

# SENATE . . . . . No. 1766

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The committee on Ways and Means, to whom was referred the House Bill relative to transportation finance (House, No. 3415); 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 1766.

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## The Commonwealth of Massachusetts

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**In the Year Two Thousand Thirteen**

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1           SECTION 1. Section 3 of chapter 6C of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by striking out, in lines 91 and 98, the word “semi-annual”  
3 and inserting in place thereof, in each instance, the following word:- quarterly.

4           SECTION 2. Said section 3 of said chapter 6C, as so appearing, is hereby further  
5 amended by inserting after the word “that”, in line 110, the following words:- the department  
6 shall receive compensation in the amount of the fair market value of the rights granted, in such  
7 form as the department, in its sole discretion, deems appropriate and such compensation shall be  
8 documented in such easement or other agreement; provided further, that.

9           SECTION 3. Said section 3 of said chapter 6C, as so appearing, is hereby further  
10 amended by striking out, in line 119, the words "mass transportation facilities” and inserting in  
11 place thereof the following words:- facilities; provided, however, that the department shall  
12 receive compensation in the amount of the fair market value of the rights granted, in such form  
13 as the department, in its sole discretion, deems appropriate and such compensation shall be  
14 documented in such easement or other agreement.

15 SECTION 4. Said chapter 6C is hereby amended by inserting after section 6 the  
16 following section:-

17 Section 6A. Notwithstanding any general or special law to the contrary, the goals  
18 established by the office of performance management and innovation under subsection (b) of  
19 section 6 shall include, but not be limited to: (1) for the division of highways, the reduction of  
20 commuting times by at least 10 per cent in each region for each rolling 5-year period, after  
21 adjusting for seasonal variations and for changes in the economic activity in the region; (2) for  
22 the division of highways, the reduction of fatalities by at least 10 per cent for each rolling 5-year  
23 period; (3) for the division of highways, the reduction of the accident rate by at least 10 per cent  
24 for each rolling 5-year period; (4) for the division of highways, the reduction of the  
25 administrative disbursement rate per mile by at least 10 per cent for each rolling 5-year period;  
26 (5) for the division of highways, increasing the maintenance disbursements per mile by at least  
27 the same total dollar amount as the total dollar amount saved by the reduction of the  
28 administrative disbursement rate per mile under the clause (4), for each corresponding 5-year  
29 period; (6) for the Mass Transit division, a decrease in the urban transit bus fleet age for each  
30 transit authority of at least 10 per cent for each rolling 5-year period; (7) for the Mass Transit  
31 division, a reduction of fatalities as a result of transit accidents in each transit authority by at  
32 least 10 per cent for each rolling 5-year period; (8) for the Mass Transit division, an increase in  
33 the farebox recovery ratio of at least 10 per cent for each transit authority for each rolling 5-year  
34 period; (9) for the Mass Transit division, an increase in the on-time performance percentage for  
35 each transit authority of at least 2 per cent for each rolling 5-year period, until that percentage  
36 reaches 98 per cent; and (10) for the Mass Transit division, an increase of at least 5 per cent in

37 the revenue miles per active vehicle reported to the Federal Transit Administration for each  
38 transit authority for each rolling 5-year period.

39 SECTION 5. Subsection (a) of section 13 of said chapter 6C, as so appearing, is hereby  
40 amended by inserting after the second sentence the following 2 sentences:- If all notes and bonds  
41 issued by the department relating to the turnpike and payable from turnpike revenues have been  
42 paid or a sufficient amount for the payment of all such notes or bonds and the interest thereon, to  
43 the maturity thereof, shall have been set aside in trust for the benefit of the holders of such notes  
44 or bonds, then the funds produced under the preceding sentence may also be used to pay costs  
45 incurred in furtherance of this chapter related to that portion of the state highway system that is  
46 bounded: in the west, by the commonwealth's border with New York; in the north, by the  
47 interchange of state highway route 128 and United States highway route 3 in the town of  
48 Burlington, but not including said interchange, and along United States highway route 3, but not  
49 including United States highway route 3, to the northern border of the commonwealth; in the  
50 east, by state highway route 128, but not including state highway route 128; and in the south, by  
51 the interchange of state highway route 128 and interstate highway route 95 in the town of  
52 Dedham, but not including that interchange, and along interstate highway route 95, but not  
53 including interstate highway route 95, to the interchange of interstate highway route 95 and  
54 interstate highway route 295 in the town of Attleborough, then along interstate highway route  
55 295, but not including interstate highway route 295, to the commonwealth's border with Rhode  
56 Island and northward, then westward, along the southern border of the commonwealth. Such  
57 costs may include, but shall not be limited to, the cost of owning, maintaining, repairing,  
58 reconstructing, improving, rehabilitating, policing, using, administering, controlling and  
59 operating the portion of the state highway system described in the preceding sentence.

60 SECTION 6. Section 19 of said chapter 6C, as so appearing, is hereby amended by  
61 striking out, in line 29, the word "if" and inserting in place thereof the following words:- or the  
62 department of public utilities, as.

63 SECTION 7. Section 43 of said chapter 6C, as so appearing, is hereby amended by  
64 striking out subsections (c) and (d) and inserting in place thereof the following 4 subsections:-

65 (c) The department shall not enter into any agreement under clause (21) of section 3 with  
66 a value in excess of \$300,000 without the written approval of the board.

67 (d) Neither the division nor the department shall promulgate any rules or regulations  
68 establishing rates for agreements under clause (21) of section 3 without the written approval of  
69 the board.

70 (e) The board shall meet periodically, but at least twice each year and shall keep a public  
71 record of all meetings, votes and other business.

72 (f) The board shall submit an annual report of its activities during the preceding fiscal  
73 year not later than September 1 to the governor, the secretary, the administrator, the house and  
74 senate chairs of the joint committee on transportation and the chairs of the house and senate  
75 committees on bonding, capital expenditures and state assets.

76 SECTION 8. Said chapter 6C is hereby further amended by striking out sections 44 and  
77 45, as so appearing, and inserting in place thereof the following 2 sections:-

78 Section 44. (a) The division of highways may provide functional replacement of real  
79 property in public ownership whenever the division has acquired such property, in whole or in  
80 part, under this chapter or when such property is significantly and adversely affected as a result

81 of the acquisition of property for a highway or highway-related project and whenever the  
82 division determines that functional replacement is necessary and in the public interest. For the  
83 purposes of this section, "functional replacement" shall mean the replacement of real property,  
84 including land, the facilities thereon or both, which shall provide equivalent utility. For the  
85 purposes of this section, "real property in public ownership" shall mean any present or future  
86 interest in land, including rights of use held by an agency, authority, board, bureau, commission,  
87 department, division or other unit, body, instrumentality or political subdivision of the  
88 commonwealth or the federal government.

89 (b) Whenever the division determines it is necessary that a utility or utility facility, as  
90 defined under federal law, be relocated because of construction of a project, such facility shall be  
91 relocated by the division or by the owner thereof in accordance with an order from the division.  
92 For any utility facility, the division may reimburse the owner in accordance with the easement or  
93 other agreement under clause (21) of section 3 between the department and the owner.

94 (c) Any relocation of facilities carried out under this section which is not performed by  
95 employees of the owner shall be subject to sections 26 to 27F, inclusive, of chapter 149.

96 (d) Any agreement under clause (21) of section 3 between the department and the owner  
97 of a utility or utility facility shall contain minimum standards for the successful completion of  
98 the relocation work as a condition of reimbursement including, without limitation, target dates  
99 for completion and adherence to minimum design standards established by the department.

100 Section 45. The division may reimburse the owner of an underground utility or utility  
101 facility whenever such underground utility or utility facility is determined by the division to be  
102 relocated because of construction of a project. For any such utility or utility facility, the division

103 shall reimburse the owner in accordance with the easement or other agreement between the  
104 department and the owner.

105 SECTION 9. Sections 4C to 4G, inclusive, of chapter 16 of the General Laws are hereby  
106 repealed.

107 SECTION 10. Section 2 of chapter 21J of the General Laws, as appearing in the 2010  
108 Official Edition, is hereby amended by striking out subsection (D).

109 SECTION 11. Section 4 of said chapter 21J, as so appearing, is hereby amended by  
110 adding the following subsection:-

111 (e) Notwithstanding any general or special law to the contrary, the treasurer shall, at the  
112 conclusion of each fiscal year, determine whether monies collected under section 2 are deemed  
113 to be excess of the purposes outlined in this chapter and shall, not later than September 1,  
114 transfer all such excess amounts into the Commonwealth Transportation Fund established in  
115 section 2ZZZ of chapter 29.

116 SECTION 12. Subsection (a) of section 2ZZZ of chapter 29 of the General Laws, as  
117 appearing in section 112 of chapter 165 of the acts of 2012, is hereby amended by striking out  
118 the second sentence and inserting in place thereof the following sentence:-

119 There shall be credited to the fund all fees received by the registrar of motor vehicles  
120 under section 34 of chapter 90, all receipts paid into the treasury of the commonwealth and  
121 directed to be credited to the Commonwealth Transportation Fund under chapters 21J, 64A, 64E,  
122 64F and any other applicable general or special law and all amounts appropriated into the fund  
123 by the general court.

124 SECTION 13. Said section 2ZZZ of said chapter 29, as so appearing, is hereby further  
125 amended by striking out subsection (c) and inserting in place thereof the following subsection:-

126 (c) In addition to those revenues credited to the fund under subsection (a) there shall be  
127 credited to the fund all monies received by the commonwealth from the receipts from sales of  
128 motor vehicles under sections 3, 25 and 26 of chapter 64H and all monies received by the  
129 commonwealth on the sales price of purchases of motor vehicles under sections 4, 26 and 27 of  
130 chapter 64I, from the taxes imposed under said chapters 64H and 64I as excises upon the sale  
131 and use at retail of motor vehicles and upon the storage, use or other consumption of motor  
132 vehicles, including interest thereon or penalties; provided however, such amount shall not  
133 include any portion of the taxes that constitute special receipts within the meaning of subsection  
134 (b1/2) of section 10 of chapter 152 of the acts of 1997. The amount credited to the fund under  
135 this subsection shall be net of the dedicated sales tax revenue amount transferred to the  
136 Massachusetts Bay Transportation Authority State and Local Contribution Fund under section  
137 35T of chapter 10 and to the School Modernization and Reconstruction Trust Fund under section  
138 35BB of chapter 10.

139 SECTION 14. Section 5 of chapter 59 of the General Laws, as appearing in the 2010  
140 Official Edition, is hereby amended by striking out, in line 237, the words “or (d)” and inserting  
141 in place thereof the following words:- (d) a telephone corporation subject to chapter 166 or (e).

142 SECTION 15. Said section 5 of said chapter 59, as so appearing, is hereby further  
143 amended by striking out, in lines 238 and 239, the words “, fifty-two A”.

144 SECTION 16. Said section 5 of said chapter 59, as so appearing, is hereby further  
145 amended by inserting after the word “corporation”, in line 255, the following words:- “or a  
146 telephone corporation subject to chapter 166”.

147 SECTION 17. Section 12 of chapter 62C of the General Laws, as so appearing, is hereby  
148 amended by striking out subsection (g).

149 SECTION 18. Said section 12 of said chapter 62C, as so appearing, is hereby further  
150 amended by striking out, in lines 40 and 41, the words “and fifty-two A of chapter sixty-three”.

151 SECTION 19. Subsection (d) of section 2A of chapter 63 of the General Laws, as so  
152 appearing, is hereby amended by striking out paragraph (xi) and inserting in place thereof the  
153 following paragraph:-

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

159 SECTION 20. Section 31H of said chapter 63 is hereby amended by striking out, in line  
160 53, as so appearing, the words “, section 39 and section 52A” and inserting in place thereof the  
161 following words:- “and section 39”.

162 SECTION 21. Section 38 of said chapter 63, is hereby amended by striking out, in line  
163 31, as so appearing, the words “or of section 52A”.



164 SECTION 22. Said section 38 of said chapter 63, as most recently amended by section 32  
165 of chapter 194 of the acts of 2011, is hereby further amended by striking out subsection (f) and  
166 inserting in place thereof the following subsection:-

167 (f) The sales factor is a fraction, the numerator of which is the total sales of the  
168 corporation in this commonwealth during the taxable year, and the denominator of which is the  
169 total sales of the corporation everywhere during the taxable year. As used in this subsection,  
170 unless specifically stated otherwise, "sales" means all gross receipts of the corporation, including  
171 deemed receipts from transactions treated as sales or exchanges under the Code, except interest,  
172 dividends and gross receipts from the maturity, redemption, sale, exchange or other disposition  
173 of securities; provided, however, that "sales" shall not include gross receipts from transactions or  
174 activities to the extent that a non-domiciliary state would be prohibited from taxing the income  
175 from such transactions or activities under the Constitution of the United States. Sales of tangible  
176 personal property are in this commonwealth if:-

177 1. the property is delivered or shipped to a purchaser within this commonwealth  
178 regardless of the f. o. b. point or other conditions of the sale; or

179 2. the corporation is not taxable in the state of the purchaser and the property was  
180 not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for  
181 the transaction of business owned or rented by the corporation outside this commonwealth.

182 "Purchaser", as used in clauses 1 and 2 of this paragraph, shall include the United States  
183 government.

184 Sales, other than sales of tangible personal property, are in this commonwealth if the  
185 corporation's market for the sale is in this commonwealth. The corporation's market for a sale is

186 in this commonwealth and the sale is thus assigned to the commonwealth for the purpose of this  
187 section:-

188                   1. in the case of sale, rental, lease or license of real property, if and to the extent  
189 the property is located in this commonwealth;

190                   2. in the case of rental, lease or license of tangible personal property, if and to the  
191 extent the property is located in this commonwealth;

192                   3. in the case of sale of a service, if and to the extent the service is delivered to a  
193 location in this commonwealth;

194                   4. in the case of lease or license of intangible property, including a sale or  
195 exchange of such property where the receipts from the sale or exchange derive from payments  
196 that are contingent on the productivity, use or disposition of the property, if and to the extent the  
197 intangible property is used in this commonwealth; and

198                   5. in the case of the sale of intangible property, other than as referenced in clause  
199 4, where the property sold is a contract right, government license or similar intangible property  
200 that authorizes the holder to conduct a business activity in a specific geographic area, if and to  
201 the extent that the intangible property is used in or otherwise associated with this  
202 commonwealth; provided, however, that any sale of intangible property, not otherwise described  
203 in this clause or clause 4, shall be excluded from the numerator and the denominator of the sales  
204 factor.

205                   For the purposes of this subsection: (1) in the case of sales, other than sales of tangible  
206 personal property, if the state or states to which sales should be assigned cannot be determined, it

207 shall be reasonably approximated; (2) in the case of sales other than sales of tangible personal  
208 property if the taxpayer is not taxable in a state to which a sale is assigned, or if the state or states  
209 to which such sales should be assigned cannot be determined or reasonably approximated, such  
210 sale shall be excluded from the numerator and denominator of the sales factor; (3) the  
211 corporation shall be considered to be taxable in the state of the purchaser if tangible personal  
212 property is delivered or shipped to a purchaser in a foreign country; (4) sales of tangible personal  
213 property to the United States government or any agency or instrumentality thereof for purposes  
214 of resale to a foreign government or any agency or instrumentality thereof are not sales made in  
215 this commonwealth; (5) in the case of sale, exchange or other disposition of a capital asset, as  
216 defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business,  
217 including a deemed sale or exchange of such asset, "sales" shall be measured by the gain from  
218 the transaction; (6) "security" shall mean any interest or instrument commonly treated as a  
219 security as well as other instruments which are customarily sold in the open market or on a  
220 recognized exchange, including, but not limited to, transferable shares of a beneficial interest in  
221 any corporation or other entity, bonds, debentures, notes and other evidences of indebtedness,  
222 accounts receivable and notes receivable, cash and cash equivalents including foreign currencies  
223 and repurchase and futures contracts; (7) in the case of a sale or deemed sale of a business, the  
224 term "sales" shall not include receipts from the sale of the business "goodwill" or similar  
225 intangible value, including, without limitation, "going concern value" and "workforce in place";  
226 (8) to the extent authorized under the life sciences tax incentive program established by section 5  
227 of chapter 23I, a certified life sciences company may be deemed a research and development  
228 corporation for purposes of exemptions under chapters 64H and 64I; and (9) in the case of a  
229 business deriving receipts from operating a gaming establishment or otherwise deriving receipts

230 from conducting a wagering business or activity, income-producing activity shall be considered  
231 to be performed in this commonwealth to the extent that the location of wagering transactions or  
232 activities that generated the receipts is in this commonwealth.

233 Notwithstanding the foregoing, mutual fund sales as defined in subsection (m), other than  
234 the sale of tangible personal property, shall be assigned to this commonwealth to the extent that  
235 shareholders of the regulated investment company are domiciled in this commonwealth as  
236 follows:

237 (a) by multiplying the taxpayer's total dollar amount of sales of such services on behalf of  
238 each regulated investment company by a fraction, the numerator of which shall be the average of  
239 the number of shares owned by the regulated investment company's shareholders domiciled in  
240 this commonwealth at the beginning of and at the end of the regulated investment company's  
241 taxable year that ends with or within the taxpayer's taxable year and the denominator of which  
242 shall be the average of the number of shares owned by the regulated investment company  
243 shareholders everywhere at the beginning of and at the end of the regulated investment  
244 company's taxable year that ends with or within the taxpayer's taxable year.

245 (b) A separate computation shall be made to determine the sale for each regulated  
246 investment company, the sum of which shall equal the total sales assigned to the commonwealth.

247 The commissioner shall adopt regulations to implement this subsection. Nothing in this  
248 subsection shall limit the commissioner's authority under subsection (j).

249 SECTION 23. The third paragraph of subsection (f) of said section 38 of said chapter 63  
250 is hereby amended by striking out clauses (8) and (9), as appearing in section 22, and inserting in  
251 place thereof the following words:- and (8) in the case of a business deriving receipts from

252 operating a gaming establishment or otherwise deriving receipts from conducting a wagering  
253 business or activity, income-producing activity shall be considered to be performed in this  
254 commonwealth to the extent that the location of wagering transactions or activities that generated  
255 the receipts is in this commonwealth.

256 SECTION 24. Section 52A of said chapter 63 is hereby repealed.

257 SECTION 25. Section 59 of said chapter 63, as appearing in the 2010 Official Edition, is  
258 hereby amended by striking out, in lines 10 and 11, the words “; but this section shall not apply  
259 to corporations subject to section fifty-two A”.

260 SECTION 26. Section 67 of said chapter 63, as so appearing, is hereby amended by  
261 striking out the last sentence.

262 SECTION 27. Section 68C of said chapter 63, as so appearing, is hereby amended by  
263 striking out clause (3).

264 SECTION 28. Section 1 of chapter 64A of the General Laws, as so appearing, is hereby  
265 amended by striking out, in line 98, the figure “21” and inserting in place thereof the following  
266 figure:- 24.

267 SECTION 29. Said section 1 of said chapter 64A, is hereby further amended, by inserting  
268 after the word “gallon”, in line 98, as so appearing, the following words:- , adjusted at the  
269 beginning of each calendar year, beginning by the percentage, if any, by which the Consumer  
270 Price Index for the preceding year exceeds the Consumer Price Index for the calendar year that  
271 ends before such preceding year; provided, however, that the Consumer Price Index for any  
272 calendar year shall be as defined in section 1 of the Internal Revenue Code.

273 SECTION 30. Section 6 of chapter 64C of the General Laws, as so appearing, is hereby  
274 amended by striking out, in lines 3 and 11, the figure “100½” and inserting in place thereof, in  
275 each instance, the following figure:- 150½.

276 SECTION 31. Said section 6 of said chapter 64C, as so appearing, is hereby further  
277 amended by striking out, in line 27, the figure “40” and inserting in place thereof the following  
278 figure:- 160.

279 SECTION 32. Section 7B of said chapter 64C, as so appearing, is hereby amended by  
280 striking out, in line 40, the figure "30" and inserting in place thereof the following figure:- 40.

281 SECTION 33. Section 1 of chapter 64H of the General Laws, as so appearing, is hereby  
282 amended by inserting after the definition of “Commissioner” the following definition:-

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

286 SECTION 34. Said section 1 of said chapter 64H, as so appearing, is hereby further  
287 amended by striking out, in lines 239 to 241, inclusive, the words “; and provided, further, that  
288 the term services shall be limited to the following item: telecommunications services” and  
289 inserting in place thereof the following words:- , or data access, data processing or information  
290 management services; and provided further, that the term services shall be limited to the  
291 following items: telecommunications services, computer system design services and the  
292 modification, integration, enhancement, installation or configuration of standardized software.

293 SECTION 35. Chapter 81 of the General Laws is hereby amended by striking out section  
294 7D, as so appearing, and inserting in place thereof the following section:-

295 Section 7D. The department may grant easements or enter into other agreements as  
296 provided in clause (21) of section 3 of chapter 6C, within and outside the limits of the state  
297 highway system, the metropolitan highway system or the turnpike locations, for ducts, pipes,  
298 pipelines, mains, poles, conduits, cables, wires, towers, cattle passes and other structures;  
299 provided, however, that the department shall receive compensation in the amount of the fair  
300 market value of the rights granted, in such form as the department, in its sole discretion, deems  
301 appropriate and such compensation shall be documented in the easement or other agreement,  
302 subject to review by the real estate appraisal review board as may be required under section 43 of  
303 chapter 6C.

304 SECTION 36. Section 7G of said chapter 81, as so appearing, is hereby amended by  
305 inserting after the word "company", in line 9, the following words:- in accordance with, and for  
306 such compensation as is provided in, the easement or other agreement authorized under section  
307 7D.

308 SECTION 37. Said section 7G of said chapter 81, as so appearing, is hereby further  
309 amended by striking out the last sentence.

310 SECTION 38. Section 7H of said chapter 81, as so appearing, is hereby amended by  
311 striking out, in lines 5 and 6, the words "the provisions of section eight A of chapter twenty-  
312 nine" and inserting in place thereof the following words:- section 8B of chapter 81.

313 SECTION 39. Said chapter 81 is hereby further amended by striking out section 7K, as  
314 so appearing, and inserting in place thereof the following section:-

315           Section 7K. Whenever land or an easement therein is taken by the department by eminent  
316 domain to relocate a utility or utility facility under sections 44 or 45 of chapter 6C, the owner of  
317 the utility or utility facility, its authorized agents or employees, after due notice by certified mail  
318 to the persons in possession of land that was taken, may enter upon the land, water and premises  
319 not including buildings, as is necessary or convenient to relocate the facility and such entry shall  
320 not be deemed a trespass, nor an entry under any condemnation proceedings which are pending.

321           SECTION 40. Section 7L of said chapter 81, as so appearing, is hereby amended by  
322 striking out, in line 13, the words "Highway Fund" and inserting in place thereof the following  
323 words:- Massachusetts Transportation Trust Fund, established under section 4 of chapter 6C.

324           SECTION 41. Said section 7L of said chapter 81, as so appearing, is hereby further  
325 amended by striking out the last paragraph.

326           SECTION 42. Section 7 of chapter 164A of the General Laws, as so appearing, is hereby  
327 amended by striking out, in line 1, the word "(a)".

328           SECTION 43. Said section 7 of said chapter 164A, as so appearing, is hereby further  
329 amended by striking out subsection (b).

330           SECTION 44. Section 21 of chapter 166 of the General Laws, as so appearing, is hereby  
331 amended by inserting after the first sentence the following sentence:- In the case of a public way  
332 owned by the Massachusetts Department of Transportation, the construction of any such poles,  
333 piers, abutments, conduits and other fixtures, except bridges shall be subject to an agreement  
334 under section 7D of chapter 81.



335 SECTION 45. Section 22A of said chapter 166, as so appearing, is hereby amended by  
336 striking out, in line 5, the word “energy” and inserting in place thereof the following word:-  
337 cable.

338 SECTION 46. Section 25 of chapter 130 of the acts of 2008 is hereby repealed.

339 SECTION 47. Section 54 of said chapter 130, as amended by section 24 of chapter 9 of  
340 the acts of 2011, is hereby further amended by striking out the figure “, 25”.

341 SECTION 48. Section 173 of chapter 25 of the acts of 2009 is hereby repealed.

342 SECTION 49. Notwithstanding any general or special law to the contrary, the department  
343 of transportation shall review the current status of the use of rights-of-way in the state highway  
344 system, the turnpike and the metropolitan highway system, all as defined in section 1 of chapter  
345 6C. The review shall also present the current status of efforts by the department's office of real  
346 estate and asset development to collect rents or other compensation for the use of department-  
347 owned rights-of-way. The review shall also include, but not be limited to, an inventory of the  
348 owners of utilities or utility facilities that occupy department-owned rights-of-way, according to  
349 town and either state route number or road name, as will most clearly identify the road or other  
350 transportation facility being referred to, and including underground facilities. For each owner of  
351 a utility or utility facility that occupies department-owned rights-of-way, the review shall state  
352 whether an easement or other agreement exists for the occupant's use of the right-of-way,  
353 whether that agreement is in writing, whether such agreement requires compensation to the  
354 department for the occupant's use of the right-of-way and if so, how much compensation, the due  
355 date of the compensation, whether the compensation has been paid, and whether the  
356 compensation is monetary or non-monetary. For each owner of a utility or utility facility that

357 occupies department-owned rights-of-way, the review shall also state whether the department  
358 knows if other occupants are also using that utility or utility facility, and if known to the  
359 department, shall identify all other occupants of that utility or utility facility. If the department  
360 knows that facilities exist on department-owned rights-of-way but does not know the identity of  
361 the owner, the review shall describe such facilities and shall characterize the owners as  
362 "unidentified owners".

363           The department shall file a report containing the department's findings from this review  
364 with the clerks of the house and senate, the house and senate chairs of the joint committee on  
365 transportation, the house and senate chairs of the joint committee on telecommunications,  
366 utilities and energy, the chairs of the house and senate committees on ways and means and the  
367 chairs of the house and senate committees on bonding, capital expenditures and state assets not  
368 later than October 1, 2013.

369           SECTION 50. The department shall use its best efforts to conclude written easements or  
370 other written agreements under clause (21) of section 3 of chapter 6C of the General Laws with  
371 the owners of utilities or utility facilities on all department-owned rights-of-way by June 30,  
372 2015. The period covered by such agreements shall begin not later than July 1, 2015.

373           SECTION 51. A manufacturer, wholesaler, vending machine operator, unclassified  
374 acquirer or retailer, as defined in section 1 of chapter 64C of the General Laws, and a stamper  
375 appointed by the commissioner under section 30 of said chapter 64C who, as of the  
376 commencement of business on July 1, 2013, has on hand any cigarettes for sale or any unused  
377 adhesive or encrypted stamps, shall make and file with the commissioner within 20 days a return,  
378 subscribed and sworn to under the penalties of perjury, showing a complete inventory of such

379 cigarettes and stamps and shall, at the time such manufacturer, wholesaler, vending machine  
380 operator, unclassified acquirer, retailer or stamper is required to file such return, pay an  
381 additional excise of 50 mills per cigarette on all cigarettes and all unused adhesive and encrypted  
382 stamps upon which an excise of only 100½ mills has previously been paid. Chapters 62C of the  
383 General Laws and 64C of the General Laws relative to the assessment, collection, payment,  
384 abatement, verification and administration of taxes, including penalties, shall apply to the excise  
385 imposed by this section.

386           SECTION 52. (a) Notwithstanding any general or special law to the contrary, the  
387 Massachusetts Department of Transportation shall generate sufficient revenue to meet the  
388 following benchmarks: (1) in fiscal year 2014, the department shall contribute 47 per cent of the  
389 department's operating budget; (2) in fiscal year 2015, the department shall contribute 48 per  
390 cent of the department's operating budget; (3) in fiscal year 2016, the department shall contribute  
391 50 per cent of the department's operating budget; (4) in fiscal year 2017, the department shall  
392 contribute 51 per cent of the department's operating budget; and (5) in fiscal year 2018, the  
393 department shall contribute 51 per cent of the department's operating budget.

394           (b) The benchmarks in subsection (a) may be achieved through savings to the  
395 department's operating budget; provided, however, that the department shall submit a  
396 preliminary report of savings to the operating budget by October 1 of each fiscal year and a final  
397 report of savings to the operating budget by January 1 of each fiscal year. The preliminary and  
398 final reports of savings shall be submitted to the house and senate committees on ways and  
399 means and the joint committee on transportation.

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

406 SECTION 53. (a) Notwithstanding any general or special law to the contrary, the  
407 Massachusetts Bay Transportation Authority shall generate sufficient revenue to meet the  
408 following benchmarks: (1) in fiscal year 2014, the authority shall contribute 31.5 per cent of the  
409 authority's operating budget; (2) in fiscal year 2015, the authority shall contribute 33 per cent of  
410 the authority's operating budget; (3) in fiscal year 2016, the authority shall contribute 33.25 per  
411 cent of the authority's operating budget; (4) in fiscal year 2017, the authority shall contribute  
412 32.75 per cent of the authority's operating budget; (5) and in fiscal year 2018, the authority shall  
413 contribute 34 per cent of the authority's operating budget.

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

420 (c) The revenue generated to meet the benchmarks in subsection (a) may be derived from  
421 any funds collected by the authority through fees and fares and any other funds directly collected

422 by the authority; provided, however, such revenue shall not include funds contributed to the  
423 Massachusetts Bay Transportation Authority State and Local Contribution Fund under section  
424 35T of chapter 10 of the General Laws.

425 SECTION 54. (a) The Massachusetts Department of Transportation shall use the  
426 revenues generated under this act to comply with the second sentence of section 15 of chapter 6C  
427 of the General Laws requiring the salaries and benefits of employees of the department to be  
428 classified and funded as operating expenditures. The department shall comply with said section  
429 15 of said chapter 6C not later than June 30, 2016.

430 (b) The secretary of transportation, in consultation with the secretary of administration  
431 and finance, shall file a report regarding the department's compliance with the second sentence  
432 of section 15 of chapter 6C of the General Laws not later than August 1, 2013. The report shall  
433 include, but not be limited to: (1) the number of employees with salaries funded by capital  
434 expenditures in fiscal year 2013; (2) the total cost of employee salaries charged to capital  
435 expenditures in fiscal year 2013; and (3) the number of employees and total cost of employee  
436 salaries that the department estimates will be moved from capital expenditures to operating  
437 expenditures in fiscal years 2014, 2015 and 2016. The report shall be filed with the joint  
438 committee on transportation, the house and senate committees on bonding, capital expenditures  
439 and state assets and the house and senate committees on ways and means.

440 SECTION 55. There shall be a value capture commission consisting of the following 7  
441 members: the secretary of transportation or a designee, who shall serve as chair; the secretary of  
442 administration and finance or a designee; and 5 members who shall be appointed by the  
443 governor, 2 of whom shall be representatives of business associations; 1 of whom shall represent

444 organized labor; 1 of whom shall be a representative of the Massachusetts Municipal  
445 Association; and 1 of whom shall be a representative of a regional planning agency. The  
446 commission shall review and evaluate the policies and best practices of other jurisdictions used  
447 to obtain benefits from the increased value of adjacent properties as a result of public  
448 infrastructure projects or “value capture” and the current policies and mechanisms available  
449 within the commonwealth relative to value capture. The commission shall report to the general  
450 court on the effectiveness of the commonwealth’s current value capture policies and recommend  
451 whether certain policies from other jurisdictions should be implemented as part of the  
452 comprehensive state transportation plan, required under section 11 of chapter 6C. A report of the  
453 commission’s findings shall be filed with the clerks of the house of representatives and senate  
454 not later than March 1, 2014.

455           SECTION 56. Corporations that filed as a utility corporation under section 52A of  
456 chapter 63 of the General Laws in the taxable year ending on or before December 31, 2013 shall  
457 not be eligible to deduct from net income, the net operating losses described in paragraph 5 of  
458 section 30 of said chapter 63 for losses sustained prior to the taxable year beginning on or after  
459 January 1, 2014.

460           SECTION 57. Nothing in section 22 shall restrict the authority of the commissioner of  
461 revenue under subsection (j) of section 38 of chapter 63 of the General Laws, nor shall it affect  
462 the continuing validity or application of regulations adopted under subsection (f) of said section  
463 38 of said chapter 63 in effect as of the effective date of this act.

464           SECTION 58. Notwithstanding any general or special law to the contrary, the  
465 Massachusetts Bay Transportation Authority shall expend funds on capital investment projects,

466 including the green line extension project and the south coast rail project, which shall be  
467 included in the authority's 5-year rolling capital investment plan as published under section 5 of  
468 chapter 161A of the General Laws.

469 SECTION 59. Sections 5 and 48 shall take effect on July 1, 2017.

470 SECTION 60. Sections 8 and 39 shall take effect on July 1, 2015.

471 SECTION 61. Sections 10 to 12, inclusive, shall take effect on July 1, 2014.

472 SECTION 62. Sections 13, 28, 30 to 34, inclusive, and 51 shall take effect on July 1,  
473 2013.

474 SECTION 63. Sections 14 to 22, inclusive, 24 to 27, inclusive, 42, 43, 56 and 57 shall  
475 take effect on January 1, 2014 and shall be effective for tax years beginning on or after January  
476 1, 2014.

477 SECTION 64. Sections 23, 46 and 47 shall take effect on December 31, 2018.

478 SECTION 65. Section 29 shall take effect on January 1, 2015.