SENATE DOCKET, NO. 1299 FILED ON: 1/21/2011

SENATE . . . . . No. 1612

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:

An Act improving certain public construction processes..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	
	☐ *[District]*
	☐

SENATE DOCKET, NO. 1299 FILED ON: 1/21/2011

SENATE . . . . . No. 1612

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 1612) of Marc R. Pacheco for legislation to improve certain public construction processes. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1449* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. (a) There shall be a special commission to consist of 7 members to review, study and investigate, as a basis for legal and legislative action as well as cost recovery available to the commonwealth, errors, omissions, mismanagement, maladministration, fraud, over-billing, negligence or any other legally actionable claim for liability related to the Central Artery/Third Harbor Tunnel Project. The investigation and study shall include, but need not be limited to, assessing liability attributable to the joint venture of Bechtel/Parsons Brinckerhoff or any other manager, management consultant, design consultant, sub-consultant, contractor, sub-contractor, government official, or individual associated with the Central Artery/Third Harbor Tunnel Project. A quorum shall exist when 4 members of the commission are available to vote on any measure.

(b) The special commission shall consist of the governor or an officer of the executive branch to be appointed by the governor; a dean or professor of a law school located in the commonwealth to be appointed by the state auditor; the inspector general or a member of that department designated by the inspector general; one lay person who shall not at any time have served as a member of the general court, to be appointed by the state secretary; the state auditor or a member of that department designated by the state auditor; a certified forensic accountant or a certified fraud examiner to be appointed by the state auditor; and, by agreement, the Federal Highway 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
26 chairperson of the commission. Any vacancy on the commission shall be filled by the
27 appropriate appointing or designating authority, unless there is at the time of the vacancy no such
28 authority, in which case by the state auditor. A vacancy shall not affect the powers and duties of
29 the commission. A majority vote of the commission shall mean a majority vote of the members
30 authorized to be appointed to serve.

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

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

37 (f) The commission may accept and expend any appropriations, grants of money,
38 professional services, consultant services, clerical or other services and supplies from the
39 commonwealth in the course of its investigations. The commission and its staff may travel
40 within and without of the commonwealth.

41 (g) The commission may request reasonable assistance from the state auditor, the
42 inspector general, and the attorney general and those officers shall furnish the commission with
43 any relevant information in their possession which is requested by the commission.

44 (h) The commission may require by summons the attendance and testimony under oath of
45 witnesses and the production before it of books, papers and things relating to any matter being
46 investigated by it pursuant to this act. Such a summons may be issued by the commission only
47 upon a majority vote of the commission and shall be served in the same manner as summonses
48 for witnesses in criminal cases issued on behalf of the commonwealth and the law relative to
49 summonses issued in those cases shall apply to summonses issued under this act so far as
50 applicable. A justice of the supreme judicial court, the appeals court, or of the superior court may
51 upon application by the commission compel the attendance of witnesses summoned as aforesaid,
52 the giving of testimony under oath and the production of books, papers and things before the
53 commission in furtherance of any investigation under this act in the same manner and to the
54 same extent as before the supreme judicial court, the appeals court or superior courts. A justice
55 may also compel any witness to answer before the court any questions put to the witness by the

56 commission. Every person who behaves in a disorderly or contemptuous manner before the
57 commission shall be deemed guilty of a misdemeanor punishable as provided in section 28A of
58 chapter 3 of the general laws.

59 (i) If any person summoned to testify or produce evidence before the commission refuses
60 to testify or produce evidence on the basis of a privilege against self-incrimination, the
61 commission shall not be bound by section 28 of said chapter 3. Upon a majority vote, the
62 commission may apply to a justice of the supreme judicial court for an order granting immunity
63 to the witness. Notice of the application shall be sent to the attorney general, all district
64 attorneys of the commonwealth, and the United States attorney for the district of Massachusetts,
65 any of whom may file an appearance and have the right to be heard with respect to the
66 application. The justice may, after hearing, order the witness to answer the question or produce
67 the evidence requested and, if so ordered, the justice shall also issue an order granting immunity
68 to the witness with respect to the transactions, matters or things concerning which the witness is
69 compelled to testify or produce evidence. A witness who has been granted immunity as provided
70 herein shall not be criminally prosecuted for or on account for any action, matter or thing
71 concerning which the witness may be required to testify or produce evidence following the grant
72 of immunity, except for perjury committed while giving testimony or producing evidence, giving
73 a false statement or otherwise failing to comply with the order.

74 (j) All hearings of the commission shall be public and witnesses shall have the right to be
75 represented by counsel and shall be sworn before testifying. Upon order of the commission, its
76 counsel shall, under conditions of confidentiality, submit to the attorney general or other law
77 enforcement agency, evidence that has come to the attention of the commission and in the
78 opinion of the commission warrants presentation or submission for prosecution or other legal
79 action. Any evidence of misconduct by an employee, officer, official, or member of the
80 executive branch of government or the general court shall be presented to the Massachusetts state
81 ethics commission; and any evidence of misconduct by a licensed or regulated professional shall
82 be presented to the appropriate professional disciplinary body; provided, however, that such
83 presentations may be limited to evidence which, in the opinion of a majority of the commission,
84 is reasonably credible.

85 (k) All appointments and designations required under subsection (b) shall be made no
86 later than 30 days after the effective date of this act. The chairperson of the commission shall
87 notify the general court when all appointments have been made and the commission is ready to
88 commence its investigations.

89 (l) The commission shall file monthly reports with the clerks of the senate and the house
90 of representatives, the senate and house post audit and oversight committees and the joint
91 committee on transportation as to investigative, legal or other remedial action undertaken by the
92 commission relative to its investigation in each month. The senate and house post audit and
93 oversight committees shall have access to all testimony, books, records and other evidence

94 gathered by the commission during its investigation. The commission shall file a final report of
95 its investigation and study and its recommendations, if any, together with drafts of legislation
96 necessary to carry its recommendations into effect, by filing the same with said clerks within
97 twelve months of the effective date of this act.

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

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

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

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

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

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

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

122 SECTION 6. Section 1 of chapter 260 of the General Laws, as appearing in the 2004
123 Official Edition, is hereby amended by adding the following clause:-

124 Sixth, Actions upon contracts for public construction projects with a project value of
125 greater than $10,000,000.

126 SECTION 7. Section 5 shall apply only to owner controlled insurance policies executed
127 after the effective date of this act.