

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act improving certain public construction processes.

PETITION OF:

NAME:

Marc R. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01895 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT IMPROVING CERTAIN PUBLIC CONSTRUCTION PROCESSES.

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,
2 study and investigate, as a basis for legal and legislative action as well as cost recovery available
3 to the commonwealth, errors, omissions, mismanagement, maladministration, fraud, over-billing,
4 negligence or any other legally actionable claim for liability related to the Central Artery/Third
5 Harbor Tunnel Project. The investigation and study shall include, but need not be limited to,
6 assessing liability attributable to the joint venture of Bechtel/Parsons Brinckerhoff or any other
7 manager, management consultant, design consultant, sub-consultant, contractor, sub-contractor,
8 government official, or individual associated with the Central Artery/Third Harbor Tunnel
9 Project. A quorum shall exist when 4 members of the commission are available to vote on any
10 measure.

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

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

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

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

35 (f) The commission may accept and expend any appropriations, grants of money, professional services,
36 consultant services, clerical or other services and supplies from the commonwealth in the course of its
37 investigations. The commission and its staff may travel within and without of the 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 28A
54 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 shall
59 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 by
70 counsel and shall be sworn before testifying. Upon order of the commission, its counsel shall, under
71 conditions of confidentiality, submit to the attorney general or other law enforcement agency, evidence
72 that has come to the attention of the commission and in the opinion of the commission warrants
73 presentation or submission for prosecution or other legal action. Any evidence of misconduct by an
74 employee, officer, official, or member of the executive branch of government or the general court shall
75 be presented to the Massachusetts state ethics commission; and any evidence of misconduct by a
76 licensed or regulated professional shall be presented to the appropriate professional disciplinary body;
77 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 days
80 after the effective date of this act. The chairperson of the commission shall notify the general court
81 when all appointments have been made and the commission is ready to commence its investigations.

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

90

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

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

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

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

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

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

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

113 SECTION 6. Section 1 of chapter 260 of the General Laws, as appearing in the 2004 Official
114 Edition, 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.