

HOUSE No. 4002

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 20, 2023.

The committee on Transportation reports, under the provisions of Joint Rule 3A, a “Committee Bill relative to transit safety” (House, No. 4002).

For the committee,

WILLIAM M. STRAUS.

Senate Membership of the committee on Transportation:

Senators (required signatures – 5):

BRENDAN P. CRIGHTON /S/

Brendan P. Crighton

PAUL W. MARK /S/

Paul W. Mark

JOHN F. KEENAN /S/

John F. Keenan

Senators (continued)

ROBYN K. KENNEDY /S/

Robyn K. Kennedy

SUSAN L. MORAN /S/

Susan L. Moran

WALTER F. TIMILTY /S/

Walter F. Timilty

PATRICK M. O'CONNOR /S/

Patrick M. O'Connor

House membership of the committee on Transportation:

Representatives (required signatures – 9):

WILLIAM M. STRAUS /S/

William M. Straus

BRIAN W. MURRAY /S/

Brian W. Murray

SALLY P. KERANS /S/

Sally P. Kerans

Representatives (continued)

NATALIE M. BLAIS /S/

Natalie M. Blais

MANNY CRUZ /S/

Manny Cruz

Susannah M. Whipps

PETER CAPANO /S/

Peter Capano

LINDSAY N. SABADOSA /S/

Lindsay N. Sabadosa

BRANDY FLUKER OAKLEY /S/

Brandy Fluker Oakley

RADY MOM /S/

Rady Mom

STEVEN S. HOWITT /S/

Steven S. Howitt

Representatives (continued)

NORMAN J. ORRALL /S/

Norman J. Orrall

David F. DeCoste

HOUSE No. 4002

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The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to transit safety.

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 12 of chapter 159 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof
3 the following subsection:-

4 (a) The transportation or carriage of persons or property, or both, between points within
5 the commonwealth by railroads, street railways, in this chapter called railways, electric railroads,
6 and trackless trolleys, including express service and car service carried on, upon or rendered in
7 connection with such railroads, railways, electric railroads, or trackless trolleys.

8 SECTION 2. Subsection (i) of section 3 of chapter 161A of the General Laws, as so
9 appearing, is hereby amended by striking out the first sentence and inserting in place thereof the
10 following sentence:- To provide mass transportation service, whether directly, jointly or under
11 contract, on an exclusive basis, in the area constituting the authority and, with respect only to
12 operations of the authority with equipment owned and operated by the authority, without, except

13 as otherwise provided in this chapter, being subject to the jurisdiction and control of any city or
14 town or other licensing authority.

15 SECTION 3. The General Laws, as so appearing, are hereby amended by inserting after
16 chapter 161D the following chapter:-

17 Chapter 161E. Office of Transit Safety

18 Section 1. As used in this chapter, the following words shall have the following
19 meanings, unless the context clearly requires otherwise:

20 “Authority” shall mean the Massachusetts Bay Transportation Authority established
21 under chapter 161A.

22 “Council” shall mean the office of transit safety council established under section 10.

23 “Department” shall mean the Massachusetts Department of Transportation established
24 under chapter 6C.

25 “Executive director” shall mean the executive director of the office appointed in
26 accordance with section 2.

27 “Mass transportation services” shall mean public transportation operated by or pursuant
28 to an agreement with the authority, department or a regional transit authority, including but not
29 limited to public transportation provided by means of rail, including but not limited to subway
30 and commuter rail, bus or other rubber-tired automotive vehicles, ferry or other vessels, or
31 paratransit.

32 “Office” shall mean the Office of Transit Safety established under section 2.

33 “Regional transit authority” shall mean a regional transit authority established under
34 chapter 161B.

35 Section 2. There is hereby established an Office of Transit Safety which shall be
36 responsible for overseeing and securing the safe operation of mass transportation services and
37 overseeing, investigating and enforcing compliance by the authority, department and regional
38 transit authorities with applicable federal and state laws, regulations and policies related to transit
39 safety. The office shall not be subject to the supervision or control of any board, bureau,
40 department or other agency of the commonwealth except as specifically provided in this chapter.
41 The office shall not operate public transportation services or receive any funds from the
42 authority, department, a regional transit authority or other state, municipal or county agency or
43 authority that operates public transportation services.

44 Section 3. There shall be in the office an executive director, who shall be the
45 administrative head of the agency. The executive director shall be appointed by a majority vote
46 of the governor, attorney general, and secretary of state and shall be experienced in the field of
47 transit operations or transit safety.

48 The executive director shall serve for a term of three years, and no person shall be
49 appointed for more than three three-year terms. In case of a vacancy in the position of executive
50 director, a successor shall be appointed in the same manner for the unexpired term, and such
51 successor shall thereafter be eligible to serve three three-year terms.

52 The executive director may be removed from office for cause by a majority vote of the
53 governor, attorney general, and secretary of state. Such cause shall include, but not be limited to,
54 substantial neglect of duty, gross misconduct or conviction of a crime. The reasons for removal

55 of the executive director shall be stated in writing and shall include the basis for such removal.
56 Such writing shall be sent to the clerk of the house of representatives and the clerk of the senate
57 at the time of removal and shall be deemed to be a public document.

58 The executive director may: (i) establish divisions and such other administrative units
59 within the office and appoint such directors as they deem necessary; (ii) subject to appropriation,
60 appoint and may remove such employees as they deem necessary to perform the duties of the
61 office, including, but not limited to, counsels, paralegals, auditors, engineers, analysts and
62 investigators; provided, that employees and contractors who are responsible for safety oversight,
63 audits, or examinations of mass transportation services shall be qualified to perform such duties;
64 and provided further, that employees and contractors who are directly responsible for safety
65 oversight of or who conduct audits or examinations of rail fixed guideway public transportation
66 or bus systems shall complete the public transportation safety certification training program in
67 compliance with 49 CFR Part 672, as may be amended or replaced from time to time; and (iii)
68 determine the salaries and duties of any employees; provided, that the total amount of all salaries
69 shall not exceed the sum appropriated therefor by the general court. The provisions of sections
70 nine A and forty-five of chapter thirty, chapter thirty-one and chapter one hundred and fifty E
71 shall not apply to officers and employees within the office.

72 Section 4. The office shall have all powers necessary or convenient to carry out and
73 effectuate the purposes of this chapter, including, but not limited to, the power to:

74 (a) adopt and amend by-laws, regulations and procedures for the governance of its affairs
75 and the conduct of its business for the administration and enforcement of this chapter; provided,
76 however, that regulations adopted by the office shall be adopted pursuant to chapter 30A;

77 (b) maintain offices at places within the commonwealth as it may determine and to
78 conduct meetings of the office in accordance with the by-laws of the office;

79 (c) direct, coordinate and supervise the administration of the office to promote economy
80 and efficiency and to leverage federal funding and private sector investment;

81 (d) enter into agreements and transactions with federal, state and municipal agencies and
82 other public institutions and private individuals, partnerships, firms, corporations, associations
83 and other entities on behalf of the office;

84 (e) sue and be sued in its own name, plead and be impleaded;

85 (f) make and enter into all contracts and agreements necessary, convenient or desirable in
86 the performance of its duties and the execution of its powers under this chapter; provided,
87 however, that, as applicable, sections 26 to 29, inclusive, and sections 44A to 44J, inclusive, of
88 chapter 149 and sections 39F to 39M, inclusive, of chapter 30 shall apply to contracts of the
89 office to the same extent and in the same manner as they are applicable to the commonwealth;
90 provided, however, that notwithstanding this clause, the office may, with the approval of the
91 secretary of administration and finance, without competitive bids and notwithstanding any
92 general or special law to the contrary, award a contract, otherwise subject to this section, limited
93 to the performance of emergency repairs necessary to preserve the safety of persons or property;

94 (g) review and recommend changes in laws, rules, programs and policies of the
95 commonwealth and its agencies and subdivisions to further transit safety within the
96 commonwealth;

97 (h) appear in its own behalf before boards, commissions, departments or other agencies
98 of municipal, state or federal government;

99 (i) obtain insurance;

100 (j) apply for and accept subventions, grants, loans, advances and contributions from any
101 source of money, property, labor or other things of value, including but not limited to the federal
102 government, the commonwealth or any political subdivision thereof, or private entities, to be
103 held, used and applied for its corporate purposes;

104 (k) adopt a fiscal year to conform with the fiscal year of the commonwealth;

105 (l) act as the central entity and coordinating organization for transit safety initiatives on
106 behalf of the commonwealth and to work in collaboration with governmental entities, bodies,
107 centers, institutes and facilities to advance the commonwealth's interests and investments in
108 transportation;

109 (m) engage consultants, agents, and advisors and to provide and pay for such advisory
110 services and technical assistance as may be necessary or desired to carry out the purposes of this
111 chapter;

112 (n) adopt an official seal;

113 (o) prepare, publish and distribute, with or without charge, as the office may determine,
114 such studies, reports and bulletins and other material as the office deems appropriate;

115 (p) take any actions necessary to comply with federal statutes, regulations, directives and
116 policies applicable to a state safety oversight authority; and

117 (q) take any other actions necessary or convenient to the exercise of any power or the
118 discharge of any duty provided for by this chapter.

119 Section 5. The office shall be responsible for overseeing and securing the safe operation
120 of mass transportation services and overseeing, investigating, and enforcing compliance by the
121 authority, department and regional transit authorities with applicable federal and state laws,
122 regulations and policies related to transit safety. The obligations and duties of the office shall
123 include, but not be limited to:

124 (a) upon being so certified by the Federal Transit Administration pursuant to 49 U.S.C. §
125 5329, acting as the state safety oversight agency for the authority in compliance with all federal
126 laws and regulations related thereto;

127 (b) developing, adopting and periodically reviewing and revising regulations that set forth
128 the duties and obligations of the office, authority, department, regional transit authorities and
129 contractors with respect to the safety and safety oversight of mass transportation services;
130 provided, that such regulations as applied to the authority shall meet the requirements of a state
131 safety oversight program standard in compliance with 49 CFR Part 674, as may be amended or
132 replaced from time to time;

133 (c) approving, overseeing and enforcing compliance by the authority with the authority's
134 public transportation agency safety plan, as defined and regulated by 49 CFR Part 673, as may be
135 amended or replaced from time to time;

136 (d) conducting or overseeing investigations of and issuing or approving reports
137 concerning hazards, safety events and near misses occurring on the premises of the authority,

138 department or a regional transit authority or occurring on or impacting any mass transportation
139 service;

140 (e) approving and overseeing compliance with corrective action plans submitted by the
141 authority, department or a regional transit authority;

142 (f) not later than 60 days following the issuance by a federal agency to a transit authority
143 in another jurisdiction of a special directive or advisory related to transit safety, conducting an
144 analysis of such special directive or advisory to determine whether the authority, department or
145 regional transit authorities, as applicable, would be in compliance with the directive or advisory
146 had it been issued to the authority, department or regional transit authorities;

147 (g) retaining an auditor every 3 years to conduct an independent assessment of the
148 authority's compliance with federal and state safety laws, regulations and policies;

149 (h) consulting with the authority, department, and regional transit authorities throughout
150 the planning and development of capital investment plans and transit asset management plans,
151 and any revisions thereto, for the purpose of assessing whether the authority and department are
152 adequately prioritizing and programming capital expenditures that remediate identified
153 unacceptable safety risks; and

154 (i) implementing and publicizing a telephone number and email address that employees,
155 contractors and members of the public may utilize for the purpose of notifying the office of
156 hazards, safety events, and near misses affecting mass transportation services; provided, that any
157 record of communications related thereto shall not be a public record under clause twenty-sixth
158 of section 7 of chapter 4 or under chapter 66.

159 Section 6. In performing its duties, the office may:

160 (a) conduct, or cause to be conducted, audits, inspections, investigations, examinations,
161 and testing of the authority, department or regional transit authorities, or their contractors,
162 including but not limited to the personnel, property, equipment, facilities, rolling stock, vessels
163 and operations thereof;

164 (b) access the electronic information and databases of the authority, department and
165 regional transit authorities after reasonable notice;

166 (c) issue subpoenas in connection with the conduct of any audit, inspection, investigation,
167 examination or testing under subsection (a);

168 (d) enter upon any lands, waters and premises of the authority, department or a regional
169 transit authority, and, after reasonable notice, upon any lands, waters and premises adjacent
170 thereto, without the necessity of any judicial orders or other legal proceedings, for the purpose of
171 making inspections, surveys, soundings, drillings and examinations as the office may deem
172 necessary, convenient or desirable for carrying out the purposes of this chapter and such entry
173 shall not be deemed a trespass nor shall an entry for such purposes be deemed an entry under any
174 condemnation proceedings which may be then pending; provided, however, that the office shall
175 provide reimbursement for any actual damage resulting to such lands, waters and premises as a
176 result of such activities;

177 (e) compel compliance by the authority, department or a regional transit authority with
178 any corrective action plan or order of the office by such means as the office deems appropriate,
179 including, but not limited to: (i) taking legal action in a court of competent jurisdiction; (ii)

180 directing the authority, department or a regional transit authority to prioritize spending on safety
181 critical items; and (iii) removing a specific vehicle, infrastructure element, or hazard;

182 (f) issue written orders directing the authority, department or a regional transit authority
183 to suspend or disqualify an individual who the office has reasonable cause to believe has violated
184 any safety rules, regulations, policies, or laws from performing any positions or functions related
185 to safety;

186 (g) issue written orders directing the authority, department, or a regional transit authority,
187 or a contractor thereof, to restrict, suspend, or prohibit all or a portion of any mass transportation
188 service for a definite or indefinite period of time as necessary to remediate an identified
189 unacceptable safety risk; and

190 (h) take such other actions as the office may deem appropriate consistent with its purpose
191 and powers.

192 Section 7. The office shall produce and post and maintain on its public website the
193 following reports and documents; provided, however, that nothing in this chapter shall be
194 construed to require the office to post or otherwise publicly release information that in the
195 reasonable judgment of the executive director is likely to jeopardize the security or safety of
196 persons, vehicles, equipment, facilities or infrastructure:

197 (a) annually on or before March 15, a report summarizing the office's oversight activities
198 conducted during the preceding 12 months, which shall include, but not be limited to, the
199 following information: (i) all regulatory changes adopted or proposed by the office; (ii) evidence
200 that each of the office's employees and contractors has completed the requirements of the public
201 transportation safety certification training program, or, if in progress, the anticipated completion

202 date of the training; (iii) causal factors of safety events and near misses identified through
203 investigation; (iv) the status of corrective action plans; (v) a description of any material changes
204 to authority, department or regional transit authority safety plans or the safety plans of any
205 contractor providing mass transportation services; (vi) the level of effort by the office in carrying
206 out its oversight activities; (vii) a summary of audits, inspections, examinations and
207 investigations conducted or completed; (viii) summary of the office's actions with respect to
208 capital planning; and (ix) evidence that the office has reviewed and approved any changes to the
209 authority's public transportation agency safety plan; provided, that a copy of the report shall be
210 submitted to the governor, attorney general, secretary of state, the house and senate chairs of the
211 joint committee on transportation, the clerk of the house of representatives and the clerk of the
212 senate;

213 (b) monthly on or before the fifteenth day of the month, a report containing the following
214 information regarding the prior calendar month: (i) records of correspondence between the office
215 and any federal agency; (ii) a description of safety events and near misses occurring on the
216 premises of or impacting any mass transportation service of which the office received notice
217 from any source, including, but not limited to, safety events and near misses that were not
218 required to be reported to a federal agency; (iii) a description of any corrective action plans
219 submitted by the authority, department or a regional transit authority; (iv) a description of any
220 approvals, requested revisions or other actions issued by the office with respect to any corrective
221 action plan submitted by the authority, department or a regional transit authority; (v) the status of
222 any audits being conducted by or on behalf of the office, authority, department or a regional
223 transit authority; (vi) a description of accident reports completed or approved by the office; and
224 (vii) a copy of all entries into the authority's hazard tracking system;

225 (c) not later than 3 days following completion, interim or final reports of any audits or
226 reviews related to the safety of mass transportation services conducted or caused to be conducted
227 by the office, authority, department or a regional transit authority, including, but not limited to,
228 any annual or triennial audits and any analysis conducted pursuant to subsection (f) of section 5;

229 (d) safety, asset management, emergency response, and training plans, and any revisions
230 thereto, required to be developed and adopted by the authority, department or a regional transit
231 authority pursuant federal or state laws or regulations;

232 (e) safety compliance plans, and any revisions thereto, adopted by any contractor
233 operating a mass transportation service; and

234 (f) all plans, manuals, policies and procedures used by the authority, department, a
235 regional transit authority or a contractor to implement safety functions, including, but not limited
236 to, inspection and investigation manuals, procurement manuals, design standards manuals,
237 standards manuals related to track, facilities, rolling stock and other capital assets, drug and
238 alcohol policies, and risk and hazard identification policies; provided, that any amendments,
239 revisions or replacements of such guides, manuals and procedures, and any newly adopted
240 guides, manuals and procedures, shall be posted online within 10 days of adoption.

241 Section 8. The office in carrying out the provisions of this chapter shall have access to all
242 records, reports, audits, reviews, papers, books, documents, recommendations, correspondence,
243 including information relative to the purchase of services or anticipated purchase of services
244 from any contractor, and any other data and material that is maintained by or available to the
245 authority, department, a regional transit authority, or Department of Public Utilities established
246 under chapter 25.

247 The executive director shall have direct and prompt access to the general manager of the
248 authority, secretary of transportation, administrator of a regional transit authority or chair of the
249 commission of said Department of Public Utilities when necessary for any purpose pertaining to
250 the performance of the executive director’s duties and responsibilities under this chapter and may
251 request such information, cooperation and assistance from the authority, department, a regional
252 transit authority or Department of Public Utilities as may be necessary for carrying out the duties
253 and responsibilities of the office. Upon receipt of such request, the general manager of the
254 authority, secretary of transportation, administrator of a regional transit authority or chair of the
255 commission of said Department of Public Utilities shall furnish promptly to the office such
256 information, cooperation and assistance.

257 Section 9. (a) The office shall not hire as an employee or otherwise retain the services of
258 any person who was an employee of or received compensation from the authority, department or
259 a regional transit authority during the previous 12-month period.

260 (b) The office shall not hire as an employee or otherwise retain the services of any person
261 who was an employee of or received compensation from an entity that provided services to the
262 authority, department or a regional transit authority during the previous 12-month period.

263 Section 10. There shall be an office of transit safety council which shall consist of the
264 governor or a designee, attorney general or a designee, secretary of state or a designee, state
265 treasurer or a designee, secretary of public safety or a designee, a person with experience in
266 transportation safety, engineering or operations appointed by the secretary of state from a list of
267 three nominees submitted by the speaker of the house, and a person with experience in

268 transportation safety, engineering or operations appointed by the attorney general from a list of
269 three nominees submitted by the president of the senate.

270 The appointed members shall serve for a term of three years and no person shall be
271 appointed for more than two three-year terms. In case of a vacancy in the position of an
272 appointed member, a successor shall be appointed in the same manner for the unexpired term,
273 and such successor shall thereafter be eligible to serve two three-year terms. Appointed members
274 shall be reimbursed for expenses necessarily incurred in the performance of their duties.

275 The council shall annually set the salary of the executive director. The estimate of the
276 amount required for the maintenance of the office required to be filed under section 3 of chapter
277 29 shall be submitted by the executive director with the advice and consent of the council.

278 Section 11. The executive director shall obtain the written approval of the council prior to
279 the issuance of a subpoena pursuant to subsection (c) of section 6 requiring the appearance
280 before the office and testimony under oath of any person. The approval of the council shall
281 require the affirmative vote of four members and shall be obtained only after information
282 concerning the matter subject to inquiry has been presented to the council, including, but not
283 limited to: (i) the name and address of the prospective witness; (ii) the subject of the inquiry; a
284 summary of the status of the inquiry; (iii) a summary of the reasons for requesting a summons
285 for testimony; and (iv) a summary of the general scope of the inquiry to be made of a prospective
286 witness.

287 The summons shall be served by the executive director, or anyone duly authorized by
288 them, in the same manner as a summons for a witness in a civil case issued on behalf of the

289 commonwealth, and all provisions of law relative to a summons issued in such case shall apply
290 to a summons issued under this section.

291 A witness required by summons to attend and testify under oath and produce books and
292 records shall be given not less than forty-eight hours' notice of the time and place of the taking of
293 testimony, unless such notice shall unduly interfere with the conduct of the inquiry and prior
294 approval for a shorter period of time for such summons and notice has been obtained from at
295 least four members of the council.

296 The witness, at the time of service of the summons, shall be given a copy of rules of
297 procedure adopted by the office and shall be notified of the following: (i) the matter under
298 inquiry concerning which the witness will be required to testify; (ii) that their testimony will be
299 taken at a private session; (iii) that the issuance of the summons was approved by the council;
300 and (iv) whether the witness is a subject of an investigation; provided, that for the purposes of
301 this section, a subject of an investigation shall be a person whose conduct is within the scope of
302 the inquiry. In addition, the witness shall be notified that they have a right to consult with and to
303 have an attorney present at the time the testimony is taken and that they have a constitutional
304 right not to furnish or produce evidence which may tend to incriminate them. The failure to
305 furnish the witness with any notice or information required to be given by this section shall cause
306 the summons to be invalid.

307 A summonsed person may object to the summons served upon them in advance of the
308 return date of the summons by a complaint in the nature of a motion to quash filed in the superior
309 court department of the trial court in Suffolk county. The filing of a complaint in the nature of a
310 motion to quash shall stay all pending summons until further order of the superior court. Any

311 justice of the superior court may, upon application by the executive director, issue an order to
312 compel the attendance of witnesses summonsed as aforesaid and the giving of testimony under
313 oath in furtherance of any audit or investigation under this chapter in the same manner and to the
314 same extent as before the superior court. Failure to obey any order of the court with respect to
315 the summons may be punished by the court as contempt.

316 Any summons issued pursuant to this section shall not be made public by the office, and
317 testimony given shall be governed by the same provisions with reference to secrecy which
318 govern grand jury proceedings. Disclosure of such testimony may be made to personnel within
319 the office as deemed necessary by the executive director, and office personnel may be present at
320 the taking of such testimony.

321 SECTION 4. Not later than 45 days following the effective date of this act, appointments
322 shall be made to the Office of Transit Safety Council in accordance with section 10 of chapter
323 161E of the General Laws.

324 SECTION 5. Not later than 90 days following the effective date of this act, the executive
325 director shall be appointed in accordance with section 3 of chapter 161E of the General Laws.

326 SECTION 6. Not later than 120 days following the appointment of the executive director,
327 the executive director shall file a staffing plan for the office with the governor, attorney general,
328 secretary of state, secretary of administration and finance, chairs of the house and senate
329 committees on ways and means, and house and senate chairs of the joint committee on
330 transportation. The staffing plan shall include, but not be limited to: (i) an organizational chart
331 denoting all management-level positions, including reporting relationships, and the job
332 categories of all positions with safety or non-safety functions; (ii) job descriptions for each job

333 category with safety functions; (iii) the number of persons to be employed within each job
334 category; (iv) projected salary and benefits for management-level positions and positions within
335 each job category; and (v) analysis demonstrating the adequacy of the staffing plan to fulfill the
336 duties and obligations of the office.

337 SECTION 7. The governor, executive director of the Office of Transit Safety, and
338 general manager of the Massachusetts Bay Transportation Authority shall take all actions
339 required by the Federal Transit Administration to certify the Office of Transit Safety established
340 under chapter 161E of the General Laws as the state safety oversight agency pursuant to 49
341 U.S.C. § 5329.

342 SECTION 8. Section 2 of this act shall take effect upon receipt by the governor of written
343 notice from the secretary of the U.S. Department of Transportation certifying the approval of the
344 office as the commonwealth's state safety oversight agency established pursuant to 49 U.S.C. §
345 5329(e).