a quorum of the advisory  
430 board shall consist of a simple majority of voting members present, and the advisory  
431 board may act, except as otherwise provided in paragraph (f), by affirmative casting of a  
432 majority  
433 of the votes represented in the quorum. The advisory board shall be deemed to be a

434 governing body for the purposes of, and shall be subject to, sections 18 to 25, inclusive,  
435 of chapter 30A of the General Laws.

436 (d) For the conduct of its business said advisory board shall adopt and may revise and  
437 amend by-laws. Said advisory board shall annually elect a chairperson, a vice-  
438 chairperson, a  
439 secretary and such officers as said advisory board might determine. Each officer may be  
440 removed by a two-thirds vote of the advisory board without cause. In the event of a  
441 vacancy,  
442 said board shall fill the vacancy for the unexpired term. Each member of said advisory  
443 board  
444 shall serve without compensation, except if a member provides specialized services, such  
445 as  
446 legal, accounting, record keeping, administration, or any other specialized services  
447 provided  
448 to the advisory board. Members may be reimbursed, as an expense of said advisory  
449 board, for all reasonable expenses incurred in the performance of their duties as approved  
450 by  
451 the advisory board.

452 (e) The purposes of the advisory board shall be as follows:

453 (i) to appoint three members of the board of directors of the Massachusetts port  
454 authority, as provided for in section 2 of this chapter  
455 and in the manner prescribed in paragraph (f) of this section;

456 (ii) to make recommendations to the authority on annual current expense expenditure  
457 budgets submitted to the advisory board under paragraph (g);

458 (iii) to hold hearings, which may be held jointly with the authority at the discretion of  
459 the advisory board and said authority, on matters relating to said authority;

460 (iv) to review the annual report of the authority and to prepare comments thereon to the

461 authority and the governor, and to make such examinations of the reports on the  
462 authority's  
463 records and affairs as the advisory board deems appropriate; and  
464 (v) to make recommendations to the governor and the general court respecting the  
465 authority and its programs. The advisory board shall have all powers necessary or  
466 convenient to carry out and effectuate the foregoing purposes.  
467 (f) Three members of the authority shall be appointed by the advisory board, in  
468 accordance with section 2 of this chapter. Two of those  
469 members shall be residents of one of the following communities: Braintree, Brookline,  
470 Cambridge, Chelsea, Cohasset, Everett, Hingham, Hull, Lincoln, Malden, Melrose,  
471 Medford,  
472 Milton, Nahant, Quincy, Revere, Somerville, Weymouth, or Winthrop; and one of whom  
473 shall be a resident of the communities of Bedford, Concord, or Lexington.  
474 Said advisory board shall appoint successor members, who shall replace that member  
475 of the board of directors appointed by the advisory board whose term has expired or  
476 otherwise terminated. With respect to appointment of any member of the board of  
477 directors  
478 the advisory board shall act only if a special quorum is present consisting of two-thirds of  
479 voting members present.  
480 (g) Within thirty days of receiving any proposed current expense budget of the  
481 authority or within fifteen days of receiving any proposed amended expense budget of the  
482 authority, the advisory board may hold a public hearing on matters relating to said budget  
483 for  
484 the purpose of ascertaining, for subsequent report to the authority if necessary, the views  
485 of  
486 the public thereon.  
487 (h) The advisory board shall provide for the appointment of an advocate who, with the

488 assistance from such staff and consultants as the advisory board may authorize and  
489 appoint,  
490 shall act for and in the name of the advisory board in the following respects:  
491 (i) preparation of analysis for the advisory board of the authority's current expense  
492 budgets, capital expenditure budgets and capital programs and their effect on the charges  
493 of  
494 said authority;  
495 (ii) representation of the advisory board to said authority on all matters pertaining to  
496 said authority's programs, operations, finances and charges;  
497 (iii) reporting regularly to the advisory board on the activities of the advocate and other  
498 staff of the advisory board, on the affairs of the Authority, and on the effect of the  
499 authority's program and operations on residents of neighboring communities.  
500 (iv) The advisory board shall have all the powers necessary to deal with Massport and  
501 all federal and state agencies, and report regularly to the board on the effect of any  
502 Massport, federal, or state agencies' programs and operations on the residents of the  
503 communities represented by the advisory board.  
504 (v) to meet with and make recommendations to all Massport, Federal, and State  
505 agencies' programs and operations, which affect said communities.  
506 (i) The advisory board may incur annual expenses, not to exceed \$500,000 for  
507 expenses authorized under paragraph (c) and for personnel and office expenses. Said  
508 annual  
509 expenses shall be paid by the authority.  
510 (j) The authority shall provide any information, including but not limited to, annual  
511 current expense expenditure budgets and capital expenditure reports, requested by the  
512 advisory board which are necessary for the discharge of its duties; provided however, that  
513 the  
514 advisory board shall not be granted access to any information if it be determined by the



515 executive director of the authority and the director of security for the authority that the  
516 release of such information would be detrimental to public safety; provided further, that  
517 said  
518 determination shall be made in writing and said writing shall be delivered to the advisory  
519 board within two days; and, provided further, that said writing shall be signed by the  
520 executive director and director of security of said authority under pains and penalties of  
521 perjury.

522 SECTION 26. Section 2 of chapter 465 of the acts of 1956 is hereby amended by striking  
523 the  
524 first sentence of the second paragraph and inserting in place thereof the following:-

525  
526 The authority shall consist of thirteen members; seven of whom shall be appointed by  
527 the governor by and with the advice and consent of the council; three of whom shall be  
528 appointed by the advisory board according to the by-laws of said board; and three of  
529 whom shall  
530 be appointed by the mayor of the city of Boston. Those members of the authority, having  
531 been  
532 duly appointed by the governor prior to January 1, 2012, shall continue until such time as  
533 their  
534 designated term expires; at which time the governor shall appoint a replacement who  
535 shall serve

536 a term of 7 years. Those members of the authority appointed by the advisory board and  
537 mayor of the city of Boston shall be appointed as follows: said advisory board and mayor  
538 shall  
539 each appoint 3 initial members, one of whom shall serve for a term of 5 years, one of  
540 whom shall serve for a term of 6 years, and one of whom shall be serve for a term of 7  
541 years. Upon expiration of the terms of all initial appointees, the advisory board or mayor of the  
542 city of Boston, whichever applicable, shall appoint a replacement whose term shall be 7

543 years. Thereafter all members shall be appointed for 7 year terms in accordance with this  
544 act.

545 SECTION 27. (a) Notwithstanding any general or special law to the contrary, the  
546 Massachusetts Department of Transportation, in this section called the department, shall generate  
547 sufficient revenue to meet the following benchmarks: (1) in fiscal year 2014, the department  
548 shall generate 47 per cent of the department's operating budget; (2) in fiscal year 2015, the  
549 department shall generate 48 per cent of the department's operating budget; (3) in fiscal year  
550 2016, the department shall contribute 50 per cent of the department's operating budget; (4) in  
551 fiscal year 2017, the department shall contribute 51 per cent of the department's operating  
552 budget; and (5) in fiscal year 2018, the department shall contribute 51 per cent of the  
553 department's operating budget.

554 (b) The benchmarks in subsection (a) may be achieved through savings to the  
555 department's operating budget; provided, that the department shall submit a preliminary report of  
556 savings to the operating budget by October 1 of each fiscal year and a final report of savings to  
557 the operating budget by January 1 of each fiscal year. The preliminary and final savings reports  
558 shall be submitted to the house and senate committees on ways and means and the joint  
559 committee on transportation.

560 (c) The revenue generated to meet the benchmarks in subsection (a) may be derived from:  
561 (1) fees collected by the registrar of motor vehicles under section 34 of chapter 90 of the General  
562 Laws; (2) funds contributed to the Motor Vehicle Inspection Trust Fund under section 61 of  
563 chapter 10; (3) funds contributed to the Massachusetts Transportation Trust Fund under section 4  
564 of chapter 6C; and (4) any other funds directly collected by the department.

565 SECTION 28. (a) Notwithstanding any general or special law to the contrary, the  
566 Massachusetts Bay Transportation Authority, in this section called the authority, shall generate  
567 sufficient revenue to meet the following benchmarks: (1) in fiscal year 2014, the authority shall  
568 generate 31.5 per cent of the authority's operating budget; (2) in fiscal year 2015, the authority  
569 shall contribute 33 per cent of the authority's operating budget; (3) in fiscal year 2016, the  
570 authority shall contribute 33.25 per cent of the authority's operating budget; (4) in fiscal year  
571 2017, the authority shall contribute 32.75 per cent of the authority's operating budget; and (5) in  
572 fiscal year 2018, the authority shall contribute 34 per cent of the authority's operating budget.

573 (b) The benchmarks in subsection (a) may be achieved through savings to the authority's  
574 operating budget; provided that, the authority shall submit a preliminary report of savings to the  
575 operating budget by October 1 of each fiscal year and a final report of savings to the operating  
576 budget by January 1 of each fiscal year. The savings reports shall be submitted to the house and  
577 senate committees on ways and means and the joint committee on transportation.

578 (c) The revenue generated to meet the benchmarks in subsection (a) may be derived from  
579 any funds collected by the authority through fees and fares and any other funds directly collected  
580 by the authority; provided, however, such revenue shall not include funds contributed to the  
581 Massachusetts Bay Transportation Authority State and Local Contribution Fund under section  
582 35T of chapter 10 of the General Laws.

583 SECTION 29. (a) The department shall use the revenues generated in this act to comply  
584 with the second sentence of section 15 of chapter 6C of the General Laws requiring the salaries  
585 and benefits of employees of the department to be classified and funded as operating  
586 expenditures. The department shall comply with said section 15 on or before June 30, 2016.

587 (b) The secretary of transportation, in consultation with the secretary of administration  
588 and finance, shall file a report regarding the department's compliance with the second sentence  
589 of said section 15 of said chapter 6C on or before August 1, 2013. The report shall include, but  
590 not be limited to: (1) the number of employees with salaries funded by capital expenditures in  
591 fiscal year 2013; (2) the total cost of employee salaries charged to capital expenditures in fiscal  
592 year 2013; and (3) the number of employees and total cost of employee salaries that the  
593 department estimates will be moved from capital expenditures to operating expenditures in fiscal  
594 years 2014, 2015 and 2016. The report shall be filed with the joint committee on transportation,  
595 the house and senate committees on bonding, capital expenditures and state assets and the house  
596 and senate committees on ways and means.

597 SECTION 30. Notwithstanding any general or special law to the contrary, each regional  
598 transit authority (RTA) established under chapter 161B of the General Laws shall develop a  
599 comprehensive regional transit plan in consultation with the appropriate regional planning  
600 agency, the department of transportation, local employers and the business associations, labor  
601 organizations, and transit authority riders. The regional transit plan shall include but not be  
602 limited to; (1) a comprehensive assessment of transit services; (2) a thorough examination of the  
603 ridership trends for each line and service provided by the RTA; (3) a performance analysis of  
604 existing services; (4) the development and evaluation of alternative service scenarios; (5) the  
605 development of a recommendation to better align service with local and regional demand; (6) the  
606 commonwealth's environmental policies; (7) fare rates and collection methods; (8) the region's  
607 job creation goals and employment needs; and (9) a determination of whether the RTA's service  
608 is deployed in the most effective way possible to accommodate the transit needs of the region's  
609 workforce. The development of the plan shall include public hearings in different regions of the  
610 commonwealth and the opportunity to comment on a draft report. The final report shall be filed  
611 with the department of transportation and made available on the department's website and the  
612 website of the appropriate RTA on or before June 30, 2014.

613 SECTION 31. There shall be established a value capture commission consisting of the  
614 following 7 members: the secretary of transportation or a designee, who shall serve as chair; the  
615 secretary of administration and finance or a designee; and 5 members to be appointed by the

616 Governor, 2 of whom shall be representatives of business associations; 1 of whom shall represent  
617 organized labor; 1 of whom shall be a representative of the Massachusetts Municipal  
618 Association; and 1 of whom shall be a representative of a regional planning agency. The  
619 commission shall review and evaluate the policies and best practices of other jurisdictions used  
620 to obtain benefits from the increased value of adjacent properties as a result of public  
621 infrastructure projects or “value capture” and the current policies and mechanisms available in  
622 the commonwealth relative to value capture. The commission shall report to the General Court  
623 on the effectiveness of the Commonwealth’s current value capture policies and recommend  
624 whether certain policies from other jurisdictions be implemented as part of the long term capital  
625 plan established under section 11A of chapter 6C. A report of the commission’s findings shall be  
626 filed with the clerks of the house of representatives and senate on or before March 1, 2014.

627 SECTION 32. There shall be established a utility relocation commission consisting of the  
628 following 5 members: the chair of the department of public utilities or a designee, who shall  
629 serve as chair; the secretary of transportation or a designee; and 3 members to be appointed by  
630 the Governor, 1 of whom shall represent organized labor, and 2 of whom shall be representatives  
631 from a utility or utility facility, as defined under federal law. The commission shall study and  
632 make recommendations on policies and reimbursement mechanisms for when it is necessary that  
633 a utility or utility facility, as defined under federal law, be relocated by the division of highways  
634 or the Massachusetts bay transit authority because of construction of a project. The commission  
635 shall review the current provisions of section 44 of chapter 6C of the General Laws, specifically  
636 current thresholds for eligible projects, the annual cap on the total reimbursement by the  
637 department, and the reimbursement formula for the total costs of functional replacements of  
638 utility lines or real properties. The commission shall recommend a utility reimbursement formula  
639 that takes into account, but is not limited to, the following factors; whether the project is to be  
640 reimbursed federally, in whole or in part, or to be paid by the commonwealth, in whole or in  
641 part; if the utility facility is to be reimbursed, in whole or in part or does not qualify for federal  
642 reimbursement; if the relocation shall be performed by the employees of the owner; and the  
643 nature of the project. The report, with any recommended legislation, shall be filed with the clerks  
644 of the house of representatives and senate on or before January 1, 2014.

645 SECTION 33. Pursuant to section 11A of chapter 6C of the General Laws, the secretary  
646 of transportation shall publish the first 10-year long term capital plan on or before April 30,  
647 2014, for fiscal years 2015 to 2024, inclusive.

648 SECTION 34. Pursuant to section 12A of chapter 6C of the General Laws, and in  
649 consultation with federal, state and local transportation agencies, regional planning agencies and  
650 other governmental agencies, the transportation performance and asset management advisory  
651 council shall develop and present to the board of directors of the Massachusetts Department of  
652 Transportation for approval such procedures and requirements as are necessary for the  
653 administration of the performance and asset management system on or before November 1,  
654 2013. This shall include, at a minimum, a comprehensive plan for the development and

655 integration of an asset management and performance information system with long-term  
656 statewide planning processes; an analytical process or decision support tool that allows for the  
657 estimation of capital investment needs of such systems over time; an asset investment  
658 prioritization method by such systems, including the possible use of a quantifiable project  
659 prioritization mechanism such as a numeric scoring system. The recommendations shall also  
660 include areas of necessary training, data storage and collection, reporting practices, development  
661 of program for implementation, budgeting and funding, and other issues related to asset  
662 management that may arise from time to time in the management of such system. The integrated  
663 asset management system, as required by section 12 of chapter 6C of the General Laws, shall be  
664 complete and operational on or before July 1, 2014.

665 SECTION 35. The searchable database required under section 34A of chapter 6C of the  
666 General Laws shall be shall be available to the public on or before January 1, 2014.

667 SECTION 36. Any corporation which was classified as a utility corporation under section  
668 52A of chapter 63 of the General Laws shall not take a deduction under clause 5 of section 30 of  
669 chapter 63 for losses incurred before January 1, 2014.

670 SECTION 37. On January 1, 2015, the tax per gallon established under section 1 of  
671 chapter 64A of the General Laws shall be adjusted by the percentage, if any, by which the  
672 Consumer Price Index for the preceding year exceeds the Consumer Price Index for the calendar  
673 year that ends before such preceding year.

674 SECTION 38. Section 13 shall not restrict the authority of the commissioner of revenue  
675 under subsection (j) of section 38 of chapter 63 of the General Laws, and shall not affect the  
676 continuing validity or application of regulations that were previously adopted under subsection  
677 (f) of said section 38 of said chapter 63.

678 SECTION 39. Every manufacturer, wholesaler, vending machine operator, unclassified  
679 acquirer or retailer, as defined in section 1 of chapter 64C of the General Laws, and every  
680 stamper appointed by the commissioner pursuant to section 30 of said chapter 64C, who, as of  
681 the commencement of business on August 1, 2013, has on hand any cigarettes for sale or any  
682 unused adhesive or meter stamps, shall make and file with the commissioner within 20 days a  
683 return, subscribed and sworn to under the penalties of perjury, showing a complete inventory of  
684 such cigarettes and stamps and shall, at the time he is required to file such return, pay an  
685 additional excise of 50 mills per cigarette on all cigarettes and all unused adhesive and meter  
686 stamps upon which an excise of only 100<sup>1</sup>/<sub>2</sub> mills has previously been paid. All provisions of  
687 chapter 62C and chapter 64C relative to the assessment, collection, payment, abatement,  
688 verification and administration of taxes, including penalties, shall apply to the excise imposed by  
689 this section.

690 SECTION 40. Notwithstanding any general or special law to the contrary, any additional  
691 revenue resulting from the enactment of sections 19 to 22, inclusive, and section 39, as estimated  
692 by the commissioner of revenue, shall be deposited in the General Fund.

693 SECTION 41. Sections 12, 13, 15 and 16 shall take effect on January 1, 2014.

694 SECTION 42. Section 18 shall take effect on January 1, 2015.

695 SECTION 43. Section 14 shall take effect on December 31, 2018.

696 SECTION 44. Except where otherwise specified, the provisions of this act shall take  
697 effect July 1, 2013.