

SUPPLEMENT DATED JULY 18, 2017



TO

THE COMMONWEALTH OF MASSACHUSETTS

INFORMATION STATEMENT

DATED MAY 19, 2017

Except as specifically provided herein, the Commonwealth Information Statement dated May 19, 2017 (the "Information Statement") has not been updated or supplemented, except as previously set forth in the Supplement dated June 16, 2017 (the "June Supplement" and, together with the Information Statement, the "Supplemented Information Statement"). The Information Statement contains information only through its date, except as specifically set forth in the June Supplement and in this Supplement, as set forth below. The Information Statement, together with the June Supplement and this Supplement, should be read in its entirety.

The Supplemented Information Statement is supplemented as of the date hereof as set forth below.

FISCAL 2017 AND FISCAL 2018 – Fiscal 2017

Under the heading "FISCAL 2017 AND FISCAL 2018 – Fiscal 2017," the eighth paragraph, as inserted by the June Supplement, is deleted and replaced with the following:

On June 9, 2017, the Governor approved a supplemental budget for fiscal 2017, including \$43 million in supplemental appropriations. The supplemental budget added funding for the Department of Correction (\$15 million), snow and ice control costs at the Massachusetts Department of Transportation (\$14 million), increased rates for certain human service providers (\$10 million), and other smaller items (\$4 million). On July 11, 2017, the Governor approved an additional supplemental budget for fiscal 2017, which provided \$26 million in supplemental appropriations for legal representation for indigent defendants. It is anticipated that additional supplemental appropriations may be required, as is customary during the period following a fiscal year's end, to close fiscal 2017 in statutory balance.

Under the heading "FISCAL 2017 AND FISCAL 2018 – Fiscal 2017," the tenth paragraph, as inserted by the June Supplement, is deleted and replaced with the following:

Massachusetts, like other similarly situated states, has experienced below-forecast income tax revenues during the spring 2017 income tax filing season, with shortfalls related primarily to lower than anticipated payments with bills and returns. The Secretary of Administration and Finance has implemented various measures, including reducing allotments, maintaining payroll caps and other hiring limitations, transferring unneeded trust fund balances and imposing spending controls to address the resulting budget gap. Preliminary tax revenue through May, 2017 was \$439 million below the revised tax revenue projection of October 14, 2016, without regard to the impact of tax-related settlements, and the Secretary currently expects that tax revenue as of the end of fiscal 2017 will be \$420 million to \$450 million below the revised October projection. Preliminary tax revenue results for June, 2017 and total collections for fiscal 2017 are expected to become available later in July.

The Executive Office for Administration and Finance currently expects that no transfer from the Stabilization Fund will be necessary to end fiscal 2017 in balance. This expectation is based on preliminary estimates, as final closure of the fiscal year is ongoing; accordingly, results are subject to change.

FISCAL 2017 AND FISCAL 2018 – Fiscal 2018

Under the heading “FISCAL 2017 AND FISCAL 2018 – Fiscal 2018,” the second through the sixth paragraphs, inclusive, of the Information Statement, are deleted and replaced with the following:

An interim budget of approximately \$5.15 billion for the first month of fiscal 2018 was approved by the Governor on June 26, 2017. The interim budget was superseded by the fiscal 2018 budget when it was approved by the Governor on July 17, 2017.

The fiscal 2018 budget, as approved by the Governor, totals approximately \$39.4 billion, after accounting for \$193 million in net line-item vetoes, and excluding transfers to the Medical Assistance Trust Fund. The fiscal 2018 budget as approved by the Governor is approximately \$652 million, or 1.7%, greater than fiscal 2017 estimated spending levels at the time of its approval. The fiscal 2018 budget is based on a projection of \$26.504 billion in tax revenue available to the budget, excluding tax-related settlements and judgments. The fiscal 2018 budget also projects a deposit of \$98.4 million to the Stabilization Fund in fiscal 2018. At the time he approved the budget, the Governor also filed a supplemental budget for fiscal 2018, which proposed additional appropriations for expected deficiencies totaling \$94 million, net of offsetting revenues.

On July 17, 2017, the Governor returned certain provisions of the enacted legislative budget relating to MassHealth and Employer Medical Assistance Contributions (EMAC) with amendments. These legislative proposals would temporarily increase EMAC contributions, resulting in approximately \$200 million of revenue in fiscal 2018; realign benefits with commercial products; transition non-disabled adults to Health Connector plans; impose a temporary moratorium on new mandated benefits; and make other changes intended to maintain the Commonwealth’s commitment to affordable health care coverage and the stability and sustainability of the MassHealth program.

LEGAL MATTERS

Under the heading “LEGAL MATTERS - Taxes,” the paragraph in the June Supplement describing the ACMA v. Heffernan matter is deleted and replaced with the following:

American Catalog Mailers Association and Netchoice v. Michael J. Heffernan, Commissioner of the Massachusetts Department of Revenue, Suffolk Superior Court, Massachusetts. Two trade associations have filed a facial challenge to Directive 17-1 issued by the Commissioner of Revenue on April 3, 2017 (the “Directive”), which requires internet vendors with more than \$500,000 in Massachusetts sales and sales for delivery into Massachusetts in 100 or more transactions in the preceding 12 months to collect and remit Massachusetts sales and use tax beginning on July 1, 2017. The suit alleges that the Directive violates the state administrative procedure act, the federal Internet Tax Freedom Act, and the Commerce Clause and the Due Process Clause of the U. S. Constitution. The plaintiffs filed a motion seeking to preliminarily enjoin enforcement of the Directive before it could go into effect. A hearing on the plaintiffs’ preliminary injunction motion was held on June 27, 2017. On June 28, 2017, the Department of Revenue revoked the Directive, effective immediately, so that it could instead propose a regulation which, if adopted after public notice, comment and a hearing, would require internet vendors to collect Massachusetts sales and use tax on a prospective basis under standards similar to those described in the Directive. Shortly after the Department of Revenue revoked the Directive, the Superior Court issued a memorandum of decision and order concluding that the Directive was a regulation promulgated without compliance with G.L. c. 30A, §§ 2-3, and therefore was invalid. The Department of Revenue had projected approximately \$30 million in sales and use tax revenue collections in fiscal 2018 as a result of the Directive, which income stream (likely to be smaller in fiscal 2018) has now, at best, been delayed due to the litigation. There is no potential in this matter for a judgment that would create a financial liability of the Commonwealth; the potential negative financial impact is limited to the foregone revenue that could otherwise have been collected under the Directive.

The subsection in the Information Statement captioned “LEGAL MATTERS - Other” is deleted and replaced with the following:

Drug Testing Laboratory disputes. In August, 2012, Annie Dookhan, a chemist formerly employed at the state’s drug testing laboratory in Boston, admitted to several types of misconduct involving her handling of laboratory samples, which were used in criminal cases. The Attorney General’s office conducted a criminal investigation and, in December, 2012, Ms. Dookhan was indicted by a statewide grand jury on charges in connection with altering drug evidence during the testing process and obstructing justice; she pled guilty in 2013 and was sentenced to 3-to-5 years in state prison. On January 18, 2017, the Supreme Judicial Court, in *Bridgeman, et al. v. District Attorney for the Suffolk District, et al.*, SJC-12157, held that, in order to resolve the ongoing issues relating to the rights of criminal defendants potentially affected by Ms. Dookhan’s misconduct in some 20,000-24,000 cases, the state’s district attorneys, within 90 days of the order, were required to review those cases to determine which it could and would re-prosecute, and then move to vacate and dismiss the rest. Defendants in the cases that remain shall receive a judicially-approved notice, after which the Committee for Public Counsel Services shall assign counsel, at state expense, to all indigent defendants who wish to pursue vacatur or a new trial. In mid-April, prosecutors announced that they would be moving to vacate and/or dismiss approximately 21,500 cases, and only a few hundred would remain open for reprosecution.

Meanwhile, in January, 2013, Sonja Farak, a chemist formerly employed at the state’s Amherst drug testing laboratory was arrested for theft of a controlled substance and tampering with evidence. In January, 2014, Ms. Farak pled guilty to charges that she removed drug samples for her own use and mixed drug evidence samples with counterfeit drugs to hide the theft, and she was given a split sentence of 2.5 years in a house of correction with 18 months to serve. The Attorney General’s Office conducted an investigation into the full scope and timing of Ms. Farak’s misconduct and the operations of the Amherst laboratory, issuing a report dated April 1, 2016, to the Hampden County Superior Court. Many thousands of criminal prosecutions may have been affected. In December, 2016, the Hampden County Superior Court held an evidentiary hearing on motions for new trial or to withdraw guilty pleas and motions to dismiss filed by a small group of 10 defendants whose cases the Court had consolidated for purposes of evidentiary hearings. On June 26, 2017, the court (Carey, J.) vacated the convictions or dismissed the indictments of six defendants and allowed another to withdraw a guilty plea. The court found that two former prosecutors “tampered with the fair administration of justice” and perpetrated “a fraud upon the court” by deliberately concealing documents which arguably showed that Ms. Farak’s drug abuse (and, inferentially, tampering in the lab) had begun earlier than previously acknowledged and by making misrepresentations in connection with discovery motions that had been decided by another judge. With respect to certain other criminal prosecutions, the court found that their misconduct has systemic ramifications. With regard to the Amherst lab, while the court found that Ms. Farak’s drug use impaired her ability to test and analyze controlled substances and to check the equipment and instruments used to analyze suspected drugs on occasions which cannot be identified, the court also found that, with the exception of Ms. Farak’s work, the Amherst lab was “free from any deficiency in analytical procedure, was kept in an orderly fashion, and that work flowed through the lab smoothly.”

Given the tens of thousands of cases from both laboratories potentially affected, there likely will be continuing significant, but as yet undetermined, state costs to remedy alleged malfeasance, including, but not limited to: vendor costs for maintaining an electronic document review platform; costs to defend civil complaints alleging state liability in both state and federal court; and for potential judgments. In addition, on April 19, 2017, the United States Supreme Court ruled, in a case out of Colorado, that when a criminal conviction is invalidated by a reviewing court and no retrial will occur, a state is obliged to refund fees, court costs, and any restitution exacted from a defendant upon, and as a consequence of, the conviction. If this ruling is applicable to the facts and legal circumstances of the Dookhan and Farak defendants’ cases, it could require the Commonwealth to budget for a million dollars or more worth of refundable exactions and administrative expenses.

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