

An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority

SECTION-BY-SECTION SUMMARY

1. SECTION 1 proposes legislative findings, similar to bills over the past several decades that have created fiscal control boards. These findings include that a well-functioning Massachusetts Bay Transportation Authority (MBTA) is essential to the civic and economic wellbeing of the Commonwealth; that 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 MBTA; that its structural imbalance between operating costs and revenues requires subsidies in amounts that are increasing and unsustainable; that the authority's capital needs are significant and include more than \$6.7 billion in maintenance and modernization and that despite these needs over the past five fiscal years the authority spent only \$2.3 billion of its planned \$4.5 billion capital spending for which funds were available; that the authority must engage in short- and long-term financial planning; that the authority is beset by workplace and product delivery inefficiencies; that 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; that 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 focus; and that 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.

2. SECTION 2 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 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 function as the board of the MBTA and shall have all powers, responsibilities, and obligations of that board. The FMCB shall be subject to both the open meeting law and public record act, and similar to the enabling legislation for the receivership in Springfield, the Secretary of transportation may fix stipends for FMCB members. Following its dissolution, and as a default, the FMCB's functions will be transferred back to the board of the Massachusetts Bay Transportation Authority. In section 6(c), the FMCB is directed to report to the Secretary of Transportation and the Legislature by January 1, 2018, regarding any recommendations it may have for the future governance of the MBTA.

3. SECTION 3 creates the position of Chief Administrator, which shall assume the role of the General Manager of the MBTA during the existence of the FMCB. The Chief Administrator shall be appointed by the Governor and serve at his pleasure, unless the FMCB approves a contract establishing otherwise. 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

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the fiscal and management control board with data on progress toward achieving key performance management targets.

4. SECTION 4 sets forth the FMCB's objectives. Those objectives 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 is instructed to use existing powers and those afforded by this act to accomplish its objectives.

5. SECTION 5 sets forth certain powers and responsibilities afforded to the FMCB that are not expressly included in the power of the existing board under G.L. c. 161A or elsewhere, including to:

- a. Establish separate operating and capital budgets, each with clearly designated revenue sources and uses, and put in place policies and procedures to ensure that the authority maintains complete separation between its operating and capital budgets,
- b. Establish 1- and 5-year operating budgets beginning in fiscal year 2017 which are balanced primarily through a combination of internal cost controls and increase in own-source revenues and assume that additional contract assistance in the form of appropriation from the commonwealth transportation fund or the general fund will be no greater than the sum of debt payments associated with legacy and central artery mitigation debt, and the amount needed to transfer all employees from the capital budget to the operating budget.
- c. Establish 5- and 20-year capital plans to address: 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. 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. Restructure the organization of the MBTA.
- f. Amend any borrowing authorization or to finance or refinance any debt in accordance with law.

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- g. Review contracts entered before the establishment of the FMCB including those relating to commuter rail and paratransit services.
- h. Establish, increase or decrease any fee, rate, or charge.
- i. 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.
- j. Employ, at will, managerial, professional and clerical staff.

6. SECTION 6 sets forth certain reporting requirements, including: within 120 days, the FMCB must file a preliminary report with the Secretary of Administration and Finance and the Legislature to analyze, and preliminarily share plans to address the authority's structural operating deficit and its capital and maintenance needs; each year, on December 1, the FMCB must report to the Legislature and the Secretary of Transportation and Administration and Finance on its fare policy, operating budget, capital plan and progress toward meeting performance metrics and targets; and before January 2018, the FMCB must report to the Legislature and the Secretary of Transportation as to whether its powers have been sufficient to restore fiscal stability and concerning its view on the governance structure that should replace it. Given the comprehensiveness of these reporting requirements, the FMCB is otherwise excused from legislative reports required by its enabling act or special legislation upon 30 days' notice to the Legislature.

7. SECTION 7 requires a full and independent audit of the MBTA Retirement Fund, according to standards set by the Governmental Accounting Standards Board. The MBTA may not make a single payment to the Fund on behalf of a new hire until the audit is completed. Section 22 imposes a delayed effective date on this section, which has the effect of mandating the audit within 120 days and annually thereafter.

8. SECTION 8 removes the statutory cap on fare increases.

9. SECTION 9 subjects the MBTA Retirement Fund to the public records act.

10. SECTION 10 reconstitutes the MassDOT board, such that it is chaired by the Secretary of Transportation. The MassDOT Board is expanded to 11 members, including a representative of an MBTA core community; an outer MBTA community; and a city or town served by a regional transit authority. Eight members are to be appointed to four year terms co-terminous with that of the Governor and three members shall be appointed for three-year terms.

11. SECTION 11 provides that the restrictions on contracting for services imposed by G.L. c. 7, §§ 52-55 (the "Pacheco Law") do not apply to the MBTA.

12. SECTION 12 removes the future funding requirement language from the 2013 legislation.

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13. SECTION 13 read together with Section 17, permits the FMCB and any future board governing the MBTA to delegate certain of its powers to the Chief Administrator/General Manager.

14. SECTION 14 allows the MBTA to use construction management at-risk procurement.

15. SECTION 15 allows the MBTA to use design-and-build procurement.

16. SECTION 16 states following the dissolution of the FMCB the board of the MBTA may 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.

17. SECTION 17 establishes limits on the FMCB or any future board's ability to delegate, including that the Board may not delegate the authority to issue debt, to sell property, or to enter into contracts in excess of \$15 million.

18. SECTION 18 requires the MBTA to establish a fare policy that balances the includes, among other things, that any fare increases must be considered in light of 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.

19. SECTION 19 limits the power of an arbitrator in binding arbitration, such that any awards may not be imposed retroactively.

20. SECTION 20 requires that any arbitration award be approved by the FMCB.

21. SECTION 21 makes explicit that the creation of, or any actions by, the FMCB in no way impacts previously issued bonds.

22. SECTION 22 provides that the audit required by Section 7 shall take place within 120 days of enactment.

23. SECTION 23 establishes the effective date of the act.