

SENATE NO. 1895

AN ACT IMPROVING CERTAIN PUBLIC CONSTRUCTION PROCESSES

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to establish a special commission to investigate the cost recovery efforts, management and construction of the Central Artery/Third Harbor Tunnel Project, 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. (a) There shall be a special commission to consist of 7 members to review, study and
2 investigate, as a basis for legal and legislative action as well as cost recovery available to the
3 commonwealth, errors, omissions, mismanagement, maladministration, fraud, over-billing, negligence
4 or any other legally actionable claim for liability related to the Central Artery/Third Harbor Tunnel
5 Project. The investigation and study shall include, but need not be limited to, assessing liability
6 attributable to the joint venture of Bechtel/Parsons Brinckerhoff or any other manager, management
7 consultant, design consultant, sub-consultant, contractor, sub-contractor, government official, or
8 individual associated with the Central Artery/Third Harbor Tunnel Project. A quorum shall exist when
9 4 members of the commission are available to vote on any measure.

10 (b) The special commission shall consist of the governor or an officer of the executive branch to be
11 appointed by the governor; a dean or professor of a law school located in the commonwealth to be
12 appointed by the state auditor; the inspector general or a member of that department designated by the

13 inspector general; one lay person who shall not at any time have served as a member of the general
14 court, to be appointed by the state secretary; the state auditor or a member of that department
15 designated by the state auditor; a certified forensic accountant or a certified fraud examiner to be
16 appointed by the state auditor; and, by agreement, the Federal Highway Administrator or a member of
17 that department designated by the Federal Highway Administrator. No person, nor any member of the
18 immediate family of such person, who has had a direct or indirect financial interest in the Central
19 Artery/ Third Harbor Tunnel Project, or who has had a direct or indirect financial interest in the joint
20 venture of Bechtel/Parsons Brinckerhoff, in any of its subsidiaries or related companies, or in any
21 other consultant, sub-consultant, contractor or sub-contractor for the Central Artery/Third Harbor
22 Tunnel Project shall be eligible for appointment to or shall serve on or be employed by the
23 commission.

24 (c) The dean or professor of the law school appointed by the state auditor shall be the chairperson of
25 the commission. Any vacancy on the commission shall be filled by the appropriate appointing or
26 designating authority, unless there is at the time of the vacancy no such authority, in which case by the
27 state auditor. A vacancy shall not affect the powers and duties of the commission. A majority vote of
28 the commission shall mean a majority vote of the members authorized to be appointed to serve.

29 (d) The members of the commission shall serve, unless otherwise provided herein, without
30 compensation but shall receive their reasonable and necessary expenses incurred in the discharge of
31 their official duties.

32 (e) The commission may employ legal counsel, licensed engineering services and such assistance as
33 it considers reasonable and necessary, subject to appropriation and in accordance with this act.

34 (f) The commission may accept and expend any appropriations, grants of money, professional
35 services, consultant services, clerical or other services and supplies from the commonwealth in the
36 course of its investigations. The commission and its staff may travel within and without of the
37 commonwealth.

38 (g) The commission may request reasonable assistance from the state auditor, the inspector general,
39 and the attorney general and those officers shall furnish the commission with any relevant information
40 in their possession which is requested by the commission.

41 (h) The commission may require by summons the attendance and testimony under oath of witnesses
42 and the production before it of books, papers and things relating to any matter being investigated by it
43 pursuant to this act. Such a summons may be issued by the commission only upon a majority vote of
44 the commission and shall be served in the same manner as summonses for witnesses in criminal cases
45 issued on behalf of the commonwealth and the law relative to summonses issued in those cases shall
46 apply to summonses issued under this act so far as applicable. A justice of the supreme judicial court,
47 the appeals court, or of the superior court may upon application by the commission compel the
48 attendance of witnesses summoned as aforesaid, the giving of testimony under oath and the production
49 of books, papers and things before the commission in furtherance of any investigation under this act in
50 the same manner and to the same extent as before the supreme judicial court, the appeals court or
51 superior courts. A justice may also compel any witness to answer before the court any questions put to
52 the witness by the commission. Every person who behaves in a disorderly or contemptuous manner
53 before the commission shall be deemed guilty of a misdemeanor punishable as provided in section
54 28A of chapter 3 of the general laws.

55 (i) If any person summoned to testify or produce evidence before the commission refuses to testify or
56 produce evidence on the basis of a privilege against self-incrimination, the commission shall not be

57 bound by section 28 of said chapter 3. Upon a majority vote, the commission may apply to a justice of
58 the supreme judicial court for an order granting immunity to the witness. Notice of the application
59 shall be sent to the attorney general, all district attorneys of the commonwealth, and the United States
60 attorney for the district of Massachusetts, any of whom may file an appearance and have the right to be
61 heard with respect to the application. The justice may, after hearing, order the witness to answer the
62 question or produce the evidence requested and, if so ordered, the justice shall also issue an order
63 granting immunity to the witness with respect to the transactions, matters or things concerning which
64 the witness is compelled to testify or produce evidence. A witness who has been granted immunity as
65 provided herein shall not be criminally prosecuted for or on account for any action, matter or thing
66 concerning which the witness may be required to testify or produce evidence following the grant of
67 immunity, except for perjury committed while giving testimony or producing evidence, giving a false
68 statement or otherwise failing to comply with the order.

69 (j) All hearings of the commission shall be public and witnesses shall have the right to be represented
70 by counsel and shall be sworn before testifying. Upon order of the commission, its counsel shall,
71 under conditions of confidentiality, submit to the attorney general or other law enforcement agency,
72 evidence that has come to the attention of the commission and in the opinion of the commission
73 warrants presentation or submission for prosecution or other legal action. Any evidence of misconduct
74 by an employee, officer, official, or member of the executive branch of government or the general
75 court shall be presented to the Massachusetts state ethics commission; and any evidence of misconduct
76 by a licensed or regulated professional shall be presented to the appropriate professional disciplinary
77 body; provided, however, that such presentations may be limited to evidence which, in the opinion of a
78 majority of the commission, is reasonably credible.

79 (k) All appointments and designations required under subsection (b) shall be made no later than 30

80 days after the effective date of this act. The chairperson of the commission shall notify the general
81 court when all appointments have been made and the commission is ready to commence its
82 investigations.

83 (l) The commission shall file monthly reports with the clerks of the senate and the house of
84 representatives, the senate and house post audit and oversight committees and the joint committee on
85 transportation as to investigative, legal or other remedial action undertaken by the commission relative
86 to its investigation in each month. The senate and house post audit and oversight committees shall
87 have access to all testimony, books, records and other evidence gathered by the commission during its
88 investigation. The commission shall file a final report of its investigation and study and its
89 recommendations, if any, together with drafts of legislation necessary to carry its recommendations
90 into effect, by filing the same with said clerks within twelve months of the effective date of this act.

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92 (m) Absent further legislative authorization, the commission shall cease its investigation and study
93 upon filing its final report, and, except as otherwise provided herein, shall forward all records and
94 documents, including stenographic notes and electronic documents, to the state secretary. The
95 secretary shall be the custodian of the records. Upon the conclusion of the investigation, the
96 documents shall be subject to the disclosures and exemptions provided under section 7 of chapter 4 of
97 the General Laws.

98 (n) Nothing in this act shall be construed to preclude any individual from cooperating with any
99 investigation into matters covered by this act.

100 SECTION 2. Section 29A of chapter 29 of the General Laws, as appearing in the 2004 Official
101 Edition, is hereby amended by striking out, in lines 3 and 4, the words “and institutions” and inserting
102 in place thereof the following words:- ,institutions and state Authorities.

103 SECTION 3. Said section 29A of said chapter 29, as so appearing, is hereby further amended by
104 inserting after the sixth sentence the following sentence:- No state Authority shall contract for any
105 such services without the prior written approval of the contract by the commissioner of administration.

106 SECTION 4. Said section 29A of said chapter 29, as so appearing, is hereby further amended by
107 striking out, in line 33, the words “by the secretary having charge of such executive office”.

108 SECTION 5. Chapter 30 of the General Laws is hereby amended by inserting after section 39S,
109 inserted by section 2 of chapter 306 of the acts of 2004, the following section:-

110 Section 39T. An owner controlled insurance policy relating to a public construction project with a
111 project value of more than \$10,000,000 shall not take effect until the attorney general, the
112 commissioner of insurance and the inspector general each review it and signify approval in writing.

113 SECTION 6. Section 1 of chapter 260 of the General Laws, as appearing in the 2004 Official Edition,
114 is hereby amended by adding the following clause:-

115 Sixth, Actions upon contracts for public construction projects with a project value of greater than
116 \$10,000,000.

117 SECTION 7. Section 5 shall apply only to owner controlled insurance policies executed after the
118 effective date of this act.

