HOUSE . . . . . No. 4145

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

AN ACT FINANCING IMPROVEMENTS TO THE COMMONWEALTH'S TRANSPORTATION SYSTEM.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to finance improvements to the Commonwealth's transportation system, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for a program of transportation development and improvements, the sums set forth in sections 2 to 2D, inclusive, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds. The sums appropriated in this act shall be in addition to any amounts previously appropriated and made available for these purposes.

SECTION 2.
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
Highway Division
6121-1215 For projects on the interstate federal aid highway system; provided, that funds may be expended for the costs of these projects including, but not limited to, the nonparticipating portions of these projects and the costs of engineering and other services essential to these projects, rendered by department of transportation employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of these employees to the extent that they work on or in support of these projects; provided further, that notwithstanding this act or any other general or special law to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the federal commitment to fund these obligations; and provided further, that the department shall only enter

20 into obligations for projects under this act based upon a prior or anticipated future commitment
21 of federal funds and the availability of corresponding state funding authorized and appropriated
22 for this use by the general court for the class and category of project for which this obligation
23 applies.....$225,000,000

24 6121-1216 For federal aid projects on the non-interstate federal highway system;
25 provided, that funds may be expended for the costs of these projects including, but not limited to,
26 the nonparticipating portions of these projects and the costs of engineering and other services
27 essential to these projects rendered by department of transportation employees or by consultants;
28 provided further, that amounts expended for department employees may include the salary and
29 salary-related expenses of these employees to the extent that they work on or in support of these
30 projects; provided further, that notwithstanding this act or any other general or special law to the
31 contrary, the department shall not enter into any obligations for projects which are eligible to
32 receive federal funds under this act unless state matching funds exist which have been
33 specifically authorized and are sufficient to fully fund the corresponding state portion of the
34 federal commitment to fund these obligations; and provided further, that the department shall
35 only enter into obligations for projects under this act based upon a prior or anticipated future
36 commitment of federal funds and the availability of corresponding state funding authorized and
37 appropriated for this use by the general court for the class and category of project for which this
38 obligation applies.....$525,000,000

39 SECTION 2A.
40 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
41 Highway Division
42 6121-1217 For the design, construction, and repair of, or improvements to, non-federally-aided
43 roadway and bridge projects and for the nonparticipating portion of federally-aided projects;
44 provided, that the costs of professional personnel directly and exclusively involved in the
45 construction, planning, engineering and design of the projects funded herein may be charged to
46 this item, and any other associated costs; provided further, that those costs shall not be classified
47 as administrative costs; and provided further, that the amounts specified in this item or for a
48 particular project may be adjusted in order to facilitate other needs of the
49 department.....$325,000,000

50 SECTION 2B.
51 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
52 Highway Division
53 6122-1223 For the construction and reconstruction of town and county ways as described in
54 clause (b) of section 4 of chapter 6C of the General Laws, the “chapter 90 program”; provided
55 that a city or town shall comply with the procedures established by the department of
56 transportation; provided further, that any city or town may appropriate for these projects amounts
57 not in excess of the amount provided to the city or town under this item, preliminary notice of
58 which shall be provided by the department to the city or town not later than April 1 of each year;

59 provided further, that the appropriation shall be considered as an available fund upon approval of
60 the commissioner of revenue under section 23 of chapter 59 of the General Laws; and provided
61 further, that the commonwealth shall reimburse a city or town under this item, subject to the
62 availability of funds as provided in section 9B of chapter 29 of the General Laws, within 30 days
63 after receipt by the department of a request for reimbursement from the city or town, which
64 request shall include certification by the city or town that actual expenses have been incurred on
65 projects eligible for reimbursement under this item, and that the work has been completed to the
66 satisfaction of the city or town according to the specifications of the project and in compliance
67 with applicable laws and procedures established by the
68 department……..$200,000,000

69 SECTION 2C.
70 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
71 Rail and Transit Division

72 6622-1205 For the purposes of chapter 161B of the General Laws, including the purchase
73 and rehabilitation of rolling stock, related assets and support equipment necessary to safely serve
74 transit passengers, construction and rehabilitation of regional transit authority operations and
75 passenger facilities, and purchase of related appurtenances and
76 tools.....$11,000,000

77 SECTION 2D.
78 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
79 Rail and Transit Division

80 6622-1280 For the purpose of implementing rail improvements under chapter 161C of the
81 General Laws; provided, that funds may also be used for transportation planning, design,
82 permitting, acquisition of interests in land, and engineering for heavy rail, light rail, bus, and
83 other transit projects, including the industrial rail access program; provided, however, the
84 department shall adopt regulations within 180 days of the effective date of this act implementing
85 the industrial rail access program, which shall increase access to rail freight service and preserve
86 or stimulate economic development through the generation of new or expanded rail service. The
87 secretary of transportation shall have the responsibility for evaluating and selecting eligible
88 projects, in consultation with the secretary of housing and economic development, where the
89 public benefit will be gained through improved use of the rail transportation network or that will
90 facilitate economic growth through access to the rail assets within the commonwealth. The
91 program shall be available to any political subdivision, railroad or shipper operating within the
92 commonwealth; and, provided further, that the amounts specified in this item or for a particular
93 project may be adjusted in order to facilitate other needs of the department or other
94 projects.....$300,000,000

95 SECTION 3. To meet the expenditures necessary in carrying out section 2, the state
96 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
97 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
98 $750,000,000. All these bonds issued by the commonwealth shall be designated on their face,
99 Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of
100 years, not exceeding 30 years, as the governor may recommend to the general court under
101 section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be
102 payable not later than June 30, 2047. All interest and payments on account of principal on these
103 obligations shall be payable from the Commonwealth Transportation Fund. Bonds and interest
104 thereon issued under this section shall, notwithstanding any other provisions of this act, be
105 general obligations of the commonwealth.

106 SECTION 4. To meet the expenditures necessary in carrying out section 2A, the state
107 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
108 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
109 $325,000,000. All these bonds issued by the commonwealth shall be designated on their face,
110 Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of
111 years, not exceeding 30 years, as the governor may recommend to the general court under
112 section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be
113 payable not later than June 30, 2047. All interest and payments on account of principal on these
114 obligations shall be payable from the Commonwealth Transportation Fund. Bonds and interest
115 thereon issued under this section shall, notwithstanding any other provisions of this act, be
116 general obligations of the commonwealth.

117 SECTION 5. To meet the expenditures necessary in carrying out section 2B, the state
118 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
119 amount to be specified by the governor from time to time but not exceeding, in the aggregate, the
120 sum of $200,000,000. All the bonds issued by the commonwealth as aforesaid shall be
121 designated on their face, Town and County Ways and Economic Development Loan, Act of
122 2012, and shall be issued for a maximum terms of years, not exceeding 30 years, as the governor
123 may recommend to the general court under Section 3 of Article LXII of the Amendments to the
124 Constitution of the Commonwealth; provided, however, that all these bonds shall be payable not
125 later than June 30, 2047. All interest and payments on account of principal of these obligations
126 shall be payable from the General Fund. Notwithstanding any other general or special law to the
127 contrary, bonds and interest thereon issued under this section shall be general obligations of the
128 commonwealth.

129 SECTION 6. To meet the expenditures necessary in carrying out section 2C, the state
130 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
131 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
132 $11,000,000 which shall be in addition to those bonds previously authorized for projects and
133 programs which are eligible to receive federal funding and which authorizations remain

134 uncommitted or unobligated on the effective date of this act. All bonds issued by the
135 commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan
136 Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the
137 governor may recommend to the general court under section 3 of Article LXII of the
138 Amendments to the Constitution; provided, however, that all these bonds shall be payable not
139 later than June 30, 2047. All interest and payments on account of principal on these obligations
140 shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon
141 issued under this section shall be general obligations of the commonwealth.

142 SECTION 7. To meet the expenditures necessary in carrying out section 2D, the state
143 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
144 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
145 $300,000,000 which shall be in addition to those bonds previously authorized for projects and
146 programs which are eligible to receive federal funding and which authorizations remain
147 uncommitted or unobligated on the effective date of this act. All bonds issued by the
148 commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan
149 Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the
150 governor may recommend to the general court under section 3 of Article LXII of the
151 Amendments to the Constitution; provided, however, that all these bonds shall be payable not
152 later than June 30, 2047. All interest and payments on account of principal on these obligations
153 shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon
154 issued under this section shall be general obligations of the commonwealth.

155 SECTION 8. Notwithstanding any general or special law to the contrary, in carrying out
156 sections 2 to 2D, inclusive, and all other provisions of this Act, the department of transportation
157 may enter into contracts, agreements, or transactions that may be appropriate with other federal,
158 state, local or regional public agencies or authorities. The contracts, agreements, or transactions
159 may relate to such matters as the department shall determine including, without limitation, the
160 research, design, layout, construction, reconstruction or management of construction of all or a
161 portion of these projects. In relation to any such contracts, agreements, or transactions the
162 department may advance monies to these agencies or authorities, without prior expenditure by
163 the agencies or authorities, and the agencies and authorities may accept monies necessary to
164 carry out these agreements; provided, however, that the department shall certify to the
165 comptroller the amounts so advanced; provided further, that these agreements shall contain
166 provisions satisfactory to the department for the accounting of monies expended by any other
167 agency or authority; and provided, further, that all monies not expended under any such
168 agreement shall be credited to the account of the department from which they were advanced.
169 The department shall report to the house and senate committees on ways and means on any
170 transfers completed under this section.

171 SECTION 9. (a) Notwithstanding any other general or special law to the contrary, the
172 department of transportation shall expend the sums authorized in sections 2A and 2B for the

173 following purposes: projects for the laying out, construction, reconstruction, resurfacing,
174 relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or
175 facilities, on- and off-street bicycle projects, sidewalks, telecommunications, parking facilities,
176 auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other
177 crossings, traffic safety devices on state highways and on roads constructed under section 4(b) of
178 chapter 6C of the General Laws, highway or mass transportation studies, including, but not
179 limited to, traffic, environmental or parking studies, the establishment of school zones in
180 accordance with section 2 of chapter 85 of the General Laws, improvements on routes not
181 designated as state highways without assumption of maintenance responsibilities and,
182 notwithstanding any general or special law to the contrary, projects to alleviate contamination of
183 public and private water supplies cause by the department's storage and use of snow removal
184 chemicals which are necessary for the purposes of highway safety and for the relocation of
185 persons or businesses or for the replacement of dwellings or structures including, but not limited
186 to, providing last resort housing under federal law and such functional replacement of structures
187 in public ownership as may be necessary for the foregoing purposes and for relocation benefits to
188 the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real
189 Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., Pub. L. 97-646, 84 Stat. 1864
190 (1971), and to sell any structure the title to which has been acquired for highway purposes. When
191 dwellings or other structures are removed in furtherance of any of the foregoing projects, the
192 excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after
193 the removal. In planning projects funded by said sections 2A and 2B, consideration shall be
194 made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of
195 bicycles and walking as a means of transportation; provided, however, that nothing in this
196 section shall be construed to give rise to enforceable legal rights in any party or a cause of action
197 or an enforceable entitlement as to the projects described in this section.

198 (b) Funds authorized in section 2A and 2B shall, except as otherwise specifically
199 provided in this act, be subject to the first paragraph of section 6 and sections 7 and 9 of chapter
200 718 of the acts of 1956, if applicable, and, notwithstanding any general or special law to the
201 contrary, may be used for the purposes stated in this act in conjunction with funds of cities,
202 towns and political subdivisions.

203 (c) In addition to the foregoing, the department of transportation may expend funds made
204 available by this act to acquire from a person by lease, purchase, eminent domain under chapter
205 79 of the General Laws or otherwise, land or rights in land for parking facilities adjacent to a
206 public way to be operated by the department or under contract with an individual; expend funds
207 made available by this act for the acquisition of van-type vehicles used for multi-passenger,
208 commuter-driven carpools and high-occupancy vehicles including, but not limited to, water
209 shuttles and water taxis; and, in accordance with all applicable state and federal laws and
210 regulations, exercise all powers and do all things necessary and convenient to carry out the
211 purposes of this act.

212 (d) In carrying out this section, the department of transportation may enter into contracts
213 or agreements with cities to mitigate the effects of projects undertaken under this act and to
214 undertake additional transportation measures within the city and may enter into contracts,
215 agreements, or transactions with other federal, state, local or regional public agencies,
216 authorities, nonprofit organizations or political subdivisions that may be necessary to implement
217 these contracts or agreements with cities. Cities and other state, local or regional public agencies,
218 authorities, nonprofit organizations or political subdivisions may enter into these contracts,
219 agreements, or transactions with the department. In relation to these agreements, the department
220 may advance to these agencies, organizations or authorities, without prior expenditure by the
221 agencies, organizations or authorities, monies necessary to carry out these agreements; provided,
222 however, that the department shall certify to the comptroller the amount so advanced; provided
223 further, that all monies not expended under these agreements shall be credited to the account of
224 the department from which they were advanced. The department shall report to the house and
225 senate committees on ways and means on any transfers completed under this subsection.

226 (e) In addition to the foregoing, the department may expend funds made available by this
227 Act for matching funds to obtain federal funds for costs associated with the design, acquisition,
228 renovation, construction, reconstruction and other improvements for transit projects.

229 SECTION 10. Notwithstanding any other general or special law to the contrary, the
230 department of transportation shall take all necessary actions to secure federal highway or
231 transportation assistance which is or may become available to the department including, but not
232 limited to, actions authorized under or in compliance with Title 23 of the United States Code, the
233 Surface Transportation Act of 1987, Pub. L. 100-17, the Intermodal Surface Transportation
234 Efficiency Act of 1991, Pub. L. 102-240, the Transportation Equity Act for the 21st Century,
235 Pub. L. 105-178, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy
236 for Users, Pub. L. 109-59, Implementing Recommendations of the 9/11 Commission Act of
237 2007, Pub. Law 110-53 and any successor acts or reauthorizations of those acts, and actions such
238 as filing applications for federal assistance, supervising the expenditure of funds under federal
239 grants or other assistance agreements and making any determinations and certifications
240 necessary or appropriate to the foregoing. If a federal law, administrative regulation or practice
241 requires an action relating to federal assistance to be taken by a department, agency or other
242 instrumentality of the commonwealth other than the department of transportation, the other
243 department, agency or instrumentality shall take such action.

244 SECTION 11. Notwithstanding any other general or special law to the contrary, all
245 construction contracts funded in whole or in part by the funds authorized by this act shall include
246 a price adjustment clause for each of the following: fuel, both diesel and gasoline, asphalt,
247 concrete and steel. A base price for each material shall be set by the awarding authority or
248 agency and included in the bid documents at the time a project is advertised. The awarding
249 authority or agency shall also identify in the bid documents the price index to be used for each

250 material or supply. The adjustment clause shall provide for a contract adjustment to be made on a
251 monthly basis when the monthly cost change exceeds +/- 5 per cent.

252 SECTION 12. Notwithstanding any other general or special law to the contrary, section
253 61 and sections 62A to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the
254 General Laws and section 40 of chapter 131 of the General Laws shall not apply to bridge
255 projects of the department of transportation and the Massachusetts Bay Transportation Authority
256 for the repair, reconstruction, replacement or demolition of existing state highway, authority and
257 municipally-owned bridges, including the immediate approaches necessary to connect the
258 bridges to the existing adjacent highway and rail system, in which the design is substantially the
259 functional equivalent of, and in similar alignment to, the structure to be reconstructed or
260 replaced; provided, however, that said section 61 and said sections 62A to 62I, inclusive, of said
261 chapter 30 shall apply to the repair, reconstruction, replacement or demolition project where the
262 project requires a mandatory environmental impact report under 301 CMR 11.00; provided
263 further, that all such work shall be subject to the requirements of the then current edition of the
264 department of transportation's Stormwater Handbook as approved by the department of
265 environmental protection in accordance with applicable law, that notice shall be published in the
266 Environmental Monitor of any application to the department of environmental protection for a
267 water quality certification, and that the work shall be subject to performance standards prescribed
268 by the department of environmental protection under section 401 of the Federal Clean Water Act
269 if applicable to the project; provided further, that notwithstanding the foregoing, said section 61
270 and said sections 62A to 62I, inclusive, of said chapter 30, said chapter 91, and said section 40 of
271 said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing
272 of the Charles river for the Central Artery/Tunnel Project. If any state highway, authority, or
273 municipal bridge crosses over a railroad right-of-way or railroad tracks, the department or
274 authority, as applicable, shall seek the opinion of a railroad company, railway company or its
275 assigns operating on the track of a necessary clearance between the track and the bridge, but the
276 department and the authority and their agents or contractors may enter upon any right-of-way,
277 land or premises of a railroad company or railway company or its assigns for purposes that the
278 department or authority may consider necessary or convenient to carry out this section. If a
279 flagman is needed to carry out this section, the railroad company, railway company or its assigns
280 shall provide the flagman. For the purposes of this section, "bridge" shall include any structure
281 spanning and providing passage over water, railroad right-of-way, public or private way, other
282 vehicular facility or other area. Any project exempted from any provision of law under this
283 section shall be subject to the public consultation process required by the then current version of
284 the department of transportation's Project Development and Design Guidebook.

285 SECTION 13. Notwithstanding any general or special law to the contrary, the
286 unexpended balances of all capital accounts which otherwise would revert on June 30, 2012, but
287 which are necessary to fund obligations during fiscal year 2013, are hereby re-authorized.