

SENATE No. 2220

[Senate, April 12, 2012 - Text of the Senate amendment, printed as amended, as a new text for the House Bill financing improvements to the Commonwealth's transportation system (House, No. 4000).]

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

1 SECTION 1. To provide for a program of transportation development and improvements,
2 the sums set 1 forth in sections 2 to 2D, inclusive, for the several purposes and subject to the
3 conditions specified in this act, are hereby made available, subject to the laws regulating the
4 disbursement of public funds. The sums appropriated in this act shall be in addition to any
5 amounts previously appropriated and made available for these purposes.

6 SECTION 2.

7 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

8 Highway Division

9 6121-1215 For projects on the interstate federal aid highway system; provided, that funds
10 may be expended for the costs of these projects including, but not limited to, the nonparticipating
11 portions of these projects and the costs of engineering and other services essential to these
12 projects, rendered by Massachusetts Department of Transportation employees or by consultants;
13 provided further, that amounts expended for department employees may include the salary and
14 salary-related expenses of these employees to the extent that they work on or in support of these

15 projects, provided further, that the secretary of transportation shall maximize efforts and utilize
16 all available means to minimize the use of capital funds to pay for the salaries of department
17 employees; provided further, that notwithstanding any provision of this act or any other general
18 or special law to the contrary, the department shall not enter into any obligations for projects
19 which are eligible to receive federal funds under this act unless state matching funds exist which
20 have been specifically authorized and are sufficient to fully fund the corresponding state portion
21 of the federal commitment to fund these obligations; and provided further, that the department
22 shall only enter into obligations for projects under this act based upon a prior or anticipated
23 future commitment of federal funds and the availability of corresponding state funding
24 authorized and appropriated for this use for the class and category of project for which this
25 obligation applies.....25,000,000

26 6121-1216 For federal aid projects on the non-interstate federal highway system;
27 provided, that funds may be expended for the costs of these projects including, but not limited to,
28 the nonparticipating portions of these projects and the costs of engineering and other services
29 essential to these projects rendered by department employees or by consultants; provided further,
30 that amounts expended for department employees may include the salary and salary-related
31 expenses of these employees to the extent that they work on or in support of these projects,
32 provided further, that the secretary of transportation and public works shall maximize efforts and
33 utilize all available means to minimize the use of capital funds to pay for the salaries of
34 department employees; provided further, that notwithstanding any provision of this act or any
35 other general or special law to the contrary, the department shall not enter into any obligations
36 for projects which are eligible to receive federal funds under this act unless state matching funds
37 exist which have been specifically authorized and are sufficient to fully fund the corresponding

state portion of the federal commitment to fund these obligations; and provided further, that the department shall only enter into obligations for projects under this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for this use by the general court for the class and category of project for which this obligation applies.....\$525,000,000

SECTION 2A.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Highway Division

6121-1217 For the design, construction and repair of, or improvements to, nonfederally-aided roadway and bridge projects and for the nonparticipating portion of federally-aided projects; provided, that the costs of professional personnel directly and exclusively involved in the construction, planning, engineering and design of the projects funded herein may be charged to this item and any other general operating costs of the department ; provided further, that those costs shall not be classified as administrative costs.....\$325,000,000

SECTION 2B.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Highway Division

6122-1223 For the construction and reconstruction of town and county ways as described in clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws provided that a city or town complies with the procedures established by the Massachusetts Department of Transportation; provided further, that a city or town may appropriate for these projects amounts not in excess of the amount provided to the city or town under this item, preliminary notice of

which shall be provided by the department to the city or town not later than April 1 of each year; provided further, that the appropriation shall be considered as an available fund upon approval of the commissioner of revenue under section 23 of chapter 59 of the General Laws; and provided further, that the commonwealth shall reimburse a city or town under this item, subject to the availability of funds as provided in section 9B of chapter 29 of the General Laws, within 30 days after receipt by the department of a request for reimbursement from the city or town, which request shall include certification by the city or town that actual expenses have been incurred on projects eligible for reimbursement under this item and that the work has been completed to the satisfaction of the city or town according to the specifications of the project and in compliance with applicable laws and procedures established by the department.....\$200,000,000

SECTION 2C.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Rail and Transit Division

6622-1205 For the purposes of chapter 161B of the General Laws, including the purchase and rehabilitation of rolling stock, related assets and support equipment necessary to safely serve transit passengers, construction and rehabilitation of regional transit authority operations and passenger facilities and purchase of related appurtenances and tools.....\$11,000,000

SECTION 2D.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Rail and Transit Division

6622-1280 For the purpose of implementing rail improvements under chapter 161C of the General Laws; provided, that funds may also be used for transportation planning, design, permitting, acquisition of interests in land and engineering for heavy rail, light rail, bus and other

transit projects, including the industrial rail access program; provided, however, the department shall adopt regulations within 180 days of the effective date of this act implementing the industrial rail access program, which shall increase access to rail freight service and preserve or stimulate economic development through the generation of new or expanded rail service; provided further, that the secretary of transportation shall evaluate and select eligible projects, in consultation with the secretary of housing and economic development, where the public benefit will be gained through improved use of the rail transportation network or that will facilitate economic growth through access to the rail assets within the commonwealth; provided further, that the program shall be available to any political subdivision, railroad or shipper operating within the commonwealth\$300,000,000

SECTION 3. To meet the expenditures necessary in carrying out section 2, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$171,750,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan, Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 4. To meet the expenditures necessary in carrying out section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an

amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$325,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan, Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 5. To meet the expenditures necessary in carrying out section 2B, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, the sum of \$200,000,000. All the bonds issued by the commonwealth as aforesaid shall be designated on their face, Town and County Ways and Economic Development Loan, Act of 2012, and shall be issued for a maximum terms of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal of these obligations shall be payable from the General Fund. Notwithstanding any general or special law to the contrary, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 6. To meet the expenditures necessary in carrying out section 2C, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate,

\$11,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan, Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 7. To meet the expenditures necessary in carrying out section 2D, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$177,500,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan, Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 8. Notwithstanding any general or special law to the contrary, in carrying out this act, the Massachusetts Department of Transportation may enter into contracts, agreements or transactions that may be appropriate with other federal, state, local or regional public agencies or authorities. The contracts, agreements or transactions may relate to such matters as the department shall determine including, without limitation, the research, design, layout, construction, reconstruction or management of construction of all or a portion of these projects. In relation to any such contract, agreement or transaction, the department may advance monies to these agencies or authorities, without prior expenditure by the agencies or authorities, and the agencies and authorities may accept monies necessary to carry out such contract, agreement or transaction; provided, however, that the department shall certify to the comptroller the amounts so advanced; provided further, that these contracts, agreements or transactions shall contain provisions satisfactory to the department for the accounting of monies expended by any other agency or authority; and provided further, that all monies not expended under any such contract, agreement or transaction shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed under this section.

SECTION 9. (a) Notwithstanding any general or special law to the contrary, the Massachusetts Department of Transportation shall expend the sums authorized in sections 2A and 2B for the following purposes: projects for the laying out, construction, reconstruction, resurfacing, relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or facilities, on-street and off-street bicycle projects, sidewalks, telecommunications, parking facilities, auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other crossings, traffic safety devices on state highways and on roads constructed

under clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws, highway or mass transportation studies including, but not limited to, traffic, environmental or parking studies, the establishment of school zones in accordance with section 2 of chapter 85 of the General Laws, improvements on routes not designated as state highways without assumption of maintenance responsibilities and, notwithstanding any general or special law to the contrary, projects to alleviate contamination of public and private water supplies caused by the department's storage and use of snow removal chemicals necessary for highway safety and for the relocation of persons or businesses or for the replacement of dwellings or structures including, but not limited to, providing last resort housing under federal law and such functional replacement of structures in public ownership as may be necessary for the foregoing purposes and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq. and to sell any structure the title to which has been acquired for highway purposes; provided, however, that environmental studies conducted pursuant to this subsection may include an assessment of both existing and proposed highway rest stop facilities to determine the cost-effectiveness of sanitary facilities that utilize zero pollution discharge technologies, including recycling greywater systems. When dwellings or other structures are removed in furtherance of any of the foregoing projects, the excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after removal. In planning projects funded by said sections 2A and 2B, consideration shall be made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of bicycles and walking as a means of transportation; provided, however, that nothing in this section shall be construed to give rise to enforceable legal rights in

any party or a cause of action or an enforceable entitlement as to the projects described in this section.

(b) Except as otherwise specifically provided in this act, funds authorized in sections 2A and 2B shall be subject to the first paragraph of section 6 and sections 7 and 9 of chapter 718 of the acts of 1956, if applicable, and notwithstanding any general or special law to the contrary, may be used for the purposes stated in this act in conjunction with funds of cities, towns and political subdivisions.

(c) In addition to the foregoing, the Massachusetts Department of Transportation may expend funds made available by this act: (1) to acquire from a person by lease, purchase, eminent domain under chapter 79 of the General Laws or otherwise, land or rights in land for parking facilities adjacent to a public way to be operated by the department or under contract with an individual; and (2) for the acquisition of van-type vehicles used for multi-passenger, commuter-driven carpools and high-occupancy vehicles including, but not limited to, water shuttles and water taxis; and may, in accordance with all applicable state and federal laws and regulations, exercise all powers and do all things necessary and convenient to carry out this act.

(d) In carrying out this section, the Massachusetts Department of Transportation may enter into contracts or agreements with cities to mitigate the effects of projects undertaken under this act and to undertake additional transportation measures within the city and may enter into contracts, agreements or transactions with other federal, state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions that may be necessary to implement these contracts or agreements with cities. Cities and other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions may enter into these contracts, agreements, or transactions with the department. In relation to these agreements, the department

may advance to these agencies, organizations or authorities, without prior expenditure by the agencies, organizations or authorities, monies necessary to carry out these agreements; provided, however, that the department shall certify to the comptroller the amount so advanced; provided further, that all monies not expended under these agreements shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed under this subsection.

SECTION 10. Notwithstanding any other general or special law to the contrary, the Massachusetts Department of Transportation shall take all necessary actions to secure federal highway or transportation assistance which is or may become available to the department including, but not limited to, actions authorized under or in compliance with Title 23 of the United States Code, the Surface Transportation and Relocation Assistance Act of 1987, Pub. L. 100-17, the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, the Transportation Equity Act for the 21st Century, Pub. L. 105-178, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law 110-53 and actions such as filing applications for federal assistance, supervising the expenditure of funds under federal grants or other assistance agreements and making any determinations and certifications necessary or appropriate to the foregoing. If a federal law, administrative regulation or practice requires an action relating to federal assistance to be taken by a department, agency or other instrumentality of the commonwealth other than the Massachusetts Department of Transportation, the other department, agency or instrumentality shall take such action.

SECTION 11. Notwithstanding any general or special law to the contrary, all construction contracts funded in whole or in part by the funds authorized in this act shall include

a price adjustment clause for each of the following: fuel, both diesel and gasoline, asphalt, concrete and steel. A base price for each material shall be set by the awarding authority or agency and included in the bid documents at the time a project is advertised. The awarding authority or agency shall also identify in the bid documents the price index to be used for each material or supply. The adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds +/- 5 per cent.

SECTION 12. Notwithstanding any general or special law to the contrary, sections 61 and 62A to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the General Laws and section 40 of chapter 131 of the General Laws shall not apply to bridge projects of the Massachusetts Department of Transportation and the Massachusetts Bay Transportation Authority for the repair, reconstruction, replacement or demolition of existing state highway, authority and municipally-owned bridges, including the immediate approaches necessary to connect the bridges to the existing adjacent highway and rail system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced; provided, however, that said sections 61 and 62A to 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction, replacement or demolition project where the project requires a mandatory environmental impact report under 301 CMR 11.00; provided further, that all such work shall be subject to the requirements of the then current edition of the department's Stormwater Handbook as approved by the department of environmental protection in accordance with applicable law, that notice shall be published in the Environmental Monitor of any application to the department of environmental protection for a water quality certification, and that the work shall be subject to performance standards prescribed by the department of environmental protection under section 401 of the Federal Clean Water Act if applicable to the

project; provided further, that notwithstanding the foregoing, said section 61 and said sections 62A to 62I, inclusive, of said chapter 30, said chapter 91, and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project. If any state highway, authority or municipal bridge crosses over a railroad right-of-way or railroad tracks, the department or authority, as applicable, shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge, but the applicable department and the authority and their agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the applicable department or authority, may consider necessary or convenient to carry out this section. If a flagman is needed to carry out this section, the railroad company or railway company or its assigns shall provide the flagman. For the purposes of this section, “bridge” shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area. Any project exempted from any provision of law under this section shall be subject to the public consultation process required by the then current version of the Massachusetts Department of Transportation’s Project Development and Design Guidebook.

SECTION 13. Notwithstanding any general or special law to the contrary, the unexpended balances of all capital accounts which otherwise would revert on June 30, 2012, but which are necessary to fund obligations during fiscal year 2013, are hereby re-authorized; provided, however, that this re-authorization shall terminate upon enactment of capital account extension legislation. The comptroller, with the approval of the secretary of transportation and the secretary of administration and finance, may eliminate appropriation accounts established

under the former executive office of transportation and construction before the effective date of chapter 25 of the acts of 2009.

SECTION 14. Notwithstanding any general law or any regulation to the contrary, the Massachusetts Department of Transportation shall commission a study to determine the impact on the public safety of transporting ethanol by train through the communities of Boston, Revere, Everett, Cambridge and Chelsea. Public safety issues to be studied shall include, but not be limited to, the proximity to residences, elderly housing complexes, schools, hospitals, health care facilities and other population and demographic characteristics, and emergency response capabilities. A report shall be completed within 6 months after the effective date of this act and copies of the report shall be submitted to the senate committee on ways and means, the executive office of public safety and security and the department of environmental protection. The department of environmental protection shall not issue a license under chapter 91 of the General Laws for the transportation of ethanol through the communities of Boston, Revere, Everett, Cambridge and Chelsea until it has received the report.

SECTION 15. The Massachusetts Bay Transportation Authority shall file a report with the general court detailing present, planned and foreseeable activities to increase its self-sufficiency and decrease its dependence on state subsidization and fare increases. The report shall include, but not be limited to, methods for increased fare collections, the cultivation and implementation of opportunities for sponsorships of facilities, programs, venues and properties, an analysis of employee compensation including, but not limited to, overtime payments, health care benefits, pensions and other benefits, the privatization of some or all of the operations of the authority and all other actions being considered or pursued to improve the sustainability of services provided by the authority within its current and projected fiscal constraints. The report

shall be filed with the clerks of the senate and house of representatives, the joint committee on transportation, and the senate and house ways and means committees not later than 180 days after the effective date of this act.

SECTION 16. The secretary of transportation, within 6 months after the effective date of this act, shall submit to the clerks of the senate and house of representatives, the joint committee on transportation and the house and senate committees on ways and means a detailed timeline and funding schedule for the transfer of all workers at the executive office of transportation and the highway division in the Massachusetts Department of Transportation, whose salaries and benefits are currently funded through the proceeds of bond sales, to the operations accounts of such agencies not later than December 31, 2014.

SECTION 17. No funds shall be disbursed to the Massachusetts Bay Transportation Authority under section 35T of chapter 10 of the General Laws for the extension of services including, but not limited to, for the addition of new line service through the creation of a new line, extension of a current line or increasing the service area of a current line until the authority submits a plan on how the authority will pay for the proposed expansion and certifies that such expansion will not adversely affect existing services. The plan shall be submitted to the clerks of the senate and house of representatives, the joint committee on transportation and the chairs of the senate and house committees on ways and means.