

**2010 -- H 7948**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2010**

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**J O I N T   R E S O L U T I O N**

**RELATING TO THE RHODE ISLAND PUBLIC RAIL CORPORATION**

Introduced By: Representatives Kilmartin, San Bento, Shallcross Smith, Carter, and McCauley

Date Introduced: March 25, 2010

Referred To: House Finance

1           WHEREAS, The State of Rhode Island and Providence Plantations (the "State") has  
2   delegated to the Rhode Island Department of Transportation (the "Department") the responsibility  
3   for maintaining and constructing highways, roads, freeways, bridges, and incidental structures as  
4   established by Chapter 8 of Title 24, Chapter 5 of Title 37, and Chapter 13 of Title 42 of the  
5   Rhode Island General Laws; and

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

8           WHEREAS, There are approximately seventy-two roads or bridges in the State located  
9   on or above Amtrak's railroad right-of-way; and

10          WHEREAS, The Department estimates that annually at least two of the roads or bridges  
11   crossing Amtrak's railroad right-of-way will undergo construction or reconstruction to  
12   accommodate the needs of the traveling public; and

13          WHEREAS, Amtrak requires that the Department provide certain risk management and  
14   financial assurances and indemnification covenants and obligations as a condition precedent to  
15   certain real estate agreements between the Department and Amtrak, including, but not limited to,  
16   permanent easements or other interests in real estate necessary to construct or reconstruct roads or  
17   bridges on or above Amtrak's railroad right-of-way (collectively the "Bridge Obligations"); and

18          WHEREAS, The Department may be constitutionally prohibited from providing the  
19   Bridge Obligations, which may negatively impact commuter transit in Rhode Island, and the  
20   Department therefore has designated the Rhode Island Public Rail Corporation ("Rail Corp"), a

1 public instrumentality of the State established by section 42-64.2 et seq. of the General Laws of  
2 Rhode Island (the "Act"), as the responsible party for providing Amtrak with the Bridge  
3 Obligations on behalf of the Department; and

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

10 WHEREAS, In connection with the South County Commuter Rail Service Agreements,  
11 the Department is required to secure and maintain a liability insurance policy covering the  
12 liability of the State and Amtrak for property damage, personal injury, bodily injury, and death  
13 arising out of the South County Commuter Rail Service, with policy limits of Two Hundred  
14 Million United States Dollars (\$200,000,000), subject to a self-insured retention of Seven Million  
15 Five Hundred Thousand United States Dollars (\$7,500,000) (the "Retention"); and

16 WHEREAS, Under Article 17 Substitute A as amended, section 8 (6/25/2009) and  
17 pursuant to Chapter 18 of Title 35 of the Rhode Island General Laws, the General Assembly  
18 authorized Rail Corp to secure and maintain a line or evergreen letter of credit in the amount of  
19 Seven Million Five Hundred Thousand United States Dollars (\$7,500,000) issued by a bank  
20 authorized to do business in Rhode Island with a surplus of not less than One Hundred Million  
21 United States Dollars (\$100,000,000) in favor of Amtrak to secure Rail Corp's performance of its  
22 requirements arising under any South County Commuter Rail Service Agreements, specifically  
23 the payment of any amounts arising from time to time under the Retention, and for the payment  
24 of any costs and fees reasonably incurred in connection with securing and maintaining such line  
25 or evergreen letter of credit; and

26 WHEREAS, Amtrak has agreed to accept expansion of the scope of Rail Corp's liability  
27 insurance policy covering the South County Commuter Rail Service, with policy limits of Two  
28 Hundred Million United States Dollars (\$200,000,000), to include liability for damage for  
29 property damage, personal injury, bodily injury, and death which would not have occurred or  
30 would not have been incurred but for the existence of any road or bridge owned or used by the  
31 State or any municipality of the State located on or above Amtrak's railroad right-of-way that  
32 hereinafter requires the Department to acquire a new or expanded permanent easement or other  
33 interest in real estate, for construction or reconstruction of such road or bridge on or above such  
34 railroad right-of-way; and

1           WHEREAS, Amtrak has agreed to accept the same line or evergreen letter of credit  
2 established for claims arising out of the South County Commuter Rail Service in the amount of  
3 Seven Million Five Hundred Thousand United States Dollars (\$7,500,000) to satisfy the Bridge  
4 Obligations under the Retention; and

5           WHEREAS, The Department further covenants and affirms on behalf of the State to  
6 support Rail Corp and to include such financial support in the Governor's printed budget  
7 submitted to the general assembly each year; and

8           WHEREAS, The requirements undertaken by the Department on behalf of the State and  
9 Rail Corp as outlined herein, and the approval and authority for Rail Corp to amend and maintain  
10 the line or evergreen letter of credit, are subject to Chapter 18 of Title 35 of the Rhode Island  
11 General Laws; and

12           WHEREAS, Pursuant to Sections 35-18-3 and 35-18-4 of the Rhode Island General  
13 Laws, Rail Corp has requested the approval and authority of the General Assembly to enter into  
14 agreements, execute, and amend documents reasonably necessary from time to time to secure and  
15 maintain the above-referenced line or evergreen letter of credit to support the Bridge Obligation  
16 of Retention; now, therefore be it

17           RESOLVED, That this General Assembly of the State of Rhode Island and Providence  
18 Plantations hereby approves and authorizes Rail Corp to amend, and hereby approves and  
19 authorizes the Department's support of Rail Corp and the use by Rail Corp of the Department's  
20 funding to secure and maintain the already existing South County Commuter Rail Service  
21 evergreen letter of credit in the amount of Seven Million Five Hundred Thousand United States  
22 Dollars (\$7,500,000) issued by a bank authorized to do business in Rhode Island with a surplus of  
23 not less than One Hundred Million United States Dollars (\$100,000,000) in favor of Amtrak to  
24 secure Rail Corp's performance of the Bridge Obligations arising under any new permanent  
25 easement or interest in real estate between the Department, Rail Corp, and Amtrak for  
26 construction or reconstruction of any road or bridge owned or used by the State or any  
27 municipality of the State located or above Amtrak's railroad right-of-way, specifically the  
28 payment of any amount arising from time to time under the Retention, and for the payment of any  
29 costs and fees reasonably incurred in connection with amending such line or evergreen letter of  
30 credit.

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