
[Senate, October 26, 1995 — Presented by Senator Thomas C. Norton.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

1 *Ordered, That*

2 *Whereas*, There is pending before the Senate a bill entitled
3 “AN ACT RELATIVE TO PROVIDING FINANCIAL ASSIS-
4 TANCE TO CERTAIN RAILROADS” (printed as Senate,
5 No. 2073), a copy of which is submitted herewith; and

6 *Whereas*, The bill contains an authorization to expend bond
7 proceeds for the modification of clearances over certain railroad
8 lines and of grade crossings to improve rail capacity and access
9 over certain freight railways in the commonwealth, including but
10 not limited to the modification of rail grades, overhead highways
11 and bridge grades, to certain freight rail lines in the common-
12 wealth necessary to achieve clearance for double stack trains to at
13 least twenty feet eight inches above the top of the rail; and

14 *Whereas*, The bill contains an authorization to expend bond
15 proceeds for the design, study, preparation of plans, if necessary,
16 for safety improvements along the Fitchburg division of the
17 Boston and Maine railroad in North Cambridge; and

18 *Whereas*, The bill contains an authorization to expend bond
19 proceeds for the construction, reconstruction, repairs and other
20 improvements to railroad facilities at Gloucester Harbor; and

21 *Whereas*, The bill contains an authorization to expend bond
22 proceeds for the design, preparation of plans, if necessary, and for
23 construction, reconstruction, repairs or other improvements to the
24 railroad beds and the railroad lines leading to the waterfront of
25 Fall River; and

26 *Whereas*, To meet these expenditures, the bill provides that the
27 state treasurer shall, upon request of the governor, issue and sell
28 bonds of the commonwealth and that the state treasurer may
29 borrow from time to time on the credit of the commonwealth sums
30 of money as may be necessary for the purpose of meeting pay-
31 ments authorized in said items; and

32 *Whereas*, Section one hundred and seven of chapter one hun-
33 dred and sixty of the General Laws provides that responsibility for
34 the maintenance and repair of bridges which a railroad corporation
35 is authorized or required to construct over or under a canal or
36 public way, lies with the railroad corporation; and

37 *Whereas*, Senate Bill No. 2073, pursuant to the provisions of
38 Rule 12B of the Joint Rules of the Senate and House of
39 Representatives, shall carry over into the nineteen hundred and
40 ninety-six annual session of this General Court; and

41 *Whereas*, Grave doubt exists as to the constitutionality of said
42 bill if enacted into law; therefore be it

43 *Ordered*, That the opinions of the Honorable the Justices of the
44 Supreme Judicial Court be required on the following important
45 questions of law: —

46 1. If the provisions of item 6000-7967 of section two of Senate
47 Bill No. 2073 are enacted into law, would the issuance of bonds of
48 the commonwealth and the authorization to use the proceeds
49 thereof to modify the clearances and grade crossings over certain
50 railroad lines to improve rail capacity and access in accordance
51 with the provisions of section eight of said Senate Bill No. 2073,
52 violate the provision of section 1 of article sixty-two of the
53 Amendments to the Massachusetts Constitution that the credit of
54 the commonwealth shall not in any manner be given or loaned to
55 or in aid of any individual, or of any private association, or of any
56 corporation which is privately owned and managed?

57 2. If the provisions of items 6000-7969, 6000-8968 and 6000-
58 8969 in section 3 of Senate Bill No. 2073 are enacted into law,
59 would the issuance of bonds of the commonwealth and the autho-
60 rization to use the proceeds thereof for the purposes of said items,
61 including but not limited to safety improvements, construction
62 and reconstruction to railroad facilities and for the improvements
63 to railroad beds and railroad lines violate the provisions of
64 section 1 of article sixty-two of the Amendments to the
65 Massachusetts Constitution that the credit of the commonwealth
66 shall not in any manner be given or loaned to or in aid of any indi-
67 vidual, or of any private association, or of any corporation which
68 is privately owned and managed?

69 3. If Senate Bill No. 2073 is enacted into law, would section
70 eight of the bill provide sufficient guidance to the secretary to

71 determine the allocation of cost items within the master
72 agreement?

73 4. If Senate Bill No. 2073 is enacted into law, would section
74 eight of the bill provide sufficient guidance to the secretary to
75 determine whether any other railroad lines necessarily should be
76 included in the double stack network?

77 5. If enacted into law, would the provisions of subsection (d) of
78 section eight of Senate Bill No. 2073 requiring the commonwealth
79 and the Massachusetts Port Authority to fully fund vertical clear-
80 ance improvements, as defined in subsection (a) of said section
81 eight, including changes to rail grades, on the Consolidated Rail
82 Corporation from the western line of the city of Framingham east-
83 erly to the existing intermodal facility at Beacon Park yard, vio-
84 late the provisions of section 1 of article sixty-two of the
85 Amendments to the Massachusetts Constitution that the credit of
86 the commonwealth shall not in any manner be given or loaned to
87 or in aid of any individual, or of any private association, or of any
88 corporation which is privately owned and managed?

89 6. With reference to public bridges, may borrowed funds be
90 expended in accordance with section eight of Senate Bill
91 No. 2073 for modifications to such bridges over railways for the
92 purpose of making improvements to allow private railroads to
93 operate double-stacked trains thereon and to stimulate economic
94 growth and expansion in the commonwealth and to promote the
95 use of the port of Boston without violating the provisions of sec-
96 tion 1 of article sixty-two of the Amendments to the
97 Massachusetts Constitution that the credit of the commonwealth
98 shall not in any manner be given or loaned to or in aid of any indi-
99 vidual, or of any private association, or of any corporation which
100 is privately owned and managed?

