

**AN ACT MOBILIZING ECONOMIC RECOVERY IN MASSACHUSETTS
BILL SUMMARY**

**SECTIONS 1-4
INCREASE THRESHOLDS FOR APPLICATION OF THE DESIGNER
SELECTION LAW**

Current law provides that contracts for design services costing less than \$10,000 or contracts for construction costing less than \$100,000 are exempt from the Designer Selection Board (“DSB”) approval process. This proposal would increase those thresholds to exempt design services costing less than \$25,000 and construction contracts costing less than \$250,000. This proposal also eliminates the requirement to advertise design service projects in the newspaper. The governor’s procurement task force estimates that this proposal could potentially reduce the time required for advertising and going through the DSB process for smaller projects by at least 3 months.

**SECTION 5
STREAMLINE DSB PROCESS**

Current law provides the DSB with jurisdiction over the selection of architects, engineers and construction managers providing design services in connection with public building projects over specified dollar thresholds. Existing law contains different DSB quorum requirements depending upon the nature of the project at issue. This proposal simplifies the statute by creating a single quorum requirement for all ARRA funded projects falling under the DSB’s jurisdiction.

**SECTION 6
INCREASE THE THRESHOLDS FOR DCAM TO DELEGATE TO PUBLIC
AGENCIES THE AUTHORITY TO CONTROL PROJECTS**

Current law authorizes state agencies to control their own building construction projects on projects costing less than \$100,000. Existing law also provides that DCAM may delegate project control to state agencies on projects costing between \$100,000 and \$1 million. To facilitate and expedite agency building construction projects, this proposal will increase the thresholds to \$250,000 and \$2 million, respectively.

**SECTIONS 7-8
MODIFY STUDY REQUIREMENTS FOR LARGER PROJECTS AND
ELIMINATE STUDY AND ENCUMBRANCE REQUIREMENTS FOR
SMALLER PROJECTS**

Current law requires formal certification of design studies before the designer can proceed with the final design phase of a project. The administrative steps associated with the study certification process can delay the start of final design. This proposal eliminates the current time consuming administrative steps required for certifying a study and allows

the study designer to move more efficiently into the final design phase. This legislative proposal also provides an exception that will allow design work for ARRA-funded maintenance and repair projects costing under \$250,000 to proceed provided the agency head certifies that the project can be accomplished within the appropriation or authorization and that there are funds available to pay for the design services. The governor's procurement task force estimates that this proposal will save up to 60 days in the process of getting projects initiated.

**SECTION 9
INCREASE THE THRESHOLDS FOR SMALL BUILDING PROJECT
PROCUREMENTS**

Currently, public agencies must comply with advertising and competitive sealed bidding procedures for small building projects costing between \$25,000 and \$100,000. This proposal increases the lower threshold from \$25,000 to \$50,000, thereby allowing awarding authorities to proceed more efficiently and expeditiously to make small repairs and complete minor projects. The governor's procurement task force estimates that this will save awarding authorities over 60 days in the procurement process for these small projects.

**SECTION 10
INCREASE THE THRESHOLD FOR PROJECTS REQUIRING PAYMENT
BONDS TO \$25,000**

Current law requires state construction contracts that cost more than \$5,000, and other public construction contracts costing more than \$2,000, to post surety bonds in an amount not less than one half of the total contract price. This proposal amends the law to increase the bond threshold to \$25,000 for both state and other public contractors to enable smaller contractors (including small, minority or women-owned businesses) to participate in the process.

**SECTION 11
REVISE ADVERTISING AND BIDDING THRESHOLDS FOR SMALL
PROJECTS**

Currently, public agencies must comply with extensive advertising and bidding procedures for small projects costing between \$10,000 and \$50,000. This proposal will relieve agencies from the public advertising requirements, and allow for awarding authorities to proceed more efficiently and expeditiously to make small repairs and complete minor projects while preserving competition and the public interest. This proposal increases the threshold for requiring certain "sealed bid" and advertising requirements in small projects from \$25,000 to \$50,000. The governor's procurement task force estimates that this will save awarding authorities over 60 days in the procurement process for these small projects.

**SECTION 12-17
ELIMINATE NEWSPAPER AD REQUIREMENT AND ABBREVIATE
CENTRAL REGISTER ADVERTISING**

Current law requires awarding authorities to advertise projects in the Central Register, which requires that advertisements be given to the Secretary of State 8 days in advance of the desired publication date. Two weeks of advertising are required. This means that ads must be ready more than 3 weeks before the deadline. This proposal reduces the advertising time in the Central Register to 1 week and eliminates the need to advertise in local papers. Projects would appear on COMPASS for 2 weeks.

**SECTION 18
STREAMLINE SELECTION PROCESS WHEN UNREASONABLY HIGH SUB-
BIDS ARE RECEIVED WITHOUT COMPETITION**

Under current state law, awarding authorities must solicit bids not only from general contractors but also from certain categories of sub-contractors. With respect to subcontracts, awarding authorities sometimes receive fewer than 3 sub-bids. In addition, when there are just 1 or 2 bidders, the sub-bids that the awarding authority receives are often unreasonably high. Under current law, the awarding authority must either accept the unreasonably high price or delay the project by re-bidding the subcontract, sometimes multiple times. This provision permits the awarding authority, as an alternative, after re-bidding at least once, to opt not to re-bid the subcontract but instead to assign the work to the general contractor within the general contractor's estimated cost. The governor's procurement task force estimates that this legislative proposal will save an awarding authority over 2 months when faced with the situation described above.

**SECTION 19
ESTABLISH A STANDING LIST OF PREQUALIFIED CONSTRUCTION
MANAGER AT RISK FIRMS**

State law permits the use of "construction manager at risk firms," which are defined as firms that enter into contracts to provide construction management services on a public building project at a guaranteed maximum price. Currently, construction manager at risk firms must be separately prequalified on each individual project for which they wish to bid. The project by project prequalification process, combined with the increasing number of project applicants, slows down the approval process. This proposal allows DCAM to prequalify firms for placement on a standing prequalification list, following which firms may submit proposals on multiple projects. According to the governor's procurement task force, this proposal will reduce the administrative and consultant costs of conducting the prequalification process, save at least 2 months per project in the procurement of construction manager at risk firms, and allow for more expedited projects.

SECTION 20-21 CONDENSED PREQUALIFICATION PROCESS

Current law requires certain general contractors and subcontractors to be prequalified following consideration of certain defined criteria. This legislative proposal will provide awarding authorities subject to the law with relief from some of the administrative burdens of the prequalification process by allowing them to rely on DCAM certification files for several prequalification criteria categories deemed to be duplicative of the DCAM certification application and review process. The governor's procurement task force estimates that this proposal can save awarding authorities up to 90 days in the course of prequalifying interested general contractors and subcontractors to bid on a project. Accordingly, this provision would allow projects to move toward bidding and contracting in a more efficient way without sacrificing the quality of contractors.

SECTION 22 INCREASE INCENTIVE PAYMENTS TO CONSTRUCTION MANAGEMENT AT RISK FIRMS IN SPECIAL CIRCUMSTANCES

Current law caps the incentive payments that public agencies are authorized to pay construction manager at risk firms at 1% of the project's total construction costs. This legislative proposal would add a provision that under special circumstances, when unique project requirements and circumstances warrant, public agencies may increase the incentive payment to 1½ % of the estimated construction costs. According to the governor's procurement task force, this proposal will encourage construction contractors to expedite the project schedule and subcontractor selection or to minimize costs.

SECTION 23 A+B BIDDING

Under current state law, "horizontal" construction contracts (i.e., road and bridge contracts) must be awarded to the lowest responsible and eligible bidder. To facilitate compliance with ARRA's "use-it-or-lose-it" deadlines, this provision allows ARRA-funded horizontal construction projects to be awarded using what is termed "A+B bidding," which means cost plus time bidding. With this change, agencies would be able to factor in the amount of time it will take a bidder to complete a project in addition to the cost.

SECTION 24 ECONOMIC STIMULUS ALTERNATIVE PROCUREMENT (ESAP) BOARD

This provision creates a mechanism for modifying or waiving state procurement procedures if necessary to ensure that a state agency will not lose ARRA funding for a project – for instance, because the time required to comply fully with all state procedures would render it impossible for the agency to satisfy ARRA deadlines. This provision creates the Economic Stimulus Alternative Procurement Board (the "ESAP board"),

which will have the authority to modify or waive procurement procedures only if necessary to avoid the loss of ARRA funds. For a project to be reviewed by the ESAP board for waiver, it must be referred by the Economic Recovery Project Director. The ESAP board's authority will be strictly limited to the waiver of procurement laws and rules under certain conditions. The proposal prohibits the waiver of accessibility requirements established by state or federal law. The board will be chaired by the Secretary of A&F or her designee, and it will make written findings in each instance that alternative procurement procedures are justified.

**SECTION 25-26
MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST BOARD
REVOLVING FUNDS AND FUND TRANSFERABILITY**

Under current state law, Massachusetts Water Pollution Abatement Trust ("MWPAT") loans must carry a 2% interest rate. ARRA requires states to provide a deeper subsidy for clean water and drinking water programs, which means that we must amend state law to authorize the MWPAT board to distribute monies from the state's revolving fund pursuant to terms that are consistent with federal law. ARRA also provides additional money to the Clean Water fund and provides states, if their law permits it, with a limited ability to transfer funds between Clean Water and Drinking Water funds. This proposal amends state law to authorize this transferability, which will allow additional resources to be applied to the Drinking Water program.

**SECTION 27
COMPTROLLER MAY AUTHORIZE EXPENDITURES WHEN THERE IS A
TIMING DISCREPANCY**

This proposal provides that the comptroller may authorize department encumbrances and expenditures in anticipation of federal ARRA funds. This change will help to accommodate timing discrepancies between the receipt of revenues and related expenditures. Prior to authorizing the expenditure, the department head must certify available accounts in the fiscal year.

**SECTION 28
MATCHING FUNDS**

This legislative proposal establishes a process for departments to follow when receiving ARRA federal funds that require matching funds. The proposal would require applying departments to notify the Secretary of A&F of the requirement, and the A&F Secretary would then direct the comptroller to create matching accounts to allow expenditure without further appropriation. The Secretary of A&F must notify the joint committee on veterans and federal affairs and the ways and means committees of this action.

**SECTION 29
POOL ADMINISTRATIVE COSTS**

To accommodate timing discrepancies and the rigid deadlines for using ARRA funds, this proposal authorizes the Secretary of A&F to allow the pooling of administrative costs of implementing ARRA projects into trusts and then gain recovery on those costs. This proposal enables the state to efficiently administer the programs.

**SECTION 30
SPECIAL TRANSFER FOR UNEMPLOYMENT INSURANCE**

Pursuant to ARRA, the federal government will be making a special transfer of \$11,620,239 to the Commonwealth for certain limited unemployment insurance administrative purposes. This proposal permits the limited use of these funds without further appropriation.

**SECTION 31
APPRENTICESHIP TRAINING REQUIREMENTS**

This proposal would require that at least 20% of the labor hours on ARRA-funded construction projects costing \$1 million or more be performed by apprentices, as defined by G.L. c. 23, §§11H, 11I.

A major goal of ARRA is to create jobs. The apprenticeship training program is a proven method for creating jobs for the long-term unemployed and otherwise disadvantaged populations. The apprenticeship program creates jobs and ensures jobs with middle-earning capacity and skills. This is a cost efficient workforce development tool and the most affordable option available to workers and employers. Moreover, employers with registered apprentice programs are more likely to be Massachusetts employers.

**SECTIONS 32-36
TRAINING FOR INDIVIDUALS RECEIVING UNEMPLOYMENT
COMPENSATION BENEFITS**

This proposal enables the Commonwealth to receive \$108,455,561 in additional federal incentive payments by amending our unemployment insurance laws. To capture these funds, a change in state law is necessary. Currently, DUA permits employees in a recognized training program to receive up to 18 weeks of additional unemployment insurance benefits while participating in the training. To access the newly available federal funds, the state must increase the time period from 18 weeks to 26 weeks.

**SECTION 37
EMPLOYEES HIRED TO WORK ON ARRA PROJECTS WILL BE FUNDED
BY ARRA**

This proposal provides that employees hired to perform work related to ARRA will be paid through accounts established solely for the purpose of effectuating ARRA. The proposal prohibits the expenditure of funds not related to ARRA on ARRA-related employees. It also prohibits the expenditure of ARRA funds on projects or employees not related to ARRA. This provision also clarifies that ARRA-related positions will be eliminated once the federal funding ends.

**SECTION 38
EMPLOYEES HIRED AND PAID FROM ARRA FUNDS ARE NOT SUBJECT
TO CIVIL SERVICE**

This proposal provides that employees hired by the state and paid from federal funds provided by ARRA are not subject to the state's civil service laws.

**SECTION 39
TECHNICAL ASSISTANCE AND CAPACITY BUILDING PILOT PROGRAM**

This proposal will create a pilot program that provides technical assistance and capacity building to promote, encourage and facilitate the participation of minority and women owned business enterprises and small businesses in ARRA-funded public construction and public works projects.

**SECTION 40
ESTABLISH SURETY BOND GUARANTEE PROGRAM**

This proposal authorizes the creation of a surety bond guarantee program to prescribe and guarantee any surety against loss resulting from certain bond breaches for ARRA-funded contracts costing up to \$250,000. A report on the issues confronting women, minority and small contractors shows that these groups sometimes have difficulty obtaining bonds. This proposal removes this barrier to participation in ARRA-funded procurement projects.

**SECTION 41
REPORTING REQUIREMENT**

This proposal requires any entity located in the state that receives ARRA funds to provide information to the state regarding its use of the funds pursuant to reporting requirements established by the Secretary of A&F. This provision will ensure transparency, accountability and efficiency.