

SENATE NO. 2121

AN ACT CREATING A CENTRAL ARTERY INVESTIGATIVE REVIEW BOARD

*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 special board to consist of seven members is hereby established to investigate
2 and study the existence and extent of unsafe and corrupt practices and maladministration by
3 contractors and government official regarding the planning, design, construction, inspection and
4 monitoring of the central artery project in order to fully ensure the safety of these structures and
5 as a basis for civil, criminal and legislative action and cost recovery.

6 The Board shall consist of: one lay person who has not at any time served as a member of
7 the General Court and one retired justice of the Supreme Judicial Court, Superior Court or State
8 Appeals Court both to be appointed by the Secretary of the Commonwealth; a Certified Public
9 Accountant or other person with appropriate financial expertise to be appointed by the State
10 Treasurer; a registered professional engineer or person with requisite engineering expertise to
11 be appointed by the Auditor of the Commonwealth; an Architect or similarly qualified
12 individual and a former prosecutor or investigator to be appointed by the Governor, and a
13 person with significant high level experience in managing large scale public construction

14 projects to be appointed by the Attorney General. The Board shall draw upon the knowledge
15 and expertise of the Inspector General.

16 No person who currently has or has within the past 10 years has had any direct or indirect
17 association financial, administrative or otherwise with any contract or matter regarding the
18 Central Artery Project nor any member of the family of such person shall be eligible to serve on
19 or be employed by the Board.

20 All appointments shall be made not later than thirty days after the passage of this legislation.

21 Said retired justice appointed by the Secretary of State shall be Chairperson of the Board. The
22 member who is a retired justice shall not in any way perform any judicial duties while serving
23 on the Board. Any vacancy on the Board shall be filled by the appropriate appointing or
24 designating authority unless there is at the time of such vacancy no such authority, in which
25 case by the governor. Such a vacancy shall not effect the powers or duties of the Board. A
26 quorum of three members shall be necessary to conduct the business of the Board.

27 The members of the Board shall serve without compensation but shall be reimbursed for
28 expenses incurred in the discharge of their official duties.

29 The Board shall be provided with offices, and may employ an executive director, legal counsel
30 and such other assistance as it may deem necessary, subject to appropriation. The Board may
31 accept and expend any appropriation from the Commonwealth in the lawful pursuit of its
32 investigation.

33 The Board may request reasonable assistance from the Attorney General, the State Auditor, the
34 Secretary of Public Safety and all other officers or entities of the Commonwealth and said
35 officers or entities shall furnish the Board with any relevant information in their possession
36 requested by the Board. Any justice of the Supreme Judicial or Superior Court may upon

37 application by the Board, and after notice of said application having been given to such officer
38 or entity, which shall have the opportunity to be heard in opposition thereto, compel compliance
39 with a request by subpoena for such information.

40 The Board may require by summons the attendance and testimony under oath of witnesses and
41 the production before it of books and papers relating to any matter being investigated by it
42 pursuant to the provisions of this Act. Such a summons may be issued by said Board upon a
43 majority vote of the Board and shall be served in the same manner as summonses for witnesses
44 in criminal cases issued on behalf of the Commonwealth and all provisions of law relative to
45 summonses issued in such cases shall apply to summonses issued under this Act so far as
46 applicable. Any justice of the Supreme Judicial or Superior Court may upon application by the
47 Board compel the attendance of witnesses summoned as aforesaid, the giving of testimony
48 under oath and the production of documents before the Board in furtherance of any
49 investigation under this Act in the same manner and to the same extent as before the supreme
50 judicial or superior courts. Such justice may also compel any witness to answer before the court
51 any questions theretofore put to such witness by the Board; in the event that such justice shall
52 compel the giving of testimony before the court, he may, upon motion of the court or upon
53 application of the Board, order that the public be excluded from such sitting of the court and
54 may impound all papers and documents, and reproductions thereof, relating thereto.

55 Every person who behaves in a disorderly or contemptuous manner before said Board shall be
56 deemed guilty of a misdemeanor punishable as provided in section twenty-eight A of Chapter
57 three of the General Laws.

58 If any person summoned to testify or produce evidence before the Board refuses to testify or
59 produce evidence on the basis of his privilege against self incrimination the board upon majority

60 vote may apply to a justice of the Supreme Judicial Court for an order granting immunity to said
61 witness. Notice of such application shall be sent to the Attorney General, all district attorneys
62 of the commonwealth and the United States Attorney for the district of Massachusetts, any of
63 whom may file an appearance and have the right to be heard with respect to such application.
64 The justice may, after hearing, order the witness to answer the question or produce the evidence
65 requested and, if he so orders, he shall also issue an order granting immunity to the witness with
66 respect to the transactions, matters or things concerning which he is compelled to testify or
67 produce evidence. A witness who is provided immunity as provided herein shall not be
68 prosecuted or subjected to any penalty or forfeiture for or on account of any action, matter or
69 thing concerning which he may be required to testify or produce evidence following the grant of
70 immunity, except for perjury committed while giving testimony or producing evidence, giving a
71 false statement or otherwise failing to comply with the order. The provisions of section one of
72 chapter two hundred and sixty-eight of the General Laws shall be applicable to testimony under
73 oath before the Board.

74 All hearings of the Board shall be public except that the Board by a majority vote of members
75 present may conduct a private hearing. Private hearings shall be governed by the same
76 provisions with reference to secrecy which govern the proceedings of a grand jury.

77 Under order of the Board, its counsel shall, under conditions of confidentiality, submit to the
78 attorney general, a district attorney or other law enforcement agency, such evidence which has
79 come to the attention of the Board that in the opinion of the board warrants submission. Any
80 evidence of misconduct by an employee, officer, or official of the executive branch of
81 government shall be presented to the State Ethics Commission; and any evidence of misconduct
82 by a licensed or regulated professional shall be presented to the appropriate professional

83 disciplinary body; provided, however, that such presentations may be limited to evidence which
84 in the opinion of the majority of the Board is reasonably credible.

85 The chairman of the Board shall notify the General Court, the Attorney General, the Auditor of
86 the Commonwealth and the Inspector General when the Board is ready to commence its
87 investigation. Upon such notification all entities conducting investigations or inquiries
88 regarding the Central Artery Project shall make a report of their findings and conclusions to the
89 Board and provide the Board with all relevant records regarding their investigations or other
90 enquiries.

91 The Board shall file an interim report with the clerk of the House of Representatives on or
92 before July 18th 2007 and shall file its final report and recommendations together with drafts of
93 legislation necessary to effectuate said recommendations with said clerk on or before December
94 18th 2007. The report will include, but not be limited to, a review of all instances of unsafe or
95 corrupt practices regarding the planning, design, construction, inspection and monitoring of the
96 Central Artery Project, the disposition or resolution of these instances and recommendations on
97 how to prevent similar occurrences in the future.

98 The Board shall cease its investigation upon filing its final report and shall forward all records
99 and documents to the Secretary of the Commonwealth. The secretary shall be the custodian of
100 said records which he shall seal in a separate and segregated vault. Said records shall not be
101 public and shall only be available upon a court order. The Secretary shall retain said records for
102 seven years after receipt.

103 Nothing in this legislation should be construed as precluding an individual from cooperating
104 with any investigation into matters covered by the provisions of this Act.

105 No person shall coerce, harass or discriminate against any employee or appointee or other
106 person or entity for cooperation with this investigation, and any person who willfully does so
107 shall be punished by a fine of not more than five-hundred thousand dollars or imprisonment for
108 not more than two years in a house of correction or both. Additionally, any person who takes
109 such prohibited action against an employee, appointee, other person or entity may be liable to
110 that employee, appointee or other person or entity for treble damages, costs and attorney's fees

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