

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

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

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

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

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

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