

Amendment #665 to H.3400

Public Contracting Accountability Amendment

Representatives Collins of Boston, McMurtry of Dedham, Chan of Quincy, Ayers of Quincy, Cullinane of Boston, Heroux of Attleboro, Cutler of Duxbury, Calter of Kingston, Hunt of Boston, DuBois of Brockton, Ultrino of Malden, Mark of Peru, Day of Stoneham, Coppinger of Boston, Gordon of Bedford, Donahue of Worcester, Tosado of Springfield, Decker of Cambridge and Stanley of Waltham move to amend the bill by adding the following section:

"SECTION XXXX. Section 51 shall be amended by removing sub-section (a)(1) and by amending subsection (b) so as to delete the words "service contracts and" now appearing in the second line."

PROPOSAL

Section 51 shall be amended by removing sub-section (a)(1) and by amending subsection (b) so as to delete the words “service contracts and” now appearing in the second line.

RATIONALE

Section 51 is written to exempt the MBTA from project review requirements for design/build contracts and building contracts, (MGL Ch. 149A, Sections 4 and 16) to suspend overview of contracts by a DOT Auditor (MGL Ch. 6C, Section 9) and to avoid explaining how a service subcontract will save money under the Pacheco law (MGL Ch. 7, Sections 52-55). The Pacheco law review should be retained for MBTA contracts.

The purpose of this amendment is to preserve the application of the Pacheco law to service contracts by the MBTA, but to leave intact those parts of Section 51 which may streamline procurement and approval of building and design projects.

In general, subcontracting for work performed by MBTA employees is more expensive for the Commonwealth, not less, because the contractor expects to make profit and the Commonwealth has to hire managers to oversee the work of the contractors. The purpose of this amendment is to make sure that the MBTA does not get tied up in contracts which provide services at a higher cost than if the work were provided by MBTA workers directly.

Since the present crisis is related to MBTA costs as compared with its budget, it makes no sense to remove from MBTA operations an important cost control mechanism like the Pacheco law.

April 22, 2015

Dear Representative,

As you are aware the House budget which you will be debating next week includes language which would exempt the MBTA from the Tax Payer Protection Act also known as the Pacheco Law, for a period of five-years.

For over twenty-years the Tax Payer Protection Act has done just what the name of the law implies. The law was passed in response to the privatization efforts of the administration of Governor William Weld.

Under Weld thousands of human service workers jobs were contracted out to former administration officials and hugely excessive salaries were awarded to private vendors. All of these excesses were paid for by slashing human service workers salaries and benefits.

In addition nothing in the Pacheco Law prevents privatization. It simply sets a standard that must be met before a private contract displaces a public service.

In 1993 when the Pacheco Bill became law I was the Political Director at the Massachusetts AFL-CIO and the entire Massachusetts labor movement at the time took great pride in successfully lobbying the Pacheco Bill which required overriding Governor Weld's veto. The rationale for the bill is as sound now as it was in 1993. It protects tax payers and assures that unscrupulous contractors are not awarded contracts solely on the basis of slashing workers pay and benefits.

Representative Nick Collins from South Boston is offering amendment #665 to the House budget which preserves the application of the Tax Payer Protection Act to the MBTA. We urge you to co-sponsor Representative Collins' amendment and to vote for it when it comes before you in next week's budget debate.

Sincerely,

Richard M Rogers
Executive Secretary-Treasurer

April 22, 2015

To the Honorable Senate and House of Representatives,

To the citizens of Massachusetts who persevered through the winter of 2015, one thing is clear, the Massachusetts Bay Transportation Authority (MBTA) failed to provide the level of service that they deserve and should be able to expect. In response to those catastrophic failures, I appointed the Governor's Special Panel to Review the MBTA. That Panel concluded that a well-functioning MBTA is essential to the civic and economic wellbeing of the Commonwealth. Unfortunately, that distinguished Panel also determined that despite years of policy initiatives the MBTA suffers from a host of structural problems that prevents the transit system from providing reliable, high-quality public transit service, every day, every rush hour, in all weather.

Specifically, the Panel found that bold and urgent action is needed to address a number of issues including that:

- The MBTA's structural imbalance between operating costs and revenues requires subsidies in amounts that are increasing and unsustainable;
- The authority's capital needs are significant and include more than \$6.7 billion in maintenance and modernization, yet over the past five fiscal years the authority spent only \$2.3 billion of the planned \$4.5 billion in capital projects for which funds were available;
- The authority must engage in short- and long-term financial planning;
- The authority is beset by workplace and product delivery inefficiencies;
- The authority should exhaust the full extent of its existing powers and those set forth in this act to establish a reliable and sustainable transit system;
- The governance and organization of the authority must be strengthened to ensure that the authority is governed and operated in a manner that is accountable, transparent and customer focused; and
- The authority as currently constituted is not directly accountable to the executive branch (through the Secretary of Transportation) or the Legislature, even though the taxpayers provide more than half of the authority's operating budget and substantial additional funding for capital projects.

This legislation, An Act for a Reliable, Sustainable Massachusetts Bay Transit Authority, responds to those findings and establishes the mechanism to get the MBTA back on track. It creates a Fiscal and Management Control Board (FMCB), consisting of 5 members, 1 of whom shall be referred to the Governor by the President of the Senate, and 1 of whom shall be referred to the Governor by the Speaker of the House. The FMCB's sole focus will be on improving the MBTA. The Board will continue until June 30, 2018, though it may be extended until June 30, 2020 upon agreement between the FMCB and the Secretary of Transportation.

During its existence, the FMCB shall employ a Chief Administrator (appointed by the Governor), shall function as the board of the MBTA, and shall have all powers, responsibilities, and obligations of the MBTA board. Following its dissolution the FMCB's functions will be

transferred back to the board of the MBTA. The FMCB is directed to report to the Legislature by January 1, 2018, regarding its ability to restore fiscal stability to the MBTA and any recommendations it may have for the future governance of the MBTA.

The objectives for the FMCB include establishing a safe, reliable, and sustainable transit system that is well-integrated into the Commonwealth's transit system; establishing fiscal stability; reorienting the agency to focus on its current riders and on attracting future riders; facilitating sound management; and developing an evidence-based, long-range approach to expansion. The FMCB shall also: establish 1- and 5-year operating budgets and 5- and 20-year capital plans for the MBTA, including restoration of the MBTA's vehicles and facilities; establish rigorous performance management systems and performance metrics; restructure the organization of the MBTA; establish, increase or decrease any fee, rate, or charge; review and reopen service contracts in accordance with their terms; and employ managerial, professional and clerical staff.

To provide the FMCB and the General Manager with appropriate flexibility the legislation removes the statutory cap on fare increases, with the requirement that any "fare increases be considered in light of the operational needs of the authority, the needs of its riders, including those of lesser means, and the potential that fare increases may lower ridership;" provides that the restrictions on contracting for services imposed by the "Pacheco Law" do not apply to the MBTA, allows the MBTA to use construction management at-risk and design-and-build procurements, and removes the previously enacted future funding guarantees.

To bring the MBTA's relationship with its unions more in line with the relationship between the Commonwealth and other public unions, the legislation limits the power of an arbitrator in binding arbitration so that any awards may not be imposed retroactively, and requires that any arbitration award be approved by the FMCB.

Consistent with the requirement that the public expenditures must be open to review, the legislation requires a full and independent audit of the MBTA Retirement Fund, according to standards set by the Governmental Accounting Standards Board within 120 days of enactment of the legislation, and subjects the MBTA Retirement Fund to the public records law.

Finally, the act expands the MassDOT Board to 11 members appointed by the Governor, including representatives of an MBTA core community, an outer MBTA community, and a city or town served by a regional transit authority.

We owe the citizens of Massachusetts a first class public transit system. The MBTA fails that standard today and this proposal puts the system on the path to recovery. I urge your prompt enactment of this legislation.

Sincerely,

Charles D. Baker



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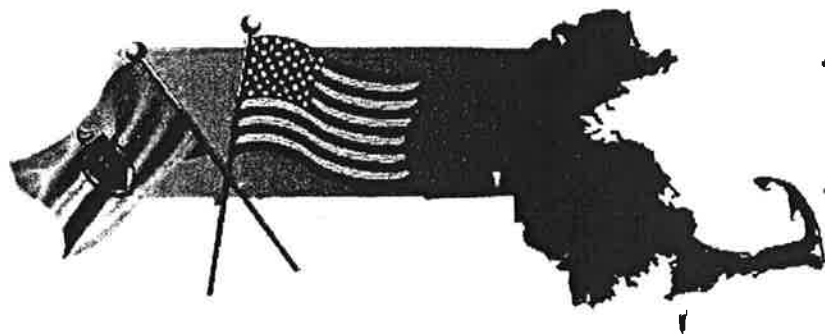
Division 1
Division 2
HTL/AFC
Equipment Maintenance
System Maintenance (S.M.):

TALKING POINTS FOR YOUR STATE HOUSE LEGISLATURE
REGARDING THE Nick Collins AMENDMENT 665

Your State Rep. : Please support Nick Collins Amendment 665
This amendment helps to protect PUBLIC EMPLOYEES
at the MBTA and the PUBLIC INTEREST.....

STOP Privatization.....Keep the T PUBLIC

Your State Senator: Please continue to support the Pacheco Law



WORKING A Voice for MASSACHUSETT

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Privatization: The REAL Story

Proponents of privatizing all public services love to say how much better, cheaper and more efficient everything is in the "free market" (you know, the folks who brought us the spectacular crash of Wall Street and the worst recession since the Depression). One of their favorite targets in Massachusetts is the "Pacheco-Menard Law," which mandates a state auditor for any proposal to privatize a public service. Privatization fans say it prevents privatization and saves millions of dollars...but the REAL story shows that the Pacheco Law is good for taxpayers and the people who depend on public services. Lots of responsible privatization and encourages efficiency and ethics in public service.

The History

In the early 1990s, then-Gov. William Weld decided to privatize many many of the human services that had been provided by state employees. Gov. Weld laid off thousands of employees. The ones who could take the financial hit were rehired by private companies now providing the work, but at 30 percent less pay and drastically reduced health insurance benefits. The quality of care provided decreased as service was disrupted and many workers were forced to find other work. Now, more than half the human services community remains in crisis. Agencies can't afford to pay workers enough, more than half the workers have lost their health insurance plans, and the quality of care is still at risk.

State watchdogs and the media documented a pattern of abuse in Gov. Weld's push to privatize many state services. Private vendors with state contracts used taxpayer money to rent posh vacation villas, buy luxury cars, and provide other luxuries. Watchdogs also discovered that there was little or no competition for contracts. Lucrative contracts were being awarded to administration officials and huge executive salaries were being paid to private vendors. In December 1993, Governor Weld issued an order banning "revolving door" hiring by private contractors of the very state officials who gave them contracts.

What the Pacheco-Menard Law Really Does

In response to the decline in quality of services because of those privatization patronage contracts, the legislature designed to assure accountability and affordability in the procurement of state services. The law is often referred to as the "Pacheco-Menard Law," named after its two primary sponsors, Sen. Marc Pacheco and then Rep. Joan Menard (who is now a state senator).

Chapter 296 of the Acts of 1993 outlines the process that state agencies and applicable authorities have to follow when they contract out for a service now performed by their employees, when the contract has an aggregate value of \$50,000 or more. The agency must prepare a detailed written statement of the service to be contracted, estimate the most cost-efficient method of providing the service with agency employees, select a contractor through a competitive bidding process, and compare the in-house contract. Bidders must maintain comparable labor standards.

The state auditor then reviews the application to ensure that the cost of the contracted service would be less than the cost of providing the service with state employees and maintain at least equal quality of service. The auditor has 30 days to approve or reject the application. A rejected application can be withdrawn, based on a revised certificate and subsequent approval by the auditor.

Why Pacheco-Menard Law Is Working for Us All

- The state auditor's office has approved 75% of privatization proposals submitted. The Pacheco-Menard Law is a guardrail to ensure privatization is safe, effective and efficient.

- Contracts may be awarded to companies if even one cent is saved.
- Public employees are allowed to submit a bid as if they were a private company. Because of their e public employees often have innovative ideas for improving services and efficiency. The law allows the footing with private companies.
- The law protects employees from cost saving measures affecting wages, health insurance, status a workers get hurt in the "race to the bottom" in wages and benefits, no one wins—except the few fat-cat
- The law ensures that the people who depend on public services—many of whom are among our mo continue to get high quality care, no matter who provides it.

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Phillip Reason
Senior Organizer

Danielle Simpson
Admin & Program Coordinator

April 23, 2015

Dear Representative,

On behalf of the Public Transit Public Good Campaign, I am writing to strongly urge you to co-sponsor and vote for **House Budget Amendment #665** offered by Representative Collins.

As I am sure you remember, in 2013 Community Labor United (CLU) brought together the Carmen's Union, other ATU locals and transit rider groups across the state to work with our elected officials to discuss how to best invest in one of the most important economic drivers in the state--our public transit system. Together, we secured \$2.5 billion in state funding for public transit and a 5% cap on fare increases to protect the most vulnerable riders who could not afford dramatic increases in fares every year. This was a tremendous victory and an important first step for the entire Commonwealth of Massachusetts, and we thank you again for your leadership in making this happen.

Unfortunately, these victories are threatened by language in the House budget that would exempt the MBTA from the Tax Payer Protection Act (also known as the Pacheco Law) for a period of five-years. Under Governor Weld, thousands of human service workers' jobs were contracted out and excessive salaries were awarded to private vendors. All of these excesses were paid for by slashing salaries and benefits of these workers. The Pacheco Law created a set of standards that must be met before a private contract displaces a public service. I am very concerned that a five-year waiver of the Pacheco Law would open the door to driving down job standards and wages at the MBTA, which would in turn destabilize many of the communities where MBTA workers live.

While Governor Baker may want to blame the MBTA's service delivery problems on poor management, or employee costs, or the current fare structure, we all know the truth that much of the MBTA's problems stem from long-term neglect and underinvestment, particularly with regard to equipment and maintenance. According to a recent Globe article, some orange line trains have not been through any major overhaul since 1979, and on average our newest red line trains are older than New York's **oldest** trains.

We are no longer fooled by band-aid solutions that require raising fares or cutting services or gutting wages. CLU and our partners understand that the best solutions will come from working together with our legislators to continue finding ways to invest more concrete resources in our public transit system. A five-year waiver of the Pacheco Law would open the door to more false solutions and allow unscrupulous contractors to slash wages and benefits, threatening the livelihoods of MBTA workers, their families, and the neighborhoods they live in.

Again, I urge you to co-sponsor and vote for **House Budget Amendment #665** offered by Representative Collins, and to keep public transit for the entire public good.

Sincerely,

Darlene Lombos
Executive Director