SENATE DOCKET, NO. 1501 FILED ON: 1/18/2013

SENATE . . . . . No. 1343

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to regional transportation ballot initiatives.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	*Second Middlesex*
Denise Provost	*27th Middlesex*

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SENATE . . . . . No. 1343

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1343) of Patricia D. Jehlen and Denise Provost for legislation relative to regional transportation ballot initiatives. Revenue.

The Commonwealth of Massachusetts

An Act relative to regional transportation ballot initiatives.

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. The General Laws are hereby amended by inserting after chapter 65C the following chapter:

CHAPTER 65D. REGIONAL TRANSPORTATION BALLOT INITIATIVES: -

Section 1. Purpose. The purpose of this Act is to give cities and towns the opportunity to obtain an additional source of revenue with which to meet their local and regional transportation financing needs and investments. This chapter grants a city or town the power to levy a tax only after said tax has been approved by a ballot initiative.

Section 2. Definitions. The following terms shall have the following meanings:

"District agreement", a document specifying the terms and conditions of the powers and duties of the two or more municipalities forming a district under section 5 of this chapter, pursuant to the laws governing any such municipality, the provisions of this chapter, and such procedural regulations as the commissioner of revenue may promulgate.

"Single subject of taxation", one of four taxes, payroll, sales, property, or vehicle excise tax, as determined annually by the board of assessors or department of revenue, that the city or town, or district, may subject to the tax surcharge.

Section 3. Taxing authority and acceptance of sections 3 through 6.

(a) Sections 3 to 6, inclusive, shall take effect in any city or town upon the approval in a city by the city council with the approval of the mayor or in a town by the board of selectmen and their acceptance by the voters of a ballot question as set forth in section 4.

(b) Upon passage of this Act, a city or town shall have authority to impose any tax surcharge within its city or town on a single subject of taxation including a payroll, sales,

22 property, or vehicle excise tax, except as otherwise prohibited by the Constitution. Said tax shall
23 be used for transportation-related purposes only. However, no tax surcharge shall be imposed
24 within the city or town unless it has first been approved in a city by the city council with the
25 approval of the mayor or in a town by the board of selectmen and accepted by the voters of a city
26 or town through a ballot question as set forth in section 4, except as provided in section 5.

27 (c) Notwithstanding the provisions of chapters 59, 60A, 64H, 62, or any other general or
28 special law to the contrary, the city by the city council with the approval of the mayor or town by
29 the board of selectmen may vote to accept sections 3 to 6, inclusive, by approving a surcharge on
30 a single subject of taxation, as determined annually by the board of assessors or department of
31 revenue. A city council or board of selectmen that intends to approve sections 3 to 6 shall
32 determine prior to approval which single subject of taxation will be levied and the amount of
33 surcharge. For a property tax surcharge, the amount of the surcharge shall not be included in a
34 calculation of total taxes assessed for purposes of section 21C of chapter 59.

35 (d) All exemptions and abatements of any single subject of taxation for which a taxpayer
36 qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an exemption for
37 any single subject of taxation shall be exempt from any surcharge on any single subject of
38 taxation established under this section. The surcharge to be paid by a taxpayer receiving an
39 abatement of any single subject of taxation shall be reduced in proportion to the amount of such
40 abatement.

41 (e) Any amount of the surcharge not paid by the due date shall bear interest at the rate per
42 annum as authorized by the law for any single subject of taxation.

43 (f) Revenues raised through the tax surcharge shall be used for transportation-related
44 purposes only including for the expenditure by the city or town for maintaining, repairing,
45 planning, design, improving and constructing of public transportation and transit systems, roads,
46 bridges, bikeways, pedestrian pathways, and other transportation-related enhancement projects.

47 Section 4. Municipal or state election on adoption of ballot initiative.

48 (a) Upon approval in a city by the city council with the approval of the mayor or in a
49 town by the board of selectmen, the actions of the body shall be submitted for acceptance to the
50 voters of a city or town at the next regular municipal or state election. The city or town clerk or
51 the state secretary shall place it on the ballot in the form of the following question: "Shall this
52 (city or town) accept sections 3 to 6, inclusive of chapter 65D of the General Laws, as approved
53 by its (in a city by the city council with the approval of the mayor or in a town by the board of
54 selectmen), a summary of which appears below"

55 (Set forth here a fair, concise summary and purpose of the law to be acted upon, as
56 determined by the city solicitor or town counsel, including in said summary the specific single
57 subject of taxation to be levied and percentage of the surcharge to be imposed.)

58 In the ballot question, the city or town may include a list of specific transportation-related
59 projects or activities for which the tax surcharge funds may be used. The city or town may also
60 include a sunset provision in the ballot question, but in no event shall the authorization for the
61 surcharge exceed 30 years.

62 If a majority of the voters voting on said question vote in the affirmative, then its
63 provisions shall take effect in the city or town, or district as set forth under section 5, but not
64 otherwise.

65 (b) The final date for notifying or filing a petition with the city or town clerk or the state
66 secretary to place such a question on the ballot shall be 35 days before the city or town election
67 or 60 days before the state election.

68 Section 5. Two or more municipalities.

69 (a) Two or more municipalities may, by vote of the city or town thereof, in a city by the
70 city council with the approval of the mayor or in a town by the board of selectmen, form a
71 district for the purposes set forth in section 3. Upon approval by each of the municipalities to
72 form a district for purposes of this chapter, Sections 3 to 6, inclusive, shall take effect in the two
73 or more municipalities upon the approval by the each of the municipalities thereof, in a city by
74 the city council with the approval of the mayor or in a town by the board of selectmen, and their
75 acceptance by the voters of a ballot question as set forth in section 4.

76 (b) If a majority of the voters in the district, for the purposes set forth in the first
77 paragraph of this section, vote on said question in the affirmative then its provisions shall take
78 effect in the district, but not otherwise.

79 (c) Two or more municipalities that choose to form a district for purposes of this chapter
80 shall apply a surcharge to the same single subject of taxation. The percentage of the surcharge
81 may vary for each municipality that comprises the district.

82 (d) Two or more municipalities forming a district under section 5 shall adopt a district
83 agreement. The district agreement shall specify:

84 (1) the purpose and nature of the arrangement;

85 (2) the single municipality to serve as the treasurer of the local and regional
86 transportation fund or the regional planning agency to serve as fiscal agent of the local and
87 regional transportation fund under section 8, and that municipality or regional planning agency
88 shall also serve as treasurer or fiscal agent for purposes of section 10;

89 (3) how the money will be used and for what purposes, and how the communities will
90 decide on details of use, plan changes, or urgent circumstances;

91 (4) the work to be performed, and the division or sharing of responsibility among the
92 municipalities;

93 (5) the estimated costs and the methods of financing;

94 (6) the method of administration;

95 (7) the composition of the district's regional transportation committee, the length of its
96 term, and the criteria and method of selecting its members by appointment only; and

97 (8) the duration of the proposed agreement.

98 (e) The district agreement shall be approved and adopted by the regional transportation
99 committee for the district as set forth in section 7.

100 (f) Nothing in this section shall be construed to:

101 (1) amend, repeal or otherwise alter the authority or jurisdiction of, or establish, a
102 municipality;

103 (2) confer any management authority over funds, land, or natural resources beyond the
104 authority exercised by participating municipalities in the district agreement set forth in this
105 section and this chapter.

106 Section 6. Levy and collection of tax.

107 (a) Upon acceptance of sections 3 to 6, inclusive, and upon the assessors' warrant to the
108 tax collector, the accepted surcharge shall be imposed.

109 (b) For a surcharge levied on either property or excise tax, after receipt of the warrant, the
110 tax collector shall collect the surcharge in the amount and according to the computation specified
111 in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to
112 the schedule for collection of the single subject of taxation, to the city's or town's treasurer, or
113 the district's treasurer. The tax collector shall cause appropriate books and accounts to be kept
114 with respect to such surcharge, which shall be subject to public examination upon reasonable
115 request from time to time.

116 (c) Two or more municipalities forming a district under section 5 shall select one of the
117 municipalities or the regional planning agency to serve as the district's treasurer for purposes of
118 section 6 and in accordance with section 5. The district agreement under section 5 shall establish
119 the method of selecting the district treasurer. The municipality or regional planning agency
120 selected to serve as district treasurer shall perform duties in accordance with section 6 and
121 chapter 41. Two or more municipalities forming a district under section 5 shall also select that
122 same municipality or regional planning agency to receive funds and provide certification for all
123 municipalities within said district for purposes of section 10 and in accordance with section 5.

124 (d) Any tax surcharge against a single subject of taxation authorized by an election held
125 under section 4 shall be levied annually but for no more than 30 years. The surcharge shall be
126 used for local and regional transportation-related purposes only, as set forth in section 3.

127 (e) If the city by the city council with the approval of the mayor or the town by the board
128 of selectmen does not vote to accept sections 3 to 6, inclusive, at least 90 days before a regular
129 city or town election or 120 days before a state election, then a question seeking said acceptance
130 through approval of a particular surcharge rate, may be so placed on the ballot when a petition
131 signed by at least 5 per cent of the registered voters of the city or town requesting such action is
132 filed with the registrars, who shall have seven days after receipt of such petition to certify its
133 signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall
134 cause the question to be placed on the ballot at the next regular city or town election held more
135 than 35 days after such certification or at the next regular state election held more than 60 days
136 after such certification.

137 Section 7. Local or Regional Transportation Committee.

138 (a) A city or town that accepts sections 3 to 6, inclusive, shall establish by ordinance or
139 by-law a local transportation committee. The committee shall consist of not less than five
140 members. The ordinance or by-law shall determine the composition of the committee, the length
141 of its term and the criteria and method of selecting its members by appointment only. The
142 committee shall include, but not be limited to, one representative from the municipality, one
143 member of the Massachusetts Department of Transportation established under section 2 of
144 chapter 6C as designated by the board, one member of the Massachusetts Bay Transportation
145 Authority established under section 2 of said chapter 161A as designated by the board if the city
146 or town is within the service area of the Massachusetts Bay Transportation Authority, one
147 member of each regional transit authority established under section 3 of chapter 161B to which
148 the city or town is a member community, one member of the regional planning agency
149 established under chapter 40B to which the city or town is a member community, or persons, as
150 determined by the ordinance or by-law or district agreement, acting in the capacity of or
151 performing like duties of the department, board or authority if they have not been established in
152 the city or town. The local committee shall ensure that representatives or members of the
153 municipality constitute a majority of the local transportation committee.

154 (b) A district as set forth under section 5, that accepts sections 3 to 6, inclusive, shall
155 establish by district agreement in accordance with section 5 a regional transportation committee.
156 The committee shall consist of not less than seven members. The committee shall include, but
157 not be limited to, one representative from each community, one member of the Massachusetts
158 Department of Transportation established under section 2 of chapter 6C as designated by the
159 board, one member of the Massachusetts Bay Transportation Authority established under section
160 2 of said chapter 161A as designated by the board if any municipalities of the district are within
161 the service area of the Massachusetts Bay Transportation Authority, one member of each

162 regional transit authority established under section 3 of chapter 161B if any municipalities of a
163 district is a member community, one member of each regional planning agency established under
164 chapter 40B if any municipalities of a district is a member community, or persons, as determined
165 by the ordinance or by-law or district agreement, acting in the capacity of or performing like
166 duties of the department, board or authority if they have not been established in the city or town.
167 The regional committee shall ensure that representatives or members of the municipalities that
168 comprise the district constitute a majority of the regional transportation committee.

169 (c) Both the local and regional transportation committees shall study the transportation-
170 related needs, possibilities, and resources of the city or town, or district. The committees shall
171 consult with existing transportation agencies, including MassDOT and regional planning
172 agencies, to develop transportation-related projects including maintaining, repairing, planning,
173 design, improving and constructing of public transportation and transit systems, roads, bridges,
174 bikeways, and pedestrian pathways, and coordinate joint-funding where appropriate in
175 accordance with the ballot initiative.

176 (d) Both the local and regional transportation committees shall not meet or conduct
177 business without the presence of a quorum. A majority of the members of the local or regional
178 transportation committee shall constitute a quorum. The committees shall approve its actions by
179 majority vote.

180 (e) The city or town, or district as set forth in section 5, shall seek the approval of
181 MassDOT and the regional planning agency or agencies for all transportation-related projects or
182 activities prior to listing specific projects on the ballot as set forth in section 4. If a city or town
183 includes no specific transportation-related projects or activities in the ballot question, the local
184 transportation committee shall seek the approval of MassDot and the regional planning agency
185 prior to submitting the local transportation committee's recommendations to a city council or
186 board of selectmen, unless the transportation-related project is under local jurisdiction. If the
187 district includes no specific transportation-related projects or activities in the ballot question, the
188 regional transportation committee shall seek the approval of MassDot and the regional planning
189 agency or agencies prior to implementing the regional transportation committee's
190 recommendations.

191 (f) The local transportation committee shall make recommendations to the city council of
192 the city or board of selectmen of the town regarding efficient and effective ways to improve and
193 enhance local transportation systems. Recommendations to the city council or board of
194 selectmen shall include their anticipated costs. The committee may include in its
195 recommendation to the city council or board of selectmen a recommendation to set aside for later
196 spending funds for specific purposes that are consistent with transportation-related purposes but
197 for which sufficient revenues are not then available in the Local and Regional Transportation
198 Fund, as set forth in section 8, to accomplish that specific purpose, or to satisfy debt payments
199 incurred from transportation-related projects, or to set aside for later spending funds for general

200 purposes that are consistent with transportation improvements and in accordance with the ballot
201 initiative.

202 (g) After receiving such recommendations from the local transportation committee, the
203 city council or board of selectmen shall then take such action and approve such appropriations
204 from the Local and Regional Transportation Fund as set forth in section 8, and such additional
205 appropriations as it deems appropriate to carry out the recommendations of the local regional
206 transportation committee and in accordance with the ballot initiative.

207 (h) The regional transportation committee shall make recommendations to the designated
208 municipality treasurer or regional planning agency as set forth in section 5 regarding efficient
209 and effective ways to improve and enhance local and regional transportation systems.
210 Recommendations to the designated municipality treasurer or regional planning agency shall
211 include their anticipated costs. The committee may include in its recommendation a
212 recommendation to set aside for later spending funds for specific purposes that are consistent
213 with transportation-related purposes but for which sufficient revenues are not then available in
214 the Local and Regional Transportation Fund, as set forth in section 8, to accomplish that specific
215 purpose, or to satisfy debt payments incurred from transportation-related projects, or to set aside
216 for later spending funds for general purposes that are consistent with transportation
217 improvements and in accordance with the ballot initiative.

218 (i) After receiving such recommendations from the regional transportation committee, the
219 designated municipality treasurer or regional planning agency shall then take such action and
220 approve such appropriations from the Local and Regional Transportation Fund as set forth in
221 section 8, and such additional appropriations as it deems appropriate to carry out the
222 recommendations of the regional transportation committee and in accordance with the ballot
223 initiative.

224 Section 8. Local and Regional Transportation Fund.

225 (a) Notwithstanding the provisions of section 53 of chapter 44 or any other general or
226 special law to the contrary, a city or town, or district as set forth in section 5, that accepts
227 sections 3 to 6, inclusive, shall establish a separate account to be known as the Local and
228 Regional Transportation Fund, of which the municipal treasurer or fiscal agent shall be the
229 custodian. The authority to approve expenditures from the fund shall be limited to the city
230 council of a city or board of selectmen of a town, or the designated municipality treasurer or
231 regional planning agency of the district, and the municipal treasurer or fiscal agent shall pay such
232 expenses in accordance with chapter 41.

233 (b) Two or more municipalities forming a district under section 5 shall select one of the
234 municipalities or regional planning agency to establish a separate account known as the Local
235 and Regional Transportation Fund in accordance with this section and section 5. The
236 municipality or regional planning agency selected to establish said fund shall only use the funds

237 for the district as a whole based solely upon the recommendations and approvals of the regional
238 transportation committee as set forth in this chapter.

239 (c) The following monies shall be deposited in the Local and Regional Transportation
240 Fund: (a) all funds collected from the levied tax surcharge on any single subject of taxation
241 pursuant to section 4, except if the single subject of taxation is a sales or payroll tax which shall
242 be deposited with the department of revenue in accordance with sections 9 and 10; and (b) all
243 funds received from the commonwealth or any other source for such purposes. The treasurer or
244 fiscal agent may deposit or invest the proceeds of the fund in savings banks, trust companies
245 incorporated under the laws of the commonwealth, banking companies incorporated under the
246 laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or
247 national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative
248 banks or in shares of savings and loan associations or in shares of federal savings and loan
249 associations doing business in the commonwealth or in the manner authorized by section 54 of
250 chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues
251 from the fund shall be limited to implementing the recommendations of the local and regional
252 transportation committees and providing administrative and operating expenses to the
253 committees, and in accordance with the ballot initiative.

254 (d) Only those cities and towns, or district under section 5, that adopt the surcharge
255 allowed by this chapter shall be eligible to receive monies through the Local and Regional
256 Transportation Fund.

257 Section 9. Massachusetts Local and Regional Transportation Trust Fund.

258 (a) There shall be established and set up on the books of the commonwealth a separate
259 fund, to be known as the Massachusetts Local and Regional Transportation Trust Fund, for the
260 benefit of cities and towns, or districts as set forth in section 5, that have accepted sections 3 to 6,
261 inclusive, and pursuant to said sections 3 to 6, inclusive, have imposed a surcharge on either a
262 sales or payroll tax levy, subject to any exemptions adopted by a municipality or district. The
263 fund shall consist of all revenues received by the commonwealth: (1) from the levied tax
264 surcharge on either a sales or payroll tax pursuant to section 4; (2) from public and private
265 sources as gifts, grants and donations to further local or regional transportation-related projects;
266 and (3) all other monies credited to or transferred to from any other fund or source pursuant to
267 law.

268 (b) The state treasurer shall deposit the fund in accordance with the provisions of section
269 10 in such manner as will secure the highest interest rate available consistent with the safety of
270 the fund and with the requirement that all amounts on deposit be available for withdrawal
271 without penalty for such withdrawal at any time. All interest accrued and earnings shall be
272 deposited into the fund. The fund shall be expended solely for the administration and

273 implementation of this chapter. Any unexpended balances shall be redeposited for future use
274 consistent with the provisions of this chapter.

275 (c) The state treasurer shall make all disbursements and expenditures from the fund
276 without further appropriation, as directed by the commissioner of revenue in accordance with
277 section 10. The department of revenue shall report by source all amounts credited to said fund
278 and all expenditures from said fund. The commissioner of revenue shall assign personnel of the
279 department as it may need to administer and manage the fund disbursements and any expense
280 incurred by the department shall be deemed an operating and administrative expense of the
281 program. The operating and administrative expenses shall not exceed 5 per cent of the annual
282 total revenue received under the provisions of section 10.

283 Section 10. Annual distributions of monies in trust fund; diversion of funds.

284 (a) The commissioner of revenue shall annually on October 15 disburse monies from the
285 fund established in section 10 to cities and towns, or the municipality treasurer or regional
286 planning agency of the district as set forth in section 5, that have accepted sections 3 to 6,
287 inclusive, and notified the commissioner of their acceptance. The city or town, or district, shall
288 notify the commissioner of the date and terms on which the voters accepted said sections 3 to 6,
289 inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the
290 municipality has raised through June 30 by imposing a surcharge on its sale or payroll tax levy
291 and shall certify the percentage of the surcharge applied.

292 (b) The commissioner shall distribute the funds to the city or town, or the municipality
293 treasurer or regional planning agency of the district as set forth in section 5, in accordance with
294 the first paragraph of this section based on the amount the city or town, or district, has raised by
295 imposing the surcharge. No city or town, or district, shall receive funds from monies raised in
296 another city or town, or district, unless the city or town is included in the district as set forth in
297 section 5.

298 (c) The commissioner shall be prohibited from diverting revenues derived from the
299 surcharge into any fund created by law including, but not limited to section 2ZZZZ of chapter
300 29, any of their subsidiaries into the general fund of the state, or into any other fund maintained
301 for the support of another governmental purpose. No diversion of funds can occur contrary to
302 this section by an administrative act of the commissioner or any other person in the executive
303 branch unless the governor declares a fiscal emergency, and communicates such emergency to
304 the general assembly, and a statute is enacted into law authorizing a diversion that would
305 otherwise be prohibited by this section.

306 (d) Only those cities and towns, or district under section 5, that adopt the surcharge
307 allowed by this chapter shall be eligible to receive state monies through the Massachusetts Local
308 and Regional Transportation Fund.

309 (e) Notwithstanding any other provision of this section, the total state contribution for
310 each city or town, or district, shall not exceed the amount raised by the municipality's surcharge
311 on its sales or payroll tax levy.

312 (f) After distributing the trust fund in accordance with this section, the commissioner may
313 keep any remaining funds in the trust for distribution in the following year.

314 Section 11. Records of recommendations, appropriations and expenditures.

315 (a) Both the local and regional transportation committees shall keep a full and accurate
316 account of all of its actions, including its recommendations and the action taken on them and
317 records of all appropriations or expenditures made from the Local and Regional Transportation
318 Fund. The records and accounts shall be public records.

319 Section 12. Amendments to amount and computation of surcharge; revocation of
320 Sections 3 to 6.

321 (a) At any time after imposition of the surcharge, the city by the city council with the
322 approval of the mayor or town by the board of selectmen may approve and the voters may accept
323 an amendment to the amount and computation of the surcharge in the same manner and within
324 the limitations set forth in this chapter.

325 (b) At any time after imposition of the surcharge, a district under section 5, with the
326 approval of the majority of voters in the district may accept an amendment to the amount and
327 computation of the surcharge in the same manner and within the limitations set forth in this
328 chapter.

329 Section 13. Rules and regulations. The commissioner of revenue shall have the authority
330 to promulgate rules and regulations to effect the purposes of this chapter.