
Chapter 290. AN ACT RELATIVE TO LOW INCOME HOUSING TAX CREDITS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith tax credits for certain low income housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The sums set forth in section 2A shall provide for planning and studies, acquisition of land and buildings, and interests therein, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, repair, furnishings and equipment, and related administrative expenses, for the acquisition, construction, renovation, and repair of court facilities owned or to be owned by the commonwealth and said sums shall be in addition to previous appropriations made for the improvement of court facilities, including any amounts appropriated by chapter 203 of the acts of 1988, chapter 227 of the acts of 1995, chapter 88 of the acts of 1997 and chapter 189 of the acts of 1998 ; provided, however, that priority shall be given to those projects necessary to improve life safety, security, handicapped accessibility and structural integrity of court facilities owned, or to be owned, by the commonwealth; and provided, further, that an amount not to exceed 1 per cent of the funds authorized herein may be expended for the costs of personnel and related administrative expenses which are solely and exclusively related to the projects funded by this authorization and any previous authorizations made for similar purposes.

NO SECTION 2.

SECTION 2A.

JUDICIARY.

Trial Court.

0330-2210 For planning, design, development, land acquisition, renovation, repairs and construction of court facilities in the city of Quincy, the city of Salem, the city of Taunton, and the city of Lowell; provided further, that not less than \$20,000,000 be expended on said court facilities in the city of Quincy; provided further that said court facility in Salem shall be known as the J. Michael Ruane Judicial Center, so-called; provided further, that such funds are expended for the construction of a new Taunton District, Probate and Family Court Facility on the site agreed upon, on Court Street directly behind the existing District and Probate Courts, by the Division of Capital Assets Management and the Taunton Courthouse Task Force; provided further, that said court facility in the city of Lowell may be constructed as a design,

build, finance and operate project, so-called, which the Commonwealth may lease from the developer of the project, pursuant to the provisions of section 19 of this act; provided further, that if said Lowell court house project is built as a design, build, finance and operate project, so-called, the division of capital asset management and maintenance shall issue and complete a request for proposals in connection with such project no later than December 31, 2004; provided further, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazard shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to such other alternative means of construction as may be provided for in this item \$220,000,000

SECTION 2E. To provide for a capital outlay program to support housing production for people with disabilities and the modification and preservation of housing for the elderly, the homeless, moderate income citizens of the commonwealth, and people with disabilities, the sums set forth in section 2E for the several purposes and subject to the conditions specified in this act, are hereby made available subject to the laws regulating the disbursement of public funds.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Office of the Secretary.

4000-7997 For a program of loan guarantees or interest subsidies to assist homeowners with blindness or severe physical disabilities in making modifications to their primary residence for the purpose of improved accessibility or to allow such homeowners to live independently in the community; provided, that said secretary shall take all steps necessary to minimize such program's administrative costs; provided further, that such loan guarantees shall be available on the basis of a sliding scale that relates homeowner's income and assets to the cost of home modifications; provided further, that interest subsidies shall be means-tested and may be for zero interest loans pursuant to income standards developed by

said secretary; provided further, that the repayment of any such loans may be delayed until the sale of the principal residence by any such homeowner; provided further, that persons residing in any development covered by section four of chapter 151B of the General Laws shall not be eligible for said program unless the owner can show that the modification is an undue financial burden; provided further, that said secretary shall consult with the Massachusetts commission for the blind and the Massachusetts rehabilitation commission in developing the rules, regulations and guidelines for such program; provided further, that nothing herein shall give rise to enforceable legal rights in any party or an enforceable entitlement to services; provided further, that nothing stated herein shall be construed as giving rise to enforceable legal rights or enforceable entitlement to any services; and provided further, that said secretary shall submit quarterly reports to the house and senate committees on ways and means detailing the status of the program herein established \$25,000,000

4000-8200 For state financial assistance in the form of loans for the development of community-based housing for the mentally ill and mentally retarded; provided, that said loan program shall be administered by the department of housing and community development through contracts with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998; provided, that said loan issuing authorities may develop or finance said community-based housing, or may enter into subcontracts with non-profit organizations established pursuant to chapter 180 of the General Laws or organizations in which such non-profit corporations have a controlling financial or managerial interest; provided, however, that said department shall take due consideration of a balanced geographic plan for such community-based housing when issuing said loans; provided further, that said department shall take due consideration of development of a

balanced range of housing models by prioritizing funds for integrated housing as defined by the appropriate state housing and service agencies including but not limited to; the department of housing and community development, the department of mental health, and the department of mental retardation in consultation with relevant and interested clients, their families, advocates, and other parties as necessary; provided further, that loans issued pursuant to this item shall be subject to the following provisions: (1) said loans shall be limited to not more than 50 per cent of the financing of the total development costs; (2) said loans shall be issued only when any contract or agreement for the use of said property for the purposes of such housing provides for repayment to the commonwealth at the time of disposition of the property an amount equal to the commonwealth's proportional contribution from the Facilities Consolidation Fund to the cost of the development through payments made by the state agency making the contract; (3) said loans shall only be issued when any contract or agreement for the use of said property for the purposes of such community-based housing provides for the recording of a restriction in the registry of deeds or the registry district of the land court of the county in which the affected real property is located, for the benefit of the said departments, running with the land, that the land be used for the purpose of providing community-based housing for eligible individuals as determined by the departments of mental health and mental retardation; provided, that the property shall not be released from such restrictions until the balance of the principal and interest for the loan is repaid in full or until a mortgage foreclosure deed is recorded; (4) said loans shall be issued for a term of up to 30 years during which time repayment may be deferred by the loan issuing authority unless at the end of any fiscal year, cash collections from all sources in connection with a community-based housing project, except for contributions, donations, or grant moneys, exceed 105 per cent of cash expenditures on behalf of said project, including debt service, operating expenses, and capital reserves, in which event such excess cash shall be paid to the commonwealth within 45 days of the end of said fiscal year, payable first to interest due hereunder and thereafter to principal advanced pursuant to said loan, provided, that if on

the date said loans become due and payable to the commonwealth an outstanding balance exists, and if, on such date, the department of housing and community development, in consultation with the executive office of health and human services, determines that there still exists a need for such housing and that there is continued funding available for the provision of services to such development, said department may, by agreement with the owner of the development, extend the loans for such periods, each period not to extend beyond 10 years, as the department determines; provided, however, that the project shall continue to remain affordable housing for the duration of the loan term, as extended, as set forth in the contract or agreement entered into by the department; and provided further, that, in the event that the terms of repayment detailed in this item would cause a project authorized by this item to become ineligible to receive federal funds which would otherwise assist in the development of that project, that commissioner may waive the terms of repayment which would cause the project to become ineligible; (5) interest rates for said loans shall be fixed at a rate, to be determined by the director of the department of housing and community development in consultation with the treasurer of the commonwealth; (6) expenditures from this item shall not be made for the purpose of refinancing outstanding mortgage loans for community-based housing in existence prior to the effective date of this act; (7) community-based housing projects developed pursuant to this act shall not be refinanced during the term of any loan issued pursuant to this item unless and until the balance of the principal and interest for such loan is repaid in full at the time of such refinancing; provided, that said community-based housing projects may be refinanced if such financing would result in a reduction of costs paid by the commonwealth; provided further, that any such refinanced loan shall be due and payable on a date no later than the date on which the original loan was due and payable, except in accordance with subsection (4) of this item, or is necessary to effect extraordinary repairs or maintenance to be approved by the commissioners of mental retardation, or mental health, as appropriate, and the director of the department of housing and community development; (8) not-

withstanding any other general or special law to the contrary, within 120 days after the expiration of affordability restrictions on housing assisted under this section, the department or its assignee, who is a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase any such property at its current appraised value reduced by any remaining obligation of the owner; provided further, that 2 impartial appraisers shall determine, within 60 days after the expiration of said affordability restrictions, the current appraised value in accordance with recognized professional standards; provided further, that 2 professionals in the field of multi-unit residential housing shall select each such appraiser; provided further, that the owner and the department, respectively, shall designate such professionals within 30 days after the expiration of said affordability restrictions; provided further, that if there exists a difference in the valuations provided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property; provided further, that prior to any sale or transfer or other disposition of any such housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase said property; provided further, that the owner shall provide to the department or its assignee written notice by regular and certified mail, return receipt requested, of the owner's intention to sell, transfer or otherwise dispose of the property; provided further, that the department or its assignee shall hold such first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property; provided further, that failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt thereof shall constitute a waiver of such right of first refusal by the department; provided further, that no sale, transfer or other disposition of such land shall be consummated unless and until either said first refusal option

period shall have expired or the owner shall have been notified in writing by the department or assignee in question that said option will not be exercised; provided further, that such option may be exercised only by written notice signed by a designated representative of the department or its assignee, mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period; provided further, that if the first refusal option has been assigned to a qualified developer selected pursuant to the terms of this section under guidelines issued by the department, such written notice shall state the name and address of such developer and the terms and conditions of such assignment; provided further, that an affidavit before a notary public that he has so mailed such notice of intent on behalf of a owner shall conclusively establish the manner and time of the giving of such notice and such an affidavit, and such a notice that the option will not be exercised, shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof and each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates; provided further, that such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of "the keeper of records" for the party in question; provided further, that upon notifying the owner in writing of its intention to pursue its first refusal option during such 120-day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property; provided further, that such time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the

county in which the affected real property is located; provided further, that within a reasonable time after request, the owner shall make available to the department or its assignee any information that is reasonably necessary for the department to exercise its rights; provided further, that the department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided further, that such housing shall remain affordable for not less than 40 years; (9) said loans shall be provided only for projects conforming to the provisions of this act; and (10) said loans shall be issued in accordance with a facilities consolidation plan prepared by the secretary of health and human services, reviewed and approved by the director of housing and community development and filed with the secretary for administration and finance and the house and senate committees on ways and means; provided further, that no expenditures shall be made pursuant to this item without the prior approval of the secretary for administration and finance; provided further, that not more than \$10,000,000 may be expended from this item for a pilot program of community-based housing loans to serve mentally ill homeless individuals in the current or former care of said department of mental health; provided further, that in implementing said pilot program, said department shall take due consideration of a balanced geographic plan when establishing community-based residences; provided further, that said housing services made available pursuant to such loans shall not be construed as a right or an entitlement for any individual or class of persons to the benefits of said pilot program; provided further, that eligibility for said pilot program shall be established by regulations promulgated by the said department; provided further, that the department of housing and community development is hereby authorized and directed to promulgate emergency regulations pursuant to section 2 of chapter 30A of the General Laws for the implementation of this item, consistent with the facilities consolidation plan prepared by the secretary of health and human services and after consultation with said secretary and the commissioner of the division of capital asset management and maintenance \$100,000,000

4000-8201 For state financial assistance in the form of loans for the development and redevelopment of community-based housing for persons with disabilities who are institutionalized or at risk of being institutionalized, who are not eligible for housing developed pursuant to item 4000-8200 of this act; provided, that said loan program shall be administered by the department of housing and community development through contracts with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998; provided, that said loan issuing authorities may develop or finance said community-based housing, or may enter into subcontracts with non-profit organizations established pursuant to chapter 180 of the General Laws or organizations in which such non-profit corporations have a controlling financial or managerial interest; provided, however, that said department shall take due consideration of a balanced geographic plan for such community-based housing when issuing said loans; provided further, that all housing developed with these funds shall be integrated housing as defined by the appropriate state housing and service agencies including, but not limited to, the department of housing and community development, the department of mental health, and the department of mental retardation in consultation with relevant and interested clients, their families, advocates, and other parties as necessary; provided further, that loans issued pursuant to this item shall be subject to the following provisions: (1) said loans shall be limited to not more than 50 per cent of the financing of the total development costs; (2) said loans shall be issued only when any contract or agreement for the use of said property for the purposes of such housing provides for repayment to the commonwealth at the time of disposition of the property an amount equal to the commonwealth's proportional contribution from this item to the cost of the development through payments made by the state agency making the contract; (3) said loans shall only be

issued when any contract or agreement for the use of said property for the purposes of such community-based housing provides for the recording of a restriction in the registry of deeds or the registry district of the land court of the county in which the affected real property is located, for the benefit of the said departments, running with the land, that the land be used for the purpose of providing community-based housing for eligible individuals as determined by the Massachusetts rehabilitation commission or other agency of the executive office of health and human services; provided further, that the property shall not be released from such restrictions until the balance of the principal and interest for the loan is repaid in full or until a mortgage foreclosure deed is recorded; (4) said loans shall be issued for a term of up to 30 years during which time repayment may be deferred by the loan issuing authority unless at the end of any fiscal year, cash collections from all sources in connection with a community-based housing project, except for contributions, donations, or grant moneys, exceed 105 per cent of cash expenditures on behalf of said project, including debt service, operating expenses, and capital reserves, in which event such excess cash shall be paid to the commonwealth within 45 days of the end of said fiscal year, payable first to interest due hereunder and thereafter to principal advanced pursuant to said loan; provided further, that if on the date said loans become due and payable to the commonwealth an outstanding balance exists, and if, on such date, the department of housing and community development, in consultation with the executive office of health and human services, determines that there still exists a need for such housing, said department may, by agreement with the owner of the development, extend the loans for such periods, each period not to extend beyond 10 years, as the department determines; provided, however, that the project shall continue to remain affordable housing for the duration of the loan term, as extended, as set forth in the contract or agreement entered into by the department; and provided further, that, in the event that the terms of repayment detailed in this item would cause a project authorized by this item to become ineligible to receive federal funds which would otherwise assist in the development of that project, that commissioner may waive the terms of repayment which would cause the project to become

ineligible; (5) interest rates for said loans shall be fixed at a rate, to be determined by the director of the department of housing and community development in consultation with the treasurer of the commonwealth; (6) expenditures from this item shall not be made for the purpose of refinancing outstanding mortgage loans for community-based housing in existence prior to the effective date of this act; (7) community-based housing projects developed pursuant to this act shall not be refinanced during the term of any loan issued pursuant to this item unless and until the balance of the principal and interest for such loan is repaid in full at the time of such refinancing; provided further, that said community-based housing projects may be refinanced if such financing would result in a reduction of costs paid by the commonwealth; provided further, that any such refinanced loan shall be due and payable on a date no later than the date on which the original loan was due and payable, except in accordance with subsection (4) of this item, or is necessary to effect extraordinary repairs or maintenance to be approved by the commissioners of the Massachusetts rehabilitation commission or other agency of the executive office of health and human services, as appropriate, and the director of the department of housing and community development; (8) notwithstanding any other general or special law to the contrary, within 120 days after the expiration of affordability restrictions on housing assisted under this section, the department or its assignee, who is a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase any such property at its current appraised value reduced by any remaining obligation of the owner; provided further, that 2 impartial appraisers shall determine, within 60 days after the expiration of said affordability restrictions, the current appraised value in accordance with recognized professional standards; provided further, that 2 professionals in the field of multi-unit residential housing shall select each such appraiser; provided further, that the owner and the department, respectively, shall designate such professionals within 30 days after the expiration of said affordability restrictions; provided further, that if there exists a difference in the valuations pro-

vided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property; provided further, that prior to any sale or transfer or other disposition of any such housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase said property; provided further, that the owner shall provide to the department or its assignee written notice by regular and certified mail, return receipt requested, of the owner's intention to sell, transfer or otherwise dispose of the property; provided further, that the department or its assignee shall hold such first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property; provided further, that failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt thereof shall constitute a waiver of such right of first refusal by the department; provided further, that no sale, transfer or other disposition of such land shall be consummated unless and until either said first refusal option period shall have expired or the owner shall have been notified in writing by the department or assignee in question that said option will not be exercised; provided further, that such option may be exercised only by written notice signed by a designated representative of the department or its assignee, mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period; provided further, that if the first refusal option has been assigned to a qualified developer selected pursuant to the terms of this section under guidelines issued by the department, such written notice shall state the name and address of such developer and the terms and conditions of such assignment; provided further, that an affidavit before a notary public that he has so mailed such notice of intent on behalf of a owner shall conclusively establish the manner and time of the giving of such notice; and such an affidavit, and

such a notice that the option will not be exercised, shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof and each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates; provided further, that such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of "the keeper of records" for the party in question; provided further, that upon notifying the owner in writing of its intention to pursue its first refusal option during such 120-day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property; provided further, that such time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the county in which the affected real property is located; provided further, that within a reasonable time after request, the owner shall make available to the department or its assignee any information that is reasonably necessary for the department to exercise its rights; provided further, that the department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided further, that such housing shall remain affordable for not less than 40 years; (9) said loans shall be provided only for projects conforming to the provisions of this act; and (10) said loans shall be issued in accordance with an enhancing community-based services plan prepared by the secretary of health and human services, in consultation with the director of housing and community development and filed with the secretary for administration and finance and the house and senate committees on ways and means; provided, that no expenditures shall be made pursuant to this item without the prior approval of the secretary for administration and finance;

provided further, that the department of housing and community development is hereby authorized and directed to promulgate emergency regulations pursuant to section 2 of chapter 30A of the General Laws for the implementation of this item, consistent with the enhancing community-based services plan prepared by the secretary of health and human services and after consultation with said secretary and the commissioner of the division of capital asset management and maintenance \$25,000,000

Department of Housing and Community Development.

7004-7013 For the purpose of state financial assistance in the form of grants or loans for the Housing Innovations Fund Program established pursuant to section 5 of chapter 244 of the acts of 2002; provided, that not less than 25 per cent of the amount appropriated in this item shall be used to fund projects which preserve and produce housing for families and individuals with incomes of not more than 30 per cent of the area median income, as defined by the United States Department of Housing and Urban Development; and provided further, that funds from this program may be used to support joint projects proposed by municipalities or housing development agencies and Massachusetts colleges and universities \$50,000,000

SECTION 3. To meet the expenditures necessary to carry out the provisions of section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an amount to be specified by the governor from time to time, not exceeding in the aggregate, the sum of \$220,000,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, Court Improvement Loan, Act of 2004, and shall be issued for such maximum terms of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Bonds and interest thereon issued under the authority of this section shall, notwithstanding any other provision of this act, be general obligations of the commonwealth.

SECTION 4. To meet the expenditures necessary to carry out the provisions of section 2E the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an amount to be specified by the governor from time to time, not exceeding in the aggregate, the sum of \$200,000,000. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, Housing Production and Modification

Loan, Act of 2004, and shall be issued for such maximum terms of years, not exceeding 20 years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2029. All interest and payments on account of principal on such obligations shall be payable from the General Fund. Bonds and interest thereon issued under the authority of this section shall, notwithstanding any other provision of this act, be general obligations of the commonwealth.

SECTION 5. Section 6I of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 53, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 6. Said section 6I of said chapter 62, as so appearing, is hereby further amended by striking out, in line 54, the figure "2005" and inserting in place thereof the following figure:- 2010.

SECTION 7. Said section 6I of said chapter 62, as so appearing, is hereby further amended by inserting after the word "project", in line 79, the following words:- ; provided further, that no credit shall be authorized related to a project that receives state financial assistance authorized under section 7A of chapter 244 of the acts of 2002.

SECTION 8. Said section 6I of chapter 62 is hereby amended by inserting after subsection (h) the following 2 subsections:-

(i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to:- pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines; by reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity; and any other such methods.

SECTION 9. Section 31H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 55, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 10. Said section 31H of said chapter 63, as so appearing, is hereby further amended by striking out, in line 56, the figure "2005" and inserting in place thereof the following figure:- 2010.

SECTION 11. Said section 31H of said chapter 63, as so appearing, is hereby further amended by inserting after the word "project", in line 81, the following words:- ; pro-

vided further, that no credit shall be authorized related to a project that receives state financial assistance authorized under section 7A of chapter 244 of the acts of 2002.

SECTION 12. Said section 31H of chapter 63 is hereby amended by inserting after subsection (h) the following 2 subsections:-

(i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to; pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines and reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.

SECTION 13. Section 2 of chapter 244 of the acts of 2002 is amended by striking out item 7004-7012 and inserting the following item:-

7004-7012 For the purpose of state financial assistance in the form of community development action grants to be awarded pursuant to section 57A of chapter 121B of the General Laws; provided, that notwithstanding the provisions of section 57A of chapter 121B, any eligible city or town may designate a community development corporation organized in accordance with the provisions of chapter 40F of the General Laws to act on their behalf; provided, further, that not less than \$2,000,000 of the amount authorized for expenditure in this item shall be used for projects in seriously distressed areas having a significant amount of vacant land or buildings, as defined by the department; provided, further, that the projects funded from this item shall be consistent with the principles of smart growth, so-called, as defined by the department . . . \$25,000,000

SECTION 14. Said section 2 of said chapter 244 is hereby further amended by inserting after item 7004-7016 the following item:-

7004-7017 For the purpose of financing construction and preservation of affordable housing in the commonwealth in projects eligible for funding under the state low-income housing tax credit program established by section 6I of chapter 62 and section 31H of chapter 63 of the General Laws, as provided in section 7A of this act; provided, that the department of housing and

community development may expend an amount not to exceed 2 per cent of these authorizations for administrative costs directly attributable to the purposes of this section, including costs of clerical and support personnel; provided the director of the department shall file an annual spending plan with the fiscal affairs division and the house and senate committees on ways and means detailing, by subsidiary, all personnel costs and administrative costs charged to expenditures made pursuant to this section; provided further, that bonds or notes issued to meet expenditures authorized by this item shall, notwithstanding other provisions of this act, be for a term not to exceed 5 years \$100,000,000

SECTION 15. Section 3 of said chapter 244 is hereby amended by striking out the figure "\$508,500,000" and inserting in place thereof the following figure:- \$608,500,000.

SECTION 16. The second sentence of section 4 of said chapter 244 is hereby amended by inserting after the words "June 30, 2008" the following words:- , except for notes issued to meet expenditures authorized by item 7004-7017 in section 2, which notes shall have final maturities not later than June 30, 2011.

SECTION 17. Section 6 of said chapter 244 is amended by inserting after the seventh paragraph the following paragraph:-

Notwithstanding the restrictions described in this section, funds provided for the Housing Stabilization and Investment Program may be used for the purposes of the Soft Second Mortgage program described in item 3322-8880 of section 2 of chapter 110 of the acts of 1993.

SECTION 18. Said chapter 244 is hereby further amended by inserting after section 7 thereof the following 2 sections:-

Section 7A. The department of housing and community development may enter into contracts for state financial assistance in the form of grants or deferred payment, below market interest rate loans, from the commonwealth, acting by and through the department of housing and community development for projects eligible for funding through the state low-income housing tax credit established by section 6I of chapter 62 and section 31H of chapter 63 of the General Laws. Assistance provided under this section shall not exceed assistance that is otherwise available pursuant to the state low-income housing tax credit program. Assistance for a project shall be in an amount not to exceed the amount that the department determines is equivalent to the equity yield of the maximum state low-income housing tax credit allocable to the project under department guidelines. The proportion of housing units to be subject to affordability restrictions, the term of affordability, and the eligibility of occupants in the affordable units shall, to the extent practicable, be consistent with the requirements for projects assisted through the state low-income housing tax credit program pursuant to section 6I of chapter 62 or section 31H of chapter 63 of the General Laws. The department shall use such instruments as are necessary to enforce the require-

ments of this section, including, but not limited to affordability restrictions, mortgages, and regulatory agreements. If, on the date such loans become due and payable to the commonwealth, an outstanding balance exists, such loans may be extended for such periods, each period not to extend beyond 10 years, as the department determines, provided that the project continues to remain affordable housing as set forth in the contract or agreement entered into for the duration of the project by the department. In the event that the terms of repayment detailed in this section would cause a project authorized by this section to become ineligible to receive federal funds that would otherwise assist in the development of that project, the department may waive the terms of repayment that would cause the project to become ineligible. On or before January 1, 2005 the department shall promulgate regulations and guidelines in consultation with the advisory committee established in section 7B necessary to effectuate the purposes of this section. The initial contracts for state financial assistance shall be announced on or before June 1, 2005.

Section 7B. There shall be an advisory committee to make policy recommendations to the department regarding the programs, funding activities and assistance provided for in section 7A and to make recommendations regarding the cost effectiveness of the Massachusetts state low income housing tax credit program to maximize the number of affordable housing units financed through such program including but not limited to:- attracting new investors to such program; seeking favorable internal revenue opinions regarding such program; and making recommendations for improvements to such program, including an alternative of a taxpayer electing to receive the credit in the form of a loan generated by transferring the credit to a designated state entity. The committee shall be composed of the following 7 members:- the director of the department of housing and community development or his designee; the commissioner of the department of revenue or his designee; the secretary of the executive office for administration and finance or his designee; the executive director of the Massachusetts Housing Finance Agency or his designee; the executive director of the Massachusetts Housing Partnership Fund or his designee; and a representative appointed by each of the following organizations: the Citizens' Housing and Planning Association, Inc. and the Massachusetts Housing Investment Corporation. Committee members shall serve at the pleasure of the appointing authorities. Chapter 268A of the General Laws shall apply to committee members as special state employees. The department may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any person in which any committee member is in any way interested or involved, if the interest or involvement is disclosed in advance to the members of the committee and recorded in the minutes of the committee meeting. A committee member having an interest or involvement shall not participate in an action of the committee relating to that person. Employment by the commonwealth or service in any agency thereof shall not be considered to be such an interest or involvement. Such advisory committee shall report its findings and recommendations to the department on or before January 1, 2006.

SECTION 19. (1) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Division", the division of capital asset management and maintenance.

"Developer", the private entity selected to design, build, maintain, and operate the new Lowell district court facility in the city of Lowell.

"Development Agreement", the agreement entered into between the developer and the Division, pursuant to subsection (4).

"Project", the study, planning, design, construction, reconstruction, operation, and maintenance, including capital maintenance, of a new Lowell district court facility in the city of Lowell in accordance with the terms of the agreement described in subsection (4).

"Commissioner", the commissioner of the division of capital asset management and maintenance.

(2) Notwithstanding chapters 30, 30B and 149 of the General Laws or any other general or special law to the contrary, the commissioner may solicit proposals from, and negotiate and authorize the division to enter into a development agreement with, a developer to undertake, as appropriate, all or a portion of the project using, in whole or in part, private sources of financing.

(3)(a) The commissioner shall develop and publicly advertise a request for qualifications setting forth criteria for pre-qualification of developers, including minimum levels of experience, financial capability, bonding capacity and such other criteria as are deemed appropriate by the commissioner. The commissioner or his designee may consult with legal, financial, technical and other experts within and outside state government in the pre-qualification of developers. The commissioner shall also consult with the secretary of administration and finance in the development of a request for qualifications and with respect to the financial capacity of the respondents to such request for qualifications before determining which respondents are qualified. The commissioner shall, within 45 days after the effective date of this section, select a minimum of 3 developers, those which he has determined to be the most qualified, based on their abilities to finance, design, and construct the project.

Any selection made in response to a request for qualifications issued by the commissioner before the effective date of this act is hereby authorized and ratified if the request for qualifications is in a form that is consistent with the provisions of this section.

(b) The commissioner shall develop and publicly advertise a request for proposals setting forth criteria of the qualified developers to undertake the project. The commissioner or his designee may consult with legal, financial, technical and other experts within and outside state government in the development of the request for proposals, the selection of a developer and the negotiation of a development agreement. The commissioner shall not select a developer in accordance with the provisions of this section without the written concurrence of the secretary of administration and finance that the selected developer and its proposal have appropriate financial characteristics and provisions.

The commissioner shall, within 30 days after the designation of the selected qualified developers, furnish each qualified developer, as determined in paragraph (a), with a request

for proposals setting forth the minimum criteria for the project. Each such developer may then submit to the commissioner, on or before the time and date specified in the request for proposals which shall be within 90 days of the issuance of the requests, a proposal in the format specified by the commissioner. The commissioner may waive any informalities in such proposals and reject any or all proposals if, in his sole discretion, such a rejection would be in the public interest. All proposals shall be reviewed in private and no proposal or any information contained therein shall be released to a third party other than as specified herein nor to execution of the development agreement in accordance with the provisions of this section, nor shall any such proposal be deemed to be a public record until such development agreement is executed.

Each proposal shall be evaluated by criteria determined by the commissioner and set forth in the request for proposals including, but not limited to, the proposed cost of the project and the financial benefit to the commonwealth, the reputation, industry experience and financial capacity of the developer, the proposed design of the facility, the time schedule proposed for completion of the project, local citizen and government concerns, environmental concerns relative to the project, benefits to the traveling public, the developer's ability to ensure labor harmony during the length of the project and such other criteria as the commissioner deems appropriate. The commissioner may request oral presentations by such developers, as he deems necessary for understanding, clarifying and improving the terms contained in any such proposals. An oral presentation shall include a written component, including minutes of the meeting in which the presentation took place, which shall be made public after the execution of the development agreement. The commissioner shall, within 60 days of the receipt of proposals from the qualified developers; select the developer that he determines best meets the selection criteria for the benefit of the commonwealth. Within 5 days of the selection of the developer, the commissioner shall notify the joint committee on state administration of his choice. Within 15 days of that notification, the commissioner and the selected developer shall make a presentation of the details of the development agreement to the joint committee on state administration. Any of the deadlines contained in this section may be extended up to 60 days, in 15-day increments, upon the provision of written notice by the commissioner to the joint committee on state administration.

If the commissioner selects a developer that did not submit the proposal offering the lowest overall cost, the commissioner shall explain the reason for the selection in writing to the joint committee on state administration not later than 5 days before the execution of the development agreement.

(4) The commissioner may enter into a binding development agreement with the selected developer, which development agreement shall:-

(a) provide for the design and construction of the project;

(b) specify a design and construction schedule with project milestones and an enforceable project completion date, subject to delays beyond the control of the developer;

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(c) specify the cost of the project, as an aggregate total and separated into cost for each identified project segment, with maintenance costs annualized and separated from the cost of construction;

(d) provide for a lease of the facility to the developer or a lease of the facility back to the division for a term not to exceed 30 years upon the completion and final acceptance of the project, but the developer shall retain the primary responsibility for all reconstruction, capital maintenance and operational maintenance work, if any, to be performed during the lease period. If the developer proposes that a third party perform any such work on its behalf, then the third party shall be approved in advance by the commissioner;

(e) establish a schedule for annualized, periodic or other payments by the division to reimburse the developer's capital outlay costs for the project, including interest expense, the costs associated with operations, maintenance and administration of the facility, payments made to the division for the costs of project oversight, technical and other services and establishment of a fund to assure the adequacy of maintenance expenditures but all payments made shall be in accordance with obligations established in the development agreement;

(f) describe the procedures to be utilized in the completion of design and construction of the project;

(g) outline the responsibilities of the division and the developer in obtaining any remaining environmental permits or approvals;

(h) require that the developer secure and maintain bonding and liability insurance coverage in amounts appropriate to protect the project's viability in accordance with subsection 7;

(i) describe the method of financing for the project, including the developer's plans for issuing bonds on a tax-exempt basis;

(j) set forth the commitments of the commonwealth necessary to secure the project's financing consistent with paragraph (b) of subsection (10);

(k) set forth the guarantee of performance and security to be provided by the developer;

(l) specify the claims process to be utilized in the event of unforeseen circumstances during project design or construction and provide for the reimbursement to the developer for reasonable costs and expenses incurred in developing the design of the project and the construction cost estimate and in the financing of the project should the commonwealth, for any reason, determine to terminate the agreement;

(m) clarify the responsibilities of the division and developer in responding to hazardous materials on the development site;

(n) designate responsibility for operation and maintenance of the facility before, during and after project construction;

(o) provide that the division's construction inspections shall be conducted by personnel employed directly and on a full-time basis by the division; and

(5) The division may enter into the development agreement. If 1 or more of the following conditions are met, the commissioner shall submit detailed project information and

analysis to the joint committee on state administration, which will hold a public meeting to discuss the information provided by the commissioner. The committee may call before it any party to the development agreement. The information provided by the commissioner shall contain a detailed explanation for the occurrence of such condition or conditions and identifying terms and conditions for inclusion in the development agreement to address such condition or conditions:

(i) the total cost of the project, as anticipated in clause (c) of subsection 4, excluding ongoing maintenance expenses and interest payments, shall not be more than \$85 million, and the developer shall be responsible for any costs in excess of such amount;

(ii) the selected developer plans to issue non-tax-exempt bonds;

(6) Agreements with the developer shall contain minority and women business enterprise or disadvantaged business enterprise goals and minority and women work force goals as specified by the commissioner in accordance with state and federal law.

(7) An agreement with a developer shall require the developer's prime contractor to obtain a labor and material payment bond, in accordance with section 29 of chapter 149 of the General Laws, covering all construction, reconstruction, or maintenance, including capital maintenance, work of the project and shall require the payment of prevailing wages for labor performed on the project in accordance with sections 26 to 27H, inclusive, of said chapter 149.

(8) Notwithstanding chapters 7, 30, and 149 of the General Laws or any other general or special law to the contrary regarding procurement practices, the developer shall, in its sole discretion and in accordance with its own procurement practices and sound business judgment, determine the qualifications and selection of its own consultants, engineers, designers, architects, lawyers, contractors, investment bankers, materials suppliers and other persons or entities employed in connection with the project. The developer shall remain subject to all applicable anti-discrimination laws including, but not limited to, chapter 151B of the General Laws.

(9)(a) The plans and specifications for the project shall be approved by the commissioner and the chief justice for administration and management of the trial court.

(b) The development agreement shall provide that, upon return of operation and control of the facility to the division, the facility shall be in good repair in accordance with appropriate division standards as shall be set forth by the division in writing and incorporated by reference in the development agreement prior to the commencement of the construction of the project. The division shall also set forth the guidelines and standards to which the developer shall periodically maintain the facility and shall require the developer to repair the facility if the facility is found not to be in accordance with such maintenance standards, as shall be indicated by the commissioner in writing.

(c) The division may exercise, on its own behalf and on behalf of the developer, any power possessed by it to facilitate the development, construction, financing, operation and maintenance of the facility. For the purpose of facilitating the project or to assist the developer in the financing, development, construction, maintenance or operation of the facility,

the development agreement may include provisions for the division to lease the facility to the developer or back from the developer or both; to exercise the power of eminent domain; to grant development rights and opportunities to the developer and third parties; to grant necessary easements and rights of access to the developer and third parties; to issue permits and other authorizations; to provide remedies in the event of default of either of the parties; to grant contractual and real property rights to the developer and third parties and to exercise any other power deemed necessary by the parties. Any person damaged in his property by the exercise of any of the powers granted by this section may recover damages under chapter 79 of the General Laws against the commonwealth with respect to said powers exercised by the division. Nothing in this section shall be construed in a manner that would allow the division or the developer the ability to override any local zoning or land use law, ordinance or regulation.

(10)(a) In order to facilitate project financing, the selected developer may form a special purpose entity and the commissioner may enter into agreements with such entity to effectuate the purposes described in this section.

(b) Revenue bonds, interim receipts, temporary bonds, revenue refunding bonds or other types of indebtedness necessary to finance the design, construction, maintenance and operation of the facility shall not be deemed to constitute a debt of the commonwealth or any political subdivision thereof or a pledge of the faith and credit of the commonwealth or any such political subdivision. All bonds and interim receipts shall contain on the face thereof a statement to the effect that neither the commonwealth nor any political subdivision thereof shall be obligated to pay the same or the interest thereon except from revenues generated by the facility, or from other federal, state or local resources specifically made available therefore, and that neither the faith and credit nor the taxing power of the commonwealth or any political subdivision thereof is pledged to the payment of the principal of or interest on the bonds and interim receipts.

(11)(a) While the developer has operation and control of the facility in accordance with the terms of the development agreement, the developer shall be liable to the same extent and with the same limitations as would be the commonwealth to any person sustaining bodily injury or damage to his property by reason of a defect or want of repair therein or thereupon as though the facility were a facility operated by the commonwealth, and the developer shall be liable for the death of any person caused by such defect or want of repair to the same extent and with the same limitations as would be the commonwealth in accordance with the provisions of chapter 258 of the General Laws. The commonwealth shall not be liable for injury, damage or death sustained by any person due to defect or want of repair therein or thereupon sustained during the operation of the facility by the developer. Any notice of such injury, damage or death required by law shall be given to the registered agent of the developer and to the commissioner, but claims instituted pursuant to section 4 of said chapter 258 shall be presented to the commissioner. Upon receipt by the commissioner of any such notice, the commissioner shall promptly notify the registered agent of the notice and shall promptly notify the person giving notice of the name and address of the registered agent.

(b) While the developer has operation and control of the facility in accordance with the terms of the development agreement, the developer shall be liable to the same extent and with the same limitations as would be the commonwealth in accordance with the provisions of chapter 258 of the General Laws, as if the facility were a facility operated by the commonwealth. The commonwealth shall not be liable for injury, damage or death sustained by any person during the operation of the facility by the developer, nor for any injury, damage or death caused by the negligence of the developer. Any notice of such injury, damage or death required by law shall be given to the registered agent of the developer and to the commissioner, but claims instituted pursuant to section 4 of said chapter 258 shall be presented to the commissioner. Upon receipt by the commissioner of any such notice, the commissioner shall promptly notify the registered agent of the notice and shall promptly notify the person giving notice of the name and address of the registered agent.

(12) This section shall be specific to the Lowell trial court facility. Within 3 months of completion of construction of the project, the commissioner shall file a report with the house and senate committees on ways and means, the joint committee on state administration and the clerks of the house and senate. Said report shall detail the actual costs incurred by the developer in the design and construction stages of the project and the aggregate cost expected to be incurred by the division, broken down into annual amounts for each year covered under the development agreement, including any anticipated costs for annual maintenance. If actual yearly costs differ from those contained in the report, the commissioner shall submit a written explanation for the difference in his annual budget request to the house and senate committees on ways and means. The report shall also include an analysis comparing the aggregate cost with the expenses the division would have incurred under a traditional design-bid-build approach.

The commissioner shall include in the report a recommendation of whether it would be beneficial for the commonwealth to utilize the construction approach authorized in this section in conjunction with other large construction projects. If the recommendation is positive, the report shall include a comprehensive list of criteria that other projects should meet in order to access this method, and a detailed list of lessons learned on this project that can be incorporated into future projects. No further projects may be undertaken utilizing the method authorized in this section unless and until the commissioner has filed the report required by this section and has received legislative authorization to expand this approach to other projects.

Throughout the duration of the project, from the execution of the development agreement to the completion of the lease, the joint committee on state administration may call, at its discretion and upon a 14-day notice, a public hearing on the status of the project and at that time request the attendance of such witnesses as are appropriate to the subject of said hearing.

SECTION 20. Any funds expended by the Trial Court for the construction of a permanent or temporary courthouse in Hampshire county shall be for the construction or rent of that courthouse in the town of Belchertown, and no funds shall be expended by the Trial

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Court for the construction or rent of a courthouse in Hampshire county unless the site for the courthouse is located in the town of Belchertown.

This bill was returned on August 10, 2004, by the Governor to the House of Representatives, the branch in which said bill originated, with His objections in writing to the following items therein:

Items Disapproved: **SECTION 20.**

SECTION 2E *Items disapproved by striking the wording:*

Item	Wording Stricken
4000-8200	“with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998”
4000-8201	“with authorities which shall be limited to housing authorities and redevelopment authorities duly organized and existing in accordance with chapter 121B of the General Laws, the Massachusetts Housing Finance Agency, a body politic and corporate entity established by chapter 708 of the acts of 1966, as amended, and the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 24 of chapter 289 of the acts of 1998”

The remainder of this bill was approved by the Governor on August 10, 2004 at five o'clock and zero minutes, P.M.

Chapter 291. AN ACT MODERNIZING THE TRANSPORTATION SYSTEM OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an accelerated transportation development and improvement program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. To provide for a program of transportation development and improvements, the sums set forth in sections 2 to 2K, inclusive, for the several purposes and