

SENATE No. 1449

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act improving certain public construction processes..

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. (a) There shall be a special commission to consist of 7 members to review,
2 study and investigate, as a basis for legal and legislative action as well as cost recovery available
3 to the commonwealth, errors, omissions, mismanagement, maladministration, fraud, over-billing,
4 negligence or any other legally actionable claim for liability related to the Central Artery/Third
5 Harbor Tunnel Project. The investigation and study shall include, but need not be limited to,
6 assessing liability attributable to the joint venture of Bechtel/Parsons Brinckerhoff or any other
7 manager, management consultant, design consultant, sub-consultant, contractor, sub-contractor,
8 government official, or individual associated with the Central Artery/Third Harbor Tunnel
9 Project. A quorum shall exist when 4 members of the commission are available to vote on any
10 measure.

11 (b) The special commission shall consist of the governor or an officer of the executive
12 branch to be appointed by the governor; a dean or professor of a law school located in the
13 commonwealth to be appointed by the state auditor; the inspector general or a member of that
14 department designated by the inspector general; one lay person who shall not at any time have

15 served as a member of the general court, to be appointed by the state secretary; the state auditor
16 or a member of that department designated by the state auditor; a certified forensic accountant or
17 a certified fraud examiner to be appointed by the state auditor; and, by agreement, the Federal
18 Highway Administrator or a member of that department designated by the Federal Highway
19 Administrator. No person, nor any member of the immediate family of such person, who has
20 had a direct or indirect financial interest in the Central Artery/ Third Harbor Tunnel Project, or
21 who has had a direct or indirect financial interest in the joint venture of Bechtel/Parsons
22 Brinckerhoff, in any of its subsidiaries or related companies, or in any other consultant, sub-
23 consultant, contractor or sub-contractor for the Central Artery/Third Harbor Tunnel Project shall
24 be eligible for appointment to or shall serve on or be employed by the commission.

25 (c) The dean or professor of the law school appointed by the state auditor shall be the
26 chairperson of the commission. Any vacancy on the commission shall be filled by the
27 appropriate appointing or designating authority, unless there is at the time of the vacancy no such
28 authority, in which case by the state auditor. A vacancy shall not affect the powers and duties of
29 the commission. A majority vote of the commission shall mean a majority vote of the members
30 authorized to be appointed to serve.

31 (d) The members of the commission shall serve, unless otherwise provided herein,
32 without compensation but shall receive their reasonable and necessary expenses incurred in the
33 discharge of their official duties.

34 (e) The commission may employ legal counsel, licensed engineering services and such
35 assistance as it considers reasonable and necessary, subject to appropriation and in accordance
36 with this act.

37 (f) The commission may accept and expend any appropriations, grants of money,
38 professional services, consultant services, clerical or other services and supplies from the
39 commonwealth in the course of its investigations. The commission and its staff may travel
40 within and without of the commonwealth.

41 (g) The commission may request reasonable assistance from the state auditor, the
42 inspector general, and the attorney general and those officers shall furnish the commission with
43 any relevant information in their possession which is requested by the commission. (h) The
44 commission may require by summons the attendance and testimony under oath of witnesses and
45 the production before it of books, papers and things relating to any matter being investigated by
46 it pursuant to this act. Such a summons may be issued by the commission only upon a majority
47 vote of the commission and shall be served in the same manner as summonses for witnesses in
48 criminal cases issued on behalf of the commonwealth and the law relative to summonses issued
49 in those cases shall apply to summonses issued under this act so far as applicable. A justice of
50 the supreme judicial court, the appeals court, or of the superior court may upon application by
51 the commission compel the attendance of witnesses summoned as aforesaid, the giving of
52 testimony under oath and the production of books, papers and things before the commission in
53 furtherance of any investigation under this act in the same manner and to the same extent as
54 before the supreme judicial court, the appeals court or superior courts. A justice may also
55 compel any witness to answer before the court any questions put to the witness by the
56 commission. Every person who behaves in a disorderly or contemptuous manner before the
57 commission shall be deemed guilty of a misdemeanor punishable as provided in section 28A of
58 chapter 3 of the general laws.

59 (i) If any person summoned to testify or produce evidence before the commission refuses
60 to testify or produce evidence on the basis of a privilege against self-incrimination, the
61 commission shall not be bound by section 28 of said chapter 3. Upon a majority vote, the
62 commission may apply to a justice of the supreme judicial court for an order granting immunity
63 to the witness. Notice of the application shall be sent to the attorney general, all district
64 attorneys of the commonwealth, and the United States attorney for the district of Massachusetts,
65 any of whom may file an appearance and have the right to be heard with respect to the
66 application. The justice may, after hearing, order the witness to answer the question or produce
67 the evidence requested and, if so ordered, the justice shall also issue an order granting immunity
68 to the witness with respect to the transactions, matters or things concerning which the witness is
69 compelled to testify or produce evidence. A witness who has been granted immunity as provided
70 herein shall not be criminally prosecuted for or on account for any action, matter or thing
71 concerning which the witness may be required to testify or produce evidence following the grant
72 of immunity, except for perjury committed while giving testimony or producing evidence, giving
73 a false statement or otherwise failing to comply with the order. (j) All hearings of the
74 commission shall be public and witnesses shall have the right to be represented by counsel and
75 shall be sworn before testifying. Upon order of the commission, its counsel shall, under
76 conditions of confidentiality, submit to the attorney general or other law enforcement agency,
77 evidence that has come to the attention of the commission and in the opinion of the commission
78 warrants presentation or submission for prosecution or other legal action. Any evidence of
79 misconduct by an employee, officer, official, or member of the executive branch of government
80 or the general court shall be presented to the Massachusetts state ethics commission; and any
81 evidence of misconduct by a licensed or regulated professional shall be presented to the

82 appropriate professional disciplinary body; provided, however, that such presentations may be
83 limited to evidence which, in the opinion of a majority of the commission, is reasonably
84 credible.(k) All appointments and designations required under subsection (b) shall be made no
85 later than 30 days after the effective date of this act. The chairperson of the commission shall
86 notify the general court when all appointments have been made and the commission is ready to
87 commence its investigations. (l) The commission shall file monthly reports with the clerks of the
88 senate and the house of representatives, the senate and house post audit and oversight
89 committees and the joint committee on transportation as to investigative, legal or other remedial
90 action undertaken by the commission relative to its investigation in each month. The senate and
91 house post audit and oversight committees shall have access to all testimony, books, records and
92 other evidence gathered by the commission during its investigation. The commission shall file a
93 final report of its investigation and study and its recommendations, if any, together with drafts of
94 legislation necessary to carry its recommendations into effect, by filing the same with said clerks
95 within twelve months of the effective date of this act.(m) Absent further legislative authorization,
96 the commission shall cease its investigation and study upon filing its final report, and, except as
97 otherwise provided herein, shall forward all records and documents, including stenographic notes
98 and electronic documents, to the state secretary. The secretary shall be the custodian of the
99 records. Upon the conclusion of the investigation, the documents shall be subject to the
100 disclosures and exemptions provided under section 7 of chapter 4 of the General Laws.

101 (n) Nothing in this act shall be construed to preclude any individual from cooperating
102 with any investigation into matters covered by this act.

103 SECTION 2. Section 29A of chapter 29 of the General Laws, as appearing in the 2004
104 Official Edition, is hereby amended by striking out, in lines 3 and 4, the words “and institutions”
105 and inserting in place thereof the following words:- ,institutions and state Authorities.

106 SECTION 3. Said section 29A of said chapter 29, as so appearing, is hereby further
107 amended by inserting after the sixth sentence the following sentence:- No state Authority shall
108 contract for any such services without the prior written approval of the contract by the
109 commissioner of administration.

110 SECTION 4. Said section 29A of said chapter 29, as so appearing, is hereby further
111 amended by striking out, in line 33, the words “by the secretary having charge of such executive
112 office”.

113 SECTION 5. Chapter 30 of the General Laws is hereby amended by inserting after
114 section 39S, inserted by section 2 of chapter 306 of the acts of 2004, the following section:-

115 Section 39T. An owner controlled insurance policy relating to a public construction
116 project with a project value of more than \$10,000,000 shall not take effect until the attorney
117 general, the commissioner of insurance and the inspector general each review it and signify
118 approval in writing.

119 SECTION 6. Section 1 of chapter 260 of the General Laws, as appearing in the 2004
120 Official Edition, is hereby amended by adding the following clause:-

121 Sixth, Actions upon contracts for public construction projects with a project value of
122 greater than \$10,000,000.

123 SECTION 7. Section 5 shall apply only to owner controlled insurance policies executed
124 after the effective date of this act.