

HOUSE No. 3347

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT



CHARLES D. BAKER
GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

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,
Governor

HOUSE No. 3347

Message from His Excellency the Governor recommending legislation relative to for a reliable, sustainable Massachusetts Bay Transportation Authority.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act for a reliable, sustainable Massachusetts Bay Transportation Authority.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith 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 convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby found that:

2 (a) A well-functioning Massachusetts Bay Transportation Authority is essential to the
3 civic and economic well-being of the commonwealth.

4 (b) The Special Panel to Review the MBTA recently concluded that the authority has
5 severe structural problems that require fundamental change in virtually all aspects of the
6 authority.

7 (c) Because of a substantial imbalance between operating costs and revenues, including
8 sources of revenue directed to the authority annually by law, the authority requires subsidies in
9 amounts that are increasing each year at an unsustainable rate.

10 (d) The authority's capital needs are significant and include more than \$6.7 billion in
11 maintenance and modernization required to strengthen, among other things, its rolling stock,
12 track, and signal infrastructure.

13 (e) Despite these significant capital needs, over the past 5 fiscal years, the authority spent
14 only \$2.3 billion of its planned \$4.5 billion capital spending for which funds were available.

15 (f) To address its operational deficits and capital needs, and to prevent their recurrence,
16 the authority must engage in short- and long-term financial planning, a process that must include
17 clear separation between operating and capital budgets and a comprehensive consideration of the
18 extent to which new revenue is required and the sources thereof.

19 (g) The authority is beset by workplace and product delivery inefficiencies.

20 (h) To address these inefficiencies, the authority should exhaust, but has to date
21 underused, the full extent of the powers and responsibilities afforded to it in its enabling act and
22 other special laws, and should be afforded certain new capabilities as set forth in this act.

23 (i) The governance and organization of the authority must be strengthened to ensure that
24 the authority is governed and operated in a manner that is accountable, transparent and customer-
25 focused.

26 (j) The authority as currently constituted is not directly accountable to the executive
27 branch (through the Secretary of Transportation) or the legislature, even though the taxpayers
28 provide more than half of the authority's operating budget and substantial additional funding for
29 capital projects.

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

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

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

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

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

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

58 (f) Following the dissolution of the board, the board established by section 7 of chapter
59 161A shall resume governance of the Massachusetts Bay Transportation Authority.

60 SECTION 3. (a) Once the fiscal and management control board has been established as
61 provided in section 2, the governor shall appoint a chief administrator of the Massachusetts Bay
62 Transportation Authority. Notwithstanding the provisions of any general or special law, the
63 chief administrator shall assume the role of the general manager of the Massachusetts Bay
64 Transportation Authority during the existence of the fiscal and management control board.

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

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

72 (d) The chief administrator shall, at least monthly, provide the fiscal and management
73 control board with information on the status of the revenues and expenses for the operating

74 budget and on the status of revenues, contracting/procurement and spending for the capital
75 program. The chief administrator shall, at least quarterly, provide the fiscal and management
76 control board with data on progress toward achieving key performance management targets.

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

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

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

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

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

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

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

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

97 (a) to establish separate operating and capital budgets, each with clearly designated
98 revenue sources and uses, and to establish policies and procedures to ensure that the authority
99 maintains complete separation between its operating and capital budgets;

100 (b) To establish 1- and 5-year operating budgets under section 20 of chapter 161A,
101 beginning in fiscal year 2017, which are balanced primarily through a combination of internal
102 cost controls and increase in own-source revenues and which assume that additional contract
103 assistance in the form of appropriations from the commonwealth transportation fund and/or
104 general fund will be no greater than the sum of debt payments associated with debt incurred by
105 the Massachusetts Bay Transportation Authority before fiscal year 2000, debt associated with
106 transit mitigation commitments for the central artery project, so-called, and any amount provided
107 to facilitate the transfer of all authority employees from the capital budget to the operating
108 budget;

109 (c) to establish 5- and 20-year capital plans, addressing, among other things, a phased
110 program for the complete restoration of the physical assets of the authority including its vehicle
111 fleet, a plan to address the failings within the existing capital program and recommendations for
112 the level of funding needed to meet the region's transit needs;

113 (d) to establish a rigorous performance management system and performance metrics and
114 targets that address, among other things, maximizing of own-source revenues, increasing
115 ridership, reducing absenteeism, addressing vacancies and attrition, achieving procurement and

116 contracting improvements and improving customer focus and orientation (including a public
117 scorecard tracking performance with respect to customer-oriented metrics);

118 (e) notwithstanding the provisions of any general or special law, to reorganize,
119 consolidate, or abolish departments, divisions, or entities of the authority, except the
120 Metropolitan Boston Transit Parking Corporation, in whole or in part, and to establish such new
121 departments, divisions, or entities as it deems necessary, and to transfer the duties, powers,
122 functions, and appropriations of one department, division, or entity, except the duties, powers,
123 functions, and appropriations of the Metropolitan Boston Transit Parking Corporation, to
124 another;

125 (f) to amend any borrowing authorization or to finance or refinance any debt in
126 accordance with law; provided, however, that the board shall not delegate this authority;

127 (g) to review any contract for the provision of services entered into by the authority,
128 including contracts entered into before the establishment of the board, and including but not
129 limited to commuter rail and paratransit services, and to amend said contracts, as necessary, in
130 accordance with their terms;

131 (h) to establish, increase, or decrease any fare, fee, rate, or charge, for any service,
132 license, or activity within the scope of the authority; provided, however, that the board shall not
133 delegate this authority

134 (i) to approve appropriations necessary to fund a decision by an arbitrator pursuant to
135 section 32 of Chapter 161A of the General Laws; provided, however, that the board shall not
136 delegate this authority; and

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

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

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

154 (c) On or before January 1, 2018, the fiscal and management control board shall report to
155 the secretary of transportation and the chairpersons of the house and senate committees on ways
156 and means and the chairpersons of the joint committee on transportation as to whether its powers
157 have been sufficient to restore fiscal stability and reliable performance to the authority. If the
158 board concludes that fiscal stability and reliable performance has been achieved, the report shall

159 include recommendations regarding its view on the governance structure that should be
160 established to govern the Massachusetts Bay Transportation Authority following the dissolution
161 of the fiscal and management control board. If the board concludes that its powers are
162 insufficient, such report shall include a statement of reasons why it has been unable to restore
163 fiscal stability and reliable performance and a recommendation as to what measures the board
164 believes to be necessary. The report shall address whether the board established by section 7 of
165 chapter 161A should govern the Massachusetts Bay Transportation Authority going forward.

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

171 SECTION 7. Notwithstanding the provisions of any general or special law, the
172 Massachusetts Bay Transportation Authority, or any successor, shall not enter into an agreement
173 to establish or amend existing retirement or pension benefits, nor shall it pay any money
174 associated with said benefits for any new hire until the entity responsible for the administration
175 and payment of said benefits is subjected to, and cooperates fully with, a complete, annual, and
176 independent audit, according to standards established by the governmental accounting standards
177 board. The report of the independent auditor required by this section shall be a public record
178 under clause 26 of section 7 of chapter 4.

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

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

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

190 (b) The department shall be governed and its corporate powers exercised by a board of
191 directors. The board shall consist of 11 members appointed by the governor. Eight members
192 shall be appointed for terms of four years, coterminous with that of the governor and three
193 members shall be appointed for three-year terms. The secretary of transportation shall serve ex
194 officio and shall be the chairperson of the board. The remaining 10 members of the board shall
195 include a member or members: with experience in transportation planning and policy, including
196 experience in the finances of transportation planning and policy; experience in the fields of
197 public or private finance; experience in the field of civil engineering; 1 member with municipal
198 government experience in 1 of the 14 cities and towns as defined in section 1 of chapter 161A; 1
199 member with municipal government experience in 1 of the 51 cities and towns or other served
200 communities as those terms are defined in section 1 of chapter 161A; 1 member with municipal
201 government experience in a city or town served primarily by a regional transit authority; and not
202 more than 6 of said members shall be members of the same political party. Any person
203 appointed to fill a vacancy in the office of a member of the board shall be appointed in a like

204 manner and shall serve for only the unexpired term of such former member. Each director shall
205 be eligible for reappointment. Each director shall serve without compensation but may be
206 reimbursed for actual and necessary expenses reasonably incurred in the performance of their
207 duties, including reimbursement for reasonable travel; provided, however, that such
208 reimbursement shall not exceed \$3000 annually.

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

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

214 SECTION 13. Subsection (d) of section 4 of chapter 149A of the General Laws, as
215 appearing in the 2012 Official Edition, is hereby amended by inserting after the words
216 “Massachusetts State College Building Authority,” in line 44, the following words:– the
217 Massachusetts Bay Transportation Authority,.

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

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

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

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

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

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

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

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

245 ; and any such award shall have no retroactive effect.

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

249 Within 30 days after the arbitrator’s written opinion is issued, the employer shall submit
250 to the fiscal and management control board a request for the appropriation necessary to fund
251 such decision or determination. Any determination by the arbitrator, if supported by material
252 and substantial evidence on the record, shall be, subject to approval by the fiscal and
253 management control board of such funding request, binding upon the parties and may be
254 enforced at the insistence of either party or by the arbitrator in the superior court.

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

266 otherwise impair the other commonwealth covenants set forth in that paragraph. The
267 commonwealth re-affirms such trust and other covenants.

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

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