

HOUSE No. 5390

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
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KARYN POLITO
LIEUTENANT GOVERNOR

November 10, 2022

To the Honorable House of Representatives,

Pursuant to Section 5 of Article LXIII, as amended by Section 4 of Article XC of the Amendments to the Constitution, I am today signing House Bill 5374, “An Act Relating to Economic Growth and Relief for the Commonwealth,” vetoing 24 sections and returning 2 sections with amendment.

The bill I am signing today authorizes \$3.76 billion in gross spending, including certain transfers, funded from a combination of state and federal sources. I am signing nearly all of the spending, which supports many of the critical needs proposed by our Administration across multiple supplemental budget proposals and the FORWARD Act filed in April, key spending items needed to close Fiscal Year 2022 (FY22), and new initiatives and projects added by the Legislature. The significant investments in this bill will fortify health and human services, advance clean energy and resiliency efforts, expand affordable housing production, and support Massachusetts communities, businesses, and families.

This bill reinforces our health care system with \$850 million in near-term relief for fiscally strained hospitals, health facilities, and human service providers as they serve the needs of their communities, \$200 million to support the Commonwealth’s continued response to and management of COVID-19, and funding for other urgent priorities such as housing for individuals experiencing homelessness, addressing the varied needs of immigrants and refugees, combatting gun violence, and supporting access to reproductive care services. Additionally, the bill provides \$150 million to stabilize early education and care providers.

The bill dedicates substantial funding to expand housing production in Massachusetts and support regional and local economies. It invests \$300 million in affordable housing creation and homeownership expansion, \$153 million to support a variety of businesses in need across the state, and \$50 million for the Equitable Developers' financing program. It also funds hundreds of local economic development projects.

The bill also supports many long-lasting capital investments that will advance clean energy and improve our parks and public spaces. Notably, it includes \$100 million for improvements to port infrastructure, \$175 million for investments in publicly-owned green space and environmental infrastructure, \$150 million for clean energy initiatives, and \$115 million for water quality improvement projects through the Massachusetts Clean Water Trust. While I am pleased to approve spending on these important investments, I remain deeply concerned that the legislation as enacted would leave approximately \$1.7 billion in time-limited ARPA Fiscal Recovery Fund (ARPA-FRF) money unallocated. Federal law requires that the entirety of this money be committed by the end of 2024 and spent by the end of 2026. It is imperative that the Commonwealth does not put these funds at risk through further delay in allocating them. Therefore, I am vetoing section 264, which would restrict ARPA-FRF spending to only \$510 million. This will allow the Commonwealth to allocate federal dollars first for uses as authorized in line items in this bill. Relative to the enacted bill, the same amount of money will remain unallocated, and that money will still be subject to appropriation, but it will be state money, and it will not expire.

As I have also previously expressed, I was disappointed that permanent tax relief reforms were not included in this bill. The measures that I proposed in January and that were supported by the Legislature in earlier versions of this bill are affordable and sorely needed by Massachusetts taxpayers. Recognizing the importance of childcare investments, I am approving sections in this bill that redirect \$315 million from the Commonwealth Taxpayer Relief Fund to the High-Quality Early Education & Care Affordability Fund. However, we can invest in childcare and make sensible tax changes at the same time. With the state in a historically strong fiscal position, the tax cuts that the Legislature has committed to prioritizing next session will be affordable without a special set-aside.

This bill will make a variety of other adjustments to law, the large majority of which I am signing. This includes many outside sections previously proposed by our Administration, and we appreciate the Legislature's support of these changes. Notably, I am signing necessary corrections that will allow for the successful implementation of new tax credits related to offshore wind and the hiring of National Guard members, in addition to policy sections that will improve the operation and effectiveness of the Brownfields Redevelopment Fund and smart growth zoning through an improved Starter Home Zoning chapter of the General Laws. Additional sections will change the Department of Public Health's (DPH) standing order authority related to COVID-19 testing and treatment and will establish effective and efficient

administrative processes through which DPH will manage the licensure and oversight of Registered Sanitarians and Certified Health Officers.

I am signing most of the sections added by the Legislature; however, I am vetoing, in addition to the aforementioned section, a number of other sections for the reasons set out below and in the accompanying attachments. I am also vetoing spending for certain programs that are not appropriate uses of public funds.

Of the 271 outside sections presented in the conference report, we are vetoing 24, returning 2 with amendments, and signing the rest.

Therefore:

- We are reducing appropriation amounts and striking accompanying wording in items of section 2A of House Bill 5374 that are enumerated in Attachment A of this message, by the amount and for the reasons set forth in that attachment;
- We are disapproving sections 6, 144 to 164, 251, and 264 itemized in Attachment B of this message for the reasons set forth in that Attachment;
- We are returning section 115 with recommendations for amendment. Our reasons for doing so and the recommended amendments are set forth in a separate letter that is dated today and included with this message as Attachment C; and
- We are returning section 253 with recommendations for amendment. Our reasons for doing so and the recommended amendments are set forth in a separate letter that is dated today and included with this message as Attachment D.

Respectfully submitted,

Charles D. Baker,
Governor

Attachment A

"An Act Relating to Economic Growth and Relief for the Commonwealth"

Veto Items: Line Item Accounts

Item Number	Action	Reduce By	Reduce To
Local Community Development Projects			
1599-6063	Reduce/Strike Wording	100,000	85,754,000
I am striking language that earmarks funding for a program not recommended. This funding is an inappropriate use of state funds. The reduction in the item incorporates the amount of the stricken earmarked funds.			
Reproductive Care Access and Information Campaign			
1599-6072	Reduce/Strike Wording	1,000,000	16,500,000
I am striking language that earmarks funding for a program not recommended. The information required to be published by this earmark is already publicly available from the state. The reduction in the item incorporates the amount of the stricken earmarked funds.			

Attachment B

"An Act Relating to Economic Growth and Relief for the Commonwealth"

Veto Items: Outside Sections

Section 6 – Tuition Retention 1

I am vetoing this section, which authorizes the conversion of existing tuition waivers into student tuition credits, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 144 – Tuition Retention 2

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 145 – Tuition Retention 3

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 146 – Tuition Retention 4

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 147 – Tuition Retention 5

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 148 – Tuition Retention 6

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 149 – Tuition Retention 7

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 150 – Tuition Retention 8

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 151 – Tuition Retention 9

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 152 – Tuition Retention 10

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 153 – Tuition Retention 11

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 154 – Tuition Retention 12

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 155 – Tuition Retention 13

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 156 – Tuition Retention 14

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 157 – Tuition Retention 15

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 158 – Tuition Retention 16

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 159 – Tuition Retention 17

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 160 – Tuition Retention 18

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 161 – Tuition Retention 19

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 162 – Tuition Retention 20

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 163 – Tuition Retention 21

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 164 – Tuition Retention 22

I am vetoing this section, along with the other sections which allow for in-state tuition to be retained and expended by all state universities and community colleges, because such changes are better advanced in conjunction with the annual budget process and should be considered as part of a comprehensive public higher education finance reform effort, not made piecemeal.

Section 251 – Water Discharge Commission

I am vetoing this section as the commission's work would be duplicative of, and would interfere with, ongoing work on waste disposal and decommissioning issues by the responsible federal and state agencies.

Section 264 – Funding Sources

I am vetoing this section, which caps ARPA-FRF spending at only \$510 million, to allow the Commonwealth greater flexibility to spend time-limited federal dollars for uses authorized in this bill.

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ATTACHMENT C

November 10, 2022

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 115 of House Bill No. 5374, “An Act relating to economic growth and relief for the Commonwealth.”

Section 115 requires the Department of Public Health (DPH) to offer certified nurses’ aide (CNA) exams in languages other than English to nurses’ aides who receive their training or work in facilities with primarily non-English speaking populations. In addition to Spanish and Chinese, it is up to DPH to determine the other languages in which to offer the test.

CNAs are critical to our health care workforce. As we work to recover from the COVID-19 pandemic, the strain on our health care workforce remains a challenge. I support Section 115, as it expands access to testing for CNAs who might otherwise not have the opportunity to join the workforce due to limited English proficiency. However, Section 115 does not include an implementation deadline. This initiative would benefit from having a clearly defined timeline for DPH to develop the testing program, and to identify providers who are qualified to offer, proctor, and score the tests in each new language. In order to ensure the smooth and adequate implementation of this important initiative, I am returning this section with language requiring DPH to implement the section on or before October 1, 2023.

Additionally, as the pandemic has evolved, so too have the Commonwealth's data needs and reporting requirements. Massachusetts continues to maintain one of the most robust and comprehensive public data reports on COVID-19 in the nation. Given the evolution of the pandemic, the availability of new leading indicators and monitoring mechanisms, and the burden the current requirement places on providers, the DPH recommends that we shift away from daily reporting and report COVID-19 data on not less than a weekly basis. I am including as a part of this package a previously filed section that accomplishes this change.

Finally, the pandemic has significantly impacted the mental health needs of the residents of the Commonwealth, which is why I was pleased to sign into law "An Act addressing barriers to care for mental health" in August. That law allows incarcerated individuals to petition the courts to be transferred to a mental health facility. The Department of Mental Health recommends that incarcerated individuals receive a clinical examination from a qualified mental health professional and a transfer to an inpatient hospital if the incarcerated individual has been on mental health watch for at least 48 hours and is in need of hospitalization by reason of mental illness. A clinical assessment is the only evidence on which a court considering a petition for transfer can reasonably rely in determining if the petitioner suffers from mental illness and whether a DMH psychiatric hospital will be able to provide the appropriate treatment. Courts uniformly rely on clinical assessments when ordering treatment in all similar contexts, and a clinical assessment for a transfer under this new provision should be required as well. I have previously proposed sections that would effectuate these changes and ask that they receive your further consideration as a part of this package.

For these reasons, I recommend that the bill be amended by striking out section 115 and inserting in place thereof the following section:-

SECTION 115. Chapter 111 of the General Laws is hereby amended by striking out section 72W and inserting in place thereof the following section:-

(a) As used in this section the following words shall have the following meanings:-
"Long term care facility", a convalescent home, nursing home, rest home or charitable home for the aged licensed under the provisions of section seventy-one.

"Nurses' aide", any employee of a long term care facility who provides nursing care under the supervision of a nurse for the purpose of providing safety, comfort, personal hygiene or protection of a patient in a long term care facility.

(b) The commissioner after consultation with the secretary of elder affairs and the board of registration shall establish standards for the training of nurses' aides which shall include a minimum of sixty hours of training.

(c) Any person administering a long term care facility who hires a nurses' aide shall provide such training for said nurses' aide within ninety days of the commencement of employment.

(d) Any long term care facility which complies with the provisions of this section shall have the costs of such compliance recognized in its interim rate of payment.

(e) A nurses' aide who receives their training and works in a facility whose resident population is predominantly non-English speaking, shall be offered the option to take the nurses' aide certification exam in a language other than English, including, but not limited to, Spanish and Chinese; provided, however, that the department shall determine which languages the exam shall be offered in.

(f) The department shall make such rules and regulations as may be necessary to carry out the provisions of this section.

And further recommend that the bill be amended by inserting after section 130 the following 3 sections:-

SECTION 130A. Paragraph (2) of subsection (a $\frac{1}{2}$) of section 18 of chapter 123 of the General Laws, as inserted by section 48 of chapter 177 of the acts of 2022, is hereby amended by striking out the second sentence and inserting in place thereof the following 5 sentences:- The court shall provide notice of the petition to the person in charge of the place of detention, who shall cause the prisoner to be clinically examined by a physician or psychologist designated by the department of mental health as qualified to perform such examination. The physician or psychologist shall conduct the examination within 24 hours of receiving the examination request. The results of the clinical examination shall be reported to the district court that has jurisdiction. Such report shall include an opinion, with reasons therefore, as to whether the prisoner needs hospitalization by reason of mental illness. The court may order the prisoner's requested transfer if the prisoner: (i) has been on mental health watch for at least 48 hours; and (ii) is in need of involuntary psychiatric hospitalization by reason of mental illness.

SECTION 130B. Said paragraph (2) of said subsection (a $\frac{1}{2}$) of said section 18, as so inserted, is hereby further amended by inserting, after the words "every 24 hours thereafter that the prisoner remains on mental health watch," the following words:- unless a qualified mental health professional, as defined by section 1 of chapter 127, finds notice every 24 hours thereafter to be clinically contraindicated, whereupon a finding of clinical contraindication shall be entered into the prisoner's medical record, .

SECTION 130C. Said subsection (a $\frac{1}{2}$) of said section 18, as so inserted, is hereby further amended by adding the following paragraph:-

(3) Any orders for hospitalization under this subsection shall proceed as provided in subsection (a).

And further recommend that the bill be amended by inserting after section 265 the following section:-

SECTION 265A. Notwithstanding the reporting requirements in section 1 of chapter 93 of the acts of 2020, each report required shall occur no less than once weekly.

And further recommend that the bill be amended by inserting after section 272 the following section :-

SECTION 272A. Section 115 shall take effect on October 1, 2023.

Respectfully submitted,

Charles D. Baker,

Governor.

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ATTACHMENT D

November 10, 2022.

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 253 of House Bill No. 5374, “An Act Relating to Economic Growth and Relief for the Commonwealth.”.

Section 253 relates to Section 90G¾ of Chapter 32 of the General Laws, which was repealed in 2017. Prior to its repeal, the section required a member of a retirement system who wanted to continue to make contributions past the age of 70, while still employed, to affirmatively elect to do so. Upon making that election, the member would then be able to accrue credible service past the age of 70 and factor salaries earned in those years into their retirement calculation.

Section 253 would allow members to buyback their post-70 years if they did not previously elect to continue their contributions past 70. As drafted, members would be entitled to buyback those years by paying the total amount of contributions they would have made after turning 70, if they had elected to continue making payments. Before this option becomes available to members, the Massachusetts State Retirement Board (“MSRB”) must determine whether an Internal Revenue Service (“IRS”) ruling is needed to determine if this buyback jeopardizes IRS compliance for the Commonwealth’s retirement systems; it also instructs the MSRB to seek such an IRS ruling if necessary.

While there are valid reasons to give retirement system members an opportunity to revisit the decision they made a number of years ago, prior to the section's repeal, I have three concerns.

First, since the section applies to members of all retirement systems in the Commonwealth, I believe that the Public Employees Retirement Administration Commission ("PERAC") should be the agency that makes the determination on IRS compliance on behalf of all the systems in the Commonwealth.

Second, creditable service buyback typically requires the member purchasing the service to pay interest on the amount of the contributions they would have made. As a result, I am proposing the payments also include the actuarial assumed interest rate.

Third, as drafted the language seems to allow a member to choose the specific periods of time after they turned 70 to be bought back. To the extent it does, I am concerned that this would not comply with IRS rules and regulations. Thus, I am proposing that the option to purchase must be for all service time accrued after a member has attained the age of 70.

For these reasons, I recommend that the bill be amended by striking out Section 253 and inserting in place thereof the following section:-

SECTION 253. (a) Notwithstanding section 141 of chapter 47 of the acts of 2017, a member who made an election under section 90G¾ of chapter 32 of the General Laws prior to the enactment of section 28 of chapter 47 of the acts of 2017, may, within 60 days of any final determination under subsection (b), repeal such election and be credited with any years of service subsequent to such election; provided, however, that such member: (i) has maintained continuous service since making such election; (ii) is a member continuing in service as of the effective date of this act; and (iii) notifies their retirement system of their intention to repeal such election; provided, further, that such service shall not be credited until such member has paid into the annuity savings fund of such system, in 1 sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments, for all years of additional creditable service after the member attained the age of 70, of an amount equal to the per cent of the regular annual compensation of the member, plus actuarial assumed interest.

(b) Not later than 90 days after the effective date of this section, the public employee retirement administration commission shall determine whether an Internal Revenue Service ruling on whether subsection (a) may be implemented without impairing the compliance of retirement systems governed under chapter 32 of the General Laws with the Internal Revenue Code of 2022 is necessary.

(1) If the commission determines that such a ruling is necessary, the commission shall request such a ruling from the Internal Revenue Service and subsection (a) shall not take effect unless and until the Internal Revenue Service issues a favorable ruling that determines that the transfers described in this section will not result in non-compliance of retirement systems governed under chapter 32 of the General Laws with the Internal Revenue Code.

(2) If the commission determines that such a ruling by the Internal Revenue Service is not necessary, then subsection (a) shall take effect as of the date of that determination.

Respectfully submitted,

Charles D. Baker,

Governor.

The actions taken by the Governor are delineated on this excerpt from the original parchment:—

I disapprove Sections 6, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 251, and 264.

I reduce the following items in Section 2A to the following amounts, and disapprove the wording as indicated:

Section 2A	Reduce By	Reduce To	Wording Stricken
1599-6063	100,000	85,754,000	"; provided further, that not less than \$100,000 shall be expended for the Downtown Hyannis Community Development Corporation for connecting downtown businesses to the OpenCape fiber-optic network"
1599-6072	1,000,000	16,500,000	"; provided further, that not less than \$1,000,000 shall be expended for a public awareness campaign to educate providers and the public about so called crisis pregnancy centers and pregnancy resource centers and their lack of medical services; provided further, that said campaign shall include information on the availability of providers across the commonwealth that provide legitimate medical and family planning services; and provided further, that said campaign shall be linguistically diverse and culturally competent"

I return for amendment, pursuant to the authority vested in me by Article 56, as amended by Article 90, Section 3, of the Amendments to the Constitution, Sections 115 and 253. The text of my recommended amendments is set forth in separate letters of this date to the Senate and House of Representatives.

The remainder of this bill I approve.

Approved, November 10, 2022

at o'clock and minutes, .M.

Charles D. Baker,

Governor.