

**SENATE . . . . . No. 10**

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Nine**

An Act modernizing the transportation systems of the Commonwealth..

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

1 SECTION 1. Section 8C of chapter 6A of the General Laws, inserted by chapter 233 of  
2 the acts of 2008, is hereby amended by striking out, in the first paragraph, the words “the  
3 commissioner of highways,” and inserting in place thereof the following words:- the  
4 administrator of the division of roads and bridges of the Massachusetts Surface Transportation  
5 Authority.

6 SECTION 2. Chapter 6A of the General Laws, as amended by chapter 86 of the acts of  
7 2008, is hereby amended by striking out sections 19 and 19A and inserting in place thereof the  
8 following 3 sections:-

9 Section 19. (a) The executive office of transportation shall serve as the principal agency  
10 of the executive department for the following purposes: (1) developing, coordinating,  
11 administering and managing transportation policies, planning and programs related to design,  
12 construction and maintenance; (2) supervising and managing the organization and conduct of the  
13 business affairs of the departments, agencies, commissions, offices, boards, divisions, and other  
14 entities within the executive office to improve administrative efficiency and program

15 effectiveness and to preserve fiscal resources; (3) developing and implementing effective  
16 policies and programs to assure the coordination and quality of roadway, transit, airport and port  
17 infrastructure and security provided by the secretary and all of the departments, agencies,  
18 commissions, offices, boards, divisions, authorities and other entities within the executive office.

19 (b) The following state agencies shall be within the executive office of transportation: the  
20 government center commission established by section 1 of chapter 635 of the acts of 1960, the  
21 registry of motor vehicles and all other state agencies within the department, except the division  
22 of motorboats and the division of waterways; and the Massachusetts aeronautics commission.  
23 The Massachusetts Surface Transportation Authority, Massachusetts Bay Transportation  
24 Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority and any duly  
25 established regional transportation authority shall also be within the executive office of  
26 transportation.

27 (c) The governor shall appoint a secretary of transportation, who shall serve at the  
28 pleasure of the governor and shall act as the executive officer in all matters pertaining to the  
29 administration, management, operation, regulation, planning, fiscal and policy development  
30 functions and affairs of the departments, agencies, commissions, offices, boards, divisions, and  
31 other agencies within the executive office.

32 (d) The secretary may: (1) operate and administer the programs of roadway design,  
33 capital improvement, development, and planning through the other agencies within the executive  
34 office, as appropriate; (2) coordinate and supervise the administration of the executive office and  
35 its agencies to promote economy and efficiency and to leverage federal funding; (3) develop and  
36 administer a long-term state-wide transportation plan for the commonwealth, as provided for in

37 section (f); (4) develop, based on a public hearing process, procedures to be used for  
38 transportation project selection; (5) establish criteria for project selection to be used in the  
39 procedures developed pursuant to clause (4); (6) enter into agreements with commissions,  
40 offices, boards, divisions, authorities and other entities within the executive office to improve  
41 departments, agencies, administrative efficiency and program effectiveness and to preserve fiscal  
42 resources; (7) pursuant to chapter 30A, make, amend and repeal rules and regulations for the  
43 management and administration of the executive office and agencies within the executive office;  
44 (8) execute all instruments necessary for carrying out the business of the executive office and its  
45 agencies; (9) acquire, own, hold, dispose of, lease and encumber property in the name of the  
46 executive office and its agencies; (10) enter into agreements and transactions with federal, state  
47 and municipal agencies and other public institutions and private individuals, partnerships, firms,  
48 corporations, associations and other entities on behalf of the executive office or its agencies; (11)  
49 apply for and accept funds, including grants, on behalf of the commonwealth in accordance with  
50 applicable law; (12) conduct research, surveys, experimentation, evaluation, design and  
51 development, in cooperation with the Massachusetts Surface Transportation Authority, and other  
52 governmental agencies and private organizations when appropriate, with regard to mass  
53 transportation facilities, equipment and services. The secretary may delegate any of the foregoing  
54 powers to an officer having charge of a department, office, division or other administrative unit  
55 within the executive office.

56 (e) In exercising its powers under this section, the executive office shall have as a  
57 primary goal the reduction of greenhouse gas emissions, particulates and other pollutants. The  
58 secretary shall collaborate with the executive office of environmental affairs, the bureau for

59 environmental health within the department of public health and other state or federal agencies to  
60 reduce greenhouse gas emissions to the limits established in chapter 21N.

61 (f) (1) Every five calendar years, starting no later than April 30, 2010, the secretary of  
62 the executive office of transportation shall, after conducting public hearings, prepare and publish  
63 in the Massachusetts Register a comprehensive state transportation plan for the five succeeding  
64 fiscal years, beginning with the period fiscal year 2011 to 2015, inclusive. The plan shall be  
65 consistent with such priorities as may be established by legislation. Said plan shall be designed to  
66 ensure construction and maintenance of a safe, sound and efficient public highway, road and  
67 bridge system, to relieve congestion, to reduce greenhouse gas emissions, particulates and other  
68 pollutants, and to improve the quality of life in the commonwealth by promoting economic  
69 development and employment in the commonwealth by meeting, cost effectively, the diverse  
70 transportation needs of all residents of the commonwealth, including urban, suburban and rural  
71 populations. Said plan shall also include an engineering assessment to anticipate highway, road  
72 and bridge needs throughout the commonwealth as determined by objective engineering  
73 measurements of condition, safety and service. The secretary shall consult with the executive  
74 offices of environmental affairs and of economic affairs in the development of said plan.

75 Said plan shall provide for meeting not less than 5 percent annually of the estimated  
76 construction, reconstruction and repair needs of the public highways and bridges of the  
77 commonwealth, its counties, cities and towns, estimated as follows. Before the secretary  
78 publishes or updates said plan, the Massachusetts Surface Transportation Authority shall  
79 determine and certify to the secretary its estimate of the total value of all construction,  
80 reconstruction and repair needs of the commonwealth's highway and bridge infrastructure. The  
81 total value estimate shall be based on satisfying current safety and maintenance standards of the

82 Federal Highway Administration and the American Association of State Highway and  
83 Transportation Officials. The estimate shall be substantiated by documented objective  
84 engineering estimates which shall be made available for public review.

85 The executive office and the Massachusetts Surface Transportation Authority shall report  
86 annually not later than February 1 to the house and senate committees on ways and means and  
87 the joint committee on transportation of the general court on their compliance with the plan and  
88 their efforts to satisfy the 5 percent requirement of the preceding paragraph.

89 (2) The executive office shall establish a program for mass transportation consistent with  
90 the provisions of this chapter. The program for mass transportation and any revisions thereto  
91 shall be submitted for comment and recommendation to the Mass Transit Advisory board not  
92 less than sixty days prior to the adoption thereof. The executive office shall prepare a written  
93 response to reports submitted to it by the advisory board which response shall state the basis for  
94 any substantial divergence between the actions of the executive office and the recommendations  
95 contained in such reports of the advisory board. Said program shall be reviewed not less than  
96 every five years to evaluate the achievement of its aims and to re-evaluate its conformity with the  
97 provisions of this chapter.

98 Said program for mass transportation and any plans specified therein shall be  
99 implemented by the mass transportation capital investment program, including a rolling five-year  
100 plan. The capital investment program and plans of the executive office shall be based on an  
101 evaluation of the impact of each proposed capital investment on the effectiveness of the  
102 commonwealth's transportation system, service quality standards, the environment, health and  
103 safety, operating costs, the prevention or avoidance of deferred maintenance, and debt service

104 costs. Capital investments that result in the greatest benefits with the least cost, transit  
105 commitments made in connection with the central artery project, so-called, capital improvements  
106 required under the Americans with disabilities act, and capital expenditures for an ongoing  
107 schedule of maintaining the equipment and mass transportation facilities of the Massachusetts  
108 Bay Transportation Authority, or any successor agency shall receive the highest priority under  
109 said capital investment program and plans.

110 Said ongoing schedule of maintenance shall be designed to prevent the deferral of routine  
111 and scheduled maintenance, and shall be undertaken prior to investing in new facilities or service  
112 expansion, unless the latter required by law or can be demonstrated to be cost-effective,  
113 environmentally beneficial or produce quantifiable savings.

114 The capital investment program shall be prepared on an annual basis, under the direction,  
115 control and supervision of the executive office. The program, including plans for each project  
116 funded therein, shall be available for public inspection and submitted to the authority, the joint  
117 committee on transportation and the senate and house committees on ways and means not later  
118 than 60 days prior to the start of the fiscal year.

119 Said program for mass transportation, the capital investment program and the plans for  
120 each such project funded therein shall be developed in conjunction with other transportation  
121 programs and plans proposed by the executive office, including any plans of regional transit  
122 authorities established pursuant to chapter 161B. Said programs shall be further developed in  
123 consultation and cooperation with the division of public transit, and in consultation with the  
124 department of housing and community development, the metropolitan area planning council, the

125 executive office of environmental affairs, and such other agencies of the commonwealth or of the  
126 federal government as may be concerned with said program and plans.

127         The plans for each project included in the capital investment program shall identify the  
128 purpose and intended benefits of each project, the total budget and timeline necessary to  
129 complete each project, the amount of said total which is budgeted for each project in the next  
130 fiscal year, the operating costs and savings, if any, anticipated to be incorporated in the operating  
131 budget of the authority upon completion of each project, the proposed operating costs and costs  
132 of routine and scheduled maintenance associated with each project upon its completion, and the  
133 expected useful life of each project.

134         The capital investment program shall be based on a rolling five-year plan, updated  
135 annually, that establishes the priorities and cashflow needs of the capital borrowing program of  
136 the authority. The five year plan shall be accompanied by a timeline for the implementation of  
137 the projects and priorities established therein and comprehensive financial estimates of the  
138 capital and operating costs and revenues associated with each project established by the plan.

139         The executive office shall conduct a series of public meetings within 30 days of issuance  
140 of an initial draft of the capital investment program and shall submit a final capital investment  
141 program to the Mass Transit advisory board, for its review, no later than January 15 of each year.

142         The authority shall be responsible for the architectural, engineering design, and the  
143 construction of mass transportation facilities and for the operation thereof.

144         (3) The secretary, in consultation with the authority, shall promulgate such rules,  
145 regulations and procedures, including public hearings, as are necessary and appropriate to  
146 provide the following parties the timely opportunity to participate in the development of major

147 transportation projects, as defined by the secretary, and to review and comment thereon: (i) state,  
148 regional and local agencies and authorities affected by said projects; (ii) elected officials and  
149 riders or potential riders from cities and towns affected by said projects; (iii) other public and  
150 private organizations, groups and persons who are affected by, and who have provided the  
151 secretary with reasonable notice of their desire to participate in the development of the design of  
152 said projects. In this section, the words “timely opportunity” shall mean sufficiently early in the  
153 design process so as to permit comments to be considered prior to the final development of or  
154 commitment to any specific design for such project.

155 (4) Prior to the final approval of any transportation infrastructure project, including mass  
156 transit expansion or the construction of new roadways with a projected capital cost of more than  
157 \$25,000,000, or the expending of any funds for the planning, design and construction of such  
158 projects, the Secretary of Transportation shall request that the administrator of the appropriate  
159 Division of the Massachusetts Surface Transportation Authority, in consultation with the Chief  
160 Executive Officer of the Authority, prepare a fiscal analysis, including life cycle costs,  
161 demonstrating that sufficient revenues exist, or will be generated to operate and maintain in a  
162 state of good repair such a new transportation asset. This analysis shall be also be submitted to  
163 the advisory boards of the respective divisions of the Massachusetts Surface Transportation  
164 Authority.

165 If any such project for the expansion of mass transit has a projected total cost in excess of  
166 \$200,000,000, the Secretary of Transportation shall submit the analysis to the Secretary of  
167 Administration and Finance so that he may determine which costs, if any, will become part of the  
168 Commonwealth’s plan of capital expenditures.



169 (g) Nothing in this chapter shall be construed to confer any powers or impose any duties  
170 upon the secretary with respect to the foregoing agencies and authorities except as expressly  
171 provided by law.

172 Section 19A. (a) The executive office shall take such steps as may be necessary to  
173 provide for the development, promotion, preservation, and improvement of an adequate, safe,  
174 efficient and convenient rail system for the movement of passengers and freight in the  
175 commonwealth. In carrying out the purposes of this chapter, the executive office shall seek to  
176 encourage and develop rail services which promote and maintain the economic wellbeing of the  
177 citizens of the commonwealth, and which preserve the environment and the commonwealth's  
178 natural resources.

179 (b) The executive office or the Massachusetts Surface Transportation Authority acting  
180 pursuant to paragraph (6) of subsection (d) is hereby authorized and directed to expend such  
181 funds as may be appropriated or otherwise made available for the acquisition, construction,  
182 preservation, rehabilitation, reconstruction, or other improvement, whether directly, jointly or  
183 under contract with other public or private parties, of land, and rail rights-of-way and related  
184 facilities or equipment, including but not limited to spurs, sidings and bridges, and for such other  
185 purposes, including, without limitation, planning, engineering and administrative purposes, as  
186 are incidental thereto; provided that any preservation, rehabilitation, reconstruction, or other  
187 improvement of land or of a rail right-of-way and related facilities or equipment shall not be  
188 authorized prior to the acquisition of said land, right-of-way and related facilities or equipment.

189 Subject to any other applicable provisions of law regarding the disposition and use of  
190 state property, the executive office may, in the course of exercising its responsibilities of

191 property management of state-owned railroad rights-of-way pursuant to this chapter: (a) set fees  
192 for the processing of applications to lease, license, or otherwise use said property; and (b) charge  
193 rent for same. Said fees shall be based on the administrative costs necessary to process said  
194 applications. Said rents shall be calculated as required under other applicable requirements of  
195 state law. Receipts from said applications and rents shall be paid into the treasury of the  
196 commonwealth and may be expended, subject to appropriation, for the purpose of property  
197 management and maintenance on railroad properties owned by the executive office on behalf of  
198 the commonwealth.

199 (c) The executive office or the Massachusetts Surface Transportation Authority acting  
200 pursuant to paragraph (6) of subsection (d) may enter into contracts or agreements to provide  
201 financial assistance, from such funds as may be provided for the purpose, for all or part of the  
202 costs of maintaining rail rights-of-way or related facilities or equipment, or operating rail  
203 services in the commonwealth.

204 Any such contracts or agreements shall be subject to the following limitations: (i) in  
205 determining whether such assistance is necessary or appropriate under this chapter with respect  
206 to an operating agreement with a private transportation company, and in determining the terms  
207 and conditions under which such assistance shall be given, the secretary shall review the  
208 transportation operations of such company and its affiliates and shall make a finding that such  
209 assistance will not permit the applicant company to make more than a reasonable return overall;  
210 and (ii) any such assistance shall cover only those services which the secretary determines to be  
211 in the public interest.

212 (d) The secretary, in addition to any other powers and duties conferred or imposed upon  
213 him by this chapter or any other general or special law, shall have the following powers and  
214 duties:

215 (1) To serve as the principal source of rail transportation planning for the commonwealth.  
216 In doing so, the secretary may conduct research, surveys, demonstration projects or studies in  
217 cooperation with federal, state, regional or local agencies, or appropriate private parties; and  
218 shall be responsible for the preparation of continuing, comprehensive and coordinated rail  
219 transportation proposals, plans, programs and projects. The secretary shall submit said proposals,  
220 plans, programs and projects for such review or consideration by other governmental agencies as  
221 may be required by law or deemed appropriate by the secretary; and shall prepare such plans and  
222 programs in coordination with related land use and other development plans, so far as  
223 practicable.

224 (2) To apply for, accept and expend on behalf of the commonwealth, any gift, loan or  
225 grant-in-aid from the federal government, any agency or instrumentality thereof, or from any  
226 foundation, private corporation, group or person, in furtherance of the purposes of this chapter.  
227 The secretary is authorized and directed to take all necessary action to secure any federal  
228 assistance which is or may become available to the executive office, any administrative unit  
229 thereof or authority within the executive office, including without limitation, filing applications  
230 for assistance, supervising the expenditure of federal grants or loans and making any  
231 determinations and certifications necessary or appropriate to the foregoing. If any federal law,  
232 administrative regulation or practice requires any action relating to such federal assistance to be  
233 taken by any department, agency or other instrumentality of the commonwealth other than the  
234 executive office, such other department, agency or instrumentality is authorized and directed to

235 take all such action. It is the intent of this clause that the provisions of any federal law,  
236 administrative regulation or practice governing federal assistance shall, to the extent necessary to  
237 enable the commonwealth or its subdivisions to receive such assistance and not constitutionally  
238 prohibited, override any inconsistent provisions of this chapter or any general or special law.

239 (3) To make and enter into any contracts or agreements necessary or incidental to the  
240 performance and execution of the powers and duties of the executive office under this chapter or  
241 any general or special law. Any party, public or private including, without limitation, federal,  
242 state and local agencies, authorities or political subdivisions of the commonwealth, or private  
243 corporations or companies, is hereby granted the power and authority to enter into any such  
244 contracts or agreements, subject to such provisions of law as may be applicable. Any such  
245 contract or agreement, if made with the Massachusetts Surface Transportation Authority may  
246 include provisions for the transfer to said Authority of appropriations or other funds made  
247 available to the executive office under subsections (b) and (c) for the purpose of carrying out  
248 such contract or agreement. Any contract or agreement made under this chapter, including,  
249 without limitation, contracts or agreements entered into by the executive office of administration  
250 and finance pursuant to subsection (c), shall include such provisions, terms or conditions as the  
251 secretary may deem necessary or appropriate.

252 (4) To acquire by eminent domain under chapter seventy-nine, or by purchase, gift,  
253 devise, transfer, lease or otherwise, or to hold, lease, pledge, otherwise deal with, transfer, sell or  
254 dispose of real and personal property.

255 (5) To exercise all powers and do all acts or things necessary or convenient to carry out  
256 the purposes of this section.

257 (6) Without limitation of the foregoing, to delegate to the Massachusetts Surface  
258 Transportation Authority on such terms and conditions as the secretary may prescribe, any power  
259 or duty conferred or imposed upon him by this section; provided, that any such delegation shall  
260 be in writing.

261 (e) (i) To the extent not inconsistent with federal law, no railroad company which  
262 conducts or has conducted operations within the commonwealth shall sell, transfer or otherwise  
263 dispose of railroad rights-of-way or related facilities without first offering such rights-of-way or  
264 facilities for sale, transfer or disposition to either the executive office, acting on behalf of the  
265 commonwealth, or such other department, authority, agency, or political subdivision of the  
266 commonwealth as may be designated by the executive office for the purpose of any such sale,  
267 transfer or disposition; provided, that such sale, transfer or disposition may be made by the  
268 railroad company to a party other than the executive office or its designee, but only if (A) the  
269 executive office or its designee has notified the railroad company in writing of its rejection of  
270 such offer; or (B) ninety calendar days have elapsed from the date on which said offer or a copy  
271 of such offer, as provided in the second paragraph, is made to the executive office.

272 (ii) Said railroad company shall make such offer in writing and shall send such offer by  
273 certified mail to the executive office or to its designee. In the event that such offer is made to a  
274 designee of the executive office, a notarized copy of such offer shall be sent by certified mail to  
275 the executive office. Any such offer shall include the price at which said company proposes to  
276 offer such rights-of-way or facilities to the commonwealth, and such other terms or conditions  
277 which said company proposed to include as part of such sale, transfer or disposition. The  
278 executive office or its designee shall notify in writing and by certified mail said railroad  
279 company of its acceptance or rejection of such offer within ninety calendar days of such offer,

280 and in the event that the designee of the executive office sends such notice, said designee shall  
281 also send a notarized copy of such notice to the executive office. The executive office is hereby  
282 authorized to notify any person that the conditions provided in clauses (A) and (B) of paragraph  
283 (i) have been satisfied and that the commonwealth no longer has the option to acquire the rights-  
284 of-way or facilities as provided in said paragraph. Any such notice shall be binding on the  
285 commonwealth.

286 In no event shall said railroad company offer to sell, transfer, or otherwise dispose of  
287 railroad rights-of-way or facilities to any person on terms or conditions more favorable to said  
288 person than those offered to the commonwealth.

289 Section 19B. The secretary shall apply for, accept and expend, subject to appropriation,  
290 on behalf of the commonwealth, any gift, loan or grant-in-aid from the federal government, or  
291 any agency or instrumentality thereof for demonstration projects and programs as may become  
292 available to the commonwealth for the purpose of energy conservation for improved  
293 transportation management systems or for improved transportation management systems.

294 SECTION 3. Section 19 of chapter 6A is hereby amended by striking out paragraph (b)  
295 and inserting in place thereof the following paragraph:-

296 (b) The following state agencies shall be within the executive office of transportation: the  
297 government center commission established by section 1 of chapter 635 of the acts of 1960, the  
298 registry of motor vehicles and all other state agencies within the department, except the division  
299 of motorboats and the division of waterways; and the Massachusetts aeronautics commission.  
300 The Massachusetts Surface Transportation Authority, Massachusetts Bay Transportation

301 Authority, the Massachusetts Port Authority and any duly established regional transportation  
302 authority shall also be within the executive office of transportation.

303 SECTION 4. Section 19 of chapter 6A is hereby amended by striking out paragraph (b)  
304 and inserting in place thereof the following paragraph:-

305 (b) The following state agencies shall be within the executive office of transportation: the  
306 government center commission established by section 1 of chapter 635 of the acts of 1960, the  
307 registry of motor vehicles and all other state agencies within the department, except the division  
308 of motorboats and the division of waterways; and the Massachusetts aeronautics commission.  
309 The Massachusetts Surface Transportation Authority, the Massachusetts Port Authority and any  
310 duly established regional transportation authority shall also be within the executive office of  
311 transportation.

312 SECTION 5. Chapter 7 of the General Laws is hereby amended by adding the following  
313 14 sections:-

314 Section 57. (a) “Affected jurisdiction” means any city or town, or other unit of  
315 government within the Commonwealth in which all or part of a transportation facility is located  
316 or any other public entity directly affected by the transportation facility.

317 (b) “Architectural and Engineering Services” means: (1) professional services of an  
318 architectural or engineering nature, as defined by applicable state law which are required to be  
319 performed or approved by a person licensed, registered, or certified to provide such services as  
320 described in this Subsection; (2) professional services of an architectural or engineering nature  
321 performed by contract that are associated with research, planning, development, design,  
322 construction, alteration, or repair of real property; and (3) such other professional services of an

323 architectural or engineering nature, or incidental services, which members of the architectural  
324 and engineering professions (and individuals in their employ) may logically or justifiably  
325 perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations,  
326 comprehensive planning, program management, conceptual designs, plans and specifications,  
327 value engineering, construction phase services, soils engineering, drawing reviews, preparation  
328 of operating and maintenance manuals, and other related services.

329 (c) “Authority” means the Massachusetts Surface Transportation Authority;

330 (d) “Construction” means the process of building, altering, repairing, improving, or  
331 demolishing any Transportation Facility, including any structure, building, or other  
332 improvements of any kind to real property. It does not include the routine operation, routine  
333 repair, or routine maintenance of any existing Transportation Facility, including structures,  
334 buildings, or real property.

335 (e) “Force majeure” means an uncontrollable force or natural disaster not within the  
336 power of the operator or the Commonwealth.

337 (f) “Contract” means all types of agreements, including a “Public-Private Agreement”,  
338 regardless of what they may be called, for the procurement, operation, or disposal under sections  
339 57 to 70, inclusive, of a Transportation Facility by the Authority.

340 (g) “Contract Modification” means any written alteration in specifications, delivery point,  
341 rate of delivery, period of performance, price, quantity, or other provisions of any contract  
342 accomplished by mutual action of the parties to the contract.



343 (h) “Contractor” means any person having a contract with the Authority under sections  
344 57 to 70, inclusive.

345 (i) “Cooperative Purchasing” means procurement conducted by, or on behalf of, one or  
346 more Affected Jurisdictions.

347 (j) “Design-build-finance-operate-maintain” means a project delivery method in which  
348 the Authority enters into a single contract for design, construction, finance, maintenance, and  
349 operation of a Transportation Facility over a contractually defined period. No public funds are  
350 appropriated to pay for any part of the services provided by the Contractor during the contract  
351 period.

352 (k) “Design-build-operate-maintain” means a project delivery method in which the  
353 Authority enters into a single contract for design, construction, maintenance, and operation of a  
354 Transportation Facility over a contractually defined period. All or a portion of the funds required  
355 to pay for the services provided by the Contractor during the contract period are either  
356 appropriated by the Commonwealth or by the Authority prior to award of the contract or secured  
357 by the Commonwealth or by the Authority through fare, toll, or user charges.

358 (l) “Design requirements” means the written description of the Transportation Facility or  
359 service to be procured under sections 57 to 70, inclusive, including:

360 (1) required features, functions, characteristics, qualities, and properties that are required  
361 by the Authority;

362 (2) the anticipated schedule, including start, duration, and completion; and

363 (3) estimated budgets (as applicable to the specific procurement) for design, construction,  
364 operation and maintenance.

365 The design requirements may, but need not, include drawings and other documents  
366 illustrating the scale and relationship of the features, functions, and characteristics of the project.

367 (m) “Independent Peer Reviewer Services” are additional Architectural and Engineering  
368 services provided to the Authority in design-build-operate-maintain or design-build-finance-  
369 operate-maintain procurements. The function of the independent peer reviewer is to confirm that  
370 the key elements of the professional engineering and architectural design provided by the  
371 contractor are in conformance with the applicable standard of care.

372 (n) “Maintenance” includes routine operation, routine maintenance, routine repair,  
373 rehabilitation, capital maintenance, maintenance replacement, and any other categories of  
374 maintenance that may be designated by the Authority.

375 (o) “Material default” means any failure of a Contractor to perform any duties under a  
376 public-private agreement, which jeopardizes delivery of adequate service to the public and  
377 remains unsatisfied after a reasonable period of time and after the operator has received written  
378 notice from the Authority of the failure.

379 (p) “Operate” means any action to operate, maintain, repair, rehabilitate, improve, equip,  
380 or modify a Transportation Facility, including the design and construction of repairs,  
381 improvements, or modifications to a Transportation Facility.

382 (q) "Operator" means a private entity that has entered into a public-private agreement to  
383 provide Design-build-finance-operate-maintain or Design-build-operate-maintain services under  
384 sections 57 to 70, inclusive.

385 (r) "Private entity" means any natural person, corporation, general partnership, limited  
386 liability company, limited partnership, joint venture, business trust, public benefit corporation,  
387 non-profit entity, or other business entity.

388 (s) "Proposal development documents" means drawings and other design related  
389 documents that are sufficient to fix and describe the size and character of a Transportation  
390 Facility as to architectural, structural, mechanical and electrical systems, materials, and such  
391 other elements as may be appropriate to the applicable project delivery method.

392 (t) "Public-private agreement" means the Contract between a private entity and the  
393 Authority that relates to the development, financing, maintenance, or operation of a  
394 transportation facility subject to sections 57 to 70, inclusive.

395 (u) "Request for Proposals" means all documents, whether attached or incorporated by  
396 reference, utilized for soliciting proposals for Transportation Facilities under sections 57 to 70,  
397 inclusive.

398 (v) "Responsible Bidder or Offeror" means a person who has the capability in all respects  
399 to perform fully the Contract requirements, and the integrity and reliability which will assure  
400 good faith performance.

401 (w) "Responsive Bidder" means a person who has submitted a bid which conforms in all  
402 material respects to the Invitation for Bids.

403 (x) “Transportation facility” means any, including new and existing, highway, road,  
404 bridge, tunnel, overpass, ferry, airport, public transportation facility, terminal facility, vehicle  
405 parking facility, seaport facility, rail facility, intermodal facility, or similar facility open to the  
406 public and used for the transportation of persons or goods, and any building; structure; or  
407 networks of buildings, structures, pipes, controls, and equipment that provide transportation  
408 services, including rolling stock, equipment, and any building, structure, parking area,  
409 appurtenances, or other property needed to operate such facility that is subject to a public-private  
410 agreement.

411 (y) “User fees” means the rate, toll, fee, or other charges imposed by an operator or by  
412 the Authority for use of all or part of a transportation facility.

413 (z) “Utility” means a privately, publicly, or cooperatively owned line, facility, or system  
414 for producing, transmitting, or distributing communications, cable television, power, electricity,  
415 light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway  
416 drainage, or any other similar commodity, including fire or police signal system or street lighting  
417 system, which directly or indirectly serves the public.

418 Section 58. (a) Notwithstanding any general or special law to the contrary, the board of  
419 directors of the Massachusetts surface transportation authority, in conjunction with the special  
420 public-private partnership infrastructure oversight commission as established in section 70 , is  
421 hereby authorized to solicit proposals, and to enter into contracts for Design-build-finance-  
422 operate-maintain or Design-build-operate-maintain services with that responsible and responsive  
423 offeror submitting the proposal that is most advantageous to the Authority through the sale,  
424 lease, operation and maintenance of a transportation facility within the commonwealth, such

425 operation to be in full compliance with all applicable requirements of federal, state and local law;  
426 provided, however, that any such contract shall not be subject to the competitive bid  
427 requirements set forth in sections 38A½ to 38O, inclusive, and section 39M of chapter 30 or  
428 sections 44A to 44M, inclusive, of chapter 149 of the General Laws; and provided, further, that  
429 each such contract shall be awarded pursuant to the provisions of chapter 30B of the General  
430 Laws, except for clause (3) of paragraph (b) of section 6, paragraphs (e) and (g) of said section 6,  
431 clause (4) of section 13 and section 16 of said chapter 30B.

432 (b) In soliciting and selecting a private entity with which to enter into a public-private  
433 agreement for Design-build-finance-operate-maintain or Design-build-operate-maintain services,  
434 the Authority shall utilize the following competitive sealed proposals procurement approach:

435 (1) Each Request for Proposals for design-build-operate-maintain and design-build-  
436 finance-operate-maintain services:

437 (A) shall include design requirements;

438 (B) shall solicit proposal development documents; and

439 (C) may, when the Authority determines that the cost of preparing proposals is high in  
440 view of the size, estimated price, and complexity of the procurement:

441 (i) prequalify offerors by issuing a Request for Qualifications in advance of the Request  
442 for Proposals; and

443 (ii) select a short list of responsible offerors prior to discussions and evaluations,  
444 provided that the number of proposals that will be short-listed is stated in the Request for

445 Proposals and prompt public notice is given to all offerors as to which proposals have been short-  
446 listed; or

447 (iii) pay stipends to unsuccessful offerors, provided that the amount of such stipends and  
448 the terms under which stipends will be paid are stated in the Request for Proposals.

449 (2) Adequate public notice of the Request for Proposals shall be given.

450 (3) Proposals shall be opened so as to avoid disclosure of contents to competing offerors  
451 during the process of negotiation. A Register of Proposals shall be prepared by the Authority  
452 and shall be open for public inspection after contract award.

453 (4) (a) The Request for Proposals shall state the relative importance of price and other  
454 factors and subfactors, if any.

455 (b) Each Request for Proposals for design-build-operate-maintain and design-build-  
456 finance-operate-maintain:

457 (i) shall state the relative importance of (1) demonstrated compliance with the design  
458 requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5)  
459 elimination of existing public debt with respect to the Transportation Facility, (6) lowest user  
460 charges (or price) over the term of the design-build-operate-maintain and design-build-finance-  
461 operate-maintain Contract, and (7) other factors, if any; and

462 (ii) shall require each offeror, when the contract price is estimated to exceed \$10,000,000,  
463 when the contract period of operations and maintenance is five years or longer, or in  
464 circumstances established by the Authority, to identify an Independent Peer Reviewer whose

465 competence and qualifications to provide such services shall be an additional evaluation factor in  
466 the award of the contract.

467 (iii) For procurement using design-build-operate-maintain, and design-build-finance-  
468 operate-maintain, the amount, if any, paid by a contractor to the Authority shall not be an  
469 evaluation factor in the award of the contract.

470 (5) As provided in the Request for Proposals, and under regulations issued by the  
471 Authority, discussions may be conducted with responsible offerors who submit proposals  
472 determined to be reasonably susceptible of being selected for award for the purpose of  
473 clarification to assure full understanding of, and responsiveness to, the solicitation requirements.  
474 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion  
475 and revision of proposals, and such revisions may be permitted after submissions and prior to  
476 award for the purpose of obtaining best and final offers. In conducting discussions, there shall be  
477 no disclosure of any information derived from proposals submitted by competing offerors.

478 (6) Award shall be made to the responsible offeror whose proposal conforms to the  
479 solicitation and is determined in writing to be the most advantageous to the Acquiring Agency  
480 taking into consideration price and the evaluation factors set forth in the Request for Proposals.  
481 No other factors or criteria shall be used in the evaluation. The contract file shall contain the  
482 basis on which the award is made. Written notice of the award of a contract to the successful  
483 offeror shall be promptly given to all offerors.

484 (7) The Authority is authorized to provide debriefings that furnish the basis for the source  
485 selection decision and contract award.

486 (c) (1) A private entity may request a review, prior to submission of a solicited proposal,  
487 by the Authority of information that the private entity has identified a confidential or proprietary  
488 to determine whether such information will be subject to disclosure under chapter 66 of the  
489 General Laws.

490 (2) The Authority shall take appropriate action to protect confidential or proprietary  
491 information that a private entity provides as part of a solicited proposal and that is exempt from  
492 disclosure under chapter 66 of the General Laws.

493 Section 59. The Request for Proposals shall contain the proposed form of Contract or  
494 Public-Private Agreement to be executed between the successful Offeror and the Authority upon  
495 Award, and shall have been approved as to content and form by the Special Public-Private  
496 Infrastructure Oversight Commission and by the Authority before the Request for Proposals is  
497 issued, pursuant to section 58 . The Inspector General and the Attorney General shall have thirty  
498 (30) days from the receipt of a draft of the proposed form of Contract to notify the Special  
499 Public-Private Infrastructure Oversight Commission in writing of any material objections to the  
500 draft form of Contract. Before issuing any Request for Proposal, the Authority shall prepare a  
501 written response to reports submitted to it by the Special Public-Private Infrastructure Oversight  
502 Commission which response shall state the basis for any substantial divergence between the  
503 actions of the Authority and the recommendations contained in such reports of said commission.  
504 The Authority and the successful Offeror may only make non-material changes in the content  
505 and form of the Public-Private Agreement contained in the Request for Proposals.



506 (a) (1) After selecting a solicited or unsolicited proposal for a public-private initiative, the  
507 Authority shall enter into the Public-Private Agreement for the subject transportation facility  
508 with the selected private entity.

509 (2) An affected jurisdiction may be a party to a public-private agreement entered into by  
510 the Authority and a selected private entity or combination of private entities.

511 (b) A public-private agreement under sections 57 to 70, inclusive, shall provide for the  
512 following:

513 (1) the planning, acquisition, financing, development, design, construction,  
514 reconstruction, replacement, improvement, maintenance, management, repair, leasing, or  
515 operation of a transportation facility;

516 (2) the term of the public-private agreement, which shall not exceed fifty (50) years  
517 without written approval of the governor;

518 (3) the type of property interest, if any, the private entity will have in the transportation  
519 facility;

520 (4) a description of the actions the Authority may take to ensure proper maintenance of  
521 the transportation facility;

522 (5) whether user fees will be collected on the transportation facility and the basis by  
523 which such user fees shall be determined and modified;

524 (6) compliance with applicable Federal, State, and local laws;

525 (7) grounds for termination of the public-private agreement by the Authority or operator;

526 (8) procedures for amendment of the agreement by mutual agreement, and for changes in  
527 the agreement by written order from the Authority.

528 (9) review and approval by the Authority of the operator's plans for the development and  
529 operation of the transportation facility;

530 (10) inspection by the Authority and the Independent Peer Reviewer of the design and  
531 construction of or improvements to the transportation facility;

532 (11) maintenance by the operator of a policy of liability insurance or self-insurance  
533 reasonably acceptable to the Authority;

534 (12) filing by the operator, on a periodic basis, of appropriate financial statements in a  
535 form acceptable to the Authority;

536 (13) filing by the operator, on a periodic basis, of traffic reports, service quality standards  
537 as defined in section 3 of chapter 81D, ridership reports, on time performance reports, or other  
538 reports identified by the Authority, in a form acceptable to the Authority;

539 (14) financing obligations of the operator and the Authority;

540 (15) apportionment of expenses between the operator and the Authority;

541 (16) the rights and duties of the operator, the Authority, and other State and local  
542 governmental entities with respect to use of the transportation facility;

543 (17) the rights and remedies available in the event of default or delay;

544 (18) the terms and conditions of indemnification of the operator by the Authority, as  
545 required by applicable law;

546 (19) assignment, subcontracting, or other delegation of responsibilities of the operator or  
547 the Authority under the agreement to third parties, including other private entities and other State  
548 agencies;

549 (20) sale or lease to the operator of private property related to the transportation facility;

550 (21) if and how the parties will share costs of development of the project;

551 (22) if and how the parties will allocate financial responsibility for cost overruns;

552 (23) liability for nonperformance;

553 (24) any incentives for performance;

554 (25) any accounting and auditing standards to be used to evaluate progress on the project;

555 (26) traffic enforcement and other policing issues, subject to section 66 including any  
556 reimbursement by the private entity for such services; and

557 (27) other terms and conditions.

558 Section 60. Upon the end of the term of the Public-Private Agreement or in the event of  
559 termination of the public-private agreement, the authority and duties of the operator cease,  
560 except for any duties and obligations that extend beyond the termination as provided in the  
561 public-private agreement, and the transportation facility reverts to the Authority and shall be  
562 dedicated to the Authority for public use.

563 Section 61. (a) Upon the occurrence and during the continuation of material default by an  
564 operator not caused by an event of force majeure, and upon the failure by the Contractor or its

565 financing institutions on the Contractor's behalf, to cure such material default within thirty (30)  
566 days of written notice from the Authority, the Authority may:

567 (1) elect to take over the transportation facility, including the succession of all right, title,  
568 and interest in the transportation facility; and

569 (2) terminate the public-private agreement and exercise any other rights and remedies that  
570 may be available.

571 (b) In the event that the Authority elects to take over a transportation facility under  
572 subsection (a), the Authority:

573 (1) shall make interim payments, on behalf of the Contractor and for the Contractor's  
574 account, of any amounts subject to the mechanics lien laws of the Commonwealth of  
575 Massachusetts ;

576 (2) may develop and operate the transportation facility, impose user fees for the use of the  
577 transportation facility, and comply with any service contracts; and

578 (3) may solicit proposals for the maintenance and operation of the transportation facility  
579 under section 58.

580 Section 62. (a) (1) The Authority may issue and sell bonds or notes of the Authority for  
581 the purpose of providing funds to carry out the provisions of sections 57 to 70, inclusive, with  
582 respect to the development, financing, or operation of a transportation facility or the refunding of  
583 any bonds or notes, together with any costs associated with the transaction.

584 (2) Any bond or note issued under this section:

585 (A) constitutes the corporate obligation of the Authority;

586 (B) does not constitute the indebtedness of the Commonwealth within the meaning or  
587 application of any constitutional provision or limitation; and

588 (C) is payable solely as to both principal and interest from:

589 (i) the revenues from a lease to the Authority, if any;

590 (ii) proceeds of bonds or notes, if any;

591 (iii) investment earnings on proceeds of bonds or notes; or

592 (iv) other funds available to the Authority for such purpose.

593 (b) (1) For the purpose of financing a transportation facility, the Authority and operator  
594 may apply for, obtain, issue, and use private activity bonds available under any Federal law or  
595 program.

596 (2) Any bonds debt, other securities, or other financing issued for the purpose of sections  
597 57 to 70, inclusive, shall not be considered to be a debt of the Commonwealth or any political  
598 subdivision of the State or a pledge of the faith and credit of the State or any political subdivision  
599 of the commonwealth.

600 (c) Nothing in this section shall limit a local government or any authority of the  
601 Commonwealth to issue bonds for transportation projects.

602 Section 63. (a) (1) The Authority may accept from the United States or any of its  
603 agencies funds that are available to the commonwealth for carrying out sections 57 to 70,  
604 inclusive, whether the funds are made available by grant, loan, or other financial assistance.

605 (2) The Authority may enter into agreements or other arrangements with the United  
606 States or any of its agencies as may be necessary for carrying out the purposes of sections 57 to  
607 70, inclusive.

608 (b) The Authority may accept from any source any grant, donation, gift, or other form of  
609 conveyance of land, money, other real or personal property, or other item of value made to the  
610 commonwealth or the Authority for carrying out the purpose of sections 57 to 70, inclusive.

611 (c) Any transportation facility may be financed in whole or in part by contribution of any  
612 funds or property made by any private entity or affected jurisdiction that is party to a public-  
613 private agreement under sections 57 to 70, inclusive.

614 (d) The Authority may combine Federal, State, local, and private funds to finance a  
615 transportation facility under sections 57 to 70 inclusive.

616 Section 64. (a) Section 9 of Chapter 81B shall apply to:

617 (1) a transportation facility; and

618 (2) tangible personal property used exclusively with a transportation facility that are:

619 (A) owned by the Authority and leased, licensed, financed, or otherwise conveyed to an  
620 operator; or

621 (B) acquired, constructed, or otherwise provided by an operator on behalf of the  
622 Authority.

623 Section 65. The Authority may exercise the power of eminent domain to acquire  
624 property, rights of way or other rights in property for transportation projects that are part of a

625 public-private agreement for design-build-finance-operate-maintain or design-build-operate-  
626 maintain services.

627           Section 66. (a) All law enforcement officers of the commonwealth and of an affected  
628 local jurisdiction shall have the same powers and jurisdiction within the limits of the  
629 transportation facility as they have in their respective areas of jurisdiction and access to the  
630 transportation facility at any time for the purpose of exercising such powers and jurisdiction.

631           (b) The traffic and motor vehicle laws of the commonwealth or, if applicable, any  
632 affected local jurisdiction shall be the same on the transportation facility as those laws applied to  
633 conduct on similar transportation facilities in the commonwealth or local jurisdiction.

634           (c) Punishment for violations of traffic and motor vehicle laws of the commonwealth or,  
635 if applicable, any affected local jurisdiction on the transportation facility shall be as prescribed  
636 by law for conduct occurring on similar transportation facilities in the commonwealth or local  
637 jurisdiction.

638           Section 67. An operator under sections 57 to 70, inclusive, and any utility whose facility  
639 is to be crossed or relocated shall cooperate fully in planning and arranging the manner of the  
640 crossing or relocation of the utility facility.

641           Section 68. Nothing in sections 57 to 70, inclusive, shall be construed or deemed to limit  
642 any waiver of the sovereign immunity of the Commonwealth or any officer or employee of the  
643 Commonwealth with respect to the participation in or approval of all or any part of the  
644 transportation facility or its operation.

645 Section 69. The Authority may adopt rules and regulations to carry out the provisions of  
646 sections 57 to 70, inclusive.

647 Section 70. There is hereby established a special public-private infrastructure oversight  
648 commission to comment and approve on all Requests for Proposals for design-build-finance-  
649 operate-maintain or design-build-operate-maintain services, pursuant to section 59.

650 The commission shall have 9 members, none of whom shall be employees of the  
651 executive branch, members of the General Court, nor employees of the Legislature, including the  
652 following: 4 members who shall reside in different geographic regions of the commonwealth, to  
653 be appointed by the governor to service terms of 2 years; 1 member, who shall not be a member  
654 of the general court, to be appointed by the president of the senate to serve a term of 2 years; 1  
655 member, who shall not be a member of the general court, to be appointed by the speaker of the  
656 house of representatives to serve a term of 2 years; 1 member who shall not be an employee of  
657 the department of the state treasurer, to be appointed by the treasurer, to serve a term of 2 years;  
658 the state auditor, or his designee; and 1 representative from the Massachusetts Organization of  
659 State Engineers and Scientists, to serve a term of 2 years. Each of the members of the  
660 commission shall be an expert with experience in the fields of transportation law, public policy,  
661 public finance, management consulting, transportation, or organizational change. One of the  
662 members appointed by the governor shall be an expert in the field of public finance. One of the  
663 members appointed by the governor shall be an expert in the field of management consulting or  
664 organizational change. One of the members appointed by the governor shall be an expert in the  
665 field of transportation. One of the members shall be appointed by the governor to serve as  
666 chairperson of the commission. The members appointed by the governor may be eligible for  
667 reappointment, provided however that no member appointed by the governor may serve more



668 than three terms. The members of the commission shall be appointed no later than August 30,  
669 2009.

670 Whenever the Authority notifies the commission of its intent to issue a Request for  
671 Proposal for design-build-finance-operate-maintain or design-build-operate-maintain services,  
672 the Authority shall submit a draft of the Request for Proposal to the commission for its review  
673 and approval. As provided in section 58 , no Request for Proposal shall be issued by the  
674 Authority for a public-private agreement for design-build-finance-operate-maintain or design-  
675 build-operate-maintain services without the commission's written approval. The commission  
676 shall provide an initial written response to the Request for Proposal within 15 days.

677 For each Request for Proposal for design-build-finance-operate-maintain or design-build-  
678 operate-maintain services, the commission shall report on issues surrounding the Request for  
679 Proposal, including but not limited to: (1) the status of current employees, (2) the policy and  
680 regulatory structure for overseeing a privately operated transportation facility and on-going  
681 legislative oversight, (3) issues of taxation, profit-sharing, and resolution of new revenue  
682 producing ideas, (4) advertising and marketing, (5) use of new technologies, (6) lease terms and  
683 termination clauses, (7) additional responsibilities by both the private infrastructure operator and  
684 the Commonwealth during the lease period, (8) the financial valuation of the certain  
685 commonwealth transportation facility; and (9) the anticipated advantages of entering into the  
686 anticipated public-private agreement for design-build-finance-operate-maintain or design-build-  
687 operate-maintain services.

688           The commission’s written approval of a Request for Proposal for design-build-finance-  
689 operate-maintain or design-build-operate-maintain services shall be deemed to satisfy the  
690 requirements of sections 52 to 55, inclusive, of chapter 7 of the General Laws.

691           The report shall be delivered within 30 days of the commission’s approval of a Request  
692 for Proposal for design-build-finance-operate-maintain or design-build-operate-maintain services  
693 to the secretary for administration and finance, the house committee on ways and means, the  
694 senate committee on ways and means, the chairmen of the joint committee on transportation, and  
695 the chairmen of the joint committee on bonding, capital expenditures, and state assets.

696           Any research, analysis or other staff support that the commission reasonably requires  
697 shall be provided by the Massachusetts Surface Transportation Authority.

698           SECTION 6. Chapter 10 of the General Laws is hereby amended by striking out section  
699 35T, as appearing in the 2006 Official Edition, and inserting in place thereof the following  
700 section:-

701           Section 35T. As used in this section, the following words shall, unless the context  
702 otherwise requires, have the following meanings:-

703           “Base revenue amount”, for fiscal year 2001 the amount of \$645,000,000, and for each  
704 fiscal year thereafter the base revenue amount for the prior fiscal year multiplied by the inflation  
705 index for the preceding 12 months, as certified by the secretary of administration and finance  
706 (the “secretary”), in consultation with the department of revenue, on March 1 of each year,  
707 beginning on March 1, 2001 as set forth in subsection (b); provided, that in no year shall the base  
708 revenue amount exceed 103 per cent of the base revenue amount applicable for the prior fiscal  
709 year; provided further, that if in any year said inflation index is less than three per cent but

710 greater than the per cent increase in gross sales tax revenues received pursuant to chapters 64H  
711 and 64I in the preceding 12 months, excluding any portion of such taxes imposed on meals as  
712 defined in paragraph (h) of section 6 of said chapter 64H, then the base revenue amount shall be  
713 adjusted by the same percentage increase in said gross sales tax revenues; provided further, that  
714 if in any year the per cent increase in said gross sales tax revenues is zero or less, then the base  
715 revenue amount shall not be adjusted for the subsequent fiscal year.

716 “Dedicated sales tax revenue amount”, all monies received by the commonwealth equal  
717 to 1 per cent of the gross receipts of a sale as defined by the provisions of chapter 64H and 1 per  
718 cent of the sales price of a purchase as defined by the provisions of chapter 64I from that portion  
719 of the taxes imposed under the provisions of said chapters 64H and 64I as excises upon the sale  
720 and use at retail of tangible property or of services, and upon the storage, use or other  
721 consumption of tangible property or of services, including interest thereon or penalties but not  
722 including any portion of such taxes imposed on the sale of meals as defined in paragraph (h) of  
723 section 6 of said chapter 64H.

724 “Inflation index”, the per cent change in inflation as measured by the per cent change in  
725 the consumer price index for all urban consumers for the Boston metropolitan area as determined  
726 by the bureau of labor statistics of the United States department of labor.

727 (a) There shall be credited to the Surface Transportation Trust Fund established in section  
728 35LL (hereinafter, the “Fund”) (i) the dedicated sales tax revenue amount, provided that in any  
729 fiscal year the amount shall be not less the base revenue amount as certified pursuant to  
730 subsection (b); and (ii) all assessments received by the commonwealth pursuant to section 22 of  
731 chapter 81D.

732 Before the state treasurer disburses funds to the Massachusetts Surface Transportation  
733 Authority, the authority must first certify that it has made provision in its annual budget pursuant  
734 to section 21 of chapter 81B for sufficient amounts to be available to meet debt service payments  
735 or other payments due under financing obligations, including, without limitation, leases,  
736 reimbursement obligations, or interest exchange agreements, for which the commonwealth has  
737 pledged its credit or contract assistance or is otherwise liable or as to which the authority has  
738 covenanted to maintain net cost of service or contract assistance support. Upon such  
739 certification, all amounts in the Fund shall be available for expenditure by the authority for any  
740 lawful purpose, including without limitation, payment of debt service on debt obligations issued  
741 by the authority, and may be pledged to secure debt of the authority in such manner and  
742 according to such priority as the authority may determine.

743 In order to increase the marketability of any bonds or notes of the authority which may be  
744 secured by or payable from amounts held in the Fund, the sums to be credited to the Fund as  
745 aforesaid are hereby impressed with a trust for the benefit of the authority and the holders from  
746 time to time of any such bonds or notes, and, in consideration of the acceptance of payment for  
747 any such bonds or notes, the commonwealth covenants with the purchasers and all subsequent  
748 holders and transferees of any such bonds or notes that while any such bond or note shall remain  
749 outstanding, and so long as the principal of or interest on any such bond or note shall remain  
750 unpaid, the sums to be credited to the Fund as aforesaid shall not be diverted from the purposes  
751 identified herein and, so long as such sums are necessary, as determined by the authority in  
752 accordance with any applicable trust agreement, bond resolution, or credit enhancement  
753 agreement, for the purposes for which they have been pledged, the rates of the excises imposed  
754 by said chapters 64H and 64I shall not be reduced below the dedicated sales tax revenue amount

755 or the base revenue amount and the amount to be assessed on cities and towns pursuant to said  
756 section 9 of said chapter 161A shall not be reduced below \$136,026,868 per fiscal year.

757 (b) For purposes of determining the amount to be credited to the Fund the secretary shall  
758 on March 1 of each year beginning on March 1, 2001 certify the base revenue amount for the  
759 following fiscal year. On March 15 of each year beginning on March 15, 2001, the secretary  
760 shall, after consultation with and based on projections of the department of revenue, certify  
761 whether the dedicated sales tax revenue amount is projected to exceed the base revenue amount  
762 for the upcoming fiscal year. If the secretary certifies that the projected dedicated sales tax  
763 revenue amount will be less than the base revenue amount, then the comptroller shall for the  
764 following fiscal year credit to the Fund amounts sufficient to meet the base revenue amount. If  
765 the secretary certifies that the projected dedicated sales tax revenue amount will exceed the base  
766 revenue amount, then the comptroller shall for the following fiscal year credit to the Fund the  
767 sales tax revenue amount. On November 15 of each year beginning on November 15, 2001, the  
768 secretary shall certify whether the dedicated sales tax revenue amount as of that date is projected  
769 to exceed the base revenue amount for the current fiscal year. If the secretary certifies that the  
770 dedicated sales tax revenue amount is projected to be less than the base revenue amount, then the  
771 comptroller shall credit to the Fund amounts sufficient to meet the base revenue amount for that  
772 fiscal year. If the secretary certifies that the dedicated sales tax revenue amount is greater than  
773 the base revenue amount, then the comptroller shall credit to the Fund the dedicated sales tax  
774 revenue amount. On April 1 of each year beginning on April 1, 2002, the secretary shall repeat  
775 the certification process required on November 15, and the comptroller shall credit the  
776 appropriate amount to the Fund.

777 SECTION 7. Section 35U of chapter 10 of the General Laws is hereby repealed.

778 SECTION 8. Chapter 10 of the General Laws is hereby amended by adding the  
779 following section:-

780 Section 35LL. There is hereby set up on the books of the commonwealth a separate fund  
781 to be known as the Surface Transportation Trust Fund, hereinafter called the Fund. There shall  
782 be credited to the Fund all fees received by the registrar of motor vehicles pursuant to chapter 90,  
783 all tolls collected pursuant to subsection (j) of section 4 of chapter 81B, all contributions and  
784 assessments paid into the treasury of the commonwealth by cities, towns or counties for  
785 maintaining, repairing, improving and constructing ways, whether before or after the work is  
786 completed, all refunds and rebates made on account of expenditures on ways by the department,  
787 all receipts paid into the treasury of the commonwealth and directed to be credited to the Surface  
788 Transportation Trust Fund under section 35T, chapter 64A, 64E, 64F, or any other applicable  
789 general or special law, all monies received by the commonwealth in satisfaction of claims by the  
790 commonwealth for damage to highway safety signs, signals, guardrails, curbing and other  
791 highway related facilities, and all receipts received by the state treasurer under the provisions of  
792 section eight of chapter ten on behalf of the registrar or for other surface transportation, as  
793 defined herein.

794 Before amounts are credited to the Surface Transportation Trust Fund, all fees received in  
795 the issuance of veterans plates, pursuant to section two, in excess of the fees set for the  
796 registration of the motor vehicle, shall be paid by the registrar into the General Fund. Remaining  
797 revenues shall then be used, subject to appropriation,

798 (1) to carry out the provisions of law relative to the use and operation of motor vehicles  
799 and trailers and for expenses authorized to administer the law relative to the taxation of the sales  
800 of gasoline and certain other motor vehicle fuel; and

801 (2) \$2 from each motorcycle registration fee shall be paid by the registrar or by the  
802 person collecting the registration fee into the General Fund and shall be appropriated solely for  
803 the purpose of promoting and advancing motorcycle safety.

804 The balance then remaining shall be transferred to the Surface Transportation  
805 Trust Fund. Annual receipts into the fund on account of any fiscal year shall be deemed to meet  
806 the full obligation of the commonwealth to the Massachusetts Surface Transportation Authority,  
807 hereinafter called the authority, for such fiscal year. Amounts in the Fund shall be held by the  
808 state treasurer or his designee as trustee and not on account of the commonwealth, and the state  
809 treasurer is hereby authorized and directed to disburse amounts in the Fund to the authority,  
810 without further appropriation, upon the request, from time to time, of the executive director of  
811 the authority.

812 The authority shall use the Fund:

813 (a) For expenditure, under the direction of said authority, for maintaining, repairing,  
814 improving and constructing town and county ways and bridges, sidewalks adjacent to such ways  
815 and bridges, bikeways and other projects eligible for funding as a transportation enhancement  
816 project as described in the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-  
817 240, salt storage sheds, bikeways and public use off-street parking facilities related to mass  
818 transportation, for engineering services and expenses related to highway transportation  
819 enhancement and mass transportation purposes, for care, repair, storage, replacement, purchase

820 and long-term leasing of road building machinery, equipment and tools, for the erection and  
821 maintenance of direction signs and warning signs and for necessary or beneficial improvements  
822 to unpaved town and county ways together with any money which any town or county may  
823 appropriate for such purposes to be used on the same ways, sheds, bikeways, bridges, machinery,  
824 equipment, tools and facilities. Such engineering services, including surveying services, shall  
825 only be performed by architectural, engineering or surveying firms prequalified by the authority;  
826 provided, however, that a municipality may seek a waiver of this requirement from the authority  
827 if the municipality demonstrates to the satisfaction of the authority that it is cost prohibitive to  
828 use a prequalified firm. Such ways, sheds, bikeways, bridges, machinery, equipment, tools and  
829 facilities shall remain town or county ways, sheds, bikeways, bridges, machinery, equipment,  
830 tools and facilities. No revenue credited to the Fund shall be transferred from said Fund to any  
831 other fund of the Commonwealth for any other purpose. The authority shall withhold or  
832 withdraw the unexpended balance of any funds assigned by it under this subdivision if the town  
833 fails to comply with the official standards for traffic control established by the authority or with  
834 any provision of a traffic control agreement negotiated between the authority and the town, as  
835 required by the United States Secretary of Commerce under section 109 of Title 23 of the United  
836 States Code. In this subdivision the word "town" shall include city;

837 (b) For expenditure, under the direction of the authority, for maintaining, repairing and  
838 improving state highways and bridges, including highways and bridges managed until July 1,  
839 2009 by the department of conservation and recreation, the turnpike and the metropolitan  
840 highway system, all as defined in chapter 81B;

841 (c) For expenditure, under the direction of the authority, in addition to federal aid  
842 payments received under section 49 of chapter 81C, for construction of state highways;



843 (d) For expenditure, under the direction of the authority, for engineering services and  
844 expenses, for care, repair, storage, replacement and purchase of road building machinery and  
845 tools, for snow removal, for the erection and maintenance of direction signs and warning signs  
846 and for the care of shrubs and trees on state highways, and for expenses incidental to the  
847 foregoing or incidental to the purposes specified in subdivisions (a), (b) or (c) of this clause;

848 (e) To meet interest, sinking fund and serial payments on all debts paid from highway  
849 fund receipts before July 1, 2009, including those paid in accordance with section 20 of chapter  
850 29.