



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration  
BUDGET OFFICE  
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**Memorandum**

**To:** The Honorable Steven M. Costantino  
Chairman, House Finance Committee

The Honorable Daniel DaPonte  
Chairman, Senate Finance Committee

**From:** Rosemary Booth Gallogly *R. Gallogly*  
Executive Director/State Budget Officer

**Date:** February 2, 2009

**Subject:** New Article of the FY 2009 Supplemental Appropriations Act (09-H-5019) –  
Relating to the Rhode Island Public Rail Corporation and South County Commuter  
Rail Service

The Governor requests that the new article attached be included in the FY 2009 Supplemental Appropriations Act.

The attached legislation requires swift action in order for the proposed South County Commuter Rail project to proceed under its current contractual obligations. By agreement with Amtrak, failure of Rhode Island Public Rail to acquire an evergreen letter of credit or line of credit by September 1, 2009, will terminate the current access agreement between the State and Amtrak and will also terminate agreements entered into between the State, Amtrak, and RIAC relative to work being performed at the Warwick Intermodal Station. This proposed legislation requires early passage as it may take longer than anticipated for a bank to put the necessary financial instruments into place. If this legislation is not passed until the end of the legislative session in June, the State risks a two month window to put the instruments into place, which may result in contract termination damages as well as the loss of access to Amtrak's right of way.

If you have any questions regarding this article, feel free to call me Mike Lewis at 222-2481.

RBG: sm09-113  
cc: Mike Lewis  
Michael O'Keefe  
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1           WHEREAS, Amtrak required the Department to provide certain risk-management and  
2 financial assurances and indemnification covenants and obligations as a condition precedent to  
3 the Access Agreement, that certain Assignment and Assumption Agreement entered into for the  
4 benefit of Amtrak by and between the Department and the Rhode Island Public Rail Corporation  
5 (“Rail Corp”), a public instrumentality of the State established by Section 42-64.2 *et seq.* of the  
6 General Laws of Rhode Island (the “Act”), that certain Master Force Account Agreement for  
7 improvements between Warwick and Providence entered into by and between Amtrak, the Rhode  
8 Island Airport Corporation (“RIAC”), a governmental agency of the State established by the  
9 Rhode Island Economic Development Corporation and Rail Corp, that certain Temporary  
10 Easement Agreement entered into by and between Amtrak, RIAC and Rail Corp, and that certain  
11 Permanent Easement Agreement entered into by and between Amtrak, RIAC and Rail Corp, and  
12 that certain Master Force Account Agreement for improvements between Warwick and North  
13 Kingstown to be entered into by and between Amtrak and the Department or its designee, that  
14 certain Temporary Easement Agreement to be entered into by and between Amtrak and Rail  
15 Corp, and that certain Permanent Easement Agreement entered into by and between Amtrak and  
16 Rail Corp (collectively, the “South County Commuter Rail Service Agreements”); and

17           WHEREAS, the above-referenced assurances and indemnification covenants and  
18 obligations include, without limitation, that (1) the Department secure and maintain a liability  
19 insurance policy covering the liability of the State and Amtrak for property damage, personal  
20 injury, bodily injury and death arising out of the South County Commuter Rail Service, with  
21 policy limits of Two Hundred Million United States Dollars (\$200,000,000.00), naming the  
22 Department, Rail Corp, Amtrak and the MBTA as primary insureds, all subject to a self-insured  
23 retention of Seven Million Five Hundred Thousand United States Dollars (\$7,500,000.00) (the  
24 “Retention”), (2) the Department defend, indemnify and save harmless Amtrak and third parties  
25 to the extent that Amtrak is obligated to defend, indemnify or save harmless such third parties,  
26 irrespective of negligence or fault of Amtrak or such third parties, for all damage or liability for

1 personal injury or property damage which would not have occurred or would not have been  
2 incurred but for the existence of the South County Commuter Rail Service or the presence on the  
3 Northeast Properties (as such term is defined in the Access Agreement) of any trains, passengers,  
4 employees, contractors, or invitees of the State or the State's Designated Operator ( the "Amtrak  
5 Access Indemnification"), (3) Rail Corp and RIAC defend, indemnify and save harmless Amtrak  
6 and third parties to the extent that Amtrak is obligated to defend, indemnify or save harmless such  
7 third parties, irrespective of negligence or fault of Amtrak or such third parties, for all damage or  
8 liability for personal injury or property damage which would not have occurred but for the  
9 improvements undertaken pursuant to the Master Force Account Agreements, the Temporary  
10 Easements and Permanent Easements with respect to the Intermodal Station and the Wickford  
11 Station (the "Amtrak Indemnification"), and (4) the Department defend, indemnify and save  
12 harmless the MBTA for all damage or liability for personal injury or property damages which  
13 would not have occurred or would not have been incurred but for the MBTA's activities as the  
14 Designated Operator under the Access Agreement except for damages or liability attributable  
15 directly to the MBTA's own negligence or misconduct (the "MBTA Indemnification"); and

16 WHEREAS, the Department may be constitutionally prohibited from providing the  
17 financial assurances and the indemnification covenants and obligations and therefore has  
18 designated Rail Corp as the responsible party for providing Amtrak and MBTA with the  
19 foregoing assurances, covenants and obligations on behalf of the Department; and

20 WHEREAS, RIAC is unable to provide the financial assurances and the indemnification  
21 covenants and obligations and therefore has also designated Rail Corp as the responsible party for  
22 providing Amtrak with the foregoing assurances, covenants and obligations on behalf of RIAC;  
23 and

24 WHEREAS, Amtrak has agreed to accept Rail Corp's financial assurances and  
25 indemnification covenants and obligations on behalf of the Department and RIAC; provided,  
26 however, that Rail Corp first secure either a line or evergreen letter of credit in the amount of

1 Seven Million Five Hundred Thousand United States Dollars (\$7,500,000.00) issued by a bank  
2 authorized to do business in Rhode Island with a surplus of not less than One Hundred Million  
3 United States Dollars (\$100,000,000.00) in favor of Amtrak to secure Rail Corp's performance of  
4 its obligations arising under any South County Commuter Rail Service Agreements, specifically  
5 the payment of any amounts arising from time to time under the Retention or any amounts that  
6 are uninsured; and

7 WHEREAS, pursuant to the Act, Rail Corp is authorized, created, and established for the  
8 purpose of enhancing and preserving the viability of commuter transit and railroad freight  
9 operations in Rhode Island and has the power to make contracts and guarantees and incur  
10 liabilities, borrow money at any rates of interest that it may determine, and to make and execute  
11 any other contracts and instruments necessary or convenient in the exercise of the powers,  
12 purposes and functions of the Act; and

13 WHEREAS, Rail Corp, at the present time, has no source of funds to discharge the  
14 obligations it has assumed to Amtrak other than the funds appropriated to the Department in the  
15 annual budget and transferred to Rail Corp; and

16 WHEREAS, a financial institution may not provide a line or evergreen letter of credit to  
17 Rail Corp without some assurances that funds would be appropriated to the Department and  
18 transferred to Rail Corp; and

19 WHEREAS, pursuant to the Assignment and Assumption Agreement, the Department  
20 has covenanted on behalf of the State to support Rail Corp and to include such financial support  
21 in the Governor's printed budget submitted to the General Assembly each year; and

22 WHEREAS, the obligations undertaken by the Department on behalf of the State and  
23 Rail Corp as outlined herein, and the approval and authority for Rail Corp to secure and maintain  
24 the letter or evergreen line of credit are subject to Chapter 18 of Title 35 of the Rhode Island  
25 General Laws; and

1           WHEREAS, pursuant to Sections 35-18-3 and 35-18-4 of the Rhode Island General  
2 Laws, Rail Corp has requested the approval and authority of the General Assembly to enter into  
3 agreements and execute documents reasonably necessary from time to time to secure and  
4 maintain the above-referenced line or evergreen letter of credit to support payment obligations of  
5 the Retention, for the payment of any costs and fees reasonably incurred in connection with  
6 securing and maintaining such line or evergreen letter of credit, and for the extension of both the  
7 risk-management and financial assurances, Amtrak Access Indemnification and Amtrak  
8 Indemnification and the risk-management and financial assurances, and MBTA Indemnification;  
9 now, therefore be it

10           RESOLVED, that the General Assembly hereby approves and authorizes Rail Corp to  
11 secure and maintain, and hereby approves and authorizes the Department's support of Rail Corp  
12 and the use by Rail Corp of the Department's funding as covenanted in the Assignment and  
13 Assumption Agreement to secure and maintain a line or evergreen letter of credit in the amount of  
14 Seven Million Five Hundred Thousand United States Dollars (\$7,500,000.00) issued by a bank  
15 authorized to do business in Rhode Island with a surplus of not less than One Hundred Million  
16 United States Dollars (\$100,000,000.00) in favor of Amtrak to secure Rail Corp's performance of  
17 its obligations arising under any South County Commuter Rail Service Agreements, specifically  
18 the payment of any amounts arising from time to time under the Retention, and for the payment  
19 of any costs and fees reasonably incurred in connection with securing and maintaining such line  
20 or evergreen letter of credit.

21           SECTION 3. This article shall take effect upon passage.