

Rail-Trail, Bicycle, Pedestrian Caucus

Thursday, December 7, 2006

ENVIRONMENTAL INSURANCE FACT SHEET

Chapter 123 of the Acts of 2003; Section 14. The Legislature overrode the Governor's veto.
SECTION 14. Said chapter 23A is hereby further amended by inserting after section 3H the following section:-

Section 3I. (a) Notwithstanding any other provisions of this chapter, the department shall upon receipt of qualifying applications, expend not less than \$500,000 annually in matching grants to assist municipalities to purchase environmental insurance naming as an additional insured the Massachusetts Bay Transportation Authority or the executive office of transportation and construction, as applicable, for purposes of establishing and maintaining rail-trails, as defined in section 2 of chapter 21E and section 35A of chapter 82, utilizing the Brownfield's Redevelopment Access to Capital Policy Form or similar or replacement form, with terms, conditions, amendments and endorsements as appropriate under the circumstances of the proposed rail-trail project, and with coverage limits of at least \$3,000,000 per incident, a deductible of at most \$50,000 per incident, and a term of at least 5 years.

(b) Unless specifically required by federal law in connection with any grant for construction of a rail-trail, a municipality that has applied for and received a grant and has purchased the environmental insurance as described in subsection (a) shall not be required to furnish to any person, authority or governmental entity, any other form of environmental insurance, or any defense, indemnification or hold harmless agreement with respect to any claims, injuries, costs, damages or other relief arising out of or related to the pre-existing release or threat of release of oil or hazardous materials at or from the project site as those terms are defined in chapter 21E, in connection with its design, acquisition, construction, use or maintenance of the rail-trail for which the application is made.

(c) The department shall promulgate regulations, policies, or directives necessary to expedite the receipt and approval of grant applications from municipalities under this section.

Background:

This provision set up a matching grant program to enable towns to purchase insurance to protect themselves and the MBTA or EOT from unexpected environmental cleanup. The way the program works is that the insurance company uses existing records to do "due diligence" on the property to identify any expected problems. When the trail is constructed, the town and/or Mass highway must use DEP's "best management practices" to construct the way. These BMP's include provisions that the trail cap or cover the existing roadbed, and minimize any excavation that can disturb possible underlying contamination. The basic approach is that towns can purchase up to \$3 million dollars in coverage with a \$50,000 deductible for five years. The matching grant is available through the Brownfields access to capital (BRAC) fund.

FREQUENTLY ASKED QUESTIONS:

1. Has an insurance company agreed to underwrite the coverage, and if so, who is the company? *AIG is one of the carriers of the brownfields program in general, and are underwriting the new rail trail insurance. Massachusetts is looking to attract more carriers to the program at this time. We are aware of at least one environmental insurance broker who is working with towns to write the insurance, Brad Niziak of The Minter Group.*

2. Will the State of MA pay the entire premium or will there be some cost sharing with the town? Assuming there is a deductible, what is that amount, and who is responsible for paying it? What is the maximum amount paid under the policy, and if the claims exceed this amount who will be responsible for the excess payment? What are the selection criteria? *The legislation sets up a program of matching grants for the towns. These grants are being processed through the office of Mr. Thomas Barry at the Massachusetts Business Development Corporation. Mr. Barry will work with the town to qualify a rail trail project for funding. That office is responsible for setting up the regulations, etc. Under the program, the state can subsidize 50% of the premium, with a maximum contribution of \$150,000 for a public project. The basic template for the rail trail insurance is a \$3 million dollar limit, \$50 thousand dollar deductible, and 5 year term.*

3. Further information: *There are two attorneys we know of who are working on these issues with towns in the Commonwealth. The first is Attorney Steve Anderson, of Anderson Krieger, in Cambridge MA. He is working with the Assabet River Rail Trail and the Bruce Freeman Rail Trail, as well as the Lynnfield and Wakefield Rail Trails. The second is Attorney Steve Winslow of Cambridge Ma, who is working on rail trail projects in Waltham, Framingham, Somerville and Everett.*

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