SENATE . . . . . No. 2625

The Commonwealth of Massachusetts

the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, July 23, 2018

The committee on Ways and Means, to whom was referred the House Bill relative to economic development in the commonwealth (House, No. 4732, published as amended) (the committee on Bonding, Capital Expenditures and State Assets having recommended that the bill be amended by striking out all after the enacting clause and inserting in place there of the text of Senate document numbered 2622); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2625.

[Bond authorization: $601,450,000]

For the committee,
Karen E. Spilka

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SECTION 1. To provide for a program of economic development and job creation, the sums set forth in sections 2A and 2B, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds; provided, however, that the amounts specified in an item or for a particular project may be adjusted to facilitate projects authorized in this act. These sums shall be in addition to any amounts previously authorized and made available for these purposes.

SECTION 2A.

EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

Office of the Secretary

6720-1351 For a grant program to coastal communities to be administered by the seaport economic council; provided, that funding shall be used for community planning and investment activities that stimulate economic development and create jobs in the maritime economy sector, and to construct, improve, repair, maintain and protect coastal assets that are vital to achieving these goals; and provided further, that the planning, prioritization, selection and implementation of projects shall consider climate change impacts in furtherance of the goals

of climate change mitigation and adaptation and consistent with the integrated state hazard mitigation and climate change adaptation plan……. $55,000,000

7002-1120 For grants to municipalities and other public instrumentalities for design, construction, building, land acquisition, rehabilitation, repair and other improvements to publicly-owned infrastructure, or those owned or operated by nonprofit organizations; provided, that not less than $3,000,000 shall be expended for the development of land for housing, community and commercial use in the Rail Transit District of the town of Ashland; provided further, that not less than $3,000,000 shall be expended for the costs associated with the replacement of the Saxonville fire station in the city of Framingham; provided further, that not less than $3,000,000 shall be expended for the site study, acquisition and improvements related to the Axton-Crossing land in the town of Holliston; provided further, that not less than $2,500,000 shall be expended for improvements to the Grove Street Business Corridor in the city known as the town of Franklin; provided further, that not less than $2,000,000 shall be expended for the design and construction of a high pressure water service system in the town of Hopkinton; provided further, that not less than $1,200,000 shall be expended for the costs associated with a new public service facility in the town of Medway; provided further, that not less than $1,500,000 shall be expended for the costs associated with the development of a parking garage in the downtown area of the town of Natick; provided further, that not less than $10,000,000 shall be expended to Massachusetts Bay Community College to support workforce development for the early education and care and allied health professions; provided further, that not less than $2,000,000 shall be expended for the façade improvement program and streetscape improvements in neighborhood business districts in the city of Worcester; provided further, that not less than $1,000,000 shall be expended to support the growth of the startup and small

business ecosystem, including the operation of incubators, accelerators and other new ventures, in the city of Worcester; provided further, that not less than $1,000,000 shall be expended for business development along Pleasant street in the city of Worcester; provided further, that not less than $500,000 shall be expended for the fit-out of the ground floor of the Union Station garage for commercial use in the city of Worcester; provided further, that not less than $1,000,000 shall be expended for the Black Box Theater at the Worcester PopUp in the city of Worcester; and provided further, that not less than $1,000,000 shall be expended for the business development in Webster square in the city of Worcester ……..$32,700,000

7002-1501 For grants administered by Massachusetts Technology Development Corporation established in section 2 of chapter 40G of the General Laws, and doing business as MassVentures; provided, that such grants shall be made on a competitive basis to growing Massachusetts-based companies commercializing technologies developed with assistance of a small business innovation research or small business technology transfer grant from a federal agency including, but not limited to, the United States Department of Defense, the United States Department of Energy or the National Science Foundation…… $12,500,000

7002-8006 For the MassWorks infrastructure program established in section 63 of chapter 23A of the General Laws……..$200,000,000

7002-8007 For matching grants to enable institutions of higher education, including state and municipal colleges and universities, to participate in and receive federal funding through Manufacturing USA, formerly known as the National Network for Manufacturing Innovation…….. $25,000,000

7002-8019 For the Massachusetts Growth Capital Corporation established in section 2 of chapter 40W of the General Laws, for a program to provide matching grants to community development financial institutions certified by the United States Treasury or community development corporations certified under chapter 40H of the General Laws to enable the community development financial institution or community development corporation to leverage federal or private investments for the purpose of making loans to small businesses…….. $1,250,000

7002-8023 For grants to coastal communities to undertake dredging projects that will promote job creation, increase commercial activity, contribute to downtown revitalization or advance other local economic development goals; provided, that all grants shall be matched on a 1 to 1 basis by the grantee……..…….. $50,000,000

SECTION 2B.

EXECUTIVE OFFICE OF EDUCATION

Office of the Secretary

7009-2005 For a competitive grant program to be administered by the executive office of education, in consultation with the executive office of housing and economic development and the executive office of labor and workforce development, to provide funding for the purchase and installation of equipment and related improvements and renovations to facilities necessary for the installation and use of such equipment, to establish, upgrade and expand career technical education and training programs that are aligned to regional economic and workforce development priorities; provided, that grant applications may facilitate collaboration to provide students enrolled in eligible vocational technical schools with

postsecondary opportunities consistent with clause (o) of the first paragraph of section 22 of chapter 15A of the General Laws and section 37A of chapter 74 of the General Laws; provided further, that community colleges and innovation centers that receive funds from the Massachusetts Life Sciences Center shall also be eligible for funds from this program; provided further, that the executive office of education, in consultation with the executive office of housing and economic development and the executive office of labor and workforce development, shall adopt additional guidelines as necessary for the administration of the program; and provided further, that awards may be made to community-based organizations with recognized success in training adults with barriers to employment……. $75,000,000

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Office of the Secretary

6720-1341 For the mitigation of or contribution toward costs associated with or arising out of the design, construction or infrastructure improvements to the Raymond L. Flynn Cruiseport in the South Boston section of the city of Boston to accommodate large cruise ships and increasing passenger demand, for the continued competitiveness of the terminal; provided, that the secretary, in coordination with the chief executive officer of the Massachusetts Port Authority, shall seek to maximize federal and private funds and reimbursement to offset, to the extent feasible, costs incurred under this item; provided further, that the Massachusetts Port Authority shall implement a program that reduces emissions associated with cruise ship operations while said ships are at berth not later than July 1, 2024; provided further, that said program to reduce emissions shall include ship-to-shore capabilities or other advanced emission reduction technology; and provided further, that the Massachusetts Port Authority shall publish

an annual report concerning environmental impacts of cruise ship operations at the Conley Terminal and Flynn Cruiseport, including but not limited to, air quality, emissions and noise pollution……$100,000,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Office of the Secretary

0640-0302 For the Massachusetts Cultural Facilities Fund established in section 42 of chapter 23G of the General Laws for the acquisition, design, construction, repair, renovation, rehabilitation or other capital improvement or deferred maintenance to a cultural facility to advance and promote tourism through the preservation of the state's cultural resources……...$50,000,000

SECTION 3. Section 16 of chapter 6D of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out subsection (c).

SECTION 4. Section 3C of chapter 23A of the General Laws, as so appearing, is hereby amended by adding the following 2 subsections:-

(d) Notwithstanding subsections (b) and (c), the EACC may, by guideline or regulation, establish a program to incentivize businesses to occupy vacant storefronts in downtown areas. The EACC may award EDIP tax credits to storefront tenants on a competitive basis, taking into account factors including, but not limited to: (i) the number of jobs to be created; (ii) the volume of pedestrian traffic to be generated; (iii) potential synergy with other downtown businesses; (iv) whether there is a matching contribution from the municipality or the landlord; (v) commitment to storefront improvements; and (vi) whether the municipality has made local plans or

investments to revitalize the downtown. Certification of such a project shall require that a business commit to occupying the vacant storefront for a period of not less than 1 year, but the business shall not be required to invest in improvements or create new jobs. The EACC shall not award more than $500,000 in EDIP tax credits in a calendar year to projects certified pursuant to this subsection.

SECTION 5. Chapter 23A of the General Laws is hereby amended by adding the following section:-

Section 68. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Participant", a municipality seeking to utilize an innovative technology solution or a startup.

"Startup", a corporation, partnership, limited liability company, sole proprietorship or organization seeking to bring innovative technology to the market including, but not limited to, a company that is seeking a first or early-customer to validate the commercial readiness of the company's technology.

(b) There shall be within the executive office of housing and economic development an innovative communities office to serve as a common place of access, education and point of connection for startups and municipalities seeking innovative technology solutions. The office shall implement an innovative communities program to support the introduction of cutting-edge technologies into the marketplace and incentivize the adoption of these technologies by municipalities.

The office shall be under the supervision and control of an executive director, appointed by the secretary of housing and economic development, who shall have experience in business, including experience with companies specializing in new and innovative technologies. The executive director may appoint and remove, subject to appropriation, agents and subordinate officers and employees as the executive director considers necessary and may establish subdivisions as the executive director considers appropriate to carry out the objectives of the office. The executive director may, subject to appropriation and the laws and regulations relating to the employment of consultants, employ consultants as the executive director considers necessary.

To implement the innovative communities program, the executive director shall enter into interagency service agreements or other contracts with state agencies, state authorities, business associations and other entities including, but not limited to, the Massachusetts office of information technology, the operational services division, the Massachusetts clean energy technology center, the office of inspector general and regional planning organizations. The interagency service agreements and contracts shall be designed to support municipalities seeking to utilize innovative technology and startups.

(c) The executive director shall establish a process to certify innovative communities. To qualify as an innovative community, a municipality shall: (i) pass a resolution, upon the vote of the local governmental body, which accepts the principles described in this section; (ii) make electronically available to the public municipal data sets maintained by the municipality, excluding data sets containing information that identifies individual persons or is protected by law; (iii) attend not less than 1 technology marketing event or exposition organized by the executive director; (iv) conduct beta testing on not less than 1 technology annually that has been

vetted and approved by the executive director; and (v) share the results of the trial with other municipalities participating in the innovative communities program. A municipality that meets the requirements of this subsection shall be designated by the executive director as an innovative community and shall be eligible for grants under clause (vii) of subsection (d).

(d) In addition to certifying innovative communities under subsection (c), the executive director shall:

(i) develop, in consultation with the inspector general, an education program for municipalities regarding purchasing innovative technology from startups under chapter 7 and chapter 30B, including purchasing under subsection (c) of section 4 of said chapter 30B;

(ii) develop, in consultation with the inspector general, an education program for startups that includes methods to understand the municipal purchasing process and the requirements and standards that shall be fulfilled by startups in order to sell to municipalities, including opportunities to participate in the commonwealth's efforts to coordinate purchasing for government entities;

(iii) create, in consultation with the inspector general, a plain language summary and other standardized informational materials to explain how the procurement process operates for contracts negotiated by municipalities under sections 22A and 22B of said chapter 7 and chapter 30B, to ensure uniform practices in the commonwealth;

(iv) organize marketing events and expositions for: (1) startups, to showcase their technology, and conduct statewide innovation competitions to solicit proposals for innovative uses of technology that allow municipalities to better serve their residents or promote efficient use of resources; and (2) participating municipalities, to make municipal technology needs

known to startups and to share the results of the beta test required under clause (iv) of subsection (c);

(v) engage municipalities and startups, through marketing and outreach, to promote the benefits of participating in the innovative communities program, including soliciting entrepreneurial proposals for reshaping government services through various platforms and encouraging participation from women-owned and minority-owned businesses;

(vi) implement pilot programs in innovative communities annually, subject to appropriation, for the most market-ready technologies presented at the technology marketing events, expositions and innovation competitions;

(vii) establish a grant program, subject to appropriation, for innovative communities to finance all or a portion of the costs associated with the adoption of a innovative technology approved by the innovative communities program;

(viii) provide municipalities and startups with technical assistance to enter into agreements under said chapter 7 and said chapter 30B that assess the need for and the cost and feasibility of employing the chosen technology;

(ix) develop a pre-qualification process for participating startups to expedite the purchase of innovative technologies;

(x) establish collective purchasing under section 22A of said chapter 7 to be updated on a regular basis, but not less often than annually, where municipalities may make purchases of innovative technologies approved by the executive director under this section;

(xi) establish evaluation, audit and compliance procedures for participating startups, including a technology readiness assessment, self-audit and standardized due diligence investigation of participating startup business profiles; and

(xii) establish a publicly-available website to publish and regularly update information, events and materials created under this subsection.

(e) There shall be an innovative communities advisory board to: (i) build and maintain relationships between startups and municipalities; and (ii) improve the innovative communities program. The advisory board shall be within, but not subject to the control of, the executive office of housing and economic development.

The advisory board shall consist of: the chief information officer of the Massachusetts office of information technology or a designee; the executive director of the Massachusetts Municipal Association, Inc. or a designee; 1 representative of the Massachusetts Association of Public Purchasing Officials; and 9 members to be appointed by the governor, 1 of whom shall be a chief executive officer of a clean energy company or a designee, 1 of whom shall be a chief executive officer of an innovative information technology company or a designee, 1 of whom shall be a chief executive officer of an innovative startup company or a designee, 1 of whom shall be an investor in new technology companies, 2 of whom shall be chief executive officers of associations representing emerging technology industries, 2 of whom shall be individuals who have experience with business incubators or shared workspaces and 1 of whom shall be a representative of a regional planning organization. The governor shall fill any vacancy. The advisory board shall elect a chair. The advisory board shall file a report on the activities of the board and any recommendations annually, not later than March 1, with the secretary of housing

and economic development and the joint committee on economic development and emerging technologies.

SECTION 6. Subsection (b) of section 2RR of chapter 29 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

(3) To provide grants for pipeline training for unemployed persons by an employer with a job vacancy; provided, however, that the director shall not allocate more than 5 per cent of the annual capitalization of the fund to provide for such grants. In determining grant recipients, the director shall contract with the commonwealth corporation to distribute the grants in a need based, competitive process in accordance with the rules and parameters outlined in section 2WWW. The grants shall be performance-based and 50 per cent funded upon enrollment in the program, with the balance to be paid contingent upon job placement and retention outcomes that demonstrate placement of a participant in a training-related position requiring not less than 30 hours per week for not less than 2 months. To further support pipeline training and to match the substantial contributions made from employers to the fund, the commonwealth shall match, subject to appropriation, money used for grants pursuant to this paragraph.

SECTION 7. Paragraph (a) of part B of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out subparagraph (10) and inserting in place thereof the following subparagraph:- (10) An amount equal to 10 per cent of the cost of renovating any abandoned building that is part of a certified project as defined in section 3A of chapter 23A.

SECTION 8. Section 6 of said chapter 62 is hereby amended by striking out, in lines 1052 and 1053, as so appearing, the words “who is not the principal owner of the qualifying

business and who is" and inserting in place thereof the following words:- , who is not: (i) the principal owner of the qualifying business; or (ii).

SECTION 9. Section 38O of said chapter 63, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words "either located within an economic target area designated under section 3G of chapter 23A, or".

SECTION 10. Sections 42 and 42A of chapter 93 of the General Laws are hereby repealed.

SECTION 11. The General Laws are hereby amended by inserting after chapter 93K the following 2 chapters:-

CHAPTER 93L.

UNIFORM TRADE SECRETS ACT.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Improper means", without limitation, theft, bribery, misrepresentation, unreasonable intrusion into private physical or electronic space or breach or inducement of a breach of a confidential relationship or other duty to limit acquisition, disclosure or use of information; provided, however, that "improper means" shall not include reverse engineering from properly accessed materials or information.

"Misappropriation", (i) the acquisition of a trade secret of another by a person who knows, or who has reason to know, that the trade secret was acquired by improper means; or (ii) the disclosure or use of a trade secret of another without that person's express or implied consent

by a person who: (A) used improper means to acquire the trade secret; or (B) at the time of the disclosure or use, knew or had reason to know that the trade secret was acquired: (1) through a person who had utilized improper means to acquire it; (2) under circumstances giving rise to a duty to limit its acquisition, disclosure or use; or (3) through a person who owed a duty to the person seeking relief to limit its acquisition, disclosure, or use; or (C) before a material change of such person's position, knew or had reason to know that what was disclosed was a trade secret and that such person's knowledge of the trade secret had been acquired by accident, mistake or through another person's act described in subclause (A) of clause (ii) or subclauses (1) or (2) of subclause (B) of said clause (ii).

"Person", a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

"Trade secret", specified or specifiable information, whether or not fixed in tangible form or embodied in any tangible thing, including, but not limited to, a formula, pattern, compilation, program, device, method, technique, process, business strategy, customer list, invention or scientific, technical, financial or customer data that, at the time of the alleged misappropriation: (i) provided an economic advantage, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others who might obtain economic advantage from its acquisition, disclosure or use; and (ii) was the subject of efforts that were reasonable under the circumstances to protect against the acquisition, disclosure or use of such information without the consent of the person properly asserting rights therein or such person's predecessor in interest including, but not limited to, reasonable notice.

Section 2. (a) Actual or threatened misappropriation may be enjoined upon principles of equity including, but not limited to, consideration of prior conduct and the circumstances of potential use, upon a showing that information qualifying as a trade secret has been or is threatened to be misappropriated. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist; provided, however, that the injunction may be continued for an additional reasonable period of time if necessary to eliminate any economic advantage that otherwise would be derived from such misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. For the purposes of this subsection, "exceptional circumstances" shall include, but are not limited to, a material and prejudicial change of position prior to acquiring the knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 3. (a) Except to the extent that a material and prejudicial change of position prior to acquiring the knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

Section 4. The court may award reasonable attorney's fees and costs to the prevailing party if: (i) a claim of misappropriation is made or defended in bad faith; (ii) a motion to enter or to terminate an injunction is made or resisted in bad faith; or (iii) willful and malicious misappropriation exists. In considering such an award, the court may take into account the claimant's specification of trade secrets and the proof that such alleged trade secrets were misappropriated.

Section 5. (a) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action alleging misappropriation, a party shall state with reasonable particularity the circumstances thereof, including the nature of the trade secret and the basis for its protection. Before commencing discovery relating to an alleged trade secret, the party alleging misappropriation shall identify the trade secret with sufficient particularity under the circumstances of the case to allow the court to determine the appropriate parameters of discovery and to reasonably enable other parties to prepare their defense.

Section 6. An action alleging misappropriation must be brought not more than 3 years after the misappropriation was discovered or should have been discovered by the exercise of

reasonable diligence. For the purposes of this chapter, a continuing disclosure or use constitutes a single claim.

Section 7. (a) Except as provided in subsection (b), this chapter shall supersede any conflicting laws of the commonwealth that provide civil remedies for misappropriation.

(b) This chapter shall not affect: (i) contractual remedies; provided, however, that, to the extent such remedies are based on an interest in the economic advantage of information claimed to be confidential, such confidentiality shall be determined according to the definition of trade secret in section 1 and the terms and circumstances of the underlying contract shall be considered in such determination; (ii) remedies based on submissions to governmental units; (iii) other civil remedies to the extent that they are not based upon misappropriation; or (iv) criminal remedies, whether or not based upon misappropriation.

Section 8. This chapter shall be applied and construed to effectuate its general purpose of making uniform the law with respect to the subject of this chapter among states enacting it.

CHAPTER 93M

BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:-

"Assertion of patent infringement", (i) the sending or delivering of a demand letter to a target; (ii) the threating of a target with litigation and asserting, alleging or claiming that the target has engaged in patent infringement; (iii) the sending or delivering of a demand letter to the customers of a target; or (iv) a claim or allegation, other than those made in litigation against a

target, that a target has engaged in patent infringement or that a target should obtain a license to a patent in order to avoid litigation.

"Demand letter", a letter, e-mail or other communication asserting, alleging or claiming that the target has engaged in patent infringement or that a target should obtain a license to a patent in order to avoid litigation, or any similar assertion.

"Target", a person residing in, conducting substantial business in or having its principal place of business in Massachusetts against whom an assertion of patent infringement is made.

Section 2. (a) A person shall not make an assertion of patent infringement in bad faith. In determining whether a person has made an assertion of patent infringement in bad faith, and in addition to any other factor the court finds relevant, a court may consider whether:

(i) the demand letter failed to contain the following information: (A) the patent number; (B) the name and address of the patent owner or owners and assignee or assignees, if any; and (C) factual allegations concerning the specific areas in which the target's products, services and technology infringe the patent or are covered by the claims in the patent;

(ii) prior to sending the demand letter, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services and technology, or whether such an analysis failed to identify specific areas in which the products, services and technology are covered by the claims in the patent;

(iii) the target requested information described in clause (i) that was not included in the demand letter and the person failed to provide the information within a reasonable period of time;

(iv) the demand letter demanded payment of a license fee or response within an unreasonably short period of time;

(v) the person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license;

(vi) the claim or assertion of patent infringement was meritless and the person knew, or should have known, that the claim or assertion was meritless;

(vii) the claim or assertion of patent infringement was deceptive;

(viii) the person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and: (A) those threats or lawsuits lacked the information described in clause (i); or (B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless; and

(ix) the patent has been held invalid or unenforceable in a final judgment or administrative decision.

(b) A court may consider the following factors as evidence that a person has not made an assertion of patent infringement in bad faith: (i) the demand letter contained the information described in clause (i) of subsection (a); (ii) the target requested such information described in clause (i) of subsection (a) that was not included in the demand letter and the person provided the information within a reasonable period of time; (iii) the person engaged in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy; (iv) the person made a substantial investment in the use of the patent or in the production or sale of a

product or item covered by the patent; (v) the person is: (A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; (B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education; or (C) a non-profit research institute or organization which has as one of its primary functions the management of inventions on behalf of an institute of higher education or a non-profit research institute or organization; (vi) the person makes significant investments in: (A) research and development in connection with the patented technology, where development means technical or experimental work to create, test, qualify, modify or validate technologies or processes for commercialization of goods or services; (B) manufacturing; or (C) the delivery or provision of goods or commercial services using the patented technology; and (vii) the person's business is the licensing of patents as a wholly-owned subsidiary of a person described in clause (vi).

Section 3. (a) A target or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter may bring an action in superior court against a person who has made a bad-faith assertion of patent infringement. The court may award to a plaintiff who prevails in an action brought pursuant to this subsection one or more of the following remedies: (i) equitable relief; (ii) damages; (iii) costs and fees, including reasonable attorneys' fees; and (iv) exemplary damages in an amount equal to $50,000 or three times the total of damages, costs, and fees, whichever is greater; provided, however, that exemplary damages shall not be awarded against a person described in subclause (B) or (C) of clause (v) of section 2 or clause (vi) of subsection (b) of said section 2 .

(b) Any person who by contract, agreement, or otherwise, directly or indirectly, arranged for the bad faith assertion of patent infringement and any person who otherwise caused or is

legally responsible for such bad faith assertion of patent infringement under the principles of the common law shall be liable to a prevailing plaintiff for all damages, costs and fees. Such liability shall be joint and several.

(c) A court may award to a defendant who prevails in an action brought pursuant to this section costs and fees, including reasonable attorneys' fees, if the court finds the action was not well-grounded in fact and warranted by existing law or was interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation

(d) This chapter shall not be construed to limit rights and remedies otherwise available under law to the commonwealth or to any person.

Section 4. The attorney general shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions and enter into assurances of discontinuance as provided under chapter 93A. In an action brought by the attorney general pursuant to this section, the court may award or impose any relief available under this chapter.

SECTION 12. Chapter 149 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 24K the following section:-

Section 24L. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Business entity”, a person or group of persons performing or engaging in an activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not for profit, including, but not limited to, corporations, limited liability companies, limited partnerships or limited liability partnerships.

"Employee", an individual who is considered an employee under section 148B; provided, however, that the term "employee" shall also include independent contractors.

"Forfeiture agreement", an agreement that imposes adverse financial consequences on a former employee as a result of the termination of an employment relationship, regardless of whether the employee engages in competitive activities following cessation of the employment relationship. Forfeiture agreements do not include forfeiture for competition agreements.

"Forfeiture for competition agreement", an agreement that, by its terms or through the manner in which it is enforced, imposes adverse financial consequences on a former employee as a result of the termination of an employment relationship if the employee engages in competitive activities.

"Garden leave clause", a provision within a noncompetition agreement by which an employer agrees to pay the employee during the restricted period and which shall become effective upon termination of employment unless the restriction upon post-employment activities are waived by the employer or ineffective under clause (iii) of subsection (c).

"Noncompetition agreement", an agreement between an employer and an employee, or otherwise arising out of an existing or anticipated employment relationship, under which the employee or expected employee agrees that the employee will not engage in certain specified activities competitive with the employee's employer after the employment relationship has ended, including, but not limited to, a forfeiture for competition agreement; provided, however, that "noncompetition agreement" shall not include: (i) a covenant not to solicit or hire employees of the employer; (ii) a covenant not to solicit or transact business with customers, clients or vendors of the employer; (iii) an agreement made in connection with the sale of a business entity

or substantially all of the operating assets of a business entity or partnership, or otherwise disposing of the ownership interest of a business entity, partnership or division or subsidiary of a business entity or partnership, when the party restricted by the noncompetition agreement is a significant owner of, or member or partner in, the business entity who will receive significant consideration or benefit from the sale or disposal; (iv) an agreement outside of an employment relationship; (v) a forfeiture agreement; (vi) a nondisclosure or confidentiality agreement; (vii) an invention assignment agreement; (viii) a garden leave clause; (ix) an agreement made in connection with the cessation of or separation from employment if the employee is expressly given 7 business days to rescind acceptance; or (x) an agreement by which an employee agrees to not reapply for employment to the same employer after termination of the employee.

"Restricted period", the period of time after the date of cessation of employment during which an employee is restricted by a noncompetition agreement from engaging in activities competitive with the employee's employer.

(b) A noncompetition agreement shall not be valid or enforceable unless:

(i) in the case of an agreement that was entered into in connection with the commencement of employment, the agreement: (A) is in writing signed by both the employer and employee; (B) expressly states that the employee has the right to consult with counsel prior to signing; and (C) is provided to the employee before a formal offer of employment is made or 10 business days before the commencement of the employee's employment, whichever comes first;

(ii) in the case of an agreement that was entered into after commencement of employment but not in connection with the separation from employment: (A) the agreement is

supported by fair and reasonable consideration independent from the continuation of employment; (B) notice of the agreement was provided not less than 10 business days before the effective date of the agreement; (C) the agreement was in writing; (D) the agreement was signed by both the employer and employee; and (E) the agreement expressly states that the employee has the right to consult with counsel prior to signing;

(iii) the agreement is no broader than necessary to protect one or more of the following legitimate business interests of the employer: (A) the employer's trade secrets, as defined in section 1 of chapter 93L; (B) the employer's confidential information that otherwise would not qualify as a trade secret; or (C) the employer's goodwill; provided, however, that the agreement may be presumed necessary where the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but not limited to a non-solicitation agreement, a non-disclosure agreement or a confidentiality agreement;

(iv) the stated restricted period within the agreement does not exceed 1 year from the date of cessation of employment; provided, however, that if the employee has breached the employee's fiduciary duty to the employer or the employee has unlawfully taken, physically or electronically, property belonging to the employer, the restricted period may be not more than 2 years from the date of cessation of employment;

(v) the agreement is reasonable in geographic reach in relation to the interests protected; provided, however, that a geographic reach that is limited to only the geographic areas in which the employee, during any time within the last 2 years of employment, provided services or had a material presence or influence shall be presumptively reasonable;

(vi) the agreement is reasonable in the scope of proscribed activities in relation to the interests protected; provided, however, that a proscription on activities that protects a legitimate business interest and is limited to only the specific types of services provided by the employee at any time during the last 2 years of employment shall be presumptively reasonable;

(vii) the agreement includes a garden leave clause or other mutually-agreed upon consideration between the employer and the employee; provided, however, that such consideration shall be specified in the agreement; provided further, that a garden leave clause within the meaning of this clause shall: (A) provide for the payment, consistent with the requirements for the payment of wages under section 148 of chapter 149, on a pro-rata basis during the entirety of the restricted period of at least 50 per cent of the employee's highest annualized base salary paid by the employer within the 2 years preceding the employee's termination; and (B) except in the event of a breach by the employee, not permit an employer to unilaterally discontinue or otherwise fail or refuse to make the payments; provided, however, if the restricted period has been increased beyond 1 year as a result of the employee's breach of a fiduciary duty to the employer or the employee has unlawfully taken, physically or electronically, property belonging to the employer, the employer shall not be required to provide payments to the employee during the extension of the restricted period; and

(viii) the agreement is consistent with public policy.

(c) A noncompetition agreement shall not be enforceable against: (i) an employee who is classified as nonexempt under the Fair Labor Standards Act, 29 U.S.C. 201-219, inclusive; (ii) an undergraduate or graduate student that partakes in an internship or otherwise enters a short-term employment relationship with an employer, whether paid or unpaid, while enrolled in a full-

time or part-time undergraduate or graduate educational institution; (iii) an employee that has been terminated without cause or laid off; or (iv) an employee that is 18 years old or younger.

(d) Nothing in this section shall render void or unenforceable the remainder of a contract or agreement containing an unenforceable noncompetition agreement or preclude the imposition of a noncompetition restriction by a court, whether through preliminary or permanent injunctive relief or otherwise, as a remedy for a breach of another agreement or a statutory or common law duty.

(e) A court may, in its discretion, reform or otherwise revise a noncompetition agreement so as to render it valid and enforceable to the extent necessary to protect the applicable legitimate business interests.

(f) No choice of law provision that would have the effect of avoiding the requirements of this section shall be enforceable if the employee is, and has been for at least 30 days immediately preceding the employee's cessation of employment, a resident of or employed in the commonwealth at the time of the employee's termination of employment.

(g) All civil actions relating to noncompetition agreements subject to this section shall be brought in the county wherein the employee resides or, if mutually agreed upon by the employer and the employee, in the county of Suffolk; provided, however, that in any such action brought in the county of Suffolk, the superior court or the business litigation session of the superior court shall have exclusive jurisdiction.

SECTION 13. Section 14L of chapter 151A of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(c) Annually, not later than September 1, the director of career services shall file a report with the joint committee on labor and workforce development and the house and senate committees on ways and means concerning the collection of the workforce training contributions pursuant to subsection (a) for the calendar year ending on the preceding December 31. The report shall include, but not be limited to: (i) the amount collected in each quarter and the total amount collected for the calendar year; (ii) the total number of employers that contributed to the fund and the total number of employees employed by that group of employers; and (iii) the contribution rate, to the extent it differs from 0.056 per cent.

SECTION 14. Chapter 166A of the General Laws is hereby amended by adding following section:-

Section 23. (a) A cable television operator shall provide a public, educational or governmental access channel and connection so that the channel is delivered, and subscribers receive, the public, educational or governmental access channel with a good quality signal and in the same format as the primary local broadcast signals, including a high definition format and a standard digital format if such formats are delivered and received by subscribers for the primary local broadcast signals; provided, however, that a cable television operator shall not be required to provide the signal of a public, educational or governmental access channel to a subscriber on any particular channel number or to provide such signals in any particular order.

(b) A cable television operator shall provide a public, educational or governmental access channel in a nondiscriminatory manner on any navigational device, on-screen program guide or menu such that a subscriber may access the public, educational or governmental access channel in the same manner as local broadcast channels.

(c) For the purposes of this section, a cable television operator shall include a cable operator and a multichannel video programming distributor as defined in 47 U.S.C. 522.

(d) Nothing in this section shall prohibit, condition or restrict a cable television operator's use of any type of subscriber equipment or any transmission technology.

SECTION 15. Section 168 of said chapter 175 of the General Laws, as so appearing, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) (1) Each person so licensed shall keep a separate account of the business done under the license and shall file forthwith a certified copy of each such account with the commissioner. Each account so filed shall include, but not be limited to: (i) the exact amount of such insurance placed for each person whose home state is the commonwealth; (ii) the gross premium charged for such insurance; (iii) the company that issued the insurance policy; (iv) the date and term of each policy; and (v) a report in the same detail of each cancelled policy, with the gross return premiums thereon.

(2) Each person so licensed shall, annually, not later than January 31, file a sworn statement with the state treasurer providing the gross premiums charged for insurance procured or placed and the gross return premiums on such insurance cancelled under the license during the year ending on December 31 last preceding. At the time of filing such statement, each person licensed as a special insurance broker shall pay a fee to the commonwealth in an amount equal to 4 per cent of such gross premiums, less such gross return premiums, on properties, risks or exposures located or to be performed in the commonwealth or any other state if the insured's home state is the commonwealth.

SECTION 16. Said section 168 of said chapter 175 of the General Laws, as so appearing, is hereby further amended by striking out, in line 161, the words “collected pursuant to clause (3) of subsection (d).

SECTION 17. Chapter 47 of the acts of 1997 is hereby amended by striking out section 22, as appearing in section 86 of chapter 287 of the acts of 2014, and inserting in place thereof the following section:-

Section 22. Notwithstanding any general or special law to the contrary, in fiscal years 2019 to 2025, inclusive, the office of Medicaid shall allocate $2,000,000 annually for a Fishing Partnership Health Plan Corporation project that shall provide services to fishermen and fishing families; provided, however, that such services shall include, but not be limited to, assisting fishermen and fishing families in obtaining health insurance coverage.

SECTION 18. Notwithstanding any general or special law to the contrary, to meet the expenditures necessary in carrying out section 2A, the state treasurer shall, upon receipt of a request by the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $376,450,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face “Commonwealth Economic Development Act of 2018” and shall be issued for a maximum term of years, not exceeding 30 years, as recommended by the governor in a message to the General court dated March 9,2018 pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on such obligations shall be payable from the General

Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 19. Notwithstanding any general or special law to the contrary, to meet the expenditures necessary in carrying out section 2B, the state treasurer shall, upon receipt of a request by the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $225,000,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face "Commonwealth Economic Development Act of 2018" and shall be issued for a maximum term of years, not exceeding 30 years, as recommended by the governor in a message to the general court dated March 9, 2018 pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 20. Section 4 shall take effect on January 1, 2019 and shall apply to tax years beginning on or after January 1, 2019.

SECTION 21. Chapter 93L of the General Laws shall take effect on October 1, 2018 and shall not apply to misappropriation commencing prior to the October 1, 2018, regardless of whether such misappropriation continues after that date.

SECTION 22. Section 24L of chapter 149 of the General Laws shall apply to employee noncompetition agreements entered into on or after October 1, 2018.