

[TWO THOUSAND] AND FIFTEEN

[An Act] FOR A RELIABLE, SUSTAINABLE MASSACHUSETTS
BAY TRANSPORTATION AUTHORITY.

Whereas, the deferred operation of this act would tend to defeat its purpose, which forthwith is to reform the Massachusetts Bay Transportation Authority so that it may safely and effectively deliver transportation services to the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

SECTION 1. It is hereby found that:

- (a) A well-functioning Massachusetts Bay Transportation Authority is essential to the civic and economic well-being of the commonwealth.
- (b) The Special Panel to Review the MBTA recently concluded that the authority has severe structural problems that require fundamental change in virtually all aspects of the authority.
- (c) Because of a substantial imbalance between operating costs and revenues, including sources of revenue directed to the authority annually by law, the authority requires subsidies in amounts that are increasing each year at an unsustainable rate.
- (d) The authority's capital needs are significant and include more than \$6.7 billion in maintenance and modernization required to strengthen, among other things, its rolling stock, track, and signal infrastructure.
- (e) Despite these significant capital needs, over the past 5 fiscal years, the authority spent only \$2.3 billion of its planned \$4.5 billion capital spending for which funds were available.
- (f) To address its operational deficits and capital needs, and to prevent their recurrence, the authority must engage in short- and long-term financial planning, a process that must include clear separation between operating and capital budgets and a comprehensive consideration of the extent to which new revenue is required and the sources thereof.
- (g) The authority is beset by workplace and product delivery inefficiencies.
- (h) To address these inefficiencies, the authority should exhaust, but has to date underused, the full extent of the powers and responsibilities afforded to it in its enabling act and other special laws, and should be afforded certain new capabilities as set forth in this act.
- (i) 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.

(j) 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.

(k) In order to ensure that the governance of the authority embraces transparency and accountability, ensures organizational and fiscal stability and earns the trust of the public, a fiscal and management control board should be established to oversee the authority and establish a long-term and comprehensive solution to the authority's management structure and financial imbalances, giving to it the powers necessary to carry out the provisions of this act.

SECTION 2. (a) There shall be within the department of transportation, and reporting to the secretary of transportation, a Massachusetts Bay Transportation Authority fiscal and management control board (in this section, the "board"). The secretary of transportation may fix stipends to be paid to members of the board from department of transportation funds.

(b) The board shall consist of 5 members appointed by the governor, 1 of whom shall be an individual referred to the governor by the president of the senate, and 1 of whom shall be an individual referred to the governor by the speaker of the house. Each member shall serve for the entire time that the board is in existence, unless removed with or without cause by the governor. Any vacancy in the board shall be filled by the governor in the same manner as the original appointment of the member who is being replaced.

(c) Notwithstanding the provisions of any general or special law, and during its existence, the board shall be afforded all powers, responsibilities, and obligations relative to the Massachusetts Bay Transportation Authority that are vested in the department of transportation board by chapter 161A of the general laws and any special law, except as otherwise provided in this act, and those powers, responsibilities, and obligations set forth in this act.

(d) Meetings of the board shall be subject to sections 18 to 25, inclusive, of chapter 30A. Records pertaining to the board shall be subject to section 10 of chapter 66.

(e) The board shall initiate and assure the implementation of appropriate measures to secure the fiscal and management stability of the Massachusetts Bay Transportation Authority, and shall continue in existence until June 30, 2018, and thereafter for such period as the members may determine, and the secretary of transportation may agree, is necessary to achieve the performance metrics established by the board for the authority; provided, however, that the board shall not continue beyond June 30, 2020.

(f) Following the dissolution of the board, the board established by section 7 of chapter 161A shall resume governance of the Massachusetts Bay Transportation Authority.

SECTION 3. (a) Once the fiscal and management control board has been established as provided in section 2, the governor shall appoint a chief administrator of the Massachusetts Bay Transportation Authority. Notwithstanding the provisions of any general or special law, the

chief administrator shall assume the role of the general manager of the Massachusetts Bay Transportation Authority during the existence of the fiscal and management control board.

(b) The chief administrator shall serve at the pleasure of the governor and report to the fiscal management and control board, except insofar as the fiscal and management control board and the chief administrator agree upon an employment contract that provides otherwise, in which case the employment contract shall control.

(c) The fiscal and management control board shall have the authority to delegate any powers, responsibilities, and obligations afforded to it to the chief administrator, unless otherwise provided in this act.

(d) The chief administrator shall, at least monthly, provide the fiscal and management control board with information on the status of the revenues and expenses for the operating budget and on the status of revenues, contracting/procurement and spending for the capital program. The chief administrator shall, at least quarterly, provide the fiscal and management control board with data on progress toward achieving key performance management targets.

SECTION 4. The fiscal and management control board shall formulate and implement a plan, and adopt performance metrics to measure progress in achieving that plan, to stabilize and strengthen the finances, management, operations and asset condition of the Massachusetts Bay Transportation Authority with the following objectives:

(a) to provide a safe, reliable, and sustainable transit system that is well integrated into the Commonwealth's transportation system;

(b) to establish fiscal stability, including short- and long-term planning to ensure that the authority's budgets are aligned with its operational and capital needs;

(c) to reorient the agency to focus on providing better service to its current riders and on attracting future riders;

(d) to facilitate sound management and a safe and effective workplace;

(e) to develop a financially responsible, long-range approach to preserving and modernizing the authority's assets and meeting future needs for regional transit facilities and services consistent with the program for mass transportation required by paragraph g of section 5 of chapter 161A of the General Laws; and

(f) to utilize the powers afforded to the authority under chapter 161A of the General Laws, any special law, and the provisions of this act to accomplish the foregoing objectives.

SECTION 5. In addition to those powers referenced in subsection (c) of section 2 of this act, the powers and responsibilities of the fiscal and management control board shall include, but not be limited to, the following:

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- (a) to establish separate operating and capital budgets, each with clearly designated revenue sources and uses, and to establish policies and procedures to ensure that the authority maintains complete separation between its operating and capital budgets;
- (b) To establish 1- and 5-year operating budgets under section 20 of chapter 161A, beginning in fiscal year 2017, which are balanced primarily through a combination of internal cost controls and increase in own-source revenues and which assume that additional contract assistance in the form of appropriations from the commonwealth transportation fund and/or general fund will be no greater than the sum of debt payments associated with debt incurred by the Massachusetts Bay Transportation Authority before fiscal year 2000, debt associated with transit mitigation commitments for the central artery project, so-called, and any amount provided to facilitate the transfer of all authority employees from the capital budget to the operating budget;
- (c) to establish 5- and 20-year capital plans, addressing, among other things, a phased program for the complete restoration of the physical assets of the authority including its vehicle fleet, a plan to address the failings within the existing capital program and recommendations for the level of funding needed to meet the region's transit needs;
- (d) to establish a rigorous performance management system and performance metrics and targets that address, among other things, maximizing of own-source revenues, increasing ridership, reducing absenteeism, addressing vacancies and attrition, achieving procurement and contracting improvements and improving customer focus and orientation (including a public scorecard tracking performance with respect to customer-oriented metrics);
- (e) notwithstanding the provisions of any general or special law, to reorganize, consolidate, or abolish departments, divisions, or entities of the authority, except the Metropolitan Boston Transit Parking Corporation, in whole or in part, and to establish such new departments, divisions, or entities as it deems necessary, and to transfer the duties, powers, functions, and appropriations of one department, division, or entity, except the duties, powers, functions, and appropriations of the Metropolitan Boston Transit Parking Corporation, to another;
- (f) to amend any borrowing authorization or to finance or refinance any debt in accordance with law; provided, however, that the board shall not delegate this authority;
- (g) to review any contract for the provision of services entered into by the authority, including contracts entered into before the establishment of the board, and including but not limited to commuter rail and paratransit services, and to amend said contracts, as necessary, in accordance with their terms;
- (h) to establish, increase, or decrease any fare, fee, rate, or charge, for any service, license, or activity within the scope of the authority; provided, however, that the board shall not delegate this authority
- (i) to approve appropriations necessary to fund a decision by an arbitrator pursuant to section 32 of Chapter 161A of the General Laws; provided, however, that the board shall not delegate this authority; and

(j) to employ, retain, and supervise such managerial, professional, and clerical staff as are necessary to carry out its responsibilities. The fiscal and management control board shall have the authority to set the compensation, terms, and conditions of employment of its own staff. Staff hired under this subsection shall be employees of the authority, except such employees as the fiscal and management control board formally designates independent contractors, except that they shall be treated as executives under section 26 of chapter 161A.

SECTION 6. (a) Within 120 days after all of the members of the fiscal and management control board have been appointed, the board shall submit a preliminary report to the secretary of administration and finance and the chairpersons of the house and senate committees on ways and means. The report shall include a preliminary analysis of and management plans to address, the authority's structural operating deficit and its capital and maintenance needs over the 5 years following the effective date of this act.

(b) On or before December 1 during each year of its existence, the fiscal and management control board shall report on its fare policy, operating budget, capital plan and progress toward meeting performance metrics and targets to the secretary of transportation, the secretary of administration and finance and the chairpersons of the house and senate committees on ways and means.

(c) On or before January 1, 2018, the fiscal and management control board shall report to the secretary of transportation and the chairpersons of the house and senate committees on ways and means and the chairpersons of the joint committee on transportation as to whether its powers have been sufficient to restore fiscal stability and reliable performance to the authority. If the board concludes that fiscal stability and reliable performance has been achieved, the report shall include recommendations regarding its view on the governance structure that should be established to govern the Massachusetts Bay Transportation Authority following the dissolution of the fiscal and management control board. If the board concludes that its powers are insufficient, such report shall include a statement of reasons why it has been unable to restore fiscal stability and reliable performance and a recommendation as to what measures the board believes to be necessary. The report shall address whether the board established by section 7 of chapter 161A should govern the Massachusetts Bay Transportation Authority going forward.

(d) Notwithstanding the provisions of any general or special law, the fiscal and management control board may determine, with 30 days' notice to the respective clerks of the house and the senate, that the foregoing reporting requirements are substantially equivalent to other reporting requirements imposed on it by law and, upon said determination and notice, shall be required to meet only those requirements set forth in this section.

SECTION 7. Notwithstanding the provisions of any general or special law, the Massachusetts Bay Transportation Authority, or any successor, shall not enter into an agreement to establish or amend existing retirement or pension benefits, nor shall it pay any money associated with said benefits for any new hire until the entity responsible for the administration and payment of said benefits is subjected to, and cooperates fully with, a complete, annual, and independent audit, according to standards established by the governmental accounting standards board. The report

of the independent auditor required by this section shall be a public record under clause 26 of section 7 of chapter 4.

SECTION 8. Subsection (d) of section 61 of chapter 46 of the Acts of 2013 is hereby repealed.

SECTION 9. Section 7 of chapter 4 of the General Laws, as amended by section 219 of chapter 38 of the acts of 2013, is hereby amended by inserting after the words, "chapter 32," the following words:-- or the Massachusetts Bay Transportation Retirement Fund or any successor entity that receives funds from the Massachusetts Bay Transportation Authority to pay or administer pension benefits for current or former Massachusetts Bay Transportation Authority employees.

SECTION 10. Section 2 of chapter 6C of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:--

(b) The department shall be governed and its corporate powers exercised by a board of directors. The board shall consist of 11 members appointed by the governor. Eight members shall be appointed for terms of four years, coterminous with that of the governor and three members shall be appointed for three-year terms. The secretary of transportation shall serve ex officio and shall be the chairperson of the board. The remaining 10 members of the board shall include a member or members: with experience in transportation planning and policy, including experience in the finances of transportation planning and policy; experience in the fields of public or private finance; experience in the field of civil engineering; 1 member with municipal government experience in 1 of the 14 cities and towns as defined in section 1 of chapter 161A; 1 member with municipal government experience in 1 of the 51 cities and towns or other served communities as those terms are defined in section 1 of chapter 161A; 1 member with municipal government experience in a city or town served primarily by a regional transit authority; and not more than 6 of said members shall be members of the same political party. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such former member. Each director shall be eligible for reappointment. Each director shall serve without compensation but may be reimbursed for actual and necessary expenses reasonably incurred in the performance of their duties, including reimbursement for reasonable travel; provided, however, that such reimbursement shall not exceed \$3000 annually.

SECTION 11. Section 53 of chapter 7 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words:-- the Massachusetts Bay Transportation Authority,.

SECTION 12. Section 2ZZZ of chapter 29 of the General Laws, as most recently amended by sections 25 to 28, inclusive, of chapter 46 of the acts of 2013, is hereby amended by striking out subsection (e).

SECTION 13. Subsection (d) of section 4 of chapter 149A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the words "Massachusetts State

College Building Authority,” in line 44, the following words:– the Massachusetts Bay Transportation Authority,.

SECTION 14. Subsection (d) of section 16 of said chapter 149A, as so appearing, is hereby amended by inserting after the words “the Massachusetts port authority,” in line 39, the following words:– the Massachusetts Bay Transportation Authority,.

SECTION 15. Section 3 of chapter 161A of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 to 3 inclusive, the words “, in each case to be exercised by the board unless otherwise specifically provided.”

SECTION 16. Said section 3 of said chapter 161A, as so appearing, is hereby further amended by striking out the first sentence of subsection (d) and inserting in its place the following sentence:– to employ, retain, and supervise such managerial, professional, and clerical staff as are necessary to carry out the work of the authority, provided, however, that the chief executive of the authority shall be a general manager who shall be hired by and report to the secretary of transportation and who in turn shall fix the compensation and conditions of employment of all other authority employees consistent with budgets that are subject to the approval of the board.

SECTION 17. Said section 3 of said chapter 161A, as so appearing, is hereby further amended by adding the following subsection:–

(t) to delegate any of the foregoing powers to the general manager or his designee, excluding (i) the powers set forth in subparagraph (e), and (ii) the power to enter into agreements involving more than \$15 million in value.

SECTION 18. Section 5 of said chapter 161A, as so appearing, is hereby amended by striking out subsection (r) and inserting in place thereof the following subsection:–

(r) to adopt a fare policy that balances the operational needs of the authority, the extent to which the authority’s fare recovery ratio is consistent with those of peer systems, the objective of increasing ridership and maximizing total fare revenues and the needs of its riders, including those of lesser means.

SECTION 19. The first sentence of section 32 of said chapter 161A, as so appearing, is hereby amended by adding the following words:–

; and any such award shall have no retroactive effect.

SECTION 20. Said section 32 of said chapter 161A, as so appearing, is hereby further amended by striking out the fourth sentence and inserting in place thereof the following 2 sentences:–

Within 30 days after the arbitrator’s written opinion is issued, the employer shall submit to the fiscal and management control board a request for the appropriation necessary to fund such decision or determination. Any determination by the arbitrator, if supported by material and substantial evidence on the record, shall be, subject to approval by the fiscal and management

control board of such funding request, binding upon the parties and may be enforced at the insistence of either party or by the arbitrator in the superior court.

SECTION 21. Notwithstanding the foregoing, no existing rights of the holders of bonds, notes and other financing obligations issued by or on behalf of the Massachusetts Bay Transportation Authority under chapter 161A of the General Laws shall be impaired, and nothing herein shall be construed to alter or grant the power to alter existing agreements securing such bonds or other obligations, hedge agreements or investment contracts pertaining thereto, other than in accordance with their terms. The Authority shall maintain the covenants and agreements of the trust agreements, bond resolutions and other instruments pertaining to such bonds and other obligations secured thereunder so long as such bonds and other obligations shall remain outstanding. The fiscal management and control board shall not control, and shall not have the power to alter or otherwise impair, the trust imposed in the third paragraph of subsection (a) of section 35T of chapter 10 of the General Laws, and shall not have the power to alter or otherwise impair the other commonwealth covenants set forth in that paragraph. The commonwealth re-affirms such trust and other covenants.

SECTION 22. Section 7 shall take effect 120 days following the date of enactment.

SECTION 23. This act shall take effect upon its enactment, except as otherwise provided.

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