HOUSE DOCKET, NO. FILED ON: 4/9/2013

HOUSE . . . . . No. 3415

House bill No. 3382, as changed by the House committee on Bills in the Third Reading, and as amended and passed to be engrossed by the House. April 8, 2013.

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:

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

SECTION 2.

1595-6367 For the transportation performance and asset management advisory council to assist with the development of a statewide integrated performance and asset

17 management 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 convene at least 2 public hearings, each to be
25 held in a community within the turnpike corridor, at least 30 days prior to the effective date of
26 any proposed change in toll structure on the turnpike and shall allow for a 1 week comment
27 period, after each such hearing, during which written testimony and comments shall be accepted;
28 provided, further, that the examination of alternatives shall include an assessment of whether a
29 revision is necessary before the implementation of a system of fair and equitable tolling across
30 the commonwealth pursuant to a statewide tolling plan developed by the department.

31 SECTION 4. Section 4 of said chapter 6C, as so appearing, is hereby amended by
32 inserting after the word "facilities", in line 46, the following words:- ; provided that no less than
33 $100,000,000 shall annually be spent on repairs and improvements to municipal ways and
34 bridges.

35 SECTION 4A. Section 11 of chapter 6C of the General Laws, as so appearing, is hereby
36 amended by striking the second sentence and inserting in place thereof the following:-

37 The plan shall be consistent with the project selection criteria as established by section
38 11B.

39 SECTION 5. Said chapter 6C is hereby further amended by inserting after section 11 the
40 following sections:-

41 Section 11A. The secretary shall, after conducting a series of public hearings, prepare
42 and publish on the website of the department a comprehensive long term capital plan for the 10
43 succeeding fiscal years. The plan shall be developed consistent with projected federal, state and
44 local funds and shall identify sources and uses for those funds. The plan shall also incorporate
45 scenario analysis planning that accounts for future spending needs and life-cycle financing. The
46 plan shall also set forth estimates and costs for the optimal long-term preservation of each major
47 transportation system component, including the need for long term comprehensive system
48 management, maintenance and operations. It shall also include, but not be limited to, projected
49 construction costs, projected maintenance costs, projected operational costs, and clearly defined
50 sources of funding, including projected revenue, to pay for each individual project identified in
51 the 10 year capital plan.

52 Section 11B. (a) In order to provide a fair and transparent effort to maintain and repair
53 the transportation assets within the commonwealth, there shall be a project selection advisory
54 council charged with developing a uniform, project selection criteria to be used in the
55 development of a comprehensive state transportation plan, as required by section 11.

56 (b) The council shall consist of the following members: the secretary or his designee,
57 who shall serve as chair; 3 members appointed by the governor, one of whom shall have
58 practical experience in transportation planning and policy, one of whom shall be a registered
59 civil engineer with at least 10 years experience, and one of whom shall be a member of a
60 regional planning agency; 1 member appointed by the president of the senate, who shall be an
61 expert in the field of transportation finance; 1 member appointed by the minority leader of the
62 senate, who shall be a member of the construction industry; 1 member appointed by the speaker
63 of the house of representatives, who shall be a representative of a transportation consumer
64 organization or other public interest organization; 1 member appointed by the minority leader of
65 the house of representatives, who shall be a member of a business association; and a
66 representative of the Massachusetts Municipal Association. The department shall provide the
67 council with qualified administrative staff and the regional planning agencies may provide
68 qualified technical assistance to the council. The council shall hold its first meeting no later
69 January 1, 2014 and all meetings of the council shall comply with chapter 30A.

70 (c) The project selection criteria developed pursuant to this section shall include a project
71 priority formula or other data-driven process that includes, but shall not be limited to, the
72 following factors: engineering factors; condition of existing assets; safety; economic impact;
73 regional priorities; and the anticipated cost of the project. The council may divide projects into
74 several categories, including but not limited to: preservation and maintenance of existing assets;
75 modernization of existing assets that improve safety; expansion projects that add to the existing
76 system; and local construction. The factors chosen by the council may be weighted to prioritize
77 specific factors, and such weighting of factors may differ by project category, as determined by
78 the council.

79 (d) The council shall conduct at least 6 public hearings, one in each of the department's
80 highway districts, prior to the final approve of the project selection criteria. The council shall
81 give interested persons an opportunity to submit their views orally and in writing, and the
82 department may create and maintain a website to allow members of the public to submit
83 comments electronically and review comments submitted by others. The council shall give
84 notice of each public hearing by publishing a notice in a newspaper of general circulation in the
85 highway district in which the hearing is to be located in each of two successive weeks, the first
86 publication to be at least fourteen days before the day of the hearing, and, if feasible, by posting
87 a notice in a conspicuous place in the cities or towns with the highway district for at least the
88 fourteen consecutive days immediately prior to the day of the hearing.

89 (e) Final approval of the project selection criteria shall be completed by December 31,
90 2014, and copies of said criteria shall be submitted to the house and senate committees on ways
91 and means and the joint committee on transportation.

92 SECTION 6. Said chapter 6C is hereby further amended by inserting after section 12the
93 following section:-

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

96 "Performance and asset management system", the permanent, comprehensive and
97 integrated system, developed by the department pursuant to section 12, that requires the
98 operation, maintenance, upgrade and expansion of all transportation assets, that are cost-
99 effectively administered throughout their lifecycle, by continuously updating physical inventory,
100 condition assessments and performance information. The system shall establish goals, metrics
101 and outcomes to measure transportation performance pursuant to section 6.

102 "Council", the transportation performance and asset management advisory council
103 created under this section.

104 "Local transportation agency", the city, town, or other governmental entity's department
105 of transportation or public works that has jurisdiction over the transportation assets in that city,
106 town or entity and that receives state or federal funding.

107 "Transportation assets", capital assets, including but not limited to, any city, town, county
108 or state highway, road, street, pavement, parkway, facilities, structures, construction and
109 maintenance equipment, vehicles, real estate, materials, corporate data and information,
110 equipment, rolling stock, infrastructure and facilities for use in public transportation; ground and
111 water transportation facilities and equipment; and any rights-of-way, bridges, tunnels, railroad
112 highway crossings, drainage structures, signs and guardrails.

113 (b) In order to provide a coordinated, unified effort on the stewardship and performance
114 of transportation assets within the commonwealth, there shall be a transportation performance
115 and asset management advisory council charged with advising the board on the creation of a
116 performance and asset management system pursuant to section 12.

117 The council shall consist of the secretary, who shall serve as chair, and the following
118 members as appointed by the secretary: 2 members of the board, 2 members from the
119 Massachusetts Municipal Association, 2 members from different regional planning agencies, 1
120 member from the construction industry, and 1 member from a business association. Each
121 member shall be appointed for a term of 3 years. The council may appoint a technical assistance
122 panel, to serve in an advisory, non-binding capacity, comprised of transportation planning,
123 construction and engineering associations. The council shall determine the scope of research and

124 assign projects to the technical assistance panel as necessary in the development of statewide
125 policies. The department shall provide the council with qualified administrative staff and the
126 regional planning agencies may provide qualified technical assistance to the council.

127 (c) The council shall review the performance measurement criteria required for the
128 performance and asset management system pursuant to subsection (b) of section 6 and the
129 comprehensive long term capital plan required by section 11A. The council shall make a report
130 to the board on the following: (i) improvements that can be made to ensure comprehensive multi-
131 modal transportation planning and analysis, (ii) additional performance metrics, such as
132 enterprise-wide measures across modes, contract management, procurement, project controls,
133 financials, organizational and prioritization outcomes, and (iii) economic development impacts,
134 and benchmarks against performance by other states and countries. The council shall make
135 recommendations on the processes and tools needed to implement a strategy for the performance
136 and asset management system.

137 (d) The council shall present minimum standards and guidelines delineating standardized
138 data and information that shall be contained in the performance and asset management system,
139 including the complete integration of transit, highway, aeronautics, water and port assets, and the
140 possible inclusion of municipal roadways. The minimum standards shall include: (i) the keeping
141 of accurate and uniform records of real transportation assets, (ii) the mileage and condition of
142 each road and bridge system under various jurisdictions, (iii) the receipts and disbursements of
143 road, street and transit funds, (iv) a multiyear compilation of projects anticipated to be contracted
144 for or by the department or local transportation agencies that are funded in whole or in part with
145 state or federal funds, and (v) any other categories established by the council. The council shall
146 recognize the differences in local, regional or other agencies' circumstances and nothing in this
147 section shall prohibit a local transportation agency or other governmental agency from using a
148 separate asset management process on any eligible system. All quality control standards and
149 protocols shall, at a minimum, be consistent with any existing federal requirements and
150 regulations and existing government accounting standards.

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

154 SECTION 7. Said chapter 6C is hereby further amended by inserting after section 34 the
155 following section:-

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

160 (b) The following information, without limitation, shall be made available and made
161 searchable with respect to each project identified in subsection (a):

162 (i) location and street name

163 (ii) a brief description of the work that has been or will be performed;

164 (iii) all project identifying numbers used within the department or with respect to any
165 federal or state grant or funding program, including without limitation any contract numbers,
166 Transportation Incentive Program numbers, or Transportation Infrastructure Finance and
167 Innovation Act or other federal aid numbers;

168 (iv) all contractors, engineers, architects and other service professionals who have
169 performed work on the project;

170 (v) all amounts expended, including payee and date of disbursement with respect to each
171 disbursement;

172 (vi) total projected and actual cost;

173 (vii) projected and actual start and completion dates;

174 (viii) projected and actual milestone dates and details;

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

177 (x) the names and contact information of the project manager within the department or
178 other department personnel with oversight authority.

179 (c) Any project identified in subsection (a) totaling $1,000,000 or more shall be assigned
180 its own web page. In addition to the information required by subsection (b), the project web
181 page shall contain links to pertinent project documents, including without limitation any work
182 progress reports, that are subject to disclosure pursuant to section 10 of chapter 66.

183 (d) Each project web page established pursuant to subsection (c) shall be updated at
184 regular intervals, but in no event less than once every 7 days.

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

191 SECTION 8. Section 39 of said chapter 6C, as appearing in the 2010 Official Edition, is
192 hereby amended by adding the following subsection:-

193 (c) The administrator shall establish within the division an internal project controls unit to
194 oversee all statewide program projects in line with the department's performance and asset
195 management system. The administrator shall establish and implement project controls to ensure
196 that projects carried out pursuant to this chapter shall be completed in the most efficient possible
197 manner. The internal project controls unit shall be subject to section 29A of chapter 29.

198 SECTION 9. Section 2ZZZ of chapter 29 of the General Laws is hereby amended by
199 striking out subsection (c), as appearing in section 112 of chapter 165 of the acts of 2012, and
200 inserting in place thereof the following subsection:-

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

209 SECTION 10. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as
210 appearing in the 2010 Official Edition, is hereby amended by striking out, in line 237, the
211 words"or (d)" and inserting in place thereof the following words:- (d) a telephone company
212 subject to chapter 166, or (e).

213 SECTION 11. Said clause Sixteenth of said section 5 of said chapter 59, as so appearing,
214 is hereby further amended by striking out, in lines 238 and 239, the words "fifty-two A".

215 SECTION 11A. Said clause sixteenth of section 5 of chapter 59 of the General Laws, as
216 so appearing, is hereby further amended by inserting, in line 255, after the word "corporation"
217 the following words:- or a telephone corporation subject to chapter 166.

218 SECTION 12. Subsection(d) of section 2A of chapter 63 of the General Laws, as so
219 appearing, is hereby amended by striking out paragraph (xi) and inserting in place thereof the
220 following paragraph:-

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

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

229 (f)(1) As used in this subsection, the following words shall, unless specifically stated
230 otherwise, have the following meanings:-

231 "Sales", all gross receipts of the corporation, including deemed receipts from transactions
232 treated as sales or exchanges under the Code, except interest, dividends, and gross receipts from
233 the maturity, redemption, sale, exchange or other disposition of securities; provided, however,
234 that "sales" shall not include gross receipts from transactions or activities to the extent that a non-
235 domiciliary state would be prohibited from taxing the income from such transactions or activities
236 under the Constitution of the United States.

237 "Security", any interest or instrument commonly treated as a security as well as other
238 instruments which are customarily sold in the open market or on a recognized exchange,
239 including, but not limited to, transferable shares of a beneficial interest in any corporation or
240 other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable
241 and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and
242 futures contracts

243 (2) The sales factor is a fraction, the numerator of which is the total sales of the
244 corporation in this commonwealth during the taxable year, and the denominator of which is the
245 total sales of the corporation everywhere during the taxable year. Sales of tangible personal
246 property are in this commonwealth if: (i) the property is delivered or shipped to a purchaser
247 within this commonwealth regardless of the free on board point or other conditions of the sale; or
248 (ii) the corporation is not taxable in the state of the purchaser and the property was not sold by an
249 agent or agencies chiefly situated at, connected with or sent out from premises for the transaction
250 of business owned or rented by the corporation outside this commonwealth. "Purchaser", as used
251 in clauses (i) and (ii), shall include the United States government.

252 (3) Sales, other than sales of tangible personal property, are in this commonwealth if the
253 corporation's market for the sale is in this commonwealth. The corporation's market for a sale is
254 in the commonwealth and the sale is thus assigned to the commonwealth for the purpose of this
255 section: (i) in the case of sale, rental, lease or license of real property, if and to the extent the
256 property is located in this commonwealth; (ii) in the case of rental, lease or license of tangible
257 personal property, if and to the extent the property is located in this commonwealth; (iii) in the
258 case of sale of a service, if and to the extent the service is delivered to a location in this
259 commonwealth; (iv) in the case of lease or license of intangible property, including a sale or
260 exchange of such property where the receipts from the sale or exchange derive from payments
261 that are contingent on the productivity, use, or disposition of the property, if and to the extent the
262 intangible property is used in this commonwealth; (v) in the case of the sale of intangible

263 property, other than as referenced in clause (iv), where the property sold is a contract right,
264 government license or similar intangible property that authorizes the holder to conduct a business
265 activity in a specific geographic area, if and to the extent that the intangible property is used in or
266 otherwise associated with this commonwealth; provided, however, that any sale of intangible
267 property, not otherwise described in this clause or clause (iv) is excluded from the numerator and
268 the denominator of the sales factor.

269 (4) For the purposes of this subsection: (i) in the case of sales other than sales of tangible
270 personal property if the state or states to which sales should be assigned cannot be determined, it
271 shall be reasonably approximated; (ii) in the case of sales other than sales of tangible personal
272 property if the taxpayer is not taxable in a state to which a sale is assigned, or if the state or states
273 to which such sales should be assigned cannot be determined or reasonably approximated, such
274 sale shall be excluded from the numerator and denominator of the sales factor; (iii) the
275 corporation shall be considered to be taxable in the state of the purchaser if tangible personal
276 property is delivered or shipped to a purchaser in a foreign country; (iv) sales of tangible
277 personal property to the United States government or any agency or instrumentality thereof for
278 purposes of resale to a foreign government or any agency or instrumentality thereof are not sales
279 made in the commonwealth; (v) in the case of the sale, exchange or other disposition of a capital
280 asset, as defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or
281 business, including a deemed sale or exchange of such asset, "sales" are measured by the gain
282 from the transaction; (vi) in the case of a sale or deemed sale of a business, the term "sales" does
283 not include receipts from the sale of the business "goodwill" or similar intangible value,
284 including, without limitation, "going concern value" and "workforce in place"; (vii) to the extent
285 authorized pursuant to the life sciences tax incentive program established by section 5 of chapter
286 23I, a certified life sciences company may be deemed a research and development corporation
287 for purposes of exemptions under chapters 64H and 64I; and (viii) in the case of a business
288 deriving receipts from operating a gaming establishment or otherwise deriving receipts from
289 conducting a wagering business or activity, income-producing activity shall be considered to be
290 performed in this commonwealth to the extent that the location of wagering transactions or
291 activities that generated the receipts is in this commonwealth.

292 (5) Notwithstanding the foregoing, mutual fund sales as defined in subsection (m) other
293 than the sale of tangible personal property, shall be assigned to this commonwealth to the extent
294 that shareholders of the regulated investment company are domiciled in this commonwealth by
295 multiplying the taxpayer's total dollar amount of sales of such services on behalf of each
296 regulated investment company by a fraction, the numerator of which shall be the average of the
297 number of shares owned by the regulated investment company's shareholders domiciled in this
298 commonwealth at the beginning of and at the end of the regulated investment company's taxable
299 year that ends with or within the taxpayer's taxable year, and the denominator of which shall be
300 the average of the number of shares owned by the regulated investment company shareholders
301 everywhere at the beginning of and at the end of the regulated investment company's taxable

302 year that ends with or within the taxpayer's taxable year. A separate computation shall be made
303 to determine the sale for each regulated investment company, the sum of which shall equal the
304 total sales assigned to the commonwealth.

305 (6) The commissioner shall adopt regulations to implement this subsection. This
306 subsection shall not affect the commissioner's authority under subsection (j).

307 SECTION 14. Paragraph (4) of subsection (f) of said section 38 of said chapter 63, as
308 appearing in section 13, is hereby further amended by striking out clause (vii).

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

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

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

315 SECTION 18. Said section 1 of said chapter 64A, as so appearing, is hereby amended by
316 inserting after the word " gallon", in line 102, the following words:- , annually adjusted by the
317 Consumer Price Index as defined in section 1 of the federal Internal Revenue Code.

318 SECTION 18A. Chapter 64A of the General Laws, as appearing in the 2010 Official
319 Edition, is hereby amended by inserting, after section 7A, the following section:—

320 Section 7B. The sale of fuel to a city or town which having consumed the same for any
321 municipal purpose shall be exempt from the excise established by this chapter.

322 SECTION 18B. Notwithstanding any special or general law to the contrary, the
323 provisions section 18A shall not take effect until such time as (i) the secretary of administration
324 and finance, in consultation with the secretary of transportation, furnishes an analysis on the
325 fiscal impacts of providing such an exemption, which shall include a cost-benefit analysis,
326 available revenues to the Massachusetts department of transportation and an examination of how
327 the exemption aligns with the recommendations and principles adopted by the tax expenditure
328 commission; and (ii) legislation necessary to carry out the recommendations in the report has
329 been filed and enacted pursuant to Part 2, Chap. 1, Sec. 1, Art. II of the Constitution.

330 SECTION 19. The first paragraph of section 6 of chapter 64C of the General Laws, as so
331 appearing, is hereby amended by striking out the first and second sentences and inserting in place
332 thereof the following 2 sentences:- Every licensee who is required to file a return under section
333 16 of chapter 62C shall, at the time of filing such return, pay to the commissioner an excise equal
334 to 150 1/2 mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills
335 for each cigarette so sold during the calendar month covered by the return; provided, however,

336 thatcigarettes with respect to which the excise under this section has once been imposed and has
337 not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by
338 this section. Each unclassified acquirer shall, at the time of filing a return required by section 16
339 of chapter 62C, pay to the commissioner an excise equal to 150 1/2 mills plus any amount by
340 which the federal excise tax on cigarettes is less than 8 mills for each cigarette so imported or
341 acquired and held for sale or consumption, and cigarettes, with respect to which such excise has
342 been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to
343 any further excise under this section.

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

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

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

353 SECTION 23. Section 1 of chapter 64H of the General Laws, as so appearing, is hereby
354 amended by inserting after the definition of “Commissioner” the following definition:-

355 “Computer system design services”, the planning, consulting or designing of computer
356 systems that integrate computer hardware, software or communication technologies and are
357 provided by a vendor or a third party.

358 SECTION 24. Said section 1 of said chapter 64H, as so appearing, is hereby amended by
359 striking out, in lines 239 to 241, inclusive, the words “; and provided, further, that the term
360 services shall be limited to the following item: telecommunications services” and inserting in
361 place thereof the following words:- , or data access, data processing or information management
362 services; and provided further, that the term services shall be limited to the following items:
363 telecommunications services, computer system design services and the modification, integration,
364 enhancement, installation or configuration of standardized software.

365 SECTION 25. The second paragraph of section 2 of chapter 465 of the acts of 1956 is
366 hereby amended by striking out the first sentence and inserting in pace thereof the following five
367 sentences:- The authority shall consist of 13 members; 7 of whom shall be appointed by

368 the governor by and with the advice and consent of the council; 3 of whom shall be

369 appointed by the advisory board according to the by-laws of said board; and 3 of whom
370 shall be appointed by the mayor of the city of Boston. Those members of the authority, having
371 been

372 duly appointed by the governor prior to January 1, 2012, shall continue until such time as
373 their

374 designated term expires; at which time the governor shall appoint a replacement who
375 shall serve

376 a term of 7 years. Those members of the authority appointed by the advisory board and

377 mayor of the city of Boston shall be appointed as follows: said advisory board and mayor
378 shall

379 each appoint 3 initial members, 1 of whom shall serve for a term of 5 years, one of

380 whom shall serve for a term of 6 years, and one of whom shall be serve for a term of 7
381 years. Upon expiration of the terms of all initial appointees, the advisory board or mayor of the

382 city of Boston, whichever applicable, shall appoint a replacement whose term shall be 7

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

384 act.

385 SECTION 26. Said chapter 465 is hereby further amended by striking out section 36,
386 added by section 128 of chapter 25 of the acts of 2009, and inserting in place thereof the
387 following section:-

388 Section 36. (a) There shall be an advisory board to the authority consisting of a voting

389 representative of each of the following cities and towns: Braintree, Bedford, Brookline,

390 Cambridge, Chelsea, Cohasset, Concord, Everett, Hingham, Hull, Lexington, Lincoln,

391 Malden, Melrose, Medford, Milton, Nahant, Quincy, Revere, Somerville, Weymouth, and

392 Winthrop; provided further, that the city of Boston shall have 8 voting representatives,

393 1 of whom shall be a resident of the Beacon Hill section of the city of Boston, 1 of

394 whom shall be a resident of the South End section of the city of Boston, 1 of whom shall

395 be a resident of the East Boston section of the city of Boston, 1 of whom shall be a
396 resident

397 of the Dorchester or Roxbury sections of the city of Boston,1 of whom shall be a resident

398 of the Charlestown section of the city of Boston, 1 of whom shall be a resident of the
399 South Boston section of the city of Boston, 1 of whom shall be a resident of the Roslindale or
400 Hyde Park sections of the city of Boston, and 1 of whom shall be a resident of the West Roxbury
401 or Jamaica Plain sections of the city of Boston. The members of the advisory board shall

402 consist of the chief executive officer thereof; provided however, that any chief executive

403 officer, by writing filed with the authority, may appoint a permanent designee to serve in
404 his

405 stead as a member of said advisory board until the expiration of each term of office of the

406 designating chief executive officer or the earlier vacancy of the office of the designating

407 chief executive officer; provided further, that if the chief executive officer of the city of

408 Boston opts to serve as the representative for the city of Boston to the advisory board, he

409 shall be deemed to represent the forgoing sections of the city of Boston; provided further
410 that

411 a permanent designee shall be versed in at least 1 of the following 3 disciplines:

412 environmental affairs, community and airport relations or public health. For the purpose
413 of this

414 section, the term "chief executive officer" shall mean the person designated as the chief

415 executive officer under the provisions of a local charter or laws having the force of a
416 charter,

417 and otherwise the mayor in every city and the chairman of the board of selectmen or

418 president of the town council, as the case may be, in every town.

419 (b) Except as otherwise prescribed in this section, each voting representative shall cast

420 1 vote on the advisory board. Each voting representative of the several sections of the city

421 of Boston as listed in paragraph (a) shall cast 1 vote. Wherein the chief executive officer

422 of the city of Boston shall opt to serve as the representative to the advisory board for the
423 city

424 of Boston, he shall cast 8 votes.

425 (c) Said advisory board may act at a regular periodic meeting called in accordance with

426 its by-laws; or at a special meeting called by the authority; or if a majority of board
427 members

428 choose to do so. Except as specially provided in paragraph (f), a quorum of the advisory

429 board shall consist of a simple majority of voting members present, and the advisory
430 board may act, except as otherwise provided in paragraph (f), by affirmative casting of a
431 majority

432 of the votes represented in the quorum. The advisory board shall be deemed to be a

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

435 (d) For the conduct of its business, said advisory board shall adopt and may revise and

436 amend by-laws. Said advisory board shall annually elect a chairperson, a vice-
437 chairperson, a

438 secretary and such officers as said advisory board might determine. Each officer may be

439 removed by a two-thirds vote of the advisory board without cause. In the event of a
440 vacancy,

441 said board shall fill the vacancy for the unexpired term. Each member of said advisory
442 board

443 shall serve without compensation, except if a member provides specialized services, such
444 as

445 legal, accounting, record keeping, administration, or any other specialized services
446 provided

447 to the advisory board. Members may be reimbursed, as an expense of said advisory

448 board, for all reasonable expenses incurred in the performance of their duties as approved
449 by

450 the advisory board.

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

452 (i) to appoint 3 members of the board of directors of the Massachusetts Port

453 Authority, as provided for in section 2 of this chapter and in the manner prescribed in
454 paragraph (f) of this section;

455 (ii) to make recommendations to the authority on annual current expense expenditure

456 budgets submitted to the advisory board under paragraph (g);

457 (iii) to hold hearings, which may be held jointly with the authority at the discretion of

458 the advisory board and said authority, on matters relating to said authority;

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

460 authority and the governor, and to make such examinations of the reports on the
461 authority's

462 records and affairs as the advisory board deems appropriate; and

463 (v) to make recommendations to the governor and the general court respecting the

464 authority and its programs. The advisory board shall have all powers necessary or
465 convenient to carry out and effectuate the foregoing purposes.

466 (f) Three members of the authority shall be appointed by the advisory board, in

467 accordance with section 2 of this chapter. Two of those members shall be residents of one
468 of the following communities: Braintree, Brookline, Cambridge, Chelsea, Cohasset, Everett,
469 Hingham, Hull, Lincoln, Malden, Melrose, Medford, Milton, Nahant, Quincy, Revere,
470 Somerville, Weymouth, or Winthrop; and one of whom shall be a resident of the communities of
471 Bedford, Concord, or Lexington. Said advisory board shall appoint successor members, who
472 shall replace that member of the board of directors appointed by the advisory board whose term
473 has expired or

474 otherwise terminated. With respect to appointment of any member of the board of
475 directors

476 the advisory board shall act only if a special quorum is present consisting of two-thirds of

477 voting members present.

478 (g) Within 30 days of receiving any proposed current expense budget of the authority or
479 within 15 days of receiving any proposed amended expense budget of the authority, the advisory
480 board may hold a public hearing on matters relating to said budget for the purpose of
481 ascertaining, for subsequent report to the authority if necessary, the views of the public thereon.

482 (h) The advisory board shall provide for the appointment of an advocate who, with the
483 assistance from such staff and consultants as the advisory board may authorize and appoint, shall
484 act for and in the name of the advisory board in the following respects:

485 (i) preparation of analysis for the advisory board of the authority's current expense

486 budgets, capital expenditure budgets and capital programs and their effect on the charges
487 of

488 said authority;

489 (ii) representation of the advisory board to said authority on all matters pertaining to

490 said authority's programs, operations, finances and charges;

491 (iii) reporting regularly to the advisory board on the activities of the advocate and other

492 staff of the advisory board, on the affairs of the authority, and on the effect of the
493 authority's program and operations on residents of neighboring communities.

494 (iv) The advisory board shall have all the powers necessary to deal with the
495 Massachusetts Port Authority and all federal and state agencies, and report regularly to the board
496 on the effect of any Massachusetts Port Authority, federal, or state agencies' programs and
497 operations on the residents of the communities represented by the advisory board.

498 (v) to meet with and make recommendations to all Massachusetts Port Aurthority,
499 federal, and state agencies' programs and operations, which affect said communities.

500 (i) The advisory board may incur annual expenses, not to exceed $500,000 for expenses
501 authorized under paragraph (c) and for personnel and office expenses. Said annual

502 expenses shall be paid by the authority.

503 (j) The authority shall provide any information, including, but not limited to, annual

504 current expense expenditure budgets and capital expenditure reports, requested by the

505 advisory board which are necessary for the discharge of its duties; provided however, that
506 the

507 advisory board shall not be granted access to any information if it be determined by the

508 executive director of the authority and the director of security for the authority that the

509 release of such information would be detrimental to public safety; provided further, that
510 said

511 determination shall be made in writing and said writing shall be delivered to the advisory
512 board within 2 days; and provided further, that said writing shall be signed by the
513 executive director and director of security of said authority under pains and penalties of
514 perjury.

515 SECTION 27. (a) Notwithstanding any general or special law to the contrary, the
516 Massachusetts Department of Transportation, in this section called the department, shall generate
517 sufficient revenue to meet the following benchmarks: (1) in fiscal year 2014, the department
518 shall generate 47 per cent of the department's operating budget; (2) in fiscal year 2015, the
519 department shall generate 48 per cent of the department's operating budget; (3) in fiscal year
520 2016, the department shall contribute 50 per cent of the department's operating budget; (4) in
521 fiscal year 2017, the department shall contribute 51 per cent of the department's operating
522 budget; and (5) in fiscal year 2018, the department shall contribute 51 per cent of the
523 department's operating budget.

524 (b) The benchmarks in subsection (a) may be achieved through savings to the
525 department's operating budget; provided, that the department shall submit a preliminary report of
526 savings to the operating budget by October 1 of each fiscal year and a final report of savings to
527 the operating budget by January 1 of each fiscal year; and provided further that the department
528 shall not implement any proposed increase in the toll structure that is in place on April 1, 2013
529 on said metropolitan highway system and turnpike except in strict accordance with the
530 provisions of Chapter 6C, Section 3, Clause (18).". The preliminary and final savings reports
531 shall be submitted to the house and senate committees on ways and means and the joint
532 committee on transportation.

533 (c) The revenue generated to meet the benchmarks in subsection (a) may be derived from:
534 (1) fees collected by the registrar of motor vehicles under section 34 of chapter 90 of the General
535 Laws; (2) funds available to the Registry of Motor Vehicles through the Motor Vehicle
536 Inspection Trust Fund, established under section 61 of chapter 10 of the General Laws; (3) funds
537 contributed to the Massachusetts Transportation Trust Fund, establishedunder section 4 of
538 chapter 6C of the General Laws; and (4) any other funds directly collected by the department.

539 SECTION 28. (a) Notwithstanding any general or special law to the contrary, the
540 Massachusetts Bay Transportation Authority, in this section called the authority, shall generate
541 sufficient revenue to meet the following benchmarks: (1) in fiscal year 2014, the authority shall
542 generate 31.5 per cent of the authority's operating budget; (2) in fiscal year 2015, the authority
543 shall contribute 33 per cent of the authority's operating budget; (3) in fiscal year 2016, the
544 authority shall contribute 33.25 per cent of the authority's operating budget; (4) in fiscal year
545 2017, the authority shall contribute 32.75 per cent of the authority's operating budget; and (5) in
546 fiscal year 2018, the authority shall contribute 34 per cent of the authority's operating budget.

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

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

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

561 (b) The secretary of transportation, in consultation with the secretary of administration
562 and finance, shall file a report regarding the department's compliance with the second sentence
563 of said section 15 of said chapter 6C on or before August 1, 2013. The report shall include, but
564 not be limited to: (1) the number of employees with salaries funded by capital expenditures in
565 fiscal year 2013; (2) the total cost of employee salaries charged to capital expenditures in fiscal
566 year 2013; (3) the number of employees and total cost of employee salaries that the department
567 estimates will be moved from capital expenditures to operating expenditures in fiscal years 2014,
568 2015 and 2016; and (4) a strategy to dedicate a portion of the funds made available through
569 compliance with this section to projects that are included in the authority's 5-year rolling capital
570 investment plan as published in accordance with section 5 of chapter 161A of the General Laws.
571 The report shall be filed with the joint committee on transportation, the house and senate
572 committees on bonding, capital expenditures and state assets and the house and senate
573 committees on ways and means.

574 (c) The department shall use as necessary the extra bonding capacity or any portion
575 thereof created by the removal of personnel costs from the capital budget pursuant to this section
576 to fund the capital costs associated with planning, design, permitting, engineering and
577 construction of transportation projects.SECTION 30. Notwithstanding any general or special law
578 to the contrary, each regional transit authority, hereinafter referred to as RTA,established under
579 chapter 161B of the General Laws shall develop a comprehensive regional transit plan in
580 consultation with the appropriate regional planning agency, the department of transportation,
581 local employers and the business associations, labor organizations, and transit authority riders.
582 The regional transit plan shall include but not be limited to; (1) a comprehensive assessment of
583 transit services; (2) a thorough examination of the ridership trends for each line and service
584 provided by the RTA; (3) a performance analysis of existing services; (4) the development and

585 evaluation of alternative service scenarios; (5) the development of a recommendation to better
586 align service with local and regional demand; (6) the commonwealth's environmental policies;
587 (7) fare rates and collection methods; (8) the region's job creation goals and employment needs;
588 and (9) a determination of whether the RTA's service is deployed in the most effective way
589 possible to accommodate the transit needs of the region's workforce. The development of the
590 plan shall include public hearings in different regions of the commonwealth and the opportunity
591 to comment on a draft report. Provided further that special consideration shall be given to the
592 towns in the surrounding area of the City of Worcester currently without regularly scheduled bus
593 service provided by the Worcester Regional Transit Authority (WRTA), with recommendations
594 on a fair and equitable plan for such communities that are contributing to the WRTA. The final
595 report shall be filed with the department of transportation and made available on the
596 department's website and the website of the appropriate RTA on or before June 30, 2014.

597 SECTION 31. There shall be established a value capture commission consisting of the
598 following 7 members: the secretary of transportation or a designee, who shall serve as chair; the
599 secretary of administration and finance or a designee; and 5 personsto be appointed by the
600 governor, 2 of whom shall be representatives of business associations; 1 of whom shall represent
601 organized labor; 1 of whom shall be a representative of the Massachusetts Municipal
602 Association; and 1 of whom shall be a representative of a regional planning agency. The
603 commission shall review and evaluate the policies and best practices of other jurisdictions used
604 to obtain benefits from the increased value of adjacent properties as a result of public
605 infrastructure projects or "value capture" and the current policies and mechanisms available in
606 the commonwealth relative to value capture. The commission shall report to the general court on
607 the effectiveness of the commonwealth's current value capture policies and recommend whether
608 certain policies from other jurisdictions be implemented as part of the long term capital plan
609 established under section 11A of chapter 6C of the General Laws. A report of the commission's
610 findings shall be filed with the clerks of the house of representatives and senate on or before
611 March 1, 2014.

612 SECTION 32. There shall be established a utility relocation commission consisting of the
613 following 5 members: the chair of the department of public utilities or a designee, who shall
614 serve as chair; the secretary of transportation or a designee; and 3 persons to be appointed by the
615 governor, 1 of whom shall represent organized labor, and 2 of whom shall be representatives
616 from a utility or utility facility, as defined under federal law. The commission shall study and
617 make recommendations on policies and reimbursement mechanisms for when it is necessary that
618 a utility or utility facility, as defined under federal law, be relocated by the division of highways
619 or the Massachusetts Bay Transportation Authority because of construction of a project. The
620 commission shall review the current provisions of section 44 of chapter 6C of the General Laws,
621 specifically current thresholds for eligible projects, the annual cap on the total reimbursement by
622 the department, and the reimbursement formula for the total costs of functional replacements of
623 utility lines or real properties. The commission shall recommend a utility reimbursement formula

624 that takes into account, but is not limited to, the following factors; whether the project is to be
625 reimbursed federally, in whole or in part, or to be paid by the commonwealth, in whole or in
626 part; if the utility facility is to be reimbursed, in whole or in part or does not qualify for federal
627 reimbursement; if the relocation shall by performed by the employees of the owner; and the
628 nature of the project. The report, with any recommended legislation, shall be filed with the clerks
629 of the house of representatives and senate on or before January 1, 2014.

630 SECTION 32A. Notwithstanding the provisions of any general or special law to the
631 contrary, the Massachusetts Bay Transportation Authority shall expend funds on capital
632 investment projects, including the green line extension project and the south coast rail project,
633 that are listed in the authority's 5-year rolling capital investment plan as published in accordance
634 with section 5 of chapter 161A of the General Laws.

635 SECTION 32B. Pursuant to clause (18) of section 3 of chapter 6C of the General Laws,
636 the Massachusetts department of transportation shall study and develop a plan to establish and
637 implement a new toll system over roadways across the commonwealth on or before July 1, 2018.
638 Such a plan shall include, but not be limited to, the procurement of necessary federal waivers and
639 any reciprocal agreements or interstate compacts, implementation of open road tolling, and the
640 methods of tolling considered such as high occupancy toll lanes; and shall include a cost-benefit
641 and traffic analysis. An initial draft of the plan shall be filed with the clerks of the house and
642 senate on or before December 31, 2013.

643 SECTION 33. The secretary of Massachusetts Department of Transportation shall,
644 pursuant to section 11A of chapter 6C of the General Laws, publish the first 10-year long term
645 capital plan, for fiscal years 2015 to 2024, inclusive, on or before April 30, 2014.

646 SECTION 34. (a) The transportation performance and asset management advisory
647 council shall, pursuant to section 12A of chapter 6C of the General Laws, and in consultation
648 with federal, state and local transportation agencies, regional planning agencies and other
649 governmental agencies, develop and present to the board of directors of the Massachusetts
650 Department of Transportation for approval such procedures and requirements as are necessary
651 for the administration of the performance and asset management system on or before November
652 1, 2013. This shall include, at a minimum:(1) a comprehensive plan for the development and
653 integration of an asset management and performance information system with long-term
654 statewide planning processes; (2) an analytical process or decision support tool that allows for
655 the estimation of capital investment needs of such systems over time; and (3) an asset investment
656 prioritization method by such systems, including the possible use of a quantifiable project
657 prioritization mechanism such as a numeric scoring system.

658 (b) The recommendations shall also include areas of necessary training, data storage and
659 collection, reporting practices, development of program for implementation, budgeting and

660 funding, and other issues related to asset management that may arise from time to time in the
661 management of such system.

662 SECTION 34A. The integrated asset management system, as required by section 12 of
663 chapter 6C of the General Laws, shall be complete and operational on or before July 1, 2014.

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

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

669 SECTION 37. On January 1, 2015, the tax per gallon established under section 1 of
670 chapter 64A of the General Laws shall be adjusted by the percentage, if any, by which the
671 Consumer Price Index as defined in section 1 of the federal Internal Revenue Code, for the
672 preceding year exceeds the Consumer Price Index for the calendar year that ends before such
673 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 July 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 such person is required to file such return, pay
685 an additional excise of 50 mills per cigarette on all cigarettes and all unused adhesive and meter
686 stamps upon which an excise of only 1001/2 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 effective date of sections 19 to 22, inclusive, and section 39, as
692 estimated by the commissioner of revenue, shall be deposited in the General Fund.

693 SECTION 41. Sections 10, 11, 11A, 12, 13, 15 and 16 shall take effect January 1,
694 2014.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.

698 SECTION 45. Notwithstanding any general or special law to the contrary, all fuel tax
699 revenues generated pursuant to chapter 64A of the General laws or otherwise shall be credited to
700 the Commonwealth's transportation fund and such funds shall be used for transportation related
701 purposes and for no other purposes, except for items funded from such revenues as of July 1,
702 2012.

703 SECTION 46. Section 24 of chapter 161A of the General Laws, as appearing in the 2010
704 Official Edition, is hereby amended by adding after the last sentence the following sentences: -

705 Real property of the authority shall, if leased, used, or occupied in connection with a
706 business conducted for profit shall, for the privilege of such lease, use or occupancy be valued,
707 classified, assessed and taxed annually as of January first to the lessee, user, or occupant in the
708 same manner and to the same extent as if such lessee, user, or occupant were the owner thereof
709 in full. No tax assessed under this section shall be a lien upon the real estate with respect to
710 which it is assessed; nor shall any tax be enforced by any sale or taking of such real estate; but
711 the interest of any lessee therein may be sold or taken by the collector of the town in which the
712 real estate lies for the nonpayment of such taxes in the manner provided by law for the sale or
713 taking of real estate for nonpayment of annual taxes. Notwithstanding the above, such collector
714 shall have for the collections of taxes assessed under this section all other remedies provided by
715 chapter sixty for the collection of annual taxes upon real estate.

716 Section 47. Chapter 161A of the General Laws, as most recently amended by chapter
717 119 of the Acts of 2012, is hereby amended by inserting at the end thereof the following new
718 section:

719 Section 50. Notwithstanding any general or special law to the contrary, the department or
720 the authority shall not undertake any system expansion, defined as encompassing the
721 development, conceptual planning, design and construction of any effort to expand the scope of
722 services at the authority, until the department or the authority conducts a cost analysis and
723 certifies that the addition of the project will not prevent the authority from generating sufficient
724 revenue to contribute 34 per cent of the authority's operating budget annually. This cost analysis
725 shall include any and all costs associated with the project including debt service, construction
726 costs, future maintenance and associated costs. The auditor of the commonwealth shall request
727 that the administrator of the appropriate division of the department prepare the fiscal analysis,
728 including life cycle costs, demonstrating that sufficient revenues exist or will be generated to
729 operate and maintain in good repair the expansion. This analysis shall also be submitted to the
730 joint legislative committee on revenue.

731 Nothing in this section shall be construed to prevent any system enhancement, defined as
732 encompassing capital projects that improve existing service and foster increased ridership on
733 exiting transit systems.

734 SECTION 48. Section 5 of chapter 161B of the General Laws, as appearing in the 2010
735 Official Edition, is hereby amended by deleting the second paragraph and inserting in place
736 thereof the following paragraph:-

737 One representative of the disabled commuter population shall serve on each advisory
738 board for a 1 year term. Such person shall have 1 vote on the advisory board. Every city or town
739 in the region, on a rotating basis as determined by the board, shall appoint a representative
740 successively. The mayor or city manager and the chairman, town manager or town administrator
741 shall appoint a resident of the city or town for this purpose. This representative shall be a
742 mobility impaired person who regularly uses services offered by the regional transit authority, or
743 have a family member who is mobility impaired and so uses such services, or be a caretaker of a
744 person who is mobility impaired and so uses such services, or work for an organization that
745 serves the needs of the physically disabled. The representative of a city or town may be
746 reappointed after representatives from the other cities and towns within the region have served
747 their 1 year terms.

748 SECTION 49. Section 5 of chapter 161B of the General Laws, as appearing in the 2010
749 Official Edition, is hereby amended by inserting after the second paragraph the following
750 paragraph:-

751 The governor shall appoint 1 person to each advisory board from a list of at least 5
752 persons nominated by the Massachusetts State AFL-CIO and its regional councils, each of whom
753 shall reside in a municipality served by the regional transit authority on whose board such
754 appointee sits. Each appointment shall be for a 1 year term. Such persons shall have 1 vote on
755 the advisory board.

756 SECTION 50. Section 1 of chapter 64C, as so appearing, is hereby further amended by
757 striking the words "sections twenty-nine to thirty-nine, inclusive," in lines 63, and replacing
758 them with the following:- section 33A.

759 SECTION 51. Section 1 of Chapter 94F is hereby amended by adding the following
760 definitions:

761 "Contraband", such units of smokeless tobacco sold, purchased, transported, imported,
762 received, or possessed and (i) upon which any required tax has not been paid, (ii) has been
763 imported in violation of federal, state or local law, (iii) the packaging of which has been altered
764 so as to remove, conceal or obscure any statement, label, stamp, sticker, or notice or any health
765 warning in violation of federal, state or local law.

766 “Smokeless Tobacco”, snuff, snuff flour and any other tobacco or tobacco product
767 prepared in such manner as to be suitable for chewing, including, but not limited to Cavendish,
768 plug, twist and fine-cut tobaccos.

769 “Unit of smokeless tobacco”, a single container to be purchased by the consumer.

770 SECTION 52. Chapter 94F is hereby further amended by adding the following new
771 sections:

772 Section 5A. Smokeless Tobacco; Possession without license; Penalties.

773 Any person, except as otherwise provided by law, who sells, purchases, transports,
774 imports, receives, or possesses smokeless tobacco upon which tax has not been paid shall be
775 required to pay any tax owed pursuant Massachusetts law. In addition, such person shall be
776 required to pay a civil penalty of (i) $2.50 per unit of smokeless tobacco, up to $500, for the first
777 violation by a legal entity within a 36-month period; (ii) $5 per unit of smokeless tobacco, up to
778 $1,000, for the second violation by the legal entity within a 36-month period; and (iii) $10 per
779 unit of smokeless tobacco, up to $2,000, for the third and any subsequent violation by the legal
780 entity within a 36-month period, to be assessed and collected by the commissioner as other taxes
781 are collected. In addition, where willful intent exists to defraud the Commonwealth of any tax
782 levied on smokeless tobacco pursuant to Massachusetts law, such person shall be required to pay
783 a civil penalty of $25 per unit of smokeless tobacco, up to $25,000.

784 B. It shall be unlawful for any person, except as otherwise provided by law, to sell,
785 purchase, transport, import, receive or possess fewer than 500 units of smokeless tobacco unless
786 the tax on those units has been paid. Any person violating the provisions of this subsection shall
787 be guilty of a misdemeanor.

788 C. It shall be unlawful for any person, except as otherwise provided by law, to sell,
789 purchase, transport, import, receive or possess 500 or more units of smokeless tobacco unless the
790 tax on those units has been paid. Any person violating the provisions of this subsection shall be
791 guilty of a felony

792 D. If a person who (i) has not been issued a license, as provided in Section two of
793 Chapter sixty-four C or (ii) is not a retail dealer who has lawfully purchased smokeless tobacco
794 from such license holder has in his possession within the Commonwealth more than 25 units
795 smokeless tobacco upon which no tax has been paid, such possession shall be presumed to be for
796 the purpose of evading the payment of the taxes due thereon.

797 E. Any person other than an authorized holder who possesses, with intent to distribute,
798 more than 25, but fewer than 500, units of tax-paid smokeless tobacco is guilty of a misdemeanor
799 for a first offense and is guilty of a felony for any second or subsequent offense.

800 F. Any person other than an authorized holder who possesses, with intent to distribute,
801 more than 500, units of tax-paid smokeless tobacco is guilty of a felony.

802 G. Additionally, any person who violates the provisions of this section shall be assessed a
803 civil penalty of (i) $2.50 per unit, but no more than $5,000, for a first offense; (ii) $5 per unit, but
804 no more than $10,000, for a second such offense committed within a 36-month period; and (iii)
805 $10 per unit, but no more than $20,000, for a third or subsequent such offense committed within
806 a 36-month period. The civil penalties shall be assessed and collected by the commissioner as
807 other taxes are collected.

808 Section 5B. Illegal distribution of smokeless tobacco.

809 It shall be unlawful for any person to:

810 Sell or distribute in the Commonwealth of Massachusetts, acquire, hold, own possess, or
811 transport, for sale or distribution in the Commonwealth, or import, or cause to be imported, into
812 the Commonwealth for sale or distribution in the Commonwealth any smokeless tobacco, (i) the
813 packages of which bear any statement, label, stamp, sticker, or notice indicating that the
814 manufacturer did not intend the smokeless tobacco to be sold, distributed, or used in the United
815 States, including but not limited to labels stating "For Export Only," "U.S. Tax-Exempt," "For
816 Use Outside U.S.," or similar wording; (ii) the packages of which do not comply with all
817 requirements imposed by or pursuant to federal law regarding warnings and any other
818 information on packages manufactured, packaged, or imported for sale, distribution, or use in the
819 United States or all federal trademark and copyright laws; (iii) imported into the United States in
820 violation of any federal law or regulation; or (iv) that such person otherwise knows or has reason
821 to know the manufacturer did not intend to be sold, distributed, or used in the United States.

822 Alter any package of any smokeless tobacco, prior to sale or distribution to the ultimate
823 consumer, so as to remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice
824 described in clause (i) of the foregoing paragraph or (ii) any health warning that is not specified
825 in, or does not conform with the requirements of federal law.

826 The commissioner may impose a civil penalty in an amount not to exceed the greater of
827 500 percent of the retail value of the smokeless tobacco involved or $5,000 upon finding a
828 violation of this provision and may assess the tax due and any interest upon the product acquired,
829 possessed, sold, or offered for sale in violation of this provision.

830 Any person who commits any of the acts prohibited by this section, either knowingly or
831 having reason to know he is doing so shall be guilty of a felony.

832 In addition to any other remedy provided by law, any person may bring an action for
833 appropriate injunctive or other equitable relief for a violation of this provision, for actual
834 damages, if any, sustained by reason of the violation, and as determined by the court, interest on

835 the damages from the date of the complaint, and taxable costs. If the court finds that the violation
836 was willful, it may increase damages to an amount not exceeding three times the actual damages
837 sustained by reason of the violation.

838 For the purpose of enforcing this provision, the commissioner may request or share
839 information with any federal, state or local agency, including any agency of another state or local
840 agency thereof.

841 Section 5C. Forfeiture of Contraband Smokeless Tobacco.

842 Contraband smokeless tobacco possessed in violation of Sections five A and B of this
843 Chapter ninety-four F shall be subject to seizure, forfeiture, and destruction by the commissioner
844 or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials, and
845 personal property used in substantial connection with the sale or possession of smokeless
846 tobacco in a knowing and intentional violation of Sections five A and B of this Chapter ninety-
847 four F shall be subject to seizure and forfeiture as provided in sections fifty to fifty-five,
848 inclusive, of chapter one hundred and thirty-eight in the case of alcoholic beverages.

849 SECTION 53. The Massachusetts Department of Transportation shall undertake an
850 analysis of the air quality impacts of the Central Artery Project and associated transit
851 commitments completed to date. The analysis shall be conducted in cooperation with the Boston
852 Region Metropolitan Planning Organization and shall report on the levels of Volatile Organic
853 Compounds, Oxides of Nitrogen, and Carbon Monoxide in the MPO region and Eastern
854 Massachusetts. The results of the analysis shall be provided to the Joint Committee on
855 Transportation within six months of the effective date of this act.