

# SENATE . . . . . No. 1846

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## *The Commonwealth of Massachusetts*

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SENATE, April 30, 1986.

The committee on Transportation, to whom was referred the petition (accompanied by bill, Senate, No. 1616) of the Board of Directors of the Massachusetts Bay Transportation Authority, by James D. Harrington, and Joseph B. Walsh for legislation to establish a claims and indemnity procedure for the Massachusetts Bay Transportation Authority report the accompanying bill (Senate, No. 1846).

For the committee,

WILLIAM Q. MacLEAN, JR.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT ESTABLISHING A CLAIMS AND INDEMNITY PROCEDURE FOR THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

*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. Section 1 of Chapter 258 of the General Laws,  
2 as appearing in the 1984 Official Edition, is hereby amended by  
3 striking out the definition of "Executive officer of a public  
4 employer" and inserting in place thereof the following  
5 definition: —

6 "Executive officer of a public employer", the secretary of an  
7 executive office of the commonwealth, or, in the case of an agency  
8 not within the executive office, the attorney general; the adjutant  
9 general of the military forces of the commonwealth; the county  
10 commissioners of a county; the mayor of a city, or as designated  
11 by the charter of the city; the selectmen of a town, or as designated  
12 by the charter of the town; the board, directors, or committee of  
13 a district in the case of the public employers of a district; in the  
14 case of the Massachusetts Bay Transportation Authority, the  
15 general manager thereof; and, in the case of any other public  
16 employer, the nominal chief executive officer or board.

1 SECTION 2. Section 1 of Chapter 258 of the General Laws,  
2 as appearing in the 1984 Official Edition, is hereby further  
3 amended by striking out the definition of "Public employer", as  
4 most recently amended by Chapter 403 of the Acts of 1981, and  
5 inserting in place thereof the following definition: —

6 "Public employer", the Commonwealth, and any county, city,  
7 town, or district, including any public health district or joint  
8 district or regional health district or regional health board  
9 established pursuant to the provisions of section twenty-seven A  
10 or twenty-seven B of Chapter one hundred and eleven, the  
11 Massachusetts Bay Transportation Authority, and any depart-

12 ment, office, commission, committee, council, board, division,  
13 bureau, institution, or agency or authority thereof which exercises  
14 direction and control over the public employee, but not a private  
15 contractor with any such public employer, the Massachusetts Port  
16 Authority, the Massachusetts Turnpike Authority, or any other  
17 independent body politic and corporate. With respect to public  
18 employees of a school committee of a city or town, the public  
19 employer for the purposes of this Chapter shall be deemed to be  
20 said respective city or town.

1 SECTION 3. Section 1 of said Chapter 258, as appearing in  
2 Section 15 of Chapter 512 of the Acts of 1978, is hereby amended  
3 by striking out the definition of "Public attorney" and inserting  
4 in place thereof the following definition: —

5 "Public attorney", the attorney who shall defend all civil actions  
6 brought against a public employer pursuant to this Chapter. In  
7 the case of any county he shall be the district attorney as  
8 designated in sections twelve and thirteen of Chapter twelve; in  
9 the case of a district he shall be an attorney legally employed by the  
10 district for that purpose; in the case of the Massachusetts Bay  
11 Transportation Authority he shall be the general counsel. A public  
12 attorney may also be an attorney furnished by an insurer obligated  
13 under the terms of a policy of insurance to defend the public  
14 employer against claims brought pursuant thereto.

1 SECTION 4. Section 21 of Chapter 161A of the General Laws,  
2 as appearing in Section 18 of Chapter 563 of the Acts of 1964,  
3 is hereby amended by striking out said section and inserting in  
4 place thereof the following section: —

5 Section 21. The Authority shall be liable for the acts of neg-  
6 ligence of the directors and of the servants and employees of  
7 the Authority in the management and operation of the Authority  
8 and of the properties owned, leased and operated by it to the same  
9 extent as though the Authority were a street railway company,  
10 but the directors shall not be personally liable except for  
11 malfeasance in office. The Authority shall be liable in tort to  
12 passengers, and to persons in the exercise of due care who are  
13 not passengers or in the employment of the Authority, for  
14 personal injury and for death and for damages to property, as

15 provided by Chapter two hundred and fifty-eight of the General  
16 Laws. The director shall have charge of and supervise the  
17 investigation, settlement and defense of all claims instituted  
18 pursuant to Chapter two hundred and fifty-eight of the General  
19 Laws and of all other suits or actions relative to the property or  
20 arising out of the construction, maintenance or operation of the  
21 Authority.