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
   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

TDD#: 277-1227
NEW ARTICLE

RELATING TO THE RHODE ISLAND PUBLIC RAIL CORPORATION

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

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

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

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

WHEREAS, Amtrak requires the department to provide certain risk-management and financial assurances and indemnification covenants and obligations as a condition precedent to that certain Access Agreement (the "Access Agreement"), entered into by and between the department and Amtrak, that certain Assignment and Assumption Agreement entered into or to be entered into for the benefit of Amtrak by and between the department and the Rhode Island Public Rail Corporation ("Rail Corp"), a public instrumentality of the state established by section 42-64.2 et seq. of the general laws of Rhode Island (the "Act"), that certain Master Force Account Agreement for improvements in the area of the Pawtucket/Central Falls Station entered into or to be entered into by and among Amtrak, the department and Rail Corp, that certain Temporary Easement Agreement entered into or to be entered into by and among Amtrak, the department
and Rail Corp, that certain Permanent Easement Agreement entered into or to be entered into by
and among Amtrak, the department and Rail Corp and that certain Lease Agreement entered into
or to be entered into by and among Amtrak, the department and Rail Corp relating to the
Pawtucket/Central Falls Station (collectively, the “Commuter Rail Service Agreements”); and

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

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

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

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

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

WHEREAS, In connection with the extension of the Commuter Rail Service—
from Providence, Rhode Island to North Kingstown, Rhode Island, as provided in the South County
Rail Service Agreements, described in article 17, section 8 of chapter 68 of the public
laws of 2009, and in article 6, section 4 of chapter 23 of the public laws of 2010, Rail Corp has
been designated as the entity responsible for securing and maintaining a liability insurance policy
to provide funds to pay all or a portion of the liabilities of the state and Amtrak for property
damage, personal injury, bodily injury and death arising out of the South County Commuter Rail
Service (the "South County Commuter Rail Service insurance policy"), with policy limits of two
hundred million United States dollars ($200,000,000), subject to a self-insured retention of seven
million five hundred thousand United States dollars ($7,500,000) (the "retention"); and

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

WHEREAS, Amtrak has agreed to accept a liability insurance policy with limits of two
hundred ninety-five million United States dollars ($295,000,000,000), towards liabilities and a line
or evergreen letter of credit established in the amount of up to seven million five hundred thousand
United States dollars ($7,500,000) issued by a bank authorized to do business in Rhode Island
with a surplus of not less than one hundred million United States dollars ($100,000,000) in favor
of Amtrak to secure the prior indemnities and the future indemnities or, in the alternative, to
accept expansion of the scope of Rail Corp's South County Commuter Rail Service insurance
policy and line or evergreen letter of credit to include the prior indemnities and the future
indemnities; and
WHEREAS, The department further covenants and affirms on behalf of the state to support Rail Corp and to include such financial support in the governor's printed budget submitted to the general assembly each year; and

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

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

RESOLVED, That the general assembly hereby approves and authorizes Rail Corp to provide, and hereby approves and authorizes the department’s support of Rail Corp and the use by Rail Corp of the department's funding to provide, for the prior indemnities and the future indemnities, which may include securing and maintaining an insurance policy with limits of two hundred ninety-five million United States dollars ($295,000,000,000), which shall provide funds to pay all or a portion of the liabilities and a line or evergreen letter of credit in the amount of up to seven million five hundred thousand United States dollars ($7,500,000) issued by a bank authorized to do business in Rhode Island with a surplus of not less than one hundred million United States dollars ($100,000,000) to secure all or a portion of the prior indemnities and the
future indemnities or, in the alternative, to amend the South County Commuter Rail Service insurance policy and line or evergreen letter of credit to secure Rail Corp’s performance of the prior indemnities and the future indemnities in favor of the National Railroad Passenger Corporation (Amtrak) and third-parties to the extent that Amtrak is required to indemnify and defend third-parties for all claims, damages, losses, liabilities and expenses for personal injury, bodily injury, death, or property damage (including, but not limited to, environmental conditions and preexisting environmental conditions) and interference with the use of Amtrak’s property, which would not have occurred, would not have been discovered, or would not have been incurred but for the existence of any platform, structure, building, road, or bridge or appurtenance thereto to any of the foregoing, located or to be located on, above, under or within the boundary of any property owned or controlled by Amtrak, or within the boundary of any railroad safety envelope established pursuant to a federal program or safety regulations, and owned or used by the State of Rhode Island, or any municipality, public corporation, or instrumentality of the State of Rhode Island, or but for the activities of any employee, agent, contractor, subcontractor or invitee of the state or any municipality, public corporation, or instrumentality of the state, relating to any platform, structure, building, road, bridge, or appurtenance, thereto located to any of the foregoing located or to be located on, above, under or within the boundary of any property owned or controlled by Amtrak or within the boundary of any railroad safety envelope established pursuant to a federal program or safety regulations, which obligations of the department include, but are not limited to, the payment of any amounts arising from time to time under the retention, the payment of claims, damages, losses, liabilities and expenses, and the payment of any costs and fees reasonably incurred in connection with obtaining such insurance policy and line or evergreen letter of credit or amending or replacing the South County Commuter Rail Service insurance policy and line of evergreen letter of credit and to secure Rail Corp’s performance of the prior indemnities and future indemnities as may be authorized under the Act, as the same may be amended from time to time.
SECTION 2. This article shall take effect upon passage.