

HOUSE No. 2354

The Commonwealth of Massachusetts

Senate, July 17, 2012.

BILL #: H04193

BILL STATUS: Favorable with Amendment

DISSENTERS:

None

ACCOMPANIED BILLS:

None

For the committee,

BRIAN A. JOYCE

SENATE No. 2354

The committee on Senate committee on Bonding, Capital Expenditures and State Assets to whom was referred the House Bill financing improvements to the Commonwealth's transportation system (House, No. 4193) report recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2354.

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 forth in sections 2 to 2C, 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 notwithstanding this act or any other general or special law to the
16 contrary, the department shall not enter into any obligations for projects which are eligible to
17 receive federal funds under this act unless state matching funds exist which have been
18 specifically authorized and are sufficient to fully fund the corresponding state portion of the
19 federal commitment to fund these obligations; and provided further, that the department shall
20 only enter into obligations for projects under this act based upon a prior or anticipated future
21 commitment of federal funds and the availability of corresponding state funding authorized and
22 appropriated for this use by the general court for the class and category of project for which this
23 obligation applies.....\$225,000,000

24 6121-1216 For federal aid projects on the non-interstate federal highway system;
25 provided, that funds may be expended for the costs of these projects including, but not limited to,
26 the nonparticipating portions of these projects and the costs of engineering and other services
27 essential to these projects rendered by Massachusetts Department of Transportation employees
28 or by consultants; provided further, that amounts expended for department employees may
29 include the salary and salary-related expenses of these employees to the extent that they work on
30 or in support of these projects; provided further, that notwithstanding this act or any other
31 general or special law to the contrary, the department shall not enter into any obligations for
32 projects which are eligible to receive federal funds under this act unless state matching funds
33 exist which have been specifically authorized and are sufficient to fully fund the corresponding
34 state portion of the federal commitment to fund these obligations; and provided further, that the
35 department shall only enter into obligations for projects under this act based upon a prior or
36 anticipated future commitment of federal funds and the availability of corresponding state

37 funding authorized and appropriated for this use by the general court for the class and category
38 of project for which this obligation applies.....\$525,000,000

39 SECTION 2A.

40 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

41 Highway Division

42 6121-1217 For the design, construction, and repair of, or improvements to, non-federally-
43 aided roadway and bridge projects and for the nonparticipating portion of federally-aided
44 projects; provided, that the costs of professional personnel directly and exclusively involved in
45 the construction, planning, engineering and design of the projects funded herein may be charged
46 to this item, and any other associated costs; provided further, that those costs shall not be
47 classified as administrative costs.....\$325,000,000

48 SECTION 2B.

49 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

50 Rail and Transit Division

51 6622-1205 For the purposes of chapter 161B of the General Laws, including the purchase
52 and rehabilitation of rolling stock, related assets and support equipment necessary to safely serve
53 transit passengers, construction and rehabilitation of regional transit authority operations and
54 passenger facilities, and purchase of related appurtenances and tools.....\$11,000,000

55 SECTION 2C.

56 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

57

Rail and Transit Division

58 6622-1280 For the purpose of implementing rail improvements under chapter 161C of the
59 General Laws; provided, that funds may also be used for transportation planning, design,
60 permitting, acquisition of interests in land, and engineering for heavy rail, light rail, bus, and
61 other transit projects, including the industrial rail access program; provided, however, the
62 department shall adopt regulations within 180 days of the effective date of this act implementing
63 the industrial rail access program, which shall increase access to rail freight service and preserve
64 or stimulate economic development through the generation of new or expanded rail service;
65 provided that, the secretary of transportation shall have the responsibility for evaluating and
66 selecting eligible projects, in consultation with the secretary of housing and economic
67 development, where the public benefit will be gained through improved use of the rail
68 transportation network or that will facilitate economic growth through access to the rail assets
69 within the commonwealth; provided that the program shall be available to any political
70 subdivision, railroad or shipper operating within the commonwealth.....\$300,000,000

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

80 provisions of this act, bonds and interest thereon issued under this section shall be general
81 obligations of the commonwealth.

82 SECTION 4. To meet the expenditures necessary in carrying out section 2A, the state
83 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
84 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
85 \$325,000,000. All bonds issued by the commonwealth shall be designated on their face,
86 Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of
87 years, not exceeding 30 years, as the governor may recommend to the general court under
88 section 3 of Article LXII of the Amendments to the Constitution. All bonds shall be payable not
89 later than June 30, 2047. All interest and payments on account of principal on these obligations
90 shall be payable from the Commonwealth Transportation Fund. Notwithstanding any other
91 provisions of this act, bonds and interest thereon issued under this section shall be general
92 obligations of the commonwealth.

93 SECTION 5. To meet the expenditures necessary in carrying out section 2B, the state
94 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
95 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
96 \$11,000,000 which shall be in addition to those bonds previously authorized for projects and
97 programs which are eligible to receive federal funding and which authorizations remain
98 uncommitted or unobligated on the effective date of this act. All bonds issued by the
99 commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan
100 Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the
101 governor may recommend to the general court under section 3 of Article LXII of the
102 Amendments to the Constitution; provided, however, that all these bonds shall be payable not

103 later than June 30, 2047. All interest and payments on account of principal on these obligations
104 shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon
105 issued under this section shall be general obligations of the commonwealth.

106 SECTION 6. To meet the expenditures necessary in carrying out section 2C, the state
107 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an
108 amount to be specified by the governor from time to time but not exceeding, in the aggregate,
109 \$177,500,000 which shall be in addition to those bonds previously authorized for projects and
110 programs which are eligible to receive federal funding and which authorizations remain
111 uncommitted or unobligated on the effective date of this act. All bonds issued by the
112 commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan
113 Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the
114 governor may recommend to the general court under section 3 of Article LXII of the
115 Amendments to the Constitution; provided, however, that all these bonds shall be payable not
116 later than June 30, 2047. All interest and payments on account of principal on these obligations
117 shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon
118 issued under this section shall be general obligations of the commonwealth.

119 SECTION 7. Notwithstanding any general or special law to the contrary, in carrying out
120 sections 2 to 2C, inclusive, and all other provisions of this act, the Massachusetts Department of
121 Transportation may enter into contracts, agreements, or transactions that may be appropriate with
122 other federal, state, local or regional public agencies or authorities. The contracts, agreements, or
123 transactions may relate to such matters as the department shall determine including, without
124 limitation, the research, design, layout, construction, reconstruction or management of
125 construction of all or a portion of these projects. In relation to any such contracts, agreements, or

126 transactions the department may advance monies to these agencies or authorities, without prior
127 expenditure by the agencies or authorities, and the agencies and authorities may accept monies
128 necessary to carry out these agreements; provided, however, that the department shall certify to
129 the comptroller the amounts so advanced; provided further, that these agreements shall contain
130 provisions satisfactory to the department for the accounting of monies expended by any other
131 agency or authority; and provided, further, that all monies not expended under any such
132 agreement shall be credited to the account of the department from which they were advanced.
133 The department shall report to the house and senate committees on ways and means on any
134 transfers completed under this section.

135 SECTION 8. (a) Notwithstanding any other general or special law to the contrary, the
136 Massachusetts Department of Transportation shall expend the sums authorized in section 2A for
137 the following purposes: projects for the laying out, construction, reconstruction, resurfacing,
138 relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or
139 facilities, on- and off-street bicycle projects, sidewalks, telecommunications, parking facilities,
140 auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other
141 crossings, traffic safety devices on state highways and on roads constructed under clause (b) of
142 the second paragraph of section 4 of chapter 6C of the General Laws, highway or mass
143 transportation studies, including, but not limited to, traffic, environmental or parking studies, the
144 establishment of school zones in accordance with section 2 of chapter 85 of the General Laws,
145 improvements on routes not designated as state highways without assumption of maintenance
146 responsibilities and, notwithstanding any general or special law to the contrary, projects to
147 alleviate contamination of public and private water supplies caused by the department's storage
148 and use of snow removal chemicals which are necessary for the purposes of highway safety and

149 for the relocation of persons or businesses or for the replacement of dwellings or structures
150 including, but not limited to, providing last resort housing under federal law and such functional
151 replacement of structures in public ownership as may be necessary for the foregoing purposes
152 and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform
153 Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et
154 seq., Pub. L. 97-646, 84 Stat. 1864 (1971), and to sell any structure the title to which has been
155 acquired for highway purposes. When dwellings or other structures are removed in furtherance
156 of any of the foregoing projects, the excavations or cellar holes remaining shall be filled in and
157 brought to grade within 1 month after the removal. In planning projects funded by said section
158 2A, consideration shall be made, to the extent feasible, to accommodate and incorporate
159 provisions to facilitate the use of bicycles and walking as a means of transportation; provided,
160 however, that nothing in this section shall be construed to give rise to enforceable legal rights in
161 any party or a cause of action or an enforceable entitlement as to the projects described in this
162 section.

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

168 (c) In addition to the foregoing, the Massachusetts Department of Transportation may
169 expend funds made available by this act to acquire from a person by lease, purchase, eminent
170 domain under chapter 79 of the General Laws or otherwise, land or rights in land for parking
171 facilities adjacent to a public way to be operated by the department or under contract with an

172 individual; expend funds made available by this act for the acquisition of van-type vehicles used
173 for multi-passenger, commuter-driven carpools and high-occupancy vehicles including, but not
174 limited to, water shuttles and water taxis; and, in accordance with all applicable state and federal
175 laws and regulations, exercise all powers and do all things necessary and convenient to carry out
176 the purposes of this act.

177 (d) In carrying out this section, the Massachusetts Department of Transportation may
178 enter into contracts or agreements with cities to mitigate the effects of projects undertaken under
179 this act and to undertake additional transportation measures within the city and may enter into
180 contracts, agreements, or transactions with other federal, state, local or regional public agencies,
181 authorities, nonprofit organizations or political subdivisions that may be necessary to implement
182 these contracts or agreements with cities. Cities and other state, local or regional public agencies,
183 authorities, nonprofit organizations or political subdivisions may enter into these contracts,
184 agreements, or transactions with the department. In relation to these agreements, the department
185 may advance to these agencies, organizations or authorities, without prior expenditure by the
186 agencies, organizations or authorities, monies necessary to carry out these agreements; provided,
187 however, that the department shall certify to the comptroller the amount so advanced; provided
188 further, that all monies not expended under these agreements shall be credited to the account of
189 the department from which they were advanced. The department shall report to the house and
190 senate committees on ways and means on any transfers completed under this subsection.

191 SECTION 9. Notwithstanding any other general or special law to the contrary, the
192 Massachusetts Department of Transportation shall take all necessary actions to secure federal
193 highway or transportation assistance which is or may become available to the department
194 including, but not limited to, actions authorized under or in compliance with Title 23 of the

195 United States Code, the Surface Transportation Act of 1987, Pub. L. 100-17, the Intermodal
196 Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, the Transportation Equity Act
197 for the 21st Century, Pub. L. 105-178, the Safe, Accountable, Flexible, Efficient Transportation
198 Equity Act: A Legacy for Users, Pub. L. 109-59, Implementing Recommendations of the 9/11
199 Commission Act of 2007, Pub. Law 110-53 and any successor acts or reauthorizations of those
200 acts, and actions such as filing applications for federal assistance, supervising the expenditure of
201 funds under federal grants or other assistance agreements and making any determinations and
202 certifications necessary or appropriate to the foregoing. If a federal law, administrative regulation
203 or practice requires an action relating to federal assistance to be taken by a department, agency or
204 other instrumentality of the commonwealth other than the Massachusetts Department of
205 Transportation, the other department, agency or instrumentality shall take such action.

206 SECTION 10. Notwithstanding any other general or special law to the contrary, all
207 construction contracts funded in whole or in part by the funds authorized by this act shall include
208 a price adjustment clause for each of the following: fuel, both diesel and gasoline, asphalt,
209 concrete and steel. A base price for each material shall be set by the awarding authority or
210 agency and included in the bid documents at the time a project is advertised. The awarding
211 authority or agency shall also identify in the bid documents the price index to be used for each
212 material or supply. The adjustment clause shall provide for a contract adjustment to be made on a
213 monthly basis when the monthly cost change exceeds +/- 5 per cent.

214 SECTION 11. Notwithstanding any other general or special law to the contrary, section
215 61 and sections 62A to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the
216 General Laws and section 40 of chapter 131 of the General Laws shall not apply to bridge
217 projects of the Massachusetts Department of Transportation and the Massachusetts Bay

218 Transportation Authority for the repair, reconstruction, replacement or demolition of existing
219 state highway, authority and municipally-owned bridges, including the immediate approaches
220 necessary to connect the bridges to the existing adjacent highway and rail system, in which the
221 design is substantially the functional equivalent of, and in similar alignment to, the structure to
222 be reconstructed or replaced; provided, however, that said section 61 and said sections 62A to
223 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction, replacement or
224 demolition project where the project requires a mandatory environmental impact report under
225 301 CMR 11.00; provided further, that all such work shall be subject to the requirements of the
226 then current edition of the Massachusetts Department of Transportation's Stormwater Handbook
227 as approved by the department of environmental protection in accordance with applicable law,
228 that notice shall be published in the Environmental Monitor of any application to the department
229 of environmental protection for a water quality certification, and that the work shall be subject to
230 performance standards prescribed by the department of environmental protection under section
231 401 of the Federal Clean Water Act if applicable to the project; provided further, that
232 notwithstanding the foregoing, said section 61 and said sections 62A to 62I, inclusive, of said
233 chapter 30, said chapter 91, and said section 40 of said chapter 131 shall apply to any portions of
234 the bridge and roadway approaches to the crossing of the Charles river for the Central
235 Artery/Tunnel Project. If any state highway, authority, or municipal bridge crosses over a
236 railroad right-of-way or railroad tracks, the department or authority, as applicable, shall seek the
237 opinion of a railroad company, railway company or its assigns operating on the track of a
238 necessary clearance between the track and the bridge, but the department and the authority and
239 their agents or contractors may enter upon any right-of-way, land or premises of a railroad
240 company or railway company or its assigns for purposes that the department or authority may

241 consider necessary or convenient to carry out this section. If a flagman is needed to carry out the
242 section, the railroad company, railway company or its assigns shall provide the flagman, the cost
243 which shall be borne by the bridge project except in the case of a bridge transferred pursuant to
244 Chapter 634 of the Acts of 1971. For the purposes of this section, “bridge” shall include any
245 structure spanning and providing passage over water, railroad right-of-way, public or private
246 way, other vehicular facility or other area. Any project exempted from any provision of law
247 under this section shall be subject to the public consultation process required by the then current
248 version of the Massachusetts Department of Transportation’s Project Development and Design
249 Guidebook.

250 SECTION 12. Notwithstanding any general or special law to the contrary, the
251 unexpended balances of all capital accounts which otherwise would revert on June 30, 2012, but
252 which are necessary to fund obligations during fiscal year 2013, are hereby re-authorized.