

行政院及所屬各機關出國報告

(出國類別：考察)

加拿大政府業務委託外包與人力管理措施考察報告

服務機關：行政院人事行政局

出國人 職 稱：處長、科長、視察

姓 名：范祥偉、李淑娟、莫永榮

出國地區：加拿大

出國期間：91.6.13~91.6.24

報告日期：91.9.13

A3/
C09>00743

行政院及所屬各機關出國報告提要

出國報告名稱：加拿大政府業務委託外包與人力管理措施考察報告

主辦機關：行政院人事行政局

頁數：31 頁

出國人員：	范祥偉	行政院人事行政局人力處	處長
	李淑娟	行政院人事行政局人力處	科長
	莫永榮	行政院人事行政局人力處	視察

出國類別：考察

出國期間：民國 91 年 6 月 13 日至 91 年 6 月 24 日

出國地區：加拿大

報告日期：民國 91 年 9 月 13 日

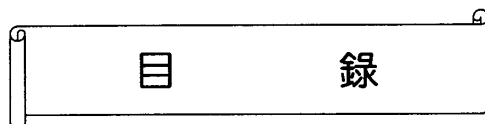
分類號／目：A3/人事行政

關鍵詞：委託外包、人力管理

內容摘要：

本次考察係由本團團員與加拿大管理發展中心(CCMD)、文官委員會(PSC)、國庫委員會秘書處(TBS)、審計總署(OAG)及安大略省政府(Ontario Government)、魁北克省政府(Québec Government)等官方代表就委託外包及人力管理成功經驗作交流分享，回程時並順道拜會美國麻塞諸塞州港務局(Massachusetts Port Authority)，就其組織屬性及人力管理進行瞭解。期望透過系統性的瞭解，提供我國在規劃委託外包及人力管理政策之參考依據。

行政院人事行政局九十一年度出國考察報告



壹、考察國家現況說明 -----	2
貳、訪查發現 -----	10
參、政策建議事項 -----	21
肆、考察活動照片 -----	27
伍、附錄一：魁北克政府「公共行政法」 -----	33
陸、附錄二：魁北克政府「文官法」 -----	71
柒、附錄三：加拿大審計總署對眾議院所提治理課責 報告 -----	101
捌、附錄四：美國麻塞諸塞州港務局授權法 -----	165

加拿大政府業務委託外包與人力管理措施

本次考察由本局人力處范處長祥偉率同李科長淑娟、莫專員永榮，於民國九十一年六月十三日下午啟程赴加拿大，於六月二十四日上午返台，考察期間共計十一日，與加拿大管理發展中心（CCMD）、文官委員會（PSC）、國庫委員會秘書處（TBS）、審計總署（OAG）及安大略省政府（Ontario Government）、魁北克省政府（Québec Government）等官方代表就委託外包及人力管理成功經驗作交流分享，回程時並順道拜會美國麻塞諸塞州港務局（Massachusetts Port Authority），就其組織屬性及人力管理進行瞭解。謹將考察國家相關制度現況、訪查發現及本團提出政策建議事項說明如下：

壹、考察國家現況說明

一、地理位置

加拿大為西半球最大國家，全境面積達 997 萬 610 平方公里，地廣人稀，人口分布多集中於南部及東部地區，其中安大略省與魁北克省人口總數達全國 61.8%。加國境內多湖泊，湖水之蓄水量，相當於全球四分之一淡水量。由於水力豐富，加國百分之七十以上電力來自水力發電。加國首府渥太華為政治中心，人口構成比例 60% 為英裔、

25%為法裔。近年來提倡多元文化，亞裔、中東、印度人口漸多，華語已成為英語和法語（均為官方語言）之外第三大語言。

二、中央政府組織概況

1867 年「英屬北美法案」正式生效，加拿大於西元 1867 年 7 月 1 日建國，採聯邦制，奉英王為國家元首，置總督（Governor General）一人代表英王，總督係由總理（Prime Minister）向英國女王建議任命，任期五年，行使國家元首的職務，根據總理的提議召開或解散議會、簽署議會通過的法案和國家重要文件、代表國家接待外國元首等。早期總督由英國皇親貴族擔任，迄至 1952 年以後，才由加拿大公民擔任。總理的產生則是在選舉之後，由總督任命眾議院多數黨領袖來擔任，總理可說是國家政治真正核心人物，負責組成內閣、任命閣員、提名總督及參議員等。2002 年加拿大現任總理為自由黨（Liberal）的強·克黑提昂（Jean Chrétien），其從 1993 年擔任加拿大第 37 屆總理至今，而現任總督為第 26 屆的艾德琳·克拉克森（Adrienne Clarkson）。加國政體採責任內閣制，行政權名義上屬總督及樞密院，實權則屬內閣，向國會負責；立法權屬於國會；司法權則屬各級法院。

國會則區分為參議院及眾議院，參議院的成員是由總理提名，經由總督任命，1965 年 6 月 2 日前任命者，

無任期限限制，其後任命者，任期至 75 歲為止，其主要工作是審議政府所提出的立法議案；眾議院則由人民選舉議員組成專司立法權，任期為五年；至於加國境內有許多政黨，包括執政的自由黨(Liberal Party)、保守黨(Progressive Conservative Party)、魁團黨(Block Quebecois)、最大的反對黨加拿大聯盟(Canadian Alliance)、新民主黨(New Democratic Party)。

加拿大係以英國議會制度為典範外，並融合美國的聯邦制度，共區分為聯邦政府、省政府及市政府三個層級。在聯邦政府層級，掌管外交、國防、通商、刑法、原住民事務、移民、交通、金融、漁業及失業保險等事項；除聯邦政府外，地方有十個省及三個特別行政區，省政府亦採行政、立法、司法三權分立制，其中省政府層級，掌管教育、財產、警察、民事、自治團體及福利等事項，各省有相當大的自治權；其餘文官制度、農業、稅制及司法行政則屬共同管理事項。

三、地方政府組織概況

加拿大各省議會通常有兩個或三個主要政黨，而每個省的主要政黨也不一樣，其議員則由地區選舉。由於省的面積遼闊，因而具有相當大的自治權。雖然聯邦政府可以透過聯合資助項目、出入口政策和其他方案影響省政府的決定，但省政府均可優先處理省內的天然資源、商業和

證券的登記與管理、教育和醫療保健等事項。聯邦政府和各省政府的稅務權力是各自獨立。茲以本次考察之安大略省政府及魁北克省政府概況說明如下：

(一) 安大略省(Ontario)

安大略省面積約 106 萬 8,580 平方公里，人口約 1,100 萬人，省都為多倫多市(Toronto)，該省位於加拿大中南部，境內多湖泊，冰丘及平原等地形，由於緯度高，冬季有風雪，夏季氣候宜人，四季分明。安大略省俗稱上加拿大(Upper Canada)，以別於下加拿大(Lower Canada)的魁北克省。安省於 1867 年 7 月 1 日正式加入加拿大聯邦。安省目前執政黨為保守黨。安大略省經濟產值幾占加拿大國內生產毛額一半，為加國工商及金融重鎮，亦因該省能源成本在全世界屬最低廉之一，使其成為加國最大工業省份，生產全加國 52%製造品，全加國 80%製造品由安省出口。

(二) 魁北克省 (Québec)

魁北克省面積約為 154 萬 2,056 平方公里，人口約 737 萬 2,400 人，省都為魁北克市(Québec City)。魁北克省為加拿大面積最大之省份，佔加國總面積的 15.4%，北部係高原地帶，南部廣大盆地環繞聖勞倫斯河，土地肥沃，可供耕種。聖勞倫斯河全長三千六百公里，係世界長河之一。蒙特婁市為魁北克省最重要之城市，亦為加拿大第二

大城市。

四、加拿大聯邦政府參訪機關權責簡介

(一) 加拿大管理發展中心 (Canadian Center For Management Development, CCMD)

加拿大管理發展中心成立於 1988 年，當時成立之目的主要為研究公部門的管理措施，並給予指導，以加強聯邦政府的管理能力。1991 年公布加拿大管理發展中心法，在該中心成立一個具法人特色的組織，並由董事會主席 (Board of Governors) 負責有關政府員工訓練之政策之擬定。董事會成員包括公部門與私部門代表，樞密院 (Privy Council) 代表為該委員會主席，其餘成員包括國庫委員會秘書長、文官委員會主任委員及加拿大管理發展中心 EX 級的高級文官等。目前加拿大管理發展中心主要負責高級人才訓練與發展業務，並研究公務部門內管理的理論與實務，同時也負責有關加拿大政府的服務革新，相當於我國考試院公務人員保障暨培訓委員會下設之國家文官培訓所及行政院人事行政局公務人力發展中心等機關的職掌。該中心有關電子化學習計畫的主要目標 (Director General Of Computer Learning Program)，係期望透過網際網路以發展線上互動圖書館 (online library of interactive) 及多媒體教學資源。

(二) 國庫委員會秘書處 (Treasury Board Secretariat, TBS)

加拿大的國庫委員會是樞密院委員會之一，該委員會於 1867 年加拿大建國時即已成立。其委員包括國庫委員會主席、財政部長、及經由樞密院提名的四位其他部會首長。國庫委員會的管理部門為秘書處 (TBS)，由秘書長及主計官 (Comptroller General) 所領導。國庫委員會秘書處在 1966 年以前，仍為財政部的一個部門，目前則為一個獨立的機關，該處直接向國庫委員會負責。

國庫委員會秘書處具有雙重的職責：(1) 要執行法令所規定之國庫委員會職掌事項，包括財政、公眾關係、平等雇用、隱私權、資訊管理、聯邦政府不動產及公務員雇用等相關法案。(2) 國庫委員會及其秘書處則扮演公部門策略領導者及改革的角色，協助國庫委員會有效率地運用現有的資源。秘書處在執行國庫委員會的政策時，主要負責政府財務支出、人力、員額、待遇、福利、資訊系統管理及低階人員的訓練等，相當我國的行政院人事行政局、主計處及研究發展考核委員會等機關之業務職能。

(三) 文官委員會 (Public Service Commission, PSC)

加拿大的文官委員會於 1908 年即成立，該委員會係直接向國會負責的獨立機構 (agency)，主要職掌為確保

文官的公正，防止政黨、政治及私人分贓，並確保功績制度之運行，以提升文官素質；協助行政部門訓練與發展；依文官任用法規定進用公務人員。該委員會根據文官任用法（ the Public Service Employment Act, PSEA），負責文官進用、保障及少數民族就業平等計畫等。

(四) 審計總署：(Office of the Auditor General of Canada, OAG)

該署負責提出對各部會有關效率、經濟與成本效益之審計，以及有關組織財務報表可靠性或其他授權項目之執行，相當於我國審計部之業務職能。

六、加拿大公元 2005 年計畫(Canada 2005)

加國於 1996 年成立助理次長聯誼會(ADMS)，分擔政府決策管理及執行實務的研究，並研擬「加拿大 2005 年(Canada 2005)」計畫，針對未來二十年加國將面臨的社會文化、經濟發展等問題，提出研究議題與工作計畫給政府相關單位參考。

該報告先界定加拿大在全球社會中的定位，探討全球化及美洲大陸的影響力將如何衝擊各個國家以及該國。並探尋適當的實質性政策與行政性政策(substantive and administrative policy)以回應變遷中的環境。該報告歸納出下列數項具體的環境變遷：

1. 國際間的人口遷移將促發強大的社會力及政治力，改變全球所有國家的面貌。
2. 距離及時間的限制，不再存在於國際貿易當中。
3. 未來是以知識為基礎的社會並面臨科技的不斷翻新，競爭的決勝點將是「知識管理」。
4. 環境永續發展的議題將朝區域多元化發展。
5. 民族國家的影響力持續下降。

面對上列的變遷，該報告中提出的因應政策可分為三個主要方向，分別是「經濟成長」、「人力發展」及「社會凝聚」，茲說明如下：

1. 經濟成長

- (1) 在國內經濟部分，消除不必要的管制。
- (2) 發展新的貿易市場及新產品。
- (3) 藉由新科技提昇生產力，加速技術及知識的升級並鼓勵投資。

2. 人力發展

- (1) 加強技術及知識的發展，以免錯過知識經濟的潮流。
- (2) 改善原住民的生活環境。
- (3) 檢討改革健保體系的設計與執行。

3. 社會凝聚

- (1) 促成各個階層及不同區域間民眾的結合。
- (2) 加強對加拿大的認同，鼓勵不同的觀念及文化在區域間流動。

貳、訪查發現

一、加拿大聯邦政府

本次參訪加拿大聯邦政府，係由「管理發展中心」（CCMD）國家交流部門學習專家 Louise Varagnolo 負責安排，邀請「國庫委員會秘書處」（TBS）國際方案服務與創新部門科長 Brian Pagan、「文官委員會」（PSC）國際方案部門高級分析師 Douglas Coughlin、計畫專員 Lina Santos 及「審計總署」（OAG）顧問 Robert Chen 等其他三個單位一同在「管理發展中心」會議室，分別針對各機關扮演角色、職掌先行簡介，並就委託外包及人力管理部分，與本團團員作經驗交流分享。

加拿大政府層級有三：聯邦政府、省政府及市政府。在聯邦政府人力管理方面，有下列幾項重點：

1. 加拿大聯邦政府的公務人員，經文官委員會的統計資料顯示，「廣義聯邦文官」：包括部會與機構（agency）、諮詢與管制機制、國營事業、公共造產、軍隊人員，總計有廣義公務人員有 440,000 人，並分佈在 130 個部門。至於「核心聯邦文官」：主要指各部會的公務人員，計有 155,360 人，分布在 26 個部會工作，每個部會皆由副部長（deputy minister）負責；在核心聯邦文官中，

男性為 73,868 人，女性為 81,492 人；其餘尚有全職不定期 12,410 人、部分工時 3,807 人、短期性 24,381 人（超過三個月 23,107 人，少於三個月 1,274 人）、季節性 1,015 人及臨時工 4,746 人。

2. 在聯邦公務人力變動情形方面，從 1993 年至 1997 年加拿大聯邦政府致力於員額精簡，惟從 2000 年至 2001 年之間開始有明顯的增員現象，新進用人員約有 32,000 人（包括短期、暑期工讀生），係因加拿大地處高緯度之地理環境，約有近半年冬季下雪時期，各項經濟活動多集中於夏季，因此，在夏季業務高峰時期，進用許多臨時人力、暑期人力辦理相關業務。
3. 在公務人員任用方面，加國的公務人員除外交官需具考試資格外，其餘均以當事人之專業資格、能力及證照進用；並且除助理副部長（assitant deputy minister）之任命外，均授權各部會自行處理，係以人事雇用通知方式辦理，並無人事命令。

其次，加拿大政府常運用不同的行政機構制訂公共政策，提供服務給人民。傳統的行政機構包括：直屬的部門機構、國營企業以及政府捐款補助的「非政府機構」。這三種行政機構均受到聯邦政府不同程度的控制，並在不同競爭程度的市場中運作。這些傳統機構與聯邦政府間之責任關係，都有明確的法律規範。而且經過加拿大審計總

署（OAG）的定期考核，都建立相當規模的「績效管理制度」。如果審計發現弊端，這些機關也都能迅速、有效地改革。

再者，加拿大聯邦政府有鑒於全球政府再造趨勢，遂鼓勵各種形式的「另類服務傳送」（Alternative Service Delivery, ASD），又稱「新興傳送措施」（New Delivery Arrangements, NDA）或「另類傳送機制」（Alternative Delivery Mechanisms, ADM）。最近七、八年間，「另類服務輸送」（ASD）如雨後春筍般以不同形式出現，如「特別營運機構」、「特別服務機構」、「合作協議」、公辦民營、特許興建營運建設（BOT）．．．等新興之行政機構。茲說明如下：

(一)「特別營運機構」(Special Operating Agency, SOA)

「特別營運機構」與傳統的行政機關相較，這種特別營運機構有相當大的決策裁量權，比一般行政機關更著重行政績效達成。但此一「特別營運機構」仍須對部長負責，而且必須受中央規章和制度控制。例如加拿大外交部的護照局和工業部的智慧財產局於數年前轉型為「特別營運機構」，即為顯例。

(二) 「特別服務機構」(Special Service Agency, SSA)

加拿大農產品檢驗局是一九九七年設立的「特別服務機關」。它有董事會和人事獨立權。它與政府之間的責任關係，有關原則性規範(包括審計的權責)係由國會立法規定，細節部分則由農產品檢驗局和農業部、衛生部協商決定。

(三) 聯邦政府和各省政府的「合作協議」(Collaborative Agreement)

加拿大聯邦政府與各省政府合作的經費通常由聯邦政府負擔全部或一部分，實際政策運作層面則由各省政府全權負責，或由聯邦和省共同負責。至於有關雙方合作的責任關係，則在「合作協議書」內予以明確規範。

(四) 「特許興建營運建設」(Build, Operate and Transfer, BOT)

一九九七年位於加拿大東海岸的聯邦大橋落成通車，此一大橋係橫跨於諾參布蘭海峽，總長計十三公里，是目前加拿大聯邦政府唯一的「特許興建營運建設」案例。此一案例有下列數項成功特質，包括計畫規劃優良，合約內容規範完善、使用收費標準合理及環保工作落實執行。

(五) 「國營企業民營化」(Privatization of Crown Corporations)

從十多年前「加拿大石油公司」民營化，一直到最近幾年「楓葉航空公司」的民營化均為顯例。此外，有些非「國營企業」的公共服務，亦將成為民營化的對象。

(六) 「解除管制」(Deregulation)

一九九六年加拿大交通部將所有的民航導航設備解除管制，並以十五億加幣轉讓給一家非營利性的「加拿大民航導航公司」。

二、安大略省政府

本次參訪安大略省政府，係由國際關係及協定局專員 Karen Sahota 聯繫，並邀請安大略省政府文官重整秘書處品質服務科科長 Lois Bain 及服務系統部門應用資源管理師 Led Paradis，在「國際關係及協定局」會議室，分別針對各機關扮演角色、職掌先行簡介，並就組織改造方面，與本團團員作經驗交流分享。

安大略省目前人口約 1,200 萬人，占加拿大 GDP 百分之四十，且安大略省為加拿大企業與財政中心，並為美國第三大貿易夥伴。目前安大略省政府約有 61,000 公務人員，以及散佈在全省 1,800 個地點之辦公處所。其在組織改造方面的成功經驗，茲分述如下：

(一) 解除管制

安大略省政府強調對政府業務解除管制之檢討，並將非核心業務交由民間部門提供，該府自一九九五年 82,000 個工作項目，減少至一九九九年 62,000 個工作項目，計減少 20,000 項工作項目（其中 14,000 個工作項目，則委由「另類服務傳送」(Alternative Service Delivery, ASD) 機制負責，亦即不再由政府提供此項服務，可交由「特別營運機構」(special operating agency)、「特別服務機構」(special service agency)及民間或非營利組織提供此項服務。)

(二) 民營化

加拿大高速公路多為免收費，只有安大略省 407 號高速公路全部民營化，受益所得 31 億加幣，是加拿大政府歷史上最大一宗民營化案例。此一高速公路係運用電子收費掃瞄裝置，並無人工收費或看管，民眾可向民間廠商以 10 元加幣（約台幣 220 元）購得電子感應器（未購買感應器者，通過此路段時將拍照存證），廠商則於每月月底將帳單寄至家中，如此作法節省相當多的政府人力及經費。此外，高速公路邊坡草皮的美化及整理均已交由 Bayer、Canada Trust、Ford、HP 等公司予以認養，並加以維護，非常美觀。

(三) 建立政府與民間夥伴關係

安大略省之駕照換發作業，其中有關交通違規罰款、保險等事宜仍由安大略省政府負責，其餘資料庫設計則由加拿大 IBM 公司負責。人民只有在第一次新領照時，須至政府機關領照，其餘均可在 IBM 公司散佈在各地的共用資訊站上換領駕照。此項服務提供，可節省每人排隊時間五小時，並可由人民信用卡中直接扣除未繳罰款，對於政府與民間夥伴關係建立可謂是雙方獲益，相當便利。此外，國有土地及土地重劃屬技術性工作交由民間部門辦理，並以公私協力方式建立 TERANET 系統。

(四) 提供人員補償性措施

安大略省政府在規劃機關整體委外政策時，機關須提供補償性措施讓人員轉換至民間公司，人員亦瞭解到安大略省政府因財政困難、組織縮編之故，並無抗拒情事發生，且人員覺得轉換至民間部門就長期觀點而言，比在政府部門中更有發展性。

(五) 建構創新的治理模式

安大略省政府推動組織改造的方式相當多元化，包括授權、特許權、地方分權、公私協力關係及民營化等方式，針對上述治理權限的分享，安省省政府採行不同的政策選擇，經整理如下表：

分享治理：政策選擇的光譜

創新治理 模 式	授 權	特 許 權	地 方 分 權	公 私 協 力 關 係	民 營 化
治 理 過 程	<ol style="list-style-type: none"> 1. 並非針對營利組織 2. 企業、政府的主管人員、消費者及民意代表 	<ol style="list-style-type: none"> 1. 特許協定 2. 績效衡量 3. 績效計畫 4. 政府需要獨立的審計 	<ol style="list-style-type: none"> 1. 加強協力關係 2. 省長對於大學的經營管理擁有自主權 3. 建立服務層次的協定 4. 政府、主管人員及大學正式職員予以監督、管理 	<ol style="list-style-type: none"> 1. 針對私人企業 2. 各自擁有百分之五十股份權 3. 各自擁有百分之五十的員工 4. 分享風險及報酬 	<ol style="list-style-type: none"> 1. 針對營利組織的主管人員 2. 強調績效衡量的公共服務 3. 公共安全保有治理責任
案 例	授予權力	准許森林執照	Guelth 大學	土地登記及轉換業務，運用公私協力關係建立 TERANET 系統	407 號高速公路民營化
公 務 部 門					私 人 部 門

三、魁北克省政府

本次參訪魁北克省政府，係由亞太司中國科顧問 Pierre Lemieux 聯繫，並邀請魁北克省政府「國庫委員會秘書處」（TBS）職位分類協調師 Jane Pycock、人力資源諮詢師 Robert Michaud、Ludny Franklin，在「國庫委員會秘書處」會議室進行二小時互訪，分別針對機關扮演角色、職掌先行簡介，並就人力管理及委託外包方面，與本團團員作經驗交流分享。

魁北克省政府針對省層級制訂省「文官法」（CSA）及省「公共行政法」（PAA），在人力管理方面有以下幾項重點：

1. 魁北克省共有就業人口 3,932,900 人，文官共有 67,000 人，佔就業人口 1.7%，佔總人口 7,410,000 人之比例為 0.9%；準公務人員計有 479,830 人（包括教師 120,000 人、專業幕僚 10,200 人，技術專業幕僚 74,327 人，健康及社會服務人員 275,303 人），佔就業人口 12%。
2. 魁北克省政府文官裁員政策係肇因於財政困難，遂採取財政強制性刪減預算方式來達成員額精簡目標，例如 1993 年規定五年內精簡人員目標為百分之二十五。至於剩餘人力則採人事凍結、優先安置、鼓勵提早退休等方式處理，精簡人員期間並提供優惠退休措施，退休或資遣人員可再任聯邦政府或省政府公職，惟規定二年內

不得再任公職。

3. 魁北克省政府大部分公務人員覺得提早退休較為划算，即可提早撥付退休準備金，紛紛提早退休，使得現有部門人力不足，尤其是醫療部門。
4. 此外，魁北克省政府也著手改變工作結構，減少管理者人數，多運用專業人員，來達到精簡人力規模的目標。並配合夏季業務高峰時期，進用許多臨時人力辦理維護市容、報稅等工作。

其次，在委託外包方面，經魁北克省政府與省議會議員共同商量後，大部分機關均未採取整體委託民間經營方式，僅有少數轉型為「機構」(agency)或「國營企業」(crown corporation)，給予較大的經營自主權限，例如：
(1) 魁北克住宅企業部 (the Quebec Housing Corporation) 轉型為「國營企業」(crown corporation)。(2) 文明博物館轉型為「機構」(agency)。(3) 教育部的教育電視轉播委託魁北克廣播電台。(4) 機關應先思考委外及人力精簡之可行性，對於未來新增業務發展思考，應先建構電子化政府，並加強公務人員電子化學習理念，培育虛擬公務人員。

四、美國麻塞諸塞州港務局

本團自加拿大回程時，並順道訪察美國麻塞諸塞州

港務局，係由航海行銷科長 Nicholas C. Billows、研究員 Lynn Vikesland 負責接待，先在港務局辦公室簡介機關扮演角色、職掌及未來願景，並就組織屬性及人力管理方面，與本團團員作經驗交流分享，簡報完畢後並帶領本團團員實地參觀港區作業方式。謹將訪查發現部分說明如下：

(一) 港務局組織屬性

麻州港務局組織屬性為「獨立公法人」(independent public authority)，該局前於一九五九年立法通過成立「法人」，將機場、港口納入港務局統一管理，由共和黨、民主黨、社區代表、工會等七人組成一董事會，每位委員任期七年，且任期均予分隔、不重複，由董事會主席 (board of directors) 決定政策方針、預算支用及其優先順序；執行長 (chief executive officer) 則負責政策執行，並向董事會主席負責，執行長毋須隨董事會主席同進退，董事會主席人選可由州長自政府、民間遴選人才，且為七位委員之一，州長有十天觀察民意對董事會主席人選適任與否的反應，如民意反應良好即予派任，並毋須州議會審議通過；九十一年麻州港務局新任局長 (董事會主席) John Quelch，即由麻州州長延攬哈佛大學國際行銷專才擔任。此一制度符合我國目前推行國營事業董事長制之精神與理念。

(二) 港務局人力管理

港務局人力管理方面，有以下幾項特色：(1) 港務局人員非屬州公務人員，惟可在麻州各機關互調，福利並比照公務人員。(2) 港務局運用 100 位州警及自行雇用 40 位特別安全警衛負責商港、漁港及四個機場門禁與安全維護事宜，至於治安及刑事案件係由聯邦及當地市警局負責。(3) 港務局運用 X 光機檢查貨櫃車有無違禁品，節省相當多人事成本。(4) 在港區範圍內之犯罪事件，由港務局州警處理，除聯邦調查局人員可知會後進入調查外，其餘麻州當地州警不能逕行入港區調查犯罪。(5) 外國船入港時，須於四天前將船員名單電傳「移民局」，當日入港時先由海岸巡防人員檢查後，交由移民局人員再行檢查，並自九一一攻擊事件後，船員均不得上岸。

參、政策建議事項

本團此行主要針對加拿大聯邦政府及安大略省政府、魁北克省政府近年實施委託外包及人力管理成效進行考察，回程並順道參訪美國麻塞諸塞州港務局，對於其組織屬性及人力管理進行瞭解，希望透過國外政府的借鏡，提供我國推動組織再造標竿學習的經驗參考。因此，本團團員經配合我國生態背景作腦力激盪，提出下列政策建議事項：

一、重新思考政府任務之必要性

加拿大安大略省政府強調對政府業務解除管制之檢討，並將非核心業務交由民間部門提供，而這些自政府任務予以排除的公共服務，則可轉由民間企業或非營利組織提供，可做為我國組織再造規劃「去任務化」(或稱「解除管制」)之參考。

二、中央政府權限應檢討下授地方政府，並可依業務特性檢討下授比例

從加拿大聯邦政府下授各省政府自治權限經驗，目前各省政府已對教育、財產、警察、民事、自治團體及福利等事項享有相當大的自治權。因此，針對我國國情，直轄市政府、縣市政府對於教育權、警察權等下授較有興趣及具有執行能力，故內政部宜朝此方向進行規劃評估。

三、運用「合作協議」方式，建立中央政府與民間組織、地方政府良善的夥伴關係

加拿大聯邦政府和各省政府建立「合作協議」(Collaborative Agreement)方式，有效強化政府執行能力及課予績效責任，並能促使中央與地方夥伴關係良性建立，殊值內政部參考借鏡。此外，加拿大安大略省政府建構的創新治理模式，包括「授權」、「特

許權」、「地方分權」、「公私協力關係」及「民營化」等，可提供我國各機關進行業務檢討，朝「地方化」、「委外辦理」等組織改造規劃方向之參考。

四、行政機關及事業機構在追求組織彈性化同時，宜轉型為「公法人」或「執行機構」

從加拿大政府及美國麻州港務局組織轉型經驗得知，未來我國行政機關及事業機構在追求人事、財政、預算、採購、審計、管理等權限彈性化，不受現行法規限制，如港務局、社教館所、國立大學等機關（構）之轉型，應配合在組織架構上予以調整，必要時須配合修組織法，賦予法源依據。

五、我國高速公路經營管理方式，宜從速改電子收費

加拿大安大略省 407 號高速公路民營化案例，顯示出民間企業運用電子收費掃瞄裝置，有效降低人事成本，並在電子感應器售價上提供低廉價格，鼓勵人民擁有，並對尚未購買感應器者，亦可通過此路段，並在當時拍照存證，由廠商統一於每月月底將帳單寄至車主家中。相較於我國高速公路管理，迄九十一年八月各收費站以「國道基金」進用約僱員額約六九四人（不含九十年九月二十一日以後新成立之收費站，如古坑、白河、月眉等收費站以受益費進用之人員），因此，加拿大對於高速公路管理的

作法，可有效節省政府人力及經費，值得參考借鏡。惟如經政策評估後，仍須採公營方式辦理，應逐步裁撤各收費站及人員，改採電子收費方式辦理，以精簡政府人力及財政負擔，並加速交通流暢性。

六、我國人事任免作業程序應再簡化

從加拿大聯邦政府人事任免作業可知，除助理副部長（assitant deputy minister）之任命外，均授權各部會自行處理，且係由權責長官（包括部長及所屬各層級主管）核可後由人事單位以雇用通知方式辦理，並無人事派令。因此，我國人事任免作業程序(含銓審、異動、動態登記等)可再予簡化，以有效提升人事作業效率。

七、員額精簡時，應有相關配套機制

從加拿大魁北克省政府人力管理措施，係以改變職務結構減少管理層級，達到降低公務人力規模，此一措施較我國顯著。此外，在精簡人力的同時，該府進用大量的短期性及契僱人員，以取代正式人員的方式，提高人力運用之彈性，亦提供我國在思考人力精簡時，得考量輔以一定比例的臨時人力之參考。

八、員額精簡時，應規定二年內不得再任公職

從加拿大魁北克省政府人力管理經驗得知，與我國刻正進行員額精簡方式相仿，惟在裁減人員時，規定二年內不得再任公職之規範較我國嚴謹。因此，未來各機關因組織調整或員額精簡原因退休或資遣人員，宜修正規定為二年內不得再任公職。

九、行政機關業務如具有市場競爭性，亦可規劃轉型為事業機構，以有效提升組織競爭力

從加拿大魁北克省政府委託外包經驗得知，大部分機關均未採取整體委託民間經營方式，僅有少數轉型為「機構」(agency)或「國營企業」(crown corporation)，其中魁北克住宅企業部(the Quebec Housing Corporation)即轉型為「國營企業」(crown corporation)，並給予較大的經營自主權限。因此，此一案例雖在我國甚為少見，但在組織改造思考上卻顯示出其重要性。

十、各機關首長應調整對於新設機關或新增業務，均由政府自辦的迷思

各機關首長未來對於新設機關或新增業務，應思考是否有必要由政府自辦，宜先朝「法人化」、「委外辦理」或發展電子化政府提供公共服務，以避免形成大政府的窘境。

十一、美國麻州港務局人力管理經驗，值得我國港務局及機場在人力管理方面之借鏡

美國麻州港務局僅運用 100 位州警及自行雇用 40 位特別安全警衛負責商港、漁港及四個機場門禁與安全維護事宜，並善用 X 光車檢查貨櫃有無違禁品，節省人事成本。相較於我國交通部四個港務局運用一、七〇〇人及內政部警政署航空警察局在中正、小港國際機場配置一六五七人似有嫌僵化，人力有通盤檢討重組的空間。

肆、考察活動照片



考察團全體成員與加拿大聯邦政府「管理發展中心」Mrs. Varagnolo、「文官委員會」Mr. Coughlin 及我駐加拿大經濟文化代表處田組長合影



考察團全體成員與加拿大聯邦政府「國庫委員會秘書處」Mr. Pagan 合影



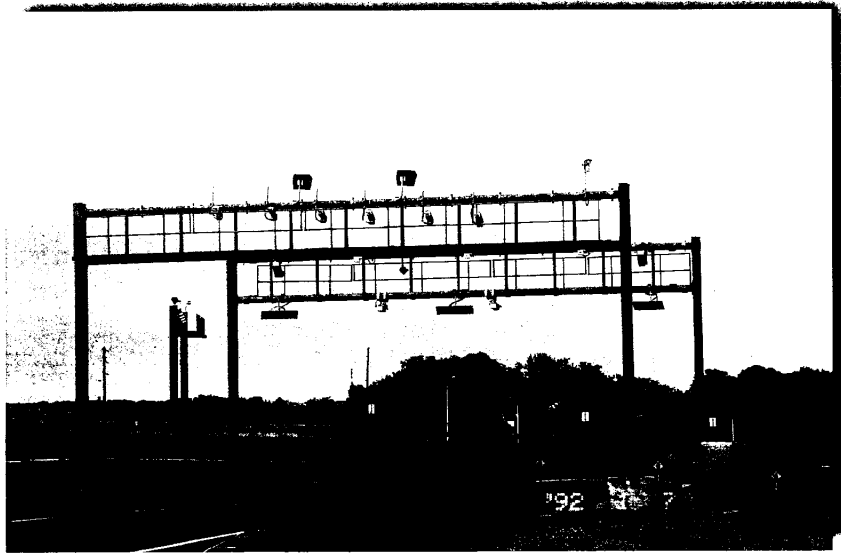
考察團全體成員與加拿大安太略省政府 Mrs. Bain 、Miss Sahota 合影



考察團全體成員與加拿大安太略省政府 Mr. Paradis 合影。



本團團員莫永榮在加拿大安太略省 407 號高速公路前，與電子感應器合影。



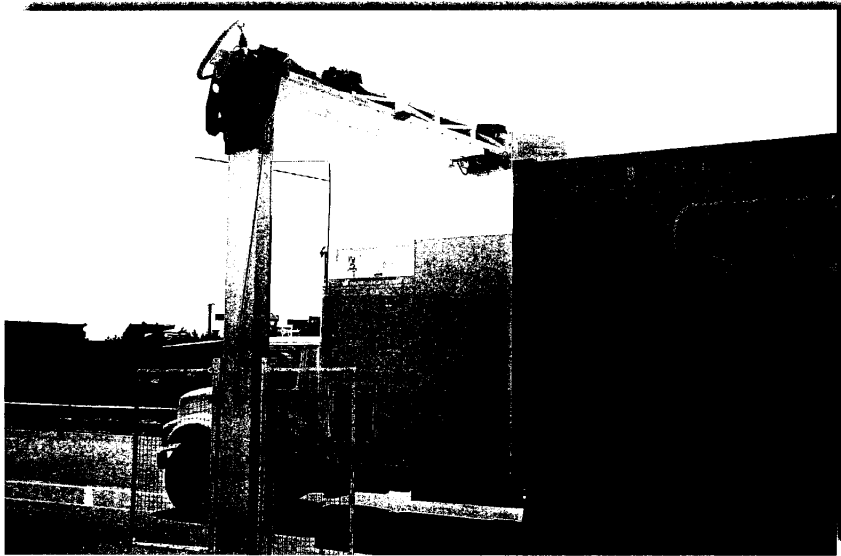
加拿大安太略省 407 號高速公路電子收費掃描裝置。



考察團全體成員與加拿大魁北克省政府代表及臺灣商會 Miss kuo 合影。



本團團長范祥偉先生與美國麻塞諸塞州港務局 Mr. Billows 合影。



美國麻塞諸塞州港務局運用 X 光機檢查貨櫃車實況。

Chapter A-6.01

PUBLIC ADMINISTRATION ACT

CHAPTER I

OBJECT AND APPLICATION

- Results-based management. 1. This Act affirms the priority given by the Administration, in developing and implementing the rules of public administration, to the quality of the services provided to the public; thus, it establishes a results-based management framework centred on transparency.
- Accountability. This Act reaffirms the role played by parliamentarians with respect to government action and their contribution to the improvement of the services provided to the public by enhancing the accountability of the Administration to the National Assembly. 2000, c. 8, s. 1.
- Object. 2. The government management framework shall focus more specifically on
- (1) responsiveness, in making management decisions, to the expectations expressed by the public in light of available resources;
 - (2) the achievement of results in relation to stated objectives;
 - (3) greater flexibility, through the adaptation of management rules to the particular situations of departments and bodies;
 - (4) recognition of the role of deputy ministers and chief executive officers in implementing controls in relation to results-based management;
 - (5) accountability reporting based on performance in achieving results;
 - (6) optimum use of the resources of the Administration;
 - (7) giving the National Assembly access to relevant information on the activities of the Administration.
- 2000, c. 8, s. 2.
- Composition of the Administration. 3. For the purposes of this Act, the Administration comprises
- (1) the departments of the Government;
 - (2) all budget-funded bodies, namely all bodies all or part of the expenditures of which are provided for in the estimates tabled in the National Assembly otherwise than under a transferred appropriation;
 - 3. all bodies whose personnel is appointed in accordance with

the Public Service Act (chapter F-3.1.1);

(4) all bodies a majority of the members or directors of which are appointed by the Government or by a minister and at least half of the expenditures of which are borne directly or indirectly by the consolidated revenue fund.

Body. A person appointed or designated by the Government or by a minister, together with the personnel directed by that person, is considered to be a body in the exercise of the functions assigned to the person by law, the Government or the Minister.

2000, c. 8, s. 3.

Applicability. 4. The National Assembly, any person appointed or designated by the National Assembly to exercise functions under the authority of the National Assembly, the personnel directed by that person and the Commission de la représentation are subject to the provisions of this Act only to the extent provided by law.

Applicability. The same applies to the courts of justice within the meaning of the Courts of Justice Act (chapter T-16), or bodies whose membership is wholly comprised of judges of the Court of Québec, the Conseil de la magistrature or the committee on the remuneration of the judges of the Court of Québec and the municipal courts.

2000, c. 8, s. 4.

CHAPTER II GENERAL RESPONSIBILITIES

DIVISION I APPLICATION

Application. 5. This chapter applies to the departments and budget-funded bodies of the Administration.

Application. It also applies to any other body of the Administration that is designated for that purpose by the minister responsible and only to the extent determined by that minister. Notice of the designation must be published in the *Gazette officielle du Québec*.

Restriction. However, only sections 6, 7 and 8, subparagraphs 1 to 5 of the first paragraph of section 9, section 11, the first paragraph and subparagraphs 1 and 2 of the second paragraph of section 24 and section 29 are applicable to bodies whose members are appointed by the National Assembly and to administrative bodies exercising adjudicative functions and, in the case of the latter bodies, only as concerns management objectives for service accessibility, the effectiveness and efficiency of their decision-making process and the results achieved. The report required under section 24 shall be incorporated into the annual report of those bodies.

2000, c. 8, s. 5.

DIVISION II SERVICE STATEMENT

Service statement. 6. A department or body that provides services directly to the public shall publish a service statement setting out its objectives

with regard to the level and quality of the services provided.

Content. The statement shall specify the time frame within which services are to be provided and give clear information on their nature and accessibility.

Services. For the purposes of this Act, services to the public comprise services to individuals and services to enterprises.
2000, c. 8, s. 6.

Duties. **7.** A department or body that provides services directly to the public must

- (1) remain receptive to public expectations;
- (2) simplify service delivery rules and procedures to the greatest extent possible;
- (3) encourage its employees to provide quality services and to collaborate in achieving the results targeted by the department or body.

Information to users. Where the department or body considers it appropriate, it shall inform users of the cost of its services.
2000, c. 8, s. 7.

DIVISION III STRATEGIC PLAN

Strategic plan. **8.** Each department or body must adopt a strategic plan covering a period of more than one year.
2000, c. 8, s. 8.

Content. **9.** The strategic plan must state

- (1) the mission of the department or body;
- (2) the context in which the department or the body acts and the main challenges it faces;
- (3) the strategic directions, objectives and lines of intervention selected;
- (4) the results targeted over the period covered by the plan;
- (5) the performance indicators to be used in measuring results;
- (6) any other element determined by the Conseil du trésor.

Conseil du trésor. The Conseil du trésor may determine the information to be included in the plan, the period it is to cover, its form, and the intervals at which it is to be reviewed.
2000, c. 8, s. 9.

Strategic plan. **10.** The strategic plan of a department or body shall be forwarded to the Government by the minister responsible at least 60 days before it is to be tabled in the National Assembly.
2000, c. 8, s. 10.

Tabling. **11.** The strategic plan of a department or body shall be tabled in the National Assembly by the minister responsible.
2000, c. 8, s. 11.

DIVISION IV
PERFORMANCE AND ACCOUNTABILITY AGREEMENT

- Performance and accountability agreement. **12.** A performance and accountability agreement may be entered into by a minister and the director of an administrative unit in a department or body under the responsibility of the minister.
- Deputy minister or chief executive officer. The deputy minister or chief executive officer concerned shall also be a party to the performance and accountability agreement to ensure that its content is integrated with the activities of the department or body and shall subscribe, in the exercise of his or her responsibilities, to the undertakings set out in the agreement.
- Description of administrative unit. The performance and accountability agreement shall include a description of the administrative unit.
2000, c. 8, s. 12.
- Content. **13.** A performance and accountability agreement must contain
- (1) a definition of the mission and strategic directions of the administrative unit and a description of the responsibilities of the director of the unit;
 - (2) an annual action plan describing the objectives for the first year of the agreement, the measures to be taken to meet the objectives, and the resources available, and an undertaking to produce such a plan on an annual basis;
 - (3) the main indicators to be used in measuring results;
 - (4) an undertaking to produce, at the end of each year, a management report describing the results achieved and, so far as possible, comparing them to the results achieved by similar bodies.
- Management agreement. Any management agreement made pursuant to section 19 by the Minister and the Conseil du trésor shall be appended to the performance and accountability agreement and shall be binding on the parties.
- Advisory committee. A performance and accountability agreement may also provide for the formation of an advisory committee to enable client representatives or specialists from outside the Administration to give their opinion on the execution of the agreement.
2000, c. 8, s. 13.
- Tabling of agreements. **14.** A performance and accountability agreement and management agreement are public documents which the minister responsible shall table in the National Assembly.
2000, c. 8, s. 14.
- Approval of annual action plan. **15.** The annual action plan of an administrative unit covered by a performance and accountability agreement shall be submitted for approval to the minister responsible by the department or body concerned.
2000, c. 8, s. 15.
- Compliance with mission and directions. **16.** The director of an administrative unit having entered into a performance and accountability agreement must ensure that the mission and strategic directions of the unit are complied with, and

that the unit achieves its annual objectives within the management framework applicable to it using the resources allocated to it.

2000, c. 8, s. 16.

Power of supervision and control. **17.** The minister is, after entering into a performance and accountability agreement, empowered to exercise supervision and control over the achievement of the objectives of the administrative unit.

Power of supervision and control. The deputy minister or chief executive officer responsible for the administrative unit is also empowered to exercise supervision and control.

2000, c. 8, s. 17.

Replacement of director. **18.** A person exercising supervision and control over an administrative unit who considers that the unit has not achieved its annual objectives or that its director has not complied with the performance and accountability agreement may replace the director of the unit or, if the appointment of the director is not within that person's authority, recommend to the competent authority that the director be replaced.

Suspension or cancellation of agreement. In addition, the minister responsible for the administrative unit may suspend or cancel the performance and accountability agreement. The minister shall notify the Conseil du trésor immediately of the suspension or cancellation.

2000, c. 8, s. 18.

Management agreement. **19.** A management agreement is an agreement entered into by the minister responsible for an administrative unit covered by a performance and accountability agreement and the Conseil du trésor. The management agreement shall define a management framework for human, financial, physical and information resources that is specific to the unit, the relevant conditions, and the administrative policies governing it.

Intervention of body concerned. Where applicable, the body concerned shall intervene in the management agreement.

2000, c. 8, s. 19.

Conseil du trésor. **20.** The Conseil du trésor may, as part of a management agreement,

(1) delegate the exercise of any power, other than a regulatory power, conferred on it or on the chair of the Conseil du trésor by this Act, the Public Service Act (chapter F-3.1.1) or any other Act governing the activities of the department or the body, and authorize the subdelegation of that power;

(2) exempt an administrative unit from the application of one of its decisions.

2000, c. 8, s. 20.

Intervention in management agreement. **21.** At the request of a minister or of a body, the minister responsible for the administration of the Act respecting government services to departments and public bodies (chapter S-

6.1) and the General Purchasing Director may intervene in a management agreement to provide for the delegation and exercise of the powers conferred on them by the Act respecting government services to departments and public bodies and the Act respecting the Service des achats du gouvernement (chapter S-4), and which they may not otherwise delegate.

Intervention in management agreement. The minister responsible for the administration of the Act respecting the Société immobilière du Québec (chapter S-17.1) may also intervene in a management agreement to provide for the delegation of the powers conferred on the Société immobilière du Québec under that Act.

Intervention. Any other minister or body may intervene in a management agreement to exempt the administrative unit from certain administrative procedures or from the obligation to provide information on the management of the administrative unit.
2000, c. 8, s. 21.

Content. 22. A management agreement may contain supplementary measures, procedural requirements and reporting requirements in respect of an administrative unit, in particular where

(1) the law provides for the transfer of the balance of an appropriation to a subsequent fiscal year;

(2) the law grants appropriations for a period exceeding one year;

(3) an expenditure in excess of the appropriation may be made in accordance with section 50;

(4) the administrative unit has been granted a delegation or an exemption under section 20 or 21;

(5) no staffing level is applicable to the administrative unit pursuant to section 32.

Content. A management agreement may also set out procedural requirements and reporting requirements where, in a regulation made under section 58 or 59, the Government has prescribed specific conditions applicable to all contracts, certain categories of contracts or certain contracts made for the administrative unit.
2000, c. 8, s. 22.

Suspension or cancellation of agreement. 23. The Conseil du trésor may, if it considers that a management agreement has not been complied with, recommend to the minister responsible for the unit that the performance and accountability agreement be suspended or cancelled.

2000, c. 8, s. 23.

DIVISION V REPORTING

Annual management report. 24. Every department and body must prepare an annual management report.

Content. The report must include

(1) a presentation of the results obtained, measured against

the objectives fixed in the strategic plan established pursuant to section 8 and in any annual expenditure management plan required under section 46;

(2) a statement by the deputy minister or chief executive officer concerning the reliability of the data and of the monitoring mechanisms;

(3) any other particular or information determined by the Conseil du trésor.

Separate report. A separate report must be prepared for every administrative unit covered by a performance and accountability agreement, or be included in a separate section of the report prepared by the department or body. The required content of the report shall be determined in the performance and accountability agreement or, where applicable, in the management agreement.

not in force 2000, c. 8, s. 24.

Reports to be transmitted. **25.** The annual management report of a body shall be transmitted to the minister responsible, at least 15 days before the expiry of the four-month period prescribed by section 26, together with the annual management report of each administrative unit within the body that is covered by a performance and accountability agreement.

not in force 2000, c. 8, s. 25.

Tabling. **26.** The annual management report of a department, and of the bodies and administrative units under a minister's responsibility, shall be tabled in the National Assembly by the minister concerned within 4 months after the end of their fiscal year or, if the Assembly is not sitting, within 15 days of resumption.

not in force 2000, c. 8, s. 26.

Annual report of activities. **27.** The annual management report of a department or body shall replace the annual report of activities that is required by statute to be tabled in the National Assembly if the annual management report contains the information required to be included in the annual activities report.

2000, c. 8, s. 27.

Tabling. **28.** A report on the administration of this Act shall be tabled in the National Assembly every year by the chair of the Conseil du trésor.

2000, c. 8, s. 28.

Accountability. **29.** A deputy minister, or a person exercising the powers conferred by the Public Service Act (chapter F-3.1.1) on a deputy minister, and the chief executive officer of a body of the Administration, even if the body has not been designated under the second paragraph of section 5, are, as provided by law, in particular as concerns the exercise of the authority and powers of the minister under whose authority they fall, accountable to the National Assembly for their administrative management.

The competent parliamentary committee of the National Assembly shall hear the minister at least once each year, if the minister considers it appropriate and, where applicable, shall also hear the deputy minister or chief executive officer to examine their administrative management.

Examination. The parliamentary committee may examine

(1) the service statement, and the results achieved in relation to the administrative aspects of a strategic plan or an annual expenditure management plan;

(2) the results achieved in relation to the objectives of an affirmative action program or hiring plan for handicapped persons that is applicable to the department or body, and in relation to the hiring objectives determined by the Conseil du trésor with regard to the various segments of Québec society;

(3) any other matter of an administrative nature under the authority of the department or body that is noted in a report of the Auditor General or the Public Protector.

2000, c. 8, s. 29.

CHAPTER III

HUMAN RESOURCES MANAGEMENT

Development of management framework. **30.** The Conseil du trésor shall involve departments and bodies whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1) in developing the management framework applicable to them.

2000, c. 8, s. 30.

Policies. **31.** The Conseil du trésor shall establish human resources management policies for the public service that are consistent with the objectives of the Public Service Act (chapter F-3.1.1).

Human resources plans. It shall facilitate the development of human resources development plans and future human resources plans by departments and bodies.

2000, c. 8, s. 31.

Public service. **32.** As concerns the public service, the Conseil du trésor shall

(1) establish a classification of positions or position holders and the minimum conditions of eligibility for classes of positions or grades;

(2) define staffing practices to be used in filling positions;

(3) determine the remuneration, employee benefits and other conditions of employment of public servants.

Staffing level. The Conseil du trésor may, in addition, establish the staffing level of a department or body.

2000, c. 8, s. 32.

Remuneration. **33.** No remuneration may be paid to public servants over and above the regular salary attached to their position except in accordance with a decision of the Conseil du trésor.

- 2000, c. 8, s. 33.
- Public servants.** **34.** The Conseil du trésor shall establish the terms and conditions regulating
- (1) the integration of public servants into a class of positions;
 - (2) the identification, placing on reserve and assignment of tenured public servants who are surplus to the requirements of a department or body.
- 2000, c. 8, s. 34.
- Affirmative action programs.** **35.** The Conseil du trésor shall set up affirmative action programs, applicable in the public service, to remedy the situation of persons belonging to groups discriminated against in employment.
- 2000, c. 8, s. 35.
- Collective agreements.** **36.** The Conseil du trésor is responsible for negotiating collective agreements with the certified associations of employees in the public service.
- Signature.** The chair of the Conseil du trésor shall sign the collective agreements and supervise and co-ordinate their implementation.
- 2000, c. 8, s. 36.
- Personnel.** **37.** As concerns a body whose personnel is not appointed in accordance with the Public Service Act (chapter F-3.1.1), the Conseil du trésor shall exercise the powers conferred on the Government by law to define the conditions governing the determination, by the body, of the remuneration, employee benefits and other conditions of employment of its personnel. The Conseil du trésor may, in particular, provide that all or some conditions of employment determined by the body will be subject to its approval.
- Conditions.** The Conseil du trésor may impose conditions that vary from one body to another or, where appropriate, impose no conditions.
- 2000, c. 8, s. 37.
- Consultation.** **38.** The Conseil du trésor may consult associations representing personnel members not represented by a certified association concerning the conditions of employment for which it considers it appropriate to hold a consultation for the entire public and parapublic sectors.
- 2000, c. 8, s. 38.
- Group insurance plans.** **39.** The Conseil du trésor may establish group insurance plans for the personnel of the public and parapublic sectors and the bodies it designates, fix the terms and conditions applicable to them, in particular the premiums and contributions payable, and enter into agreements for that purpose.
- 2000, c. 8, s. 39.
- Powers.** **40.** The Conseil du trésor shall, after consulting the Minister of Finance, exercise the powers conferred on the Government by an

Act that establishes a pension plan applicable to personnel of the public and parapublic sectors, except

(1) the powers conferred by section 4.1, section 128 and the first paragraph of section 141 of the Act respecting the Pension Plan of Peace Officers in Correctional Services (chapter R-9.2);

(2) the powers conferred by sections 2, 144 and 158.9, the second paragraph of section 173.1 and section 177 of the Act respecting the Government and Public Employees Retirement Plan (chapter R-10);

(3) the power conferred by section 9.0.1 of the Act respecting the Teachers Pension Plan (chapter R-11);

(4) the powers conferred by the third paragraph of section 54 and section 99.1 of the Act respecting the Civil Service Superannuation Plan (chapter R-12);

(4.1) the powers conferred by section 2, subparagraph 7 of the first paragraph of section 3, section 23 and the first paragraph of section 208 of the Act respecting the Pension Plan of Management Personnel (chapter R-12.1);

(5) the power of appointment and the power to establish the conditions of employment of appointees;

(6) the power to designate the minister responsible for the administration of those Acts.

2000, c. 8, s. 40.;2001, c. 31, s. 394.

CHAPTER IV

BUDGETARY CONTROL OF CURRENT AND CAPITAL EXPENDITURES

DIVISION I

APPLICATION

Application. **41.** This chapter applies to the departments and budget-funded bodies of the Administration.

2000, c. 8, s. 41.

Provisions applicable. **42.** The provisions of this Act that relate to the current expenditures of a department or body also apply to their capital expenditures.

2000, c. 8, s. 42.

DIVISION II

EXPENDITURE PLANNING

Management of expenditures. **43.** Departments and bodies shall manage their expenditures on the basis of expected results. They are responsible for controlling their expenditures and complying with the resource envelopes allocated to them.

2000, c. 8, s. 43.

Draft estimates. **44.** The Conseil du trésor is responsible for submitting draft estimates to the Government each fiscal year. For such purpose, it shall consider the budgetary implications of the proposals of the departments and bodies.

- Preparation procedure. The Conseil du trésor shall determine the procedure for the preparation of draft estimates.
2000, c. 8, s. 44.
- Tabling of estimates. **45.** The estimates of the expenditures of departments and bodies shall be tabled in the National Assembly by the chair of the Conseil du trésor for the purpose of establishing the appropriations required during the fiscal year.
- Duration of appropriation. An appropriation may, however, cover a period of more than one year, without exceeding three years.
- Content of estimates. The estimates shall indicate the expenditures of the departments and budget-funded bodies that must be recorded in accordance with the Government's accounting policies and the extent to which the balance of an appropriation will not lapse.
- Appropriations. The Government shall determine, on the joint recommendation of the Minister of Finance and the chair of the Conseil du trésor, the proportion of the appropriations shown in the estimates that may cover more than one year, and the proportion that will not lapse.
2000, c. 8, s. 45.
- Tabling of plans. **46.** The annual expenditure management plans prepared by each minister shall be tabled in the National Assembly by the chair of the Conseil du trésor. The plans shall present, for the fiscal year concerned, the choices made with regard to the allocation of resources, and the actions envisaged to achieve the objectives stated in the strategic plan.
2000, c. 8, s. 46.
- Appropriations. **47.** The estimates shall show separately the statutory appropriations that do not require an annual vote by Parliament, the appropriations which are already or are to be authorized for a period of more than one year, and the appropriations which must be authorized annually by a vote of Parliament.
2000, c. 8, s. 47.

DIVISION III UTILIZATION OF APPROPRIATIONS

- Expenditures. **48.** The expenditures chargeable against an appropriation shall be limited according to the division of such appropriation into allotments as shown in the expenditure budget.
- Transfer of appropriation. The Conseil du trésor may, to the extent provided by law, authorize the transfer of part of an appropriation granted to a department or body to another appropriation of the department or body.
- Allotments. The Conseil du trésor may amend or subdivide an allotment. The Conseil du trésor may also, in the cases and circumstances and on the terms and conditions it determines, authorize a department or a body to transfer any portion of an appropriation between allotments or suballotments of that appropriation.

Amounts received during a fiscal year, as repayments of advances or loans granted during the same year out of an appropriation, shall be returned to the same appropriation and may be reutilized.

2000, c. 8, s. 48.

Proceeds from alienation of property. **49.** The proceeds derived from the alienation of property by a department or body shall constitute, for all purposes, an appropriation of the department or body for the fiscal year during which they are paid into the consolidated revenue fund, to the extent and according to the conditions determined by the Government.

Proceeds. The proceeds shall be added to the appropriation that would be utilized by the department or body to purchase similar property.
2000, c. 8, s. 49.

Net voted appropriation. **50.** Where the law provides that an appropriation is a net voted appropriation, the amount of the expenditures chargeable against the appropriation is equal to the total of the amount of the net voted appropriation and the amount of the estimated revenues. A net voted appropriation is the amount by which the estimated expenditures exceed the amount of the estimated revenues as shown in the estimates.

Revenues. If the revenues are less than those estimated, the amount of the expenditures chargeable against the appropriation is reduced accordingly.

Revenues. If the revenues are greater than those estimated, the amount of the expenditures chargeable to the appropriation may exceed the total amount referred to in the first paragraph up to the amount of the surplus revenues.

Nature of revenues. The Government shall determine, on the joint recommendation of the Minister of Finance and the chair of the Conseil du trésor, the nature of the revenues other than revenues from levies or taxes that may constitute revenues for the purposes of a net voted appropriation, and the terms and conditions applicable to the utilization of a net voted appropriation.

2000, c. 8, s. 50.

Unforeseen expenditure. **51.** Where the National Assembly is not in session by reason of a scheduled adjournment of at least 20 days and an unforeseen expenditure for which provision has not been made by Parliament is urgently and immediately required for the public good, the Government may, upon the report of the chair of the Conseil du trésor and of the Minister of Finance that there is no legislative provision under which payment of the unforeseen expenditure may be authorized and the report of the minister responsible that the payment is urgently required in the public interest, order a special warrant to be prepared authorizing payment of the amount it considers necessary; the warrant shall be signed by the Lieutenant-Governor and the amount shall be placed by the Minister of Finance in an account established for that purpose.

- 2000, c. 8, s. 51.
- Special warrant. **52.** A special warrant issued under section 51 shall be an appropriation for the fiscal year in which it is issued.
2000, c. 8, s. 52.
- Suspension of right. **53.** The Conseil du trésor may order the suspension, for such period as it fixes, of the right to commit any appropriation or part thereof.
2000, c. 8, s. 53.
- Transfer of personnel. **54.** Where the personnel or a position of an administrative unit or any part thereof is transferred from one department or body to another department or body, the appropriations voted for the personnel or position shall also be transferred to the department or body provided, in the case of a body, that it is a budget-funded body.
2000, c. 8, s. 54.
- Provision of service. **55.** Where a department or a body provides a service to another department or to another body, the appropriations for payment of the service may be transferred from the department or body that receives the service to the department or body that provides it, in the cases and according to the conditions determined by the Conseil du trésor.
2000, c. 8, s. 55.
- Balance of unexpended appropriation. **56.** Any balance of an appropriation granted for a fiscal year that remains unexpended once the expenditures for that fiscal year have been charged to it shall lapse, except to such extent as may be provided by law.
2000, c. 8, s. 56.
- Authorization. **57.** The Government may, by regulation, determine the cases in which the awarding of grants or other forms of financial assistance requires the authorization of the Government or the Conseil du trésor. The Government or the Conseil du trésor, as the case may be, may attach conditions to its authorization.
- Report. Where a grant or other form of financial assistance requires authorization, the recipient must report on the use of the grant or assistance unless exempted from doing so in the authorization. The report must contain the elements that may be prescribed by the minister or body providing the grant or assistance; the Conseil du trésor may also prescribe the elements that are to be included in the report. Where a grant or other form of financial assistance does not require authorization, the minister or body providing the grant or assistance may require that the recipient file a report as specified.
- Approval of capital program. The Government may determine the cases in which the capital program of a department or body that has an impact on government expenditure is subject to the approval of the Conseil du trésor.
2000, c. 8, s. 57

CHAPTER V
CONTRACT MANAGEMENT AND PHYSICAL RESOURCES
MANAGEMENT

- Regulations. **58.** The Government may, by regulation, upon the recommendation of the Conseil du trésor,
- (1) determine the terms of contracts
 - (a) entered into in the name of the Government by a minister;
 - (b) entered into by a body of the Administration;
 - (2) determine the cases in which such contracts are subject to authorization by the Government or the Conseil du trésor.
- 2000, c. 8, s. 58.
- Contracts. **59.** The terms of contracts and the cases in which they are subject to authorization pursuant to section 58 may vary in respect of all contracts, certain categories of contracts or certain contracts entered into by a minister or a body, as specified in the regulation referred to in that section.
- 2000, c. 8, s. 59.
- Contract. **60.** A minister or a body, with the authorization of the Government upon the recommendation of the Conseil du trésor in the case of a contract that is subject to authorization by the Government, or with the authorization of the Conseil du trésor in any other case, may enter into a contract whose terms differ from those applicable to it pursuant to a regulation made under section 58. In such a case, the Government or the Conseil du trésor, as the case may be, may determine the terms applicable to the contract.
- 2000, c. 8, s. 60.
- Policy. **61.** Every body referred to in paragraph 1 of section 5 of the Auditor General Act (chapter V-5.01) must adopt a policy concerning the terms of its contracts. The policy shall be filed with the Conseil du trésor and made public by the body not later than 30 days after its adoption.
- Policy. The policy referred to in the first paragraph must be consistent with the agreements on the liberalization of public procurement applicable to that body and reflect general government policy on public procurement.
- 2000, c. 8, s. 61.
- Directories. **62.** The Conseil du trésor shall establish directories listing categories of goods, categories of services, and specialities under which suppliers may be registered for the purpose of the selection of suppliers. The directories shall be published in the *Gazette officielle du Québec*.
- Registration of suppliers. Suppliers are called upon to register by way of a public notice published by the chair of the Conseil du trésor in an electronic tendering system or in the manner considered appropriate by the chair of the Conseil du trésor. The information contained in the notice shall include

- (1) the categories and specialities under which suppliers may register;
 - (2) the place where documents giving details on registration may be consulted and obtained, and where additional information may be obtained.
 - Content of documents. The documents referred to in the second paragraph must set out
 - (1) the conditions suppliers must satisfy to be registered;
 - (2) the rules relating to the preparation of lists of registered suppliers;
 - (3) the rules relating to the transmission of the names of suppliers to departments or bodies for the purpose of the awarding of contracts.

2000, c. 8, s. 62.
 - Prevailing provisions. **63.** The provisions of sections 58 to 61 prevail over any inconsistent provision of any earlier general law or special Act or of any subsequent general law or special Act unless the latter expressly states that it applies notwithstanding the said provisions.
2000, c. 8, s. 63.
- CHAPTER VI**
INFORMATION RESOURCE MANAGEMENT
- Application. **64.** This chapter applies to the Administration but not to bodies that are not budget-funded and whose personnel is not appointed in accordance with the Public Service Act (chapter F-3.1.1).
2000, c. 8, s. 64.
 - Information resources management. **65.** The information resources of the Administration shall be managed in such a way as to
 - (1) ensure that the possibilities offered by information and communications technologies are used to optimum effect in managing human, financial and physical resources;
 - (2) enhance the accessibility of and simplify the services provided to the public;
 - (3) foster concerted action between departments and bodies and the pooling of expertise and resources.

2000, c. 8, s. 65.
 - Powers. **66.** The Conseil du trésor may, as regards information resources,
 - (1) adopt rules to ensure the security of information resources, including the protection of personal information and other confidential information;
 - (2) adopt measures to ensure coherence in government actions and to allow the pooling of infrastructures or services. and determine management procedures;
 - (3) determine, after consulting the departments and bodies. the cases in which a development project must be subject to certain conditions or authorization procedures.

Departments and bodies. Departments and bodies shall manage their information resources in accordance with this section.

2000, c. 8, s. 66.

CHAPTER VII CONSEIL DU TRÉSOR

DIVISION I

CONTINUANCE OF THE CONSEIL DU TRÉSOR

Continuance. **67.** The Conseil du trésor shall be continued under this Act.
2000, c. 8, s. 67.

Composition. **68.** The Conseil du trésor shall be composed of a chair and of four other ministers designated by the Government.

Vice-chair and substitutes. The Government may designate, from among the members of the Conseil du trésor, a vice-chair to preside at sittings if the chair is absent or unable to act, and designate ministers to act as substitutes for the other members.
2000, c. 8, s. 68.

Quorum. **69.** Three members of the Conseil du trésor constitute a quorum.
2000, c. 8, s. 69.

DIVISION II

FUNCTIONS

Functions and powers. **70.** The Conseil du trésor shall exercise the functions and powers conferred upon it by this Act or another Act or by the Government.

Exercise of functions. In the exercise of its functions, the Conseil du trésor shall endeavour to adapt the management framework to the situation of each department and body while taking the necessary actions to ensure compliance with the Government's budget policy.
2000, c. 8, s. 70.

Advisory function. **71.** The Conseil du trésor shall advise the Government on the utilization of resources. It shall also advise the Government on the impacts which the strategic plans of the departments and bodies will have on resource allocation and management and, upon the Government's request, on any other project of a department or body.
2000, c. 8, s. 71.

Guidelines. **72.** The Conseil du trésor may determine guidelines concerning the principles or practices to be preferred with regard to the management of human, financial, physical and information resources.

Guidelines. Such guidelines shall serve as management references for the departments and the bodies concerned.

Guidelines. In addition, guidelines may be determined to assist a department or a body in achieving specific objectives.
2000, c. 8, s. 72.

Rules and accounting policies. **73.** The Conseil du trésor shall adopt the accounting policies to be followed by departments and budget-funded bodies, the rules respecting payments made out of the consolidated revenue fund and the rules respecting the collection and administration of State revenue. The Conseil du trésor may also determine the accounting policies applicable to other bodies of the Administration it designates.

2000, c. 8, s. 73.

Directive on management of resources. **74.** In addition to exercising the powers conferred upon it by this Act, the Conseil du trésor may, where it considers a matter to be of governmental import, prepare a directive on the management of human, financial, physical or information resources in the departments or bodies of the Administration concerned.

Approval. Such a directive requires the approval of the Government and is applicable from the date fixed therein. Once approved, the directive is binding on the departments and bodies concerned.

2000, c. 8, s. 74.

Control mechanisms. **75.** The Conseil du trésor may, where warranted by the circumstances, establish control mechanisms to verify compliance with this Act and the achievement of its objectives.

Establishment of programs or studies. In particular, the Conseil du trésor may require a department or body of the Administration to establish an evaluation program, an internal audit program or a comparative cost study.

2000, c. 8, s. 75.

DIVISION III CHAIR

Chair. **76.** The chair shall preside at sittings of the Conseil du trésor. The chair shall see that the decisions of the Conseil du trésor are implemented.

Functions and powers. The chair shall exercise the functions and powers conferred on the chair by this Act or another Act and assume any other responsibility entrusted by the Government.

2000, c. 8, s. 76.

Functions. **77.** More specifically, the chair of the Conseil du trésor shall

- (1) perform the analyses required for the preparation of the estimates and ensure, together with the Minister of Finance, that the estimates are consistent with the Government's budget policy;
- (2) monitor the expenditure budget and report to the Conseil du trésor;
- (3) collect information from departments on the budgets of bodies of the Administration other than budget-funded bodies and bodies determined by the chair, and monitor their budgetary results as compared to their estimated results, where the information is required to determine the consolidated expenditure of the Government;
- (4) assist departments and bodies in developing indicators or

other management tools to facilitate results-based management;

(5) coordinate and monitor negotiations relating to the determination of the conditions of employment in the public and parapublic sectors, and ensure that the financial commitments resulting from the renewal of collective agreements do not exceed the level fixed jointly with the Minister of Finance;

(6) ensure that capital expenditures are consistent with the policies and guidelines determined jointly with the Minister of Finance;

(7) establish interdepartmental coordination mechanisms with regard to information resources and facilitate partnership projects in that regard;

(8) see to the implementation of the government information highway policy;

(9) propose to the Government a general public procurement policy and coordinate its implementation;

(10) coordinate the implementation of agreements on the liberalization of public procurement entered into by Québec;

(11) at their request, assist departments and bodies in establishing their strategic plans;

(12) support departments and bodies in the implementation of government guidelines with regard to human, financial, physical and information resources.

2000, c. 8, s. 77.

Information. **78.** Departments and bodies of the Administration must provide, at the request of the chair of the Conseil du trésor, any information relevant to the exercise of the functions of the chair or of the Conseil du trésor.

Documents. The chair of the Conseil du trésor may also require, for the same purposes, the preparation of documents.

Applicability. This section applies to every other public body where the information is required for the preparation of estimates and the monitoring of the expenditure budget.

2000, c. 8, s. 78.

Agreements. **79.** The chair of the Conseil du trésor may, as provided by law, enter into an agreement with a government other than the Government of Québec, a department of such a government, an international organization, or a body of such a government or organization.

2000, c. 8, s. 79.

Agreements. **80.** The chair of the Conseil du trésor may also enter into an agreement with any person, association, partnership or body concerning any matter coming under the chair's authority.

2000, c. 8, s. 80.

DIVISION IV **SECRETARIAT OF THE CONSEIL DU TRÉSOR**

- Direction. **81.** The secretariat of the Conseil du trésor is under the direction of the chair.
2000, c. 8, s. 81.
- Duties. **82.** The secretariat shall provide support for the activities of the Conseil du trésor and assist the chair in the exercise of the functions of the chair.
- Presumption. The secretariat of the Conseil du trésor is, for the purposes of the law, considered to be a department.
2000, c. 8, s. 82.
- Secretary. **83.** The Government shall appoint a person as secretary of the Conseil du trésor in accordance with the Public Service Act (chapter F-3.1.1).
- Powers. The secretary shall exercise as regards the personnel of the secretariat such powers as the Public Service Act confers upon a deputy minister.
2000, c. 8, s. 83.
- Function. **84.** Under the direction of the chair of the Conseil du trésor, the secretary shall administer the secretariat.
- Other functions. The secretary shall, in addition, exercise any other function assigned to the secretary by the Government, the Conseil du trésor or the chair.
2000, c. 8, s. 84.
- Authority. **85.** The secretary has, in the exercise of the functions of secretary, the authority of the chair except with regard to the sittings of the Conseil du trésor.
2000, c. 8, s. 85.
- Delegation of functions. **86.** The secretary may delegate, in writing and to the extent indicated, the exercise of the functions of secretary to a public servant or to the holder of a position.
- Subdelegation of functions. The secretary may, in the instrument of delegation, authorize the subdelegation of the functions indicated, and, in such a case, the secretary shall identify the public servant or holder of a position to whom they may be subdelegated.
2000, c. 8, s. 86.
- Personnel. **87.** The personnel of the secretariat is made up of the public servants necessary for the exercise of the functions of the Conseil du trésor or the chair; the public servants are appointed in accordance with the Public Service Act (chapter F-3.1.1).
- Duties of public servants. The chair of the Conseil du trésor shall determine the duties of the public servants insofar as they are not determined by law or by the Government.
2000, c. 8, s. 87.
- Signature. **88.** The signature of the chair, the secretary or the clerk gives authority to any document emanating from the Conseil du trésor or

from the secretariat.

- Signature.** An act, document or writing is binding on or may be attributed to the chair of the Conseil du trésor only if it is signed by the chair, the secretary, the clerk, a member of the personnel of the secretariat or the holder of a position, and in the latter two cases, only to the extent determined by the Government.
2000, c. 8, s. 88.
- Signature.** 89. The Government may, on the conditions it fixes, allow a signature to be affixed by means of an automatic device or electronic process.
- Facsimile.** The Government may also allow a facsimile of the signature to be engraved, lithographed or printed. The facsimile must be authenticated by the countersignature of a person authorized by the chair of the Conseil du trésor.
2000, c. 8, s. 89.
- Authenticity.** 90. A document or copy of a document forming part of the records of the Conseil du trésor or the secretariat is authentic if it is signed or certified by a person referred to in the second paragraph of section 88.
2000, c. 8, s. 90.
- Transcription.** 91. An intelligible transcription of a decision or other data stored by the secretariat on a computer or on any other data storage medium is a document of the secretariat and is proof of its contents where certified by a person referred to in the second paragraph of section 88.
2000, c. 8, s. 91.

CHAPTER VIII AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

- 92.** *(Inoperative, 2000, c. 15, s. 166).*
2000, c. 8, s. 92.
- 93.** *(Omitted).*
2000, c. 8, s. 93.
- 94.** *(Amendment integrated into c. A-6, heading of Division V).*
2000, c. 8, s. 94.
- 95.** *(Inoperative, 2000, c. 15, s. 166).*
2000, c. 8, s. 95.
- 96.** *(Inoperative, 2000, c. 15, s. 166).*
2000, c. 8, s. 96.
- 97.** *(Inoperative, 2000, c. 15, s. 166).*
2000, c. 8, s. 97.

98. *(Inoperative, 2000, c. 15, s. 166)*
2000, c. 8, s. 98.

ACT RESPECTING THE AGENCE MÉTROPOLITAINE DE TRANSPORT

99. *(Amendment integrated into c. A-7.02, s. 13).*
2000, c. 8, s. 99.

ACT RESPECTING ASSISTANCE FOR VICTIMS OF CRIME

100. *(Amendment integrated into c. A-13.2, s. 19).*
2000, c. 8, s. 100.

LEGAL AID ACT

101. *(Amendment integrated into c. A-14, s. 80).*
2000, c. 8, s. 101.

102. *(Amendment integrated into c. A-14, s. 80.1).*
2000, c. 8, s. 102.

ACT RESPECTING THE NATIONAL ASSEMBLY

103. *(Amendment integrated into c. A-23.1, s. 110.2).*
2000, c. 8, s. 103.

BUILDING ACT

104. *(Amendment integrated into c. B-1.1, s. 65.4).*
2000, c. 8, s. 104.;2000, c. 8, s. 104.

ACT RESPECTING THE BIBLIOTHÈQUE NATIONALE DU QUÉBEC

105. *(Omitted).*
2000, c. 8, s. 105.

ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

106. *(Amendment integrated into c. C-2, s. 13).*
2000, c. 8, s. 106.

107. *(Amendment integrated into c. C-2, s. 15).*
2000, c. 8, s. 107.

CHARTER OF HUMAN RIGHTS AND FREEDOMS

108. (*Amendment integrated into c. C-12, s. 62*).
2000, c. 8, s. 108.

CODE OF PENAL PROCEDURE

109. (*Amendment integrated into c. C-25.1, a. 340*).
2000, c. 8, s. 109.;2000, c. 8, s. 109.

LABOUR CODE

110. (*Amendment integrated into c. C-27, s. 111.0.13*).
2000, c. 8, s. 110.

GENERAL AND VOCATIONAL COLLEGES ACT

111. (*Amendment integrated into c. C-29, s. 18.1*).
2000, c. 8, s. 111.

ACT RESPECTING THE COMMISSION DE DÉVELOPPEMENT DE LA
MÉTROPOLE

112. (*Inoperative, 2000, c. 56, s. 226*).
2000, c. 8, s. 112.

ACT RESPECTING THE NATIONAL CAPITAL COMMISSION

113. (*Amendment integrated into c. C-33.1, s. 13*).
2000, c. 8, s. 113.

ACT RESPECTING THE CONSEIL DES ARTS ET DES LETTRES DU
QUÉBEC

114. (*Amendment integrated into c. C-57.02, s. 13*).
2000, c. 8, s. 114.

ACT RESPECTING THE CONSERVATION AND DEVELOPMENT OF
WILDLIFE

115. (*Amendment integrated into c. C-61.1, s. 141*).
2000, c. 8, s. 115.

ACT RESPECTING THE CONSERVATOIRE DE MUSIQUE ET D'ART
DRAMATIQUE DU QUÉBEC

116. *(Amendment integrated into c. C-62.1, s. 28)*
2000, c. 8, s. 116.

117. *(Amendment integrated into c. C-62.1, s. 29).*
2000, c. 8, s. 117.

118. *(Omitted).*
2000, c. 8, s. 118.

REAL ESTATE BROKERAGE ACT

119. *(Amendment integrated into c. C-73.1, s. 51).*
2000, c. 8, s. 119.

ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS
AND SERVICES

120. *(Amendment integrated into c. D-9.2, s. 160)*
2000, c. 8, s. 120.;2000, c. 8, s. 120.

ELECTION ACT

121. *(Amendment integrated into c. E-3.3, ss. 488.1-488.2).*
2000, c. 8, s. 121.;2000, c. 8, s. 121.

122. *(Amendment integrated into c. E-3.3, s. 540.1).*
2000, c. 8, s. 122.

PUBLIC OFFICERS ACT

123. *(Omitted).*
2000, c. 8, s. 123.;2000, c. 8, s. 123.

PAY EQUITY ACT

124. *(Amendment integrated into c. E-12.001, s. 3).*
2000, c. 8, s. 124.

PUBLIC SERVICE ACT

125. *(Amendment integrated into c. F-3.1.1, s. 3)*
2000, c. 8, s. 125.;2000, c. 8, s. 125

126. *(Amendment integrated into c. F-3.1.1, s. 35)*
2000, c. 8, s. 126.
127. *(Amendment integrated into c. F-3.1.1, s. 36)*
2000, c. 8, s. 127.
128. *(Amendment integrated into c. F-3.1.1, s. 39)*
2000, c. 8, s. 128.
129. *(Amendment integrated into c. F-3.1.1, s. 42)*
2000, c. 8, s. 129.
130. *(Amendment integrated into c. F-3.1.1, s. 44)*
2000, c. 8, s. 130.
131. *(Amendment integrated into c. F-3.1.1, s. 47)*
2000, c. 8, s. 131.
132. *(Amendment integrated into c. F-3.1.1, s. 48)*
2000, c. 8, s. 132.
133. *(Amendment integrated into c. F-3.1.1, s. 49.1)*
2000, c. 8, s. 133.
134. *(Amendment integrated into c. F-3.1.1, s. 50)*
2000, c. 8, s. 134.
135. *(Amendment integrated into c. F-3.1.1, s. 50.1)*
2000, c. 8, s. 135.
136. *(Amendment integrated into c. F-3.1.1, s. 53.0.1)*
2000, c. 8, s. 136.
137. *(Amendment integrated into c. F-3.1.1, s. 54)*
2000, c. 8, s. 137.
138. *(Amendment integrated into c. F-3.1.1, s. 63)*
2000, c. 8, s. 138.
139. *(Amendment integrated into c. F-3.1.1, s. 70)*
2000, c. 8, s. 139.
140. *(Omitted)*
2000, c. 8, s. 140.
141. *(Amendment integrated into c. F-3.1.1, s. 102)*
2000, c. 8, s. 141.
142. *(Amendment integrated into c. F-3.1.1, s. 115)*
2000, c. 8, s. 142.
143. *(Amendment integrated into c. F-3.1.1, s. 121)*
2000, c. 8, s. 143.
144. *(Amendment integrated into c. F-3.1.1, s. 122)*
2000, c. 8, s. 144.

145. *(Amendment integrated into c. F-3 1.1, s. 123 1)*
2000, c. 8, s. 145.

146. *(Amendment integrated into c. F-3.1.1, s. 127)*
2000, c. 8, s. 146.

ACT TO ESTABLISH A FUND TO COMBAT POVERTY THROUGH
REINTEGRATION INTO THE LABOUR MARKET

147. *(Amendment integrated into c. F-3.2.0.3, s. 8).*
2000, c. 8, s. 147.

ACT TO ESTABLISH THE SPECIAL LOCAL ACTIVITIES FINANCING
FUND

148. *(Amendment integrated into c. F-4.01, s. 16).*
2000, c. 8, s. 148.

FOREST ACT

149. *(Amendment integrated into c. F-4.1, s. 170.9).*
2000, c. 8, s. 149.

ACT TO ESTABLISH THE GRANDE BIBLIOTHÈQUE DU QUÉBEC

150. *(Amendment integrated into c. G-3, s. 11).*
2000, c. 8, s. 150.

ACT RESPECTING HÉMA-QUÉBEC AND THE HAEMOVIGILANCE
COMMITTEE

151. *(Amendment integrated into c. H-1.1, s. 19).*
2000, c. 8, s. 151.

TAXATION ACT

152. *(Amendment integrated into c. I-3, s. 1)*
2000, c. 8, s. 152.

ACT RESPECTING THE ACCOUNTABILITY OF DEPUTY MINISTERS
AND CHIEF EXECUTIVE OFFICERS OF PUBLIC BODIES

153. *(Omitted).*
2000, c. 8, s. 153.

ACT RESPECTING INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC

154. (*Amendment integrated into c. I-13.1.1, s. 19*)
2000, c. 8, s. 154.

EDUCATION ACT

155. (*Amendment integrated into c. I-13.3, s. 451*).
2000, c. 8, s. 155.

ACT RESPECTING INVESTISSEMENT QUÉBEC AND GARANTIE QUÉBEC

156. (*Amendment integrated into c. I-16.1, s. 23*).
2000, c. 8, s. 156.

STATIONARY ENGINEMEN ACT

157. (*Amendment integrated into c. M-6, s. 3*).
2000, c. 8, s. 157.

ACT RESPECTING THE MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION

158. (*Amendment integrated into c. M-14, s. 21.10*).
2000, c. 8, s. 158.

ACT RESPECTING THE MINISTÈRE DE L'ÉDUCATION

159. (*Amendment integrated into c. M-15, s. 13.8*).
2000, c. 8, s. 159.

ACT RESPECTING THE MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ AND ESTABLISHING THE COMMISSION DES PARTENAIRES DU MARCHÉ DU TRAVAIL

160. (*Amendment integrated into c. M-15.001, s. 66*).
2000, c. 8, s. 160.

ACT RESPECTING THE MINISTÈRE DE L'INDUSTRIE ET DU COMMERCE

161. (*Amendment integrated into c. M-17, s. 17.10*).
2000, c. 8, s. 161.

ACT RESPECTING THE MINISTÈRE DE LA JUSTICE

162. (*Amendment integrated into c. M-19, s. 11.1*).
2000, c. 8, s. 162.

163. (*Amendment integrated into c. M-19, s. 32.9*).
2000, c. 8, s. 163.

ACT RESPECTING THE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

164. (*Amendment integrated into c. M-19.3, s. 14.9*).
2000, c. 8, s. 164.

ACT RESPECTING THE MINISTÈRE DES RÉGIONS

165. (*Amendment integrated into c. M-25.001, s. 32*).
2000, c. 8, s. 165.

ACT RESPECTING THE MINISTÈRE DES RELATIONS AVEC LES
CITOYENS ET DE L'IMMIGRATION

166. (*Amendment integrated into c. M-25.01, s. 25*).
2000, c. 8, s. 166.

ACT RESPECTING THE MINISTÈRE DES RELATIONS
INTERNATIONALES

167. (*Amendment integrated into c. M-25.1.1, s. 35.8*).
2000, c. 8, s. 167.

ACT RESPECTING THE MINISTÈRE DES RESSOURCES NATURELLES

168. (*Amendment integrated into c. M-25.2, s. 17.8*).
2000, c. 8, s. 168.

ACT RESPECTING THE MINISTÈRE DES TRANSPORTS

169. (*Amendment integrated into c. M-28, s. 12.27*).
2000, c. 8, s. 169.

170. (*Amendment integrated into c. M-28, s. 12.37*).
2000, c. 8, s. 170.

ACT RESPECTING THE MINISTÈRE DU CONSEIL EXECUTIF

171. (*Amendment integrated into c. M-30, s. 338*).
2000, c. 8, s. 171.

ACT RESPECTING THE MINISTÈRE DU REVENU

172. (*Amendment integrated into c. M-31, s. 71.0.11*).
2000, c. 8, s. 172.

173. (*Amendment integrated into c. M-31, s. 97.9*).
2000, c. 8, s. 173.

NATIONAL MUSEUMS ACT

174. (*Amendment integrated into c. M-44, s. 19*).
2000, c. 8, s. 174.;2000, c. 8, s. 174.

175. (*Amendment integrated into c. M-44, s. 27*).
2000, c. 8, s. 175.

176. (*Amendment integrated into c. M-44, s. 32*).
2000, c. 8, s. 176.

ACT RESPECTING POLICE ORGANIZATION

177. (*Inoperative, 2000, c. 12, s. 353*).
2000, c. 8, s. 177.

ACT TO FACILITATE THE PAYMENT OF SUPPORT

178. (*Amendment integrated into c. P-2.2, s. 44*).
2000, c. 8, s. 178.

PUBLIC PROTECTOR ACT

179. (*Amendment integrated into c. P-32, s. 15*).
2000, c. 8, s. 179.

180. (*Amendment integrated into c. P-32, ss. 35.1-35.2*).
2000, c. 8, s. 180.

ACT TO PROMOTE THE REFORM OF THE CADASTRE IN QUÉBEC

181. (*Amendment integrated into c. R-3 l, s. 2.1*).
2000, c. 8, s. 181.

ACT RESPECTING THE RÉGIE DE L'ASSURANCE MALADIE DU
QUÉBEC

182. *(Amendment integrated into c. R-5, s. 39).*
2000, c. 8, s. 182.

ACT RESPECTING THE RÉGIE DE L'ÉNERGIE

183. *(Amendment integrated into c. R-6.01, s. 13).*
2000, c. 8, s. 183.

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING
AND MANPOWER MANAGEMENT IN THE CONSTRUCTION
INDUSTRY

184. *(Amendment integrated into c. R-20, s. 4.1).*
2000, c. 8, s. 184.

185. *(Amendment integrated into c. R-20, s. 5).*
2000, c. 8, s. 185.

ACT RESPECTING THE SALARIES OF OFFICERS OF JUSTICE

186. *(Amendment integrated into c. S-2, s. 2).*
2000, c. 8, s. 186.

ACT RESPECTING INCOME SECURITY FOR CREE HUNTERS AND
TRAPPERS WHO ARE BENEFICIARIES UNDER THE AGREEMENT
CONCERNING JAMES BAY AND NORTHERN QUÉBEC

187. *(Amendment integrated into c. S-3.2, s. 26).*
2000, c. 8, s. 187.

ACT RESPECTING CORRECTIONAL SERVICES

188. *(Amendment integrated into c. S-4.01, s. 19.7).*
2000, c. 8, s. 188.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

189. *(Amendment integrated into c. S-4.2, s. 487.2).*
2000, c. 8, s. 189.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES FOR
CREE NATIVE PERSONS

190. *(Amendment integrated into c. S-5, s. 149 15).*
2000, c. 8, s. 190.

ACT RESPECTING GOVERNMENT SERVICES TO DEPARTMENTS AND
PUBLIC BODIES

191. *(Amendment integrated into c. S-6.1, s. 19).*
2000, c. 8, s. 191.

ACT RESPECTING THE SOCIÉTÉ D'HABITATION DU QUÉBEC

192. *(Amendment integrated into c. S-8, s. 3.5).*
2000, c. 8, s. 192.

ACT RESPECTING THE SOCIÉTÉ DE DÉVELOPPEMENT DES
ENTREPRISES CULTURELLES

193. *(Amendment integrated into c. S-10.002, s. 13).*
2000, c. 8, s. 193.

ACT RESPECTING THE SOCIÉTÉ DE LA PLACE DES ARTS DE
MONTRÉAL

194. *(Amendment integrated into c. S-11.03, s. 16).*
2000, c. 8, s. 194.

195. *(Amendment integrated into c. S-11.03, s. 21).*
2000, c. 8, s. 195.

ACT RESPECTING THE SOCIÉTÉ DE TÉLÉDIFFUSION DU QUÉBEC

196. *(Amendment integrated into c. S-12.01, s. 13).*
2000, c. 8, s. 196.

ACT RESPECTING THE SOCIÉTÉ DES ALCOOLS DU QUÉBEC

197. *(Amendment integrated into c. S-13, s. 14).*
2000, c. 8, s. 197.

ACT RESPECTING THE SOCIÉTÉ DES ÉTABLISSEMENTS DE PLEIN
AIR DU QUÉBEC

198. *(Amendment integrated into c. S-13.01, s. 14).*
2000, c. 8, s. 198.

199. *(Amendment integrated into c. S-13.01, s. 15).*
2000, c. 8, s. 199.

ACT RESPECTING THE SOCIÉTÉ DES LOTERIES DU QUÉBEC

200. *(Amendment integrated into c. S-13.1, s. 15).*
2000, c. 8, s. 200.

ACT RESPECTING THE SOCIÉTÉ DES TRAVERSIERS DU QUÉBEC

201. *(Amendment integrated into c. S-14, s. 16).*
2000, c. 8, s. 201.

ACT RESPECTING THE SOCIÉTÉ DU CENTRE DES CONGRÈS DE
QUÉBEC

202. *(Amendment integrated into c. S-14.001, s. 14).*
2000, c. 8, s. 202.

ACT RESPECTING THE SOCIÉTÉ DU GRAND THÉÂTRE DE QUÉBEC

203. *(Amendment integrated into c. S-14.01, s. 16).*
2000, c. 8, s. 203.

204. *(Amendment integrated into c. S-14.01, s. 21).*
2000, c. 8, s. 204.

ACT RESPECTING THE SOCIÉTÉ DU PALAIS DES CONGRÈS DE
MONTRÉAL

205. *(Amendment integrated into c. S-14.1, s. 14).*
2000, c. 8, s. 205.

206. *(Amendment integrated into c. S-14.1, s. 16).*
2000, c. 8, s. 206.

ACT RESPECTING THE SOCIÉTÉ DU PARC INDUSTRIEL ET
PORTUAIRE DE BÉCANCOUR

207. *(Amendment integrated into c. S-16.001, s. 17).*
2000, c. 8, s. 207.

ACT RESPECTING THE SOCIÉTÉ IMMOBILIÈRE DU QUÉBEC

208. *(Amendment integrated into c. S-17.1, s. 14).*

2000, c. 8, s. 208.

209. (*Amendment integrated into c. S-17.1, s. 15*).

2000, c. 8, s. 209.

ACT RESPECTING SOCIÉTÉ INNOVATECH DU GRAND MONTRÉAL

210. (*Amendment integrated into c. S-17.2.0.1, s. 18*).

2000, c. 8, s. 210.

ACT RESPECTING SOCIÉTÉ INNOVATECH DU SUD DU QUÉBEC

211. (*Amendment integrated into c. S-17.2.2, s. 18*).

2000, c. 8, s. 211.

ACT RESPECTING SOCIÉTÉ INNOVATECH QUÉBEC ET CHAUDIÈRE-
APPALACHES

212. (*Amendment integrated into c. S-17.4, s. 18*).

2000, c. 8, s. 212.

ACT RESPECTING SOCIÉTÉ INNOVATECH RÉGIONS RESSOURCES

213. (*Amendment integrated into c. S-17.5, s. 18*).

2000, c. 8, s. 213.

ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE D'ASSAINISSEMENT
DES EAUX

214. (*Amendment integrated into c. S-18.2.1, s. 15*).

2000, c. 8, s. 214.

215. (*Amendment integrated into c. S-18.2.1, s. 16*).

2000, c. 8, s. 215.

ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE D'INFORMATION
JURIDIQUE

216. (*Amendment integrated into c. S-20, s. 9*).

2000, c. 8, s. 216.

ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE DE RÉCUPÉRATION ET
DE RECYCLAGE

217. (*Amendment integrated into c. S-22.01, s. 13*).

2000, c. 8, s. 217.

218. *(Amendment integrated into c. S-22.01, s. 17).*
2000, c. 8, s. 218.

ACT RESPECTING INCOME SUPPORT, EMPLOYMENT ASSISTANCE
AND SOCIAL SOLIDARITY

219. *(Amendment integrated into c. S-32.001, s. 8).*
2000, c. 8, s. 219.

ACT RESPECTING THE PROFESSIONAL STATUS AND CONDITIONS
OF ENGAGEMENT OF PERFORMING, RECORDING AND FILM
ARTISTS

220. *(Amendment integrated into c. S-32.1, s. 46).*
2000, c. 8, s. 220.

COURTS OF JUSTICE ACT

221. *(Omitted).*
2000, c. 8, s. 221.

222. *(Amendment integrated into c. T-16, s. 246.37).*
2000, c. 8, s. 222.

SECURITIES ACT

223. *(Amendment integrated into c. V-1.1, s. 299).*
2000, c. 8, s. 223.

AUDITOR GENERAL ACT

224. *(Amendment integrated into c. V-5.01, s. 58).*
2000, c. 8, s. 224.

225. *(Amendment integrated into c. V-5.01, s. 61).*
2000, c. 8, s. 225.

226. *(Amendment integrated into c. V-5.01, s. 64).*
2000, c. 8, s. 226.

227. *(Amendment integrated into c. V-5.01, s. 67).*
2000, c. 8, s. 227.

ACT RESPECTING ASSISTANCE AND COMPENSATION FOR VICTIMS
OF CRIME

228. *(Omitted).*

2000, c. 8, s. 228.

ACT RESPECTING THE SOCIÉTÉ DE TOURISME DU QUÉBEC

229. *(Omitted).*

2000, c. 8, s. 229.

230. *(Omitted).*

2000, c. 8, s. 230.

231. *(Omitted).*

2000, c. 8, s. 231.

ACT RESPECTING THE MINISTÈRE DE LA RECHERCHE, DE LA
SCIENCE ET DE LA TECHNOLOGIE

232. *(Amendment integrated into c. M-19.1.2, s. 15.30).*

2000, c. 8, s. 232.

ACT RESPECTING FINANCEMENT-QUÉBEC

233. *(Amendment integrated into c. F-2.01, s. 27).*

2000, c. 8, s. 233.

ACT RESPECTING THE BUREAU D'ACCREDITATION DES PÊCHEURS
ET DES AIDES-PÊCHEURS DU QUÉBEC

234. *(Amendment integrated into c. B-7.1, s. 11).*

2000, c. 8, s. 234.

ACT RESPECTING THE CORPORATION D'HÉBERGEMENT DU
QUÉBEC

235. *(Amendment integrated into c. C-68.1, s. 27).*

2000, c. 8, s. 235.

236. *(Amendment integrated into c. C-68.1, s. 29).*

2000, c. 8, s. 236.

ACT RESPECTING THE SOCIÉTÉ DE DÉVELOPPEMENT DE LA ZONE
DE COMMERCE INTERNATIONAL DE MONTRÉAL À MIRABEL

237. *(Amendment integrated into c. S-10.0001, s. 35).*

2000, c. 8, s. 237.

ACT RESPECTING INTERNATIONAL FINANCIAL CENTRES

238. (*Amendment integrated into c C-8.3. s 46*)
2000, c. 8, s. 238.

OTHER AMENDMENTS

Words replaced. **239.** The words “aux prévisions budgétaires déposées”, “les prévisions budgétaires déposées”, “les prévisions budgétaires soumises” and “les prévisions budgétaires” are replaced, respectively, by “au budget de dépenses déposé”, “le budget de dépenses déposé”, “le budget de dépenses soumis” and “le budget de dépenses” in the French text of the following provisions:

- (1) (*amendment integrated into c. A-2.1, s. 6*);
- (2) (*amendment integrated into c. A-3.01, s. 2*);
- (3) (*inoperative, 2000, c. 15, s. 166*);
- (4) (*amendment integrated into c. A-21.1, Schedule*);
- (5) (*amendment integrated into c. C-2, s. 20.4*);
- (6) (*amendment integrated into c. M-30, s. 3 0 4*);
- (7) (*amendment integrated into c. N-1.1, s. 39.0.1*);
- (8) (*amendment integrated into c. V-5.01, s. 4*).

2000, c. 8, s. 239.

References. **240.** References to the Financial Administration Act (chapter A-6) are replaced by references to the Public Administration Act (chapter A-6.01) wherever they occur in the following provisions:

- (1) (*amendment integrated into c. C-19, s. 29.9.2*);
- (2) (*amendment integrated into c. C-27.1, a. 14.7.2*);
- (3) (*amendment integrated into c. M-28, ss. 10 2, 11.5*);
- (4) (*inoperative, 2000, c. 7, s. 6*);
- (5) (*inoperative, 2000, c. 7, s. 15*).

2000, c. 8, s. 240.

Words replaced. **241.** The word “Government” is replaced by the words “Conseil du trésor” wherever it occurs in the following provisions:

- (1) (*amendment integrated into c. A-28, s. 3*);
- (2) (*amendment integrated into c. A-29, ss. 19, 19.1*);
- (3) (*amendment integrated into c. S-4.2, s. 432*).

2000, c. 8, s. 241.

242. (*Omitted*).

2000, c. 8, s. 242.

CHAPTER IX

TRANSITIONAL AND FINAL PROVISIONS

Presumption. **243.** Regulations made under sections 25, 49, 49.1, 49 3.2 and 49.6 of the Financial Administration Act (chapter A-6) are deemed to be regulations made under this Act.

2000, c. 8, s. 243.

- Presumption. **244.** A policy adopted under section 49.4 of the Financial Administration Act (chapter A-6) is deemed to be a policy adopted under section 61 of this Act.
2000, c. 8, s. 244.
- Presumption **245.** The directory of specialities established pursuant to section 49.5.1 of the Financial Administration Act (chapter A-6) is deemed to be established pursuant to section 62 of this Act.
2000, c. 8, s. 245.
- Registration of supplier. **246.** Every supplier registered under a specialty in a directory established pursuant to section 49.5.1 of the Financial Administration Act (chapter A-6), on the date preceding the date of coming into force of the first regulation concerning supply, construction and service contracts made under section 58 of this Act, shall be registered, on the date of coming into force of that regulation, pursuant to section 62 of this Act if the directories established thereunder contain the specialty concerned. The supplier is deemed to have accepted all the rules and conditions set out in the documents relating to registration, as described in the second paragraph of the said section. The supplier shall remain registered under that specialty until the supplier's registration is struck off or cancelled pursuant to this Act.
- Proceedings. Proceedings to strike off or cancel registration that began before the date of coming into force of the first regulation concerning supply, construction and service contracts made under section 58 of this Act shall be continued pursuant to the regulations made under the Financial Administration Act.
- Prohibition. No supplier to whom a sanction has been applied pursuant to the regulations made under the Financial Administration Act may register pursuant to section 62 of this Act under the specialty concerned by the sanction during the period during which the supplier would have been disqualified from re-registering pursuant to section 49.5.1 of the Financial Administration Act.
2000, c. 8, s. 246.
- Presumption. **247.** The regulations respecting the contracts made or entered into by the chief electoral officer, the Commission de la représentation, the Public Protector and the Auditor General are deemed to have been made, respectively, pursuant to section 488.1 and section 539.1 of the Election Act (chapter E-3.3), section 35.2 of the Public Protector Act (chapter P-32) and section 61 of the Auditor General Act (chapter V-5.01).
2000, c. 8, s. 247.
- Time limit not applicable. **248.** The new time limit under section 35 of the Public Service Act (chapter F-3.1.1) does not apply to a period of time that began before 1 October 2000.
2000, c. 8, s. 248.
- Matters pending. **249.** Matters pending before an appeals committee on 1 October 2000 shall be continued and decided by the Commission de la

- fonction publique in accordance with section 127 of the Public Service Act (chapter F-3.1.1).
- Hearing commenced. However, matters for which a hearing has commenced before that date shall be continued by the appeals committee to which they have been referred.
2000, c. 8, s. 249.
- Presumption. **250.** All directives, policies and other decisions made by the Conseil du trésor or by the chairman of the Conseil du trésor under a repealed provision of the Financial Administration Act (chapter A-6) or the Public Service Act (chapter F-3.1.1) are deemed to be directives, policies and decisions made under this Act.
2000, c. 8, s. 250.
- Reference. **251.** In every regulation, order or other document, a reference to a provision of the Public Service Act (chapter F-3.1.1) or the Financial Administration Act (chapter A-6) is, where applicable, a reference to the corresponding provision of the Public Administration Act (chapter A-6.01).
2000, c. 8, s. 251.
- Administration of the Act. **252.** The chair of the Conseil du trésor is responsible for the administration of this Act.
2000, c. 8, s. 252.
- Report. **253.** The chair of the Conseil du trésor must, not later than 1 October 2005 report to the Government on the carrying out of this Act and on the advisability of amending it.
- Tabling. The report shall be tabled within 30 days in the National Assembly or, if the Assembly is not in session, within 30 days of resumption. The competent committee of the National Assembly shall examine the report.
2000, c. 8, s. 253.
- First strategic plan. **254.** The first strategic plan of a department or body to which Chapter II applies must be laid before the National Assembly before 1 April 2001. The period covered by the plan may include a period prior to 30 May 2000.
2000, c. 8, s. 254.
- 255.** *(Omitted).*
2000, c. 8, s. 255.

REPEAL SCHEDULE

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 8 of the statutes of 2000, in force on 1 April 2001, is repealed, except sections 228 to 231, 242 and 255, effective from the coming into force of chapter A-6.01 of the Revised Statutes.

Chapter F-3.1.1

PUBLIC SERVICE ACT

CHAPTER I

APPLICATION AND OBJECT OF THE ACT

DIVISION I

APPLICATION

- Application. 1. This Act applies to persons appointed thereunder.
- Presumption. Persons admitted to the public service under a former Act are deemed to have been appointed under this Act.
- Public servant. Every person contemplated in this section is a public servant.

1983, c. 55, s. 1.

DIVISION II

OBJECT OF THE ACT

- Role of the public service. 2. The role of the public service is to provide the public with the services of quality to which it is entitled, implement the policies formulated by constituted authority and ensure the attainment of the other objectives of the state.

1983, c. 55, s. 2.

- Object of the Act. 3. The object of this Act is to enable the public service to fulfil its role. For that purpose, the Act establishes a mode of organization of human resources intended to promote
- (1) efficient administration and optimum utilization and development of human resources,
 - (2) the exercise of the powers of human resources management at the least possible hierarchical remove from the persons concerned and the application of a system under which the public servant vested with such management powers is accountable for his acts, within the means put at his disposal,
 - (3) equal opportunity for employment in the public service for all citizens,
 - (4) impartiality and fairness in decisions affecting public servants, and
 - (5) optimum contribution of the various components of Québec society to the public service.

- Organization. The mode of organization of human resources must also facilitate the achievement of the objectives of the Public Administration Act (chapter A-6.01).

1983, c. 55, s. 3.;2000, c. 8, s. 125.

CHAPTER II
RIGHTS AND OBLIGATIONS OF PUBLIC SERVANTS
DIVISION I
CONDITIONS OF SERVICE

§ 1. — *Standards of ethics and discipline*

- Duties and powers. **4.** A public servant has such primary and habitual duties and powers as are attached to his position.
- Duties and powers. A public servant also has the powers and duties which may be assigned to him by any person duly authorized to define his duties and to supervise his work.
- Ethics and discipline. A public servant shall exercise his powers and perform his duties in accordance with the standards of ethics and discipline prescribed in this Act or in the regulations under it.
1983, c. 55, s. 4.
- Loyalty. **5.** Every public servant is bound *ex officio* to be loyal and to bear allegiance to constituted authority.
- Impartiality. A public servant shall perform his duties in the public interest, to the best of his ability, with honesty and impartiality, and shall treat the public with consideration and diligence.
1983, c. 55, s. 5.
- Confidentiality. **6.** Subject to the provisions relating to access to information and the protection of personal information, every public servant is bound to confidentiality regarding any matter brought to his knowledge in the performance of his duties.
1983, c. 55, s. 6.
- Conflict of interest. **7.** In no case may a public servant have a direct or indirect interest in any undertaking that causes his personal interest to conflict with his duties of office.
- Conflict of interest. Where the interest devolves to him by succession or gift, he shall renounce or dispose of it with all possible dispatch.
1983, c. 55, s. 7.
- Gifts. **8.** In no case may a public servant accept any sum of money or any other consideration for the performance of his duties over and above the amount allocated to him for that purpose under this act.
1983, c. 55, s. 8.
- Undue benefit. **9.** In no case may a public servant, directly or indirectly,
(1) grant, solicit, or accept, as a public servant, any undue favour or benefit for himself or another person;
(2) use for his own benefit any state property or any information obtained by him as a public servant.
1983, c. 55, s. 9.
- Political neutrality. **10.** A public servant shall be politically neutral in performing his duties.
1983, c. 55, s. 10.

- Political opinion. **11.** A public servant shall act with reserve in any public display of his political opinions.
1983, c. 55, s. 11.
- Membership in political party. **12.** Nothing in this Act prohibits a public servant from being a member of a political party, attending a political meeting or making, in accordance with the law, a contribution to a political party or a local association of a political party or to a candidate in an election.
1983, c. 55, s. 12.
§ 2. — *Probation and permanent tenure*
- Probationary period. **13.** Every person recruited as a public servant shall undergo a probationary period of not less than six months.
- Probationary period. The Conseil du trésor may determine the classes of positions for which a probationary period of over six months is required, and fix the length of such a period.
1983, c. 55, s. 13.
- Permanent tenure. **14.** A public servant obtains permanent tenure after being employed continuously in the public service for two years.
- Continuous employment. The Conseil du trésor shall define what constitutes the fact of being employed continuously in the public service, within the meaning of the first paragraph.
1983, c. 55, s. 14.
- Probationary period. **15.** In the case of a promotion, the Conseil du trésor may determine the classes of positions for which a probationary period is required and fix the length of such a period.
1983, c. 55, s. 15.
§ 3. — *Disciplinary action*
- Disciplinary action. **16.** A public servant who contravenes the standards of ethics and discipline is liable to disciplinary action, which may include dismissal, according to the nature and gravity of the fault.
1983, c. 55, s. 16.
- Imposition. **17.** The imposition of a disciplinary action on a public servant, in accordance with section 16 or for any other just and sufficient cause, is effected by the deputy minister or the chief executive officer to whom he is responsible.
1983, c. 55, s. 17.
§ 4. — *Administrative measures*
- Demotion and dismissal. **18.** Any public servant who is incompetent in the performance of his duties or who is unable to perform them may be demoted or dismissed.
1983, c. 55, s. 18.
- Dismissal. **19.** Every public servant undergoing a probationary period other than a probationary period required on promotion may be dismissed without other procedure or formality than fifteen days'

prior notice in writing.

1983, c. 55, s. 19.

Lack of work. **20.** Every public servant who has not acquired permanent tenure may be dismissed for lack of work without other procedure or formality than fifteen days' prior notice in writing.
1983, c. 55, s. 20.

Unauthorized absence. **21.** Without prejudice to any disciplinary action, if a public servant is absent from the service without permission, a deduction proportionate to the duration of his absence must be made from his remuneration.
1983, c. 55, s. 21.

Temporary relief from duty. **22.** A public servant may, in accordance with the requirements prescribed by regulation, be provisionally relieved of his duties in order to enable the competent authority to make an appropriate decision in the case of an urgent situation requiring prompt intervention, or in a presumed case of serious fault, whether it be a breach of a standard of ethics or discipline or an indictable or penal offence.
1983, c. 55, s. 22.

Imposition. **23.** The imposition of an administrative measure on a public servant is effected by the deputy minister or the chief executive officer to whom he is responsible.
1983, c. 55, s. 23.

DIVISION II POLITICAL ACTIVITIES

Candidate. **24.** A public servant wishing to be a candidate in a provincial election must apply for and is entitled to leave without pay from the date of the writ ordering the election.

Elective public office. A public servant wishing to be a candidate for any other elective public office is entitled to leave without pay if he applies therefor. The deputy minister or the chief executive officer to whom he is responsible shall fix the date of the beginning and end of the leave. The duration of the leave must, however, allow the public servant to become a candidate in due time and to conduct his election campaign.

Position resumed. A public servant who is granted leave without pay under this section is entitled to resume his position within 30 days of the date for the nomination of candidates if he is not nominated or, if he is a candidate, of the date on which another person is declared elected.
1983, c. 55, s. 24.

Official agent of a candidate. **25.** The provisions of section 24 apply, with the necessary modifications, to every public servant wishing to act as the official agent of a candidate in a provincial election.
1983, c. 55, s. 25.

- Member of the National Assembly. **26.** A public servant elected in a provincial election ceases to be subject to this Act, except sections 29, 30 and 129 to 131. Throughout his tenure as a Member of the National Assembly, he retains his classification on the day he was elected.
1983, c. 55, s. 26.
- Elected to public office. **27.** A public servant elected to an elective public office other than to that of Member of the National Assembly, is entitled throughout his first term, to partial or full leave without pay, for the purpose of carrying on his duties of office.
- Full leave without pay. Where the public servant is granted full leave without pay, he ceases to be subject to this Act, except sections 29, 30 and 129 to 131. Throughout his tenure of the public office to which he was elected, he retains his classification on the day he was elected.
1983, c. 55, s. 27.
- Member of the office staff of a Minister. **28.** A public servant employed as a member of the office staff of the Lieutenant-Governor, of a Minister or of any other person contemplated in the first paragraph of section 124.1 of the Act respecting the National Assembly (chapter A-23.1) or as a member of the staff of a Member ceases to be subject to this Act, except sections 29, 30 and 129 to 131 and is governed by sections 11.5 and 11.6 of the Executive Power Act (chapter E-18) or by sections 124.1 and 124.2 of the Act respecting the National Assembly, as the case may be.
- Classification maintained. While the public servant is employed on an office staff or as a member of the staff of a Member, he retains his classification at the time of his appointment to the staff.
1983, c. 55, s. 28.;1984, c. 27, s. 66.
- Classification in the public service. **29.** A public servant contemplated in section 26, 27 or 28, during the period in which he holds on a full time basis the public office to which he was elected, or in which he carries on his duties on the office staff of a Minister or as a member of the staff of a Member, as the case may be, may apply to the chairman of the Conseil du trésor for an opinion on the classification that could be assigned to him in the public service if he decided to exercise his right to return to the public service under section 30.
- Basis of classification. The opinion must take account of the classification of the public servant as provided under section 26, 27 or 28 and of the experience and formal training he has acquired since he left the public service.
1983, c. 55, s. 29.;1996, c. 35, s. 16.
- Re-examination of qualifications. **30.** A public servant is entitled to require the chairman of the Conseil du trésor to reexamine his qualifications and to place him by priority in a position commensurate with his qualifications,
(1) on ceasing to be a Member of the National Assembly;
(2) on ceasing to hold on a full time basis a public elective office other than that of Member of the National Assembly, in accordance with section 27;

(3) on ceasing to be employed on the office staff of the Lieutenant-Governor, of a Minister or of a person contemplated in the first paragraph of section 124.1 of the Act respecting the National Assembly (chapter A-23.1) or as a member of the staff of a Member.

Written requisition. The requisition must be made in writing and received not later than 60 days after the day the public servant ceases to hold an office contemplated in paragraph 1, 2 or 3 of the first paragraph. 1983, c. 55, s. 30.;1984, c. 27, s. 67.;1996, c. 35, s. 16.

Salary. **30.1.** Every public servant who held the office contemplated in subparagraph 1 of the first paragraph of section 30 is entitled to receive, from the receipt of the requisition contemplated in the second paragraph of that section, the salary attached to his classification before he was elected as a Member.

Pre-placement period. He shall remain under the responsibility of the chairman of the Conseil du trésor until he is placed. 1986, c. 70, s. 1.;1996, c. 35, s. 16.

Placing on reserve. **31.** Where it is impossible for the chairman of the Conseil du trésor to place a public servant contemplated in sections 30 and 30.1, the public servant shall be placed on reserve under the responsibility of the chairman of the Conseil du trésor until he is placed. 1983, c. 55, s. 31.;1986, c. 70, s. 2.;1996, c. 35, s. 1.

DIVISION III PROTECTION

Defense by Attorney General. **32.** Where a public servant is sued by a third person for an act he has done or failed to do in the performance of his duties, the Attorney General shall take up his defense unless he is charged with a gross fault. 1983, c. 55, s. 32.

DIVISION IV APPEAL

Appeal. **33.** Except where jurisdiction in the matters enumerated in this paragraph is assigned to another authority under a collective agreement, a public servant may appeal to the Commission de la fonction publique from a decision informing him of

- (1) his classification following his appointment to a new or changed class of positions;
- (2) his demotion;
- (3) his dismissal;
- (4) disciplinary action;
- (5) his being provisionally relieved of his duties.

Appeal. An appeal under this section must be made in writing and received by the Commission within 30 days of the date the contested decision was sent.

This section, except subparagraph 1 of the first paragraph, does not apply to a public servant undergoing a probationary period under section 13.

1983, c. 55, s. 33.

Powers of the Commission. **34.** The Commission de la fonction publique may uphold, amend or quash any decision appealed from under section 33.

Decision. Where the Commission amends a decision under the first paragraph, it may substitute therefor any decision it considers just and reasonable, having regard to all the circumstances of the case.

Demotion. Where the Commission upholds the demotion of a public servant or reduces a dismissal to a demotion, it may order that the appellant be demoted to a class of positions determined by the chairman of the Conseil du trésor, having regard to his qualifications.

1983, c. 55, s. 34.;1996, c. 35, s. 16.

Irregularity or illegality. **35.** If a candidate considers that the procedure used in determining the eligibility of or evaluating candidates during a competition for promotion or the constitution of a candidate inventory was irregular or illegal, he may appeal to the Commission de la fonction publique by an application in writing, which must be received by the Commission within 15 working days of the sending of a notice advising him that he is not eligible for the competition, the constitution of a candidate inventory or the grade advancement examination, or informing him of the results of the competition or examination.

Evaluation tool. Components of an evaluation tool that have been certified pursuant to the third paragraph of section 115 cannot be contested during the appeal.

1983, c. 55, s. 35.;1996, c. 35, s. 2.;2000, c. 8, s. 126.

Frivolous application. **36.** The Commission de la fonction publique may refuse to hear an appeal brought under section 35 relating to a competition for promotion where it considers the application frivolous or in bad faith.

Appeal. The Commission shall refuse to hear an appeal brought under section 35 relating to a competition for promotion until such time as the list of the candidates declared qualified has been established, unless it has obtained the consent of the parties.

1983, c. 55, s. 36.;2000, c. 8, s. 127.

CHAPTER III

MANAGEMENT OF HUMAN RESOURCES

DIVISION I

RESPONSIBILITIES OF DEPARTMENTS AND AGENCIES

Deputy minister. **37.** A deputy minister is responsible, subject to the direction of his minister, for the management of the human resources of the department.

1983, c. 55, s. 37.

- Chief executive officer. **38.** The chief executive officer of an agency to which the staff is appointed under this Act is responsible for the management of the human resources of the agency.
- Chief executive officer. The chief executive officer is the person identified as such by law or, failing that, the person holding the highest authority in the agency.
1983, c. 55, s. 38.
- Management policies. **39.** Deputy ministers and chief executive officers shall manage the human resources under their authority in conformity with the policies of the Conseil du trésor in that regard.
- Management. The management of human resources includes, in particular, the planning, organization, supervision, development and evaluation of such resources.
1983, c. 55, s. 39.;2000, c. 8, s. 128.
- Delegation. **40.** Deputy ministers and chief executive officers shall in exercising their responsibilities favour the delegation of responsibilities to their assistants and to the managerial staff.
- Managerial staff. Senior executives and managers form part of the managerial staff.
1983, c. 55, s. 40.
- Delegation. **41.** A deputy minister or a chief executive officer may, in writing and to the extent he indicates, delegate the exercise of the powers conferred on him under this Act to a public servant or the holder of a position.
- Subdelegation. He may, in the instrument of delegation, authorize the subdelegation of the powers he indicates, and in that case shall name the title of the holder of the position or the public servant to whom they may be subdelegated.
1983, c. 55, s. 41.
- DIVISION II**
STAFFING
- § 1. — *Recruitment and promotion*
- Competitions. **42.** Public servants are recruited and promoted by way of competition.
- Upgrading of positions. Notwithstanding the first paragraph, a public servant whose position is upgraded may be promoted without a competition, according to the rules determined by the Conseil du trésor by regulation, if he meets the conditions of eligibility to the class of positions so upgraded and if he is declared qualified by the chairman of the Conseil du trésor.
- Assessment of qualifications. A public servant may also be promoted after the public servant's qualifications have been assessed as part of a human resources development program approved for that purpose by the Conseil du trésor.
1983, c. 55, s. 42.;1996, c. 35, s. 3.;2000, c. 8, s. 129.

- Conditions of eligibility. 43. The chairman of the Conseil du trésor shall prescribe the conditions of eligibility for a competition held to fill a position or several positions.
- Consistency with regulations. The conditions of eligibility must be consistent with the regulations under section 50.1 and with the minimum conditions of eligibility to the classes of positions or grades prescribed by the Conseil du trésor and allow the implementation of Government policies regarding, in particular,
- (1) affirmative action programs intended, in particular, for women, members of cultural communities, handicapped persons or Native persons;
 - (2) recruitment, whether from educational institutions or from all or any category of the persons employed in the education or social affairs sector.
- Additional requirements. In addition, the conditions of eligibility for a competition, in particular, those relating to minimum conditions of eligibility to classes of positions or grades, may include additional requirements which take into account the nature and particularities of the position or positions for which the competition is held.
1983, c. 55, s. 43.;1996, c. 35, s. 4.
- Invitations for applications. 44. The chair of the Conseil du trésor shall invite applications for competitions and candidate inventories. The chair shall proceed without inviting applications where a competition is held among the candidates in a candidate inventory.
1983, c. 55, s. 44.;1996, c. 35, s. 16.;2000, c. 8, s. 130.
- Invitations for applications. 45. Invitations for applications must be made in such a manner that persons likely to meet the conditions of eligibility have a reasonable opportunity to apply.
1983, c. 55, s. 45.
- Candidate inventory. 46. The conditions of entry on a candidate inventory are prescribed by the chairman of the Conseil du trésor according to the modalities prescribed in section 43.
1983, c. 55, s. 46.;1996, c. 35, s. 16.
- Admission. 47. The chair of the Conseil du trésor must admit all the persons who have submitted applications and meet the conditions of eligibility for a competition or candidate inventory.
- Reduction. However, where the chair of the Conseil du trésor considers that it would be unreasonable to evaluate all the candidates in view of their large number, the chair may reduce their number according to the norms determined by regulation by the Conseil du trésor.
- Reduced applications. The chairman of the Conseil du trésor shall state when inviting applications what means he intends to use to reduce the number of applications.
1983, c. 55, s. 47.;1996, c. 35, s. 5.;2000, c. 8, s. 131.
- Criteria of evaluation. 48. The evaluation of candidates is based on the criteria of knowledge, experience or qualifications required for the position.

- 1983, c. 55, s. 48.;2000, c. 8, s. 132.
- Evaluation procedure. **49.** The chairman of the Conseil du trésor shall determine the evaluation procedure, which must be of such a nature as to allow impartial evaluation of the candidates.
1983, c. 55, s. 49.;1996, c. 35, s. 16.
- Evaluation of candidates. **49.1.** The chair of the Conseil du trésor may evaluate the candidates in a candidate inventory. Only the candidates whose eligibility is established by the evaluation shall be admitted to a competition held among the candidates in the candidate inventory, and the results of the evaluation shall be transferred for use for the purposes of the competition.
2000, c. 8, s. 133.
- Qualified candidates. **50.** A competition leads to the preparation of a list of the candidates declared qualified.
- Correction of error. The chair of the Conseil du trésor may, on request or on the chair's initiative and without further formality, correct an error in writing or calculation or any other clerical error or error in the correction of an evaluation, including by adding or removing a candidate's name.
1983, c. 55, s. 50.;1996, c. 35, s. 6.;1999, c. 58, s. 1.;2000, c. 8, s. 134.
- Regulations. **50.1.** The Conseil du trésor shall determine, by regulation,
(1) the procedure for holding recruitment or promotion competitions;
(2) geographical areas and criteria to determine whether a person belongs to an area for the purposes of eligibility for a competition or for a candidate inventory in that area;
(3) the administrative entity to which a public servant must belong in order to be eligible for a competition or a candidate inventory;
(4) norms according to which the number of eligible candidates for a competition may be reduced;
(5) norms according to which lists of certifications of qualification may be drawn up;
(6) conditions, cases and categories of cases where the upgrading of a position may allow promotion without a competition;
(7) norms relating to the use of candidate inventories.
- Publication. The Conseil du trésor shall publish in the *Gazette officielle du Québec* draft regulations with a notice stating that the regulations may be made with or without amendment at the expiry of 30 days from that publication.
- Coming into force. Regulations of the Conseil du trésor come into force 15 days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.
1996, c. 35, s. 7.;1999, c. 58, s. 2.;2000, c. 8, s. 135.

§ 2. — *Appointment and classification*

- Appointment by the deputy minister 51. A public servant comes into office, or changes position, by appointment by the deputy minister or the chief executive officer responsible for the position to be filled.
1983, c. 55, s. 51.
- Change of department. 52. Where the appointment of a public servant involves a change of department or agency, the prior agreement of the deputy minister or chief executive officer to whom he is responsible is required. This requirement does not apply in the case of a promotion.
1983, c. 55, s. 52.
- Appointment. 53. Following a competition, the appointment of a public servant is made by selecting a person from among the persons included in the list of candidates declared qualified.
- Program and hiring objectives. Where a list of candidates declared qualified includes a candidate to whom an affirmative action program or a program designed to ensure the hiring of handicapped persons applies, the Deputy Minister or the chief executive officer of the public body must take the objectives of the program into consideration. The hiring objectives determined by the Conseil du trésor as regards the various components of Québec society must also be taken into consideration.
1983, c. 55, s. 53.;1999, c. 58, s. 3.
- Appeal pending. 53.0.1. Following a competition for promotion, a public servant may be appointed even if an appeal brought under section 35 is pending before the Commission de la fonction publique.
- Conditional appointment. The appointment is conditional, and must be re-evaluated by the deputy minister or chief executive officer on the basis of the decision rendered by the Commission. Where applicable, the appointment shall cease to have effect and the public servant shall be reinstated in the position held before the conditional appointment.
- Position. The position held by the public servant before the conditional appointment may not be filled on a permanent basis by the deputy minister or chief executive officer concerned until the conditional appointment of the public servant becomes definitive.
2000, c. 8, s. 136.
- Account of the results achieved. 53.1. The annual report of a department or body must include, under a special heading, an account of the results achieved in relation to the objectives of any affirmative action program or program designed to ensure the hiring of handicapped persons applicable to the department or body and in relation to the hiring objectives as regards the various components of Québec society.
1999, c. 58, s. 4.
- Assignment of classification. 54. When a public servant comes into office or changes class of positions or grade, the deputy minister or the chief executive

officer shall assign a classification to him in accordance with the regulation under section 126.

Assignment of classification. When placing a public servant in a new or changed class of positions, the deputy minister or the chief executive officer shall assign a classification to him in accordance with the conditions and modalities fixed by the Conseil du trésor under paragraph 1 of section 34 of the Public Administration Act (chapter A-6.01).
1983, c. 55, s. 54.;2000, c. 8, s. 137.

DIVISION III

ADMINISTRATORS OF STATE

- Administrator of state. **55.** A public servant acquires the classification of administrator of state on his appointment to any of the following positions:
- (1) Secretary-General, Associate Secretary-General or Deputy Secretary of the Conseil exécutif;
 - (2) Secretary, Deputy Secretary or Associate Secretary of the Conseil du trésor;
 - (3) deputy minister or assistant or associate deputy minister;
 - (4) *(paragraph repealed)*.
- 1983, c. 55, s. 55.;1992, c. 24, s. 5.;1996, c. 35, s. 8.
- Appointment. **56.** The Government appoints an administrator of state to a position on a motion of the Prime Minister. The Government determines the classification of a public servant within the group of administrators of state.
1983, c. 55, s. 56.
- Contract. **57.** Where the Government engages a person by contract to hold any office listed in section 55, the person does not have the classification of administrator of state and is not a public servant, but Chapter VII applies to him as if he were a public servant.
1983, c. 55, s. 57.
- Replacement. **58.** In the case of the absence or inability to act of a person holding any office listed in section 55, the minister or the deputy minister may designate a person to replace him during the interim.
1983, c. 55, s. 58.;1999, c. 40, s. 135.
- Classification. **59.** The Government, on the recommendation of the Prime Minister, may assign a classification in another group of positions to an administrator of state.
- Appeal prohibited. No appeal lies to the Commission de la fonction publique from a decision made under this section.
1983, c. 55, s. 59.
- Classification and remuneration. **60.** The Government shall determine the classification and fix the remuneration, social benefits and other conditions of employment of the administrators of state.
1983, c. 55, s. 60.
- Disciplinary action. **61.** Disciplinary action is imposed on an administrator of state

by the minister or deputy minister, as the case may be, to whom he is responsible.

1983, c. 55, s. 61.

Dismissal. **62.** The Government, on the recommendation of the Prime Minister, may dismiss an administrator of state for just and sufficient cause.

1983, c. 55, s. 62.

Provisions applicable. **63.** The provisions of the other chapters, except sections 13 to 15, 17 to 20, 23 to 27, 42 to 54 and 127, apply to the administrators of state, to the extent that they are consistent with this chapter.

1983, c. 55, s. 63.;2000, c. 8, s. 138.

CHAPTER IV COLLECTIVE BARGAINING

DIVISION I GENERAL PROVISIONS

Union representative. **64.** The Syndicat de la fonction publique du Québec inc. is recognized as the representative of all public servants who are employees within the meaning of the Labour Code (chapter C-27), except

(1) employees who are teachers;

(2) employees who are members of the professional orders of advocates, notaries, physicians, dentists, pharmacists, optometrists, veterinary surgeons, agronomists, architects, engineers, land-surveyors, forest engineers, chemists or chartered accountants, and persons admitted to the study of these professions;

(3) employees who are university graduates, economists, geographers, geologists, biologists, town-planners, accountants, auditors, psychologists, social workers, guidance counsellors and other professionals;

(4) employees who are peace officers belonging to any of the following groups;

(a) wildlife protection officers;

(b) fisheries officers;

(c) constables at the Youth Division of the Court of Québec;

(d) security officers;

(e) transportation officers;

(f) instructors, guards and nursing attendants in houses of detention;

(g) any other group performing duties of a peace officer.

1983, c. 55, s. 64.;1988, c. 21, s. 93.;1993, c. 74, s. 2.;1994, c. 40, s. 457.;2000, c. 48, s. 36.

Certification. **65.** Section 64 has the same effect as a certification granted by a labour commissioner under the Labour Code (chapter C-27) for

two separate employee groups, namely:

- (1) public servants other than workmen;
- (2) workmen.

Labour disputes. The Labour Court established by the Labour Code decides all disputes respecting the effective exclusion or inclusion of a public servant or a class of public servants from or in either of such groups, and has the power to cancel the certification and grant another upon the conditions prescribed by the Labour Code.
1983, c. 55, s. 65.

Powers of the Government. **66.** The Government may grant certification to any association of employees to represent each of the groups contemplated in paragraphs 1, 3 and 4 of section 64 and the members of each of the professions contemplated in paragraph 2 of the same section together with the persons admitted to the study of such profession.

Joint committee. Certification under this section is granted only upon the recommendation of a joint committee constituted for such purpose by the Government, one-half of the members of which are representatives of the group concerned.

Certification. Certification under this section has the same effect as certification granted by a labour commissioner under the Labour Code (chapter C-27).

Labour disputes. The Labour Court decides all disputes respecting the effective exclusion or inclusion of a public servant from or in any of the groups referred to in the first paragraph and may cancel the certification and grant another upon the conditions prescribed by the Labour Code.
1983, c. 55, s. 66.

Certification. **67.** With the consent of the majority of the employees who are members or admitted to the study of a profession contemplated in paragraph 2 of section 64, certification may be granted to an association representing more than one of such groups and, with the consent of the absolute majority of the group contemplated in paragraph 3 of the same section, certification may be granted to such an association for such group together with the others which it represents.

Certification. With the consent of the majority of the employees who are members of a group contemplated in paragraph 4 of section 64, certification may be granted to an association to represent more than one of such groups.

Applications. Notwithstanding the time limit provided in section 111.3 of the Labour Code (chapter C-27), certification to represent more than one group, in accordance with the second paragraph, may be applied for to the Labour Court within 15 days of the decision of the Court rendered pursuant to section 66.
1983, c. 55, s. 67.

Right of affiliation. **68.** Every association of employees contemplated in this Act has the right to affiliate, but an association of employees

contemplated in paragraph 4 of section 64 shall only affiliate with an association exclusively grouping employees performing duties of a peace officer, except the members of the Sûreté du Québec. 1983, c. 55, s. 68.

Strike prohibited. **69.** All employee groups contemplated in paragraph 4 of section 64 are forbidden to strike.

Essential services. All other groups are forbidden to strike unless the essential services and the manner of maintaining them are determined by prior agreement between the parties or, failing an agreement, by a decision of the Conseil des services essentiels established by the Labour Code (chapter C-27).

Copy. The Conseil du trésor shall transmit, without delay, a copy of any agreement made under the second paragraph to the Conseil des services essentiels. 1983, c. 55, s. 69.;2001, c. 26, s. 126.

Collective agreement applicable to public servants. **70.** Public servants are governed by the provisions of the collective agreement applicable to them, or if there are no such provisions in the collective agreement, by the provisions of this Act and the Public Administration Act (chapter A-6.01). However, no provision of a collective agreement may limit the powers of the Commission de la fonction publique or the powers of the chairman of the Conseil du trésor relating to the holding of recruitment or promotion competitions or to the certification of the qualification of candidates. Moreover, no clause of any collective agreement may limit the powers of a deputy minister, a chief executive officer, the Government or the Conseil du trésor with regard to any of the following matters:

- (1) the appointment of candidates to the public service or the promotion of public servants;
- (2) the classification of positions, including the definition of conditions of eligibility and the determination of the level of positions relating to the classification;
- (3) the granting of permanent tenure and the determination of the duration of the probationary period for recruitment or on promotion;
- (4) the establishment of standards of ethics and discipline in the public service;
- (5) the establishment of organization plans and staffing procedures.

Decree. A decree adopted under the Act respecting labour relations, vocational training and manpower management in the construction industry (chapter R-20) or under another Act, or a document in lieu thereof or a collective agreement made with a view to such a decree does not apply to the conditions of employment of public servants. 1983, c. 55, s. 70.;1986, c. 89, s. 50.;1996, c. 35, s. 9.;2000, c. 8, s. 139.

DIVISION II
SPECIAL PROVISIONS APPLICABLE TO PERSONS
PERFORMING DUTIES OF A PEACE OFFICER

§ 1. — *Bargaining method*

- Joint parity committee. **71.** A joint parity committee is instituted for each certified association representing one or more groups of employees contemplated in paragraph 4 of section 64.
- Composition. Each committee shall consist of a chairman, who shall not have the right to vote, appointed by the Government after consultation with the association concerned, and eight other members of whom four shall be appointed by the Conseil du trésor and four by each certified association.
1983, c. 55, s. 71.
- Duties of the committee. **72.** The committee shall initiate and carry on negotiations in which its members shall take part as representatives of the Conseil du trésor or of the certified association with a view to the making or the renewal of a collective agreement.
- Duties of the committee. The committee shall perform any other duty the parties may agree to entrust to it.
1983, c. 55, s. 72.
- Meetings. **73.** The committee shall meet at the request of the chairman who shall convene it whenever requested by the Conseil du trésor or by the certified association.
1983, c. 55, s. 73.
- Recommendations. **74.** When it deems it expedient, the committee shall submit to the Government its recommendations concerning the making or the renewal of a collective agreement.
1983, c. 55, s. 74.

§ 2. — *Collective agreement*

- Collective agreement. **75.** On being approved by the Government, the recommendations of the committee submitted pursuant to section 74 have the effect of a collective agreement signed by the parties.
1983, c. 55, s. 75.

§ 3. — *Method for the settlement of disputes*

- Settlement of disputes. **76.** The committee shall negotiate a method for the settlement of disputes.
1983, c. 55, s. 76.

CHAPTER V
INSTITUTIONAL STRUCTURE OF THE PUBLIC SERVICE

DIVISION I
CONSEIL DU TRÉSOR

77. *(Repealed).*
1983, c. 55, s. 77.;2000, c. 8, s. 140.

78. *(Repealed).*

1983, c. 55, s. 78.;2000, c. 8, s. 140.

79. *(Repealed).*

1983, c. 55, s. 79.;2000, c. 8, s. 140.

80. *(Repealed).*

1983, c. 55, s. 80.;2000, c. 8, s. 140.

81. *(Repealed).*

1983, c. 55, s. 81.;2000, c. 8, s. 140.

82. *(Repealed).*

1983, c. 55, s. 82.;2000, c. 8, s. 140.

Exemptions. **83.** For reasons of urgency or of public interest, or for practical reasons, the Conseil du trésor may, after consulting the Commission de la fonction publique, exempt any position or class of positions, owing to its special nature, from any provisions of this Act it may indicate.

Exception. In no case may the Conseil du trésor exempt a position or class of positions from the application of sections 64 to 76.

1983, c. 55, s. 83.

Tabling of report. **84.** Where the Conseil du trésor exempts a position or class of positions from the provisions of this Act in accordance with section 83, it shall table a report within 30 days before the National Assembly if it is sitting, or before the President of the National Assembly if it is not sitting.

Content. The report shall contain the opinion of the Commission de la fonction publique and indicate the positions or classes of positions so exempted and the reasons for the measures.

1983, c. 55, s. 84.

Conditions of employment. **85.** The Conseil du trésor shall determine the remuneration, social benefits and other conditions of employment of persons whose position or class of positions is exempt from the provisions of this Act and the manner in which a position or class of positions so exempted is governed.

1983, c. 55, s. 85.

Agreements. **86.** The Conseil du trésor may, according to law, enter into an agreement with any government or organization in order to facilitate the carrying out of its functions under this Act.

1983, c. 55, s. 86.

DIVISION II

CHAIRMAN OF THE CONSEIL DU TRÉSOR

87. *(Repealed).*

1983, c. 55, s. 87.;1996, c. 35, s. 11.

88. *(Repealed).*

1983, c. 55, s. 88.;1996, c. 35, s. 11.

89. *(Repealed).*

1983, c. 55, s. 89.;1996, c. 35, s. 11.

90. *(Repealed).*

1983, c. 55, s. 90.;1996, c. 35, s. 11.

91. *(Repealed).*

1983, c. 55, s. 91.;1996, c. 35, s. 11.

92. *(Repealed).*

1983, c. 55, s. 92.;1996, c. 35, s. 11.

93. *(Repealed).*

1983, c. 55, s. 93.;1996, c. 35, s. 11.

94. *(Repealed).*

1983, c. 55, s. 94.;1996, c. 35, s. 11.

95. *(Repealed).*

1983, c. 55, s. 95.;1996, c. 35, s. 11.

96. *(Repealed).*

1983, c. 55, s. 96.;1988, c. 41, s. 90.;1996, c. 35, s. 11.

97. *(Repealed).*

1983, c. 55, s. 97.;1996, c. 35, s. 11.

98. *(Repealed).*

1983, c. 55, s. 98.;1996, c. 35, s. 11.

Functions. **99.** The functions of the chairman of the Conseil du trésor shall include

(1) holding competitions for the recruitment and promotion of candidates and certifying the qualifications of candidates;

(2) prescribing conditions of eligibility for the purposes of a competition or of a candidate inventory;

(3) inviting applications for the purpose of constituting a candidate inventory;

(4) reducing the number of candidates who meet the conditions of eligibility for a competition;

(5) assessing and certifying the qualifications of candidates for promotion without a competition;

(6) giving an opinion on the classification he considers, after assessment, to be most appropriate to a person's qualifications, in accordance with the provisions of this Act;

(7) proposing measures to the Government and to government departments and bodies to improve staffing and human resource management and development within the public service, and measures to ensure equal employment opportunity;

(8) advising government departments and bodies, and the Government, on management and administrative organization, in particular to improve the quality of service to the public and the efficiency of the organization and staff of government departments

and bodies;

(9) carrying out research, studies and surveys in human resource management, coordinating them with those carried out within government departments and bodies, and ensuring their diffusion;

(10) seeing to the implementation of human resource management policies and programs at the request of a government department or body or of the Government;

(11) instituting and maintaining a career planning and development system for the managerial staff, in collaboration with government departments and bodies;

(12) developing and maintaining an integrated data system for human resource management;

(13) discharging any other duties assigned by the Government.

1983, c. 55, s. 99.;1996, c. 35, s. 12.

- Placement on reserve. **100.** The chairman of the Conseil du trésor shall place and, where applicable, retrain permanent public servants who have been placed on reserve or who exercise their right to reappointment according to law or to an agreement with the Government.
1983, c. 55, s. 100.;1996, c. 35, s. 16.
- New classification. **101.** Where the chairman of the Conseil du trésor is unable to place a public servant having permanent tenure, who has been placed on reserve, in a position consistent with his classification, the chairman of the Conseil du trésor may assign a new classification to him in conformity with the conditions and modalities prescribed by the Conseil du trésor or provided in a collective agreement, after examining his qualifications.
- Reduction of salary. In no case may the new classification entail a decrease in the regular salary to which the public servant was entitled before being assigned that classification.
1983, c. 55, s. 101.;1996, c. 35, s. 16.
- Delegation of functions. **102.** The chairman of the Conseil du trésor may, in writing and to the extent he indicates, delegate the exercise of the functions assigned to him under this Act to a deputy minister or chief executive officer, except the functions assigned to him under sections 30 and 31, paragraph 6 of section 99 and sections 100 and 101.
- Subdelegation of functions. The instrument of delegation may authorize the deputy minister or the chief executive officer to subdelegate the functions he indicates, and, where he does so, he must identify the titles of the holders of positions or the public servants to whom the functions may be subdelegated.
- Chairman. The chairman of the Conseil du trésor may verify or mandate a person or a body to verify the carrying out of the delegation or subdelegation, or revoke the delegation at any time.

1983, c. 55, s. 102.;1996, c. 35, s. 13.;2000, c. 8, s. 141.

103. *(Repealed).*

1983, c. 55, s. 103.;1996, c. 35, s. 14.

104. *(Repealed).*

1983, c. 55, s. 104.;1996, c. 35, s. 14.

DIVISION III

COMMISSION DE LA FONCTION PUBLIQUE

§ 1. — *Organization of the Commission*

- Establishment. **105.** A Commission de la fonction publique is hereby established.
1983, c. 55, s. 105.
- Composition. **106.** The Commission consists of not fewer than three nor over five members, including a chairman, who is its chief executive officer.
- Appointment. On the motion of the Prime Minister, the National Assembly shall appoint the members by a resolution approved by not less than two-thirds of its members.
- Conditions of employment. The Government shall fix the remuneration, social benefits and other conditions of employment of the members of the Commission.
- Full-time duties. Members of the Commission shall perform their duties on a full-time basis.
1983, c. 55, s. 106.;1984, c. 47, s. 203.
- Term. **107.** The term of office of any member of the Commission is not over five years.
- Continuance in office. At the expiry of his term, a member remains in office until he is reappointed or replaced.
1983, c. 55, s. 107.
- Resignation. **108.** A member of the Commission may resign at any time by giving notice thereof in writing to the President of the National Assembly.
- Dismissal. He shall not be dismissed except by a resolution of the Assembly, approved by not less than two-thirds of its members.
1983, c. 55, s. 108.
- Replacement. **109.** Where the chairman of the Commission is absent or unable to act or where the office of chairman is vacant, the President of the National Assembly may, with the consent of the Prime Minister and of the Leader of the Official Opposition in the Assembly, appoint one of the other members of the Commission to act in place of the chairman in the interim.
1983, c. 55, s. 109.;1999, c. 40, s. 135.
- Secretary and staff. **110.** The secretary and the other members of the staff of the Commission are appointed in accordance with this Act.
1983, c. 55, s. 110.;2000, c. 8, s. 242.

- Conflict of interest. **111.** No member of the Commission may, under pain of forfeiture of office, have a direct or indirect interest in any undertaking that puts his personal interest in conflict with that of the Commission.
- Execution. Forfeiture is not incurred if the interest devolves to a member by succession or gift, provided that he renounces or disposes of it with all possible dispatch.
1983, c. 55, s. 111.
- Minutes. **112.** The minutes of a sitting, approved by the Commission and signed by the chairman or the secretary, are authentic. The same rule applies to a document or a copy emanating from the Commission or forming part of its records, if it is certified by the chairman or the secretary.
1983, c. 55, s. 112.
- Immunity. **113.** Neither the Commission nor any of its members may be sued for any official act performed in good faith in the exercise of their functions.
1983, c. 55, s. 113.
- Immunity. **114.** Except on a matter of competence, no extraordinary recourse contemplated in articles 834 to 850 of the Code of Civil Procedure (chapter C-25) may be exercised nor any injunction granted against the Commission or against any of its members acting in his official capacity.
- Annulment of injunction. Two judges of the Court of Appeal, upon motion, may summarily annul any writ, order or injunction issued or granted contrary to the first paragraph.
1983, c. 55, s. 114.
- § 2. — *Functions and powers of the Commission*
- Functions. **115.** In addition to hearing the appeals brought by public servants under this Act, the Commission shall
- (1) ascertain the impartiality and fairness of the decisions made under this Act and under sections 30 to 36 of the Public Administration Act (chapter A-6.01), which affect public servants;
 - (2) ascertain whether the system of recruitment and promotion of public servants is in compliance with the Act and the regulations thereunder.
- Recommendations. For the purposes of the carrying out of the first paragraph, the Commission shall make any inquiry it deems necessary, formulate recommendations to the appropriate authorities or, where it deems it useful, make a report to the National Assembly.
- Analysis of evaluation tool. The Commission may also, at the request of the chair of the Conseil du trésor, analyze an evaluation tool intended for use in a competition or the establishment of a candidate inventory and certify that its content, the criteria evaluated and the correction grid and procedure are consistent with section 48 and allow an impartial assessment of the value of the candidates with regard to

the positions specified by the chair of the Conseil du trésor.
1983, c. 55, s. 115.;2000, c. 8, s. 142.

Regulations. **116.** The Commission shall, by regulation,
(1) determine the number of members required to hear and decide appeals;
(2) determine the rules of proof and procedure;
(3) provide for its internal management.

Publication. The Commission shall publish every draft regulation in the *Gazette officielle du Québec*, with a notice that it may be adopted with or without amendment at the expiry of 30 days from that publication.

Coming into force. Regulations of the Commission come into force fifteen days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.
1983, c. 55, s. 116.

Powers and immunity. **117.** The Commission, its members and any person entrusted by it with making an inquiry have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.
1983, c. 55, s. 117.

Recusation. **118.** A member of the Commission may be recused; articles 234 to 242 of the Code of Civil Procedure (chapter C-25) apply to the recusation, with the necessary modifications
1983, c. 55, s. 118.

Powers. **119.** The Commission has all the necessary powers to exercise its jurisdiction; it may, in particular, make any order it considers proper to safeguard the rights of the parties, and decide any question of fact or of law.
1983, c. 55, s. 119.

Extensions. **120.** The Commission may extend any time limit fixed by law where it considers that a public servant was unable to act sooner or to appoint a person to act in his place within the prescribed time limit.
1983, c. 55, s. 120.

Substitute commissioners. **121.** The Commission may, where justified by work load, appoint substitute commissioners for a term of not over one year to hear and decide appeals brought under sections 33, 35 and 127.

Remuneration. The Office of the National Assembly shall fix the fees, allowances or salaries of the substitute commissioners.

Dispositions applicable. Sections 111, 113, 114 and 117 to 120 apply to substitute commissioners.
1983, c. 55, s. 121.;2000, c. 8, s. 143.

122. Every substitute commissioner appointed by the

- Selection of substitute commissioner. Commission de la fonction publique is chosen from a list drawn up annually, on the recommendation of the Prime Minister, by a resolution of the National Assembly approved by not less than two-thirds of its members.
- Validity of list. The list shall remain in force until replaced pursuant to the first paragraph.
1983, c. 55, s. 122.;2000, c. 8, s. 144.
- Written decision. **123.** A decision of the Commission must be rendered in writing and be substantiated. It forms part of the records of the Commission.
- Review or revocation. The Commission may, for cause, review or revoke any decision it has rendered.
1983, c. 55, s. 123.
- Extension. **123.1.** Where an appeal is brought before the Commission under section 35, the decision must be rendered within 30 days of being taken under advisement, unless the chairman of the Commission grants an extension on serious grounds.
- Removal of member. Where a member before whom an appeal has been brought fails to render a decision within 30 days or within the extension granted, the chairman may, on the chairman's initiative or on the application of a party, remove the member from the case.
- Extension or removal. Before granting an extension or removing a member who has failed to render a decision within the required time, the chairman must consider the circumstances and the interests of the parties.
2000, c. 8, s. 145.
- Report of activities. **124.** Not later than 31 July each year, the Commission shall submit a report of its activities for the preceding fiscal year to the President of the National Assembly. The report shall be tabled before the National Assembly if it is in session or, if it is not sitting, it shall be tabled within 30 days after the opening of the next session or resumption.
1983, c. 55, s. 124.
- Audit. **125.** The books and accounts of the Commission shall be audited each year by the Auditor General and, in addition, as often as may be ordered by the Government.
- Auditor General's reports. The reports of the Auditor General must accompany the annual report of the Commission.
1983, c. 55, s. 125.

CHAPTER VI REGULATIONS

- Regulations. **126.** The Government may, by regulation, on the advice of the Conseil du trésor,
(1) specify the standards of ethics and discipline prescribed in this Act and add to them;
(2) define disciplinary action applicable to public servants

and determine the conditions under which it may be taken;

(3) determine on what conditions and according to what modalities a public servant may be provisionally relieved of his duties and the cases where the relief is with or without remuneration;

(4) fix the norms of classification of public servants;

(5) amend, replace or repeal a regulation made by the Minister of the Civil Service pursuant to the Civil Service Act (chapter F-3.1).

1983, c. 55, s. 126.

Public servants not governed by collective agreement. **127.** The Government, by regulation, shall make provision for an appeal in the matters it determines, for public servants who are not governed by a collective agreement and for whom no appeal is provided in those matters under this Act.

Procedure. The regulation shall also prescribe the rules of procedure to be followed.

Hearing and decision. Appeals shall be heard and decided by the Commission de la fonction publique. Subparagraph 2 of the first paragraph of section 116, where it concerns rules of procedure, does not apply to such appeals.

1983, c. 55, s. 127.;2000, c. 8, s. 146.

Publication. **128.** The Government shall publish the text of every draft regulation in the *Gazette officielle du Québec* with a notice that it may be adopted with or without amendment on the expiry of 30 days from that publication.

Coming into force. Regulations of the Government come into force fifteen days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.

1983, c. 55, s. 128.

CHAPTER VII PENAL PROVISIONS

Fraudulent act. **129.** Every person who commits a fraudulent act, or incites a person to commit a fraudulent act, at a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory is guilty of an offence and liable to a fine of \$700 to \$2 800.

Sanctions. Every person who is convicted of such an offence ceases to be eligible for any competition or examination for a period of two years; if the person is a public servant, he is also liable to disciplinary action.

1983, c. 55, s. 129.;1986, c. 58, s. 38.;1990, c. 4, s. 426.;1991, c. 33, s. 40.

Intimidation. **130.** Every person who uses intimidation or threats to induce a public servant to engage in partisan work or to punish him for refusing to do so is guilty of an offence and liable to a fine of \$700 to \$7 000.

1983, c. 55, s. 130.;1986, c. 58, s. 39.;1990, c. 4, s. 427.;1991, c. 33, s. 41.

131. *(Repealed).*

1983, c. 55, s. 131.;1990, c. 4, s. 428.

CHAPTER VIII **TRANSITIONAL AND FINAL PROVISIONS**

132. *(Amendment integrated into c. A-2.1, s. 34).*

1983, c. 55, s. 132.

133. *(Amendment integrated into c. A-6, s. 20).*

1983, c. 55, s. 133.

134. *(Amendment integrated into c. A-6, s. 22).*

1983, c. 55, s. 134.

135. *(Amendment integrated into c. A-6, ss. 46.1, 46.2).*

1983, c. 55, s. 135.

136. *(Amendment integrated into c. A-23.1, Division III.1, ss. 124.1, 124.2).*

1983, c. 55, s. 136.

137. *(Amendment integrated into c. A-23.1, s. 127).*

1983, c. 55, s. 137.

138. *(Amendment integrated into c. C-27, s. 1).*

1983, c. 55, s. 138.

139. *(Amendment integrated into c. C-64.1, s. 33).*

1983, c. 55, s. 139.

140. *(Amendment integrated into c. E-18, s. 4).*

1983, c. 55, s. 140.

141. *(Amendment integrated into c. E-18, s. 10).*

1983, c. 55, s. 141.

142. *(Amendment integrated into c. E-18, s. 10.1).*

1983, c. 55, s. 142.

143. *(Amendment integrated into c. E-18, Division II.2, ss. 11.5, 11.6).*

1983, c. 55, s. 143.

144. *(Amendment integrated into c. F-2, s. 105).*

1983, c. 55, s. 144.

145. *(Amendment integrated into c. M-31, s. 5).*

1983, c. 55, s. 145.

146. *(Amendment integrated into c. M-34, s. 1).*

1983, c. 55, s. 146.

147. *(Amendment integrated into c. R-10, s. 2).*

1983, c. 55, s. 147.

148. (*Amendment integrated into c. R-10, s. 4*).

1983, c. 55, s. 148.

149. (*Amendment integrated into c. R-11, s. 9*).

1983, c. 55, s. 149.

150. (*Amendment integrated into c. R-12, s. 55*).

1983, c. 55, s. 150.

151. (*Amendment integrated into c. R-12, s. 63.6*).

1983, c. 55, s. 151.

152. (*Amendment integrated into c. R-12, s. 99.1*).

1983, c. 55, s. 152.

C. F-3.1, Provisions replaced. **153.** The provisions of the Civil Service Act (chapter F-3.1) are replaced by the corresponding provisions of this Act to the extent indicated by the proclamations made under section 174 of chapter 55 of the statutes of 1983.

Effect. Every other provision of the said Act ceases to have effect on the date fixed by order of the Government.

1983, c. 55, s. 153.

Pending matters. **154.** Matters pending before the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1) are continued in all respects in accordance with this Act by the Commission de la fonction publique established by this Act.

Party to proceedings. The Commission de la fonction publique established by this Act becomes a party to any proceeding to which the former Commission was a party on 31 March 1984, without continuance of suit.

1983, c. 55, s. 154.

Appeals. **155.** Appeals before the appeals committee under section 10 of the Civil Service Act (chapter F-3.1) are continued in all respects in accordance with the said Act.

1983, c. 55, s. 155.

Regulations in force. **156.** Regulations made by the Minister of the Civil Service under the Civil Service Act (chapter F-3.1) remain in force until they are amended, replaced or repealed by regulation of the Government in accordance with paragraph 5 of section 126 of this Act.

1983, c. 55, s. 156.

Regulations in force. **157.** Regulations made by the Office du recrutement et de la sélection du personnel de la fonction publique remain in force, until they are amended, replaced or repealed by regulation of the Office des ressources humaines.

1983, c. 55, s. 157.

Regulations in force. **158.** Regulations made by the Commission de la fonction

publique established by the Civil Service Act (chapter F-3.1) remain in force until they are amended, replaced or repealed by regulation of the Commission de la fonction publique established by this Act.

1983, c. 55, s. 158.

Validity of lists. **159.** The lists of certificates of qualifications now in force remain valid and are to be used in the application of this Act, as the Office des ressources humaines may determine.

1983, c. 55, s. 159.

Private secretaries. **160.** Private secretaries and their assistants appointed under section 65 of the Civil Service Act (1965, 1st session, chapter 14) and in office on 1 April 1984 continue to be governed by the legislative and regulatory provisions applicable to them until they cease to perform their duties as such.

1983, c. 55, s. 160.

Interpretation. **161.** Any reference in any Act, proclamation or commission, order in council, order or other document to the Civil Service Act (chapter F-3.1) or to a provision of that Act is a reference to this Act or the corresponding provision of this Act unless the context requires otherwise; and, in particular, any reference to section 87 or 97 of the Civil Service Act (chapter F-3.1) is a reference to section 33 of this Act.

Interpretation. In addition, any reference to the Minister of the Civil Service or to the Ministère de la Fonction publique, the Office du recrutement et de la sélection du personnel de la fonction publique or the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1) is a reference to the Government, the Conseil du trésor, the Office des ressources humaines or the Commission de la fonction publique established by this Act, according to their respective jurisdictions.

1983, c. 55, s. 161.;1999, c. 40, s. 135.

Public servants. **162.** Public servants of the Ministère de la Fonction publique, of the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1) and of the Office du recrutement et de la sélection du personnel de la fonction publique in office on 1 February 1984, become, without other formality, public servants of the Conseil du trésor, of the Commission de la fonction publique established by this Act or of the Office des ressources humaines, as the Government may determine.

1983, c. 55, s. 162.

Records and documents. **163.** The records and documents of the Ministère de la Fonction publique, the Office du recrutement et de la sélection du personnel de la fonction publique and the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1) become records and documents of the Conseil du trésor, the Office des ressources humaines or the Commission de la fonction publique established by this Act, respectively, as determined by

the Government.
1983, c. 55, s. 163.

Permanent tenure. **164.** The Government shall award permanent tenure to a casual public servant who meets all the following conditions:

(1) he holds a position the activities of which form part of the regular activities of his department or agency;

(2) he has worked on specific projects for a period of at least five years from 1 July 1977 to 30 December 1983 inclusive of both;

(3) he has been named by the Gouvernement du Québec and the Syndicat des professionnelles et professionnels du Gouvernement du Québec;

(4) his qualifications have been certified by the Office des ressources humaines.

Applicability. This Act applies, where such is the case, without other formality, to the public servant, provided that he is still working for the same department or agency on 15 November 1983.
1983, c. 55, s. 164.

“workmen unit”. **165.** Persons employed in the public service on 2 February 1984 and who have acquired permanent tenure under the collective agreement signed on 24 October 1972 between the Gouvernement du Québec and the Syndicat des fonctionnaires provinciaux du Québec Inc., “workmen” unit, become permanent public servants within the meaning of this Act, without any other procedure or formality.

1983, c. 55, s. 165.

Administrator of state. **166.** The holder of a position listed in section 55 on 21 December 1983 becomes an administrator of state, except where he is engaged by contract.

Administrator of state. A person who formerly held a position contemplated in section 55 or who is a Deputy Secretary at the Conseil exécutif on 21 December 1983 may become an administrator of state, as the Government may determine.

1983, c. 55, s. 166.

Members of the Commission de la fonction publique. **167.** The members of the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1) in office on 1 April 1984 remain in office for the unexpired portion of their term.

1983, c. 55, s. 167.

Applicability. **168.** Sections 43 and 80 apply notwithstanding the Charter of human rights and freedoms (chapter C-12).

Effect. This section ceases to have effect on 26 June 1985.

1983, c. 55, s. 168.

Transfer of appropriations. **169.** The moneys appropriated for the purposes of the Commission de la fonction publique established by the Civil Service Act (chapter F-3.1), the Office du recrutement et de la

sélection du personnel de la fonction publique and the Ministère de la Fonction publique are transferred to the Commission de la fonction publique established by this Act, to the Office des ressources humaines or to the Conseil du trésor, as the Government may determine.

1983, c. 55, s. 169.

Sums required. **170.** The moneys required for the application of this Act are taken, for the fiscal year 1984-85, out of the consolidated revenue fund to the extent determined by the Government, and for subsequent fiscal years, out of the appropriations granted each year for that purpose by Parliament.

1983, c. 55, s. 170.

Chairman. **171.** The chairman of the Conseil du trésor is responsible for the administration of this Act.

1983, c. 55, s. 171.;1996, c. 35, s. 15.

Report of the Conseil du trésor. **172.** The Conseil du trésor shall, not later than 22 December 1988, make a report to the Government on the implementation of this Act and the expediency of maintaining it in force and, as the case may be, of amending it.

Tabling. The report shall be tabled before the National Assembly within the next fifteen days if the Assembly is sitting or, if it is not sitting, before the President of the National Assembly.

Parliamentary committee. Within one year of the tabling of the report, the President shall convene a parliamentary committee to examine the expediency of maintaining this Act in force or, as the case may be, of amending it, and to hear representations on the matter from interested persons and agencies.

1983, c. 55, s. 172.

173. *(This section ceased to have effect on 21 March 1989).*

1983, c. 55, s. 173.;U. K., 1982, c. 11, Sch. B, Part I, s. 33.

174. *(Omitted).*

1983, c. 55, s. 174.

REPEAL SCHEDULES

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 55 of the statutes of 1983, in force on 1 July 1984, is repealed, except section 174, effective from the coming into force of chapter F-3.1.1 of the Revised Statutes.

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), sections 42 to 50 and 53 of chapter 55 of the statutes of 1983, in force on 1 March 1985, are repealed effective from the coming into force of the updating to 1 March 1985 of chapter F-3.1.1 of the Revised Statutes.



© Copyright - Gouvernement du Québec, 1995-2001

《 附錄三 》

**Report of the
Auditor General
of Canada
to the House of Commons**

Chapter 23
Involving Others in Governing: Accountability at Risk

Chapter 24
The Canadian Adaptation and Rural Development Fund:
An Example of Involving Others in Governing

November 1999

This November 1999 Report comprises 14 chapters, including "Matters of Special Importance", as well as a Foreword and the Main Points from the April, September and November 1999 Report chapters. In order to better meet clients' needs, the Report is available in a variety of formats. If you wish to obtain another format or other material, the Table of Contents and the order form are found at the end of this chapter.

© Minister of Public Works and Government Services Canada 1999
Cat. No. FA1-1999/2-24E
ISBN 0-662-28262-0
Copies françaises aussi disponibles

Chapter 23

Involving Others in Governing

Accountability at Risk

The audit work reported in this chapter was conducted in accordance with the legislative mandate, policies and practices of the Office of the Auditor General. These policies and practices embrace the standards recommended by the Canadian Institute of Chartered Accountants. The numbered paragraphs in bold face represent recommendations.

Table of Contents

	Page
Main Points	23-5
Introduction	23-7
The federal government is using new governance arrangements	23-7
Principles of parliamentary control and accountability are challenged	23-7
Focus of the audit	23-10
Observations and Recommendations	23-10
How Many Arrangements Are There?	23-10
The government does not know the extent of new governance arrangements	23-10
Use is significant and growing	23-10
The Need for a Governing Framework and Central Guidance	23-12
Guidance is limited	23-13
Monitoring helps to identify strengths and weaknesses of new governance arrangements	23-15
Collaborative Arrangements: Sharing Governance	23-16
Performance reporting is occurring	23-16
Many essential accountability mechanisms are not in place	23-19
Transparency needs attention	23-21
Mechanisms to protect the public interest are often weak	23-21
Delegated Arrangements: Letting Go	23-22
Reporting requirements and practices need improvement	23-23
Several accountability mechanisms are weak	23-26
Transparency is not assured	23-27
Some mechanisms to protect the public interest are present	23-28
New Governance Arrangements Need Attention	23-29
Improvements can be made	23-29
The nature of accountability is changing; good governance needs attention	23-30
Conclusion	23-31
About the Audit	23-33
Exhibits	
23.1 Federal Approaches to Program and Service Delivery	23-8
23.2 A Governing Framework for New Arrangements	23-9
23.3 Cumulative Growth in New Governance Arrangements 1990-1998	23-11
23.4 Annual Federal Expenditures Through New Governance Arrangements	23-12
23.5 Arrangements With Federal Commitment Over \$1 Billion	23-12
23.6 Total Federal and Partner Contributions to New Governance Arrangements, 1990-1999	23-12
23.7 Environment Canada: Building on Experience	23-14
23.8 Types of Partners in Collaborative Arrangements With Federal Departments	23-16
23.9 Key Features Present in the Ten Collaborative Arrangements Examined	23-17
23.10 Appropriate Reporting to Parliament	23-18
23.11 Key Features Present in the Seven Delegated Arrangements Examined	23-24
23.12 Reporting Framework: Canada Millennium Scholarship Foundation	23-25

	Page
Appendices	
A. Accountability Frameworks in Other Jurisdictions	23-35
B. New Governance Arrangements Identified in OAG Survey	23-37
C. Collaborative Arrangements Examined in the Audit	23-40
D. Delegated Arrangements Examined in the Audit	23-42



Involving Others in Governing

Accountability at Risk

Main Points

23.1 We found a total of 77 new governance arrangements across the federal government, involving annual expenditures totalling over \$5 billion. Federal investments in some arrangements are quite small, such as the Canadian Industry Program for Energy Conservation, but others involve federal commitments of billions of dollars, such as the Canada Infrastructure Works Program.

23.2 Under these arrangements, the federal government involves external partners in the planning, design and achievement of federal objectives, replacing delivery by federal employees, contractors or agents. These partners are not accountable to ministers and Parliament.

23.3 These initiatives, if properly implemented, have the potential to improve the delivery of federal programs and services. However, many of the new governance arrangements we examined have been put together in an ad hoc manner that puts accountability to Parliament at unnecessary risk. Parliament has limited means under these arrangements — in some cases no means — of holding the government to account for the federal functions performed or the federal objectives to be achieved. Good will and trust alone, while essential in all arrangements, are not adequate insurance for continued success in the long term.

23.4 For these new arrangements, the government does not have in place a consistent and generally accepted governing framework that safeguards the essential principles of our parliamentary system. Nor has it been adequately capturing and communicating the lessons being learned in these new approaches. In our view, the federal government remains accountable to Parliament for the use of federal tax dollars, assets and authorities, no matter what tools it uses or arrangements it puts in place with partners to achieve its public objectives.

23.5 Parliament and the public need to be consulted on the development of an adequate governing framework that will reconcile new governance arrangements with accountability to Parliament for the exercise of federal functions by parties outside the federal government.

Background and other observations

23.6 Over the last decade, the government has significantly increased its use of external partners in innovative arrangements to deliver federal programs and services to Canadians. In some cases, these arrangements have diffused federal power, by drawing outside parties into the process of actually governing Canadians in important areas of public policy that were once the sole domain of the federal government.

23.7 The new governance arrangements we examined use a wide variety of approaches to program and service delivery. Provision for ensuring good governance and accountability to Parliament and the public is very patchy: we found limited reporting of performance, many weak accountability mechanisms, and inadequate attention to transparency and protection of the public interest. These need to be fixed.

23.8 The government needs to ensure that departments and agencies setting up new arrangements address the essential issues of credible reporting to Parliament and the public, effective accountability mechanisms, adequate transparency and protection of the public interest. The Treasury Board Secretariat's leadership and commitment are needed in developing a governing framework and overseeing its use, recognizing that what constitutes appropriate and adequate specific provisions to address these issues will vary from case to case.

23.9 There is a balance to be struck between the independence these arrangements need to operate efficiently to achieve results and the need for adequate accountability. In our view, appropriate accountability to Parliament and the public is not incompatible with independence from government intervention in operational matters.

The response of the Treasury Board Secretariat is included at the end of the chapter. The Secretariat endorses the elements of the governing framework we propose, stresses the need for flexibility in their application and acknowledges the need for improvement in some areas. The Secretariat mentions several steps it is taking to address issues identified in this chapter.

Introduction

The federal government is using new governance arrangements

23.10 Government programs and services have traditionally been delivered to Canadians by departments and agencies that report directly to ministers and are subject to common administrative rules and regulations. The government has also created Crown corporations to deliver public services that it believes should be delivered at arm's length from government. Most Crown corporations are subject to a common accountability and control regime. More recently, the government has used new, alternative approaches to deliver its programs and services.

23.11 Many new initiatives stay within the traditional model of ministerial accountability to Parliament. Examples are Crown corporations, special operating agencies like the Passport Office, and service agencies such as the Canadian Food Inspection Agency, the Canadian Parks Agency and the new Canada Customs and Revenue Agency.

23.12 In some cases, the government has involved outside organizations in delivering federal programs as its service providers or as its agents. It has expanded its use of contracting for goods and services. For example, Public Works and Government Services Canada has contracted for property management services covering some 300 federal buildings (see Chapter 18 of this Report), and National Defence has implemented Alternative Service Delivery arrangements for several of its non-core support activities (see Chapter 27 of this Report). In these cases, the federal government is still in control of policy and operations, and ministers remain directly accountable to Parliament.

23.13 A change in how Canadians are governed. Some of the government's

current initiatives have moved beyond the traditional forms of governance of federal public policy — of directing and managing the interests of the state. Under these **new governance arrangements**, the federal government involves other parties in the planning, design and achievement of federal objectives, replacing delivery by federal employees, contractors or agents. In effect, federal governance has been shifted to outside entities that are not accountable to ministers and Parliament.

23.14 Arrangements where the federal government *shares* policy formulation, risk and operational planning, design and management with another party or parties who deliver programs and services are called **collaborative arrangements** in this chapter. Those in which the federal government, within a policy framework it has set out, has *delegated* key planning and operational decisions to the discretion of another party are called **delegated arrangements**. Exhibit 23.1 summarizes both the traditional approaches to program and service delivery and some of the new arrangements that are being tried.

23.15 **New governance arrangements need to balance efficiency, accountability and results.** Initiatives of this kind have been implemented in many jurisdictions. We recognize that new governance arrangements have the potential for greater efficiency, flexibility, citizen participation and client satisfaction and that departing from traditional models of delivery to experiment with new forms represents a calculated risk. As noted in our April 1999 Report (Chapter 5), to best serve the public interest, improved efficiency and the achievement of results need to be balanced with adequate accountability.

Principles of parliamentary control and accountability are challenged

23.16 New governance arrangements pose a challenge to principles of Parliamentary control and accountability

Under new governance arrangements, federal governance has been shifted to outside entities that are not directly accountable to ministers and Parliament.

To best serve the public interest, improved efficiency and the achievement of results need to be balanced with adequate accountability.

Parliament's ability to control and scrutinize the breadth of federal public policy may be compromised.

that are long-established. Accountability for federal spending and for the use of federal authorities can be at risk in arrangements that involve others in governing who are not directly accountable to a minister and are not subject to parliamentary scrutiny. Unless these arrangements specifically provide for them, mechanisms to ensure adequate accountability through ministers to Parliament and to the public will not be present and Parliament's ability to control and scrutinize the breadth of federal public policy may be compromised.

23.17 The government has recognized this challenge:

Departments share, but do not abdicate, their responsibilities when they enter into partnerships; they remain accountable and answerable to Parliament for the consequences of their involvement in such arrangements. (Treasury Board Secretariat, *Citizen-Centred Service and the Partnership Option*, 1998)

23.18 Essential elements in new governance arrangements. In our April

Exhibit 23.1

Federal Approaches to Program and Service Delivery

Organizational Form	Key Features	Examples
Traditional Ministerial Accountability Arrangements		
Departments and Agencies	Federal entities reporting directly to a minister and subject to the administrative rules and regulations of Treasury Board and the Public Service Commission	Transport Canada Statistics Canada Immigration and Refugee Board
Crown Corporations	Federal entities that have a board of directors, are involved in a federal public policy purpose and report through a minister to Parliament.	Export Development Corporation Canada Post Corporation Canadian Broadcasting Corporation
New Arrangements Under Direct Ministerial Accountability		
Special Operating Agencies	Remains part of a federal department, reporting to a deputy minister.	Passport Office
Service Agencies	A federal entity with its own CEO reporting to a minister but with greater administrative autonomy than a department	Canadian Food Inspection Agency Canadian Parks Agency Canada Customs and Revenue Agency
New Governance Arrangements		
Collaborative Arrangements	Partnering arrangements with other levels of government, the private and/or the voluntary sectors, where policy and operational decision-making and risk are shared among partners.	Labour Market Development Agreements Canada's Model Forest Program
Delegated Arrangements	Arrangements where the federal government confers discretionary authority and responsibility over program design, planning, management and delivery of federal functions to independent outside bodies, usually corporate boards of directors, within a broad strategic policy framework provided by the government.	Canada Foundation for Innovation Canadian Television Fund The St. Lawrence Seaway Management Corporation

1999 Report, Chapter 5, we identified the elements of accountability, transparency and protection of the public interest that are essential in collaborative arrangements — that is, arrangements where the federal government shares policy or program management with other parties. These same elements apply, with some adjustment, to delegated arrangements — those where program management has been shifted to an organization outside the government. Exhibit 23.2 sets out a general governing framework for these new arrangements, which includes the elements of accountability (separated into reporting and accountability mechanisms), transparency and protection of the public interest. Specific attributes of each element are presented. These two accountability elements are based on our previous audits and studies of accountability arrangements, which have identified key attributes of strong accountability: clear and agreed expectations, clear roles and responsibilities, balanced expectations and capacities, credible reporting, and reasonable review, program evaluation and audit.

23.19 These elements and attributes are stated as general conditions; their particular application to each new governance arrangement will need to be considered. On the one hand, given the wide range of arrangements, a “one size fits all” approach to developing a suitable governing structure will not work. On the other hand, by their very nature these arrangements step outside — and hence cannot be expected to necessarily rely on — the federal government’s established regimes of public management, administration and accountability such as human resource management regimes, the framework of the *Financial Administration Act* and the traditional role of a minister. In each arrangement, those involved need to develop an appropriate governing framework that addresses the essential elements.

23.20 The government has, at various times, suggested similar elements of an effective accountability regime for arrangements with other parties. Recently, other jurisdictions as well as the voluntary sector in Canada proposed quite similar elements of accountability and good governance in their own operations (see Appendix A).

23.21 Our governing framework is based on two fundamental principles of parliamentary democracy:

- **Parliamentary sovereignty over federal policy.** Whoever holds discretionary authority to spend federal taxpayer money or to execute federal authority must not be exempt from potential scrutiny by Parliament.
- **Stewardship of the public trust.** Any arrangement delivering federal

A governing framework for new arrangements includes elements of accountability, reporting, transparency and protection of the public interest.

Exhibit 23.2

A Governing Framework for New Arrangements

<p>To ensure credible reporting:</p> <ul style="list-style-type: none"> • Clear public objectives • Concrete performance expectations • Appropriate performance measurement and reporting regime <p>To establish effective accountability mechanisms:</p> <ul style="list-style-type: none"> • Clear roles and responsibilities • Performance expectations that are balanced with capabilities • Well-defined management structure • Appropriate monitoring regime • Partner dispute resolution mechanisms • Specific evaluation provisions • Procedures to deal with non-performance • Appropriate audit regime <p>To ensure adequate transparency:</p> <ul style="list-style-type: none"> • Public access to information • Communication of information on key policies and decisions <p>To protect the public interest:</p> <ul style="list-style-type: none"> • Citizen complaint and redress mechanisms • Public consultation/feedback mechanisms • Policies to promote pertinent public sector values

programs and services must respect the public trust, observing public sector values of fairness, impartiality and equity.

Focus of the audit

23.22 We undertook this audit for several reasons. The government's use of these new governance arrangements was perceived to be increasing. Both this Office and members of Parliament have expressed concerns about the accountability and transparency of some of the new arrangements. Accountability and good governance issues surrounding many of these forms of delivery have had no clear answers. Other national jurisdictions, in particular the United Kingdom and Australia, are questioning and examining similar innovative arrangements. For all these reasons, we believed the audit was timely even though many of the arrangements we looked at were created only recently.

23.23 Our audit focussed on the regimes set up in new governance arrangements to address good governance and to maintain accountability for the federal public trust they manage. We sought to determine the extent to which these new governance arrangements since 1990 are being used by the federal government. In a number of selected arrangements, we also sought to assess whether the formal provisions and subsequent practices for reporting, accountability mechanisms, transparency and protection of the public interest are adequate. We did not audit the effectiveness of these arrangements in achieving the objectives for which they were established. Finally, we examined the guidance provided both by central agencies and by sponsoring departments in the creation of these new governance arrangements.

23.24 All new governance arrangements involve parties outside the federal government. We did not audit those parties. Rather, we audited the

federal government's involvement in these arrangements and the mechanisms established to manage its relationship with its partners in them.

23.25 We excluded several types of arrangements. As our focus was on new *governance* arrangements, we excluded such arrangements as contracting for goods and services and arrangements with international partners. We also excluded most partnering arrangements in Environment Canada and self-government arrangements in Indian and Northern Affairs Canada.

23.26 Further details on our audit objectives, criteria and approach, and on the types of arrangements excluded from our scope, can be found at the end of the chapter in **About the Audit**.

Observations and Recommendations

How Many Arrangements Are There?

The government does not know the extent of new governance arrangements

23.27 Since the start of the decade, the federal government has encouraged departments to look for new ways of performing federal functions, in particular by involving other governments and the private and/or voluntary sectors.

23.28 We wanted to find out how many of these new arrangements have been created, the expenditures involved and what basic forms they take. The government could not provide us with an inventory of Alternative Service Delivery arrangements, nor of the new governance arrangements they include. We therefore undertook a government-wide survey.

Use is significant and growing

23.29 We distributed our survey to 49 departments and agencies, asking for

information on all their existing arrangements created since 1990 that met our definitions. Twenty-four had no new governance arrangements.

23.30 Our survey found a total of 77 new governance arrangements, set up by 25 departments and agencies; 51 of these are collaborative arrangements and 26 are delegated arrangements. Appendix B provides basic information on them. As Exhibit 23.3 illustrates, there has been a significant growth in the use of new governance arrangements since 1990

23.31 We found that the classification of arrangements into collaborative and delegated was not always apparent. For example, those involving a form of contracting for services that gives contractors significant administrative independence come close to being delegated arrangements. The key distinction was whether the government has delegated to a non-federal party significant management discretion in the delivery of federal public objectives. But the dividing line was not always clear. One example is Human Resources Development Canada's sector councils that develop and implement national human resource development strategies: we classified these as **borderline arrangements** and did not include them in our survey results. We also found other types of borderline arrangements we did

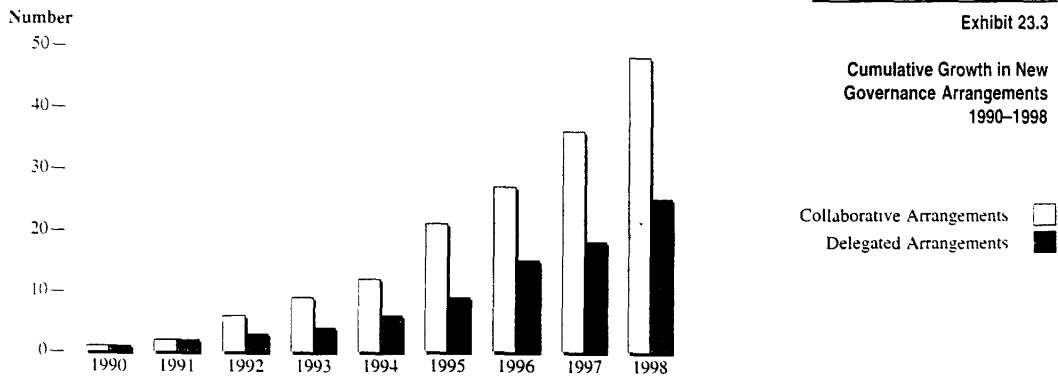
not include, where the federal government has promoted and sponsored an entity to effectively take over federal responsibilities but where there are no federal moneys, direct involvement or currently owned assets, even though the federal government retains a degree of legal, constitutional or political interest. Examples include NavCanada, which fulfils Canada's national and international responsibilities for air traffic control, and Strait Crossing Bridge Ltd., which delivers part of the federal constitutional obligation to provide transport links between Prince Edward Island and the rest of Canada.

23.32 Of the 77 arrangements identified, 44 (57 percent) are concentrated in six departments and agencies: Agriculture and Agri-Food Canada, Canadian Heritage, Fisheries and Oceans, Human Resources Development Canada, Natural Resources Canada and Industry Canada.

23.33 In addition, 17 of the 77 are "models" and consist of more than one agreement. For example, Canada's Model Forests Program involves agreements with 11 entities. If the list of arrangements were expanded to include all such agreements, the total number of new governance arrangements would be over 280.

23.34 The federal financial commitment has also grown, with over

There has been a significant growth in new governance arrangements since 1990. The federal financial commitment is over \$5 billion annually.



\$5 billion now being spent annually under new governance arrangements (see Exhibit 23.4).

23.35 The federal financial commitment to new delivery arrangements varies greatly and in many cases is quite small. However, as shown in Exhibit 23.5, the federal contribution to some arrangements over the last few years has been quite substantial.

23.36 The government's partners in new governance arrangements have contributed \$11 billion, or about 30 percent of total funding (see Exhibit 23.6).

The Need for a Governing Framework and Central Guidance

23.37 Organizational change within government involves a range of central players with different responsibilities and expectations. The Privy Council Office is the central agency involved in machinery-of-government issues, that is, the form and design of departments and agencies. The Department of Finance approves provisions that deal with the government's overall financial commitments. The Treasury Board Secretariat (TBS) has the responsibility to provide advice to Treasury Board ministers and government departments on

Exhibit 23.4
Annual Federal Expenditures Through New Governance Arrangements

Source: Office of the Auditor General Survey

Fiscal Year	(\$ billions)		
	Collaborative	Delegated	Total
1997-98	1.9	2.9	4.8
1998-99	3.8	0.8	4.6
1999-00	4.5	0.7	5.1*

*Difference due to rounding

Exhibit 23.5
Arrangements With Federal Commitment Over \$1 Billion

Source: Office of the Auditor General Survey

Collaborative Arrangements	
Labour Market Development Agreements	\$7.7 B between 1995-96 and 1999-00
National Child Benefit	\$3.8 B between 1998-99 and 2000-01; \$1.7 B per year thereafter
Canada Infrastructure Works Program	\$2.4 B between 1994-95 and 1999-00
Regional Bilateral Agreements	\$2.2 B between 1996-97 and 2003-04
Delegated Arrangements	
Canada Millennium Scholarship Foundation	\$2.5 B 1997-98, to be spent over 10 years
Canada Foundation for Innovation	\$1.0 B between 1996-97 and 2002-03

Exhibit 23.6
Total Federal and Partner Contributions to New Governance Arrangements, 1990-1999

Source: Office of the Auditor General Survey

Type of Arrangement	Federal Contributions (\$ billions)	Contributions by Partner (\$ billions)
Collaborative	19.6	8.6
Delegated	6.6	2.9
Total	26.2	11.4*

*Difference due to rounding

the implementation of change, as it relates to human, financial, information and technology resources. It provides assistance to departments seeking to establish new and innovative forms of program delivery known as alternative service delivery mechanisms (ASDs).

23.38 We expected that the central players would provide departments with timely and appropriate guidance on operational issues, as well as on broader issues of design of the arrangements, to reflect the essential elements of accountability and good governance. We also expected that central agencies would generally monitor the establishment of new arrangements — including new governance arrangements — and assess their usefulness and appropriateness as tools of public policy, learn from the experience and communicate that learning across government.

23.39 We were informed that the Privy Council Office has had minor involvement in providing guidance or advice on negotiating and managing the new arrangements that we examined in this audit. The Department of Finance was involved in selected cases, for example, the Canada Foundation for Innovation and the Canada Millennium Scholarship Foundation.

Guidance is limited

23.40 *Framework for Alternative Program Delivery* is not used. Program Review prompted Treasury Board Secretariat's ASD division (created in 1994) to develop the *Framework for Alternative Program Delivery*, which identifies some categories of alternative service delivery. We examined the Framework's applicability to new governance arrangements.

23.41 The Secretariat's Framework, developed in 1995, provides broad strategies for developing these kinds of arrangements, along with a checklist of questions on the public interest, service

quality, resource management and human resources that need to be considered when assessing proposed new methods of delivery. Although it sets out a general requirement for accountability, it is not clear on what constitutes an appropriate accountability regime, particularly in non-traditional arrangements outside the direct control of the federal government. Nor does it contain specific information about requirements for transparency and for protection of the public interest. The Treasury Board Secretariat has provided further information in recent publications, namely, *Citizen-Centred Service and the Partnership Option* (1998) and *Impediments to Partnering and the Role of Treasury Board* (1998). However, it has not yet updated its *Framework for Alternative Program Delivery* to reflect departmental experience with ASDs in general or with, in particular, the types of new governance arrangements we discuss in this chapter. In most of the arrangements we examined, we noted that sponsoring departments had not used the 1995 Framework for Alternative Program Delivery. Officials at the Secretariat informed us that plans have been made to update the Framework for March 2000.

23.42 We observed that most departments that have sponsored new governance arrangements do not have centres of expertise responsible for providing guidance, monitoring implementation and documenting best practices. Few departmental managers have much experience in setting up new arrangements. In the absence of clear guidance, some departmental officials have developed their own informal networks to share experiences. Some departments have made attempts to provide guidance and capture lessons learned from their experiences. Environment Canada has documented lessons learned and has prepared a number of management frameworks for the programs it delivers with partners outside the federal government (see Exhibit 23.7).

The Treasury Board Secretariat's Framework for Alternative Program Delivery is not clear on what constitutes an appropriate accountability regime.

There is no consistent governing framework or other guidance from the centre specifying how, in designing new governance arrangements, departments are to ensure that the flexibility the new arrangements need to work efficiently is balanced with the requirements of good governance and accountability to Parliament.

23.43 The Secretariat has approached the creation of new governance arrangements on a case-by-case basis, providing advice through ad hoc teams of experts in areas such as financial management, human resource management and alternative service delivery. There is no centre of expertise responsible for co-ordinating guidance, monitoring implementation and documenting best practices. The ASD division of the Secretariat is responsive, providing advice when requested. It does not take the lead in giving advice.

23.44 In our interviews with departmental managers tasked to develop and implement new governance arrangements or other ASD initiatives, a common theme was the lack of clear direction and guidance from the central agencies of government, particularly in addressing the elements of accountability and good governance. There is a clear need to better co-ordinate and manage the guidance provided to departments by the Secretariat's various policy centres in the creation of new arrangements. Also needed is a consistent message.

23.45 There is no consistent governing framework. In a number of publications, the Secretariat has identified

some elements of a governing regime for alternative service delivery mechanisms that are also applicable to new governance arrangements. One is a joint paper developed with this Office, *Modernizing Accountability Practices in the Public Sector*, which is the basis of the framework we suggest in Exhibit 23.2. But there is no consistent governing framework or other guidance from the centre specifying how, in designing new governance arrangements, departments are to ensure that the flexibility the new arrangements need to work efficiently is balanced with the requirements of good governance and accountability to Parliament. We found no consistent approach to establishing governing frameworks for new governance arrangements. Even if a standard governing framework existed, the Secretariat would need a more structured and committed approach than it presently has to oversee its implementation.

23.46 The Treasury Board Secretariat should clearly identify and communicate the essential elements of an effective governing framework for new governance arrangements and provide departments with consistent guidance on its use when they design and implement new arrangements.

Exhibit 23.7

Environment Canada:
Building on Experience

Source: Office of the Auditor General, Environment Canada

Environment Canada has a long tradition of recognizing the importance of collaborative arrangements as a means of engaging citizens and sharing ownership of problems and solutions, and encouraging results. Its Ecosystem Initiatives are an example. Through evaluations Environment Canada with its partners has identified and addressed challenges in its programs and documented lessons learned. This process and extensive consultations within the Department and among partners led to the development of the Planning and Management Framework for Ecosystem Initiatives -- a key guide for future decision making.

Some lessons learned through evaluations of the Ecosystem Initiatives: There is a need for clear accountability and performance indicators; information must be shared among all partners; and procedures need to be put in place to ensure lessons learned have been incorporated in the framework and used to guide the implementation of the National System Ecosystem Initiative.

Notwithstanding these positive developments, challenges remain. We observed that the Framework does not contain explicit guidelines for accountability -- for example, the need to provide for clear roles and responsibilities among partners and agreed expectations. Environment Canada uses that memoranda of understanding and other means used to document roles and responsibilities and it is preparing a national evaluation framework to more clearly define accountability for the planning and monitoring of goals, objectives and results.

The framework should provide for:

- **appropriate reporting to Parliament and the public on the extent to which the arrangement has achieved its federal public policy purpose and on the expenditure and investment of federal moneys and the stewardship of federal assets;**
- **effective accountability mechanisms to ensure that adequate and appropriate evaluation and audit regimes are established;**
- **adequate transparency of important decisions on the management and operations of the arrangement; and**
- **protection of the public interest so that delivery of the federal objective adheres to essential and traditional values of public sector administration.**

Monitoring helps to identify strengths and weaknesses of new governance arrangements

23.47 As already noted, the government could not provide us with an inventory of the number, types and expenditures of new arrangements created. The Treasury Board Secretariat does prepare an annual report to Parliament entitled *Crown Corporations and Other Corporate Interests of Canada*, which lists each entity to whose governing body the federal government has a legal right to appoint or nominate one or more members. As such, it provides limited information on some of the delegated arrangements identified in our survey, but not all. It does not include, for example, federal representatives who are made directors pursuant to a contribution agreement. In addition, the President of the Treasury Board tables an annual report in Parliament, which in recent years has identified as examples a few of the intergovernmental initiatives that were also captured in our survey as collaborative arrangements. Thus there is reporting to Parliament by the Secretariat on some new governance arrangements,

but it is very limited. These reports could be used to present a more complete picture to Parliament.

23.48 Further, the Treasury Board Secretariat has not tracked or evaluated trends, successes or issues emerging from the establishment of these new arrangements. It does not monitor new arrangements to see which types work as policy tools, despite its access to a broad range of departmental documents that presumably would mention them (Treasury Board Submissions, Reports on Plans and Priorities, Business Plans and Departmental Performance Reports). Consequently, it has not assessed the appropriateness of the use of new governance arrangements, what they cost and how effective or responsive they have been

23.49 **Lessons learned as a springboard for new governance arrangements.** TBS has acknowledged the need to develop its capacity to assess the results of new forms of delivery arrangements, to capture lessons learned, and to communicate these lessons to the managers of existing arrangements and those proposing new ones. An understanding of the benefits and potential difficulties inherent in new governance arrangements would help departments considering them to overcome the shortcomings we identified in the audit and to avoid “reinventing the wheel”.

23.50 The ASD division of the Treasury Board Secretariat recently made an effort to document lessons learned on the benefits, risks and costs involved in selected alternative service delivery initiatives. However, the attention given to new governance arrangements has been very limited. We were informed that officials in the ASD division plan to develop a guide on management practices for new service delivery arrangements, including new governance arrangements, as well as a database on best practices and a process for updating it. The projected

The Treasury Board Secretariat has not reported overall on the extent to which arrangements are being used, what they cost and how effective or responsive they have been.

time for completion is early 2000. We support this effort.

23.51 The Treasury Board Secretariat should:

- collect and make available more complete information on the types and extent of use of new governance arrangements that federal departments and agencies create;
- develop an evaluation framework and, after an appropriate period, evaluate the use of new governance arrangements as tools of public policy. The Secretariat should communicate the findings government-wide and report a summary of the evaluation to Parliament; and
- gather information on lessons learned and good practices identified in new governance arrangements, and communicate this information to government managers.

Collaborative Arrangements: Sharing Governance

23.52 We defined collaborative arrangements as those that involve the federal government and either provincial governments and/or partners in the private or voluntary sector and in which decisions about collective activities are shared, along with risks. As Exhibit 23.8 shows, in almost half of the 51 collaborative

arrangements identified by our survey, the departments had only non-government partners, and in about one quarter they had only government partners. Appendix B provides a list of those arrangements identified by our survey.

23.53 Our cases. We selected 10 collaborative arrangements to examine. They cover a range of types, and include those with the largest federal financial commitments but also some involving little federal spending. Appendix C provides basic information on each of these arrangements, including their purpose, partners and financial commitments involved.

23.54 What we examined. We expected the arrangements to have appropriately addressed the elements of accountability and good governance. Exhibit 23.9 provides an overview of the 10 collaborative arrangements we examined, identifying the number of arrangements where selected key attributes and related features are present in the governing framework.

Performance reporting is occurring

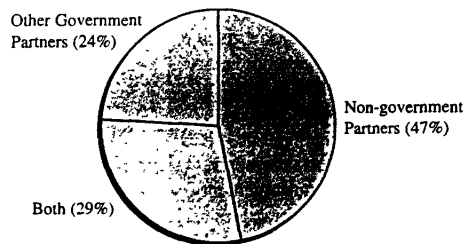
23.55 Given that the new governance arrangements are outside the normal federal reporting regimes (in particular, the Estimates process) yet still involve a significant federal interest, we expected them to have a governing framework that:

- states clearly the objectives they are trying to achieve;
- includes in agreements or subsequent documents more specific statements about the results expected from the arrangement and for each of the parties involved; and
- makes appropriate provision for reliable measurement of the results achieved and for reporting on them to the parties involved, the ministers responsible, Parliament and the public.

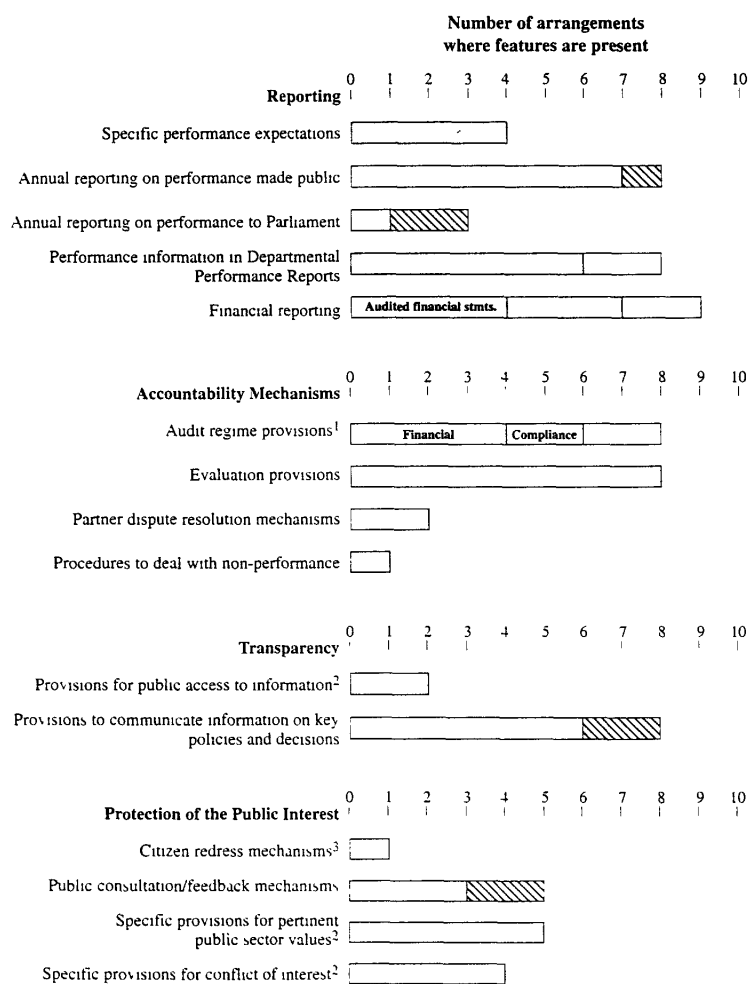
23.56 While there is some form of reporting on the collaborative arrangements we examined, we found that

Exhibit 23.8

Types of Partners in Collaborative Arrangements With Federal Departments



Key Features Present in the Ten Collaborative Arrangements Examined



Notes: ¹ Audit provisions in addition to value-for-money audits of the federal partner
² Refers only to formal requirements in the arrangements. Relevant federal and provincial legislation/policies also apply
³ Refers only to the federal component of the arrangement. Provincial or private sector partner may have redress mechanisms

Yes, formal requirement or feature Yes, voluntary Not applicable

performance measurement practices need more attention and that reporting to Parliament is generally weak and sometimes absent.

23.57 Public objectives are clear but specific performance expectations are not. Documents we examined for the 10 collaborative arrangements frequently state the public objectives clearly so that the general purpose is known. However, for the most part we found that performance expectations, when identified, tend to focus on outputs and not the accomplishments that are expected of each partner. Without more concrete outcome expectations, it is hard to translate good intentions into effective action that each partner should take. Further, it will be difficult or impossible later to judge and report on the success of the arrangement. We did note exceptions. For example, Canada's Model Forests Program (Foothills Model Forest) has tailored performance expectations to regional needs and to measurement of outcomes at the local level.

23.58 Performance information is being reported. According to our survey, about 55 percent of collaborative arrangements are required to report what they have accomplished. Another 27 percent report only on the activities they have undertaken. Sixteen percent have no requirement to report on performance, but most in this group involve little or no federal funds.

23.59 In the 10 collaborative arrangements we examined, we found that seven require performance reports that are

publicly available. However, we found shortcomings in the nature of their performance reporting. The kinds, quality and quantity of data they report vary widely. Employability Assistance for People with Disabilities is an example: the provinces and Human Resources Development Canada are committed to annual reporting but to date there is no agreement on the specific format, substance, or timing of an annual report. Nor are there yet specific targets to be met over any time frame. We observed no structured reporting in other arrangements as well, although efforts were under way to improve reporting practices.

23.60 Some information reported to Parliament. We recognize that it is neither reasonable nor desirable to expect all new governance arrangements to report to Parliament in detail on their performance, and doing so would overwhelm Parliament with information. Appropriate reporting to Parliament would depend on the significance of the arrangement (see Exhibit 23.10). By reporting to Parliament we mean using, as appropriate, one of these approaches.

23.61 We found that for the arrangements examined, selected financial, performance or evaluation information has been provided in sponsoring departments' Performance Reports but the extent of the information varies.

23.62 The Canada-Alberta Labour Market Development Agreement was the only arrangement that had formal provisions for reporting information to

Exhibit 23.10

Appropriate Reporting to Parliament

Size of Arrangement	Appropriate Reporting
<i>Small</i>	Reference in Departmental Performance Report (except for very small arrangements)
<i>Medium</i>	Reference in Departmental Performance Report to a publicly available performance report
<i>Significant</i>	Summary of annual performance in Departmental Performance Report
<i>Very significant or legislated</i>	Separate performance report tabled in Parliament

Parliament directly and on a regular basis. In other large arrangements such as Employability Assistance for People with Disabilities and the National Child Benefit, there is no requirement to report to Parliament.

23.63 Comparability and sharing of performance data need attention. A common problem in collaborative arrangements that was identified in several of our case studies is ensuring that data collected by the different partners are reliable and compatible. The credibility of reporting on the arrangement's overall performance requires that the data each partner collects and reports be relevant, accurate, verifiable, and sufficiently comparable with other partners' data. Of course, data sharing may be constrained by legitimate concerns for individual privacy, commercial confidence and future negotiations between levels of government. We expect that any such restrictions would be spelled out explicitly.

23.64 Departments sponsoring collaborative arrangements should provide for the reporting of timely, appropriate and credible information to Parliament and the public on the extent to which the arrangements have accomplished their federal policy objectives, and at what cost. They should ensure that:

- expectations about what the arrangement and each of its partners are to accomplish are stated in clear and concrete terms; and
- agreement is reached on the collection and sharing of reliable and compatible data.

Many essential accountability mechanisms are not in place

23.65 Existing federal mechanisms for accountability do not apply to new governance arrangements unless specific provision is made, or apply only to the

ongoing federal part of the arrangement. We expected that provisions would be made in these arrangements to ensure.

- clearly specified roles and responsibilities of the parties;
- performance expectations balanced with the capacity to deliver;
- a well-defined structure to manage the arrangement;
- an appropriate monitoring regime whereby the federal government can assess whether the arrangement is accomplishing what is expected;
- appropriate evaluation of the success of the arrangement,
- mechanisms for resolving any disputes among partners,
- reasonable procedures to deal with non-performance in aspects of the arrangement; and
- a clearly defined and appropriate audit regime.

We did not look at all of these attributes in examining the 10 collaborative arrangements; we did not look at management structures or monitoring regimes. In the latter case, since the federal government is a partner in the arrangements, federal monitoring is occurring to some extent.

23.66 We found that several of these attributes are generally in place but that many important mechanisms to help ensure accountability are not.

23.67 Assessment of partners' ability to deliver is inadequate. In the collaborative arrangements we examined, partner roles are generally spelled out clearly. However, we found no evidence that before entering into an arrangement the federal government had conducted any systematic assessment of its prospective partners' ability to discharge their responsibilities. Without such assessment the arrangement is at risk, especially if

Existing federal mechanisms for accountability do not apply to new governance arrangements unless specific provision is made, or they apply only to the ongoing federal part of the arrangement.

In most of the 10 arrangements we examined, the partners had agreed on mechanisms for evaluation.

there are no dispute resolution mechanisms in place. The Commissioner of the Environment and Sustainable Development made the same observation in Chapter 5 of his 1999 Report, on federal-provincial environmental protection agreements.

23.68 Dispute resolution mechanisms and provisions for non-performance are lacking. Only two of the arrangements we examined provide for dispute resolution mechanisms to help resolve conflicts before they escalate. Given the general absence of formal dispute mechanisms, we looked at the arrangements to see what recourse partners have, short of termination, when parts of the arrangement are not respected or when a partner does not fulfil its responsibilities. None of the arrangements provide for ways to deal with non-performance. Only one, the Loan Investment Fund Program, sets out conditions under which the agreement may be terminated.

23.69 Officials indicated to us that putting dispute resolution and sanction mechanisms in place would be onerous, it would slow down and overly formalize relations among the partners. We were also informed that “pushing accountability too hard” undermines trust and thereby weakens accountability further. While we appreciate these concerns and the importance of trust among partners, dispute resolution mechanisms are an important aspect of managing with partners and are quite common in the private sector. The success of collaborative arrangements depends on all partners fulfilling their respective responsibilities, including the responsibility to hold others to account and take corrective action when necessary.

23.70 Before entering into collaborative arrangements, departments should carry out an assessment of prospective partners’ ability to deliver their part of the arrangements. Departments should also

ensure that the arrangements include dispute resolution mechanisms and identify the actions that can be taken in the event that partners in the arrangement do not fulfil their responsibilities.

23.71 Creating an effective audit regime for collaborative arrangements. Traditionally, government departments are subject to external audit as a means of ensuring accountability to Parliament for federal spending and the use of federal authorities. However, the audit regimes of the 10 collaborative arrangements we examined are fragmented, and audit responsibilities are usually not well specified. For example, in arrangements with provincial partners, provincial legislative auditors might look at provincial department expenditures and the Auditor General of Canada might examine the federal department’s involvement. In no case was there provision for audit of the whole of the arrangement.

23.72 Nor did we find provision in the arrangements for co-ordinated or joint audit work, or for reliance on the audit work of a partner. In one case — Canada Infrastructure Works Program — some joint audit work (federal-provincial) has been done. However, since each legislative auditor is independent, there is no requirement to carry out a joint audit. Yet without one, the respective legislative bodies are unlikely to get adequate audit assurance on the arrangement as a whole. Legislative audit offices in Canada are discussing ways to carry out effective joint audit work in such cases.

23.73 There are evaluation provisions in place. We did observe in most of the 10 arrangements that the partners had agreed on mechanisms for evaluating the extent to which the objectives of the arrangement have been met (see Exhibit 23.9). Although only 61 percent of the collaborative arrangements identified by our survey reported that an evaluation was planned or under way, all

arrangements with large financial commitments have evaluation requirements. Our survey shows that evaluation is more likely to be required where the partners are the federal and provincial governments. Evaluation is one way to provide governments, Parliament and provincial legislatures with information on how well the arrangement is working.

23.74 Sponsoring departments, before entering collaborative arrangements, should agree with their partners on appropriate evaluation plans and an external audit regime that includes, as appropriate, financial, compliance and value-for-money audits of the arrangements, co-ordinated as required with the legislative audit offices of the governments involved.

Transparency needs attention

23.75 Given their complexity and their less familiar organizational structures, we expected that new governance arrangements would:

- be as open as possible with access to information on the agreements, objectives, activities and achievements; and
- actively communicate such information to the public and stakeholders

23.76 Different partners may have different policies on access to information. To the public and to users trying to obtain information, collaborative arrangements often appear to be a maze since they involve several organizations and governments. With several different partners, some with their own access-to-information regimes and others perhaps with none, we expected to see specific formal provision made for consistent and compatible transparency rules

23.77 We found few collaborative arrangements whose design sets out adequate and specific provisions for

public access to key information. As a result, disclosure is often restricted. Indeed, conflicts can arise between the separate regimes of disclosure that apply to federal and provincial partners. None of the arrangements we examined that involve private sector partners have specific provisions for information disclosure.

23.78 We found that collaborative arrangements generally have provisions to publicize information on their key decisions, policies and processes. Some arrangements issue press releases and others issue public information notices. The use of Web sites to disseminate information to the public is increasing. All the arrangements we examined have Web sites that provide some type of information. We see this as effective use of the Internet to enhance transparency

23.79 Departments entering into collaborative arrangements, especially with partners in the private or the voluntary sector, should ensure that there are clear provisions for transparency among the partners in the arrangement.

Mechanisms to protect the public interest are often weak

23.80 Canadians expect federal authority to be exercised with fairness, equity, honesty, prudence and openness. We expected that new governance arrangements would provide adequate protection of the public interest, through:

- citizen complaint and redress mechanisms;
- public consultation and feedback mechanisms; and
- policies to promote pertinent public sector values and instil a notion of public trust.

Public sector values, tailored to the specific arrangement, would cover such areas as the primacy of the public good and the rule of law, along with other

values promoting the availability of services in French and English where demographics warrant, personal privacy and cultural diversity, among others.

23.81 Traditional mechanisms to protect the public interest need attention. Although all the collaborative arrangements we examined have some provisions for protecting the public interest, none has all the essential provisions (see Exhibit 23.9). This is perhaps a lesser problem when the arrangement involves only governments as partners, since each has its own conflict-of-interest codes and policies on public sector values. However, it is not enough when dealing with multiple partners to rely solely on existing government legislation and policies. There may be gaps or inconsistencies among jurisdictions that need to be addressed in negotiating a particular arrangement. There are federal areas that do need to be considered when the arrangements are established, such as official language requirements.

23.82 We would expect that federal departments would pay special attention to ensuring appropriate protection of the public interest in arrangements that include partners from the private sector, where many traditional public service values do not apply. Non-governmental partners were involved in about three quarters of the collaborative arrangements identified in our survey, and four of the 10 arrangements we examined. Two of these have mechanisms for public input, policies on official languages and conflict-of-interest codes.

23.83 In many of the arrangements we examined, those responsible are kept aware of their stakeholders' needs and their changing policy and operational environments through regular consultations with stakeholders and informal links to ministers and officials. However, only the Employability Assistance for People with Disabilities

arrangement specifically provides for redress of a citizen's grievances.

23.84 Departments entering into collaborative arrangements, especially with partners in the private or the voluntary sector, should ensure that the arrangements make clear provision for protection of the public interest and, in particular, for procedures to deal with stakeholder and public input and citizen grievances.

Delegated Arrangements: Letting Go

23.85 Delegated arrangements involve non-federal entities that exercise discretionary federal authority in delivering programs and services within a broad policy framework determined by the government. Our departmental survey identified 26 delegated arrangements (listed in Appendix B). Delegated arrangements, like Crown corporations, serve federal purposes. Unlike Crown corporations, they are not owned by the federal government. The government may appoint some directors to their governing boards but usually not a majority, and it has no power to remove directors it did not appoint. Nor does it usually have authority to review and approve corporate plans as it does in the case of Crown corporations.

23.86 We identified two basic types of delegated arrangements: non-profit, independent bodies that exercise discretion in disbursing (and often investing) non-recoverable, federal trust funds, such as the Canada Millennium Scholarship Foundation; and independent entities that operate primarily along business lines (usually corporations) but that draw on, pledge, use or manage federal assets for a federal public purpose, such as The St. Lawrence Seaway Management Corporation.

23.87 Accountability concerns about delegated arrangements are not new. The 1979 Royal Commission on Financial

Management and Accountability (the Lambert Commission), whose main focus was financial management and control and accountability for public funds by deputy ministers and heads of Crown corporations, also noted that there were problems of accountability, performance and disclosure in independent bodies (it called them quasi-public corporations) whose creation the government had sponsored in order to carry out federal functions. The Lambert Commission called on the government to recognize its responsibility and deal with these issues. In 1984 the government established in legislation a control and accountability regime for almost all federal Crown corporations.

23.88 What we examined. In our audit we examined six delegated arrangements as well as one arrangement that has features of both collaborative and delegated arrangements, the Canadian Institute for Health Information. For the purpose of our analysis, we treated this as a delegated arrangement. Appendix D provides basic information on the seven arrangements we examined. Our general expectations for accountability and good governance were the same as we had of collaborative arrangements, although the specifics differed for some elements Exhibit 23.11 summarizes what we found. To further illustrate how a delegated arrangement works, Chapter 24 reports the results of a more detailed audit of the Canadian Adaptation and Rural Development Fund.

23.89 Delegated arrangements must balance independence and efficiency with accountability. Delegated arrangements are set up to be independent of the day-to-day involvement of the government and to be exempt from its rules and regulations. They are intended to have flexibility and the freedom to take reasonable risks and adopt innovative ways of delivering federal objectives. Yet, as we have noted, they do carry out an explicit federal purpose in which

Parliament and the government maintain a strong, ongoing interest. In our view, appropriate and adequate accountability to Parliament can be balanced with the autonomy and flexibility these arrangements require. Reasonable accountability to Parliament is not synonymous with control by the government and should not necessarily be interpreted as bringing these entities under government control or into the federal accounts, or invalidating their independence. However, in our democratic system, ministers are the traditional link between those who exercise federal authority and Parliament, and they still need to play a role — perhaps along lines similar to that already established for ministers in relation to Crown corporations.

Reporting requirements and practices need improvement

23.90 In the delegated arrangements we examined, the requirements and practices for credible reporting are generally patchy and need attention.

23.91 Performance expectations are not related to objectives. In using delegated arrangements that it does not directly control, the government faces the challenge of ensuring that taxpayers' money is being spent for intended purposes, that federal authority is being exercised properly and that federal objectives are being achieved efficiently. Most of the seven delegated arrangements we examined have clearly stated objectives. Generally, however, these objectives have not been translated into specific performance expectations — what is to be specifically accomplished.

23.92 Measures are output-focussed. Targets, measures and indicators, where they have been identified (the Canadian Television Fund and the Canada Millennium Scholarship Foundation, for example) have focussed mainly on outputs. This is a start, but measuring only outputs will not provide for reporting what

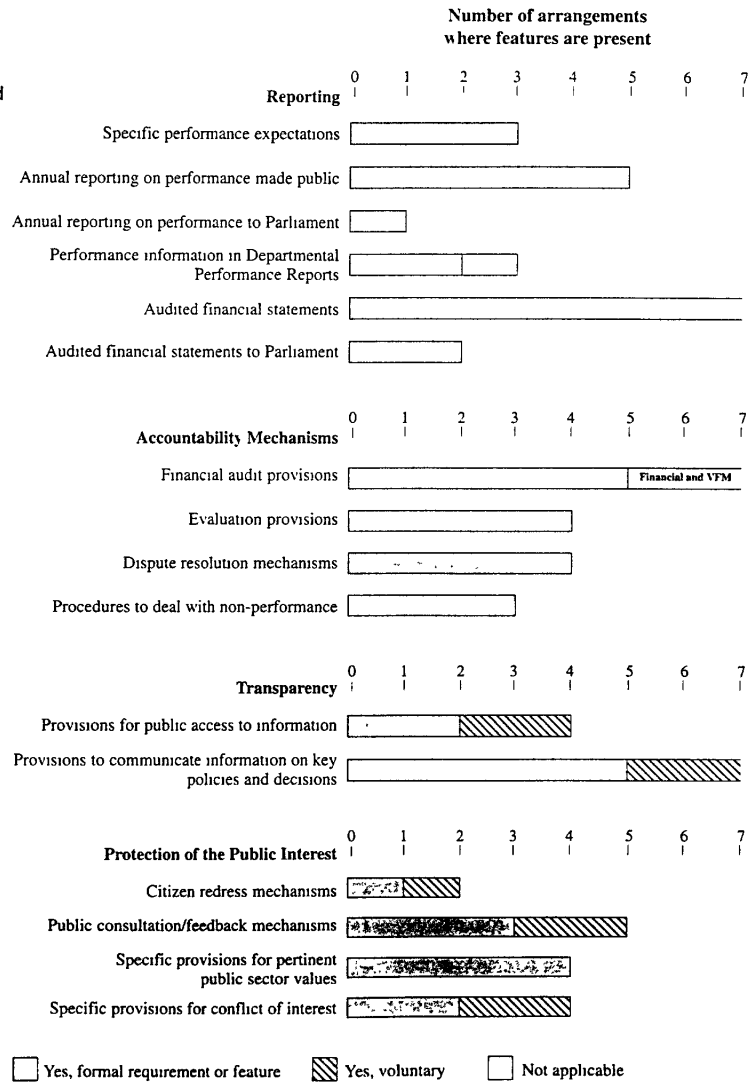
Reasonable accountability to Parliament is not synonymous with control by the government. However, ministers still need to play a role.

has been accomplished in relation to objectives. For example, the Canada Millennium Scholarship Foundation has a target of granting some 100,000 scholarships each year for 10 years (an output). It has no targets for achieving the government's objectives of improving access to post-secondary education and

reducing student debt. The Foundation does intend to track student debt (an outcome measure) but is not required to do so. In the other delegated arrangements we examined, measures of outcomes for the most part have yet to be identified and appropriate information collected.

Exhibit 23.11

Key Features Present in the Seven Delegated Arrangements Examined



Procedures for monitoring outcomes have yet to be established.

23.93 Important baselines have not always been developed. In some delegated arrangements we examined, baselines essential to determining the success of the arrangement have not been developed or identified. For example, the Canada Foundation for Innovation was created to renew Canada's aging research infrastructure, yet it has no baseline figure for the age of the research capital base before the program began. It has no obligation to measure the effectiveness of its spending in reducing the average age of the capital base, nor any target to achieve for age reduction.

23.94 When creating delegated arrangements, sponsoring departments should clearly specify what the arrangements are to achieve, identifying measurable outcomes and timetables as well as concrete outputs. The departments should ensure that the capacity exists to measure the extent to which objectives have been achieved under the arrangement.

23.95 Outcomes often are not reported. Of the 26 delegated arrangements identified in our survey,

departments said that 54 percent are required to report performance information, and another 31 percent to report on activities. All but one of the delegated arrangements we examined publish annual reports and all produce audited financial statements. Almost all of the arrangements we examined are required to report their achievements publicly or to the government. However, we found a lack of consistency in the kind, quantity, quality and depth of detail of performance information required of the arrangements or actually reported by them. Except for the Canadian Adaptation and Rural Development Fund, we found that reporting focusses on activities and outputs, not outcomes. As a result, what has been accomplished in support of federal objectives is not being reported. Exhibit 23.12 presents a reporting framework applied in the legislation creating the Canada Millennium Scholarship Foundation.

23.96 Parliament is often not informed about accomplishments. In our view, information on the financial and results performance of delegated arrangements should be regularly brought into the parliamentary domain through means such as those suggested in

In a 1997 audit observation on the Canada Foundation for Innovation, we stated our view that good accountability in arm's-length arrangements and partnerships begins with a clear description by the government of the goals, planned actions and ends of the arrangement; the party delivering the arrangement must be clearly obliged to give Parliament a full and audited annual account of its financial and operational performance. We also stated that all future arrangements should require program evaluations, reported to Parliament.

Subsequently, in the legislation creating the Canada Millennium Scholarship Foundation, the government included some of these elements. The Foundation's annual reports must contain audited financial statements; a detailed statement of investment activities; a statement on the investment portfolio, policies, standards and procedures; a statement on plans for meeting objectives in the current and next years; a yearly evaluation of results achieved; and a five-year review and report. Annual reports approved by the Board and its members are tabled in the House of Commons by the Minister of Human Resources Development and sent to the appropriate provincial and federal ministers. Annual reports are made available to the public and discussed at an annual public meeting. The legislation did not require the auditing of the performance reports as the Auditor General had called for.

Exhibit 23.12

Reporting Framework: Canada Millennium Scholarship Foundation

Sources: Report of the Auditor General December 1997, Chapter 36, and *Budget Implementation Act 1998*, Part 1 Canada Millennium Scholarship Foundation

Parliament does not always receive the performance information it needs to assess whether delegated arrangements are working effectively as tools of public policy.

Exhibit 23.10. Only two of the delegated arrangements we examined report to Parliament: the Canada Foundation for Innovation with audited financial statements, and the Canada Millennium Scholarship Foundation in audited financial statements and an annual performance report. Ministers have made some reference in their Departmental Performance Reports to the existence of the delegated arrangements we examined. However, only in one — the Canadian Adaptation and Rural Development Fund — has any performance information been included. Parliament, then, does not always receive the performance information it needs to assess whether delegated arrangements are working effectively as tools of public policy.

23.97 Sponsoring departments should ensure that timely and credible information on the performance of their delegated arrangements and, where appropriate, audited financial statements of the entities involved are provided to Parliament and the public.

Several accountability mechanisms are weak

23.98 Except as required by special legislation in two cases, the delegated arrangements we examined are not formally obliged to establish accountability mechanisms that are typical of public sector organizations. Often there are no provisions for program evaluation or for dealing with non-performance.

23.99 Roles and responsibilities are well defined and dispute resolution mechanisms are provided. In the delegated arrangements we examined, we found that the roles and responsibilities of the entities involved are spelled out reasonably well. Four of the seven delegated arrangements we examined provide formal mechanisms to resolve disagreements with the government over issues including roles and responsibilities.

23.100 Delegated arrangements do not allow for federal adjustment. The delegated arrangements we examined offer limited scope for the government to adjust the arrangement when circumstances change or performance is off track. The federal government's main instrument of influence is the minority position of its appointees on boards and their membership on key committees. Where there are annual payments from the federal government, the priorities and direction of delegated arrangements can be adjusted by withholding payments or attaching new conditions. All of the arrangements are insulated from direct ministerial intervention, even where there are fundamental policy issues, but three do allow for amendment of terms by written mutual agreement. None of the arrangements, however, has a mechanism whereby the government can intervene to require the entity to modify its operations in respect of its federal function in order to reflect a change in the government's underlying policy framework.

23.101 Only three of the delegated arrangements we examined have formal provisions for dealing with non-performance. Federal officials we interviewed seemed reluctant to address such sensitive aspects of accountability. Short of special legislation, in most cases there are no means of bringing a delegated arrangement back into line or adjusting its public purpose. In our view, ministers need to monitor their arrangements from a strategic perspective, keeping apprised of changes in the policy environment and in the capacities of delegated arrangements to perform their public purpose functions. Sponsoring departments need to be able to take corrective action when arrangements stray from their purpose or when circumstances alter or invalidate their purpose. Only the Canada Millennium Scholarship Foundation, the Canada Foundation for Innovation and The St. Lawrence Seaway Management Corporation address the disbursement of federal moneys and assets in the event that

the arrangements terminate or wind down; in neither of the foundations are the funds recouped by the federal treasury.

23.102 Evaluations are planned or required in many delegated arrangements. Our survey responses indicated that evaluation is planned or under way in 58 percent of the 26 delegated arrangements our survey identified. Four of the arrangements we examined are required to evaluate their programs. In only one case, the Canada Millennium Scholarship Foundation, is the evaluation reported to Parliament. In two cases, the Canadian Television Fund and the Canadian Institute for Health Information, evaluations have been undertaken. While sponsoring departments may have an idea of what is happening in their delegated arrangements, it is through an evaluation that departments can assess the extent to which arrangements are meeting their objectives, as well as their adequacy as strategic tools of public policy.

23.103 Audit regimes are incomplete. The only external audit of most delegated arrangements is the audit of their financial statements. All the delegated arrangements we examined produce audited financial statements. Only a few are required to conduct value-for-money audits that look at economy, efficiency and effectiveness in their internal systems. For example, The St. Lawrence Seaway Management Corporation is required to periodically undergo a special examination, and this report is made available to the public.

23.104 Although these arrangements are serving federal public policy purposes and using federal assets or funds appropriated by Parliament, Parliament does not receive any assurances on the use of those federal funds, assets and authorities, as it does from departments and Crown corporations. In some cases, especially the commercially oriented delegated arrangements, value-for-money audits

may not be necessary or appropriate. In larger arrangements, however, Parliament would probably want some assurance that federal money is not being wasted and that federal assets are being safeguarded.

23.105 Certainly, Parliament needs fair and reliable information on the performance of all arrangements. In our view, where the independent entities involved in delegated arrangements provide performance reports through ministers to Parliament, the fairness and reliability of the performance information ought to be subject to assessment by an external auditor, paralleling the well-accepted model for financial information. This is the model Parliament has established for the recently created and less independent service agencies.

23.106 Sponsoring departments should ensure that, where appropriate, the design of delegated arrangements provides for:

- formal mechanisms and guidance to resolve disputes with partners;
- means to deal with non-performance and termination of the arrangement;
- periodic program evaluations, the results of which are reported through ministers to Parliament;
- consideration of value-for-money audit; and
- independent assessment of the fairness and reliability of the performance information tabled in Parliament.

Transparency is not assured

23.107 Private sector disclosure practices are not enough. Delegated arrangements distance the delivery of public policy from direct government control and accountability to Parliament through responsible ministers. Without direct ministerial control, provision needs to be made for enhanced transparency.

Short of special legislation, in most cases there are no means of bringing a delegated arrangement back into line or adjusting its public purpose.

Legitimate concerns about competitive business confidence and individual privacy may be factors that limit transparency.

including access to corporate information that is relevant to the delivery of federal public policy functions. This would enable stakeholders and citizens to exercise a measure of oversight. However, most delegated arrangements are entities incorporated under the *Canada Corporations Act* or the *Canada Business Corporations Act*. They are not traded publicly and do not necessarily provide for public disclosure of corporate information. Indeed, traditional business practice is to guard information that is commercially confidential. Given the presence of federal purposes and of changing public attitudes, we expected to see transparency provisions at least as strong as those for access to federal information, and to see key information actively communicated to stakeholders and the public.

23.108 Among the delegated arrangements we examined, federal provisions for access to information apply only to the government's ongoing operational involvement in the Canadian Television Fund and the Canadian Adaptation and Rural Development Fund. Two arrangements — the Canadian Health Services Research Foundation and the Canada Foundation for Innovation — stated that they apply transparency policies similar to federal policy, but voluntarily and on a case-by-case basis. We were informed that citizens can gain access to corporate information held by sponsoring departments through access-to-information requests, but this process can be cumbersome. In our view this information should be more readily available, although we recognize that legitimate concerns about competitive business confidence and individual privacy may sometimes be limiting factors.

23.109 All of the delegated arrangements we examined have Web sites and disseminate some key information, including board decisions in some cases. We did not encounter any delegated

arrangements that make the minutes of board meetings available to the public. Boards that exercise federal authority or dispense federal funds might be expected to have these decisions open to public scrutiny.

23.110 When creating delegated arrangements, sponsoring departments should provide for reasonable standards of disclosure in the areas involving a federal public purpose; the standards should reflect public sector standards of access to information. Appropriate provision should be made for legitimate concerns of personal privacy and commercial confidence.

Some mechanisms to protect the public interest are present

23.111 Research conducted by EKOS Research Associates Inc. in 1998 found that 63 percent of Canadians favour the notion that "too much focus on private sector practices will weaken government's ability to protect the public interest." Canadians appear to recognize the need to protect the public interest in the exercise of government functions.

23.112 Complaint and redress mechanisms are often absent. When Canadians feel aggrieved by the decisions or actions of their governments, they can appeal for redress through their elected representatives. In delegated arrangements, independence from the government eliminates this avenue of appeal. In our opinion, an appeal mechanism short of litigation is needed for citizens affected by the discretionary decisions of bodies that exercise federal authority but are independent of federal control. There are a variety of ways to provide for redress. Of the delegated arrangements we examined, only The St. Lawrence Seaway Management Corporation has formal provisions for citizen redress. In the Canada Millennium Scholarship Foundation, provincial officials handle appeals after denial of a scholarship on financial grounds. The

other five arrangements make no provision for citizen redress.

23.113 Consultation is occurring. We expected to find that delegated arrangements consult widely with stakeholders and citizens. From our interviews, we found that all the delegated arrangements we examined consult with stakeholders to solicit information on changing client and stakeholder needs. Five of the seven have mechanisms for general public input.

23.114 Building public sector values into corporate culture. Canadians expect federal authority to be exercised with fairness, impartiality, equity, honesty, prudence and openness. They expect those who use federal authority to respect the public good and the rule of law, along with federal standards like providing services in English or French where demographics warrant, and values like personal privacy and cultural diversity. Four of the delegated arrangements we examined have formal provision for some public values as part of their operations. Two others manage the federal interest under values of peer review. Most of the arrangements have some federally appointed directors, or staff recruited from the public service, but this does not ensure that the arrangement will instil public sector values in the corporate culture or a sense of its public trust.

23.115 Private sector conflict-of-interest rules are not adequate. Canadians expect that those who exercise public authority will not abuse their power or influence. As a result, codes of ethical conduct and conflict of interest are more demanding in the public sector than the private sector. Private sector bodies that deliver public services to Canadians on behalf of the government need codes of conduct and conflict-of-interest rules that reflect public sector ethics. Two of the delegated arrangements we examined require that public sector rules on conflict

of interest be applied, two others apply public sector codes voluntarily.

23.116 Sponsoring departments should ensure that delegated arrangements include mechanisms to facilitate public consultation, make specific provision for relevant public sector values in the corporate culture, and establish appropriate mechanisms for redress of citizen complaints.

New Governance Arrangements Need Attention

Improvements can be made

23.117 We recognize that it is a challenge to adhere to the traditional principles of accountability while, at the same time, gaining flexibility through partnering agreements with other levels of government, the private sector or the voluntary sector. For example, in collaborative arrangements among government partners there are legislative mandates that may impose constraints, as well as political imperatives that must be recognized by those designing and implementing the new arrangement. In these cases, care is needed in co-ordinating the different components of the arrangement to ensure that the whole is well managed and able to report on the achievement of its objectives. If provincial governments are involved, their own accountability requirements come into play.

23.118 We recognize that since federal departments are active partners in collaborative arrangements, there is a link, attenuated though it may be, to parliamentary accountability and control through the responsible federal minister. Collaborative arrangements thus pose a lesser risk to accountability than delegated arrangements. For delegated arrangements, the *Canada Corporations Act* and the *Canada Business Corporations Act* are the usual legal structure and they provide for accountability only inside the corporation:

Collaborative arrangements pose a lesser risk to accountability than delegated arrangements.

The government needs to take extra care to ensure that Parliament can maintain its role of scrutinizing federal actions and ensuring that the rights of citizens are protected.

management and staff are accountable to the board of directors, who are accountable to shareholders. In all but a few cases, delegated arrangements have weak accountability links to Parliament. As a result, significant amounts of federal authority and federal funds are currently beyond Parliament's scrutiny.

23.119 Trust and good will are essential and present, but are not enough. With the exception of the Canada Millennium Scholarship Foundation, which has encountered some political scrutiny, the arrangements we examined are working without drawing noticeable public attention or complaint. Several officials we interviewed attributed this to the competence, dedication and sense of public service exhibited by people currently involved in managing these arrangements, people both inside and outside the federal government. We note from our interviews, for example, that considerable attention has been paid to ensuring the appropriate professional competence and regional balance in the composition of boards for delegated arrangements. Enthusiasm, client good will and the determination of appointees to gain public confidence and to make the arrangements succeed, may offset weak accountability infrastructures in the short term, but alone cannot be counted on for success in the long term.

23.120 In the 17 new governance arrangements examined, we found numerous gaps and weaknesses in the design and implementation of their governing frameworks. As many of these arrangements are quite new and are expected to be in operation for many years, it would be worthwhile to correct these shortcomings. We recognize that bringing about such changes may not always be possible — given, for example, the need to consult with other levels of government and, in some cases, the independence of the other parties involved. Still, we expect that many of these parties would be interested in

improving their governing framework and associated practices. In most cases there will likely be occasions when the federal government can negotiate changes in the agreement that created the arrangement and the practices adopted to implement it.

23.121 Where existing new governance arrangements have inadequate provisions or practices for accountability and good governance, sponsoring departments should identify opportunities to negotiate appropriate improvements.

The nature of accountability is changing; good governance needs attention

23.122 Throughout this chapter, we have registered our concern that a consistent approach is needed to guide the creation of new governance arrangements so that essential elements of accountability and good governance are adequately addressed. In the more traditional delivery of federal objectives by departments, agencies and Crown corporations, there are clearly established — and indeed, legislated — governing frameworks in place. Once government steps outside these accountability and management regimes, it needs to take extra care to ensure that Parliament can maintain its role of scrutinizing federal actions and ensuring that the rights of citizens are protected. No one we interviewed questioned the general need for accountability to stakeholders, to the public, to sponsoring departments and/or to legislative bodies for expenditures of public moneys and the exercise of public authority.

23.123 A governing framework and discussion are needed. Governments in several other jurisdictions have set out such frameworks, thereby allowing their legislatures to decide how and to what extent they wish to scrutinize new ways of delivering government programs. Presenting a new and unique approach to Parliament with every proposed new

arrangement — if presented at all — does not provide Parliament with the opportunity to fully consider and debate the merits of the approach. It does not enable Parliament to consider the essential question of reconciling diffused governance outside traditional government structures with accountability for the exercise of federal power.

23.124 Parliament may indeed decide to lessen its scrutiny of certain cases or classes of arrangements, perhaps in exchange for greater transparency and direct reporting to and involvement of the public. Or it may decide to change the focus of its scrutiny in some cases to focus on, for example, not how well public funds have been managed but to what extent federal objectives have been achieved. In our view, changing the nature of accountability to Parliament — as is happening with new governance arrangements — must be done only after considered thought and debate.

23.125 The government should begin a process of consultation with Parliament and the public on how to reconcile new governance arrangements with accountability to Parliament and how to formalize the participation and accountability of independent parties involved in the achievement of federal objectives.

Conclusion

23.126 Over the past decade, the government has increasingly worked with partners in the delivery of programs and services and, as shown by our survey, the federal financial commitment in collaborative and delegated arrangements is growing. Our discussions with some departmental officials suggest that this trend is likely to continue.

23.127 In the new governance arrangements we examined, most had gaps and weaknesses in their formal governing provisions and in the

implementation of those provisions. Accountability to Parliament was often weak and good governance not always assured.

23.128 Many of our observations point to weaknesses in the ad hoc approach taken by the government in creating new governance arrangements. We have noted the lack of a conscious effort to systematically consider the essential elements of reporting, accountability mechanisms, transparency and protection of the public interest when designing new arrangements. We believe that the use of a structured approach, based on a governing framework such as we have suggested and applied as appropriate, would guide departments in addressing the needs of Parliament and the public and still allow the federal government to create innovative and flexible arrangements with outside partners.

Treasury Board Secretariat's response:
The Treasury Board Secretariat (TBS) supports the management framework and reporting principles outlined in the OAG's April 1999 Report (Chapter 5), which are described in detail in Exhibit 23.2. However, it is important to recognize that these new governance arrangements are, by their very nature, varied and cannot always adhere to a rigid framework. Indeed, the framework must be flexible to accommodate the diversity and complexity of these arrangements and to recognize that, implicitly, there must be some compromise between the exercise of direct control and the objectives of public policy, as was emphasized in the joint OAG/TBS paper, *Modernizing Accountability Practices in the Public Sector*. In fact, involving partners in the delivery of public services/programs requires negotiation and a flexible approach to risk management, as well as adequate accountability practices.

We recognize that these new arrangements must incorporate a management framework that enables those arrangements to achieve public interest

Changing the nature of accountability to Parliament must be done only after considered thought and debate.

objectives, report to the public, be transparent and protect the public interest. TBS fully endorses these principles. Our efforts to modernize the role of TBS and to renew accountability practices are in keeping with these principles. It is our view that existing reporting mechanisms address to a large extent the concerns raised by the OAG. However, there are still a few areas for improvement. TBS has already undertaken several initiatives to improve the accountability framework. The current review of the Alternative Service Delivery framework will apply the federal government's new governance requirements to these new arrangements. Further, the future development of a Management Practices Guide and Database on practices to consider will make it easier to implement ASD initiatives and will enable TBS to develop policies based on expressed needs.

It is precisely in this context that the Treasury Board's role as a Management Board becomes important. TBS's mandate

is structured around its two main activities: providing informed advice to departments and policy development. TBS's role in supporting management board requires an emphasis on guidance based on the advanced principles of modern management. Specifically, other central agencies such as the Privy Council Office have worked closely with departments in addressing issues of ministerial accountability for inclusion in the enabling legislation for the Canada Foundation for Innovation and the Canada Millennium Scholarship Foundation

The OAG raises the need to get parliamentary concurrence on the reporting and accountability needs for these arrangements. We will be proposing to Parliament the government's approach to such reporting as part of the second phase of the Improved Reporting to Parliament Project, as described in the government's fifth annual report, Managing For Results 1999.



About the Audit

Objectives

The objectives of the audit were:

- to determine the extent to which new governance arrangements are being used;
- to assess the adequacy of the accountability provisions and practice in selected new governance arrangements; and
- to assess the adequacy of guidance provided in the creation of new governance arrangements and subsequent monitoring of their implementation by central agencies and selected departments.

Scope

Our audit looked at new governance arrangements in all federal departments and agencies. In addition, we examined the accountability frameworks in a number of selected arrangements. Finally, we looked at the activities carried out by central agencies and sponsoring departments in establishing these new arrangements.

We excluded a number of types of arrangements that have several features of new governance arrangements but do not significantly challenge the traditional structure of ministerial accountability. Consequently, we did not include in our scope:

- reorganizations and innovations inside the federal government;
- contracting for goods and services, and other circumstances where an entity outside the federal government acts only as an agent or contractor;
- functions that the federal government has privatized to commercial markets or has devolved to other levels of government;
- Crown corporations, and
- arrangements involving the federal government and international partners.

We also excluded most arrangements of Environment Canada, since the Department has been involved in collaborative arrangements in areas of shared jurisdiction for many years. However, its experience in delivering selected programs with outside parties is valuable, and is described in Exhibit 23.7 of the chapter. In addition, we excluded arrangements that Indian and Northern Affairs Canada has in the area of self-government because this has been a long-standing government initiative and this Office is examining it in other audits.

We also excluded arrangements that were established before 1990. We recognize that several of the types of new governance arrangements of interest to us were not "new" and have been used by the federal government for many years.

Criteria

We assessed the case studies against three basic criteria:

There should be an appropriate accountability framework in place, that serves the public interest, including:

- clearly established expectations for the achievement of public objectives and expected accomplishments;
- clearly established roles and responsibilities of each partner;
- mechanisms for credible and timely reporting on performance;
- mechanisms for evaluation, review and adjustment; and
- mechanisms for protecting the public interest.

There should be adequate practices of accountability for federal involvement, including:

- understanding and agreement among parties on the key features of the accountability framework;
- credible reporting on performance by the arrangement and by the federal government;
- effective federal review and adjustment; and
- adequate transparency and attention to the public interest.

There should be appropriate central guidance on providing for adequate accountability and good governance in the design of new governance arrangements. As well, there should be central monitoring, compilation of lessons learned and communication of those lessons.

Approach

We conducted a survey of all federal government departments to identify new governance arrangements established since 1990 and to estimate the federal resources contributed to them. We selected a range of specific arrangements, examined relevant departmental and organizational documentation and conducted interviews with officials of the sponsoring departments (and in some cases its partners in arrangements), as well as central agencies. We concentrated on the design and implementation of new governance arrangements and their governing frameworks. We also reviewed literature on governance and accountability and drew from our work on collaborative arrangements (April 1999 Report of the Auditor General, Chapter 5).

Audit Team

Assistant Auditor General: Maria Barrados
Principal: John Mayne
Directors: Patricia MacDonald and Robert Goo

Allison Trade
Adele Lamoureux
Christina Brooks
Thomas Gyopcsa

For further information, please contact John Mayne.

Appendix A

Accountability Frameworks in Other Jurisdictions

The Canadian Voluntary Sector

The recently published report of the Panel on Accountability and Governance in the Voluntary Sector, commissioned by an unincorporated group of Canada's major national voluntary organizations and coalitions, strongly recommended greater accountability in non-profit bodies and charities that perform public functions. In the course of putting forward recommendations for improving governance and accountability in the sector, the report addressed the following elements:

Transparency in all governance practices, that is, establishing policies for communicating and receiving feedback from stakeholders, ensuring that the complaints and grievance procedure works effectively, holding regular board meetings that allow for discussion, ensuring that appropriate minutes and documents are kept, and responding appropriately to requests for information by the public, members or clients.

Annual, publicly available reporting to government on mission, programs and intended results; board-approved financial statements for fundraising activities; basic board governance structures and processes; the organization's code of ethical fundraising and its complaint response approach; and contacts for further information.

Larger organizations would also be required to provide information on how they fulfil the good practice guide's eight key tasks. This annual reporting would describe the entity's mission, intended outcomes and strategic planning processes; its policies for transparency, including code of ethical conduct and complaints process; its governing structures, including whether an independent nominating and audit committees exist, summary of the provisions for board stewardship; evidence of fiscal responsibility, for example, through provision of audited financial statements; and provisions for board succession and diversity of representation (if applicable).

Reporting that focusses on performance by building voluntary organizational capacity and recognition by funders of the need to focus on performance, identifying outcome goals; developing ways to measure progress and achievement of goals; collecting and analyzing the data; and disseminating outcome assessments to stakeholders and using them in planning.

Source: Panel on Accountability and Governance in the Voluntary Sector (Broadbent Panel), *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector - Final Report*, February 1999

Recommended Accountability Framework for Australasian Countries

The Australasian Council of Auditors-General, which includes the 13 Auditors General of Australia, New Zealand, Papua-New Guinea, Fiji and Hong Kong, has stated that an adequate accountability regime for public-private sector arrangements would need to include:

- legislative provisions requiring government to report to Parliament in a timely, regular way on issues relevant to Parliament's oversight role, likely including probity, compliance and performance issues (including financial audits) and other arrangement-specific reportable issues;
- requirement for the Auditor-General to test the assertions of management and to provide Parliament with the Auditor-General's opinion on the fairness and accuracy (on the basis of standards) of information provided by management to Parliament.
- provision for Auditors-General to advise Parliament publicly of matters identified in the audit process that Parliament should know about,
- parliamentary mechanisms of inquiry and, if necessary, censure, and

- parliamentary access to commercial documents to which the government is a party.

Source: Australasian Council of Auditors General, *Statement of Principles: Commercial Confidentiality and the Public Interest*, 1997, available on Web site <http://www.acag.org.au>

United Kingdom Practice Applicable to Accountability of New Governance Arrangements

As the result of a comprehensive review in 1997, the British government has further developed its principles for accountability of non-departmental public bodies, sometimes called QUANGOs (Quasi-Autonomous Non-Governmental Organizations). These are bodies that have a role in the processes of national government, but are not government departments. They work at arm's length from ministers and have a degree of independence (e.g. British Council, British Museum, Commonwealth Institute. etc). The principles of accountability for those bodies include the following.

- Parliamentary committees should play a more systematic role in overseeing QUANGOs (e.g. scrutinizing annual reports and being involved in quinquennial reviews).
- QUANGOs are accountable to Parliament through Acts of Parliament, through the minister of the sponsor department, through the Public Accounts Committee and through relevant parliamentary committees.
- The Comptroller and Auditor General should have inspection rights over all public bodies that he does not audit directly.
- All public bodies should produce annual reports and make them publicly available in order to improve transparency.
- Where practicable, public bodies should hold meetings in public — perhaps by arranging an annual open meeting.
- Where practicable, public bodies should release summary reports of meetings.
- The proposed Freedom of Information Act is expected to cover all public bodies including non-departmental public bodies, allowing rights of access to information about and held by them, and including the rights of members of the public to see their own records. In the meantime, public bodies are required to make full use of the discretion available under the Code of Practice on Access to Government Information to disclose as much information as possible, including minutes of meetings.
- Government reporting on public bodies should include basic information about local public spending bodies that are not technically public bodies, such as training and enterprise councils, which are private sector companies limited by guarantee but which receive public funds.

Sources: Chancellor of the Duchy of Lancaster and the Financial Secretary to the Treasury, *Spending Public Money: Governance and Audit Issues*, March 1996, London, England.

Second Report of the Committee on Standards in Public Life (Nolan Report), *Standards in Public Life: Local Public Spending Bodies*, May 1996, London, England.

Fourth Report of the Committee on Standards in Public Life (Nolan Report), *Standards in Public Life: Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies*, November 1997, London, England.

Cabinet Office, *Quangos: Opening the Doors*, UK, June 1998, available on Web site <http://www.open.gov.uk>

Appendix B New Governance Arrangements Identified in OAG Survey

Part A: List of Collaborative Arrangements

Department/Agency	Collaborative Arrangements
Agriculture and Agri-Food Canada	Canada-Manitoba Partnership Agreement on Municipal Water Infrastructure (1990) Canada-Saskatchewan Partnership Agreement on Water-based Economic Development (1991) Programs under the Canadian Adaptation and Rural Development Fund – 7 programs (1992) * National Beef Industry Development Fund (1995) Safety Net Companion Programs - 15 programs (1996) *
Canada Economic Development for Quebec Regions	Info entrepreneur et Ressources Entreprises Inc. – two programs (1994) * Programs with shared authorities – three programs (1997) *
Canadian Food Inspection Agency	Canadian Animal Health Network (1997) Centre opérationnel du Québec (1998) Canadian Partnership for Consumer Food Safety Education (1998)
Canadian Heritage	National Sport Centres – 7 centres (1994) * Canadian Heritage Information Network (1995) Canada-Alberta Strategic Alliance on Culture and Heritage (1995) Young Canada Works – 5 components (1996) *
Citizenship and Immigration Canada	Centre for Canadian Language Benchmarks (1998)
Department of Fisheries and Oceans	Sablefish Quota Agreement (1992) Canada-Infomar Dealership Agreement (1993) Canada-NDI Agreement for Marketing and Distribution of Electronic Charts (1994; Revised 1998) Pacific Prawn Fishery – Co-management (1995) Pacific Shrimp Trawl Fishery Co-management (1997) Pacific Halibut Management Association (1999)
Department of Justice	Community Mobilization Program (1998)
Environment Canada	Canada-Wide Accord on Environmental Harmonization (1998) **
Health Canada	Health Transition Fund (1997)
Human Resources Development Canada	Labour Market Development Agreements – 11 agreements (1996) * <i>Canada-Alberta Labour Market Development Agreement (1996)</i> Regional Bilateral Agreements – 54 agreements (1996) * Employability Assistance for People with Disabilities (1998) National Child Benefit (1998) Canada Education Savings Grants (1998) Social Development Partnership Program (1998) Fisheries Early Retirement (Fisheries Restructuring and Adjustment Program) (1998)
* Involves a number of agreements or sub-agreements; dates refer to the first agreement or sub-agreement signed.	
** Environment Canada has been involved in collaborative arrangements in areas of shared jurisdiction for many years. These arrangements have not been included in this survey. The experiences of Environment Canada are discussed in a box located in the section on the role of the central agencies. In addition, the survey has not covered the activities of Indian and Northern Affairs Canada in the area of self-government.	
New governance arrangements created since 1990 and still in existence in March 1999. Arrangements in bold are examined through case studies.	

Involving Others in Governing: Accountability at Risk

Department/Agency	Collaborative Arrangements
Industry Canada	Computers for Schools (1993) Canadian Tourism Commission Product Club Program 1998 Canada Business Service Centres – 3 agreements (1995) *
National Defence	Emergency Preparedness Partners in Canada (1997) Canadian Emergency Preparedness Association (1999)
Natural Resources Canada	Canadian Industry Program for Energy Conservation (1992) Canada's Model Forests Program – 11 agreements (1992) * Foothills Model Forest (1992) National Centre for Upgrading Technology (1995) First Nations Forestry Program (1996) Wildlife Conservation in Resource Development Initiative (1997) *** Biodiversity Stewardship by Resource Industries Initiative (1999) Charge-up to Recycle Program! (1997) Climate Change Action Fund (1998)
Environment Canada	
Royal Canadian Mounted Police	RCMP Foundation (1995) E-COMM – Emergency Communications for South-West B C (1997)
Statistics Canada	Data Liberation Initiative (1996)
Treasury Board Secretariat	Canada Infrastructure Works Program – 12 agreements (1994) *
Veterans Affairs Canada and other departments	Knowledge Economy Partnership (1997)
Western Economic Diversification Canada	Collaborative Business Service Centres – 4 agreements (1993) * Loan Investment Fund Program – 15 programs (1995) *
<p>* Involves a number of agreements or sub-agreements, dates refer to the first agreement or sub-agreement signed</p> <p>*** The Wildlife Conservation Resources Development Initiative ended in 1999 and was replaced at that time by the Biodiversity Stewardship by Resource Industries Initiative</p> <p>New governance arrangements created since 1990 and still in existence in March 1999</p> <p>Arrangements in bold are examined through case studies</p>	

Part B: List of Delegated Arrangements

Department/Agency	Delegated Arrangements
Agriculture and Agri-Food Canada	Canadian Adaptation and Rural Development Fund – Provincial Councils – 13 councils (1995) *
Atlantic Canada Opportunities Agency	Young Entrepreneurs ConneXion Seed Capital and Counselling Program for Young Entrepreneurs (1997)
Canadian Food Inspection Agency	Canadian Beef Grading Agency (1996) Canadian Seed Institute (1998)
Canadian Heritage	Canadian Television Fund (1996) Aboriginal Friendship Centres Program (1996) Loan Program for Book Publishers (1998)
Citizenship and Immigration Canada	Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens (1991) Canada-Manitoba Agreement to Realign Responsibilities for Immigrant Settlement Services (1998) Agreement for Canada-British Columbia Co-operation on Immigration – Realignment of Responsibilities for Immigrant Settlement Services (1998)
Department of Fisheries and Oceans	Pacific Salmon Conservation, Enhancement and Restoration Program (1995) Marine Oil Spill Preparedness and Response Regime (1995)
Department of Foreign Affairs and International Trade	Canadian Centre for Foreign Policy Development (1996)
Health Canada Medical Research Council	Canadian Health Services Research Foundation (1997)
Human Resources Development Canada	Canada Millennium Scholarship Foundation (1998)
Indian and Northern Affairs Canada**	Mi'kmaq Sectoral Education Self-Government (1997) Aboriginal Healing Foundation (1998)
Industry Canada	Canadian Network for the Advancement of Research, Industry and Education (1993) Canada Foundation for Innovation (1997)
Social Sciences and Humanities Research Council, Natural Sciences and Engineering Research Council	Network of Centres of Excellence Program (1990)
Transport Canada	Canadian Airports Authorities – 26 airports (1992) * Blainville Test Centre (1996) The St. Lawrence Seaway Management Corporation (1998) Canada Port Authority – 18 ports (1999) *
Western Economic Diversification Canada	Women's Enterprise Initiative – 4 agreements (1994) * Service Delivery Network Program – 9 programs (1995) *
<p>* Involves a number of agreements or sub-agreements; dates refer to the first agreement or sub-agreement signed</p> <p>** Environment Canada has been involved in collaborative arrangements in areas of shared jurisdiction for many years. These arrangements have not been included in this survey. The experiences of Environment Canada are discussed in a box located in the section on the role of the central agencies. In addition, the survey has not covered the activities of Indian and Northern Affairs Canada in the area of self-government</p> <p>New governance arrangements created since 1990 and still in existence in March 1999 Arrangements in bold are examined through case studies</p>	

Appendix C
Collaborative Arrangements Examined in the Audit

Collaborative Arrangement	Description/Purpose	Federal Departments Involved	Partners	Federal Funding	Other Contributions
<p>Canada's Model Forests Program (Foothills Model Forest) Established 1992 (Phase 2 started 1997)</p>	<p>Foothills Model Forest is one of 11 Model Forest Groups in a national program created to work in partnerships to enhance forest management at the local level, transfer knowledge, and demonstrate management approaches that are based on principles of sustainable development.</p>	<p>Natural Resources Canada</p>	<p>Provincial and municipal governments, industry, educational institutions, and other interest groups</p>	<p>\$2.5 million for Foothills Model Forest (1997-2002)¹ (Federal commitment for the program as a whole is \$96m between 1997 and 2002)²</p>	<p>\$10 million for Foothills Model Forest (1997-2002)¹ (Partner commitment for the program as a whole is \$13.7m between 1997 and 2002)²</p>
<p>Canada-Alberta Labour Market Development Agreement Established 1996</p>	<p>One of several bilateral arrangements established to provide for a stronger provincial role in the design and delivery of labour market development programs and services.</p>	<p>Human Resources Development Canada</p>	<p>Provincial government</p>	<p>\$314.2 million (1997-98 to 1999-00)¹</p>	<p>Unknown</p>
<p>Canada Infrastructure Works Program Established 1994 (Phase 2 started 1997)</p>	<p>An arrangement between the federal and provincial or territorial governments designed to renew and enhance physical infrastructure, particularly in local communities, and to promote job creation and skills development.</p>	<p>Treasury Board Secretariat, Industry Canada, Atlantic Canada Opportunities Agency, Western Economic Diversification Canada, Economic Development Agency for the Region of Quebec, Indian and Northern Affairs Canada</p>	<p>Provincial and territorial governments</p>	<p>\$2.4 billion (1994-95 to 1999/00)³</p>	<p>\$5.9 billion (1994-95 to 1999-00)³</p>
<p>Canada-Wide Accord on Environmental Harmonization Established 1998</p>	<p>A framework agreement aimed at harmonizing environmental programs and policies through Canada-wide co-ordinated action with the provinces and territories, by guiding the development of sub-agreements in specific areas. Sub-agreements have been negotiated in areas such as environmental inspection, environmental assessment and Canada-wide standards.</p>	<p>Environment Canada</p>	<p>Provincial and territorial governments (excluding Quebec)</p>	<p>None¹</p>	<p>None¹</p>

Collaborative Arrangement	Description/Purpose	Federal Departments Involved	Partners	Federal Funding	Other Contributions
Canadian Industry Program for Energy Conservation Established 1992 (CIPEC, Phase 3 started 1997)	A voluntary initiative of Canada's manufacturing and mining industries that promotes the reduction of industrial energy use per unit of production while participating in other efforts to meet Canada's carbon dioxide stabilization objectives.	Natural Resources Canada	Industry groups and private sector	None ¹	None ¹
Canadian Tourism Commission - Product Club Program (Quebec) Established 1998	A national program undertaken by tourism consortia to create tourism products aimed at bringing together small and medium-sized businesses to pool knowledge, efforts and resources to extend the range of market-ready products.	Industry Canada (Canadian Tourism Commission)	Provincial and territorial governments, private sector, industry other interest groups	\$ 0.8 million (1997-98) ¹	\$ 1.3 million (1997-98) ¹
Loan Investment Fund Program Established 1995	A program that guarantees repayment of loans to small and medium-sized enterprises by partner financial institutions.	Western Economic Diversification Canada	Banks, lending institutions	\$ 57.4 million contingent liability (1995-2007) ²	(\$439 million repayable loans) ²
National Child Benefit Established 1998	An initiative that provides enhanced federal child benefits for low-income families as well as increased provincial, territorial and First Nations reinvestments in services and benefits for these families.	Human Resources Development Canada, Revenue Canada, Indian and Northern Affairs Canada	Provincial and territorial governments (excluding Quebec)	\$3.8 billion between 1998-99 and 2000-2001, and \$1.7 billion ongoing thereafter ¹	\$805 million ⁴ (1998-99 to 1999-00) ¹
Employability Assistance for People with Disabilities Established 1998	An arrangement that provides for provinces to deliver a range of services aimed at integrating people with disabilities into the labour force. Funding is shared equally by both federal and provincial/territorial governments.	Human Resources Development Canada	Provincial and territorial governments	\$965 million (1998-99 to 2002-03) ¹	\$960 million (1998-99 to 2002-03) ¹
Health Transition Fund Established 1997	An arrangement to encourage innovations leading to a more integrated health care system by supporting pilot and evaluation projects in four priority areas: home care, pharmacare, primary care and integrated service delivery.	Health Canada	Provincial and territorial governments	\$150 million (1997-98 to 2000-01) ²	None ²

Notes: 1 Arrangement documentation, interviews with program officials

2 Office of the Auditor General, Survey of New Governance Arrangements

3 Reported in Auditor General's 1999 Report, Chapter 17

4 Most of this amount represents savings reinvested in other related programs.

Appendix D

Delegated Arrangements Examined in the Audit

Delegated Arrangement	Description/Purpose	Federal Departments Involved	Federal Funding	Other Contributions
Canadian Adaptation and Rural Development Fund – Provincial councils Established 1995 (Phase 2 started 1999)	A program intended to increase the agricultural industry's ability to adapt and become more self-reliant in a changing environment.	Agriculture and Agri-Food Canada	\$25 million annually (1995–96 to 2000–01) ¹	None ²
Canada Millennium Scholarship Foundation Established 1998	An independent body created through the <i>Budget Implementation Act</i> of 1998 to manage a federal endowment. It will grant some 100,000 scholarships each year for the next decade.	Human Resources Development Canada, Department of Finance	\$2,500 million (1997–98 to 2009–10) ¹	None ¹
Canada Foundation for Innovation Established 1997	An independent, not-for-profit corporation created under the <i>Budget Implementation Act</i> 1997 to provide funding to universities, colleges, hospitals and other not-for-profit institutions to obtain necessary research infrastructure.	Industry Canada, Department of Finance	\$1,000 million (1996–97 to 2002–03) ¹	\$1,500 million in leveraged funding from other sources (1996–97 to 2002–03) ¹
Canadian Health Services Research Foundation Established 1997	A partnership of public and private health sector stakeholders that operates as an independent, arm's-length, non-profit corporation to fund research in health services management and systems.	Health Canada (Medical Research Council, Social Sciences and Humanities Research Council)	\$65 million ¹	None ¹
Canadian Television Fund Established 1996	An independent not-for-profit corporation mandated to support Canadian television and film industry production. It replaces the Canadian Cable Production Fund.	Canadian Heritage	\$500 million (1996–97 to 2000–01) ¹	\$500 million (1996–97 to 2000–01) ¹
The St. Lawrence Seaway Management Corporation Established 1998	An independent corporation responsible for the management, operation, and maintenance of the St. Lawrence Seaway. It replaces the St. Lawrence Seaway Authority, a Crown corporation.	Transport Canada	\$83 million (1998–99 to 2000–01) ¹	\$36 million non-interest bearing promissory note payable on termination of management agreement ¹

Delegated Arrangement	Description/Purpose	Federal Departments Involved	Federal Funding	Other Contributions
Borderline Arrangement: Canadian Institute for Health Information Established 1994	An independent, not-for-profit corporation given responsibility for developing and maintaining Canada's health statistics information system, in support of policy, health system management and public awareness.	Health Canada Statistics Canada	\$10.6 million (including a one-time grant of \$95 million from Health Canada (1994-1999)) ²	\$10.5 million (1994-1999) ²

Notes: ¹ Arrangement documentation, interviews with program officials
² Office of the Auditor General Survey of New Governance Arrangements

Chapter 24

The Canadian Adaptation and Rural Development Fund

An Example of Involving
Others in Governing

The audit work reported in this chapter was conducted in accordance with the legislative mandate, policies and practices of the Office of the Auditor General. These policies and practices embrace the standards recommended by the Canadian Institute of Chartered Accountants. The numbered paragraphs in bold face represent recommendations.

Table of Contents

	Page
Main Points	24-5
Introduction	24-7
Evolution and design of industry councils	24-8
Focus of the audit	24-8
Observations and Recommendations	24-8
Councils require more guidance	24-9
The next step in performance management is better public and parliamentary reporting	24-9
Strategy needed for long-term relationship with councils	24-10
Assessment tool results suggest good governance	24-11
Conclusion	24-11
About the Audit	24-14
Exhibits	
24.1 Minister's and Provincial Council Chairs' Comments	24-8
24.2 Good Practices	24-9
24.3 Assessing the Capabilities of a New Governance Arrangement	24-10
24.4 Key Findings About Council Capabilities Through Interviews	24-12



The Canadian Adaptation and Rural Development Fund

An Example of Involving Others in Governing

Main Points

24.1 The Canadian Adaptation and Rural Development (CARD) fund is a new governance arrangement developed by Agriculture and Agri-Food Canada to help farmers, producers and processors adapt to the new business realities of farming. Under the arrangement, projects to support agricultural adaptation are selected largely by the agriculture industry for funding.

24.2 We found that a reasonable balance had been struck between giving industry councils the freedom to make the best decisions and respecting the public purpose of the funds. In designing this arrangement, the Department developed a number of good practices. However, we also found some areas that need to be improved.

24.3 In conjunction with the Department, we developed an instrument to assess the capabilities of the adaptation councils. Pilot results suggest that the CARD councils rate well in most of the required competencies. We determined that the instrument could be useful for assessing the capabilities of parties in this new governance arrangement and perhaps in others.

The Department accepts our findings and has committed to act on our recommendations, although no details have been provided.

Introduction

24.4 The business environment for farming has changed dramatically over the last several decades. The industry has had to adapt to reductions in government subsidies, changes in technology, growing concern about the environment, more competitive global markets, the decline of the rural population and other changes. In 1995, Agriculture and Agri-Food Canada introduced a strategy to assist in this adaptation, the Canadian Adaptation and Rural Development Strategy.

24.5 This strategy was designed to foster a growing, diversified, competitive sector and a healthy rural economy, and to help offset the impact of eliminating transportation support and reducing safety net subsidies. Further, in delivering this strategy the Department wished to design a package of programs that would respond to the government's objectives of bringing decision making closer to citizens, making government more cost-effective and involving the sector more directly in funding decisions. To pay for these programs, the Canadian Adaptation and Rural Development (CARD) fund was created.

24.6 Federal funds for the four-year CARD fund, about \$60 million annually, are shared between national and provincial applications. National programs receive \$35 million annually, while an annual allocation of \$25 million is administered by 13 provincial councils. National programs support initiatives that have potential benefits for Canadians in any province, while provincial councils support initiatives that are unique to specific regions and have been identified as priorities by those regions.

24.7 Each province has a council that represents the agriculture and agri-food industry. Funding for the councils is provided by federal grant. Council members in each province are representatives of the industry, and

include producers and agri-food processors in the province. Members of the council are selected either by industry vote or by federal appointment, depending on the province. The size of the council also varies by province. Both the federal and provincial governments are represented on the councils but do not have a vote. The federal government largely guided the design and development of the councils. Resources for administration are covered by the grants to the councils, although in some provinces the provincial government has contributed resources.

24.8 **CARD is a delegated arrangement.** Agriculture and Agri-Food Canada has delegated extensive decision-making authority to each council to determine where CARD funding should be directed to best serve the adaptation needs in its province. Councils decide on everything from strategic funding priorities (within policy bounds set by Agriculture and Agri-Food Canada) to approval of individual applications for project funding from CARD funds.

24.9 Representatives of the agri-food industry with an adaptation project can apply to the provincial council for funding of the project. The following are a few examples of the hundreds of projects partially funded within the adaptation priorities of this program.

- **Human resource development.** Youth conferences (for example, 4H); farm safety education (such as farm safety pamphlets for schools), and farm management conferences and skills training (conference on abandonment of rail lines, use of computer technology to improve operations, evaluation of value-added opportunities, leadership, management and strategic visioning).
- **Research and development.** Disease-resistant seed and more economical feed
- **Infrastructure support.** Understanding and communicating

Councils decide on everything from strategic funding priorities to approval of individual applications for project funding.

For the most part, we found that the controls the Department has developed for the arrangement were appropriate to ensure an adequate governing framework.

benefits of and barriers to sustainable cropping practices.

- **Enhanced access to capital.** Funding of business plans and market feasibility studies.
- **Improved market information and utilization.** New products, including fruit chips, byproducts, organic products, and hemp oil.

24.10 Approval was given for the second phase of CARD, known as CARD II, beginning 1 April 1999. Annual funding will continue at \$60 million. Further, the government has approved CARD as an ongoing program of the Department.

Evolution and design of industry councils

24.11 Agriculture and Agri-Food Canada considers the use of industry councils to be an important innovation in its delivery of adaptation programs. A number of factors led to its decision to experiment with using them to provide programs. At the time that CARD was created, the government of the day was particularly interested in alternative ways to make decisions. This program allowed industry to decide how it could best be helped to adapt to change. The Department hoped this would result in better decisions and would increase the

support and involvement of industry. As well, giving industry more responsibility for decisions reflected the program's objective of increasing industry's ability to adapt and become more self-reliant.

24.12 Exhibit 24.1 summarizes some of the comments made by the Minister and the provincial council chairs about the creation of the councils.

24.13 The councils are using public funds that have a specific public purpose. Although the Minister of Agriculture remains accountable to Parliament for the expenditure of these funds, there are no conditions attached to them because they are in the form of grants. The Department recognized the importance of providing for accountability mechanisms, so it developed a number of objectives, principles, guidelines and criteria that the councils are required to respect and include in their by-laws. The Department also developed a performance management framework that the councils are required to use to measure and report on their performance.

Focus of the audit

24.14 This audit focussed on the mechanisms the Department included in the design and development of the provincial councils to ensure adequate accountability and control of federal funds. We conducted our examination at Agriculture and Agri-Food Canada and at three of the provincial councils. Specifically, we examined the framework governing arrangements between the federal government and the provincial councils.

Observations and Recommendations

24.15 For the most part, we found that the controls the Department has developed for the arrangement were appropriate to ensure an adequate governing framework. Those that we consider good practices are

Exhibit 24.1

Minister's and Provincial Council Chairs' Comments

What the Minister said: "I am pleased that industry groups have so enthusiastically pooled their expertise and experience to form these councils. This groundbreaking initiative demonstrates how producer organizations are determined to take charge of their future and to build a more innovative and prosperous rural economy."

What two councils said: "This council represents a unique partnership based on the belief that farm and rural organizations have the knowledge and ability to help determine the most effective allocation of government funds."

"The council was established by all rural industry players to facilitate adaptation to the new realities and challenges ahead, thereby fostering a dynamic approach within agriculture in the province."

summarized in Exhibit 24.2. Some of the gaps in reporting, accountability mechanisms, transparency and protection of the public interest noted in Chapter 23 (paragraphs 23.85 through 23.116) we also noted in CARD; for example, the Department has not required specific provisions for conflict-of-interest codes, public service values and citizen redress mechanisms. These weaknesses are mitigated to some extent by the practices noted in Exhibit 24.2.

Councils require more guidance

24.16 Guidance from the Department could be improved to ensure better and more consistent decision making across councils. Guidance does not mean more control and it does not need to be prescriptive. The kind of guidance the councils need could include the logic underlying the objectives, principles, guidelines and criteria the Department has established, or more detailed definitions that support them. For example, “normal commercial operations” cannot be funded under CARD. Some councils have had difficulty identifying what this term was intended to mean. More guidance from the Department on the logic behind this restriction would help to ensure that interpretation is consistent. Providing information on best practices and encouraging greater sharing of information and learning among councils could also be a way for the Department to help the councils operate effectively and efficiently. This sharing would allow councils to capitalize on the experience of the Department and other councils, rather than “reinventing the wheel” each time there is an operational challenge. For example, sharing the lessons learned from using royalties and loan guarantees as a means for a council to provide funding to a project would help those councils that have no experience using such arrangements. Council members confirmed the desire for more guidance and greater sharing of this kind.

24.17 Agriculture and Agri-Food Canada should provide further guidance to the councils, in particular by defining and presenting the logic underlying the objectives, principles, guidelines and criteria established by the Department. It should also work with the councils to develop better means of sharing experience and good practices.

The next step in performance management is better public and parliamentary reporting

24.18 The Department requires the councils to report annually on the performance of funded projects in accordance with the CARD performance management framework. Using the results of this reporting, the Department completes a central aggregation of performance management data in a national project database. While the Department has reported some performance information on CARD in the Departmental Performance Report, it has yet to make extensive use of the performance information gathered as part of the performance management framework. The challenge will be to summarize this concisely in the Departmental Performance Report with references to where more detailed performance information can be found.

- Involvement of federal ex officio member on provincial councils
- Eligibility requirement that councils incorporate the objectives, principles, guidelines and criteria of the government into the council by-laws
- Requirement for councils to annually report on performance of funded projects in accordance with the Department's performance management framework
- Central aggregation of performance management data in a national project database

Guidance from the Department could be improved to ensure better and more consistent decision making across councils.

Exhibit 24.2

Good Practices

It is important that both the Department and the councils consider long-term strategies.

24.19 The Department should implement better means of ensuring that parliamentarians and the public have access to performance information collected by the program.

Strategy needed for long-term relationship with councils

24.20 Due to the experimental nature of these councils, original funding was limited to four years and the government's approval would be required for continuation of the program. Recently, the government approved a second phase of CARD that establishes it as an ongoing program of the Department. This makes it important that both the Department and the councils consider long-term strategies. Since there could be economies of scale if

the use of the councils were expanded, the Department may want to assess the merits of using the councils to administer other departmental programs. Conversely, the councils may want to attract other sources of funding. In these circumstances, it is important that both parties agree on the nature of the relationship between them. At the present time, there is no formal agreement on whether councils can continue to be eligible for funding from CARD if they arrange for funding from other sources. Nor is there any formal agreement on how disputes will be settled on this or any other issue.

24.21 The Department should consider and formalize a long-term strategy for its relationship with councils, including considering the

Exhibit 24.3

Assessing the Capabilities of a New Governance Arrangement

Agriculture and Agri-Food Canada has been using informal means to assess the capabilities of the Canadian Adaptation and Rural Development (CARD) councils. A departmental official assigned to each council attends council meetings as an ex officio, non-voting member. These officials have not been able to form first-hand impressions of the strengths and weaknesses of their councils, but their impressions have not usually been captured and reported.

In conjunction with Agriculture and Agri-Food Canada, we developed an instrument for assessing the capabilities of adaptation councils. We did this to determine whether a more systematic process could prove to be a useful tool for monitoring this new governance arrangement and potentially others. The tool was then piloted with three of the councils.

Capabilities assessment tools are useful in the monitoring of new governance arrangements

Councils that took part in the pilot found the capability assessment tool to be useful. They reported that the results painted an accurate picture of the strengths and weaknesses of their councils. Some took immediate action to strengthen areas the assessment identified as needing improvement. Several councils that were not part of the pilot project have expressed an interest in using the tool.

We concluded that the tool could be used in other new governance arrangements, with minimal modification. Although this tool appears to be a valid and reliable means of assessing council capabilities, it is possible that other, superior tools could be developed.

The capability model could be used in a variety of ways. It could reflect perceptions only, or be augmented by gathering corroborative evidence. It could be used by auditors or other external assessors, or the assessments could be completed by the federal government's partners in new governance arrangements and reported to the federal government. In the latter case, the credibility of the report could be enhanced by having a third party attest to the fairness of the information. As another alternative, assessments using the tool could be completed by the federal government members of one council alone and the results used internally by the government. Alternatively, by having a portion of the government complete part of the assessment, the tool could be used to monitor the effectiveness of the existing arrangement, then on a regular basis to assess the use of the tool.

Because the need to assess governance arrangements is not limited to the capabilities of partners outside the federal government, capability assessment is very applicable to the evaluation of the capabilities of an outside organization and deserves consideration in deciding whether to adopt a new governance arrangement and whether to continue that arrangement. The informal means currently in use are inadequate, by diagnosing strengths and weaknesses, to improve their capabilities and improve the means of their arrangement with the federal government.

merits of using the councils to deliver other programs.

Assessment tool results suggest good governance

24.22 The councils have been given considerable responsibility for decision making. Because the success of this program depends greatly on the councils' capabilities, it is important that they be assessed regularly. At the start of our audit, the Department had not developed a formal means to do this.

24.23 We undertook a project, in conjunction with the Department, to develop an instrument for assessing the capabilities of the councils (see Exhibit 24.3). For this project, 18 specific competencies required of CARD councils were identified. Questions were developed on each of the 18 required competencies to determine whether they were present in each council.

24.24 The completed capabilities assessment tool was then piloted in three CARD councils that volunteered for the pilot. Information was gathered through individual interviews with council members, council staff and federal ex officio members. The results were compiled and the capabilities of the three pilot CARD councils were compared with research data gathered by the Conference Board of Canada over several decades on the capabilities of private and public sector boards of directors. Because participants answered the questions from their own experience, the results reflect perceptions only.

24.25 Pilot assessment results suggest that CARD councils are generally strong, with some areas that need improvement. Members view their councils as generally well governed. Federal ex officio members and the councils' staffs essentially concur in the assessment of the strengths of the councils overall, with some modest differences of opinion on specific strengths and weaknesses.

24.26 There was considerable similarity among councils in their capabilities. They demonstrated strong performance in 8 of the 18 capabilities, rated fairly well in another 7, and would benefit from improvement in 3 others (see Exhibit 24.4). Further, given that the CARD councils were created quite recently, they compared favourably with established benchmarks for Canadian private and public sector boards of directors.

24.27 The results of the project suggest that the Department could find this or a similar tool useful in regularly assessing council capabilities.

24.28 The Department should incorporate the use of a capabilities assessment tool in its monitoring of program delivery by Canadian Adaptation and Rural Development councils.

Conclusion

24.29 Notwithstanding the concerns noted above, we found that a reasonable balance has been struck between giving the industry councils freedom to make the best decisions and respecting the public purpose of the funds. The refinements to the program that we have recommended, and the recommendations in Chapter 23 that apply to all new governance arrangements, would provide additional comfort to the Department in its accountability role and should help to ensure the long-term success of the arrangements. It is important that the Department be cognizant of any additional administrative burden they might add.

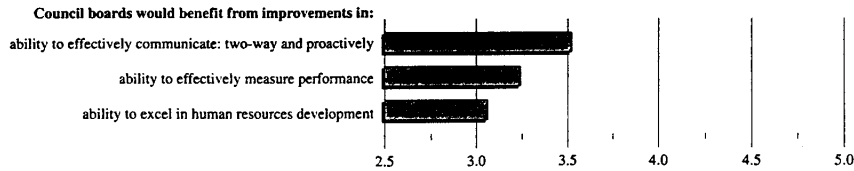
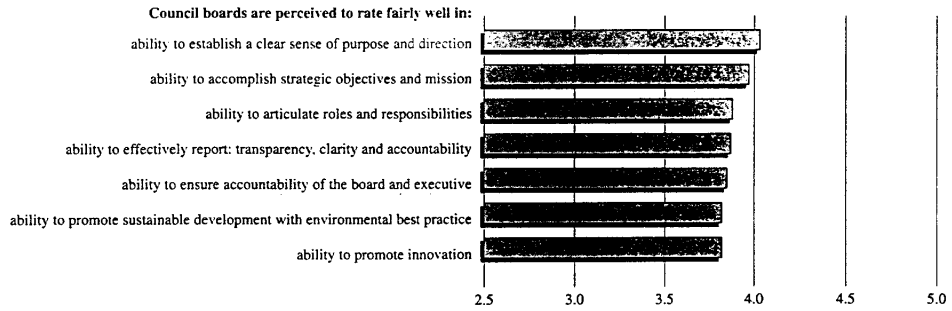
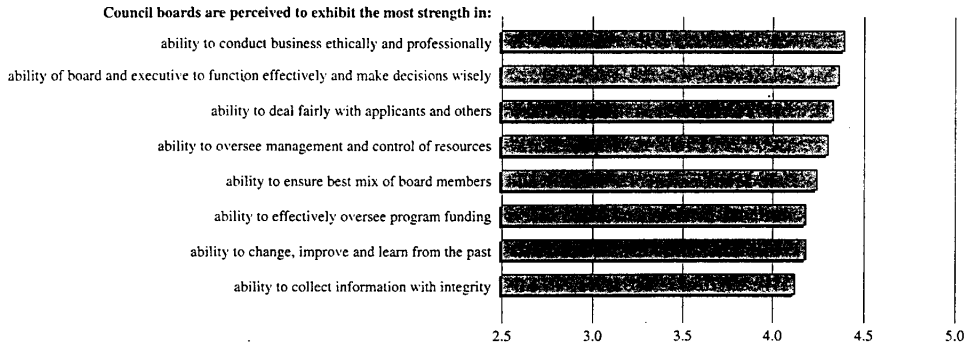
24.30 Results of the capability assessment indicate that there is a great deal of competence and enthusiasm within the councils. The success of this program can, in part, be attributed to these factors. However, it is possible that once the excitement surrounding the program begins to wane, the momentum of success will also wane. Where interpretation of federal requirements is needed, councils

The results of applying the assessment tool suggest that the Department could find this or a similar tool useful in regularly assessing council capabilities.

The Canadian Adaptation and Rural Development Fund:
An Example of Involving Others in Governing

Exhibit 24.4

Key Findings About Council Capabilities Through Interviews



Mean score of all respondents on questions related to each of the above capabilities, using the following scale:

- 0 – Not at all; nothing being done in this area
- 1 – Not well; improvement definitely needed
- 2 – Somewhat; improvement required
- 3 – Moderately well; satisfactory
- 4 – Quite well
- 5 – Very well; no improvement required

have been careful to ensure that they err on the side of the federal government. Over time, this could change. For this reason, it is important that the tools and guidance provided by the Department be adequate to support continued success.

Department's response: The Department is proud of the CARD program and pleased that the Auditor General recognizes, in this separate chapter, the

valuable contribution of the provincial councils and the good practices that contribute to this successful arrangement. We welcome the Auditor General's suggested refinements and will address them in our continuing efforts to improve this worthwhile initiative. We would also like to thank the councils who participated in the audit for their valuable contribution.



About the Audit

Objective

The objective of this audit was to assess the adequacy of the accountability and control arrangements established by Agriculture and Agri-Food Canada for provincial adaptation councils with whom it has arrangements for the delivery of the Canadian Adaptation and Rural Development (CARD) fund.

Scope

Our audit focussed on Agriculture and Agri-Food Canada, which designed the governing framework of the provincial adaptation councils that deliver CARD programming. While our Office did some work on the councils, as entities independent of the federal government they were not subject to our audit.

In parallel with the audit, this Office and Agriculture and Agri-Food Canada established a study project to develop and pilot a tool for assessing the capabilities of the provincial adaptation councils.

Criteria

In addition to the criteria for the audit of new governance arrangements in Chapter 23, Involving Others in Governing, one separate criterion was applied. Namely, we expected that the Department would provide guidance and direction to the councils to ensure that objectives are met.

Audit Team

Assistant Auditor General: Don Young
Principal: Neil Maxwell

Linda Anglin
Anthony Levita
Christian Weber

For more information, please contact Neil Maxwell.

Report of the Auditor General of Canada to the House of Commons – 1999 Table of Contents

Volume 1 – April 1999

Chapter

- Foreword and Main Points
- Other Audit Observations
- 1 Correctional Service Canada – Reintegration of Offenders
- 2 Revenue Canada – Underground Economy Initiative
- 3 Statistics Canada – Managing the Quality of Statistics
- 4 Fisheries and Oceans – Managing Atlantic Shellfish in a Sustainable Manner
- 5 Collaborative Arrangements: Issues for the Federal Government
- 6 Human Resources Development Canada – Accountability for Shared Social Programs
National Child Benefit and Employability Assistance for People with Disabilities
- Chapters 7 & 8**
- 7 The Atlantic Groundfish Strategy: Contributions and Grants
- 8 The Atlantic Groundfish Strategy: Follow-up
- 9 Management of Science and Technology Personnel Follow-up
- 10 Indian and Northern Affairs Canada – Funding Arrangements for
First Nations: Follow-up

Volume 2 September 1999

Chapter

- Matters of Special Importance – 1999
- Foreword and Main Points
- Chapters 11 & 12**
- 11 Agriculture Portfolio – User Charges
- 12 Agriculture and Agri-Food Canada – A New Crop Intellectual Property in Research
- 13 National Defence – Hazardous Materials: Managing Risks to Employees
and the Environment
- Chapters 14 & 15**
- 14 National Health Surveillance, Diseases and Injuries
- 15 Management of a Food-Borne Disease Outbreak

**Report of the
Auditor General of Canada to the House of Commons – 1999
Table of Contents**

September 1999 (cont'd)

Chapter	
16	Revenue Canada – Goods and Services Tax: Returns Processing and Audit
17	Canada Infrastructure Works Program: Phase II and Follow-up of Phase I Audit
18	Public Works and Government Services Canada – Alternative Forms of Delivery: Contracting for Property Management Services
19	Industry Portfolio – Investing in Innovation

November 1999

Chapter	
20	Fisheries and Oceans – Pacific Salmon: Sustainability of the Fisheries
21	Financial Information Strategy: Departmental Readiness
22	Attributes of Well-Managed Research Organizations
	Chapters 23 & 24
23	Involving Others in Governing: Accountability at Risk
24	The Canadian Adaptation and Rural Development Fund: An Example of Involving Others in Governing
25	Preparedness for Year 2000: Final Preparation
	Chapters 26 & 27
26	National Defence – The Proper Conduct of Public Business
27	National Defence – Alternative Service Delivery
28	Canadian International Development Agency – Financial Controls Over Projects
29	Federal Support of Health Care Delivery
30	Sole-Source Contracting for Professional Services: Using Advance Contract Award Notices
31	Department of Foreign Affairs and International Trade – Delivery of Capital Projects in Four Missions
	Other Observations and Appendices
32	Follow-up of Recommendations in Previous Reports
33	Other Audit Observations Appendices

Order Form for 1999 Report Material

If you wish to obtain other 1999 Report material, consult the Main Table of Contents and indicate the chapters and formats you wish to receive. Mail the form to:

Office of the Auditor General of Canada
240 Sparks Street, Stop 10-1
Ottawa, ON K1A 0G6

or FAX form to. (613) 954-0696

Please Print

Name: _____

Organization: _____

Address: _____

City: _____ Province: _____

Country: _____ Postal Code: _____

Telephone: (____) _____

Please Specify Chapter Number and Quantity

Chapter(s)	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French
	# _____	_____ English	_____ French

Matters of Special Importance - 1999

Foreword and Main Points _____ Bilingual

CD-ROM (contains Reports from 1990 to 1999) _____ Bilingual

Video (contains Selected Highlights of the Report)

April 1999 _____ English _____ French

September and November 1999 _____ English _____ French

The Report is also available on the Internet at www.oag-bvg.gc.ca

《 附錄四 》

PREFACE

The Massachusetts Port Authority ("Massport" or the "Authority") was established by Chapter 465 of the Acts of 1956. This reprint sets forth the Enabling Act as amended through December, 1996 (the "Enabling Act"). It contains the language of legislation as enacted; no editorial changes have been made - see, e.g., Section 3(q) of the Enabling Act which references both "the authority" and "the Authority".

Appendix A contains a description of pre-Enabling Act legislation relating to the Port of Boston, the General Edward Lawrence Logan International Airport, the Laurence G. Hanscom Field and the Mystic River Bridge.

In addition to the Enabling Act, there are a number of Acts and Resolves which have been passed by the Massachusetts General Court which relate to Massport. Appendix B contains significant Acts and Resolves affecting Massport entities as well as some referenced in footnotes to the Enabling Act. Certain of these Acts and Resolves are reprinted in full while others have been summarized. Appendix C contains a selected listing of references to relevant Massachusetts General Laws. The reader should refer to the official version of the relevant Acts and Resolves or General Laws where appropriate:

The Massachusetts Port Authority Enabling Act can also be found at Mass. Gen. Laws Ann. Ch. 91 App. (West) and at Mass. Ann. Laws, Selected Special Laws of Massachusetts Ch. 73 (Michie/Law Co-op.)

TABLE OF CONTENTS

	<u>Page</u>
I. Massachusetts Port Authority Enabling Act.....	1.
SECTION 1. Definitions.....	1.
SECTION 2. Massachusetts Port Authority.....	6.
SECTION 3. General Grant of Powers.....	7.
SECTION 3A. Flight Patterns; Public Hearings.....	10.
SECTION 3B. Ineligibility of Smokers for Certain Positions at Logan International Airport.....	11.
SECTION 4. Acquisition of Property.....	11.
SECTION 4A. Trade and Transportation Center.....	13.
SECTION 4B. Financing of Project.....	13.
SECTION 4C. Agreements with Authority.....	14.
SECTION 5. Airport Properties.....	14.
SECTION 6. Port Properties.....	15.
SECTION 7. Application of Airport and Port Payments.....	17.
SECTION 8. Issuance of Revenue Bonds.....	18.
SECTION 9. Additional Revenue Bonds.....	19.
SECTION 10. Provisions Applicable to All Bonds.....	19.
SECTION 10A. Provisions Applicable to Money Borrowed.....	20.
SECTION 11. Credit of Commonwealth or Any Political Subdivision Thereof Not Pledged.....	21.
SECTION 12. Trust Agreement.....	22.
SECTION 13. Operation of Bridge.....	22.
SECTION 14. Revenues.....	23.
SECTION 15. Trust Funds.....	24.
SECTION 16. Remedies.....	24.
SECTION 17. Exemption from Taxation.....	24.
SECTION 18. Bonds Eligible for Investment.....	26.
SECTION 19. Revenue Refunding Bonds.....	27.
SECTION 20. Freedom from Competition.....	27.
SECTION 21. Annual Reports.....	27.
SECTION 22. Transfer of Employees.....	28.
SECTION 22A. Deferred Compensation Contracts Authorized for Funding Life Insurance Contracts, Mutual Funds Or Bank Investment Trusts.....	30.
SECTION 22B. Deferred Compensation Contracts Authorized for Funding Individual Retirement Accounts.....	31.
SECTION 23. Miscellaneous.....	33.
SECTION 24. Labor Relations Policy.....	35.
SECTION 25. Transfer to Commonwealth.....	35.

SECTION 26.	Appropriation.....	37.
SECTION 27.	Act Liberally Construed.....	37.
SECTION 28.	Constitutional Construction.....	37.
SECTION 29.	Inconsistent Laws Inapplicable.....	37.
SECTION 30.	Amends Mass. Gen. Laws Chs. 63, §121.....	37.
SECTION 31.	Repeals 1950 Mass. Acts Ch. 7411.....	37.
SECTION 32.	Other Laws Inoperative upon Vesting of Title to Airport Properties in Authority.....	38.
SECTION 33.	Other Laws Inoperative upon Vesting of Title to Port Properties in Authority.....	38.
SECTION 34.	Other Laws Inoperative upon Vesting of Title to Mystic River Bridge in Authority.....	38.
SECTION 34A.	Authority to Reimburse Commonwealth for Retirement Costs Associated with Department Of Public Safety Employees.....	38.
SECTION 35.	[Repealed].....	39.
II.	Appendices.....	41.
<u>Appendix A.</u>	Description of Pre-enabling Act Legislation Relating To:	
	1. Port of Boston.....	41.
	2. General Edward Lawrence Logan International Airport	44.
	3. Laurence G. Hanscom Field.....	46.
	4. Mystic River Bridge.....	47.
<u>Appendix B.</u>	Miscellaneous Acts and Resolves Relating to the Massachusetts Port Authority.....	49.
1.	Chapter 412 of the Acts of 1958. An Act Exempting from Local Taxation Certain Lands Of the Commonwealth.....	49.
2.	Chapter 274 of the Acts of 1959. An Act Providing for the Policing of the General Edward Lawrence Logan Airport by the State Police.....	50.
3.	Chapter 473 of the Acts of 1960. An Act Providing for the Installation of Sound Barriers at Certain Hangars and for the Designation of a Run up Area At the Logan International Airport.....	51.

4. Chapter 760 of the Acts of 1962.
An Act Providing That the . . . Massachusetts Port Authority
. . . and [Its] Employees Shall Be Subject to Certain
Provisions of the State Labor Relations Law..... 52.
5. Chapter 288 of the Acts of 1963.
An Act Authorizing the City of Boston to Contract to
Provide Fire-fighting Services for the Tax Exempt Property
Of the Massachusetts Port Authority in Said City..... 53.
6. Chapter 410 of the Acts of 1963.
An Act Prohibiting the Expansion of the Logan
Airport or the Construction of Hangars in a Westerly
Direction Therefrom..... 53.
7. Chapter 383 of the Acts of 1964.
An Act Permitting the Massachusetts Port Authority to
Take by Eminent Domain Land in a Certain Area for the
Construction and Maintenance of a Service Road at the
General Edward Lawrence Logan International Airport..... 53.
8. Chapter 682 of The Acts of 1964.
An Act Directing the Metropolitan District Commission
To Construct and Maintain a High Level Bridge over the
Charles River from Leverett Circle to the Vicinity of
City Square in the City of Boston, and Authorizing the
Massachusetts Port Authority to Construct Certain
Connections Thereto and to Contribute to the Cost Thereof..... 54.
9. Chapter 740 of the Acts of 1964.
An Act Repealing Statutory Powers of the Governor's
Council Which Interfere with the Efficient Operation of
the Executive Department of the Commonwealth..... 55.
10. Chapter 733 of the Acts, Extra Session, 1966.
An Act Changing the Harbor Line on the Northerly
Side of Boston Harbor..... 57.
11. Chapter 869 of the Acts of 1967.
An Act Authorizing the Armory Commission to Sell
To the Massachusetts Port Authority Certain Land
And Buildings Owned, Used or Controlled by the

	Military Division of the Commonwealth at the General Edward Lawrence Logan International Airport.....	58.
12.	Chapter 893 of the Acts of 1967. An Act Relative to the Maintenance by the Massachusetts Port Authority of a Floating Boom to Safeguard Boston Harbor from the Dangers of Oil Pollution.....	59.
13.	Chapter 90 of the Resolves of 1968. Resolve Providing for an Investigation and Study by the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority Relative to the Feasibility Of Operating a High Speed Transportation System from General Edward Lawrence Logan International Airport to Downtown Boston.....	60.
14.	Chapter 367 of the Acts of 1969. An Act Prohibiting the Charging of Tolls by the Massachusetts Port Authority for Vehicles in Funeral Processions of Vietnam Veterans Who Died in Service in Vietnam.....	60.
15.	Chapter 704 of the Acts of 1969. An Act Establishing a Governor's Cabinet.....	61.
16.	Chapter 75 of the Resolves of 1969. Resolve Continuing the Investigation and Study by the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority Relative to the Feasibility of Operating a High Speed Transportation System from General Edward Lawrence Logan International Airport To Downtown Boston.....	62.
17.	Chapter 295 of the Acts of 1971. An Act Requiring the Massachusetts Port Authority to Submit a List of the Fair Market Value of All of its Tax Exempt Property.....	62.
18.	Chapter 584 of the Acts of 1971. An Act Providing That the Board to Facilitate the Use of Public Buildings by the Physically Handicapped May Adopt Rules and Regulations Applicable to Certain Buildings Of Public Authorities and Public Education Institutions.....	62.

19.	Chapter 3 of the Resolves of 1975. Resolve Providing for an Investigation and Study by the Massachusetts Port Authority Relative to the Feasibility of Establishing a Foreign-trade Zone in the Commonwealth.....	63.
20.	Chapter 373 of the Acts of 1977. An Act Authorizing the Sale of Certain Land of the Massachusetts Port Authority to Certain Persons.....	64.
21.	Chapter 949 of the Acts of 1977. An Act Amending the Tax-exempt Status of the Massachusetts Port Authority.....	64.
22.	Chapter 1 of the Resolves of 1977. Resolve Providing for an Investigation and Study by the Massachusetts Port Authority Relative to Aiding the Stability And Expansion of the Massachusetts Seafood Industry.....	67.
23.	Chapter 487 of the Acts of 1978. An Act Establishing the Massachusetts Port Authority Employees' Retirement System.....	68.
24.	Chapter 12 of the Resolves of 1979. Resolve Providing for an Investigation and Study by a Special Commission Relative to the Operation, Regulation, Financing and Control of All Means of Transportation in the Commonwealth.....	75.
25.	Chapter 703 of the Acts of 1979. An Act Prohibiting the Massachusetts Port Authority from Implementing Certain Rules and Regulations Relative to the Towing or Pushing of Certain Aircraft.....	76.
26.	Chapter 290 of the Acts of 1980. An Act Establishing the Hanscom Field Advisory Commission at Laurence G. Hanscom Field.....	77.
27.	Chapter 636 of the Acts of 1982. An Act Regulating the Use of Commonwealth Pier Commonly Known as Pier 5.....	78.

28.	Chapter 234 of the Acts of 1983. An Act Regulating the Use of the Commonwealth Pier Commonly Known as Pier 5.....	78.
29.	Chapter 234 of the Acts of 1984. An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Eighty Five for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth for Interest, Sinking Fund and Serial Bond Requirements and for Certain Improvements.....	78.
30.	Chapter 240 of the Acts of 1984. An Act Authorizing the Division of Capital Planning and Operations to Lease the Retail, Restaurant and Other Commercial Portions of the State Transportation Building.....	79.
31.	Chapter 46 of the Acts of 1985. An Act Designating a Certain Section of Massachusetts Port Authority Land at Castle Island as the James F. Dahill Harborview.....	80.
32.	Chapter 280 of the Acts of 1986. An Act Authorizing the Deputy Commissioner of the Division Of Capital Planning and Operations to Acquire by Eminent Domain a Certain Parcel of Land in the City of Boston from the Massachusetts Port Authority and to Transfer the Care, Custody and Control of Said Parcel of Land to the Department of Public Works for Highway Purposes.....	80.
33.	Chapter 349 of the Acts of 1986. An Act Providing for the Development of Facilities Within Boston Harbor for the Lobster Fishing Industry and Further Providing for the Revitalization of the East Boston Piers Property.....	81.
34.	Chapter 134 of the Acts of 1988. An Act Authorizing the Deputy Commissioner of Capital Planning and Operations to Acquire Certain Lands in the City Of Boston from the Massachusetts Port Authority for Highway Purposes. [Commonwealth Flats Area].....	86.

35.	Chapter 208 of the Acts of 1988. An Act Providing for a Capital Outlay Facility Program for The System of Higher Education for the Commonwealth.....	86.
36.	Chapter 218 of the Acts of 1988. An Act Relative to the Assignment of State Police to Certain Authorities.....	87.
37.	Chapter 449 of the Acts of 1989. An Act Authorizing the Deputy Commissioner of Capital Planning and Operations to Acquire a Certain Parcel of Land In the City of Boston.....	88.
38.	Chapter 653 of the Acts of 1989. An Act Establishing the Budget Control and Reform Act of 1989.....	88.
39.	Chapter 313 of the Acts of 1990. An Act Relative to Leave with Pay for Certain Incapacitated Employees of the Massachusetts Port Authority.....	89.
40.	Chapter 133 of the Acts of 1992. An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Ninety-three for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.....	89.
41.	Chapter 110 of the Acts of 1993. An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Ninety-four for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.....	89.
42.	Chapter 139 of the Acts of 1993. An Act Further Regulating the Classification for Retirement Purposes of Certain Individuals.....	90.
43.	Chapter 301 of the Acts of 1993. An Act Allowing Employees of the Massachusetts Port Authority to Be Eligible for Sound Insulation Programs.....	90.

44.	Chapter 85 of the Acts of 1994. An Act Relative to Bond Authorizations for Certain Emergency Capital Projects of the Commonwealth.....	91.
45.	Chapter 273 of the Acts of 1994. An Act Providing for an Accelerated Transportation Development and Improvement Program for the Commonwealth.....	92.
46.	Chapter 102 of the Acts of 1995. An Act for the Operation of the Third Harbor Tunnel and the Study of a Unified Transportation System in the Boston Metropolitan Area.....	95.
47.	Chapter 273 of the Acts of 1995. An Act Providing for a Joint Feasibility Study Relating to a Unified Transportation System in the Boston Metropolitan Area.....	99.
48.	Chapter 5 of the Acts of 1996. An Act Relative to the Retirement Program of the Massachusetts Port Authority.....	100.
49.	Chapter 28 of the Acts of 1996. An Act Relative to the Revitalization and Development of the Commonwealth's Seaports. ["Seaport Bond Bill"].....	101.
50.	Chapter 71 of the Acts of 1996. An Act Authorizing Certain Public Employees Creditable Retirement Service Time for Active Service in the Armed Forces.....	101.
51.	Chapter 130 of the Acts of 1996. An Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar).....	102.
52.	Various Transportation Bond Bills.....	103.

<u>Appendix C.</u>	Selected General Law References Relevant to the Massachusetts Port Authority.....	105.
--------------------	--	------

**MASSACHUSETTS PORT AUTHORITY
ENABLING ACT**

Chapter 465 of the Acts of 1956

AN ACT * * * CREATING THE MASSACHUSETTS PORT AUTHORITY AND DEFINING ITS POWERS AND DUTIES: PROVIDING FOR THE ISSUANCE OF REVENUE BONDS OF THE AUTHORITY, PAYABLE SOLELY FROM TOLLS AND OTHER REVENUES, FOR * * * REFINANCING * * * THE MYSTIC RIVER BRIDGE AND REFINANCING AND IMPROVING THE STATE-OWNED AIRPORTS AND PORT OF BOSTON FACILITIES, AND PROVIDING FOR THE TRANSFER TO SAID AUTHORITY OF SAID * * * BRIDGE, AIRPORTS AND PORT FACILITIES.

as amended by

Chapter 599 of the Acts of 1958
Chapter 476 of the Acts of 1959
Chapter 328 of the Acts of 1960
Chapter 525 of the Acts of 1960
Chapter 384 of the Acts of 1961
Chapter 543 of the Acts of 1963
Chapter 719 of the Acts of 1967
Chapter 869 of the Acts of 1967
Chapter 449 of the Acts of 1968
Chapter 869 of the Acts of 1969
Chapter 771 of the Acts of 1971
Chapter 198 of the Acts of 1972
Chapter 208 of the Acts of 1974

Chapter 660 of the Acts of 1977
Chapter 949 of the Acts of 1977
Chapter 332 of the Acts of 1978
Chapter 487 of the Acts of 1978
Chapter 709 of the Acts of 1979
Chapter 497 of the Acts of 1980
Chapter 732 of the Acts of 1981
Chapter 371 of the Acts of 1983
Chapter 199 of the Acts of 1987
Chapter 199 of the Acts of 1988
Chapter 341 of the Acts of 1989
Chapter 301 of the Acts of 1993
* * * * *

Be it enacted, etc., as follows:

SECTION 1. Definitions. - As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The term "airport properties" shall include the General Edward Lawrence Logan International Airport, hereinafter called Logan Airport, and Laurence G. Hanscom field, together with all buildings and other facilities and all equipment, appurtenances, property, rights, easements and interests formerly acquired or leased by the commonwealth in connection with the construction or the operation thereof and which were in the charge of the state airport management board on February seventeenth, nineteen hundred and fifty-nine, and together with all the land and buildings thereon at Logan Airport formerly owned, used or controlled by the military division of the commonwealth for purposes of the Air National Guard, including a certain parcel of land

2.

and the buildings thereon, now or formerly owned, used or controlled by said military division at Logan Airport, bounded and described as follows:

Beginning at a point at the intersection of the major and minor axis of the General Edward Lawrence Logan International Airport in latitude three thousand five hundred sixty-four and forty-six hundredths (N 3564.46) feet north and longitude ten thousand nine hundred thirty-one and fifty-three hundredths (E 10931.53) feet east; thence north fifty-eight degrees thirty-five minutes and thirty-two seconds west (N 58° 35' 32" W), six hundred forty-four and forty-one hundredths (644.41') feet to a point; thence south thirty-one degrees, twenty-four minutes, and twenty-eight seconds west (S 31° 24' 28" W) fifty and fifty hundredths (50.50) feet to the point of beginning, point A; thence continuing south thirty-one degrees twenty-four minutes and twenty-eight seconds west (S 31° 24' 28" W) six hundred forty-seven and sixty hundredths (647.60') feet to point B; thence turning and running north sixty-nine degrees forty-seven minutes and two seconds west (N 69° 47' 02" W), six hundred twenty-four and twenty-eight hundredths (624.28') feet to point C; thence turning and running south thirty-one degrees, twenty-seven minutes and fifty-eight seconds west (S 31° 27' 58" W) twelve and seventy-five hundredths (12.75') feet to point D; thence turning and running north fifty-eight degrees thirty-two minutes and two seconds west (N 58° 32' 02" W) four hundred seventy-one and thirty-three hundredths (471.33) feet to point E; thence turning and running north forty degrees three minutes and twenty-six seconds east (N 40° 03' 26" E), two hundred ninety-seven and eleven hundredths (297.11) feet to point F; thence turning and running south forty-nine degrees thirty-six minutes and two seconds east (S 49° 36' 02" E) twenty-nine and forty hundredths (29.40') feet to point G; thence curving in an easterly direction with a radius of one hundred thirty-five and no hundredths (R 135.00') feet and length of arc of one hundred eighty-nine and fifty hundredths (L 189.50') feet to point H, thence running north forty-nine degrees, fifty-nine minutes and thirty-six seconds east (N 49° 59' 36" E), twenty-six and sixty hundredths (26.60') feet to point J; thence turning and running south forty degrees, no minutes and twenty-four seconds east (S 40° 00' 24" E) six and twenty hundredths (6.20') feet to point K; thence turning and running north forty-nine degrees fifty-nine minutes and thirty-six seconds east (N 49° 59' 36" E) three hundred ninety-three and no hundredths (393.00') feet to point L; thence turning and running south seventy-nine degrees, twenty-eight minutes and forty seconds east (S 79° 28' 40" E), sixty-one and thirty-eight hundredths (61.38') feet to point M; thence turning and running south fifty-seven degrees, thirty-five minutes and thirty-two seconds east (S 57° 35' 32" E); six hundred sixty-two and no hundredths (662.00') feet, to point A; the point of beginning. The location of the intersection of the major and minor axis is fixed by distance called longitude in feet, from a meridian passing through the center of the apex of the dome of the State House in Boston and by a distance called latitude in feet, from a line at right angles to said meridian and passing through the said center of the apex of the State House dome and the bearings refer to the true meridian.

(b) The word "Authority" shall mean the Massachusetts Port Authority created by section two or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this act to the Authority shall be given by law.

(c) The word "city" shall mean the city of Boston.

(d) The word "cost", as applied to any additional facility financed under the provisions of this act or any extensions, enlargements or improvements of any project, shall embrace the cost of construction or acquisition, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interest acquired by the Authority in connection with the project, financing charges, interest prior to and during construction and for one year after completion of construction, cost of removal or relocation of any public utilities facilities, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the project, administrative expense, and such other expense as may be necessary or incident to the construction or acquisition of such additional facility or such extensions, enlargements or improvements, the financing thereof and the issuance of revenue bonds under the provisions of this act and placing the project in operation. Any obligation or expense hereafter incurred at the request of the Authority by the department of public works, the metropolitan district commission or by the public works department of the city or by any other governmental agency for engineering and legal services in connection with the construction of a project and the financing thereof shall be regarded as a part of the cost of the project and shall be assumed and paid by the Authority, or reimbursed to the commonwealth or to the city or to such agency out of the proceeds of the revenue bonds hereinafter authorized.

(e) The term "current expenses" shall mean the Authority's reasonable and necessary current expenses of maintaining, repairing and operating the projects and shall include, without limiting the generality of the foregoing, all administrative expenses, insurance premiums, fees and expenses of the Trustee, engineering expenses relating to operation and maintenance, legal expenses, charges of the paying agents, any taxes which may be lawfully imposed on the Authority or its income or operations or the property under its control and reserves for such taxes, any payments made by the Authority in lieu of taxes pursuant to section seventeen and reserves for such payments, ordinary and usual expenses of maintenance and repair, which may include expenses not annually recurring, and any other expenses required to be paid by the Authority under the provisions of the trust agreement hereinafter mentioned or by law, but shall not include any reserves for operation, maintenance or repair, whether current or nonannually recurring, or any allowance for depreciation of transfers to the credit of the sinking fund for the revenue bonds.

(f) The term "fiscal year" shall be deemed to be the period commencing on the first day of July and ending on the last day of June of the following year.

(g) The words "Mystic River Bridge" shall mean the bridge heretofore constructed and financed by the Mystic River Bridge Authority under the provisions of chapter five hundred and sixty-two of the acts of nineteen hundred and forty-six, as amended by chapter six hundred and twenty-six of the acts of nineteen hundred and forty-seven and by chapter four hundred and thirty-two of the acts of nineteen hundred and fifty-four, together with its approaches and approach facilities and all buildings and other facilities constructed, and all equipment, appurtenances, prop-

4.

erty, rights, easements and interests acquired or leased by the Mystic River Bridge Authority in connection with the construction or the operation thereof.

(h) The term "Mystic River Bridge Revenue Bonds" shall mean the bonds, dated September first, nineteen hundred and forty-seven, and designated "Mystic River Bridge Authority Bridge Revenue Bonds (Boston-Chelsea Bridge)", which were issued by the Mystic River Bridge Authority under the provisions of said chapter five hundred and sixty-two of the acts of nineteen hundred and forty-six, as amended for paying the cost of the Mystic River Bridge.

(i) The term "port properties" shall embrace all lands, piers and other structures and facilities and all equipment, appurtenances, property, rights, easements and interests acquired or leased by the commonwealth in the port of Boston and in charge of the port of Boston commission.

The term "port of Boston" shall mean all of the tidewater lying westerly of the following described line: Point Allerton to the northeasterly side of Green island, thence to the southerly point of Deer island, thence to the northeasterly corner of President Roads anchorage basin, thence along the northerly side of said anchorage basin, thence along the westerly end of said anchorage basin and a line in extension thereof to the northerly line of the thirty-five foot main ship channel, thence along the northerly line of the main ship channel to the Bird island anchorage basin, thence along the easterly end and northerly side of said Bird island anchorage basin to an intersection of the southeasterly side line of Jeffries street extended southwesterly, thence northeasterly along said line extended and the southeasterly side line of Jeffries street to Maverick street, excepting therefrom all of the tidewater now or formerly in the cities of Somerville, Cambridge, and Boston bounded on the seaward side by a line beginning at a point in the Charlestown section of the city of Boston having co-ordinates $X = 718,435.88$ and $Y = 499,894.43$ on the Massachusetts Co-ordinate System (Mainland Zone) as established by chapter forty-seven of the acts of nineteen hundred and forty-one, and extending thence, crossing the Charles river by a line bearing south $27^{\circ} 50' 07''$ east, parallel to and approximately sixty feet easterly from the center line of the Charlestown bridge to the northerly street line of Commercial street; thence following said street line northeasterly, easterly and southeasterly to the easterly street line of Atlantic avenue; thence following said line of Atlantic avenue and an extension thereof southerly to a point on the extension of a line parallel to the center line of the Northern avenue bridge and approximately fifty feet distant southwesterly therefrom; thence following said line parallel to the center line of Northern avenue bridge south $61^{\circ} 23' 02''$ east to the intersection of said line and the harbor line of the westerly side of Fort Point channel as established by section two of chapter one hundred and seventy of the acts of eighteen hundred and eighty; thence southwesterly by said harbor line to point I of the harbor line established by section two of said chapter one hundred and seventy; thence southwesterly by the harbor line by the arc of a circle having a radius of three hundred and thirty-eight feet about one hundred and fifty-seven feet to point H' as established by section one of chapter two hundred and seventy-eight of the acts of nineteen hundred and twenty-nine; thence by the harbor line to the left by the arc of a circle having a radius of seven hundred and fifty feet to a point G', said G' being the intersection of said arc and the harbor line as established by

section one of chapter two hundred and thirty-two of the acts of eighteen hundred and seventy-three.

Neither the term "port properties" nor the term "port of Boston" shall include the trade and transportation center or any part thereof authorized by this act.

(j) The word "project" shall mean the Mystic River bridge, the airport properties, the port properties, or any additional facility, including the trade and transportation center, financed or acquired under the provisions of this act, together with all property, rights, easements and interests pertaining thereto or acquired for the construction or the operation thereof.

(k) The word "series" shall apply to any revenue bonds or revenue refunding bonds issued serially under the provisions of sections eight, nine or nineteen, or to any additional bonds of the same series issued under the provisions of section ten.

(l) The word "treasurer" shall mean the treasurer and receiver-general of the commonwealth.

(m) The word "Trustee" shall mean the bank or trust company acting as trustee under the trust agreement hereinafter mentioned.

(n) The term "trust agreement" shall mean the trust agreement made and entered into by and between the Authority and the Trustee under the provisions of section twelve.

(o) The term "South Station Area" shall mean the area of the city bounded generally by Summer Street, by Atlantic Avenue as extended to the Fort Point Channel, and by said Channel.

(p) The term "trade and transportation center" shall mean a project consisting of one or more areas, buildings, structures, improvements and accommodations necessary, convenient or desirable in the opinion of the Authority for the development and improvement of commerce in the city and the metropolitan area surrounding the city and for the more expeditious handling of such commerce, including, but not limited to, terminal and related facilities for ground transportation of all kinds, heliport facilities, off-street parking facilities, offices, storage, warehouse marketing, display, and exhibition facilities, custom houses, custom stores, inspection and appraisal facilities, and hotel and motel accommodations.

In no event shall the Authority be permitted to operate or manage directly any hotel or motel accommodation, retail store, restaurant, or off-street parking facility forming a part of the trade and transportation center.

Nothing in this act shall authorize the constructing or leasing of any facility of a multi-commodity retail establishment of the type commonly known as a department store, and in no event may more than an aggregate of fifteen per cent of the total floor area of the trade and transportation center be used for retail and service activities not directly related to trade and transportation or customs functions.

6.

(Statutory History: 1956 Mass. Acts Ch. 465, §1; 1958 Mass. Acts Ch. 599, § 1; 1967 Mass. Acts Ch. 719, §§ 1-4; 1967 Mass. Acts Ch. 869, §4)

SECTION 2. *Massachusetts Port Authority* - There is hereby created and placed in the department of public works a body politic and corporate to be known as the Massachusetts Port Authority, which shall not be subject to the supervision or regulation of the department of public works or of any department, commission, board, bureau or agency of the commonwealth except to the extent and in the manner provided in this act.¹ The Authority is hereby constituted a public instrumentality and the exercise by the Authority of the powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

The Authority shall consist of seven members all of whom shall be appointed by the governor by and with the advice and consent of the council,² and shall be residents of the commonwealth. Not more than four of such members shall be of the same political party, and shall include persons with extensive experience in the fields of engineering, finance and commerce, and shall include a bona fide representative of a national or international labor organization, free of communist influence or domination which organization shall have the nature of its interests and employment directly and continually related to the scope of the activity of the Authority. The members of the Authority first appointed shall continue in office for terms expiring on June thirtieth, nineteen hundred and sixty, June thirtieth, nineteen hundred and sixty-one, June thirtieth, nineteen hundred and sixty-two, June thirtieth, nineteen hundred and sixty-three, June thirtieth, nineteen hundred and sixty-four, June thirtieth, nineteen hundred and sixty-five, and June thirtieth, nineteen hundred and sixty-six, respectively, the term of each such member to be designated by the governor and to continue until his successor shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of seven years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Authority shall be eligible for reappointment. Each member of the Authority may be removed by the governor, with the advice and consent of the council,³ for misfeasance, malfeasance or willful neglect of duty but only after reasonable notice and a public hearing unless the same are in writing expressly waived. Each member of the Authority before entering upon his duties shall take an oath before the governor to administer the duties of his office faithfully and impartially, and a record of such oaths shall be filed in the office of the secretary of the commonwealth.

¹ See Section 19 of Chapter 704 of the Acts of 1969, or Mass. Gen. Laws Ann. Ch. 6A §19, for the inclusion of the Massachusetts Port Authority within Executive Office of Transportation and Construction. See also 310 CMR 9.03(3) relating to Massport exemption from Massachusetts General Laws Chapter 91 Permit Requirements.

² See Chapter 740 of the Acts of 1964 for an act limiting the power of the council to advise and consent.

³ *Id.*

The governor shall designate one of the members as chairman of the Authority who shall serve as such chairman during his term of office as a member.⁴ Upon the expiration of the term of office of any such chairman, the governor shall designate one of the members as chairman, who shall serve as such chairman during his term or the remainder of his term of office as a member. The Authority shall annually elect one of its members as vice-chairman and shall also elect a secretary-treasurer who need not be a member of the Authority.

The secretary-treasurer shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority and of the minute book or journal of the Authority and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Authority and to give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates.⁵

Four members of the Authority shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any revenue bonds under the provisions of this act the secretary-treasurer of the Authority shall execute a surety bond in the penal sum of one hundred thousand dollars, such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the commonwealth as surety and to be approved by the attorney general and filed in the office of the secretary of the commonwealth.

The members of the Authority shall serve without compensation, but each member shall be reimbursed for all necessary travel and other expenses incurred by him in the discharge of his official duties.

(Statutory History: 1956 Mass. Acts Ch. 465, §2)

SECTION 3. *General Grant of Powers* - The Authority is hereby authorized and empowered:

(a) To adopt by-laws for the regulation of its affairs and the conduct of its business and to fix penalties for the violation thereof; provided, however, that no penalty shall be in excess of two thousand dollars;

⁴ See Chapter 12 of the Resolves of 1979 for further duties of the Chairman. See Mass. Gen. Laws Ann. Ch. 40B, §24 as to Chairman's membership on the Metropolitan Area Planning Council.

⁵ See Chapter 487, Section 10 (b) and Section 15 of the Acts of 1978 for further duties of the Secretary-Treasurer.

8.

- (b) To adopt an official seal and alter the same at pleasure;
- (c) To maintain offices at such place or places, either within or without the commonwealth, as it may determine;
- (d) To sue and be sued in its own name, plead and be impleaded;⁶
- (e) To construct or acquire additional facilities;
- (f) Except as provided in chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two, as amended from time to time, to investigate the necessity for additional facilities for the development and improvement of commerce in the city and in the metropolitan area surrounding the city and for the more expeditious handling of such commerce, including but not limited to, additional traffic facilities, bus and truck terminals, off-street parking facilities, and facilities for the handling, storage, loading or unloading of freight or passengers at steamship, railroad or motor terminals or airports, and to make such studies, surveys and estimates as may be necessary to determine the feasibility of any such facility; and further to investigate the operations, financing and traffic of the Metropolitan Transit Authority, to make such studies, surveys and estimates as may be necessary in addition to or in connection with those made by other public or private agencies to determine the feasibility of acquiring the properties of said authority as a facility of the Authority, and to report thereon to the governor and general court not later than two years from the effective date of this act;
- (g) To extend, enlarge, improve, rehabilitate, lease as lessor or as lessee, maintain, repair and operate the projects under its control, and to establish rules and regulations for the use of any such project; provided, however, that no such rules or regulations shall conflict with the rules and regulations of any state or federal regulatory body having jurisdiction over the operation of aircraft;⁷ and provided, further, that in the enforcement of such rules and regulations the police appointed or employed by the Authority under section twenty-three shall have within the boundaries of all projects all the powers of police officers and constables of the towns of the commonwealth except the power of serving and executing civil process;⁸

⁶ See also definition of the term "public employer" in Section I of Chapter 258 of the Mass. Gen. Laws. Chapter 258, which relates to the liability of public employers for acts and omissions of public employees, was added by Chapter 512 of the Acts of 1978.

⁷ See Chapter 703 of the Acts of 1979 for prohibitions against the Authority implementing rules or regulations relative to the towing or pushing of aircraft.

⁸ See Chapter 274 of the Acts of 1959 and Mass. Gen. Laws Ann. Chapter 22C § 30, concerning state police at Logan Airport.

(h) To issue its revenue bonds, payable solely from revenues, and in anticipation of an issue of its revenue bonds to borrow money, all as hereinafter provided;

(i) To fix and revise from time to time and charge and collect tolls, rates, fees, rentals and other charges for the use of any project under its control; provided, however, that in revising or fixing the tolls for the use of the Mystic River bridge, the Authority shall give at least ten days' notice of the new schedule of tolls by publishing at least once in a daily newspaper of general circulation in the city; and provided, further, that no toll or charge for the use of any highway, bridge or tunnel of the Authority shall be collected for the passage of vehicles of the Metropolitan Transit Authority;

(j) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(k) To acquire in its own name by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain in accordance with the provisions of chapter seventy-nine of the General Laws or any other alternative method now or hereafter provided by law, insofar as such provisions may be applicable, such public or private lands, or parts thereof or rights therein, and public or private ways as it may deem necessary for carrying out the provisions of this act; provided, that the Authority shall act in its name and on its behalf in exercising its functions under this clause; and, provided, further, that before taking any private property the Authority shall give security to the treasurer, in such amount and in such form as may be determined by the department of public works, for the payment of such damages as may be awarded in accordance with law for such taking, and that the provisions of section forty of said chapter seventy-nine, insofar as the same may be applicable, shall govern the rights of the Authority and of any person whose property is so taken;⁹

(l) To employ consulting engineers, accountants, attorneys, construction, financial and other experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation, provided that all such expenses shall be payable solely from funds provided under the authority of this act;

(m) To appear in its own behalf before boards, commissions, departments or other agencies of the federal government and other states and international conferences and before committees of the congress of the United States and the general court of the commonwealth in all matters relating to its powers and purposes;

(n) To make application for, receive and accept from any federal agency grants for or in aid of the planning, construction or financing of any project or any additional facility, and to receive

⁹ See Chapter 383 of the Acts of 1964 for acquisition of service road to Logan Airport.

10.

and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(o) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(p) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act;

(q) To apply for, establish, operate and maintain or lease to others to operate and maintain, subject to the approval of the local municipality, a foreign trade zone and sub-zones in the commonwealth in accordance with the Foreign Trade Zones Act of 1934 (Title 19 U.S.C. Sections 81a-81u). Land acquired by the Authority after the effective date of this act which was subject to taxation on the assessment date next preceding the acquisition thereof and used by the Authority for a foreign trade zone shall not be exempt from local real estate taxes, and any such land leased by the Authority to others for said purpose shall be taxed by the city or town in which the land is situated to the lessees thereof in the same manner as if they were the owners;¹⁰

(r) To make such studies, surveys and estimates as may be necessary in addition to or in connection with those made by other public or private agencies to determine the feasibility of acquiring necessary facilities and vessels to be operated by existing private marine carriers of passengers for hire, with or without such federal and or other aid as may be available, and to take whatever action necessary to implement such passenger carrier service; and

(s) To indemnify its members, officers or employees from personal expense or damages incurred, arising out of any claim, suit, demand or judgement which arose out of any act or omission of the individual, including the violation of the civil rights of any person under any federal law, if at the time of such act or omission the member, officer or employee was acting within the scope of his official duties or employment. The defense or settlement of any such claim against a member, officer or employee shall be made by the chief counsel of the Authority, by an attorney retained for such purpose by the Authority, or by an attorney provided by an insurer obligated under the terms of a policy of insurance to defend against such claims.

(Statutory History: 1956 Mass. Acts Ch. 465, §3; 1958 Mass. Acts Ch. 599, §2; 1967 Mass. Acts Ch. 869, §5; 1968 Mass. Acts Ch. 449, §1; 1971 Mass. Acts Ch. 771; 1972 Mass. Acts Ch. 198, 1974 Mass. Acts Ch. 208; 1977 Mass. Acts Ch. 660, §2)

SECTION 3A. *Flight Patterns; Public Hearings.* - The Authority, no less than thirty days prior to requesting from the Federal Aviation Administration any significant alteration of flight patterns

¹⁰ See Chapter 3 of the Resolves of 1975 for authorization to study feasibility of foreign trade zone.

arriving or departing from any airport owned by the Authority, shall advertise in a newspaper or newspapers of general circulation in any city or town which would be affected by such alteration.

If the Authority receives, within thirty days of said advertising, a petition signed by no fewer than fifty persons who are residents of the affected cities and towns, the Authority, prior to requesting said alteration, shall hold a public hearing in the city or town where the greatest number of petitioners reside.

The Authority shall, after considering the testimony at said public hearing, and at least seven days prior to requesting said alteration, issue a report, which shall be a public record, maintaining its intent to request said alteration, or making modifications thereto, and the reasons therefor.

For the purposes of this section significant alteration of flight patterns shall be those alterations proposed to be effective for a period of thirty days or longer, and shall not include any alterations necessitated by weather, equipment failure, or other emergency conditions.

(Statutory History: 1979 Mass. Acts Ch. 709)

SECTION 3B. *Ineligibility of Smokers for Certain Positions at Logan International Airport.* - Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a permanent crash crewman, crash boatman, fire controlman, or assistant fire controlman at the General Edward Lawrence Logan International Airport, and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator of the commonwealth shall promulgate regulations for the implementation of this section.

(Statutory History: 1988 Mass. Acts Ch. 199, §43; 1989 Mass. Acts Ch. 341, §106 - approved, with emergency preamble, August 15, 1989.)

SECTION 4. *Acquisition of Property.* The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property, rights, rights of way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction or for the operation of any project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the Authority and the owner thereof, and to take title thereto in the name of the Authority.

The Authority may, for the purpose of this act, acquire in its own name by purchase or otherwise, or may take by eminent domain under chapter seventy-nine of the General Laws or any other alternative method now or hereafter provided by law, lands in fee including buildings thereon, and easements, estates and rights in land including the right to go under the surface thereof, or through or under buildings or parts of buildings thereon, or any leasehold rights or other rights therein, or relative thereto; such takings in fee otherwise may be made, whether the lands or other rights taken or otherwise affected are held under or by title derived by eminent

12.

domain or otherwise, and the Authority may, for such purposes, acquire in its own name by purchase or otherwise, or may take any property and rights of any kind deemed by it essential for the construction or for the operation of any project. A taking or purchase under this section of an easement or other estate air right or other right in a particular parcel of real estate, or any right taken, whether such parcel or other right taken consists of unimproved land or of land and buildings or rights of any nature, may be confined to a portion or section of such parcel or right fixed by planes of division, or otherwise, below or above or at the surface of the soil, and in such case no taking need be made of upper or lower portions, or other parts or section thereof, except of such easements therein, if any, as the Authority may deem necessary. The Authority shall, so far as may be practicable, notify all known owners of such taking, but the validity thereof shall not be affected by want of such notice.¹¹

The Authority may sell the buildings or other structures upon any lands taken by it, or may remove the same, and may sell, if a sale be practicable, or if not, may lease, if a lease be practicable, any lands or rights or interest in lands or other property taken or purchased for the purposes of this act, whenever the same shall, in the opinion of the Authority, cease to be needed for such purpose.¹² The proceeds of any such sale or lease shall be applied toward the cost of the project or deposited to the credit of the sinking fund for the revenue bonds issued under the provisions of this act; provided, however, that no airport or port properties acquired from the commonwealth under the provisions of this act shall be sold without the prior approval of the governor and council;¹³ and provided, further, that the proceeds of any such sale shall be paid to the treasurer and shall be credited as provided in paragraph (a) of section seven.

The Authority may order the removal or relocation of any surface tracks, and the removal or relocation of any conduits, pipes, wires, poles or other property located in public ways or places, or in or upon private lands, which it deems to interfere with the laying out, construction or operation of any project, and the proper authorities shall grant new locations for any such structure so removed or relocated, and the owner thereof shall be reimbursed by the Authority for the reasonable cost of such removal or relocation. Such orders, to the extent specified therein, shall be deemed a revocation of the right or license to maintain such tracks, pipes, conduits, wires, poles or other property in such public ways or places, and the private owner of any such structures in public ways or lands shall comply with such orders. If any such owner shall fail to comply with any such order of the Authority relating to any such structure in public ways and places within a reasonable time, to be fixed in the order, the Authority may discontinue and remove such tracks, conduits, pipes, wires, poles or other property, and may relocate the same,

¹¹ See Chapter 383 of the Acts of 1964 for particular acquisitions.

¹² See Chapter 373 of the Acts of 1977 for sale to certain people of certain lands.

¹³ Section 4 of Chapter 740 of the Acts of 1964 repealed so much of each provision of laws requiring the "advice and consent of the council with respect to any action or omission to act by . . . any agency . . . including without limitation . . . (any) sale."

and the cost of such discontinuance, removal or relocation shall be repaid to the Authority by the owner. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof, except for the reimbursement of cost provided for above. Any such structure in or upon private lands may be removed and relocated by the Authority, or, if removed and relocated by the owner thereof, the reasonable expense shall be repaid to him by the Authority. This section shall not apply to facilities on property of the commonwealth under the control of the department of public works or the metropolitan district commission or installed under licenses or permits granted by said department or commission, except with its approval.

The Authority and its authorized agents and employees may enter upon any lands, waters and premises in the commonwealth for the purpose of making surveys, soundings, drillings and examination as it may deem necessary or convenient for the purposes of this act and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

The commonwealth hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any project; provided, however, that any such use shall require the prior approval of the governor and council,¹⁴ except as otherwise specifically provided in this act.

(Statutory History: 1956 Mass. Acts Ch. 465, §4; 1958 Mass. Acts Ch. 599, §3; 1967 Mass. Acts Ch. 869, §6)

SECTION 4A. *Trade and Transportation Center.* - In addition to and not in any way limiting the powers granted the Authority elsewhere in this act, the Authority is hereby authorized and empowered to acquire from the Boston Redevelopment Authority, by agreement therewith, any real property within the South Station Area and to acquire, construct, establish, own, lease, develop, maintain, operate, improve and rehabilitate as an additional facility (as that term is defined in section nine) a trade and transportation center to be located within the South Station Area and is hereby further authorized and empowered to operate and maintain the trade and transportation center or any part thereof either directly or indirectly through agents, lessees, concessionaires or others, but only in accordance with the provisions of section one.

(Statutory History: 1967 Mass. Acts Ch. 719, §5)

SECTION 4B. *Financing of Project.* - The Authority is hereby authorized and empowered to finance the trade and transportation center and in accordance with section nine to provide by resolution for the issuance at one time or from time to time of revenue bonds of the Authority for the purpose of providing funds for paying the cost of acquiring and constructing the trade and

¹⁴ See Chapter 704 of the Acts of 1964 for an act limiting the advice and consent powers of the council

14.

transportation center or any part thereof. The Authority is further authorized, subject to such conditions, limitations and restrictions as may be set forth in the trust agreement, to apply the tolls, rates, fees, rentals and other charges from all projects under the control of the Authority to the payment of such cost of acquiring and constructing the trade and transportation center.

(Statutory History: 1967 Mass. Acts Ch. 719, §5)

SECTION 4C. *Agreements with Authority.* - Any department, division, commission, public body, authority, board, bureau or agency of the commonwealth or the city is authorized and empowered to cooperate with the Authority and to enter into any agreement or agreements (and from time to time to enter into agreements amending or supplementing the same) with the Authority (a) for and in connection with or relating to the development of the South Station Area for purposes of the trade and transportation center, (b) for the purpose of providing for the construction, operation and maintenance of vehicular and pedestrian access facilities for the trade and transportation center, or any part thereof, to and from areas and public ways in the vicinity of the South Station Area, and (c) for any of the purposes of this act. All such agreements shall be upon such reasonable terms and conditions as may be determined by the Authority and by such department, division, commission, public body, authority, board, bureau or agency having jurisdiction in the premises.

(Statutory History: 1967 Mass. Acts Ch. 719, §5)

SECTION 5. *Airport Properties.* - Title to the airport properties shall be vested in the Authority upon the payment to the treasurer on the date of such transfer of: (a) a sum equal to the aggregate principal amount of all bonds of the commonwealth issued under the provisions of chapter three hundred and eighty-three of the acts of nineteen hundred and forty-five, chapter five hundred and sixteen of the acts of nineteen hundred and forty-six, chapter six hundred and seventy-six of the acts of nineteen hundred and forty-seven, chapter six hundred and fifty-two of the acts of nineteen hundred and forty-eight, chapter seven hundred and forty-five of the acts of nineteen hundred and forty-nine, chapter seven hundred and sixty of the acts of nineteen hundred and fifty and chapters seven hundred and thirty-one and seven hundred-and thirty-three of the acts of nineteen hundred and fifty-one, and outstanding on April thirtieth, nineteen hundred and fifty-six, which sum shall be certified by the treasurer; and (b) as of the date of transfer by the commonwealth a sum equal to the aggregate cash payments under the provisions of chapter seven hundred and fifty-six of the acts of nineteen hundred and fifty-one, chapter six hundred and four of the acts of nineteen hundred and fifty-two, chapter six hundred and sixty of the acts of nineteen hundred and fifty-three, chapter four hundred and seventy-one of the acts of nineteen hundred and fifty-four, and chapters one hundred and seventy-five, seven hundred and thirty-eight and seven hundred and sixty-nine of the acts of nineteen hundred and fifty-five for the development of or improvements to the airport properties, which sum shall have been warranted and certified by the state comptroller.

Thereupon, the possession of the airport properties shall be transferred to the Authority and there shall be vested in the Authority the control, operation and maintenance of the airport properties¹⁵ and all rents, tolls, charges and revenues pertaining thereto; provided, however, that the Authority shall assume all of the obligations and have the benefit of all of the rights of the commonwealth in and to all leases, contracts and agreements relating to the airport properties and existing on the date of the transfer. The treasurer shall pay to the Authority, upon certification by the state comptroller, a sum equal to the unexpended cash balances of the proceeds of the bonds referred to in (a) above available on the date of the transfer. The treasurer shall collect for the commonwealth all accounts receivable as certified by the state airport management board outstanding on the date of transfer. Upon title to the airport properties becoming vested in the Authority, the state airport management board shall be dissolved.¹⁶

(Statutory History: 1956 Mass. Acts Ch. 465, §5. Other legislation relating to certain of the airport properties includes: 1941 Mass. Acts Ch. 695 (Coleridge St. area), 1945 Mass. Acts Ch. 383 (Coleridge St. area and Orient Heights Yacht Club area); 1949 Mass. Acts Ch. 431 (World War Memorial Park and William Amerena Playground); and 1955 Mass. Acts Ch. 438 (Wood Island Park). See also 1978 Mass. Acts Ch. 577 having reference to the Airport MBTA Station. See also discussion of Logan Airport in connection with the Airport and Airways Development Act Amendments of 1976, P.L. 94-353, 1976 U.S. Code Cong. & Ad. News 1622-1623.)

SECTION 6. *Port Properties.* - Upon the issuance of revenue bonds under the provisions of section eight and the application of the proceeds of said bonds as provided in said section eight (1) and (2), title to the port properties shall be vested in the Authority and the possession of the port properties shall be transferred to the Authority; provided, however, that the Authority shall pay to the treasurer within the first ninety days of each fiscal year the net revenues of the preceding fiscal year, if any, of the port properties, including any extensions, enlargements and improvements thereof, after deducting therefrom an amount equal to the principal and interest requirements of such preceding fiscal year as computed by the Authority for all bonds issued under the provisions of section eight (c) and section nine for the purpose of constructing any extensions, enlargements or improvements of said properties, together with a sum which represents the amount of the overhead costs of the Authority allocated to the port properties by the Authority. The term "net revenues" as applied to this section shall mean the revenues of said properties over and above the current expenses for said properties, reserves for such purposes, the cost of renewals and replacements and the cost of acquiring and installing equipment.

The above payments shall continue until there shall have been paid to the treasurer (a) a sum equal to the aggregate cash payments by the commonwealth, as of the date of transfer of the title to the port properties, under the provisions of chapter four hundred and seventy-one of the acts of nineteen hundred and fifty-four and chapter seven hundred and thirty-eight of the acts of

¹⁵ See Chapter 290 of the Acts of 1980 for the powers of the Hanscom Field Advisory Commission.

¹⁶ See Appendices A 2 and A.3 for descriptions of pre-Enabling Act legislation relating to the General Edward Lawrence Logan International Airport and the Laurence G. Hanscom Field.

16.

nineteen hundred and fifty-five for improvements to the port properties which shall have been warranted and certified by the state comptroller, and (b) a sum equal to the aggregate principal amount of all bonds of the commonwealth issued under the provisions of chapter six hundred and nineteen of the acts of nineteen hundred and forty-five, chapter five hundred and thirty-two of the acts of nineteen hundred and forty-seven, chapter seven hundred and seventy-one of the acts of nineteen hundred and fifty-one, chapter five hundred and five of the acts of nineteen hundred and fifty-two, chapter six hundred and forty-nine of the acts of nineteen hundred and fifty-three and chapter five hundred and seventy-five of the acts of nineteen hundred and fifty-four for the port properties and outstanding upon the date of the transfer and the interest paid thereon after said transfer, which sum shall be certified by the treasurer, less the unexpended cash balances of the proceeds of such bonds available upon said date of transfer, which balances shall be certified by the state comptroller and transferred to the Logan Airport and Port of Boston Bond Redemption Account established by section seven.

Upon transfer of the port properties there shall be vested in the Authority the control, operation and maintenance of the port properties and all rents, tolls, charges and revenues pertaining thereto; provided, however, that the Authority shall assume all of the obligations and have the benefit of all of the rights of the commonwealth in and to all leases, contracts and agreements relating to the port properties and existing on the date of the transfer. The treasurer shall collect for the commonwealth all accounts receivable of the Port of Boston Commission outstanding on the date of the transfer. Upon title to the port properties becoming vested in the Authority, the Port of Boston Commission shall be dissolved.¹⁷

Upon transfer of the port properties the Authority shall make all necessary plans for the development of the port of Boston. The Authority shall concern itself with the condition and location of piers, switching, floatage, lighterage, rates, rules, regulations and practices, dockage, wharfage, waterfront labor conditions, grain elevator and warehouse facilities within the port of Boston.

Upon transfer of the port properties the Authority may initiate or participate in any rate proceedings, or any hearings or investigations concerning the port of Boston, before any other body or official.

Upon transfer of the port properties, all the rights, powers, and duties pertaining to the Port of Boston Commission in respect to lands, rights in lands, flats, shores, waters and rights belonging to the commonwealth in tidewaters and in lands under water, within the port of Boston, and any other rights and powers vested by the laws of the commonwealth in the Port of Boston Commission in respect to the port of Boston not heretofore in this act expressly vested in or imposed upon the Authority are hereby transferred to and hereafter shall be vested in and exercised by the Authority; provided, however, the department of public works, acting through

¹⁷ See Appendix A. I for a description of pre-Enabling Act legislation relating to the Port of Boston.

the division of waterways, may, in accordance with such plans as it may adopt, not in conflict with the purposes, powers and plans for the development of the port of Boston or the Authority, excavate and dredge mooring basins for yachts and small craft, dredge channels, construct shore protection, remove hulks and wrecks, issue licenses and permits for filling, dredging, building of structures or excavating within the port of Boston, as defined in section one, provided no such license or permits shall be required to be obtained by the Authority.

(Statutory History: 1956 Mass. Acts Ch. 465, §6; 1958 Mass. Acts Ch. 599, §4. Other sources relating to certain of the property comprising the Port of Boston include: 1903 Mass. Acts Ch. 381 and 1941 Mass. Acts Ch. 492 (part of Northern Avenue); *United States v. New England Fish Exchange*, 258 Fed. 732 (D. Mass. 1919) relating to the Boston Fish Pier; 1897 Mass. Acts Ch. 513 (Commonwealth Pier); 1910 Mass. Acts Ch. 648 and 1952 Mass. Acts Ch. 505 (East Boston Pier); 1897 Mass. Acts Ch. 486 and 1912 Mass. Acts Ch. 181 (relating to East Boston); 1954 Mass. Acts Ch. 575 and Act of July 27, 1954 Pub. L. No. 534, § 103, 68 Stat. 535, 537-538 (leasehold interest in Boston Army Base); Hoosac Pier purchased in 1946 pursuant to general authority granted in 1945 Mass. Acts Ch. 619 §§3, 10; 1948 Mass. Acts Ch. 625, 1951 Mass. Acts Chs. 705 and 771, Act of October 27, 1951, Pub. L. No. 222, 65 Stat. 658 and 1953 Mass. Acts Ch. 626 (Castle Island); Act of July 7, 1960, Pub. L. No. 80-602, 74 Stat. 355 (E. Street Annex); 1941 Mass. Acts Ch. 714, 1947 Mass. Acts Ch. 532 (Mystic Terminal: Mystic Wharf Piers 46 to 50); 1904 Mass. Acts Ch. 385 (taxing of leasehold estates on Commonwealth Flats)).

SECTION 7. *Application of Airport and Port Payments.* -

(a) The proceeds received by the treasurer for the airport properties under clause (a) of section five shall be credited on the books of the commonwealth to an account to be known as the Logan Airport and Port of Boston Bond Redemption Account. Such proceeds shall be invested in securities maturing not later than the several earliest maturities of the then outstanding bonds of the commonwealth which have been issued for the airport properties and the port properties. The income from such investments, together with the payments received by the commonwealth in accordance with section four of this act shall be credited to the Logan Airport and Port of Boston Bond Redemption Account. The principal and interest on said bonds of the commonwealth falling due after the title to the airport properties and port properties shall have vested in the Authority in accordance with the terms of this act shall be paid without appropriation from the Logan Airport and Port of Boston Bond Redemption Account. Upon retirement of said bonds of the commonwealth any balance then remaining in the Logan Airport and Port of Boston Bond Redemption Account shall be transferred to the General Fund and said account shall be abolished and any payments received thereafter by the treasurer in accordance with sections four and six shall be credited to the General Fund.

(b) The proceeds received by the commonwealth for the airport properties under clause (b) of section five shall be credited on the books of the commonwealth to the General Fund.

(c) The payments received by the commonwealth on account of the port properties under section six shall be credited on the books of the commonwealth to the General Fund.

(Statutory History: 1956 Mass. Acts Ch. 465, §7)

18.

SECTION 8. *Issuance of Revenue Bonds.* - The Authority is hereby authorized and empowered to provide by resolution for the issuance of revenue bonds of the Authority, at one time or from time to time, for the purpose of providing funds for: -

(a) Refunding the Mystic River Bridge Revenue Bonds then outstanding, including the payment of the redemption premium thereon;

(b) Making the payments to the treasurer which are provided for in section five and making the payments required to be made by chapters four hundred and eighty-four and seven hundred and twelve of the acts of nineteen hundred and fifty-seven;

(c) Paying the cost of constructing such extensions, enlargements and improvements of the airport properties and the port properties as may be authorized by said resolution; and

(d) Providing funds for paying the current expenses of the Authority prior to the time when the revenues of the projects will be available for such purposes and for reimbursing the commonwealth for sums paid the Authority under section twenty-six.

The proceeds of such bonds shall be deposited with the Trustee and applied as follows: -

(1) Such amount of the proceeds as may be required for paying the principal of and the redemption premium on the Mystic River Bridge Revenue Bonds then outstanding shall be deposited with the trustee under the trust agreement securing said bonds in trust for the sole and exclusive purpose of paying such principal and redemption premium, and said bonds shall thereupon be called for redemption at the earliest practicable date. The amount required for paying the interest which will accrue on said bonds from the last interest payment date to the date designated for the redemption of said bonds shall be withdrawn from the Mystic River bridge interest and sinking fund, a special fund created under the provisions of said trust agreement, and applied to the payment of such interest;

(2) There shall be paid to the treasurer the sums provided in section five and the payments required by chapters four hundred and eighty-four and seven hundred and twelve of the acts of nineteen hundred and fifty-seven shall be made;

(3) The Trustee shall set aside from such proceeds such amount as may be provided in the trust agreement for paying the current expenses of the Authority prior to the time when the revenues of the projects will be available for such purpose;

(4) The balance of such proceeds shall be deposited with the Trustee to the credit of a special fund or funds to be used solely for the payment of the cost of the extensions, enlargements and improvements of the airport and port properties which shall be authorized by said resolution and shall be disbursed in such manner and under such restrictions as may be provided in the trust agreement.

(Statutory History: 1956 Mass. Acts Ch. 465, §8; 1958 Mass. Acts Ch. 599, §5)

SECTION 9. *Additional Revenue Bonds.* - In addition to the bonds issued under the provisions of section eight, the Authority is authorized and empowered, subject to such conditions, limitations and restrictions as may be set forth in the trust agreement, to provide by resolution for the issuance at one time or from time to time of revenue bonds of the Authority or the borrowing of money in anticipation of the issuance of such revenue bonds for the purpose of providing funds for paying the cost of acquiring or constructing any additional revenue producing facility, the acquisition or construction and the financing of which by the Authority under the provisions of this act may hereafter be authorized by the general court (any such facility being herein called "additional facility"), or of acquiring or constructing any extensions, enlargements or improvements of any project then under the control of the Authority or, in the case of revenue bonds, of paying and discharging notes theretofore issued in anticipation of the issuance of such bonds, or any combination of the foregoing; provided, however, that no such additional facility, extension or enlargement shall be constructed which will impair the revenues to be derived from facilities constructed pursuant to chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two, as from time to time amended.

(Statutory History: 1956 Mass. Acts Ch. 465, §9; 1968 Mass. Acts Ch. 449, §2, 1969 Mass. Acts Ch. 869, §1)

SECTION 10. *Provisions Applicable to All Bonds.* - The principal of and the interest on all bonds issued under the provisions of this act shall be payable solely from the funds provided therefor from revenues as herein provided. The bonds may be of one or more series but all bonds issued by the Authority shall be dated, shall bear interest at such rate or rates per annum as the Authority shall determine, shall mature at such time or times not exceeding forty years from their date, as may be determined by the Authority and may be made redeemable before maturity, at the option of the Authority at such price or prices and under such conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth. In case any officer whose signature or facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the commonwealth, subject only to any provisions for registration contained in any such bond. The bonds may be issued in coupon or in registered form or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds or any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. The Authority may sell such bonds in such

20.

manner, either at public or private sale, and for such price as it may determine to be for the best interests of the Authority.

If the proceeds of the bonds of any series initially issued, by reason of increased construction costs or error in estimates or otherwise, shall be less than the amount required for the purpose for which such bonds are authorized, additional bonds may in like manner be issued to provide the amount of such deficiency and shall be deemed to be of the same series and shall be entitled to payment from the same fund or funds as the bonds first issued without preference or priority of the bonds first issued. If the proceeds of such bonds shall exceed the amount so required, such excess shall be deposited to the credit of the sinking fund for such bonds or, if so provided in the trust agreement, may be applied to the payment of any other project.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued by the Authority under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the city, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this act.

(Statutory History: 1956 Mass. Acts Ch. 465, §10; 1958 Mass. Acts Ch. 599, §6; 1968 Mass. Acts Ch. 449, §3-4; 1969 Mass. Acts Ch. 869, §2)

SECTION 10A. *Provisions Applicable to Money Borrowed.* Money borrowed by the Authority in anticipation of the issuance of revenue bonds shall be evidenced by notes or other obligations of the Authority. The aggregate principal amount so borrowed by the Authority and evidenced by such notes or other obligations (but excluding the aggregate principal amount borrowed which is contemporaneously to be repaid from the proceeds of notes then to be issued) shall not exceed ten per centum of the aggregate principal amount of revenue bonds of the Authority outstanding at the time such borrowing is made. The principal and interest of all notes or other obligations of the Authority so issued under the provisions of this act shall be payable no later than the fourth anniversary of the date of issue thereof, shall in no event, except as herein specifically provided, be payable from revenues of the Authority but shall be payable solely (i) from the proceeds of revenue bonds subsequently issued, or (ii) from the proceeds of subsequent borrowings which comply with the provisions hereof, or (iii), if the notes or other obligations evidencing such borrowings so provide, from moneys held for the credit of the maintenance reserve fund or the improvement and extension fund established by the trust agreement dated as of July first, nineteen hundred and sixty-four relating to revenue bonds of the Authority or any similar fund or funds established in any subsequent trust agreement, if such moneys, to the extent permitted thereby, are pledged by the Authority to the payment of the principal of and interest on such notes or other obligations and if such notes or other obligations were issued by the Authority for any purpose for which the moneys held for the credit of such fund or funds may be disbursed, or (iv) from

revenues but only to the extent of the claim or charge provided in the following sentence. If and to the extent then permitted by any trust agreement relating to revenue bonds of the Authority and to the extent set forth in such notes or other obligations or the resolutions of the Authority authorizing the same, such notes may be secured by a claim or charge upon the revenues of the Authority which may be equal and proportionate with, but not superior to, that securing all bonds then outstanding or subsequently issued under said trust agreement. Notwithstanding any other provisions of this act or any recitals in any notes issued under the provisions of this act, all such notes shall be deemed to be negotiable instruments under the laws of the commonwealth, subject only to any provisions for registration contained in any such notes. Such notes or other obligations or any issue thereof shall be in such form and contain such other provisions as the Authority may determine and such notes or other obligations or any issue thereof and any resolution or resolutions authorizing such notes or other obligations or any issue thereof may contain, in addition to any provisions, conditions, covenants or limitations authorized by this act, any provisions, conditions, covenants or limitations which the Authority is authorized to include in any resolution or resolutions authorizing revenue bonds of the Authority, in such bonds or in the trust agreement relating thereto. The Authority may issue such notes or other obligations in such manner either publicly or privately and on such terms as it may determine to be in the best interests of the Authority. Such notes or other obligations may be issued by the Authority under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the city and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this act.

(Statutory History: 1968 Mass. Acts Ch. 449, §5; 1969 Mass. Acts Ch. 869, §3)

SECTION 11. *Credit of Commonwealth or any Political Subdivision thereof not pledged.* - Revenue bonds or notes issued under the provisions of this act shall not be deemed to constitute a debt of the commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the commonwealth or of any political subdivision, but such bonds or notes shall be payable solely from the funds herein provided therefor from revenues or, in the case of notes, from the proceeds of bonds as herein provided. All such revenue bonds or notes shall contain on the face thereof a statement to the effect that neither the Authority nor the commonwealth nor any political subdivision thereof shall be obligated to pay the same or the interest thereon except from revenues or, in the case of notes, from the proceeds of bonds as herein provided 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 the interest on such bonds or notes.

All expenses incurred in carrying out the provisions of this act shall be payable solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this act.

(Statutory History: 1956 Mass. Acts Ch. 556, § 11; 1968 Mass. Acts Ch. 449, §6)

22.

SECTION 12. *Trust Agreement.* - The bonds issued under the provisions of this act shall be secured by a trust agreement by and between the Authority and a corporate trustee, which shall be located within the commonwealth and shall be a trust company or bank having the powers of a trust company.¹⁸ The Authority shall appoint a financial advisor whose appointment shall be subject to approval by the governor. Such advisor shall be an individual, firm or corporation of established reputation in the field of finance and investment who, before any trust agreement is executed by the Authority, shall certify in a writing filed with the commissioner of administration and with the Authority that such trust agreement fully protects the public interest affected by its provisions. The governor's approval of such advisor shall be conclusively evidenced by a writing to that effect filed with the commissioner of administration and with the Authority. Such trust agreement may pledge or assign the tolls and other revenues of the projects on account of which the bonds secured by such trust agreement shall be issued, but shall not convey or mortgage any project or any part thereof. Such trust agreement shall contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition or construction of any project and the extension, enlargement, improvement, maintenance, operation, repair and insurance of the projects and the custody, safeguarding and application of all moneys and may contain provisions for the employment of consulting engineers in connection with any such construction and the operation of such projects. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth which may act as depository of the proceeds of the bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Such trust agreement shall set forth the rights and remedies of the bondholders and of the Trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust agreement may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as an item of current expenses.

(Statutory History: 1956 Mass. Acts Ch. 465, §12; 1958 Mass. Acts Ch. 599, §7)

SECTION 13. *Operation of Bridge.* - Upon the issuance of revenue bonds under the provisions of section eight and the application of the proceeds of said bonds as provided in said section eight (1), title to the Mystic River bridge shall be vested in the Authority, said bridge shall thereafter be maintained, repaired and operated by the Authority, the trustee under the trust agreement securing the outstanding Mystic River Bridge Revenue Bonds shall deposit with the Trustee for

¹⁸ See Trust Agreements dated February 1, 1959 and July 1, 1964 with New England Merchants National Bank of Boston as Trustee; Trust Agreement dated August 1, 1978 with State Street Bank and Trust Company as Trustee.

the credit of the appropriate funds all moneys then in its hands which pertain to the Mystic River bridge and the Mystic River Bridge Authority shall be dissolved.¹⁹

(Statutory History: 1956 Mass. Acts Ch. 465, §13; 1958 Mass. Acts Ch. 599, §8)

SECTION 14. Revenues. - The Authority is hereby authorized to fix, revise, charge and collect tolls, rates, fees, rentals and other charges for the use of each project, and to contract with any person, partnership, association or corporation desiring the use of any part of a project and its approaches and appurtenances for any proper purpose, and to fix the terms, conditions, rents and rates or charges for such use including such commutation rate of a uniform nature for the users of the bridge facilities as the Authority may deem desirable. Such tolls, rates, fees, rentals and other charges shall be so fixed and adjusted in respect of the aggregate thereof from the projects under the control of the Authority as to provide a fund sufficient with other revenues, if any, (a) to pay the current expenses of the Authority, (b) to pay the principal of and the interest on all bonds issued under the provisions of this act as the same become due and payable, (c) to create reserves for such purposes, (d) to make any payments which may be required under the provisions of section six, (e) to provide funds for making the investigations, studies, surveys and estimates authorized in section three, and (f) to provide funds for paying the costs of renewals or replacements, the cost of acquiring or installing equipment and the cost of enlarging, extending, reconstructing or improving any project or projects. Such tolls, rates, fees, rentals and other charges shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the commonwealth or any political subdivision thereof.

The Authority is further authorized to pledge such amount of such tolls and other revenues, over and above the amounts necessary to pay such current expenses and to provide such reserves therefor as may be provided for in the trust agreement, to the payment of the interest on and the principal of the bonds issued under the provisions of this act. The moneys so pledged shall be set aside at such regular intervals and in such amounts as may be provided in the trust agreement in a sinking fund for the payment of such interest, principal and the redemption price or purchase price of such bonds. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The balance of such tolls and other revenues not needed for such sinking fund requirements shall be applied to the purposes set forth in clauses (d), (e) and (f) of this section as may be provided in the trust agreement.

¹⁹ See Appendix A.4 for a description of pre-Enabling Act legislation relating to the Mystic River Bridge

24.

No trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the trust agreement. Except as may otherwise be provided in the trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

The word "bonds" as used in this section and in sections fourteen, sixteen, seventeen, eighteen and twenty-five shall be deemed to include all obligations of the Authority issued under the provisions of this act, including, without limitation, notes of the Authority.

(Statutory History: 1956 Mass. Acts Ch. 465, §14; 1958 Mass. Acts Ch. 599, §9; 1969 Mass. Acts Ch. 869, §4)

SECTION 15. *Trust Funds* - All moneys received pursuant to the authority of this act, whether as proceeds from the sale of revenue bonds, notes or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this act. The trust agreement shall provide that any officer to whom, or any bank or trust company to which, any such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and the trust agreement may provide.

(Statutory History: 1956 Mass. Acts Ch. 465, § 15; 1968 Mass. Acts Ch. 449, §7)

SECTION 16. *Remedies*. - Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the Trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under the trust agreement, and may enforce and compel the performance of all duties required by this act or by the trust agreement to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls, rates, fees, rentals and other charges for the use of the projects.

(Statutory History: 1956 Mass. Acts. Ch. 465, §16)

SECTION 17. *Exemption from Taxation*.²⁰ - The exercise of the powers granted by this act will be in all respects for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom, and the bonds issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof.

²⁰ This section was amended by Chapter 949 of the Acts of 1977, but the original language was reinstated by Chapter 332 of the Acts of 1978.

shall at all times be free from taxation within the commonwealth, and no property of the Authority shall be taxed to a lessee thereof under section three A of chapter fifty-nine of the General Laws; provided, however, that anything herein to the contrary notwithstanding, lands of the Authority, except lands acquired by the commonwealth under the provisions of chapter seven hundred and five of the acts of nineteen hundred and fifty-one, situate in that part of the city called South Boston and constituting a part of the Commonwealth Flats, and lands acquired by the Authority which were subject to taxation on the assessment date next preceding the acquisition thereof, shall, if leased for business purposes, be taxed by the city or by any city or town in which the said land may be situated to the lessees thereof, respectively, in the same manner as the lands and buildings thereon would be taxed to such lessees if they were the owners of the fee, except that the payment of the tax shall not be enforced by any lien upon or sale of the lands, but a sale of the leasehold interest therein and of the buildings thereon may be made by the collector of the city in the manner provided by law in case of nonpayment of taxes for selling real estate, for the purpose of enforcing the payment of the taxes by such lessees to the city or town assessed under the provisions hereof.²¹ The Authority is hereby authorized and empowered to enter into an agreement or agreements with the Boston Redevelopment Authority, with the approval of the mayor of the city, where the Authority will undertake to make the city annual payments in lieu of taxes in connection with any real property acquired and owned by the Authority as a part of the trade and transportation center, the amounts of such payments to be reasonable sums stipulated in such agreement or agreements or determined in accordance with a reasonable formula so stipulated. No such property shall be taxed to a lessee thereof from the Authority regardless of the date of acquisition of such property by the Authority. No revenue bonds of the Authority shall be issued pursuant to section four B of this act until the Authority shall have entered into such agreement or agreements with the Boston Redevelopment Authority, which agreement or agreements shall be conclusively deemed to comply with the provisions hereof if executed by the Boston Redevelopment Authority and the mayor of the city of Boston.

In addition to and without limitation of the foregoing, and notwithstanding any contrary provisions of this act or any other general or special law, the Authority is authorized and directed to enter into agreements with the cities of Chelsea and Boston and the town of Winthrop whereby the Authority will make to each such city and town annual payments in lieu of taxes. Any such agreement shall provide for annual payments for a period extending at least five years from the date thereof. Such agreements may be amended by the mutual agreement of the respective city and the Authority and shall be extended each year to incorporate an additional year or years to the term of the agreement. In arriving at the agreed upon level of such annual payments or any amendments thereto, the respective city and the Authority shall consider (1) the general level of property taxation in effect in such city; (2) the effect of the projects, facilities or activities of the Authority on such city; (3) the general economic condition of the users or other persons who pay the tolls, rates, fees, rentals, or other charges of the Authority; and (4) the needs of the Authority to maintain or improve its facilities or projects; provided, that no such annual payments as agreed

²¹ See Chapter 412 of the Acts of 1958 for designation of certain tax exempt lands.

26.

upon or any amendments thereto shall exceed in the aggregate for any fiscal year of the Authority the balance of revenues remaining for such fiscal year after payment of all other current expenses of the Authority, any payments to the state treasurer which may be required under the provisions of section six hereof and the deposits to the credit of any maintenance reserve or like fund and the interest and sinking fund provided for in the trust agreement referred to in section twelve as from time to time in effect. Notwithstanding the provisions of clause (e) of section 1 hereof, any moneys set aside or payable or paid under such agreements with the cities of Chelsea and Boston and the town of Winthrop shall not constitute current expenses for the purposes of the second paragraph of section fourteen hereof, and not withstanding any provision of section twelve hereof, such trust agreement may provide that such amounts shall be set aside or payable or paid only after the Authority has set aside or paid all other current expenses of the Authority, any payments to the state treasurer which may be required under the provisions of section six hereof and the deposits to the credit of any maintenance reserve or like fund and the interest and sinking fund provided for in said trust agreement, as from time to time in effect.²²

There shall be added to the equalized valuations of the cities of Chelsea and Boston and the town of Winthrop as calculated by the department of revenue, a value equivalent to that which would produce the amount of tax revenues accruing to said cities and town under the agreement authorized herein.²³

(Statutory History: 1956 Mass. Acts Ch. 465, §17; 1967 Mass. Acts Ch. 719, §6; 1977 Mass. Acts Ch. 949, §8; 1978 Mass. Acts Ch. 332, §§2, 3; 1980 Mass. Acts, Ch. 497, §§1-3)

SECTION 18. *Bonds Eligible for Investment.* - Bonds issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by section fourteen of chapter one hundred and sixty-seven E of the General Laws²⁴, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the commonwealth may properly and legally invest funds, including capital in their control or belonging to them, and such bonds are hereby made obligations which may properly and legally be made eligible for the investment of savings deposits and the income thereof in the manner provided by section fifteen B of chapter one hundred and sixty-seven of the General Laws. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political

²² Added in part by §3 of Chapter 332 of the Acts of 1978. Section 4 of that chapter granted exclusive original jurisdiction to the Supreme Judicial Court to hear and settle disputes under said chapter.

²³ *Id.*

subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth now or may hereafter be authorized by law.

(Statutory History: 1956 Mass. Acts Ch. 465, §18; 1983 Mass. Acts Ch. 371, §99)

SECTION 19. *Revenue Refunding Bonds.* -The Authority is hereby authorized to provide by resolution for the issue of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued to the date of redemption of such bonds, and, if deemed advisable by the Authority, for any one or more of the following purposes: - (a) constructing improvements, extension or enlargements of any project or projects or, (b) paying all or any part of the cost of any additional facility or facilities or, (c) in the case of revenue bonds, of paying and discharging notes theretofore issued in anticipation of the issuance of such bonds, or any combination of the foregoing. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this act insofar as the same may be applicable.

(Statutory History: 1956 Mass. Acts Ch. 465, § 19; 1968 Mass. Acts Ch. 449, §8)

SECTION 20. *Freedom from Competition.* - After the effective date of this act and so long as any bonds issued under the provisions thereof shall be outstanding, no bridge, tunnel or ferry, for vehicular traffic, shall be constructed by the commonwealth or any political subdivision thereof or by any public instrumentality, over, under or across the Mystic river between its junction with the Chelsea creek and a point one mile upstream from the location of the bridge authorized by chapter five hundred and sixty-two of the acts of nineteen hundred and forty-six and no franchise shall be granted for the construction or operation of such a bridge, tunnel or ferry.

(Statutory History: 1956 Mass. Acts Ch. 465, §20; 1958 Mass. Acts Ch. 599, §9A)

SECTION 21. *Annual Reports.* - On or before the thirtieth day of November in each year the Authority shall make an annual report of its activities for the preceding fiscal year to the governor and to the general court. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants and the cost thereof shall be treated as an item of current expenses. The state auditor shall likewise audit said books and accounts at least once in each fiscal year.²⁵ Such audits shall be deemed to be public records within the meaning of chapter sixty-six of the General Laws.

(Statutory History: 1956 Mass. Acts Ch. 465, §21; 1961 Mass. Acts Ch. 384, §1)

²⁵ Section I of Chapter 384 of the Acts of 1961 inserted the fourth sentence of §21. Section 2 of that chapter provides: "Such audit shall be made by the state auditor without any additional appropriation."

28.

SECTION 22. *Transfer of Employees.* - Upon the control of the Mystic River bridge, the airport properties or the port properties becoming vested in the authority, the employees of said projects whose work is directly related to such projects shall be transferred to the Authority and shall continue to perform the same duties at a salary not less than theretofore and every employee so transferred who immediately prior to such transfer was subject to section nine A of chapter thirty or to chapter thirty-one of the General Laws under a permanent appointment and who has served a probationary period shall continue to serve subject to the provisions of said section nine A of chapter thirty or to sections sixteen A, forty-three and forty-five of said chapter thirty-one as the case may be, whether or not thereafter reclassified, and shall retain all rights to holidays, sick leave and vacations in effect on the effective date of this act; provided, that any person transferred who was not subject to said section nine A or said chapter thirty-one and persons appointed after the effective date of this act shall not be subject to said section nine A of chapter thirty or to any provisions of said chapter thirty-one.

Every employee who upon transfer to the Authority is covered by the group insurance provided by chapter thirty-two A of the General Laws shall continue in uninterrupted coverage and all other employees of the authority are hereby likewise made eligible for said group insurance to the same extent as if they were employees of the commonwealth; provided, that the share of the commonwealth of the cost of such insurance shall, with respect to the employees of the Authority, be borne by said Authority. The Authority shall forward its contribution, together with all amounts withheld from the salaries or wages of its employees as provided in paragraph (a) of section eight of said chapter thirty-two A and all amounts paid by an employee as provided in paragraph (b) of said section, to the state employees group insurance commission at such time and in such manner as said commission may prescribe.

Each employee of the Authority as of January first, nineteen hundred and seventy-nine, and each employee of the Authority thereafter shall become a member of the Massachusetts Port Authority employees' retirement system. All others who are members of the state employees' retirement system on account of employment by the Authority shall continue to be members thereof and subject to the laws applicable thereto. The Massachusetts Port Authority employees' retirement system shall reimburse the commonwealth for the Authority's proportionate share of any amounts expended by the commonwealth under the provisions of chapter thirty-two of the General Laws for retirement allowances to or on account of the Authority's employees.

Whenever a person who is a member of the state employees' retirement system on account of employment by the Massachusetts Port Authority shall become a member of the Massachusetts Port Authority employees' retirement system pursuant to this section, that employee shall be entitled to all creditable service and all rights and benefits to which he was entitled as a member of the state employees' retirement system. Within ninety days of such transfer by a member of the state employees' retirement system to the Massachusetts Port Authority employees' retirement system, the amount of the accumulated total deductions credited to his account in the annuity

savings fund of the state employees' retirement system shall be transferred and credited to the annuity savings fund of the Massachusetts Port Authority employees' retirement system.

Anything to the contrary in section twenty-two of chapter thirty-two of the General Laws notwithstanding, the amount to be appropriated by the Massachusetts Port Authority for any fiscal year for the pension fund as described in subparagraph (3) of said section 22 shall be the sum of (a) the normal pension cost, as hereinafter defined, incurred by the authority for that year plus (b) the amount necessary to amortize in equal annual installments over a period of twenty years the unfunded past service liability of the authority as of July first, nineteen hundred and seventy-eight. For purposes of this section the term "past service liability" of the Authority shall mean the excess of the present value of all future pension benefits payable by the Massachusetts Port Authority employees' retirement system as determined under the entry age normal actuarial cost method with frozen initial liability over the present value of all future normal costs. The terms "unfunded past service liability" shall mean the past service liability less the assets of the system. The term "normal pension cost" as applied to the authority for any year shall mean the amount, as determined under the entry age normal actuarial cost method with frozen initial liability, required to finance pension benefits earned by Authority employees during that year as members of the Massachusetts Port Authority employees' retirement system.

Any funds paid into the Massachusetts Port Authority employees' retirement system pursuant to this section or any provision of chapter thirty-two of the General Laws shall be used solely for the purpose of paying the costs of operation of the system. The provisions of this paragraph shall be deemed to constitute a contractual right and benefit on behalf of members of the system who are or may be retired pursuant to said chapter thirty-two, and no amendment or alteration shall be made which would result in a diversion of said fund for other purposes.

Every person who immediately prior to being transferred to the authority was subject to the provisions of sections fifty-six to sixty, inclusive, of chapter thirty-two of the General Laws, shall continue subject to the provisions of said sections; provided, however, that the words "retiring authority", as used in said sections shall mean the members of said Authority; and provided further, that the amount of all retirement allowances payable under said sections by virtue of this act shall be paid by the Authority, and the commonwealth shall reimburse the Authority for its proportionate share of any amounts so paid. Upon the retirement of any such person under said sections fifty-six to sixty, inclusive, the Massachusetts Port Authority employees' retirement board shall refund to the person so retired the amount of his accumulated deductions.^{26, 27, 28, 29}

²⁶ See generally, Mass. Gen. Laws Ann. Ch.32 § I et. seq concerning retirement systems and pensions.

²⁷ Section 23 of Chapter 487 of the Acts of 1978 States: SECTION 23. Nothing in this act shall be deemed to repeal, decrease, abridge or in any way change the annuities, pensions, retirement allowances, refunds of accumulated total deductions or any other right or benefit to which a person transferred to the Massachusetts Port Authority employees' retirement system pursuant to this act would have been entitled had he remained a

(Statutory History: 1956 Mass. Acts Ch. 465, §22; 1958 Mass. Acts Ch. 599, § 10; 1959 Mass. Acts Ch. 476; 1960 Mass. Acts Ch. 525 §1; 1978 Mass. Acts Ch. 487, §20)

SECTION 22A. *Deferred Compensation Contracts Authorized for Funding Life Insurance Contracts, Mutual Funds or Bank Investment Trusts.* - The secretary-treasurer of the Massachusetts Port Authority, on behalf of the authority, may contract with an employee to defer a portion of that employee's compensation and may, for the purpose of funding a deferred compensation program for said employee, established in accordance with the U.S. Internal Revenue Code, (the "Code"), invest the deferred portion of the employee's income in a life insurance or annuity contract, mutual fund, or a bank investment trust. The secretary-treasurer shall, before making any such investment, solicit bids from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five of the General Laws, mutual fund managers, and banks, which bids shall be sealed, and opened at a time and place designated by the secretary-treasurer. Any bid submitted by an insurance company, mutual fund, or bank investment trust to fund the deferred compensation program shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the secretary-treasurer may require. Any contract entered into between an employee and the Authority pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand.

As used in this section, the word "employee" shall have the same meaning as "employee" in section one of chapter thirty-two of the General Laws and shall also include consultants and independent contractors who are natural persons paid by the Authority.³⁰

Notwithstanding any provisions herein to the contrary, the secretary-treasurer shall not be required to solicit bids to invest the deferred portion of an employee's income provided: (a) the secretary-treasurer elects to invest such funds in the same investment products as provided through the deferred compensation plan for employees of the commonwealth administered by the state

member of the state employees' retirement system.

²⁸ Section 2 of Chapter 525 of the Acts of 1960 states: No person who was an employee of the Mystic River Bridge Authority on the date of the acquisition of said Authority by the Massachusetts Port Authority, shall be excluded from membership in the state employees retirement system if he was under the maximum age for his group on said date.

²⁹ See Mass. Gen. Laws Ann. Chapter 152 § 73 relating to election to receive workers compensation or pension.

³⁰ See Mass. Gen. Laws Ann. Chapter 27 § 64A for inclusion of State Police temporarily assigned to Massport facilities within group of employees allowed to contract with State Treasurer for contributions to individual retirement accounts.

treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the secretary-treasurer elects to invest such funds in the investment products offered pursuant to a plan developed through a competitive selection process, provided that such plan resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

An employee may defer compensation so long as such deferral is the lesser of seven thousand five hundred dollars or thirty-three and one-third per cent of his includible compensation for a taxable year, except that for one or more of the last three taxable years ending before he attains normal retirement age under the plan the employee may defer the lesser of fifteen thousand dollars or the sum of (1) seven thousand five hundred dollars or thirty-three and one-third per cent of his includible compensation for a such year, plus (2) a sum not more than the total deferrable compensation for prior taxable years that had not in fact been deferred in such years.

Such deferred compensation program shall be in addition to and not a part of the retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation deferred under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing the retirement and pension benefits earned by any such employee, but any compensation so deferred shall not be included in the computation of any taxes withheld on behalf of any such employee.

(Statutory History: 1981 Mass. Acts Ch. 731, §6)

SECTION 22B. *Deferred Compensation Contracts Authorized for Funding Individual Retirement Accounts.* - The secretary-treasurer of the Massachusetts Port Authority, on behalf of the authority, may contract with an employee to make contributions for and in the name of such employee, from amounts otherwise payable to the employee as current compensation, to an Individual Retirement Account ("IRA") by such employee established in accordance with the U.S. Internal Revenue Code, (the "Code"). The participating employee may invest that portion of his income so contributed to an IRA in an annuity contract, mutual fund, bank investment trust or other investment authorized by the Code. Before making such deduction, the secretary-treasurer shall be required to solicit bids from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five of the General Laws, mutual fund managers, and banks which bids shall be sealed, and opened at a time and place designated by the secretary-treasurer. Any bid submitted by an insurance company, mutual fund, or bank investment trust seeking investment of the IRA contribution shall, where applicable, clearly indicate the interest rate which shall be paid on the invested funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, expected payouts, tax implications for participating employees and such other information as the secretary-treasurer may require. Upon the treasurer's determining which provider offers the product or

32.

products most beneficial to the employee in each category for which bids were solicited, the secretary-treasurer may offer such employee the opportunity to establish an IRA with one or more such providers. The employee who wishes to invest his IRA funds with any such provider, or combination of providers, may authorize the secretary-treasurer to deduct from amounts otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the employee's IRA. If the employee so elects, the secretary-treasurer shall pay to the providers the amount designated by the employee, in the name of the employee, to the employee's IRA. Amounts so paid to the providers for the employee's IRA accounts shall belong exclusively to the employee. Except as otherwise provided herein, the secretary-treasurer may restrict an employee's rights to contract to have contributions made to an IRA through deductions and payments by the secretary-treasurer, to those providers selected as the result of the competitive bidding process outlined herein, but the authority conferred upon the secretary-treasurer shall not be construed to restrict or limit the right of any employee to establish one or more IRAs with such banks, insurance companies, or similar authorized institutions as the employee may choose in any manner other than through an authorized deduction by the secretary-treasurer of a portion of the employees compensation as outlined herein. Any contract entered into between an employee and the authority pursuant to this section shall include all information in terms the employee can reasonably be expected to understand.

As used in this section the word "employee" shall have the same meaning as "employee" in section one of chapter thirty-two of the General Laws and shall also include consultants and independent contractors who are natural persons paid by the Authority.

An employee may contribute a portion of his compensation to an IRA under the program outlined herein so long as such contribution, for an employee who is single, is the lesser of two thousand dollars or one hundred per cent of his compensation for a taxable year, and, for an employee who is married, the contribution is the lesser of two thousand two hundred and fifty dollars or one hundred per cent of his compensation for a taxable year. If an employee has any compensation deferred under a deferred compensation plan for employees of the Authority, if one is established by the treasurer under section twenty-two A, then the aggregate amount of such deferred compensation deduction and amounts contributed to such employee's IRA shall not exceed the limits imposed upon such combined deduction and contribution by the Code.

Notwithstanding any provisions to the contrary, the secretary-treasurer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's IRA provided: (a) the secretary-treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the same investment products as provided through a deferred compensation or IRA plan for employees of the commonwealth administered by the state treasurer, or a deferred compensation plan for employees of the Authority administered by the secretary-treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the secretary-treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the investment products offered pursuant to a deferred

compensation plan or an IRA investment option program developed through a competitive selection process, provided that such plan or program resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

Such IRA plan shall be in addition to and not a part of the retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation contributed by the employee to his IRA under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing the retirement and pension benefits earned by any such employee, but any compensation so contributed shall not be included in the computation of federal taxes but shall be included in the computation of state taxes withheld on behalf of any such employee.

(Statutory History: 1981 Mass. Acts Ch. 731, §6)

SECTION 23. *Miscellaneous.* - Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale or lease of any property, either real or personal, to, or in the purchase or lease of any property from the Authority, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both; provided, however, that this paragraph shall not preclude an officer or employee of the Authority from eligibility for any residential sound insulation program administered by the Authority, if said officer or employee has no responsibility for the administration of said program.³¹

The Authority may call upon the department of public works, the metropolitan district commission, the department of commerce, the department of public safety, the planning board of the city, and such other state or city boards, commissions, divisions or agencies as may be deemed advisable for the purposes of assisting in making investigations, studies, surveys and estimates, and in policing the projects, and the Authority may arrange for payment for such services and expenses of said agencies in connection therewith.³²

All maps, charts, plans, records and all other related documents and equipment pertaining to the acquisition, construction, maintenance and operation of the airport properties and the port properties which are in the possession of the division of building construction of the commission

³¹ See Chapter 373 of the Acts of 1977 for specific limited exemption.

³² See Chapter 274 of the Acts of 1939 relating to police services and Chapter 288 of the Acts of 1963 relating to fire services and Mass. Gen. Laws Ann. Chapter 22C § 30 relating to Agreement for police services by State Police.

34.

on administration and finance, the state airport management board and the Port of Boston Commission upon the transfer of those properties to the Authority shall be transferred and delivered to the Authority.

Any action taken by the Authority under the provisions of this act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

Each project shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ.³³

Any person who uses any project and fails or refuses to pay the toll provided therefor shall be punished by a fine of not more than one hundred dollars to be paid to the Authority or by imprisonment for not more than thirty days or both, and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges in connection therewith shall have been paid.

Until the projects of the Authority shall have come under the control of the general court under the provisions of section twenty-five, the Authority shall be liable to any person sustaining bodily injury or damage in or on its property by reason of a defect or want of repair of ways in or on said projects to the same extent as though said ways were ways within the meaning of sections fifteen, eighteen, and nineteen of chapter eighty-four of the General Laws, and shall be liable for the death of any person caused by such defect or want of repair to the same extent as is provided in chapter two hundred and twenty-nine of the General Laws. Any notice of such injury, damage or death required by law shall be given to any member of the Authority or to the secretary-treasurer of the Authority.

Notwithstanding the provision of chapters one hundred and thirty-four and one hundred and forty-seven of the General Laws, if money, goods or other property which has been abandoned, mislaid or lost on the premises of the Massachusetts Port Authority comes into the possession of said Authority and remains unclaimed in its possession for a period of one hundred and twenty days, the Authority may sell the same, excepting money so unclaimed, at public auction after notice of such sale has been published for three successive weeks in a newspaper published in the city or town where such sale is to take place. The net proceeds of such sale, after deducting the cost of storage and the expenses of the sale, and all money so unclaimed, shall be paid into and become the property of the Authority. If, in the opinion of the Authority, any property so abandoned, mislaid or lost which comes into the possession of the Authority and remains

³³ See Chapter 274 of the Acts of 1959 relating to police services and Mass. Gen. Laws Ann. Chapter 22C § 30 relating to Agreement for police services by State Police.

unclaimed in its possession for a period of one hundred and twenty days, is of the value of three dollars or less, the Authority may donate the same to a charitable organization.

(Statutory History: 1956 Mass. Acts Ch. 465, §23; 1958 Mass. Acts Ch. 599, §11; 1960 Mass. Acts Ch. 328; 1963 Mass. Acts Ch. 543; 1967 Mass. Acts Ch. 869, §7; 1993 Mass. Acts Ch. 301, §2)

SECTION 24. *Labor Relations Policy.* - It is hereby declared to be the policy of the Authority to eliminate the causes of certain substantial obstructions to the free flow of industry and trade and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The Authority shall have authority to bargain collectively with labor organizations representing employees of the Authority and to enter into agreements with such organizations relative to wages, salaries, hours, working conditions, health benefits, pensions and retirement allowances of such employees. The employees of the Authority shall submit all grievances and disputes to arbitration pursuant to the arbitration provisions in agreements existing at the time of this act or subsequently entered into with the Authority, or in the absence of such provisions to the state board of conciliation and arbitration, or other board or body having similar powers and duties, whose decision shall be final and binding.³⁴

The provisions of sections twenty-six to twenty-seven D, inclusive, sections forty-four A to forty-four E, inclusive, of chapter one hundred and forty-nine of the General Laws shall apply to the Authority. The provisions of sections twenty-six to twenty-nine, inclusive, and of sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine of the General Laws, and the provisions of sections thirty-nine F to thirty-nine M, inclusive, of chapter thirty of the General Laws, shall apply to the Authority in regard to the trade and transportation center.

(Statutory History: 1956 Mass. Acts Ch. 465, §24, 1967 Mass. Acts Ch. 719, §7)

SECTION 25. *Transfer to Commonwealth.* - (a) When all payments due on account of the port properties, as provided in section six, shall have been made, and when all bonds issued under the provisions of this act and the interest thereon shall have been paid or a sufficient amount of the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, and contributions shall have been made to the several funds of the Massachusetts Port Authority employees' retirement system established under sections one to twenty-eight, inclusive, of chapter thirty-two of the General Laws such as are sufficient, in the opinion of the actuary, as defined in section one of said chapter thirty-two, to provide for

³⁴ See Chapter 760 of the Acts of 1962 as to applicability of State Labor Relations Law.

36.

the payment of all amounts payable by the system after that date with respect to all persons then receiving allowances from the Massachusetts Port Authority employees' retirement system and with respect to all persons who are then employees, as defined in said section one, of the Authority, whether or not any such amount is or becomes payable to any such person or the spouse or other beneficiary of any such person, such opinion to be based upon the assumption, among others, that such persons who are then employees are then or thereafter become entitled to receive retirement allowances in the amounts then provided by sections five, six and seven of said chapter thirty-two on the basis of the regular compensation received by, and the years of creditable service of, such persons at such date, all projects then under the control of the Authority shall be operated and maintained in such manner as may be provided by the general court.

(b) Should the general court dissolve the Authority under the provisions of subparagraph (a), the members of the Massachusetts Port Authority employees' retirement system on the effective date of the dissolution of the authority who do not then transfer to or enter service in a governmental unit in which a contributory retirement system established under the provisions of sections one to twenty-eight, inclusive, of said chapter thirty-two, or under corresponding provisions of earlier laws or of any special law, shall continue to be members of the Massachusetts Port Authority employees' retirement system and shall then be entitled to apply for and receive retirement allowances from such system in the amounts, upon the terms, subject to the conditions and with all of the related rights provided by and under sections six, seven, ten and twelve of said chapter thirty-two.

(c) Effective upon the date of dissolution of the Authority (1) the Massachusetts Port Authority employees' retirement system shall continue under the provisions of sections 1 to 28 inclusive of said chapter 32; (2) the management of the Massachusetts Port Authority employees' retirement system shall be transferred to the state board of retirement provided for in section eighteen of chapter ten of the General Laws which board shall have with respect thereto the general powers and duties set forth in subdivision (5) of section twenty of said chapter thirty-two; (3) all data, files, papers and records and other materials of the retirement board provided for in paragraph (b) of subdivisions (4 7/8) of said section twenty shall be transferred to and held by the state board of retirement; (4) the funds of the Massachusetts Port Authority employees' retirement system in the custody of the secretary-treasurer of the Authority shall be transferred to the state treasurer who shall thereafter be and perform the duties of the treasurer-custodian of such funds which shall then be held by him for the exclusive benefit and use of the members of the Massachusetts Port Authority employees' retirement system and their beneficiaries; and (5) the retirement board provided for in said paragraph (b) of subdivision (4 7/8) shall be abolished; provided, however, that the members and officers thereof shall continue to be authorized to do all such things and take all such action as may be necessary or desirable to be done or taken by them to effectuate the transfers to be made pursuant to this section.

(d) Effective upon the date of dissolution of the Massachusetts Port Authority or a default in its obligations under chapter thirty-two of the General Laws, the payment of all annuities,

pensions, retirement allowances and refunds of accumulated total deductions and of any other benefits granted under the provisions of sections one to twenty-eight, inclusive, of said chapter thirty-two are hereby made obligations of the commonwealth in the case of any such payments from funds of the Massachusetts Port Authority employees' retirement system.

(Statutory History: 1956 Mass. Acts Ch. 465, §25; 1978 Mass. Acts Ch. 487, §21)

SECTION 26. *Appropriation.* - To provide for the expenses of the Authority in carrying out the provisions of this act, the sum of seven hundred and fifty thousand dollars is hereby appropriated from the General Fund of the commonwealth, which sum shall be paid to the Authority, and any sum so paid shall be reimbursed by the Authority to the commonwealth out of the proceeds of any revenue bonds which may be issued under the provisions of section eight.

(Statutory History: 1956 Mass. Acts Ch. 465, §26)

SECTION 27. *Act Liberally Construed.* - This act, being necessary for the welfare of the commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

(Statutory History: 1956 Mass. Acts Ch. 465, §27)

SECTION 28. *Constitutional Construction.* - The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

(Statutory History: 1956 Mass. Acts Ch. 465, §28)

SECTION 29. *Inconsistent Laws Inapplicable.* - All other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this act, excepting section fifty-one M of chapter ninety of the General Laws, and Chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two as from time to time amended.

(Statutory History: 1956 Mass. Acts Ch. 465, §29)

SECTION 30. [Section 30 amended Section 12 of Chapter 63 of the General Laws. Section 12 was subsequently repealed by 1966 Mass. Acts Ch. 14, § 12. Section 12 provided that certain investments were exempt from § 11 of Chapter 63 of the General Laws relating to the excise tax on savings banks, etc.]

SECTION 31. [Section 31 repealed Chapter 741 of the Acts of 1950 relating to the construction of a tunnel under the Mystic River]

38.

SECTION 32. *Other Laws Inoperative Upon Vesting of Title to Airport Properties in Authority.* Upon title to the airport properties becoming vested in the Authority under the provisions of section five of this act, sections fifty-nine A to fifty-nine C, inclusive, of chapter six of the General Laws and sections fifty A to fifty L, inclusive, of chapter ninety of the General Laws shall be inoperative and cease to be effective, and no bonds of the commonwealth shall thereafter be issued under the provisions of chapters four hundred and eighty-four and seven hundred and twelve of the acts of nineteen hundred and fifty-seven.³⁵

(Statutory History: 1956 Mass. Acts Ch. 465, §32; 1958 Mass. Acts Ch. 599, § 12)

SECTION 33. *Other Laws Inoperative Upon Vesting of Title to Port Properties in Authority.* - Upon title to the port properties becoming vested in the Authority under the provisions of section six of this act, sections fifty-three to fifty-five, inclusive, of chapter six of the General Laws, chapter ninety-one A of the General Laws and sections five, six and eight of chapter six hundred and nineteen of the acts of nineteen hundred and forty-five and sections thirteen to sixteen, inclusive, of chapter six hundred and eight of the acts of nineteen hundred and fifty-three shall be inoperative and cease to be effective.³⁶

(Statutory History: 1956 Mass. Acts Ch. 465, §33)

SECTION 34. *Other Laws Inoperative Upon Vesting of Title to Mystic River Bridge in Authority.* - Upon title to the Mystic River bridge becoming vested in the Authority under the provisions of section thirteen of this act, chapter five hundred and sixty-two of the acts of nineteen hundred and forty-six, as amended by chapter six hundred and twenty-six of the acts of nineteen hundred and forty-seven and chapter four hundred and thirty-two of the acts of nineteen hundred and fifty-four shall be inoperative and cease to be effective.³⁷

(Statutory History: 1956 Mass. Acts Ch. 465, §34)

SECTION 34A. *Authority to Reimburse Commonwealth for Retirement Costs Associated with Department of Public Safety Employees; Rate to be Set by Commissioner of Administration.* - The Authority is hereby authorized and directed to reimburse the commonwealth for the amount of

³⁵ See Appendix A.2 for a description of pre-Enabling Act legislation relating to the General Edward Lawrence Logan Airport and Appendix A.3 relating to the Laurence G. Hanscom Field.

³⁶ See Appendix A.1 for a description of pre-Enabling Act legislation relating to the Port of Boston.

³⁷ See Appendix A.4 for a description of pre-Enabling Act legislation relating to the Mystic River Bridge.

retirement costs incurred by the commonwealth on behalf of employees of the department of public safety for the time such employees are assigned by the commissioner of said department to duty with the Authority. Said amount shall be the retirement cost portion of the cost of fringe benefits as determined by the commissioner of administration pursuant to section six B of chapter twenty-nine of the General Laws. Said amount shall be reimbursed annually to the commonwealth for fiscal years beginning after June thirtieth, nineteen hundred and eighty-seven.

(Statutory History: 1987 Mass. Acts Ch. 199, §146)

SECTION 35. [Relating to Sumner tunnel. Repealed by 1958 Mass. Acts Ch. 599, § 13. As originally enacted the Enabling Act provided for vesting of title of the Sumner Tunnel in the Massachusetts Port Authority. Section 13 of Chapter 599 of the Acts of 1958 repealed this provision. Chapter 598 of the Acts of 1958 authorized the Massachusetts Turnpike Authority to construct an additional tunnel under Boston harbor and provided for the vesting of title of the Sumner Tunnel in the Massachusetts Turnpike Authority.]

40.

APPENDICES

APPENDIX A: DESCRIPTION OF PRE-ENABLING ACT LEGISLATION

The Massachusetts Port Authority was the successor to the Port of Boston Commission, the State Airport Management Board and the Mystic River Bridge Authority. The Enabling Act provides for the Massachusetts Port Authority to succeed to the property in the administrative charge of these agencies. The Pre-Enabling Act statutory provisions relating to these properties and agencies are described below.

1. PORT OF BOSTON

Chapter 223 of the Acts of 1859 provided that "all conveyances hereafter made of land or flats of the Commonwealth shall be subject to the approval of the governor and council"

Chapter 103 of the Resolves of 1859 provided that "the land agent shall have charge of all lands, flats, shores and rights in tide waters belonging to the Commonwealth, except the Back Bay lands and other lands and rights now by law provided for" The land agent was given power to lease and sell such property and permit the construction of wharves and piers, all subject to the direction of the governor and council.

Chapter 149 of the Acts of 1866 established a Board of Harbor Commissioners consisting of five persons appointed by the governor with the advice and consent of the council. The Board was empowered with "the general care and supervision of all the harbors and tidewaters, and of all the flats and lands flowed thereby, within the Commonwealth, except the Back Bay lands, so called, in the City of Boston, in order to prevent and remove, unauthorized encroachments and causes of every kind which are liable to interfere with the full navigation of said harbors, or in any way injure their channels, or cause any reduction of their tide waters, and in order to protect and develop the rights and property of the Commonwealth in said flats and lands." Section 5 of chapter 149 provided that "[a]ll erections and works hereafter made without authority from the legislature, or in any manner not sanctioned by the board of harbor commissioners, where their direction is required, as herein before provided, within the tide waters flowing into or through any harbor, shall be considered a public nuisance and liable to indictment as such."

Chapter 239 of the Acts of 1875 authorized the governor with the advice and consent of the council to appoint three persons to act as agents of the Commonwealth to make contracts with regard to the lands "at or near to South Boston in the County of Suffolk, known as the Commonwealth flats at South Boston. . . ." The contracts were subject to the approval of the governor and the council and the Board of Harbor Commissioners.

42.

Section 1, chapter 213 of the Acts of 1877, reconstituted the Board of Harbor Commissioners. Section 2 of that Act (a) abolished the Board of Commissioners on Public Lands and (b) rescinded the appointment of agents in chapter 239 of the Acts of 1875 relating to the Commonwealth flats near South Boston, and transferred the powers and duties of said Board and agents to a newly established Board of Land Commissioners.

Chapter 263 of the Acts of 1879 abolished the Board of Harbor Commissioners and the Board of Land Commissioners and transferred their powers and duties to a newly established Board of Harbor and Land Commissioners.

Chapter 486 of the Acts of 1897 authorized the Board of Harbor and Land Commissioners to acquire certain lands and flats on the easterly side of East Boston and authorized the issuance of bonds for harbor improvements.

Chapter 513 of the Acts of 1897 directed the Board of Harbor and Land Commissioners "to construct a pier and dock on the northerly frontage of the Commonwealth's flats at South Boston, in substantial accordance with the recommendations contained in the final report of the state board on docks and terminal facilities."

Chapter 96 of the Revised Laws of 1902 set forth the powers and duties of the Board of Harbor and Land Commissioners. Section 3 specifically mentioned lands near South Boston known as the Commonwealth Flats.

Chapter 748 of the Acts of 1911 created a board entitled the "Directors of the Port of Boston" to administer the port and make comprehensive plans for the development of the harbor. The Directors were given "immediate charge of the lands now or hereafter owned by the commonwealth upon or adjacent to the harbor front, except lands under the control of the metropolitan park commission or of the metropolitan water and sewerage board, and of the construction of piers and other public works therein. . ." The Directors were given powers to purchase property and exercise powers of eminent domain, to purchase equipment, develop property, enter into leases, etc.

Chapter 712 of the Acts of 1914 changed the method of choosing members of the Directors of the Port of Boston.

Chapter 288 of the Acts of 1916 abolished the Board of Harbor and Land Commissioners and the Directors of the Port of Boston. The powers and duties of these agencies were transferred to a newly established Commission on Waterways and Public Lands consisting of three persons appointed by the governor.

Chapter 350 of the Acts of 1919 reorganized the executive branch of state government. Section 111 of that chapter abolished the Commission on Waterways and Public Lands and transferred the powers and duties of each to a newly established Department of Public Works.

Chapter 229 of the Acts of 1929 established "an unpaid board to be known as the Boston Port Authority, consisting of two persons to be appointed by the governor with the advice and consent of the council, and three persons to be appointed by the mayor of the City of Boston." The Authority was directed to "investigate any and all matters relating to the port of Boston, particularly with reference to the unification of overseas terminals, belt line connections, condition and location of piers and channels, switching, floatage, lighterage, rates, rules, regulations and practices, dockage, wharfage, water front labor conditions, grain elevator and warehouse facilities." The expenses of the Boston Port Authority were to be paid by the City of Boston.

Chapter 453 of the Acts of 1938 enlarged the Boston Port Authority from two to seven members, three members to be appointed by the governor and four members by the mayor of Boston.

Chapter 619 of the Acts of 1945 abolished the Boston Port Authority and added sections 53 to 55 to chapter 6 of the Massachusetts General Laws. These new sections established a board, known as the Port of Boston Authority, consisting of five members appointed by the governor. A new chapter 91A was added to the Massachusetts General Laws which placed the Port of Boston Authority "in administrative charge of the Port of Boston" and gave the Authority powers to purchase or take by eminent domain real property, to acquire equipment, to charge for the use of facilities, to enter into leases, etc. Section 8 of Chapter 91A revoked with certain exceptions all revocable authorities and licenses granted since 1868 to build or extend wharves or structures in tide or navigable water within the Port of Boston and under the control of the Authority. Section 5 of Chapter 91A transferred to the Port of Boston Authority all powers and duties of the Department of Public Works "in respect to lands, rights in lands, flats, shores, waters and lands under water, within the port of Boston" and certain other rights, powers and duties.

Chapter 457 of the Acts of 1951 amended Chapter 91A of the Massachusetts General Laws and in doing so transferred to the Department of Public Works a portion of the properties previously transferred to the Port of Boston Authority by Chapter 619 of the Acts of 1945.

Chapter 608 of the Acts of 1953 further amended Chapter 91A of the Massachusetts General Laws to abolish the Port of Boston Authority and transfer its powers, duties and obligations to a newly established Port of Boston Commission which was placed in administrative charge of the Port of Boston.

Chapter 465 of the Acts of 1956 "created and placed in the department of public works a body politic and corporate to be known as the Massachusetts Port Authority, which shall not be subject to the supervision or regulation of the department of public works or of any department, commission, board, bureau or agency of the commonwealth" Chapter 465 provided for vesting of title to the "port properties" in the Massachusetts Port Authority upon the issuance of revenue bonds under section 8 of the chapter and the application of the proceeds thereof as provided in sections 8(1) and 8(2). Section 33 of Chapter 465 in effect provided that the Port of Boston Commission would be abolished upon vesting of title to the port properties in the Massachusetts Port Authority.

44.

Title to the port properties vested in the Massachusetts Port Authority on February 17, 1959 when revenue bonds were issued.

2. GENERAL EDWARD LAWRENCE LOGAN INTERNATIONAL AIRPORT

Chapter 64 of the Resolves of 1928 authorized the Department of Public Works, subject to the approval of the governor and council, "to lease to the City of Boston for airport purposes, for a term not to exceed twenty years, land of the commonwealth in the control of said department in that part of said city called East Boston. . . ."

Chapter 53 of the Resolves of 1930 authorized the Department of Public Works to lease additional properties in East Boston to the City of Boston "for airport and seaplane purposes."

Chapter 8 of the Resolves of 1941 established a special commission to determine the values of certain improvements made to the East Boston airport property by the City of Boston as lessee under leases from the Commonwealth. The valuation was to be made in contemplation of the transfer of said properties to the Commonwealth in 1941 instead of 1948 as provided in said leases.

Chapter 695 of the Acts of 1941 terminated the leases authorized by the 1928 and 1930 Resolves and granted the Department of Public Works various powers to make improvements to the airport, acquire property, exercise eminent domain powers, etc. Section 14 of Chapter 695 directed the Commissioner of Public Works to establish in the Division of Waterways a Bureau of Airport Management to maintain and operate all airports owned and maintained by the Commonwealth.

Chapter 528 of the Acts of 1943 authorized the Department of Public Works "to enlarge, extend, improve and develop the Commonwealth Airport - Boston, so called. . . ." The Department was given powers to purchase and acquire real estate, exercise the powers of eminent domain, enter into leases, enter into agreements with the United States, etc. The issuance of up to \$4.75 million in bonds for terms not to exceed 5 years was authorized. Section 8 of said Chapter 528 named and designated the airport as the General Edward Lawrence Logan Airport.

Chapter 383 of the Acts of 1945 further authorized the Department of Public Works to enlarge, extend, improve and develop Logan Airport. That chapter permitted the Department of Public Works and the City of Boston to enter into agreements with regard to lands owned by City of Boston and necessary for purposes of Logan Airport. The issuance of up to \$15 million of bonds for terms not exceeding 10 years was authorized.

Chapter 595 of the Acts of 1946 further authorized the Department of Public Works to enlarge, extend and improve the Logan Airport. This legislation authorized the issuance of up to \$6 million of bonds for terms not to exceed 5 years.

Chapter 676 of the Act of 1947 further authorized the Department of Public Works to enlarge, etc., Logan Airport. The Massachusetts Public Building Commission was authorized and directed to complete plans and specifications for the "Apron Building." The legislation authorized the issuance of up to \$12 million in bonds for terms not to exceed 18 years.

Chapter 637 of the Acts of 1948 added Sections 59A-59C to Chapter 6 of the Massachusetts General Laws and Sections 50A-50L to Chapter 90 of the Massachusetts General Laws. These sections established the State Airport Management Board consisting of five members appointed by the governor. The position of Commissioner of Airport Management was established with responsibility for general supervision of all state-owned airports. Section 4 of said Chapter 637 transferred to the State Airport Management Board the rights, powers, duties and obligations of the Department of Public Works with regard to "the acquisition, construction, maintenance and operation of the General Edward Lawrence Logan Airport" except with regard to construction authorized under Chapter 676 of the Acts of 1947.

Chapter 745 of the Acts of 1949 further authorized the Commissioner of Airport Management to enlarge, etc., Logan Airport and authorized the issuance of up to \$7.195 million in bonds for terms not to exceed 9 years.

Chapter 555 of the Acts of 1950 directed the Commissioner of Airport Management to make certain changes to the flats and channels on the part of the airport property near the Town of Winthrop.

Chapter 760 of the Acts of 1950 further authorized the Commissioner of Airport Management to enlarge, etc., Logan Airport and authorized the issuance of up to \$2.850 million in bonds to mature between 1952 and 1964.

Chapter 731 of the Acts of 1951 further authorized the Commissioner of Airport Management to make improvements to Logan Airport to conform to standards established by the Civil Aeronautics Administration of the United States and authorized the issuance of bonds to accomplish the same.

Chapter 733 of the Acts of 1951 authorized the Commissioner of Airport Management to build an additional hangar at Logan Airport and authorized the issuance of up to \$2.5 million for terms not to exceed 25 years.

Chapter 799 of the Acts of 1951 established certain airport approach zones for Logan Airport.

46.

Section 5 of the Enabling Act provided for vesting of title to the airport properties in the Massachusetts Port Authority, which occurred on February 17, 1959. Section 32 of the Enabling Act provided that upon such vesting of the airport properties, the legislation relating to the State Airport Management Board would become inoperative and would cease to be effective.

Title to the airport properties became vested in the Massachusetts Port Authority on February 17, 1959.

In addition to legislation relating to the construction of airport facilities at Logan Airport, there were several other pertinent miscellaneous acts relating to recreation areas. See, Chapter 516 of the Acts of 1946 (Porter Street area); Chapter 652 of the Acts of 1948 (Wordsworth and Bayswater Streets and Porter Street).

3. LAURENCE G. HANSCOM FIELD

Chapter 268 of the Acts of 1941 authorized the Department of Public Works to take by eminent domain land in the town of Bedford or partly in Bedford and partly in the towns of Concord and Lincoln for the purposes of an airport to be constructed by the federal government pursuant to Public Document No. 812, 76th Congress (October 9, 1940). The Department of Public Works was authorized to enter into agreements and leases with the U.S. relative to the construction, maintenance and operation of said airport.

Chapter 442 of the Acts of 1946 provided that upon the completion of the construction of the Bedford airport (to be known as the Laurence G. Hanscom Field) and the return of the control thereof to the Commonwealth, Hanscom Field was to be maintained and operated by the Massachusetts Aeronautics Commission.

Chapter 637 of the Acts of 1948 transferred Hanscom Field to the newly created State Airport Management Board.

Chapter 641 of the Acts of 1953 authorized the Commissioner of Airport Management to execute a "confirmatory deed" to that of February 25, 1952 between the Commonwealth and the United States "with broadened purposes to permit the construction and operation of a complete military air base at the Bedford airport."

Chapter 769 of the Acts of 1955 authorized the Commissioner of Airport Management to build additional hangars and shops at Hanscom Field.

Section 5 of the Enabling Act provided for the vesting of title to the airport properties, including L.G. Hanscom Field, in the Massachusetts Port Authority, which occurred on February 17, 1959.

4. MYSTIC RIVER BRIDGE

Chapter 562 of the Acts of 1946 created the Mystic River Bridge Authority "to construct, maintain, repair and operate a high level toll bridge without a draw over the Mystic River. . . " between Boston and Chelsea. The Mystic River Bridge Authority was authorized to issue revenue bonds to be payable solely from tolls charged on the use of the bridge.

Section 13 of the Enabling Act provided for vesting title to the Mystic River Bridge in the Massachusetts Port Authority. Section 34 provided that upon such vesting the legislation relating to the Mystic River Bridge Authority would become inoperative and would cease to be effective.

Title to the Mystic River Bridge became vested in the Massachusetts Port Authority on February 17, 1959.

48.

APPENDIX B

Miscellaneous Acts and Resolves Relating to the Massachusetts Port Authority. ¹

Chapter 412 of the Acts of 1958	Chapter 234 of the Acts of 1983
Chapter 274 of the Acts of 1959	Chapter 234 of the Acts of 1984
Chapter 473 of the Acts of 1960	Chapter 240 of the Acts of 1984
Chapter 760 of the Acts of 1962	Chapter 46 of the Acts of 1985
Chapter 288 of the Acts of 1963	Chapter 280 of the Acts of 1986
Chapter 410 of the Acts of 1963	Chapter 349 of the Acts of 1986
Chapter 383 of the Acts of 1964	Chapter 134 of the Acts of 1988
Chapter 682 of the Acts of 1964	Chapter 208 of the Acts of 1988
Chapter 740 of the Acts of 1964	Chapter 218 of the Acts of 1988
Chapter 733 of the Acts, Extra Session, 1966	Chapter 449 of the Acts of 1989
Chapter 869 of the Acts of 1967	Chapter 653 of the Acts of 1989
Chapter 893 of the Acts of 1967	Chapter 313 of the Acts of 1990
Chapter 90 of the Resolves of 1968	Chapter 133 of the Acts of 1992
Chapter 367 of the Acts of 1969	Chapter 110 of the Acts of 1993
Chapter 704 of the Acts of 1969	Chapter 139 of the Acts of 1993
Chapter 75 of the Resolves of 1969	Chapter 301 of the Acts of 1993
Chapter 295 of the Acts of 1971	Chapter 85 of the Acts of 1994
Chapter 584 of the Acts of 1971	Chapter 273 of the Acts of 1994
Chapter 3 of the Resolves of 1975	Chapter 102 of the Acts of 1995
Chapter 373 of the Acts of 1977	Chapter 273 of the Acts of 1995
Chapter 949 of the Acts of 1977	Chapter 5 of the Acts of 1996
Chapter 1 of the Resolves of 1977	Chapter 28 of the Acts of 1996
Chapter 487 of the Acts of 1978	Chapter 71 of the Acts of 1996
Chapter 703 of the Acts of 1979	Chapter 130 of the Acts of 1996
Chapter 12 of the Resolves of 1979	
Chapter 290 of the Acts of 1980	
Chapter 636 of the Acts of 1982	Various Transportation Bond Bills

* * * * *

CHAPTER 412 OF THE ACTS OF 1958.

An Act Exempting from Local Taxation Certain Lands of the Commonwealth.

¹ Certain of the Acts and Resolves are reprinted only in significant part. Omissions of sections or other relevant portions are indicated by ellipses as follows: ". . ." or "****". Summaries of certain Acts and Resolves are indicated in brackets.

50.

Be it enacted, etc., as follows:

Section 1. Notwithstanding any contrary provision of chapter fifty-nine of the General Laws, or of section twelve of Part I of chapter four hundred and ninety of the acts of nineteen hundred and nine, or of section seventeen of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, or of any other general or special law, there shall be exempt from local taxation, so long as constituting property of the commonwealth or of the Massachusetts Port Authority and remaining open to the public for navigation, so much of the lands situate in that part of the city of Boston called South Boston and known as the Commonwealth Flats as are shown as lots A(1) and A(5) on a plan by Ernest W. Branch, Inc., dated March 6, 1958, entitled "Plan of Comm. Pier #6 (Fish Pier) Boston," and filed in the office of the state secretary on June 2, 1958.

Section 2. This act shall take effect on January first, nineteen hundred and fifty-nine.

Approved June 10, 1958.

CHAPTER 274 OF THE ACTS OF 1959.

An Act Providing for the Policing of the General Edward Lawrence Logan Airport by the State Police.

Be it enacted, etc., as follows:

Section 1. Chapter 22 of the General Laws is hereby amended by inserting after section 91, inserted by chapter 548 of the acts of 1956, the following two sections:

Section 9J. The commissioner is hereby authorized and directed to enter into an agreement with the Massachusetts Port Authority for police service to be furnished to the Authority by the department at the General Edward Lawrence Logan International Airport. Said agreement shall fix the legal responsibility pertaining to the operation and maintenance of such service and shall include, among other provisions, a provision for payments to the commonwealth for the cost of retirement, compensation of injured officers, sick leave, or other employee benefits, and a minimum allowance for departmental supervision. Said agreement shall also include a provision that all expenses incurred by the department in supplying such police service shall, upon proper requisition, be paid by the Authority as such expenses are incurred.

Section 9K. The commissioner may appoint and organize a state police force of such size as he and the Authority may agree upon, in addition to any other force authorized by law, to be assigned to the Massachusetts Port Authority to meet the requirements of section twenty-three of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, as amended by section eleven of chapter five hundred and ninety-nine of the acts of nineteen hundred and fifty-eight. The officers of the state police force, so appointed and so assigned, shall have the same powers and be subject

to the same qualifications, orders or restrictions as officers appointed under the provisions of section nine A. During such assignments, such officers, in the performance of their duties, shall be subject to the control of the commissioner, but shall perform such police duties as may be requested by the Authority. Any officer, so appointed and so assigned, may be reassigned to general duties the same as those officers appointed under the provisions of said section nine A, and any officer appointed as provided in section nine A may be substituted by assignment for any officer appointed under this section. Any officer so appointed, assigned or reassigned shall for the purposes of salary, seniority, retirement or other rights be considered as appointed under the provisions of said section nine A, and the assignment or reassignment shall in no way impair any rights to which an officer may be entitled, and such officer shall at all times be considered to be an employee of the commonwealth.

Any officer assigned to duty with the Authority shall receive his entire compensation during the period of his assignment from the Authority, and the appointment and assignment of such officers by the commissioner shall in no way be considered a violation of any provisions of chapter twenty-nine.

Section 2. Members of the uniformed branch of the division of state police in the department of public safety, during such period or periods as they may be assigned or reassigned to the Massachusetts Port Authority, under the provisions of sections nine J and nine K of chapter twenty-two of the General Laws, inserted by section one of this act, shall be considered as employees of the commonwealth and entitled to all rights and benefits accorded employees of the commonwealth under the provisions of chapter thirty-two of the General Laws. Said Authority is hereby authorized and directed to make such deductions as are required to be made by said chapter thirty-two and to transmit such deductions monthly, together with a report showing the amount of regular compensation paid to and the amount deducted from the salary of each such member for retirement purposes, to the state board of retirement.

Approved May 5, 1959.

CHAPTER 473 OF THE ACTS OF 1960.

An Act Providing for the Installation of Sound Barriers at Certain Hangars and for the Designation of a Run up Area at the Logan International Airport.

Be it enacted, etc., as follows:

Section 1. The Massachusetts Port Authority is hereby authorized and directed to install sound barriers outside of and adjacent to all hangars erected after January first, nineteen hundred and sixty at the General Edward Lawrence Logan International Airport for the purpose of decreasing the vibration from the operation of aircraft engines.

Section 2. Said Authority shall, by regulation, designate an area at said Logan airport southeast of the present terminal building as the only area in said airport in which aircraft engines shall be

52.

test run between midnight and seven o'clock in the morning. This section shall not apply to aircraft testing immediately prior to take-off.

Section 3. The provisions of section two of this act shall not apply to military aircraft.

Approved June 14, 1960.

CHAPTER 760 OF THE ACTS OF 1962.

An Act Providing That the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority and Their Employees Shall Be Subject to Certain Provisions of the State Labor Relations Law.

Be it enacted, etc., as follows:

Section 1. Notwithstanding any provision of law to the contrary, the Massachusetts Turnpike Authority, established by chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two, the Massachusetts Port Authority, established by chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, the Massachusetts Parking Authority, established by chapter six hundred and six of the acts of nineteen hundred and fifty-eight and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, created by chapter seven hundred and one of the acts of nineteen hundred and sixty shall have authority to bargain collectively with labor organizations representing employees of said authorities and to enter into agreements with such organizations relative to wages, salaries, hours, working conditions, health benefits, pensions and retirement allowances of such employees. The employees of said authorities shall submit all grievances and disputes to arbitration, pursuant to the arbitration provisions in agreements existing at the time of the passage of this act or subsequently entered into with said authorities, or in the absence of such provisions with the state board of conciliation and arbitration, or other board or body having similar powers and duties, whose decisions shall be final and binding.

Notwithstanding any provision of law to the contrary, the provisions of sections four, four A, four B, five, six, six A, six B, six C, seven and eight of chapter one hundred and fifty A of the General Laws, so far as apt, shall apply to said authorities and their employees.

Nothing in this act shall be construed as conferring upon the employees of any of said authorities the right to strike.

Section 2. This act shall take effect upon its passage.

Approved July 26, 1962.

CHAPTER 288 OF THE ACTS OF 1963.

An Act Authorizing the City of Boston to Contract to Provide Fire-fighting Services for the Tax Exempt Property of the Massachusetts Port Authority in Said City.

Be it enacted, etc., as follows:

The city of Boston, acting by its fire commissioner with the approval of its mayor, and the Massachusetts Port Authority are hereby respectively authorized to make contracts from time to time whereby for such annual fee as said city and authority shall mutually agree, the city will provide fire-fighting services for the tax exempt property of said authority in-said city.

Approved April 16, 1963.

CHAPTER 410 OF THE ACTS OF 1963.

An Act Prohibiting the Expansion of the Logan Airport or the Construction of Hangars in a Westerly Direction Therefrom.

[Approved May 16, 1963, Repealed and Superseded by Chapter 383 of the Acts of 1964.]

CHAPTER 383 OF THE ACTS OF 1964.

An Act Permitting the Massachusetts Port Authority to Take by Eminent Domain Land in a Certain Area for the Construction and Maintenance of a Service Road at the General Edward Lawrence Logan International Airport.

Be it enacted, etc., as follows:

Section 1. Chapter four hundred and ten of the acts of nineteen hundred and sixty-three is hereby repealed.

Section 2. The Massachusetts Port Authority, created by section two of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, shall not, except for the purpose of protecting the aerial approaches to runways in accordance with applicable federal standards, meeting runway clear zone requirements of the federal government, or meeting other air safety requirements of the federal government, and except for the purpose of the construction, use and maintenance of a service road, on land to be acquired by it located in the East Boston district of the city of Boston and bounded and described as follows: - [See Act for metes and bounds description] - acquire by the exercise of the power of eminent domain for airport purposes any land above mean high water in said district westerly of the present property line of the General Edward Lawrence Logan

54.

International Airport, nor shall said Authority build, cause to be built nor allow to be built any hangar, or allow the operation of any aircraft, on land owned by it and lying southwesterly of Porter street and westerly of the existing airport service road running between Porter street and Maverick street.

Approved May 11, 1964.

CHAPTER 682 OF THE ACTS OF 1964. ²

An Act Directing the Metropolitan District Commission to Construct and Maintain a High Level Bridge over the Charles River from Leverett Circle to the Vicinity of City Square in the City of Boston; and Authorizing the Massachusetts Port Authority to Construct Certain Connections Thereto and to Contribute to the Cost Thereof.

Be it enacted, etc., as follows:

Section 1. In order to relieve congestion, to expedite the flow of vehicular traffic, and to promote the public safety, the metropolitan district commission, hereinafter referred to as the commission, is hereby authorized and directed to construct and maintain a high level bridge over the Charles River from Leverett Circle in the city of Boston northeasterly over said river, over mainline tracks of the Boston and Maine Railroad Company, and over the proposed relocated mainline tracks of the Metropolitan Transit Authority, then back to grade to intersect with the proposed reconstructed Rutherford Avenue in the vicinity of City Square in the Charlestown district of said city, together with the necessary approaches thereto.

Section 2. The commission may expend such sums, not exceeding one million five hundred thousand dollars, as may be appropriated for the construction authorized in section one, in addition to such sums as may be received from the Massachusetts Port Authority, hereinafter referred to as the authority, together with any federal funds available for the purpose.

Section 3. The authority is hereby authorized to construct and maintain, as a southerly extension of the Mystic River bridge, such connections between the Mystic River bridge and said high level bridge and such other ways in the area in the vicinity of the present southerly end of said bridge, as may be necessary or desirable.

Section 4. No monies shall be expended by the commission under this act unless the authority shall have entered into an agreement with the commission, approved as to form by the attorney general, to pay to the commission a sum equal to one half the cost of the construction authorized in section one, if the total cost thereof does not exceed three million dollars; and if the total cost of

² See Section 4 of Chapter 679 of the Acts of 1965 authorizing the Department of Public Works to expend funds on the project described in Chapter 682 of the Acts of 1964.

said construction exceeds three million dollars, to pay to the commission that part of such total cost which is in excess of one and one half million dollars.

The authority is hereby authorized to enter into such agreement and do all things necessary under this act, notwithstanding any contrary provision of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

Section 5. For the purposes of this act, the commission may, on behalf of the commonwealth, take by eminent domain under chapter seventy-nine of the General Laws, or acquire by purchase or otherwise, any lands, waters, water rights, rights of way, easements or other property or interest in property including railroad property, and shall have all the rights, powers and duties and be subject to the limitations of sections thirty-two, thirty-three and thirty-five of chapter ninety-two of the General Laws. The commission shall have all the rights, powers and duties provided by chapter twenty-eight of the General Laws and all other applicable provisions of said chapter ninety-two; provided, however, that for the purposes of this act, the commission may accept grants or properties, rights or monies and enter into agreements, in forms approved by the attorney general, with any department, commission or agency of the commonwealth or any railroad or other public franchise holder or agency as provided by said chapter ninety-two.

Section 6. The commission may, on behalf of the commonwealth, make application for and use any federal funds or assistance or both as may be obtainable in the planning or construction of said high level bridge or any part of the total project.

Approved July 3, 1964.

CHAPTER 740 OF THE ACTS OF 1964.

An Act Repealing Statutory Powers of the Governor's Council Which Interfere with the Efficient Operation of the Executive Department of The Commonwealth.

Be it enacted by the People, and by their authority:

Section 1. As used in this act, the phrase "the council" shall mean the council for advising the governor established in accordance with Part II, Chapter 2, Section 3, of the Constitution of the Commonwealth.

As used in this act, the phrase "advice and consent of the council" shall include, without limitation, approval, advice, consent, and advice and consent, however phrased in the General Laws and in any special law of the commonwealth.

As used in this act, the phrase "executive department" shall include, without limitation, all departments, divisions, boards, bureaus, commissions, institutions, councils and offices of state government and of county government, and any instrumentality or agency within or under any of the

56.

foregoing, whether or not serving under the governor or under the governor and council, and any independent authority, district, commission, instrumentality or agency, but expressly excluding therefrom the legislative and judicial departments and any instrumentality or agency of a city or town.

Section 2. The provisions of this act shall not be applicable to section sixty-five of chapter six, to section fifteen of chapter twenty-three, to section two of chapter twenty-five, to section four of chapter twenty-seven, or to section one of chapter fifty-eight A of the General Laws, except, however, that if the council shall neither grant nor refuse its advice and consent with respect to any appointment or removal under any of the aforesaid provisions of the General Laws within the thirty calendar days next following any such appointment or removal, then the person so appointed or removed shall be deemed to have been appointed or removed, as the case may be, as if such advice and consent had been granted.

Section 3. Subject to section two of this act and except as required by the constitution of the commonwealth, so much of each provision of the General Laws and of any special law as requires the advice and consent of the council to any appointment in the executive department, or to the fixing of any salary, or other compensation for services rendered, in the executive department, or to the removal of any person holding office in the executive department, including without limitation, any person appointed prior to the effective date of this act, is hereby repealed.

Any such appointment in the executive department by any officer other than the governor which heretofore required the advice and consent of the council shall instead require the approval of the governor.

At any time within fifteen days after the making of any such appointment which heretofore required the advice and consent of the council the governor may, without cause, remove the person so appointed.

Section 4. Subject to section two of this act and except as required by the constitution of the commonwealth, so much of each provision of the General Laws and of any special law as requires the advice and consent of the council with respect to any action or omission to act by the governor or by any officer, agency or instrumentality in the executive department, including without limitation, any deposit, borrowing, loan, investment, endorsement, validation, surety or bond, or any lease, license, purchase, acquisition, sale, conveyance, disposition or transfer, or any contract or other agreement, or any permit or license, or any rules or regulations, is hereby repealed.

Section 5. Notwithstanding anything in this act contained to the contrary, the governor shall at all times, in his sole discretion, be free to seek the advice and consent of the council upon any matter.

Section 6. The provisions of this act are severable. If any provision of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect any other provisions of this act.

OFFICE OF THE SECRETARY, BOSTON, November 16, 1964. I hereby certify that the foregoing law entitled "An Act Repealing Statutory Powers of the Governor's Council which Interfere with the Efficient Operation of the Executive Department of the Commonwealth" was approved by the People at the State Election held on November 3, 1964, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, as amended by Article LXXIV of said Amendments.

KEVIN H. WHITE,
Secretary of the Commonwealth.

CHAPTER 733 OF THE ACTS, EXTRA SESSION, 1966.

An Act Changing the Harbor Line on the Northerly Side of Boston Harbor.

Be it enacted, etc., as follows:

Section 1. The harbor lines on the northerly side of Boston harbor are hereby changed and established as follows:

[See Act for metes and bounds description]

Section 2. The harbor line established by chapter four hundred and eleven of the acts of nineteen hundred and thirty-nine is hereby abolished.

Section 3. Any license hereafter granted by the department of public works to the Massachusetts Port Authority under the provisions of chapter ninety-one of the General Laws for the filling of any tidewaters lying to the southerly of the latitude of point I' (prime) as defined in section one of this act shall be irrevocable upon compliance with all applicable provisions of said chapter ninety-one, and the provisions of section twenty-seven A of chapter one hundred and thirty of the General Laws shall not apply to any part of the area to which any such license may apply.

Section 3A. The Massachusetts Port Authority shall, on or before February first, nineteen hundred and sixty-seven, submit to the general court a master plan for the proposed development of the General Edward Lawrence Logan International Airport, including the amount of land to be taken by said Authority for the future development of said airport.

Section 3B. The Massachusetts Port Authority is hereby directed to investigate and study the regulations adopted or under consideration by the agencies managing airports in New York, Chicago, and Washington with particular emphasis on noise abatement and rules affecting the health, quiet and safety of the communities served by such airports. Such study shall include the feasibility of obtaining equipment to measure the decibel level of sounds emanating from aircraft, and of methods of controlling the same, including the possibility of levying charges against the owners of aircraft which exceed certain acceptable levels. The director of the Massachusetts Port Authority is directed to report the results of the investigation, together with recommendations for

58.

legislation where necessary, and together with proposals for regulations designed to protect the health, quiet and safety of the people of metropolitan Boston, to the general court, by filing the same with the clerk of the senate on or before June first, nineteen hundred and sixty-seven.

Section 4. This act shall take effect upon its passage.

Approved December 28, 1966.

CHAPTER 869 OF THE ACTS OF 1967.

An Act Authorizing the Armory Commission to Sell to the Massachusetts Port Authority Certain Land and Buildings Owned, Used or Controlled by the Military Division of the Commonwealth at the General Edward Lawrence Logan International Airport.

Be it enacted, etc., as follows:

Section 1. The armory commission, with the approval of the governor, is hereby authorized to sell to the Massachusetts Port Authority, and the said Authority, subject to such conditions, limitations and restrictions as may be set forth in the trust agreement provided for in section twelve, as amended, of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, is hereby authorized and empowered to purchase from the commonwealth, for the sum of four million fifty thousand dollars a certain parcel of land and the buildings thereon, now or formerly owned, used or controlled by the military division of the commonwealth at General Edward Lawrence Logan International Airport, hereinafter known as the air base, bounded and described as follows:

[See Act for metes and bounds description]

Section 2. The funds received by the armory commission as the result of said sale shall be placed in a special fund known as the Air Base Replacement Fund. The armory commission shall have full authority to expend the funds of the Air Base Replacement Fund for the purchase; taking or other acquisition of land and buildings, and for the construction of new buildings, ramps, runways and other facilities on such land or other land owned by the military division or the military reservations commission of the commonwealth; and for the equipment of such buildings and facilities as may be deemed necessary by the armory commission for the proper accommodation, training, operation and administration of the Massachusetts Air National Guard organizations. Expenditures from the Air Base Replacement Fund may be made in conjunction with such federal funds as may be available. For the foregoing purposes the armory commission may expend from the Air Base Replacement Fund such sums as may be necessary to employ or contract for the services of architects, engineers, attorneys, clerks of the works, clerical personnel and other consultants, and for tests, borings, surveys, estimates, appraisals and other activities incidental to the sale or purchase of land and buildings, and the construction of buildings, ramps and other facilities of a new air base for the Massachusetts Air National Guard.

Section 3. The agreement of sale of the air base may provide for the payment of the purchase price into the Air Base Replacement Fund, in installments. Such agreement shall provide that title to the air base shall not pass to the purchaser, and that the purchaser thereof shall have no occupancy, right of entry or use of the premises until the armory commission shall have certified that all organizations and personnel located at the air base have been relocated in replacement facilities and that there is no further military requirement for the air base or any portion thereof.

Section 4. Section 1 of Chapter 465 of the acts of 1956 is hereby amended by striking out paragraph (a), as appearing in section 1 of chapter 599 of the acts of 1958, and inserting in place thereof the following paragraph: -

[See SECTION 4 of Enabling Act for metes and bounds description]

Section 5. Paragraph (k) of section 3 of said chapter 465 is hereby amended by striking out, in lines 20 to 26, inclusive, the words "; and provided, further, that nothing in this act shall be construed to confer upon the Authority the power to take by eminent domain under existing or future statutes any part of Logan Airport now under lease to the United States of America nor that part of Logan Airport now used or controlled by the military division of the commonwealth for the purpose of the air national guard."

Section 6. Section 4 of said chapter 465 is hereby amended by striking out the third and sixth paragraphs.

Section 7. Section 23 of said chapter 465 is hereby amended by striking out the eighth paragraph, as appearing in section 11 of chapter 599 of the acts of 1958.

Section 8. Paragraph (a) of section one of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, as amended by section four of this act, shall take effect upon the transfer to the Massachusetts Port Authority of the property described in section one of this act in accordance with the provisions of section three of this act.

Approved January 4, 1968.

CHAPTER 893 OF THE ACTS OF 1967.

An Act Relative to the Maintenance by the Massachusetts Port Authority of a Floating Boom to Safeguard Boston Harbor from the Dangers of Oil Pollution.

Be it enacted, etc., as follows:

Section 1 - For the purpose of safeguarding Boston harbor and its tributary waters from the dangers of oil pollution, the Massachusetts Port Authority may, as a part of its administrative expense, maintain and keep readily accessible for use a suitable floating boom and, at any time and

60.

from time to time, permit the use thereof, free of charge, by the fire department of any city or town bordering on said harbor or waters.

Section 2. Chapter six hundred and thirty-seven of the acts of nineteen hundred and fifty-one is hereby repealed.

Approved January 5, 1968.

CHAPTER 90 OF THE RESOLVES OF 1968.

Resolve Providing for an Investigation and Study by the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority Relative to the Feasibility of Operating a High-speed Transportation System from General Edward Lawrence Logan International Airport to Downtown Boston.

Resolved, That the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority are hereby authorized and directed to make a joint investigation and study relative to the feasibility of operating an improved high-speed public transportation system from the General Edward Lawrence Logan International Airport administration building and from the Massachusetts Bay Transportation Authority airport station to points in downtown Boston. Said authorities shall report to the general court the results of their joint investigation and study, and their recommendations, if any, together with drafts of legislation necessary to carry their recommendations into effect, by filing the same with the clerk of the house of representatives on or before the third Wednesday of December, nineteen hundred and sixty-eight.

Approved June 19, 1968.

CHAPTER 367 OF THE ACTS OF 1969.

An Act Prohibiting the Charging of Tolls by the Massachusetts Port Authority for Vehicles in Funeral Processions of Vietnam Veterans Who Died in Service in Vietnam.

Be it enacted, etc., as follows:

Section 1. Notwithstanding any provision of law to the contrary, the Massachusetts Port Authority shall not charge tolls for vehicles taking part in funeral processions of Vietnam veterans who died in service in Vietnam.

Section 2. This act shall take effect upon its acceptance by the Massachusetts Port Authority.

Approved June 3, 1969.

CHAPTER 704 OF THE ACTS OF 1969.

An Act Establishing a Governor's Cabinet.

Be it enacted, etc., as follows:

EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION.

Section 19. The following state agencies are hereby declared to be within the executive office of transportation and construction: the department of public works, including the government center commission established by section one of chapter six hundred and thirty-five of the acts of nineteen hundred and sixty, and all other state agencies within said department except the registry of motor vehicles, the division of motorboats, the outdoor advertising division, and outdoor advertising board; and the Massachusetts aeronautics commission. The Massachusetts Bay Transportation Authority, the Massachusetts Port Authority and the Massachusetts Turnpike Authority shall also be within the executive office of transportation and construction.

Nothing in this chapter shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies and authorities except as expressly provided by law.³

Section 51. No provision of this act whereby a division, board, commission or other agency which, immediately prior to the effective date of this act, was assigned by any provision of the General Laws to any of the departments of the commonwealth, without being subject to the direction, supervision or control thereof, is removed from such department shall be construed as abolishing such division, board, commission or other agency or as creating a new agency, nor shall any such provision of this act be construed as increasing, diminishing or otherwise affecting in any manner the powers and duties of any such agency or any officer or employee thereof.

Approved August 14, 1969.

³ Section 4 of Chapter 704 of the Acts of 1969 provided:

Section 4. Each secretary shall act as the executive officer of the governor for accomplishing the purposes of his executive office. He shall conduct comprehensive planning with respect to the functions of said office and coordinate the activities and programs of the state agencies therein. He shall conduct studies of the operations of said agencies with a view to effecting improvements in administrative organization, procedures and practices, and to promoting economy, efficiency, and avoiding useless labor and expenses in said agencies. He shall from time to time recommend to the governor such changes as he shall deem desirable in the laws relating to the organization, structure, efficiency or administrative functions, services, procedures and practices of any such agency or agencies. He shall review and act upon budgetary and other financial matters concerning said agencies in accordance with sections two C, three, three A, four, nine B and twenty-nine of chapter twenty-nine.

CHAPTER 75 OF THE RESOLVES OF 1969.

Resolve Continuing the Investigation and Study by the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority Relative to the Feasibility of Operating a High Speed Transportation System from General Edward Lawrence Logan International Airport to Downtown Boston.

Resolved, That the Massachusetts Bay Transportation Authority and the Massachusetts Port Authority are hereby authorized and directed to continue the joint investigation and study authorized by chapter ninety of the resolves of nineteen hundred and sixty-eight. Said authorities shall report to the general court the results of their joint investigation and study, and their recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect, by filing the same with the clerk of the house of representatives on or before the last Wednesday of January, nineteen hundred and seventy.

Approved August 7, 1969.

CHAPTER 295 OF THE ACTS OF 1971.

An Act Requiring the Massachusetts Port Authority to Submit a List of the Fair Market Value of All of its Tax-exempt Property.

Be it enacted, etc., as follows:

Notwithstanding any provision of law to the contrary, the Massachusetts Port Authority is hereby authorized and directed to submit a list of its tax-exempt property, together with the fair market value thereof, to the department of corporations and taxation, to the city of Boston and to the town of Bedford.

Approved May 13, 1971.

CHAPTER 584 OF THE ACTS OF 1971.

An Act Providing That the Board to Facilitate the Use of Public Buildings by the Physically Handicapped May Adopt Rules and Regulations Applicable to Certain Buildings of Public Authorities and Public Educational Institutions.

Be it enacted, etc., as follows:

Section 1. Section 13A of chapter 22 of the General Laws, inserted by section 1 of chapter 724 of the acts of 1967, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

As used in this section, the term "public building" shall be construed to mean buildings constructed by the commonwealth or any political subdivision thereof with public funds and open to public use, and including public housing authorities, the Massachusetts Port Authority, the Massachusetts Parking Authority, the Massachusetts Turnpike Authority, or building authorities of any public educational institution, or their successors, and the term "physically handicapped person" shall be construed to mean any of the following: a person confined to a wheel chair, a person who, because of the use of braces or crutches or because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary or cardiac condition, walks with difficulty or insecurity, a person who, due to a brain, spinal or peripheral nerve injury, suffers from a faulty coordination or palsy, a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger, a person whose hearing is so impaired that he is unable to hear warning signals and a person whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging.

Section 2. No rule or regulation made by the board to facilitate the use of public buildings by the physically handicapped established under section thirteen A of chapter twenty-two of the General Laws, as amended by section one of this act, shall apply to any structure or appurtenance thereto constructed, reconstructed, remodeled, altered, improved or added to their property by or for public housing authorities, the Massachusetts Port Authority, the Massachusetts Parking Authority, the Massachusetts Turnpike Authority or building authorities of any public educational institution or their successors prior to the effective date of this act.

Approved July 29, 1971.

CHAPTER 3 OF THE RESOLVES OF 1975.

Resolve Providing for an Investigation and Study by the Massachusetts Port Authority Relative to the Feasibility of Establishing a Foreign-trade Zone in the Commonwealth.

Resolved, That the Massachusetts Port Authority is hereby authorized and directed to make an investigation and study relative to the feasibility of establishing a foreign-trade zone in the commonwealth.

Said Authority shall, in the course of its investigation, consult with the United States Foreign-Trade Zones Board, examine federal and state statutes in order to determine how such a foreign-trade zone would be established, and examine the experiences of other foreign-trade zones and their economic impact to the states in which they are located. Said Authority shall consider the feasibility of sites for such foreign-trade zone in the commonwealth, both within and without the jurisdiction of said Authority.

Said Authority shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry such

64.

recommendations into effect, by filing the same with the clerk of the senate on or before December first, nineteen hundred and seventy-five.

Approved March 28, 1975.

CHAPTER 373 OF THE ACTS OF 1977.

An Act Authorizing the Sale of Certain Land of the Massachusetts Port Authority to Certain Persons.

Be it enacted, etc., as follows:

Notwithstanding the provisions of section twenty-three of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, but subject to the provisions of section four of said chapter four hundred and sixty-five and the provisions of the trust agreement authorized and entered into by said chapter four hundred and sixty-five, the Massachusetts Port Authority is hereby authorized to sell parcels of residential property in the East Boston district of the city of Boston heretofore purchased by said Authority and now deemed by said Authority to be no longer needed for the purposes for which they were acquired, to employees of said Authority who were residents of the East Boston district of said city as of April fifteenth, nineteen hundred and seventy-six, and who currently reside in said district of said city as tenants of said Authority, as part of a program which will give present tenants priority in the purchase of residential property owned by said Authority.

Such employees of said Authority purchasing said property from said Authority by sale hereinabove authorized shall not be subject to the penalty provided by section twenty-three of said chapter four hundred and sixty-five.

Approved July 6, 1977.

CHAPTER 949 OF THE ACTS OF 1977.

An Act Amending the Tax Exempt Status of the Massachusetts Port Authority.

*Be it enacted, etc., as follows:*⁴

Section 1. The general court finds and declares that a serious inequity exists and has been perpetuated as a result of its having previously granted to the Massachusetts Port Authority a complete exemption from taxation. The greatest impact of that exemption is currently being felt in the cities of Boston and Chelsea, where the Authority's operations are centered, and because the

⁴ Section 1 of Chapter 332 of the Acts of 1978 repealed Sections 1 to 7 inclusive of this Chapter 949.

exemption was created largely in part to enable the Authority to put its projects on a sound financial footing, and being mindful of the fact that the protection and stability the general court sought to provide the fledgling Authority has now, and for some years past, achieved its essential purpose, a new distribution of privileges and obligations is now deemed fit, necessary, just and proper to benefit the citizens of the commonwealth in general and the citizens of the cities of Boston and Chelsea in particular. The general court after long investigation finds that the continued tax exempt operation of the Authority's projects in the cities of Boston and Chelsea has resulted in an erosion of said cities' tax base from which revenues would otherwise be derived in an amount of three to five million dollars to meet the reasonable demands of its citizenry for services. In the absence of those revenues the city of Boston has been forced to turn to the commonwealth for relief through various state aid mechanisms, the granting of which relief has resulted in lesser distributions to the commonwealth's other cities and towns than might otherwise have been possible. Moreover, without the relief provided by the terms of this act, the general court finds it is conceivable that harm of an economic nature could result to the Authority and its bondholders by virtue of the Authority's central location in a community less financially able to provide sound and sure access to and from its projects. The general court feels that the future of the Authority and the capital of the commonwealth are so interrelated that justice and economic self-interest require these modifications to be made. For all the aforementioned reasons the general court finds it necessary and desirable to modify the Authority's tax exempt status for the benefit of the commonwealth and with due regard for the rights and obligations of its communities.

Section 2. As used in this act, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent: -

"Authority", the Massachusetts Port Authority created by section two of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

"Current expenses", the current expenses which are defined and set forth in section one of chapter seven hundred and nineteen of the acts of nineteen hundred and sixty-seven.

"Project", project as defined in section three of chapter seven hundred and nineteen of the acts of nineteen hundred and sixty-seven.

"Revenues", moneys received by the Authority in payment of the tolls, rates, fees, rentals and other charges for the use of and for the services and facilities furnished by the projects of the Authority, any proceeds of use and occupancy insurance and all other income derived by the Authority from the operation or ownership of its properties and also the income from the investment of moneys held for the credit of all funds and accounts created; provided, however, that the word "revenues" as applied to the properties as defined in section ten of chapter five hundred and ninety-nine of the acts of nineteen hundred and fifty-eight shall not exceed an amount equal to the total of the amount of the current expenses of the properties until payments shall have been made to the state treasurer in the aggregate amounts required by section six of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

66.

"Trust agreement", the trust agreement made and entered into by and between the Authority and the trustee under section twelve of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, as most recently amended.

Section 3. For the privilege of conducting its projects in the cities of Boston and Chelsea, the authority shall pay to the city of Boston on the first day of November of each year an excise equal to 4.777 per cent of its revenues from the preceding fiscal year and shall pay to the city of Chelsea an excise equal to .223 per cent of its revenues from the preceding fiscal year. For the purposes of this section the term "revenues" shall not include moneys derived from the operation and maintenance of Bedford Airport.

Section 4. The excise imposed herein shall be considered a tax lawfully imposed on the Authority or its income as an exercise of the commonwealth's reserve taxing power and shall be paid by the Authority as a current expense.

Section 5. The excise imposed by this act shall be considered an estimated receipt for the purposes of section twenty-three of chapter fifty-nine of the General Laws.

Section 6. The supreme judicial court of Massachusetts is hereby granted exclusive original jurisdiction to hear and settle disputes arising under the provisions of this act.

Section 7. The excise imposed herein shall apply to revenues for fiscal years ending June thirtieth, nineteen hundred and seventy-seven and thereafter.

Section 8.⁵ Section 17 of chapter 465 of the acts of 1956, as most recently amended by section 6 of chapter 719 of the acts of 1967, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence: - The exercise of the powers granted by this act will be in all respects for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the projects by the Authority will constitute the performance of essential governmental functions, the Authority after the payment of any excise which may be levied upon it or its income for the privilege of operating its projects in the cities of Boston and Chelsea shall not be required to pay any taxes or assessments upon any project or any property acquired or used, by the Authority under the provisions of this act or upon the income therefrom and the bonds issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the commonwealth, and no property of the Authority shall be taxed to a lessee thereof under section three A of chapter fifty-nine of the General Laws; provided, however, that any thing herein to the contrary notwithstanding, lands of the Authority, except lands acquired by the commonwealth under the provisions of chapter seven hundred and five of the acts of nineteen hundred and fifty-one situated in that part of the city

⁵ See Chapter 332 of the Acts of 1978 and Chapter 497 of the Acts of 1980 for further amendments.

called South Boston and constituting a part of the Commonwealth Flats, and lands acquired by the Authority which were subject to taxation on the assessment date next preceding the acquisition thereof, shall, if leased for business purposes, be taxed by the city or by any city or town in which the said land may be situated to the lessees thereof, respectively, in the same manner as the lands and the buildings thereon would be taxed to such lessees if they were the owners of the fee, except that the payment of the tax shall not be enforced by any lien upon or sale of the lands, but a sale of the leasehold interest therein and of the buildings thereon may be made by the collector of the city in the manner provided by law in case of nonpayment of taxes for selling real estate, for the purpose of enforcing the payment of the taxes by such lessees to the city or town assessed under the provisions hereof.

Section 9. This act shall take effect upon its passage.

Approved January 10, 1978.

CHAPTER 1 OF THE RESOLVES OF 1977.

Resolve Providing for an Investigation and Study by the Massachusetts Port Authority Relative to Aiding the Stability and Expansion of the Massachusetts Seafood Industry.

Resolved, That the Massachusetts Port Authority is hereby authorized and directed to make an investigation and study of the subject matter of current house document numbered 1796, providing for aid to the stability and expansion of the Massachusetts seafood industry. Said Authority shall, in the course of its investigation and study, consult with the secretary of environmental affairs, the secretary of commerce and development, the secretary of transportation and such other secretariats as may be necessary.

Said Authority shall consider but not be limited to the following: the effects the proposed two hundred mile fishing limitation will have on the fisheries usually fished by Massachusetts fishermen, particularly those servicing the Boston Fish Pier, the effect of the demand for new boats and the number to be expected over the next five years, and the training of a sufficient number of persons to work as fishermen, deck hands, and various other occupations. Said Authority shall also consider an examination of various species and where they are landed to determine the effects that such species would have if landed at the Boston Fish Pier or various other Massachusetts ports. Said Authority shall also consider the demand for processing facilities both new and rehabilitated, to accommodate the increased fresh fish to be landed at the Boston Fish Pier as well as available trained personnel to process it, unload it and prepare it for shipment.

Said Authority shall also consider the economic impact that the two hundred mile limit may have on the increased distribution of fresh fish out of the various Massachusetts ports as well as the distribution techniques presently employed and what form such techniques may take in the future. Said Authority shall also consider the possible effect and impact of any oil spills or related damages

68.

within the two hundred mile limit upon the fishery facilities located at the various ports of the commonwealth. Said Authority shall also consider chapter eleven hundred and four of the acts of nineteen hundred and seventy-one, relative to extending the lateral boundaries of the commonwealth drawn seaward to a distance of two hundred miles. Said Authority shall also consider any issues it deems necessary in order to properly evaluate the impact of the new federal two hundred mile fishing limit. Said Authority shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives from time to time, but shall file an annual report no later than the last Wednesday of December, nineteen hundred and seventy-seven.

Approved February 22, 1977.

CHAPTER 487 OF THE ACTS OF 1978.

An Act Establishing the Massachusetts Port Authority Employees' Retirement System.

Be it enacted, etc., as follows:

Section 1. The paragraph defining "Employee" in section 1 of chapter 32 of the General Laws, as most recently amended by section 12 of chapter 708 of the acts of 1975, is hereby amended by adding, the following sentence: - "Employee", as applied to persons whose regular compensation is paid by the Massachusetts Port Authority, shall mean any person, whether employed for a stated term or otherwise, who is engaged in duties which require that his time be devoted to the service of the authority in each year during the ordinary working hours of regular and permanent employees, but shall not include any member of the state police force assigned to the Massachusetts Port Authority under the provisions of chapter two hundred and seventy-four of the acts of nineteen hundred and fifty-nine.

Section 2. Said section 1 of said chapter 32 is hereby further amended by striking out the paragraph defining "member", as most recently amended by section 2 of chapter 1003 of the acts of 1973, and inserting in place thereof the following paragraph: -

"Member", any employee included in the state employees' retirement system, in the teachers' retirement system or in any county, city, town, the Massachusetts Turnpike Authority, the Massachusetts Housing Finance Agency, or the Massachusetts Port Authority contributory retirement system and the Massachusetts Bay Transportation Authority police retirement system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, and if the context so requires, any member of any contributory retirement system established under the provisions of any special law.

Section 3. Said section 1 of said chapter 32 is hereby further amended by striking out the paragraph defining "Political subdivision", as most recently amended by section 13 of chapter 708 of the acts of 1975, and inserting in place thereof the following paragraph: -

"Political subdivision", the metropolitan district commission or any county, hospital district, city, town, district or housing authority, established under the provisions of section five of chapter one hundred and twenty-one B, the Massachusetts Turnpike Authority, the Massachusetts Parking Authority, the Old Colony Planning Council, the Massachusetts Bay Transportation Authority, the Massachusetts State College Building Authority, the University of Lowell Building Authority, the Massachusetts Housing Finance Agency, the Massachusetts Port Authority or any other public unit in the commonwealth.

Section 4. Said section 1 of said chapter 32 is hereby further amended by striking out the paragraph defining "System", as most recently amended by section 4 of chapter 1003 of the acts of 1973, and inserting in place thereof the following paragraph: -

"System", the state employees' retirement system, the teachers' retirement system, the Massachusetts Turnpike Authority employees' retirement system, the Massachusetts Housing Finance Agency employees' retirement system, the Massachusetts Bay Transportation Authority police retirement system, the Massachusetts Port Authority employees' retirement system, or any county, city, or town contributory retirement system, as the case may be, established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws and subject thereto, in which any member is included, and if the context so requires, any contributory retirement system established for the employees of any governmental unit under the provisions of any special law.

Section 5. Section 2 of said chapter 32 is hereby amended by striking out the fourth sentence, as most recently amended by section 14 of chapter 708 of the acts of 1975, and inserting in place thereof the following sentence: - Subject to said sections, an employee of the commonwealth or of the metropolitan district commission or of the Massachusetts State College Building Authority or of the University of Lowell Building Authority or of the Massachusetts Parking Authority or of the Old Colony Planning Council or of the Boston Arena Authority shall be included in the state employees' retirement system, except that a register of probate shall be included in the system of the county in which he is elected, a teacher as defined in section one shall be included in the teachers retirement system, an employee of a county or of a hospital district, an employee of a mosquito control district or a mosquito control project, located within a county shall be included in the system of such county, an employee of a city or town other than a teacher as defined in section one shall be included in the system of or which pertains to the municipality by which he is employed, an employee of the Massachusetts Turnpike Authority shall be included in the Massachusetts Turnpike Authority employees' retirement system, an employee of the police department of the Massachusetts Bay Transportation Authority shall be included in the Massachusetts Bay Transportation Authority police retirement system, an employee of the Massachusetts Housing Finance Agency shall be included in the Massachusetts Housing Finance

70.

Agency employees' retirement system, an employee of the Massachusetts Port Authority shall be included in the Massachusetts Port Authority employees' retirement system, and, an employee of a district shall be included in a system as provided for in subdivision (4) of section twenty-eight, except that in the case of a district which comprises cities and towns located in more than one county, or in the case of a district in which the cities and towns comprising such district may vary from time to time, the employees of such district may become members of the state employees' retirement system, subject to the provisions of subdivision (4) of section twenty-eight.

Section 6. Paragraph (b) of subdivision 4 of section 7 of said chapter 32 is hereby amended by striking out the last sentence, added by section 8 of chapter 1003 of the acts of 1973, and inserting in place thereof the following sentence:- This subdivision shall not be applicable to the Massachusetts Turnpike Authority or its employees' retirement system, to the Massachusetts Housing Finance Agency or its employees' retirement system, or to the Massachusetts Port Authority or its employees' retirement system.

Section 7. Subdivision (3) of section 11 of said chapter 32 is hereby amended by striking out the second paragraph, as amended by section 9 of said chapter 1003, and inserting in place thereof the following paragraph: -

No check which has been issued by the state treasurer in payment of any obligation of the state board of retirement or the teachers' retirement board under authority of sections one to twenty-eight, inclusive, or which is issued by any county, city or town treasurer, by the secretary-treasurer of the Massachusetts Turnpike Authority, by the treasurer of the Massachusetts Housing Finance Agency, or by the secretary-treasurer of the Massachusetts Port Authority in payment of any obligation of any retirement system established under this chapter shall be payable later than six years after its date, and the obligation of the commonwealth or of any county, city, town, the Massachusetts Turnpike Authority, the Massachusetts Housing Finance Agency or the Massachusetts Port Authority represented by any such check shall not be enforceable if such check is not presented for payment within such period. The amount represented by such check shall thereupon be transferred to the pension fund of the retirement system under whose authority the check was originally issued.

Section 8. Subdivision (1) of section 14 of said chapter 32 is hereby amended by striking out the first paragraph of subdivision (a), as amended by section 11 of chapter 597 of the acts of 1967, and inserting in place thereof the following paragraph: -

Any employee who was a member in service at the time of sustaining an injury or undergoing a hazard on account of which he becomes entitled to payments under the provisions of chapter one hundred and fifty-two, shall, during the period while he is receiving weekly payments for total incapacity under the provisions of sections sixty-nine to seventy-five, inclusive, of said chapter or of section thirty-four, thirty-four A, thirty-five A or thirty-six of said chapter in the case of an employee of the Massachusetts Turnpike Authority or the Massachusetts Port Authority, or during any period, determined as set forth in paragraph (c) of this subdivision, represented by the allocation

of the amount of any lump sum settlement payable directly to him under the provisions of section forty-eight of such chapter in lieu of such weekly payments, and also in either event during a further period of thirty days, retain all the rights of a member in service while he is living, unless and until a retirement allowance becomes effective for him under the provisions of sections one to twenty-eight, inclusive. During such periods, however, no deductions for the annuity savings fund of the system shall be made from payments such members shall receive under the provisions of chapter one hundred and fifty-two, nor shall he withdraw his accumulated total deductions therefrom.

Section 9. Section 15 of said chapter 32 is hereby amended by striking out subdivision (2), as amended by section 10 of chapter 1003 of the acts of 1973, and inserting in place thereof the following subdivision:-

(2) Initiation of Proceedings. Proceedings under this section may be initiated by the board, by the head of the department or by the commission or board of the commonwealth or of any political subdivision thereof wherein the member is employed or was last employed if not then in service, or in a county by the county commissioners, in a city by the mayor, in a town by the board of selectmen; in the Massachusetts Turnpike Authority by the authority, in the Massachusetts Housing Finance Agency by the agency, or in the Massachusetts Port Authority by the authority. The procedure set forth in subdivision (1) of section sixteen relative to delivery of copies, statement of service thereof, notice, hearing if requested, and the filing of a certificate of findings and decision, so far as applicable, shall apply to any proceedings under this section.

Section 10. Section 20 of said chapter 32 is hereby amended by inserting after subdivision (4 $\frac{3}{4}$) the following subdivision: -

(4 $\frac{7}{8}$) (a) The contributory retirement system established for the Massachusetts Port Authority under the provisions of sections one to twenty-eight, inclusive, shall be known as, and all of its business shall be transacted under the name of, the "Massachusetts Port Authority Employees' Retirement System".

(b) Said system shall be managed by a retirement board which shall have the general powers and duties set forth in subdivision (5) of the section. Said board shall consist of three members as follows: the secretary-treasurer of the Authority who shall be a member ex officio, a second member who shall be elected by the members in service of such System from among their number in such manner and for such term, not exceeding three years, as the chairman of the Authority shall determine, and a third member who shall be chosen by the other two for a term of three years. Future elections of the second member shall be held under the supervision of said retirement board and the term of the second member shall be arranged so as not to expire in the year of expiration of the term of the third member. If a third member is not chosen by the other two members within thirty days after the expiration of the term of the third member, the Authority board shall appoint a third member for a term of three years. Each member of said retirement board shall continue to hold office until the expiration of his term and until the qualification of his successor. Upon the expiration of the term of office of any elected or appointed member or in case of a vacancy in either

72.

of said offices, his successor shall be elected or appointed as aforesaid for a three-year term or for the unexpired portion thereof, as the case may be, except that in no event shall the term of the second member expire in the same year as the term of the third member.

(c) The members of the board shall serve without compensation, but they shall be reimbursed from the expense fund of the system for any expense or loss of salary or wages which they may incur through service on said board. Nothing in this paragraph shall prevent the secretary-treasurer, or any other person who serves in the active administration of the system in lieu of the secretary-treasurer, from being compensated for services rendered in the active administration of the system; provided, that the compensation for such services shall not be less than two hundred nor more than fifteen hundred dollars per annum, and shall be payable from the expense fund of the system.

(d) The board by majority vote shall elect one of its members to serve as chairman until the election of his successor and shall appoint a secretary who may be, but need not be, one of its members. The board shall employ such clerical and other assistants as may be required to transact the business of the system.

(e) The chief legal counsel of the Authority shall be the legal advisor of the board; provided, that in such cases as the board deems necessary it may employ other counsel whose fees shall be paid from the expense fund of the system.

(f) The secretary-treasurer may be compensated for services rendered as custodian of the funds of the retirement system, provided that the compensation for such services shall not be more than fifteen hundred dollars per annum and shall be payable from the expense fund of the system.

Section 11. Paragraph (i) of subdivision (5) of section 20 of said chapter 32 is hereby amended by inserting after the eighth sentence, added by section 12 of chapter 1003 of the acts of 1973 the following sentence:- The retirement board of the Massachusetts Port Authority employees' retirement system shall file a copy of its report with the Authority for publication in the Authority's annual report to the governor and to the general court.

Section 12. Paragraph (c) of subdivision (1) of section 21 of said chapter 32 is hereby amended by striking out the last sentence, as most recently amended by section 13 of said chapter 1003, and inserting in place thereof the following sentence:- Upon the completion of such examination, verification and valuation, the commissioner shall make a report in writing of his findings to the board, and shall send a copy thereof to the governor and state treasurer, the county commissioners, the mayor, the board of selectmen, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, or the Massachusetts Port Authority, as the case may be.

Section 13. Subdivision (2) of said section 21 of said chapter 32, as most recently amended by section 14 of said chapter 1003, is hereby further amended by adding the following sentence:

The Massachusetts Port Authority shall reimburse the commonwealth for such proportion of such expenses attributable to its retirement system as shall be determined just and proper by the commissioner of insurance, which sum shall be paid to the state treasurer upon notice from the commissioner.

Section 14. Subdivision (7) of section 22 of said chapter 32 is hereby amended by adding the following paragraph: - (h) The retirement board of the Massachusetts Port Authority employees' retirement system shall, on or before October fifteenth in each year, furnish the actuary with such information as he may require to enable him to determine the amount to be paid for the pension fund of said system by the Authority for the fiscal year commencing on the next following July first. The actuary shall, on or before the December fifteenth immediately preceding such fiscal year, determine such amount and specify in a written notice to said board the amount so required to be paid. The board shall, at least ten days before the January first next following the receipt of such notice from the actuary, certify to the Authority the amount necessary to be paid for such fiscal year for the three aforesaid funds of said system and the amount so certified shall be included by appropriate items in the Authority's budgets for such fiscal year and shall be paid by the Authority to the treasurer-custodian of said system in twelve equal monthly installments to be credited to the several funds thereof. Such amounts as the actuary deems necessary to cover the requirements of the retirement system for the fiscal year prior to the beginning of the next fiscal year after this section shall become effective shall be paid into the several funds thereof in equal monthly installments by special payments of the Authority.

Section 15. Paragraph (a) of subdivision (2) of section 23 of said chapter 32 is hereby amended by striking out the first sentence, as most recently amended by section 16 of said chapter 1003, and inserting in place thereof the following sentence: - The county, city or town treasurer, the secretary-treasurer of the Massachusetts Turnpike Authority, the treasurer of the Massachusetts Bay Transportation Authority, the treasurer of the Massachusetts Housing Finance Agency, and the secretary-treasurer of the Massachusetts Port Authority shall be the treasurer-custodian of the system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws. in any county, city, or town, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency or the Massachusetts Port Authority, as the case may be, and shall have the custody of the funds of any such system.

Section 16. Subdivision (1) of section 24 of said chapter 32 is hereby amended by striking out the first sentence, as most recently amended by section 17 of said chapter 1003, and inserting in place thereof the following sentence: - If the commissioner of insurance is of the opinion that any governmental unit or any officer or employee thereof, or the state board of retirement, the teachers' retirement board or any other retirement board subject to the provisions of sections one to twenty-eight, inclusive, or any member or employee of any such board, has violated or neglected to comply with any provision of such sections, or the rules and regulations established thereunder, he shall give notice thereof to the governor, county commissioners, the mayor, the board of selectmen, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the

74.

Massachusetts Housing Finance Agency, or the Massachusetts Port Authority, as the case may be, and to the retirement board, and thereafter, if such violation or neglect continues, shall forthwith present the facts to the attorney general who shall take appropriate action.

Section 17. Section 25 of said chapter 32 is hereby amended by striking out subdivision (4), as most recently amended by section 18 of said chapter 1003, and inserting in place thereof the following subdivision:- (4) The payment of all annuities, pensions, retirement allowances and refunds of accumulated total deductions and of any other benefits granted under the provisions of sections one to twenty-eight, inclusive, are hereby made obligations of the commonwealth in the case of any such payments from funds of the state employees' retirement system or the teachers' retirement system and obligations of the governmental unit in which the system is established in the case of payments from funds of any system established in any county, city or town or in the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, or the Massachusetts Port Authority.

Section 18. Section 100 of said chapter 32 is hereby amended by striking out the third paragraph, as most recently amended by chapter 685 of the acts of 1973, and inserting in place thereof the following paragraph:- The benefits payable under this section to the widow of such deceased firefighter, police officer or corrections officer shall be paid as follows:- If her husband was a member of the state employees' retirement system, the Massachusetts Port Authority employees' retirement system or any county, city or town contributory retirement system, as the case may be, established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, and subject thereto, or any contributory retirement system established for the employees of any governmental unit under the provisions of any special law, from the same appropriation, and in the same manner, as accidental death benefits payable under the provisions of section nine; if her husband was not a member of a contributory retirement system, from the same appropriation, and in the same manner as annuities to dependents payable under the provisions of section eighty-nine or section eighty-nine A.

Section 19. Paragraph (a) of section 102 of said chapter 32 is hereby amended by striking the second and third sentences, as most recently amended by section 1 of chapter 126 of the acts of 1976, and inserting in place thereof the following two sentences: -

In the event that such comparison indicates an increase in the cost-of-living of at least three per cent, the retirement allowance, pension, or annuity of every former employee of the commonwealth or of any county, city, town, district, housing or redevelopment authority, or of the Massachusetts Turnpike Authority, or of the Massachusetts Port Authority, or of the spouse or other beneficiary of any such former employee who is receiving a retirement allowance, pension, or annuity shall, beginning July first of said year, be increased by such percentum as the general court shall determine. In the event that such comparison indicates a decrease in the cost-of-living of at least three per cent, the retirement allowance, pension, or annuity of every former employee of the commonwealth or of any county, city, town, district, housing or redevelopment authority, or of the Massachusetts Turnpike Authority, or of the Massachusetts Port Authority, or of the spouse or other

beneficiary of any such former employee who is receiving a retirement allowance, pension, or annuity shall be decreased by such percentum; provided, that no decrease shall be made which would reduce any retirement allowance, pension, or annuity to an amount less than the amount fixed for such retirement allowance, pension, or annuity as of December thirty-first, nineteen hundred and seventy-three.

Section 20. Chapter 465 of the acts of 1956 is hereby amended by striking out section 22, as most recently amended by section 1 of chapter 525 of the acts of 1960, and inserting in place thereof the following section: -

[See SECTION 22 of Enabling Act for revised text]

Section 21. Chapter 465 of the acts of 1956 is hereby amended by striking out section 25 and inserting in place thereof the following section: -

[See SECTION 25 of Enabling Act for revised text]

Section 22. Section 73 of chapter 152 of the General Laws is hereby amended by striking out the first sentence, as most recently amended by section 15 of chapter 1012 of the acts of 1971, and inserting in place thereof the following sentence: - Any person entitled under section sixty-nine to receive compensation from the commonwealth or from such county, city, town or district and any person entitled under section thirty-one, thirty-four, thirty-four A, thirty-five, thirty-five A or thirty-six to receive compensation from the Massachusetts Turnpike Authority or the Massachusetts Port Authority and any police officer of the Massachusetts Bay Transportation Authority so entitled to compensation under said sections and who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both, except in the manner and to the extent provided by section fourteen of chapter thirty-two.

Section 23. Nothing in this act shall be deemed to repeal, decrease, abridge or in any way change the annuities, pensions, retirement allowances, refunds of accumulated total deductions or any other right or benefit to which a person transferred to the Massachusetts Port Authority employees' retirement system pursuant to this act would have been entitled had he remained a member of the state employees' retirement system.

Approved July 18, 1978.

CHAPTER 12 OF THE RESOLVES OF 1979.

Resolve Providing for an Investigation and Study by a Special Commission Relative to the Operation, Regulation, Financing and Control of All Means of Transportation in the Commonwealth.

Resolved, That a special commission to consist of the members of the joint legislative committee on transportation, the secretary of transportation and construction, the commissioner of the

76.

department of public works, the chairman of the Massachusetts Port Authority, the chairman of the Massachusetts Turnpike Authority, the chairman and chief executive officer of the Massachusetts Bay Transportation Authority, and one member to be appointed by the governor, who shall be an administrator of a regional transit authority, is hereby established for the purpose of making an investigation and study of the laws of the commonwealth pertaining to the development and improvement of the transportation systems of the commonwealth with a view toward reorganizing and improving the structure of the several offices, departments, agencies, commissions and authorities now responsible for transportation policy making, capital improvements or delivery of services.

Said commission shall consider the feasibility of establishing within the commonwealth a unified department of transportation, consolidating all matters concerning the operation, regulation, financing and control of all means of transportation in the air, on land or in the water, under one central management.

Said commission may involve in advisory roles such persons, organizations, or public and private institutions as it may determine as appropriate and may travel within and without the commonwealth. Said commission may call upon officials of the commonwealth or its various subdivisions and may also call upon officials of the federal government and its various agencies and departments for such information as it may desire in the course of its investigation and study. Said commission shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives on or before the first Wednesday of December, nineteen hundred and eighty.

Approved August 3, 1979.

CHAPTER 703 OF THE ACTS OF 1979.

An Act Prohibiting the Massachusetts's Port Authority from Implementing Certain Rules and Regulations Relative to the Towing or Pushing of Certain Aircraft.

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provisions of paragraph (g), of section 3 of chapter 465 of the acts of 1956, or any other general or special law to the contrary, the Massachusetts Port Authority is hereby prohibited from adopting or enforcing any rule or regulation which would have the effect of requiring the towing or pushing of any aircraft for any part of a movement on the ground to or from a runway or taxiway in connection with a takeoff or landing, or which would have the effect of requiring the enplaning or deplaning of passengers at places other than fixed passenger terminal facilities.

Section 2. This act shall take effect upon its passage.

Section 2A. Upon the rescision of Article V of the Logan Airport Noise Rules and Regulations, Eastern Airlines shall construct a suitable sound suppressing barrier for the purpose of providing airport noise abatement for the residents of Jefferies Point in the East Boston district of the City of Boston, and to beautify same.

Approved November 9, 1979.

CHAPTER 290 OF THE ACTS OF 1980.

An Act Establishing the Hanscom Field Advisory Commission at Laurence G. Hanscom Field.

Be it enacted, etc., as follows:

Section 1. Notwithstanding any special or general law to the contrary, the Hanscom Field advisory committee, created by an executive order on July eighteenth, nineteen hundred and seventy-four, to review existing and projected activities at the Laurence G. Hanscom Field, hereinafter referred to as Hanscom Field, and to work closely with the Massachusetts Port Authority is hereby established as the Hanscom Field advisory commission, hereinafter referred to as the commission.

The commission shall consist of a representative from the four towns of Bedford, Concord, Lexington, and Lincoln, each representative to be appointed by the selectmen of their respective town. All other representatives on the commission shall be appointed by a majority of the boards of selectmen in said four towns. Two such representatives shall be appointed from each of the following categories: (1) local citizen groups concerned with problems related to aviation and transportation; (2) areawide organizations concerned with the environment, transportation planning, aircraft noise and land use and development; (3) other area towns impacted by aviation at Hanscom Field; (4) businesses basing aircraft at Hanscom Field; and (5) aviation or aviation-related businesses at Hanscom Field. In addition thereto, there shall be appointed in the same manner, one representative from a business-aviation organization and one from a general aviation organization both of whom shall be a regular user or employee of a regular user of Hanscom Field.

One-third of the commission members shall be initially appointed to serve for terms of one year, one-third for terms of two years, and one-third for terms of three years, and each member shall be appointed thereafter for a term of three years. Each commission member shall serve until the qualification of his or her successor, and vacancies shall be filled for an unexpired term by the appointing authorities. Any appointive member shall be eligible for re-appointment. The chairman shall be a resident of one of the four towns abutting Hanscom Field and shall be chosen annually by vote of the members. All members of said commission shall serve without compensation. Legislators representing the said towns shall serve as advisory members of the commission. Members of other towns or organizations having an interest in Hanscom Field may serve in an advisory capacity.

78.

Section 2. The Hanscom Field advisory commission shall have the following duties: (1) to act as an advisory commission for review and reaction with regard to decisions relating to Hanscom Field and the Hanscom Field area, including but not limited to, land use, noise abatement and transportation needs as outlined in the Hanscom Field master plan; (2) to provide continued communication between the communities surrounding Hanscom Field and the Massachusetts Port Authority; and (3) to establish an executive committee of members within the commission.

Approved June 16, 1980.

CHAPTER 636 OF THE ACTS OF 1982.

An Act Regulating the Use of Commonwealth Pier Commonly Known as Pier 5.

[Approved January 4, 1983, but repealed by Chapter 234 of the Acts of 1983.]

CHAPTER 234 OF THE ACTS OF 1983.

An Act Regulating the Use of Commonwealth Pier Commonly Known as Pier 5.

Be it enacted, etc., as follows:

Section 1. *Whereas*, Pursuant to the grant of powers under chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six as heretofore amended, the Massachusetts Port Authority is authorized to lease all or any portion of Commonwealth Pier, commonly known as Pier 5, upon such terms and conditions as it may deem to be necessary or appropriate for the rehabilitation of said Pier, including provision of such uses and public purposes as a passenger ship terminal, a computer and communications industry market center, and related hotel, restaurant, and hospitality facilities.

Section 2. Chapter six hundred and thirty-six of the acts of nineteen hundred and eighty-two is hereby repealed.

Approved July 5, 1983.

CHAPTER 234 OF THE ACTS OF 1984.

An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Eighty-five For The Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.

*Be it enacted, etc., as follows: ****

Section 104. A special commission, to consist of four members of the senate and five members of the house of representatives, is hereby established for the purpose of making an investigation and study of the finances, operations, management and other related matters regarding the Massachusetts Port Authority. Said investigation and study shall include, but not be limited to, the port of the city of Boston and the reimbursement in lieu of taxes paid to said city. Said commission shall report to the general court on or before the last Wednesday of December, nineteen hundred and eighty-four. ***

Approved July 14, 1984.

CHAPTER 240 OF THE ACTS OF 1984.

An Act Authorizing the Division of Capital Planning and Operations to Lease the Retail, Restaurant and Other Commercial Portions of the State Transportation Building.

Be it enacted, etc., as follows:

Section 1. . . . (n) The division and the Massachusetts Port Authority may enter into a contract for the provision of building management services by the authority to the division for the operation and maintenance of said building described in subsection (b). The initial contract shall be for a term which shall not extend beyond June thirtieth, nineteen hundred and eighty-five. The division shall annually review said authority's performance against explicit maintenance performance criteria which shall be incorporated into the contract. The division may negotiate twelve month contract renewals, if warranted by the authority's performance. The deputy commissioner shall thirty business days prior to the renewal of such contract send a copy thereof, together with a copy of the division's evaluation of said authority's performance against such maintenance performance criteria, to the inspector general for his review and comment. The inspector general shall issue his review and comment within fifteen business days of his receipt thereof. Neither the initial contract, nor subsequent amendments or renewals thereof, shall become effective until the inspector general has reviewed and commented on said contract, or any such amendments or renewals. The house and senate chairmen of the joint committee on state administration shall be sent a copy of the review and any comments thereon by said inspector general.

In carrying out its duties and responsibilities under said building management services contract, the Massachusetts Port Authority shall abide by all laws applicable to public agencies; provided, however, that building projects at said building, the estimated cost of which exceed twenty-five thousand dollars and that involve structural or mechanical work, shall remain under the control and supervision of the division in accordance with section forty B of chapter seven of the General Laws and shall be undertaken in accordance with all laws applicable to state agencies.

80.

The deputy commissioner shall annually, on or before September first, submit to the joint committee on state administration a comprehensive report on the maintenance, repair and management of said property.

The division and the authority are hereby authorized to enter into a lease or other agreement consistent with the provisions of section one of this act to develop the portions of the building which have been set aside for retail, restaurant and other commercial and parking uses. Said deputy commissioner shall provide the house and senate chairmen of the joint committee on state administration and the inspector general with a copy of such lease or agreement at least twenty business days prior to the execution thereof by the said deputy commissioner. ***

Approved July 21, 1984.

CHAPTER 46 OF THE ACTS OF 1985.

An Act Designating a Certain Section of Massachusetts Port Authority Land at Castle Island as the James F. Dahill Harborview.

Be it enacted, etc., as follows:

The Massachusetts Port Authority land at Castle Island in the South Boston district of the city of Boston, being a grove of trees, known as a section of the Castle Island buffer zone adjacent to Sealand terminal, shall be designated and known as the James F. Dahill Harborview in honor of James F. Dahill, longtime community and civic leader. A suitable marker bearing said designation shall be erected, inscribed and maintained at such site by the metropolitan district commission.

Approved May 8, 1985.

CHAPTER 280 OF THE ACTS OF 1986.

An Act Authorizing the Deputy Commissioner of the Division of Capital Planning and Operations to Acquire by Eminent Domain a Certain Parcel of Land in the City of Boston from the Massachusetts Port Authority and to Transfer the Care, Custody and Control of Said Parcel of Land to the Department of Public Works for Highway Purposes.

Be it enacted, etc., as follows:

Section 1. The deputy commissioner of the division of capital planning and operations is hereby authorized to acquire by eminent domain, in the name of the commonwealth, a certain parcel of land, hereinafter described, located in the city of Boston, owned by the Massachusetts Port Authority, and to transfer the care, custody and control of these parcels of land to the department

of public works for the construction of the central artery, north area, section 1, for highway purposes. The said parcel of land is more particularly described as follows:

PARCEL 49-3-C. [See Act for metes and bounds description]

Section 2. The above described parcel of vacant land are shown on a plan entitled: "Plan of Land in Boston, Mass. Proposed Land Takings from Massachusetts Port Authority" dated April 3, 1986, prepared by Bryant Associates Inc. Boston, Massachusetts, which plan shall be kept on file with the chief engineer of the said department of public works.

Section 3. This act shall take effect upon its passage.

Approved July 21, 1986.

CHAPTER 349 OF THE ACTS OF 1986.

An Act Providing for the Development of Facilities Within Boston Harbor for the Lobster Fishing Industry and Further Providing for the Revitalization of the East Boston Piers Property.

Be it enacted, etc., as follows:

Section 1. It is hereby found that:

(1) The waterfront property known as East Boston Piers 1 through 5 is a component of the port properties owned and operated by the Massachusetts Port Authority pursuant to chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

(2) Title to the piers was vested in the authority in February 1959, at which time the authority assumed responsibility for the operation and maintenance of said facility.

(3) The piers are currently underutilized and require extensive repair before a more productive use can be implemented.

(4) The piers are a potentially valuable resource to the Boston harbor community, the East Boston community, and the commonwealth to facilitate commerce in East Boston, including public access to the harborfront.

(5) Absent public investment, the private sector will be unable to stimulate economic activity sufficient to provide appropriate redevelopment of the piers and abutting land consistent with community and regional needs, to fully utilize potential resources of the piers and harborfront, to prevent further deterioration of the piers, and to be able to do so in a financially self-sustaining manner.

(6) The lobster fishing industry is in need of a permanent facility in Boston harbor in order to continue operation; the East Boston harborfront, including portions of the piers, can accommodate uses for a lobster facility and waterfront park, which uses are determined to be in furtherance of the interests of the citizens of the commonwealth in accordance with the provisions herein and are

82.

further determined to be consistent with the ongoing examination and implementation by the authority of alternate uses for the remaining portions of the piers.

(7) Other sites within the Boston Harbor area may also be suitable for development of lobster pier facilities.

Section 2. The following words as used in this act shall, unless the context clearly requires otherwise, have the following meanings:-

“Authority”, the Massachusetts Port Authority.

“Board”, the advisor board, established by section five of this act.

“Commissioner”, the commissioner of the department of the metropolitan district commission.

“Department”, the department of the metropolitan district commission.

“Division”, the division of capital planning and operations.

“East Boston”, the East Boston section of the city of Boston.

“PAC”, the East Boston Project Advisory Committee, Incorporated established in accordance with an agreement between the authority and the Boston Redevelopment Authority to provide community based advisory assistance to planning activities for revitalization of the piers.

“Piers”, Piers 1 through 5 located in the East Boston section of the city of Boston which constitute a part of the port properties as defined in chapter 465 of the acts of 1956 as amended.

“Plan”, the plan involving a certain segment of the piers and entitled “Land in the East Boston section of the city of Boston to be developed by the department of the metropolitan district commission and Massachusetts Port Authority for use as a lobster pier and terminal and as a waterfront park”, which plan is on file at the authority and the department of environmental management and which, on the effective date of this act, shall be filed at the department of the metropolitan district commission, and which may be amended from time to time by an agreement between the authority and the department.

Section 4. In addition to all powers otherwise granted to the authority in act or by law, the authority is hereby authorized and empowered:

(a) to enter into an agreement or agreements with the division concerning the planning, design, construction, use, operation and maintenance of the lobster facility and park at the piers and setting out the financial responsibilities of both the department and the authority relative to these facilities and consistent with the purposes and provisions of this act; provided, however, that any such agreement shall require that the authority reimburse the commonwealth in the amount of any state funds expended for the planning, design and construction of a lobster facility located at the piers prior to conveying title to said piers or facility to any other party;

(b) to lease for a term which may not exceed twenty-five years, design, construct, improve, maintain, and operate the lobster pier facilities, including associated facilities, at the piers, for the use and benefit of persons engaging in the lobstering industry pursuant to a license, lease, use agreement or any other type of authorization that the authority may grant in its discretion;

(c) to fix and revise from time to time and to charge and collect such fees, rentals, or other charges for the use of said piers or associated facilities under the authority's control, provided that any lobster pier facilities constructed in accordance with the provisions of this act shall be available

to prospective users of the facilities, upon payment of a reasonable fee, in a nondiscriminatory manner;

(d) to design in consultation with and subject to review by the department, construct, improve, and maintain the waterfront park, including associated buildings, facilities and improvements thereon, at the piers, as a public park for the benefit and enjoyment of the general public;

(e) to apply for and receive funds from any source, public or private, by gift, grant, bequest, or otherwise, and to expend the same on behalf of the authority to provide for the design, construction and operation of a lobster pier and associated structures, facilities and improvements thereon, and a waterfront park, at the piers, pursuant to and in accordance with the plan;

(f) to convey or lease to the division for no consideration, upon completion of construction of the waterfront park, said park at the piers, including all associated buildings and facilities and improvements thereon, which shall be used by the department as a public park for the benefit and enjoyment of the general public. Any such conveyance or lease may be made upon such terms as may be agreed upon by the authority and division subject to the applicable provisions of sections forty F to forty H, inclusive, of chapter seven of the General Laws; and

(g) to do any and all things necessary or convenient to carry out its purposes and exercise the powers conferred by this act.

Section 5. (a) Any planning, acquisition, design, construction, demolition, repair or maintenance undertaken pursuant to this act shall be deemed a "building project" pursuant to the provisions of chapters seven and twenty-nine of the General Laws.

(b) To the extent consistent with agreements authorized by sections three and four of this act, the authority may accomplish such work, or a portion thereof, as lead administering agency so called, in consultation with the division and the department, and on any work undertaken by the authority as such lead administering agency, the department may be deemed the using agency, provided that the certifications required by sections twenty-six A and twenty-six B of chapter twenty-nine of the General Laws shall be the responsibility of the deputy commissioner of the division.

(c) The authority, in cooperation with the department, shall prepare a report on the development of the lobster facility and waterfront park pursuant to this act, and shall file said report with the general court for review. At least thirty days before filing said report, however, the authority, in cooperation with the department, shall submit said report to the Inspector General of the commonwealth, and shall annex the comments, if any, of the said inspector general to said report. Said report shall include, but not be limited to (1) a study or program pursuant to the provisions of section seven K of said chapter twenty-nine; (2) a feasibility study relative to the provision of such facilities as are necessary in order for the lobster fishing industry to continue operation in Boston Harbor; (3) a comparison of the suitability, costs, and benefits of alternative sites, if any, for permanent lobster facilities in Boston Harbor; (4) an inventory of any additional facilities which will continue to be necessary for the operation of the lobster industry in Boston harbor, together with cost and market study projections indicating the capacity of the lobster industry to obtain use of such facilities with public subsidy; (5) operation and major maintenance cost projections, for the first ten years of operation of facilities funded by this act; (6) a schedule of anticipated fees, rentals or other charges for the use of lobster facilities funded by this act for the first ten years of operation, including market study projections demonstrating the capacity of the lobster industry to pay such

84.

amounts; (7) a review of all relevant public properties in Boston harbor as they relate to their current or potential marine industrial, commercial, and deep water use; (8) evidence that the development of the lobster terminal and waterfront park, as authorized in this act, will not preclude future marine industrial or commercial activity; (9) certification that the requirements authorized pursuant to the provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty, chapter ninety-one, and section forty of chapter one hundred and thirty-one of the General Laws and all other applicable general or special laws have been satisfied, (10) evidence that the authority has provided for the share of funding for which it is responsible under terms of the agreement authorized in clause (a) of section 4.

Section 6. The department and the authority shall continue to coordinate with the PAC and the Boston Redevelopment Authority for the purpose of obtaining the advisory input of the East Boston community and the city of Boston relative to design and environmental review as required under sections sixty-one and sixty-two H, inclusive, of chapter thirty of the General Laws in the event final agency approval for the lobster facilities and waterfront park is sought at the piers.

The department and the authority shall convene and appoint an advisory board which shall consist of eight members, one of whom shall be the commissioner of the department or his designee, one of whom shall be the executive director of the authority or his designee, one of whom shall be the commissioner of the department of environmental quality engineering or his designee, one of whom shall be the director of the Boston Redevelopment Authority or his designee, one of whom shall be the president of the Boston Harbor Lobstermen's Cooperative or his designee, one of whom shall be a representative of the PAC and two of whom shall be residents of Marginal Street in East Boston and be designated by the PAC. The executive director of the authority or his designee shall serve as chairperson of the board. Upon completion of construction at the piers, the commissioner or his designee and the executive director of the authority or his designee shall serve as co-chairpersons of said board.

Said board shall assist in the planning, design, and construction of the lobster facilities and the waterfront park. Upon completion of construction at the piers said board shall provide consultation to the department and the authority in operating the lobster pier and waterfront park.

The members of said board shall serve without compensation. Said board shall meet from time to time to review the operation and maintenance of said facilities and waterfront park and may advise the department and the authority with the respect to their respective duties as provided in this act. Said board shall also advise the department and the authority concerning relationships between and among users of said pier and waterfront park, residents of the East Boston community, and other development projects on the East Boston Piers.

Section 7. The provisions of chapter ninety-one of the General Laws shall apply in full to any development undertaken on the piers, including the projects authorized hereunder. The provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws shall also apply for all projects proposed at the piers, including the lobster facility and waterfront park to the extent applicable to projects of the authority. For the purposes of compliance with said sections 61 through 62H, the authority shall be deemed to be lead agency project proponent.

Section 8. The department is hereby authorized to expend a sum not exceeding [twenty]⁶ million dollars for the purpose of development of a waterfront park at the piers pursuant to and in accordance with the plan, and lobster pier facilities either at the piers pursuant to and in accordance with the plan or at any alternate site that the department may deem suitable; provided, however, that no funds authorized by this act shall be expended, except for the necessary costs related to the environmental review, preliminary design, and report required by section five unless notice of such expenditures, together with said report is filed with the clerks of the house and senate while the general court is in session and the general court has failed to pass a resolve disapproving of such proposed action and report within the next thirty days after such filing.

Section 9. To meet the expenditure necessary in carrying out the provisions of this act, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, registered or with the interest coupons attached, as he may deem best, to an amount to be specified by the governor from time to time, but not exceeding, in the aggregate, the sum of [twenty] million dollars. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, Boston Harbor Improvements Loan, Act of 1986, and shall be on the serial payment plan for such maximum term of years, not exceeding twenty-five years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth, the maturities thereof shall be as nearly equal as in the opinion of the state treasurer it is practicable to make them. Said bonds shall bear interest semiannually at such rate or rates as the state treasurer, with the approval of the governor, shall fix. The initial maturity of such bonds shall be payable not later than one year from the date of issue thereof and the entire issue not later than June thirtieth, two thousand and eleven.

Section 11. Any and all revenues received by the authority from the lobster facility and waterfront park at the piers from rentals, fees, or any other charge or source other than grants made for specific purposes relating to the lobster facility and park, shall be deposited with the authority and applied as required by any applicable indenture or indentures of trust to which the authority is subject. To the extent allowable under such trust indenture or indentures the authority shall make annual payments to the commonwealth by deposit to the fund established hereunder of all such revenues, which revenues shall in turn be applied toward the operating and maintenance expenses of the lobster facility and waterfront park and for the establishment of reserve accounts for working capital, maintenance and repair.

There shall be established and set up on the books of the commonwealth a separate fund to be known as the East Boston Piers Fund and which shall consist of all revenues received by the commonwealth from the authority relative to the lobster facility and waterfront park and all other monies credited or transferred thereto from any other fund or source pursuant to the law. Said funds shall be expended by the department, subject to appropriation and the laws relating to the state

⁶ See Chapter 208 of the Acts of 1988, Sections 49A & 49B, which increased the aggregate figures in Sections 8 & 9 of this Act from fifteen to twenty million dollars.

86.

finances, for the operation, maintenance or other expenses relative to the lobster facility and waterfront park.

The commissioner shall file with the state treasurer and state auditor an annual report of the fund based upon the status of the fund on June thirtieth of the preceding fiscal year. The fund shall be subject to an annual audit by the state treasurer.

Approved July 23, 1986.

CHAPTER 134 OF THE ACTS OF 1988.

An Act Authorizing the Deputy Commissioner of Capital Planning and Operations to Acquire Certain Lands in the City of Boston from the Massachusetts Port Authority for Highway Purposes. [Commonwealth Flats Area]

Be it enacted, etc., as follows:

The deputy commissioner of capital planning and operations, acting for and on behalf of the commonwealth, is hereby authorized, subject to the provisions of section forty E through forty J of chapter seven of the General Laws, to acquire by eminent domain, purchase or otherwise, in the name of the commonwealth, land or rights in land from the Massachusetts Port Authority within the hereinafter described parcels located in the commonwealth flats area of the city of Boston and to transfer the care, custody and control of said land or rights in said land to the department of public works for highway purposes in conjunction with construction of the depressed central artery and third harbor tunnel project, so-called.

Upon determination by the department of public works that any portion of said land or said rights in land within the hereinafter described parcels is no longer needed for highway purposes, the deputy commissioner of capital planning and operations is authorized to convey back said land or said rights in land to the Massachusetts Port Authority.

Said parcels are more particularly bounded and described as follows:-

[See Act for metes and bounds description]

Approved July 14, 1988.

CHAPTER 208 OF THE ACTS OF 1988.

An Act Providing for a Capital Outlay Facility Program for the System of Higher Education for the Commonwealth.

*Be it enacted, etc., as follows: ****

Section 30. Notwithstanding the provisions of any general or special law to the contrary, and subject to the conditions in section thirty-one, all payments to be made to the commonwealth by the Massachusetts Port Authority pursuant to section six of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, on account of the port properties, so called, are hereby deemed to have been made in full, and the Massachusetts Port Authority shall have no further liability to make any payments to the commonwealth regarding said port properties.

Section 31. The provisions of sections forty-nine A and forty-nine B shall take effect upon occurrence of both (i) the enactment of this section sixty-four and (ii) the receipt by the commonwealth from the Massachusetts Port Authority of a payment in the amount of five million dollars on account of said provisions, which payment the Massachusetts Port Authority shall deliver to the commonwealth no later than five business days after the enactment of this section; provided that any such payment to the commonwealth shall be credited to the General Fund. ***

Approved July 26, 1988.

CHAPTER 218 OF THE ACTS OF 1988.

An Act Relative to the Assignment of State Police to Certain Authorities.

Be it enacted, etc., as follows:

Section 1. Section 9G of chapter 22 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by inserting after the second sentence the following sentence:- Said agreement shall also provide for the applicability during the period of such service of all terms and conditions of employment established under any existing collective bargaining agreement reached pursuant to the provisions of chapter one hundred and fifty E between the commonwealth and the exclusive bargaining representative of any employee rendering such service including, without limitation, the payment by the authority of any benefit or contribution therefor.

Section 2. Section 9J of said chapter 22, as so appearing, is hereby amended by inserting after the second sentence the following sentence:- Said agreement shall also provide for the applicability during the period of such service of all terms and conditions of employment established under any existing collective bargaining agreement reached pursuant to the provisions of chapter one hundred and fifty E between the commonwealth and the exclusive bargaining representative of any employee rendering such service including, without limitation, the payment by the authority of any benefit or contribution therefor.

Approved July 27, 1988.

88.

CHAPTER 449 OF THE ACTS OF 1989.

An Act Authorizing the Deputy Commissioner of Capital Planning and Operations to Acquire a Certain Parcel of Land in the City of Boston.

Be it enacted, etc., as follows:

Section 1. The deputy commissioner of the division of capital planning and operations, acting for and on behalf of the commonwealth, is hereby authorized to acquire by eminent domain, purchase or otherwise, a certain parcel of land located in the city of Boston owned by the Massachusetts Port Authority and to transfer the care, custody and control of said parcel to the department of public works for highway purposes in conjunction with the construction of the central artery north area project, so-called. Said parcel is shown on a plan entitled: "Plan of Land in Boston, Mass, Proposed Land Takings for the Commonwealth of Massachusetts, Department of Public Works", dated October 1, 1986, prepared by Bryant Associates Inc. Boston Massachusetts, which plan shall be kept on file with the chief engineer of said department of public works.

Section 2. This act shall take effect upon its passage.

Approved October 27, 1989.

CHAPTER 653 OF THE ACTS OF 1989.

An Act Establishing the Budget Control and Reform Act of 1989.

Be it enacted, etc., as follows:

Section 28. Section 1 of chapter 29 of the General Laws, as so appearing, is hereby amended by inserting after the definition of "State agency" the following definition:-

"State Authority", shall include the following: . . . Massachusetts Port Authority . . .

Section 179. All officers, directors and employees of state authorities and all trustees and employees of state institutions of higher education are hereby made subject to the provisions of chapter fifty-five of the General Laws, including sections thirteen through seventeen, inclusive, thereof. [M.G.L. Chapter 55 prohibits the solicitation of political contributions]

Approved January 4, 1990.

CHAPTER 313 OF THE ACTS OF 1990.

An Act Relative to Leave with Pay for Certain Incapacitated Employees of the Massachusetts Port Authority.

Be it enacted, etc., as follows:

The first paragraph of section 111F of chapter 41 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by adding the following sentence:- The provisions of this section shall also apply in all respects to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, and for the purposes of this section the Massachusetts Port Authority shall be deemed to be a fire district.

Approved December 13, 1990.

CHAPTER 133 OF THE ACTS OF 1992.

An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Ninety-three for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.

Be it enacted, etc., as follows:

Section 139. Notwithstanding the provisions of any general or special law to the contrary, the Massachusetts Port Authority and the Massachusetts Turnpike Authority are hereby authorized to enter into agreements with the executive office of economic affairs and the tourist-promotion agencies for the purposes of domestic and international tourism and trade promotions and programs.

Approved July 20, 1992.

CHAPTER 110 OF THE ACTS OF 1993.

An Act Making Appropriations for the Fiscal Year Nineteen Hundred and Ninety-four for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.

Be it enacted, etc., as follows:

90.

Section 314. Notwithstanding the provisions of any general or special law to the contrary, the Massachusetts Port Authority and the Massachusetts Turnpike Authority are hereby authorized to enter into agreements with the executive office of economic affairs and the tourist-promotion agencies included in section fourteen of chapter twenty-three A of the General Laws, for the purposes of domestic and international tourism and trade promotions and programs.

Approved July 19, 1993.

CHAPTER 139 OF THE ACTS OF 1993.

An Act Further Regulating the Classification for Retirement Purposes of Certain Individuals.

Be it enacted, etc., as follows:

Section 3 of chapter 32 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by inserting after the word "employees", the first time it appears, in line 328, the following words:- who shall include managers and assistant managers; employees of the Massachusetts Port Authority who are employed as licensed electricians, utility technicians, steam engineers, watch engineers, boiler operators, or steam firemen, and supervisors of said employees, at an electrical generating or distribution plant.

Approved August 6, 1993.

CHAPTER 301 OF THE ACTS OF 1993.

An Act Allowing Employees of the Massachusetts Port Authority to Be Eligible for Sound Insulation Programs.

Be it enacted, etc., as follows:

Section 1. Section 7 of chapter 268A of the General Laws is hereby amended by adding the following paragraph:-

This section shall not preclude an officer or employee of the Massachusetts Port Authority from eligibility for any residential sound insulation program administered by said Authority, provided that any such officer or employee has no responsibility for the administration of said program.

Section 2. The first paragraph of section 23 of chapter 465 of the acts of 1956, as amended by chapter 328 of the acts of 1960, is hereby further amended by inserting after the word "both", in line 7, the following words:- provided, however, that this paragraph shall not preclude an officer or employee of the Authority from eligibility for any residential sound insulation program

administered by the Authority, if said officer or employee has no responsibility for the administration of said program.

Approved December 17, 1993.

CHAPTER 85 OF THE ACTS OF 1994.

An Act Relative to Bond Authorizations for Certain Emergency Capital Projects of the Commonwealth.

Be it enacted, etc., as follows:

Section 45. The executive director of the Massachusetts Port Authority, hereinafter referred to as the port authority, is hereby authorized and directed to expend a sum not to exceed three million three hundred thousand dollars to fund the port authority's facilities, including but not limited to, parking, passenger shelters and amenities, and related support facilities in connection with shuttle bus service to and from Logan airport as part of the Industri-plex Regional Transportation Center in Woburn; provided that the inspector general of the commonwealth shall study and examine the feasibility of relocating and operating the Massachusetts Port Authority's shuttle bus service to and from Logan International Airport, known as the "Woburn Logan Express", from its current site at Mishawam community Rail Station or any other site to the Industri-plex Regional Transit Center in Woburn; including but not limited to, an analysis of the potential economic benefits of such relocation, the potential for increased ridership from such relocation and the appropriateness of the site itself; provided further, that the inspector general shall file such study with the house and senate committees on ways and means and the joint committee on transportation. Funds authorized herein shall include, but not be limited to, the capital costs for the following:

(a) a sum not to exceed five hundred thousand dollars which the port authority is authorized to immediately transfer to the Woburn Redevelopment Authority, and which the Woburn Redevelopment Authority is authorized to accept, pursuant to the enabling legislation of the both authorities, to be used to fund the preliminary design and permitting of all aspects of the Regional Transportation Center;

(b) a sum not to exceed two million eight hundred thousand dollars to fund the capital costs in connection with the detailed design and construction of the port authority's airport shuttle bus service facilities, including parking for up to fifteen hundred cars and those costs, if any, which might be incurred by the port authority to acquire the rights in any land by lease, purchase or eminent domain under the provisions of chapter seventy-nine of the General Laws; provided, that prior to any acquisition of rights in any land by lease, purchase, or eminent domain, notice of said acquisition shall be filed for review with the inspector general of the commonwealth.

Approved August 5, 1994.

CHAPTER 273 OF THE ACTS OF 1994.

An Act Providing for an Accelerated Transportation Development and Improvement Program for the Commonwealth.

Be it enacted, etc., as follows:

[See Chapter 205 of the Acts of 1996 §§ 43, 46, 49, 50, 51, 100 and 112 for amendments to sections not printed here.]

Section 86. (a) The Massachusetts Port Authority, hereinafter referred to as the port authority, is hereby authorized and directed to transfer a sum not to exceed five hundred thousand dollars to the Woburn Redevelopment Authority, which the Woburn Redevelopment Authority is hereby authorized to accept, pursuant to the enabling acts of both authorities, and pursuant to a mutually acceptable contract to be executed by both authorities, to fund (i) the preliminary design of an Industri-plex regional transportation center to be located in Woburn on land commonly known as the Woburn Industri-plex site, with such center including Massachusetts Bay Transit Authority (the "MBTA") commuter rail service and related facilities, including new parking spaces for up to twenty-five hundred vehicles, a Massachusetts highway department (the "department") park-and-ride facility for up to fifteen hundred vehicles and related high occupancy vehicle commuter facilities, and parking facilities for no less than twelve hundred vehicles, passenger shelters and amenities and related support facilities in connection with shuttle bus service to and from General Edward Lawrence Logan International Airport, (ii) the costs of evaluating and procuring any and all necessary federal and state environmental permits, including but not limited to any drafts and statements required pursuant to section sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws, for construction of said Regional Transportation Center, and assessing any additional costs imposed by federal environmental laws and (iii) a study, under the direction of the Port Authority, of the feasibility of relocating and operating said Port Authority's existing shuttle bus service to and from the airport in Woburn from its current site at Mishawam Commuter Rail Station to the Industri-plex site, the feasibility of relocating all or a portion of the Massachusetts Bay Transportation Authority's commuter rail services from the Mishawam Commuter Rail Station to the Industri-plex site and the feasibility of locating the department's park-and-ride facility at the Industri-plex site, which study shall include but not be limited to an analysis of the effect of such relocation on the port authority's shuttle bus passenger demand, analysis of the potential economic benefits of such relocations and location, an analysis of the potential for increased ridership on the port authority's shuttle bus services from such relocation, and an analysis of the appropriateness of the site itself. The port authority is hereby authorized to accept reimbursement of all or a portion of said five hundred thousand dollars as set forth in section two of this act.

(b) The port authority is authorized to expend a sum of up to two million eight hundred thousand dollars to fund the capital costs in connection with the final design and construction of the port authority's shuttle bus service facilities, including parking of not less than twelve hundred vehicles and related passenger shelters and amenities and related support facilities, and those costs, if any, which might be incurred by the Port Authority to acquire rights in land by lease, purchase or

eminent domain under the provisions of chapter seventy-nine; provided, however, that the study required pursuant to subsection (a) concludes recommends relocating the port authority's Woburn shuttle bus service to and from the airport to the Industri-plex regional transportation center.

(c) The port authority shall, in the event it acquires any interest in the Industri-plex site, be exempt from any and all liability to third parties and to the commonwealth that may be imposed under sections four, five and eleven of chapter twenty-one E of the General Laws for releases of oil or hazardous substances or material existing as of the date of said acquisition, provided that the port authority shall comply with any and all restrictions and obligations imposed by the United States Environmental Protection Agency on the use and operation of the Industri-plex site.

(d) No action shall be taken to carry out this section unless or until the attorney general certifies in writing to the comptroller that the commonwealth will not thereby undertake any additional financial liability pursuant to any federal environmental statute, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USCA 9601, et seq.; provided, however, that the amount of just compensation paid by the Port Authority to acquire the rights in any land by eminent domain shall not exceed the approved appraisal of the fair market value of the property or one dollar, whichever is the greater. The amount of just compensation shall, among other rights, take into account (i) the environmental condition of the property, and (ii), if applicable, the cost required to render any such property commercially usable in light of any contamination affecting such property; and provided, further, that thirty days prior to any such acquisition of rights in any land by lease, purchase or eminent domain, notice of said acquisition shall be filed for review with the inspector general of the commonwealth.

Section 87. The chairman of the Massachusetts Turnpike Authority, in consultation with the executive director of the Massachusetts Port Authority, the commissioner of the department of highways and the secretary of the executive office of transportation and construction shall, within four months of the effective date of this act, study and develop specifications and standards for a comprehensive, interagency-compatible electronic toll collection and traffic management system that shall encourage multiple bidders; provided, however, that such study and plan shall not preclude a system supplied or purchased from one manufacturer or vendor. Said system shall, to the extent feasible, be compatible with all non-electric toll and traffic management systems to be installed by the Port Authority, the Massachusetts turnpike authority and the department of highways on all toll roads, toll tunnels, toll bridges, parking facilities and other ground transport facilities and no such system shall be acquired or installed, except on a demonstration basis, until such time as such study and plan has been completed. The secretary of each agency or the commissioner and the executive officer of each authority or political subdivision under the provisions of this section shall not purchase or implement an electronic toll collection or traffic management system that is not compatible, under said plan.

Section 105. The Massachusetts Port Authority is hereby authorized and directed to conduct a study to determine the feasibility of establishing a new airport in the city of Fall River or in another community in Bristol county. Said study shall be submitted to the senate and house committees on ways and means by May first, nineteen hundred and ninety-five.

94.

Section 108. (a) The following words are used in this section shall, unless the context clearly requires otherwise, have the following meanings:

“Airport,” the Worcester Airport and all buildings located thereon, located in the Western portion of the city of Worcester, bordering Leicester, and owned and operated by the city of Worcester.

“Authority,” the Massachusetts Port Authority.

“City,” the city of Worcester.

“Commission,” the Massachusetts Aeronautics Commission.

(b) Notwithstanding the provisions of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six, or any other general or special law to the contrary, and in addition to the powers otherwise granted to the city and the Authority in act or by law, the Authority and the city are hereby authorized and empowered to negotiate, and on mutually satisfactory terms consistent with the Authority's trust agreement obligations, to enter into an agreement or agreements concerning the leasing, management, operation and/or improvement of the airport by the Authority, and such other rights in property as the Authority and the city may deem necessary and appropriate, consistent with the purposes and provisions of this act; provided further, that the commission shall not use existing regulations or implement new regulations that prohibit said Authority and said city from entering into a mutually satisfactory agreement for the leasing, management or operation of said airport.

(c) The commission is hereby authorized and directed to provide a sum not exceeding five million dollars for the purpose of paying costs of capital improvements to the airport pursuant to item 6005-9500 in section two G of this act; provided, that the capital improvements are to be constructed in accordance with the agreement.

Section 120. There is hereby established a task force for the purpose of developing a program to improve the transportation infrastructure of the commonwealth. Said task force shall include: the secretary of transportation and construction, who shall serve as chairman; three members of the senate appointed by the senate president; five members of the house appointed by the speaker of the house; a representative of the Massachusetts Port Authority, a representative from affected railroad companies, including, but not limited to, Consolidated Rail Corporation (“Conrail”), Guilford Transportation Industries, Providence & Worcester Railroad and the MassCentral Railroad, and a representative of the International Longshoremen's Association all of whom shall be appointed by the governor.

Said task force shall focus on ways to accommodate the efficient and safe movement of freight to, through and from the port of Boston and the port of Worcester through the use of new technology freight equipment, including double stack container technology.

Said task force shall further review the selection of freight corridors and associated clearance improvement projects, based upon independent market data and engineering feasibility; the identification of one or more corridors linking the port of Boston to landside rail connections; the negotiated agreement among the affected rail companies as identified herein establishing the cost sharing formula of clearance improvements; the assurance of rate equalization protecting the port

of Boston and the port of Worcester, the negotiated schedule agreed upon by all of the affected carriers of all proposed clearance improvements ensuring that no carrier will achieve a competitive advantage over others as a result of public investment in clearance access, with a consideration in establishing such a schedule of the costs incurred by those carriers who have made clearance improvements without public investment; and a plan to fund the implementation of said program from all available sources, both public and private.

The task force shall submit its final report along with any legislation necessary to carry out its report to the governor and the clerks of the senate and house of representatives, not later than by April twenty-eighth, nineteen hundred and ninety-five.

Approved December 30, 1994.

CHAPTER 102 OF THE ACTS OF 1995.

An Act Providing for the Operation of the Third Harbor Tunnel and the Study of a Unified Transportation System in the Boston Metropolitan Area.

Be it enacted, etc., as follows:

Section 1. Chapter 29 of the General Laws is hereby amended by inserting after section 2CC, inserted by section 46 of chapter 38 of the acts of 1995, the following section:-

Section 2DD. There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Capital Expenditure Reserve Fund. Said fund shall consist of:
 . . . (iii) amounts paid by the Massachusetts Port Authority as determined by the feasibility study of the Third Harbor tunnel and the metropolitan highway system jointly undertaken by said authority and the executive office of transportation and construction;

Section 9. As used in sections nine to twenty-four, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

(a) "Authority", the Massachusetts Turnpike Authority established pursuant to chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two.

(b) "Boston extension", all of the roadways and tunnels for vehicular traffic that constitute that portion of interstate highway Route 90 beginning at and including the interchange of interstate highway Route 90 and state highway route 128 and ending in Boston at the interchange of interstate highway Route 90 and interstate highway Route 93 and includes such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land, acquired or leased, in connection with or incident to the construction, ownership, operation, or maintenance of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance.

(c) "Callahan tunnel", the tunnel for vehicular traffic constructed under the provisions of chapter five hundred and ninety-eight of the acts of nineteen hundred and fifty-eight between Boston

proper and the East Boston section of the city of Boston and includes such real property and any improvements thereon, personal property, equipment, licenses, appurtenances, and interests in land, acquired or leased, in connection with or incident to the construction, ownership, operation or maintenance of such tunnel as are necessary for its safe and efficient operation and maintenance.

(d) "Central artery", all of the roadways and tunnels for vehicular traffic constructed by the department of highways that constitute that portion of interstate highway Route 93 beginning at a point immediately south of the Southampton street interchange, so-called, and including the interchange of interstate highway Route 93 and Massachusetts avenue in the South End section of the city of Boston, so-called, and continuing to and including the interchange of interstate highway Route 90 and interstate highway Route 93 in the South Bay section of the city of Boston, so-called, and continuing to and including the interchange of Route 1 and interstate highway Route 93 in the Charlestown section of the city of Boston including, but not limited to, the so-called Charles River crossing portion of interstate highway Route 93, but excluding the portion of the component known as the central artery north area as defined in subsection (e), and includes such real property and any improvements thereon, personal property, equipment, licenses, appurtenances, and interests in land, acquired or leased, in connection with or incident to the construction, ownership, operation, or maintenance of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance.

(e) "Central artery north area", all of the roadways and tunnels for vehicular traffic constructed by the highway department consisting of a portion of Route 1 beginning at, but not including, the southern boundary of the Tobin Memorial Bridge and the interchange of interstate highway Route 93 and United States Route 1, including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances, and interests in land, acquired or leased, in connection with or incident to the construction, ownership, operation, or maintenance of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance.

(f) "Highway department", the department of highways established pursuant to section one of chapter sixteen of the General Laws.

(g) "Metropolitan highway system", the integrated system of roadways, bridges and tunnels that may be established as a result of the joint feasibility study undertaken pursuant to paragraph (b) of section thirteen.

(h) "Port authority", the Massachusetts Port Authority established pursuant to chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

(i) "Sumner tunnel", the vehicular tunnel under Boston Harbor, heretofore constructed and financed by the city of Boston under the provisions of chapter two hundred and ninety-seven of the acts of nineteen hundred and twenty-nine, including such real property and any improvement thereon, personal property, equipment, licenses, appurtenances, and interests in land, acquired or leased, in connection with or incident to the construction, ownership, operation or maintenance of such tunnel as are necessary for its safe and efficient operation and maintenance.

(j) "Third Harbor tunnel", all, or any segments of, the roadways, bridges, viaducts and tunnels for vehicular traffic constructed by the highway department that constitutes the interstate highway Route 90 extension and its connecting roadways and tunnels, including (i) the harbor tunnel crossing beneath Boston Harbor, beginning at and including the interchanges of state highway Route 1A and the Logan airport access and egress roadways with interstate highway Route 90, excluding

the Logan airport access and egress roadways owned or to be owned by the Port Authority on or after the effective date of this act, and continuing beneath Boston Harbor to and including the interchange of interstate highway Route 90 and the South Boston Bypass road, so-called; (ii) the seaport access highway, so-called beginning at the interchange of interstate highway Routes 90 and 93 and continuing to the interchange of interstate highway Route 90 and the South Boston Bypass road, so-called; and (iii) the South Boston Bypass road, so-called, a portion of which is also known as the South Boston Haul road, beginning at the interchange of interstate highway Route 93 and the South Boston Bypass road, so-called, and continuing to the interchange of the seaport access highway, so-called, in the South Boston section of the city of Boston, including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances, and interests in land acquired or leased by the highway department in connection with or incident to the construction, ownership, operation, or maintenance of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance.

(k) "Tobin memorial bridge", the bridge owned and operated by the Port Authority pursuant to the provisions of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six.

(l) "Turnpike", the limited access express toll highway, together with and including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, connecting highways, service stations and restaurants and administration storage, and other buildings that the authority constructed, operates and maintains pursuant to the provisions of chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two, extending in a generally easterly direction from the town of West Stockbridge on the commonwealth's border with New York State to Kneeland Street in the city of Boston.

(m) "Turnpike corridor", the cities and towns of the commonwealth from the New York State border to state highway route 128 through which interstate highway Route 90 runs.

Section 10. . . . (b) The authority and the highway department, in consultation with the port authority, are hereby authorized and directed to develop, not later than October fifteenth, nineteen hundred and ninety-five, a plan for the authority's opening of the Third Harbor tunnel, as one entity or in segments, to commercial and high occupancy vehicle traffic and for the authority's subsequent full opening and continuing efficient operation and maintenance of the Third Harbor tunnel. The authority and the highway department, in consultation with the port authority, shall include in such plan, by way of example and without limitation, provisions with respect to the coordination of police, fire, safety, and traffic monitoring and control services; signage, marking, and lighting; and plowing and sweeping, and may enter into such agreements to implement the plan as they determine necessary and appropriate.

(c) The authority and the highway department are hereby authorized and directed to enter into or amend any agreements with respect to the Third Harbor tunnel made or required pursuant to 23 USC 129(a) and to do all things necessary to comply with the requirements of said Titles 23 and 49 USC.

(d) Upon the transfer of the Third Harbor tunnel by the highway department to the authority pursuant to this section, the authority shall be responsible for the operation and maintenance of the Third Harbor tunnel or segments of it, and the highway department shall cease to be responsible for such operation and maintenance; provided, however, that the highway department shall continue

98.

to require its contractors to complete construction of the Third Harbor tunnel or segments of it pursuant to their contracts and pursuant to chapters thirty and one hundred and forty-nine of the General Laws and the authority shall have no such responsibility. All warranties and all contract and indemnification rights and obligations arising out of the design and construction of the Third Harbor tunnel or segments of it shall remain in full force and effect following such transfer. The authority shall not be liable for any claim arising out of the design or construction of the Third Harbor tunnel. The provisions of this section shall not limit or impair the rights, remedies, or defenses of the commonwealth, the highway department, or the authority in or to any such action including, without limitation, the provisions of section eighteen of chapter eighty-one of the General Laws and chapter two hundred and fifty-eight of the General Laws.

(e) Upon the request of the authority or the port authority, the highway department shall make available to the authority or to the port authority for its review and comment all plans, specifications and other design and construction documents prepared for the Third Harbor tunnel and shall permit the authority or the port authority to inspect the Third Harbor tunnel, subject to such reasonable safety rules and procedures established by the highway department. Said highway department shall also consider the written comments of the authority and the port authority with respect to the design and construction of the Third Harbor tunnel and shall respond in writing to the comments within thirty days of their receipt; provided, however, that neither the authority nor the port authority shall have any right of approval over the design or construction of the Third Harbor tunnel.

(f) Nothing in this act shall impair or nullify the terms and conditions set forth in any and all written agreements between the city of Boston and the highway department concerning the central artery or the Third Harbor tunnel, including specifically the land disposition agreement dated June tenth, nineteen hundred and ninety-two and the joint traffic management and construction coordination agreement dated June twenty-ninth, nineteen hundred and ninety-four.

Section 11. . . . (e) Notwithstanding any other provisions of section thirteen of this act, and not subject to further legislation, the port authority is hereby authorized and directed to pay into the Capital Expenditure Reserve Fund the sum of one hundred million dollars as a minimum payment toward the capital cost of the Third Harbor tunnel as determined in accordance with clause (i) of the joint-feasibility study described in paragraph (a) of said section thirteen. Further, the port authority shall pay any additional amounts determined in accordance with clauses (i) and (ii) of the joint-feasibility study described in paragraph (a) of said section thirteen.

Section 13. [This section was superseded by Section 1 of Chapter 273 of the Acts of 1995, see below.]

Approved August 10, 1995.

CHAPTER 273 OF THE ACTS OF 1995.**An Act Providing for a Joint Feasibility Study Relating to a Unified Transportation System in the Boston Metropolitan Area.**

Be it enacted, etc., as follows:

Section 1. Chapter 102 of the Acts of 1995 is hereby amended by striking out Section 13 and inserting in place thereof the following section:

Section 13. The executive office of transportation and construction and the authority are hereby authorized and directed to undertake a joint feasibility study of the financial, public policy, implementation and operational issues as they relate to the following:

(a) The Third Harbor Tunnel:

(i) establishment of the amount and terms of any contribution from the Massachusetts Port Authority to the commonwealth toward the cost of constructing the Third Harbor tunnel, for which the measure of any such contribution shall be the reasonable value of the benefit conferred upon and received by the Massachusetts Port Authority as a result of the construction of said Third Harbor tunnel; provided, however, that the amount of such contribution shall be, at a minimum, one hundred million dollars, as determined pursuant to sub-section (e) of section eleven; and

(ii) establishment of the amount of an annual contribution from the Massachusetts Port Authority to the authority for the maintenance, operation and repair of the Third Harbor tunnel; and

(iii) establishment of the amount of any additional contribution, in excess of the specific amounts referred to in section eleven, to be paid by the authority for the acquisition of the Third Harbor tunnel, giving recognition to all amounts expended or to be expended by the commonwealth for the Third Harbor tunnel; and

(iv) identification of assets commensurate with the value of the contribution from the Massachusetts Port Authority required under clause (i), which assets shall be transferred to the Massachusetts Port Authority in consideration of such contribution, and which assets, upon said transfer, shall constitute a portion of the airport properties of the Massachusetts Port Authority for the purposes of chapter four hundred and sixty-five of the acts of nineteen hundred and fifty-six; provided, however, that said assets shall be limited to the portions of the Third Harbor tunnel, as defined in section nine, in the East Boston section of the city of Boston serving General Edward Lawrence Logan International Airport beginning at a point on interstate highway 90 east of the Third Harbor tunnel toll facilities and continuing to and including said airport access and egress roadways connecting thereto and the interchange between said airport access and egress roadways and interstate highway 90 and state highway Route 1A; provided, further, that any such transfer shall be subject to a transfer agreement between the highway department and the Massachusetts Port

100.

Authority which shall include, but not be limited to provisions which the authority, the Massachusetts Port Authority and the highway department agree are necessary to (a) effectuate the orderly transfer of the ownership, control, operation and maintenance of said asset and (b) assure the on-going safe and efficient operation and maintenance of the Third Harbor tunnel, including but not limited to the interchange between the General Edward Lawrence Logan International Airport access and egress roadways and interstate highway 90 and state highway Route 1A, and, if created, the metropolitan highway system; provided, further, the executive office of transportation and construction shall provide a report to the legislature's joint committee on transportation no later than April first, nineteen hundred and ninety-six, detailing all plans and preparations to coordinate the planning, design and construction among the authority, the Massachusetts Port Authority, the Massachusetts Bay Transportation Authority and the Central Artery/Tunnel of the so-called D008A component of the Central Artery/Tunnel project, including all construction contracts associated therewith; provided, further, such report shall include efforts being undertaken to coordinate the project with emphasis on the communities, agencies and authorities affected and shall further include an estimate of the cost of maintenance for the above mentioned component of the Central Artery/Tunnel project.

The Massachusetts Port Authority shall be a full participant in, and equally responsible for the associated costs of conducting, the joint feasibility study with respect to clauses (i), (ii) and (iv); provided, however, that the agreement of a majority of such participants shall be required prior to the submission of those portions of said feasibility study with respect to the subject matter of such clauses. Any contribution required from the Massachusetts Port Authority under said feasibility study shall be consistent with its enabling act, trust agreements entered into prior hereto by the Massachusetts Port Authority and with the requirements of applicable federal aviation law.

Approved November 22, 1995.

CHAPTER 5 OF THE ACTS OF 1996.

An Act Relative to the Retirement Program of the Massachusetts Port Authority.

Be it enacted, etc., as follows:

Chapter 133 of the Acts of 1992 is hereby amended by striking out Section 49 and inserting in place thereof the following section:

Section 49. The board of directors established by chapter four hundred and sixty-five of the Acts of nineteen hundred and fifty-six is hereby authorized to design and implement an early retirement program for its employees; provided, however, that retirement under said program must occur between the period of September first, nineteen hundred and ninety-two

through August thirty-first, nineteen hundred and ninety-three or January first, nineteen hundred and ninety-six through December thirty-first, nineteen hundred and ninety-six.

Approved January 8, 1996.

CHAPTER 28 OF THE ACTS OF 1996.

An Act Relative to the Revitalization and Development of the Commonwealth's Seaports.
["Seaport Bond Bill"]

[This Act authorizes and directs the Massachusetts Port Authority to pay 25% of the total \$20 million cost for dredging the Commonwealth's harbors and half of the cost for the proposed double stack train network.]

Approved February 26, 1996.

CHAPTER 71 OF THE ACTS OF 1996.

An Act Authorizing Certain Public Employees Creditable Retirement Service Time for Active Service in the Armed Forces.

Be it enacted, etc., as follows:

Section 1. Paragraph (g) of subdivision (2) of section 3 of chapter 32 of the General Laws is hereby amended by striking out Group 4 as amended by section 52 of chapter 38 of the acts of 1995, and inserting in place thereof the following:-

Group 4. - . . . employees of the Massachusetts Port Authority at the General Edward Lawrence Logan International Airport, comprising permanent crash crewmen, fire control men, assistant fire control men, . . . employees of the Massachusetts Port Authority who are employed as licensed electricians, utility technicians, steam engineers, watch engineers, boiler operators, or steam firemen, and supervisors of said employees, at an electrical generating or distribution plant;. . .

Section 2. Paragraph (h) of subdivision (1) of section 4 of said chapter 32, as appearing in the 1994 Official Edition, is hereby amended by adding the following paragraph:-

Notwithstanding the provisions of this chapter or any other general or special law, rule or regulation to the contrary, a member in service of a retirement system as defined in section one who is a veteran who served in the armed forces of the United States and who has completed ten or more years of membership service shall be entitled to credit for active service in the armed services of the United States; provided, however, that such active service shall not be credited until such

102.

member has paid into the annuity savings fund of such system, in one sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments of an amount equal to the ten percent of the regular annual compensation of the member when said member entered the retirement system; and, provided further that such creditable service shall not be construed to include service for more than four years provided further, that such creditable service shall not be allowed for any period of active service for which said veteran has received credit pursuant to paragraph (h) of subsection (1) of section 4 of chapter thirty-two of the General Laws or for which said veteran receives a federal military pension. This act shall apply to Massachusetts National Guard and Active Reserve personnel, both former and present. Creditable service time, both enlisted and commissioned may be applied toward retirement on a ratio of five years guard service or five years active reserve service substitutable for each year of active service.

Section 3. For the retirement system of any political subdivision, the provisions of this act shall take effect on the effective date of this act by majority vote of the board of such system and by the local legislative body. For the purposes of this paragraph local legislative body shall mean a town meeting for a town system, the city council subject to the provisions of its charter for a city system, the county commissioners for a county system, the district members for a district system and the governing body of an authority for an authority system. Acceptance shall be deemed to have occurred upon the filing of a certification of such vote with the commissioner.

Members in service of a retirement system eligible for said creditable service under this act shall make application for said creditable service within one hundred and eighty days of being notified by the retirement board of their eligibility after becoming vested in the retirement system, or for currently eligible members, within one hundred and eighty days of the acceptance of this act by the local legislative body.

Terms used in this act shall have the same meaning as those terms defined in section one of chapter thirty-two of the General Laws.

Approved April 25, 1996.

CHAPTER 130 OF THE ACTS OF 1996.

An Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar).

[This act prohibits Massport and other state agencies from contracting with companies with interests in Burma and is effective September 23, 1996.]

Approved June 25, 1996.

VARIOUS TRANSPORTATION BOND BILLS

The following Acts authorize the Massachusetts Turnpike Authority to enter into agreements with other Commonwealth entities such as the Massachusetts Port Authority:

Chapter 15 of the Acts of 1988

Chapter 113 of the Acts of 1996

Chapter 33 of the Acts of 1991

Chapter 151 of the Acts of 1996 §531

Chapter 273 of the Acts of 1994

Chapter 205 of the Acts of 1996
{See Sections 43, 46, 49, 50, 51,
110 and 112}

104.

278

APPENDIX C: SELECTED GENERAL LAW REFERENCES

The following is a partial listing of selected Massachusetts General Laws relevant to Massport.

Chapter 3	Sections 39 <i>et seq.</i>	Massport included as an "authority" subject to the rules governing lobbying by executive agents.
Chapter 6A	Section 19	Massport placed within the Executive Office of Transportation and Construction.
Chapter 7	Section 1	Massport included as "state authority" under the laws governing the Executive Office of Administration and Finance for certain types of procurement. {See Chapter 7, Section 22C, <i>et seq.</i> }
Chapter 7	Section 53	Massport included as "agency" with respect to regulation of privatization contracts.
Chapter 22	Section 13A	Certain buildings constructed by Massport are "public buildings" subject to certain requirements of the architectural access board.
Chapter 22C	Section 30	Agreement for state police services at Logan Airport.
Chapter 23A	Section 59	Massport included as "state authority". Persons receiving economic development funds from state authority required to agree to certain specified code of corporate standards relative to business interests or involvement with People's Republic of China.
Chapter 29	Section 1	Massport included as a "state authority" subject to certain requirements of state finance laws.
	Section 23	Massport funds are not subject to control by the State Treasurer.
	Section 64 & 64A	State police assigned to Massport facilities and funded by Massport are employees under this section for purposes of deferred compensation contracts.
Chapter 30	Section 39M	Public bidding for public works contracts.

106.

Chapter 30	Sections 61, <i>et seq.</i>	Massachusetts Environmental Policy Act.
Chapter 30A	Sections 11, <i>et seq.</i>	Imposes certain requirements with respect to promulgation of certain Massport regulations.
	Sections 11A, <i>et seq.</i>	State Open Meeting Law.
Chapter 32	Sections 1, 3, 4 ^{7/8} (a), 7, 11, 14, 15, 21, 22 (7h), 23, 24, 100, 102	Guidelines for Massport Employees Retirement System. {See Chapter 151 of the Acts of 1996, §531}
Chapter 40B	Section 24	Massport Chairman is included as a member of the Metropolitan Area Planning Council.
Chapter 41	Section 111F	Leave with pay during period of incapacity for certain Massport employees at Logan Airport.
Chapter 66	Sections 1, <i>et seq.</i>	Public Records. {See also Chapter 4, Section 7, cl. 23}
Chapter 91	Sections 1, <i>et seq.</i>	Waterways licenses. {See 310 CMR 9.03(3) for exemption provision applicable to Massport.}
Chapter 142	Section 21	All plumbing and gas fitting work in Massport buildings must conform to the rules set by the Board of State Examiners of Plumbers and Gas Fitters.
Chapter 143	Section 94	Excludes Massport bridges and appurtenant supporting structures from the control of the State Board of Building Regulations and Standards.
Chapter 149	Sections 44A, <i>et seq.</i>	Public bidding laws applicable to building construction contracts.
Chapter 152	Section 73	Election of workers' compensation or pension benefits by an eligible Massport employee.
Chapter 258	Section 1	Private contractors with Massport are not public employers.
Chapter 268A		State Conflict of Interest Law.