

HOUSE No. 4125

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to certain reforms relative to the Massachusetts Department of Transportation.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for an accelerated transportation development and improvement program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1 SECTION 1. Chapter 161A of the General Laws is hereby amended by striking out
2 section 43, as appearing in the 2010 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 43. Agreements between the authority or the Massachusetts Department of
5 Transportation, or both, and a railroad for the provision of passenger rail services, or the
6 operation or accommodation of passenger rail services provided by or on behalf of the authority
7 or the Massachusetts Department of Transportation, or both, and freight rail services on or about
8 the same rail corridor, shall provide that the authority or the Massachusetts Department of
9 Transportation, as applicable, shall, on such properties and during such periods as such rail
10 passenger services are provided or offered, secure and maintain a liability insurance policy
11 covering the liability of the authority or the Massachusetts Department of Transportation, or

both, as applicable, and the railroad, for property damage, personal injury, bodily injury and death arising out of the provision, operation or accommodation of such passenger rail services. Such policy shall name the authority or the Massachusetts Department of Transportation, or both, as applicable, as named insured, and the railroad as either a named insured or an additional insured, and shall have policy limits of \$75,000,000 per occurrence annually and \$75,000,000 in the aggregate annually. In no event shall the authority, the Massachusetts Department of Transportation or the railroad be liable in excess of \$75,000,000 for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury and death arising out of the provision, operation or accommodation of such passenger rail services.

For the purposes of this section: the term "railroad" shall include any person, railroad corporation or other legal entity in the business of providing rail transportation of passengers or freight, but excluding any "tourist railroad" as defined in section 234 of chapter 160; the term "passenger rail services" shall include all services performed in connection with the transportation of rail passengers including, but not limited to, the operation of trains, trackage and equipment, or the construction, reconstruction or maintenance or operation of railroad equipment, tracks, stations and any appurtenant facilities or the provision of trackage rights; the term "operation or accommodation of rail passenger services" shall include the performance of freight rail services upon such properties where freight rail services and rail passenger services are provided or offered; and the term "freight rail services" shall include all services performed in connection with the transportation of freight including, but not limited to, the operation of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad equipment, tracks and any appurtenant facilities or the provision of trackage rights.

SECTION 2. Chapter 161A of the General Laws, as so appearing, is hereby further amended by inserting the following section:-

Section 49. Any provision of any agreement in effect as of June 24, 2009 between the authority and any freight railroad, including, without limitation, provisions relating to the liability of, or contribution or indemnity by, the authority, shall be interpreted based upon the provisions of chapter 258 as in effect on June 24, 2009, regardless of the date of any incident giving rise to the interpretation of such provision. For the purposes of this section, the term “freight railroad” shall include any person, railroad corporation or other legal entity in the business of providing freight rail transportation.

SECTION 3. Section 6 of chapter 15 of the acts of 1993 is hereby repealed.