



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
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MEMORANDUM

To: The Honorable Marvin L. Abney
Chairman, House Finance Committee

The Honorable William J. Conley, Jr.
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: April 10, 2018

Subject: New Article in the FY 2019 Appropriations Act (18-H-7200)
Relating to the Rhode Island Public Rail Corporation

The Governor requests that an additional article, entitled "Relating to the Rhode Island Public Rail Corporation", be submitted alongside the other articles submitted on January 18, 2018. This article amends a joint resolution from 2010 relating to the Rhode Island Public Rail Corporation (Rail Corp).

A 2009 joint resolution authorized a letter of credit only on train stations between Providence and North Kingstown, RI. The 2010 resolution amended the prior year's resolution to include all bridges over the Amtrak rail line. This new article is amending this resolution to also include the planned Pawtucket/Central-Falls Station, which is due to begin construction this year, as well as to cover all transportation programs, including rail passenger and freight services.

The 2010 joint resolution set the liability insurance policy with a limit of \$200,000,000 and an evergreen letter of credit for a self-insured retention of \$7,500,000. This new article amends those amounts to \$295,000,000 and up to \$7,500,000, respectively. The increase in liability insurance is to conform with recently amended federal requirements. The change to the amount of the letter of credit will create a variable self-insured retention of up to \$7,500,000, rather than a set amount of \$7,500,000. Allowing this amount to be lower than \$7,500,000 would provide the Rail Corp. with the ability to reduce the self-insured retention, the costs of maintaining the letter of credit in that amount and the out-of-pocket costs to the State in the event of a major claim.

TAM:sma 19-Amend-13

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Michael DiBiase, Director of Administration
Jonathan Womer, Director, Office of Management and Budget
Evelyn Shapiro, Senior Budget Analyst
Peter Alviti, Director, Department of Transportation

1 NEW ARTICLE

2 RELATING TO THE RHODE ISLAND PUBLIC RAIL CORPORATION

3 SECTION 1. *Rhode Island Public Rail Corporation*. Section 4 of Article 6 of Chapter
4 023 of the 2010 Public Laws is hereby amended to read as follows:

5 WHEREAS, The State of Rhode Island and Providence Plantations (the "state") has
6 delegated to the Rhode Island department of transportation (the "department") the responsibility
7 for ~~maintaining and constructing highways, roads, freeways, bridges and incidental structures~~
8 preparing project plans and implementation programs for transportation and for maintaining an
9 adequate level of rail passenger and freight services; as established by chapter 8 of title 24, chapter
10 5 of title 37 and chapter 13 of title 42 of the Rhode Island general laws; and

11 WHEREAS, The National Railroad Passenger Corporation ("Amtrak") owns the railroad
12 right-of-way along the Northeast Corridor throughout the state; and

13 WHEREAS, The department seeks to enhance commuter rail service north from the
14 Amtrak Providence Station in Providence, Rhode Island with stops at the proposed
15 Pawtucket/Central Falls Station (the "Pawtucket/Central Falls Station") (together with other
16 commuter rail service in the State, the "Commuter Rail Service"); and

17 WHEREAS, Amtrak requires the department to provide certain risk-management and
18 financial assurances and indemnification covenants and obligations as a condition precedent to
19 that certain Access Agreement (the "Access Agreement"), entered into by and between the
20 department and Amtrak, that certain Assignment and Assumption Agreement entered into or to
21 be entered into for the benefit of Amtrak by and between the department and the Rhode Island
22 Public Rail Corporation ("Rail Corp"), a public instrumentality of the state established by section
23 42-64.2 et seq. of the general laws of Rhode Island (the "Act"), that certain Master Force Account
24 Agreement for improvements in the area of the Pawtucket/Central Falls Station entered into or to
25 be entered into by and among Amtrak, the department and Rail Corp, that certain Temporary
26 Easement Agreement entered into or to be entered into by and among Amtrak, the department

1 and Rail Corp, that certain Permanent Easement Agreement entered into or to be entered into by
2 and among Amtrak, the department and Rail Corp and that certain Lease Agreement entered into
3 or to be entered into by and among Amtrak, the department and Rail Corp relating to the
4 Pawtucket/Central Falls Station (collectively, the “Commuter Rail Service Agreements”); and

5 WHEREAS, The above-referenced assurances and indemnification covenants and
6 obligations include, without limitation, that: (1) the department secure and maintain a liability
7 insurance policy covering the liability of the state and Amtrak for property damage, personal
8 injury, bodily injury and death arising out of the Commuter Rail Service, with policy limits of
9 two hundred ninety-five million United States dollars (\$295,000,000), naming the department,
10 Rail Corp, Amtrak and Massachusetts Bay Transportation Authority (the “MBTA”) as primary
11 insureds, all subject to a self-insurance retention of up to seven million five hundred thousand
12 United States dollars (\$7,500,000) (the “Retention”); (2) the department defend, indemnify and
13 save harmless Amtrak and third parties to the extent that Amtrak is obligated to defend, indemnify
14 or save harmless such third parties, irrespective of negligence or fault of Amtrak or such third
15 parties, for all damage or liability for personal injury or property damage which would not have
16 occurred or would not have been incurred but for the existence of the Commuter Rail Service or
17 the presence on the Northeast Properties (as such term is defined in the Access Agreement) of
18 any trains, passengers, employees, contractors, or invitees of the state or the state’s designated
19 operator; (3) Rail Corp defend, indemnify and save harmless Amtrak and third parties to the extent
20 that Amtrak is obligated to defend, indemnify or save harmless such third parties, irrespective of
21 negligence or fault of Amtrak or such third parties, for all damage or liability for personal injury
22 or property damage which would not have occurred but for the improvements undertaken
23 pursuant to the Master Force Account Agreement, the Temporary Easement Agreements and
24 Permanent Easement Agreement with respect to the Pawtucket/Central Falls Station; and (4) the
25 department defend, indemnify and save harmless the MBTA for all damage or liability for
26 personal injury or property damages which would not have occurred or would not have been

1 incurred but for the MBTA's activities as the designated operator under the Access Agreement
2 except for damages or liability attributable directly to the MBTA's own negligence or
3 misconduct; and

4 WHEREAS, In connection with certain existing agreements between the department and
5 Amtrak, the state has agreed from time to time to indemnify Amtrak and third-parties to the extent
6 that Amtrak is required to indemnify third-parties (the "prior indemnities"); and

7 WHEREAS, In connection with future agreements relating to the construction or
8 reconstruction ~~to roads and bridges of the Pawtucket/Central Falls Station~~ described above, the
9 state and the department will be required to provide similar indemnities to Amtrak and third-
10 parties to the extent that Amtrak is required to indemnify third-parties ("future indemnities"); and

11 WHEREAS, The ~~S~~state and the department may be themselves constitutionally
12 prohibited from providing such prior indemnities and future indemnities, which may negatively
13 impact commuter transit in Rhode Island, and the department therefore has designated the ~~Rhode~~
14 ~~Island Public Rail Corporation ("Rail Corp"), a public instrumentality of the state established by~~
15 ~~chapter 42-64.2 et seq. of the general laws of Rhode Island (the "act")~~ Rail Corp as the responsible
16 party for providing Amtrak with such indemnities; and

17 WHEREAS, Pursuant to the ~~a~~Act, Rail Corp is authorized, created and established for
18 the purpose of enhancing and preserving the viability of commuter transit and railroad freight
19 operations in Rhode Island and has the power to make contracts and guarantees and incur
20 liabilities, borrow money at any rates of interest that it may determine, and to make and execute
21 any other contracts and instruments necessary or convenient in the exercise of the powers,
22 purposes and functions of the act; and

23 WHEREAS, In connection with ~~the extension of eCommuter r~~Rail s~~Service from~~
24 ~~Providence, Rhode Island to North Kingstown, Rhode Island, as provided in the South County~~
25 ~~Commuter Rail Service Agreements~~, described in article 17, section 8 of chapter 68 of the public
26 laws of 2009, and in article 6, section 4 of chapter 23 of the public laws of 2010, Rail Corp has

1 been designated as the entity responsible for securing and maintaining a liability insurance policy
2 to provide funds to pay all or a portion of the liabilities of the state and Amtrak for property
3 damage, personal injury, bodily injury and death arising out of the ~~South County~~ Commuter Rail
4 Service (the "~~South County~~ Commuter Rail Service insurance policy"), with policy limits of two
5 hundred million United States dollars (\$200,000,000), subject to a self-insured retention of seven
6 million five hundred thousand United States dollars (\$7,500,000) (the "retention"); and

7 WHEREAS, Under article 17, section 8 of chapter 68 of the public laws of 2009, under
8 article 6, section 4 of chapter 23 of the public laws of 2010 and pursuant to chapter 18 of title 35
9 of the Rhode Island general laws, the general assembly authorized Rail Corp to secure and
10 maintain a line or evergreen letter of credit in the amount of seven million five hundred thousand
11 United States dollars (\$7,500,000) issued by a bank authorized to do business in Rhode Island
12 with a surplus of not less than one hundred million United States dollars (\$100,000,000) in favor
13 of Amtrak to secure Rail Corp's performance of indemnities under the ~~South County~~ Commuter
14 Rail Service Agreements, and specifically the payment of any amounts arising from time to time
15 under the retention, and for the payment of any costs and fees reasonably incurred in connection
16 with securing and maintaining such line or evergreen letter of credit; and

17 WHEREAS, Amtrak has agreed to accept a liability insurance policy with limits of two
18 hundred ninety-five million United States dollars (~~\$29500,000,000~~), towards liabilities and a line
19 or evergreen letter of credit established in the amount of up to seven million five hundred thousand
20 United States dollars (\$7,500,000) issued by a bank authorized to do business in Rhode Island
21 with a surplus of not less than one hundred million United States dollars (\$100,000,000) in favor
22 of Amtrak to secure the prior indemnities and the future indemnities or, in the alternative, to
23 accept expansion of the scope of Rail Corp's ~~South County~~ Commuter Rail Service insurance
24 policy and line or evergreen letter of credit to include the prior indemnities and the future
25 indemnities; and

1 WHEREAS, The department further covenants and affirms on behalf of the state to
2 support Rail Corp and to include such financial support in the governor's printed budget submitted
3 to the general assembly each year; and

4 WHEREAS, The requirements undertaken by the department on behalf of the state and
5 Rail Corp as outlined herein to provide the prior indemnities and the future indemnities, and the
6 approval and authority for Rail Corp to obtain and maintain a line or evergreen letter of credit to
7 secure the prior indemnities and the future indemnities or to amend the line or evergreen letter of
8 credit relating to the ~~South County~~ Commuter Rail Service ~~Indemnities Agreements~~ to secure the
9 prior indemnities and the future indemnities are subject to chapter 18 of title 35 of the Rhode
10 Island general laws; and

11 WHEREAS, Pursuant to sections 35-18-3 and 35-18-4 of the Rhode Island general laws,
12 Rail Corp has requested the approval and authority of the general assembly to provide for the
13 prior indemnities and the future indemnities, which may include securing and maintaining a new
14 insurance policy and line or letter of credit to secure the prior indemnities and future indemnities,
15 or in the alternative, to amend or replace the ~~South County~~ Commuter Rail Service insurance
16 policy and line or letter of credit in order that they may also secure the prior indemnities and the
17 future indemnities; now, therefore be it

18 RESOLVED, That the general assembly hereby approves and authorizes Rail Corp to
19 provide, and hereby approves and authorizes the department's support of Rail Corp and the use
20 by Rail Corp of the department's funding to provide, for the prior indemnities and the future
21 indemnities, which may include securing and maintaining an insurance policy with limits of two
22 hundred ninety-five million United States dollars (~~\$29500,000,000~~), which shall provide funds to
23 pay all or a portion of the liabilities and a line or evergreen letter of credit in the amount of up to
24 seven million five hundred thousand United States dollars (\$7,500,000) issued by a bank
25 authorized to do business in Rhode Island with a surplus of not less than one hundred million
26 United States dollars (\$100,000,000) to secure all or a portion of the prior indemnities and the

1 future indemnities or, in the alternative, to amend the ~~South County~~ Commuter Rail Service
2 insurance policy and line or evergreen letter of credit to secure Rail Corp's performance of the
3 prior indemnities and the future indemnities in favor of ~~the National Railroad Passenger~~
4 ~~Corporation~~ (Amtrak) and third-parties to the extent that Amtrak is required to indemnify and
5 defend third-parties for all claims, damages, losses, liabilities and expenses for personal injury,
6 bodily injury, death, or property damage (including, but not limited to, environmental conditions
7 and preexisting environmental conditions) and interference with the use of Amtrak's property,
8 which would not have occurred, would not have been discovered, or would not have been incurred
9 but for the existence of any platform, structure, building, road, or bridge or appurtenance ~~thereto~~
10 to any of the foregoing, located or to be located on, above, under or within the boundary of any
11 property owned or controlled by Amtrak, or within the boundary of any railroad safety envelope
12 established pursuant to a federal program or safety regulations, and owned or used by the State
13 of Rhode Island, or any municipality, public corporation, or instrumentality of the State of Rhode
14 Island, or but for the activities of any employee, agent, contractor, subcontractor or invitee of the
15 state or any municipality, public corporation, or instrumentality of the state, relating to any
16 platform, structure, building, road, bridge, or appurtenance, thereto located to any of the foregoing
17 located or to be located on, above, under or within the boundary of any property owned or
18 controlled by Amtrak or within the boundary of any railroad safety envelope established pursuant
19 to a federal program or safety regulations, which obligations of the department include, but are
20 not limited to, the payment of any amounts arising from time to time under the retention, the
21 payment of claims, damages, losses, liabilities and expenses, and the payment of any costs and
22 fees reasonably incurred in connection with obtaining such insurance policy and line or evergreen
23 letter of credit or amending or replacing the ~~South County~~ Commuter Rail Service insurance
24 policy and line of evergreen letter of credit and to secure Rail Corp's performance of the prior
25 indemnities and future indemnities as may be authorized under the Act, as the same may be
26 amended from time to time.

SECTION 2. This article shall take effect upon passage.