

**SENATE . . . . . No. 2625**

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**The Commonwealth of Massachusetts**

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

**The Commonwealth of Massachusetts**

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**the One Hundred and Ninetieth General Court**  
**(2017-2018)**  
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1           SECTION 1. To provide for a program of economic development and job creation, the  
2 sums set forth in sections 2A and 2B, for the several purposes and subject to the conditions  
3 specified in this act, are hereby made available, subject to the laws regulating the disbursement  
4 of public funds; provided, however, that the amounts specified in an item or for a particular  
5 project may be adjusted to facilitate projects authorized in this act. These sums shall be in  
6 addition to any amounts previously authorized and made available for these purposes.

7           SECTION 2A.

8                   EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

9                                   Office of the Secretary

10           6720-1351   For a grant program to coastal communities to be administered by the  
11 seaport economic council; provided, that funding shall be used for community planning and  
12 investment activities that stimulate economic development and create jobs in the maritime  
13 economy sector, and to construct, improve, repair, maintain and protect coastal assets that are  
14 vital to achieving these goals; and provided further, that the planning, prioritization, selection  
15 and implementation of projects shall consider climate change impacts in furtherance of the goals

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

18           7002-1120     For grants to municipalities and other public instrumentalities for design,  
19 construction, building, land acquisition, rehabilitation, repair and other improvements to  
20 publicly-owned infrastructure, or those owned or operated by nonprofit organizations; provided,  
21 that not less than \$3,000,000 shall be expended for the development of land for housing,  
22 community and commercial use in the Rail Transit District of the town of Ashland; provided  
23 further, that not less than \$3,000,000 shall be expended for the costs associated with the  
24 replacement of the Saxonville fire station in the city of Framingham; provided further, that not  
25 less than \$3,000,000 shall be expended for the site study, acquisition and improvements related  
26 to the Axton-Crossing land in the town of Holliston; provided further, that not less than  
27 \$2,500,000 shall be expended for improvements to the Grove Street Business Corridor in the city  
28 known as the town of Franklin; provided further, that not less than \$2,000,000 shall be expended  
29 for the design and construction of a high pressure water service system in the town of Hopkinton;  
30 provided further, that not less than \$1,200,000 shall be expended for the costs associated with a  
31 new public service facility in the town of Medway; provided further, that not less than  
32 \$1,500,000 shall be expended for the costs associated with the development of a parking garage  
33 in the downtown area of the town of Natick; provided further, that not less than \$10,000,000  
34 shall be expended to Massachusetts Bay Community College to support workforce development  
35 for the early education and care and allied health professions; provided further, that not less than  
36 \$2,000,000 shall be expended for the façade improvement program and streetscape  
37 improvements in neighborhood business districts in the city of Worcester; provided further, that  
38 not less than \$1,000,000 shall be expended to support the growth of the startup and small

39 business ecosystem, including the operation of incubators, accelerators and other new ventures,  
40 in the city of Worcester; provided further, that not less than \$1,000,000 shall be expended for  
41 business development along Pleasant street in the city of Worcester; provided further, that not  
42 less than \$500,000 shall be expended for the fit-out of the ground floor of the Union Station  
43 garage for commercial use in the city of Worcester; provided further, that not less than  
44 \$1,000,000 shall be expended for the Black Box Theater at the Worcester PopUp in the city of  
45 Worcester; and provided further, that not less than \$1,000,000 shall be expended for the business  
46 development in Webster square in the city of Worcester .....\$32,700,000

47           7002-1501     For grants administered by Massachusetts Technology Development  
48 Corporation established in section 2 of chapter 40G of the General Laws, and doing business as  
49 MassVentures; provided, that such grants shall be made on a competitive basis to growing  
50 Massachusetts-based companies commercializing technologies developed with assistance of a  
51 small business innovation research or small business technology transfer grant from a federal  
52 agency including, but not limited to, the United States Department of Defense, the United States  
53 Department of Energy or the National Science Foundation..... \$12,500,000

54           7002-8006     For the MassWorks infrastructure program established in section 63 of  
55 chapter 23A of the General Laws.....\$200,000,000

56           7002-8007     For matching grants to enable institutions of higher education, including  
57 state and municipal colleges and universities, to participate in and receive federal funding  
58 through Manufacturing USA, formerly known as the National Network for Manufacturing  
59 Innovation..... \$25,000,000

60           7002-8019     For the Massachusetts Growth Capital Corporation established in section 2  
61 of chapter 40W of the General Laws, for a program to provide matching grants to community  
62 development financial institutions certified by the United States Treasury or community  
63 development corporations certified under chapter 40H of the General Laws to enable the  
64 community development financial institution or community development corporation to leverage  
65 federal or private investments for the purpose of making loans to small  
66 businesses..... \$1,250,000

67           7002-8023     For grants to coastal communities to undertake dredging projects that will  
68 promote job creation, increase commercial activity, contribute to downtown revitalization or  
69 advance other local economic development goals; provided, that all grants shall be matched on a  
70 1 to 1 basis by the grantee..... \$50,000,000

71           SECTION 2B.

72                           EXECUTIVE OFFICE OF EDUCATION

73   Office of the Secretary

74           7009-2005     For a competitive grant program to be administered by the executive  
75 office of education, in consultation with the executive office of housing and economic  
76 development and the executive office of labor and workforce development, to provide funding  
77 for the purchase and installation of equipment and related improvements and renovations to  
78 facilities necessary for the installation and use of such equipment, to establish, upgrade and  
79 expand career technical education and training programs that are aligned to regional economic  
80 and workforce development priorities; provided, that grant applications may facilitate  
81 collaboration to provide students enrolled in eligible vocational technical schools with

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

91 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

92 Office of the Secretary

93 6720-1341 For the mitigation of or contribution toward costs associated with or  
94 arising out of the design, construction or infrastructure improvements to the Raymond L. Flynn  
95 Cruiseport in the South Boston section of the city of Boston to accommodate large cruise ships  
96 and increasing passenger demand, for the continued competitiveness of the terminal; provided,  
97 that the secretary, in coordination with the chief executive officer of the Massachusetts Port  
98 Authority, shall seek to maximize federal and private funds and reimbursement to offset, to the  
99 extent feasible, costs incurred under this item; provided further, that the Massachusetts Port  
100 Authority shall implement a program that reduces emissions associated with cruise ship  
101 operations while said ships are at berth not later than July 1, 2024; provided further, that said  
102 program to reduce emissions shall include ship-to-shore capabilities or other advanced emission  
103 reduction technology; and provided further, that the Massachusetts Port Authority shall publish

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

107 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

108 Office of the Secretary

109 0640-0302 For the Massachusetts Cultural Facilities Fund established in section 42 of  
110 chapter 23G of the General Laws for the acquisition, design, construction, repair, renovation,  
111 rehabilitation or other capital improvement or deferred maintenance to a cultural facility to  
112 advance and promote tourism through the preservation of the state's cultural  
113 resources.....\$50,000,000

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

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

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

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

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

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

134 “Participant”, a municipality seeking to utilize an innovative technology solution or a  
135 startup.

136 “Startup”, a corporation, partnership, limited liability company, sole proprietorship or  
137 organization seeking to bring innovative technology to the market including, but not limited to, a  
138 company that is seeking a first or early-customer to validate the commercial readiness of the  
139 company’s technology.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

237 (3) To provide grants for pipeline training for unemployed persons by an employer with a  
238 job vacancy; provided, however, that the director shall not allocate more than 5 per cent of the  
239 annual capitalization of the fund to provide for such grants. In determining grant recipients, the  
240 director shall contract with the commonwealth corporation to distribute the grants in a need  
241 based, competitive process in accordance with the rules and parameters outlined in section  
242 2WWW. The grants shall be performance-based and 50 per cent funded upon enrollment in the  
243 program, with the balance to be paid contingent upon job placement and retention outcomes that  
244 demonstrate placement of a participant in a training-related position requiring not less than 30  
245 hours per week for not less than 2 months. To further support pipeline training and to match the  
246 substantial contributions made from employers to the fund, the commonwealth shall match,  
247 subject to appropriation, money used for grants pursuant to this paragraph.

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

252 SECTION 8. Section 6 of said chapter 62 is hereby amended by striking out, in lines  
253 1052 and 1053, as so appearing, the words “who is not the principal owner of the qualifying

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

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

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

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

263 CHAPTER 93L.

264 UNIFORM TRADE SECRETS ACT.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## 353 CHAPTER 93M

### 354 BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

479 “Restricted period”, the period of time after the date of cessation of employment during  
480 which an employee is restricted by a noncompetition agreement from engaging in activities  
481 competitive with the employee’s employer.

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

483 (i) in the case of an agreement that was entered into in connection with the  
484 commencement of employment, the agreement: (A) is in writing signed by both the employer  
485 and employee; (B) expressly states that the employee has the right to consult with counsel prior  
486 to signing; and (C) is provided to the employee before a formal offer of employment is made or  
487 10 business days before the commencement of the employee’s employment, whichever comes  
488 first;

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



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

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

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

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

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

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

529 (viii) the agreement is consistent with public policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

591 (2) Each person so licensed shall, annually, not later than January 31, file a sworn  
592 statement with the state treasurer providing the gross premiums charged for insurance procured  
593 or placed and the gross return premiums on such insurance cancelled under the license during the  
594 year ending on December 31 last preceding. At the time of filing such statement, each person  
595 licensed as a special insurance broker shall pay a fee to the commonwealth in an amount equal to  
596 4 per cent of such gross premiums, less such gross return premiums, on properties, risks or  
597 exposures located or to be performed in the commonwealth or any other state if the insured's  
598 home state is the commonwealth.

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

602 SECTION 17. Chapter 47 of the acts of 1997 is hereby amended by striking out section  
603 22, as appearing in section 86 of chapter 287 of the acts of 2014, and inserting in place thereof  
604 the following section:-

605 Section 22. Notwithstanding any general or special law to the contrary, in fiscal years  
606 2019 to 2025, inclusive, the office of Medicaid shall allocate \$2,000,000 annually for a Fishing  
607 Partnership Health Plan Corporation project that shall provide services to fishermen and fishing  
608 families; provided, however, that such services shall include, but not be limited to, assisting  
609 fishermen and fishing families in obtaining health insurance coverage.

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

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

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

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

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

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