

SENATE No. 16

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Text of the Senate amendment (Montigny) to the House Bill to extending the Commonwealth’s power to guarantee certain obligations of the Massachusetts Turnpike Authority (House, No. 100).

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. Chapter 6 of the General Laws is hereby amended by striking out section
2 98, as appearing in section 3 of chapter 304 of the acts of 2008, and inserting in place thereof the
3 following section:-

4 Section 98. (a) As used in this section, “state entities” shall mean the commonwealth,
5 state authorities, as defined in section 1 of chapter 29, and other state entities with responsibility
6 for managing and overseeing public funds.

7 (b) It shall be the duty of the board to promote transparency, public accountability and
8 adherence to best practices by all state entities with respect to investments, borrowing or other
9 financial transactions made or entered into by state entities and involving public funds. The
10 board shall make an annual written report to the secretary of administration and finance, the state
11 treasurer, the state auditor, the house and senate committees on ways and means, and the senate
12 and house committees on bonding, capital expenditures and state assets with respect to its

13 findings regarding investments, borrowing and other financial transactions carried out by state
14 entities and its activities to promote transparency, public accountability and best practices with
15 respect thereto.

16 (c) In order to carry out its duty, the board shall:

17 (1) adopt regulations or guidelines requiring state entities to report, adopt appropriate
18 policies, and adhere to best practices with respect to investments, borrowing and other financial
19 transactions;

20 (2) make recommendations to state entities or state officers and propose legislative
21 changes to improve the management of public funds;

22 (3) employ staff and engage professionals to review and advise it on financial
23 transactions entered into by state entities; and

24 (4) conduct oversight hearings with respect to investment, borrowing and other financial
25 transactions made or entered into by state entities.

26 SECTION 2. Clause (l) of section 4 of chapter 81A of the General Laws, as amended by
27 section 7 of chapter 304 of the acts of 2008, is hereby further amended by striking out the words
28 “, and the joint committee” and inserting in place thereof the following words:- and the senate
29 and house committees.

30 SECTION 3. Subsection (b) of section 26 of chapter 304 of the acts of 2008 is hereby
31 amended by adding the following sentence:- If the authority certifies to said secretary that it has
32 received such notice, within 15 days of such certification the chairman or executive director of
33 the authority and said secretary shall jointly certify, in writing and under the pains and penalties

34 of perjury, to the chairpersons of the house and senate committees on ways and means, the
35 chairpersons of the joint committee on transportation, and the chairpersons of the senate and
36 house committees on bonding, capital expenditures and state assets that, in their judgment, there
37 exists no feasible alternative to a pledge of the commonwealth's full faith and credit pursuant to
38 this act. Said chairman or executive director and said secretary shall jointly report to the
39 chairpersons of the house and senate committees on ways and means, the chairpersons of the
40 joint committee on transportation, and the chairpersons of the senate and house committees on
41 bonding, capital expenditures and state assets all efforts undertaken to avoid the need for a full
42 faith and credit guaranty of the commonwealth pursuant to this act.

43 SECTION 4. Said subsection (c) of said section 26 of said chapter 304 is hereby further
44 amended by inserting after the words "with the approval of the governor" the words "and the
45 treasurer of the commonwealth", in each instance.

46 SECTION 5. The third sentence of said subsection (c) of said section 26 of said chapter
47 304 is hereby amended by striking out the words "joint committee on bonding" and inserting in
48 place thereof the following words:- senate and house committees on bonding.

49 SECTION 6. The first sentence of subsection (a) of section 27 of said chapter 304 is
50 hereby amended by inserting after the words "approval of the governor", the first time they
51 appear, the following words: - and the treasurer of the commonwealth.

52 SECTION 7. The second sentence of said subsection (a) of said section 27 of said chapter
53 304 is hereby amended by striking out the words "and without further authorization" and
54 inserting in place thereof the following words:- and the treasurer of the commonwealth.

55 SECTION 8. Said chapter 304 is hereby further amended by striking out section 29 and
56 inserting in place thereof the following section: -

57 SECTION 29. The state treasurer and all quasi-public entities and independent
58 authorities shall submit a report on their borrowing practices from fiscal years 1997 to 2009,
59 inclusive to the secretary of administration and finance, the state auditor, the chair of the finance
60 advisory board established in section 97 of chapter 6 of the General Laws, the chairpersons of
61 the senate and house committees on ways and means and the chairpersons of the senate and
62 house committees on bonding, capital expenditures and state assets prior to June 30, 2009. The
63 report shall include all transactions entered into, including fixed-rate borrowing, during the 6
64 months immediately preceding the filing of the report. The report shall include: (1) a list of all
65 transactions related to derivative financial products; (2) the terms and conditions of each
66 derivative financial product transaction; (3) the parties involved in negotiating each derivative
67 financial product transaction; (4) copies of all agreements entered into between the parties
68 relative to derivative financial product transactions; (5) the financial impact of each transaction
69 including, but not limited to, the interest rates, fluctuation in interest rates and payments
70 associated therewith; and (6) a written rationale for the determination to enter into any such
71 transaction. The report shall be signed under oath by the state treasurer or by the chief financial
72 officer of the quasi-public entity or independent authority filing the report, and the secretary of
73 administration and finance with respect to quasi-public entities and independent authorities. For
74 purposes of this section, "derivative financial products" shall mean financial instruments with
75 values derived from or based upon the value of other assets or on the level of an interest rate
76 index including, but not limited to, a call option on a bond, an interest rate swaptions, caps,
77 floors, collars, inverse floaters, auction rate securities or any other financial transaction,

78 including fixed-rate, long-term borrowing. As of the effective date of this act no quasi-public
79 state entity or independent authority of the commonwealth shall be authorized to enter into any
80 derivative financial transaction as defined in this act.

81 SECTION 9. Chapter 304 of the acts of 2008 is hereby amended by striking out section
82 32 and inserting in place thereof the following section:-

83 SECTION 32. Section 27 shall take effect as of October 1, 2008 and shall expire on June
84 30, 2009.

85 SECTION 10. In addition to the requirements set forth in clause (l) of section 4 of
86 chapter 81A of the General Laws, the initial semi-annual report for fiscal year 2009 to be
87 submitted by the Massachusetts Turnpike Authority shall include the current market value of all
88 real property held in the name of or subject to the control of the Authority pursuant to said
89 chapter 81A and the current market value of all real property held in the name of or under the
90 control of the authority that was acquired, whether by purchase or otherwise, during fiscal years
91 1997 to year 2010, inclusive.

92 SECTION 11. (a) Notwithstanding any general or special law to the contrary, there shall
93 be a special task force to examine the structure, fiscal obligations and contracts, and continued
94 viability of the Massachusetts Turnpike Authority.

95 (b) The task force shall be comprised of 9 members including: the state treasurer; the
96 state auditor; the secretary of administration and finance; the secretary of transportation and
97 public works; the executive director of the Massachusetts Turnpike Authority; and 4 members to
98 be appointed by the governor, 1 of whom shall be a forensic accountant, 1 of whom shall be a
99 practicing or former bond attorney who shall have no conflicts of interest as a result of

100 participating on the task force, 1 of whom shall be a financial expert with 10 or more years of
101 financial experience at a company with more than 100 employees and which is located in the
102 commonwealth and 1 of whom shall be a person with expertise in transportation construction or
103 financing and experience in complex transportation issues and toll roads. The secretary of
104 transportation and public works shall chair the task force.

105 (c) Within 60 days after the task force is established, the task force shall make a
106 preliminary report to the secretary of administration and finance, the state treasurer, the state
107 auditor, the attorney general, the inspector general, the chairpersons of the house and senate
108 committees on ways and means, the chairpersons of the joint committee on transportation and
109 the chairpersons of the senate and house committees on bonding, capital expenditures and state
110 assets. The report shall present a preliminary analysis of the Authority's fiscal situation. This
111 analysis shall include, but not be limited to: the impact of the Authority's debt and other
112 financial obligations as they relate to the credit rating of the commonwealth; the impact of the
113 Authority's debt and other financial obligations as they relate to the commonwealth's capital
114 plan and; a full accounting of all administrative costs borne by the authority, including but not
115 limited to, debt service, banking fees, salaries and benefits paid to employees and outside
116 contractors, actions taken by the Authority or on its behalf to investigate legal causes of action
117 relative to any derivative transaction entered into between fiscal years 1997 to 2010, all
118 payments to law firms, outside consultants and legislative or executive agents, an inventory of all
119 vehicles and rolling stock owned by the authority, a review of the authority's real property
120 holdings and its value and any other financial information related to the operation of the
121 authority.

122 (d) The task force shall also study and make recommendations on stabilizing the current
123 fiscal situation of the authority and future actions to ensure the long-term sustainability of the
124 authority.

125 (e) The office of the treasurer and the executive office of administration and finance, in
126 conjunction with the office of the executive director of the Authority, shall provide such staff and
127 resources as may be necessary for the task force to perform its functions. The task force shall
128 convene its first meeting on or before March 31, 2009 and shall file a final report on its findings,
129 including any legislative or regulatory recommendations relative to methods to stabilize the
130 current and future fiscal condition of the Authority. Said report shall be filed with the clerks of
131 the senate and the house of representatives and the chairpersons of the house and senate
132 committees on ways and means, the chairpersons of the joint committee on transportation and
133 the chairpersons of the senate and house committees on bonding, capital expenditures and state
134 assets on or before June 30, 2009.

135 SECTION 13. Section 9 shall take effect as of January 15, 2009.