



October 2013

## 2013 Massachusetts Midsession Legislative Summary

---

The 188th General Court of the Commonwealth of Massachusetts is about midway through its session, and several pieces of legislation are noteworthy to stakeholders in the construction industry. There has been a recent focus on appropriations for public infrastructure and works projects. The summaries below highlight notable legislative action from approximately the end of the previous legislative session (August 2012) through the middle of the current session (August 2013).

### 2013 ACTS AND RESOLVES

#### Chapter 46: An Act Relative to Construction Finance

Chapter 46 of the 2013 Acts and Resolves became effective on July 1, 2013, and bolsters spending on transportation finance by, among other things, increasing the Massachusetts compulsory gasoline tax, increasing excise taxes on certain tobacco products, and reorganizing certain other consumer and corporate tax takings. The act further requires utilities with infrastructure on rights-of-way to pay fair market value for their use. By amending the existing General Laws Chapter 6C § 3 (relative to the Massachusetts Department of Transportation), the act ensures the establishment of a long-range transportation plan developed by the secretary of Transportation. This plan provides that not less than \$100 million will be spent each year for the construction and reconstruction of municipal roadways and bridges throughout the Commonwealth.

#### Chapter 18: An Act Financing Improvements to the Commonwealth's Transportation System

Continuing the attention on the highways, byways, and other infrastructure of the Commonwealth, Chapter 18 of the act, enacted on an emergency basis, appropriates \$300 million for the construction and reconstruction of town and county roads and authorizes \$300 million in bonding for the capital expenditure (payable by 2048). The act also requires that all construction contracts it funds include a price adjustment clause for fuel, asphalt, concrete, and steel. Chapter 18 represents a portion of the overall 2013 Transportation Bond Bill (described below), which includes infrastructure construction appropriations totaling \$19.2 billion and related bonding.

### 2012 ACTS AND RESOLVES

#### Chapter 242: An Act Financing Improvements to the Commonwealth's Transportation System

Chapter 242 of the 2012 Acts and Resolves, which became effective in January 2013, invests \$19.2 billion in various transportation projects as part of Governor Patrick's effort to address road and bridge programs identified in the Fiscal Years 2013-2017 Capital Investment Plan. The act, among other things, appropriates \$4.3 billion for nonfederally aided road and bridge projects, \$3.4 billion for the construction and reconstruction of county ways, \$3.3 billion for rail projects, \$2.4 billion on both interstate and noninterstate highways, \$1.7 billion on South Coast Rail improvements, \$1.3 billion for the Green Line Extension, and several other smaller projects. The act also allows for a number of bond issues related to the appropriations.

### **Chapter 462: An Act to Ensure Transparency of Workplace Participation in Public Construction Projects**

Over the last several years, the Commonwealth has increased scrutiny and enforcement of the requirement that certain public construction projects utilize a diverse workforce. As such, it has promulgated laws that require the use of Minority and Women-Owned Business Enterprises (MWBEs). The Commonwealth tasked the Supplier Diversity Office (SDO, formerly SOMWBA) with, among other things, establishing MWBE participation levels for public projects.

To a certain degree, Chapter 462 puts a finer point on the Commonwealth's existing MWBE legislation with respect to government reporting requirements. The act specifically requires that the secretary of Administration and Finance create an annual report (which will be made available to the public - including awarding authorities, general bidders, and sub-bidders - on the Executive Office of Administration and Finance page at [www.mass.gov](http://www.mass.gov)) that includes (1) the date each public contract was entered into; (2) a brief description of each contract, including the contract reference number, the total contract dollar amount to be spent on the contract, the location of the project, and whether the project receives federal aid and state funding; (3) the total amount of money expended, to date, on each contract; (4) the total amount of money expended, to date, with minority-owned business enterprises and women-owned business enterprises on the contract; (5) the name of each minority-owned business enterprise and women-owned business enterprise that performs work as a contractor, whether as a general or prime contractor or as a subcontractor, on the contract; (6) the total number of labor hours worked to date on each contract, organized by the zip code of each worker; (7) the total number of labor hours worked to date by women, expressed both in the form of a whole number and as a percentage; (8) the total number of labor hours worked to date by minorities, expressed both in the form of a whole number and as a percentage; and (9) any additional information required by the SDO.

The act also now requires that "[e]very contract by a state agency or state assisted contract for design, construction, reconstruction, installation, demolition, maintenance or repair shall set forth the participation goals of minority and women workers to be employed on each such contract and the processes and procedures to ensure compliance with those workforce participation goals, including reporting and enforcement provisions."

---

[Joseph A. Barra](mailto:jbarra@rc.com)  
617-557-5901  
[jbarra@rc.com](mailto:jbarra@rc.com)

---

[Jonathan R. Hausner](mailto:jhausner@rc.com)  
617-557-5928  
[jhausner@rc.com](mailto:jhausner@rc.com)

---

*© 2013 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.*

