

SENATE . . . . . No.

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the creation of the Massachusetts Bay Transportation Authority Finance Control Board.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	First Essex and Middlesex
Robert L. Hedlund	Plymouth and Norfolk
Richard J. Ross	Norfolk, Bristol and Middlesex
Donald F. Humason, Jr.	Second Hampden and Hampshire
Viriato M. deMacedo	Plymouth and Barnstable
Ryan C. Fattman	Worcester and Norfolk
James E. Timilty	Bristol and Norfolk
Steven S. Howitt	4th Bristol
Colleen M. Garry	36th Middlesex
Kevin J. Kuros	8th Worcester
Geoff Diehl	7th Plymouth
Shaunna L. O'Connell	3rd Bristol
James J. Dwyer	30th Middlesex
Michael O. Moore	Second Worcester
Walter F. Timilty	7th Norfolk
Stephen L. DiNatale	3rd Worcester
Bruce J. Ayers	1st Norfolk

**SENATE . . . . . No.**

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By Mr. Tarr, a petition (subject to Joint Rule 12) of Bruce E. Tarr, Robert L. Hedlund, Richard J. Ross, Donald F. Humason, Jr. and other members of the General Court for legislation relative to the creation of the Massachusetts Bay Transportation Authority Finance Control Board.  
Transportation.

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**The Commonwealth of Massachusetts**

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

An Act relative to the creation of the Massachusetts Bay Transportation Authority Finance Control Board.

*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. Notwithstanding any general or special law to the contrary, there is hereby  
2 established and set up on the books of the commonwealth the MBTA Fiscal Recovery Trust  
3 Fund, herein after in this act called the “fund”, the sole purpose of which shall be to provide  
4 interest free loans to the Massachusetts Bay Transportation Authority (“MBTA”) as established  
5 under chapter 161A of the General Laws. Effective April 1, 2015, the comptroller shall transfer  
6 to the fund \$25,000,000 from the commonwealth stabilization fund to the fund. The fund shall be  
7 established as a separate trust fund, subject to the control of the secretary for administration and  
8 finance, who shall serve as the trustee and who may approve without further appropriation  
9 interest-free loans from the fund to the MBTA. The loan shall be disbursed to the MBTA from  
10 time to time in such amounts and upon terms and conditions determined by the finance control  
11 board and approved by the secretary for administration and finance. These terms and conditions

12 may provide that payment of money on account of tax receivables be paid over to the  
13 commonwealth to reduce any loan balance. The MBTA shall repay the loan on a schedule  
14 proposed by the finance control board and approved by the secretary for administration and  
15 finance. Any such repayment schedule proposed by the finance control board and approved by  
16 the secretary for administration and finance shall begin in fiscal year 2016. The MBTA shall  
17 repay the entire balance of amounts loaned pursuant to this section no later than June 30, 2020.  
18 This loan shall not be forgiven in whole or in part, and failure to repay the full value of loans  
19 disbursed from the fund to the MBTA shall result in an equally commensurate reduction in so  
20 called "contract assistance" payments established under Chapter 131 of the Acts of 2010, to the  
21 MBTA in fiscal year 2021. The repayments shall be deposited in the commonwealth's General  
22 Fund. Loan amounts from the fund may be expended for the operating expenses of the MBTA  
23 finance control board established in section 3 of this act, subject to the approval of the secretary  
24 for administration and finance. The secretary shall report quarterly to the house and senate  
25 committees on ways and means on expenditures made from the fund, including the amounts and  
26 purposes of expenditures for personnel costs, contracted personnel costs or consultant fees. Any  
27 amounts loaned to the MBTA from funds made available in this section shall be repaid to the  
28 commonwealth regardless of any actions taken by any trustees appointed on behalf of the MBTA  
29 pursuant to chapter 9 of Title 11 of the United States Code. The secretary shall report quarterly to  
30 the house and senate committees on ways and means on the amounts and purposes of  
31 expenditures made from the fund. The fund shall expire on June 30, 2021.

32 SECTION 2. Notwithstanding any general or special law to the contrary the secretary of  
33 administration and finance shall identify available funding mechanisms to assist the MBTA  
34 including but not limited to collaborations and assessments with agencies and quasi-public

35 agencies including but not limited to the Massachusetts Port Authority (Massport), and  
36 evaluating the needs of the regional transit authorities. The secretary shall submit said findings  
37 and any legislative recommendations to the clerks of the house and senate, the joint committee  
38 on transportation, and the senate and house committee on ways and means no later than 90 days  
39 after passage of this act.

40 SECTION 3. (a) There shall be a MBTA finance control board, herein after in this act  
41 called the “board”, which shall consist of 7 members: 3 designees of the secretary of  
42 administration and finance 2 of whom shall reside within the MBTA service area, the Chair of  
43 the Massachusetts Department of Transportation (“MassDOT”) Board of Directors, the Secretary  
44 of Transportation, and 2 members appointed by the Governor 1 of whom shall be a member from  
45 organized labor that represents employees of the MBTA, and 1 of whom shall be a citizen of the  
46 commonwealth with a background in transportation. The board shall act by a majority vote of all  
47 its members. The secretary for administration and finance may fix stipends to be paid to  
48 members of the board other than the Chair of the MassDOT Board of Directors and Secretary of  
49 Transportation, which stipends shall be paid from directly from the trust established in section 1.  
50 The board shall initiate and assure the implementation of appropriate measures to secure the  
51 financial stability of the MBTA, establishing, or utilizing measures to secure performance and  
52 reliability measures and bringing the MBTA into a state of good repair and shall continue in  
53 existence until June 30, 2016, and thereafter for such period as the members may vote to petition  
54 the legislature to continue its existence, provided however that the secretary of administration  
55 and finance may at any time abolish the board. The board shall be a state agency for the purpose  
56 of chapter 268A of the General Laws.

57 (b) Action by the board under the authority of this act shall in all respects constitute  
58 action by the MBTA for all purposes under the General Laws and under any special law.

59 (c) Until the board ceases to exist, no appropriation, borrowing authorization, transfer, or  
60 other spending authority shall take effect until approved by the board. The board shall approve  
61 all appropriations, borrowing authorizations, transfers, or any other spending authorizations, in  
62 whole or part.

63 (d) In addition to the authority and powers conferred elsewhere in this act, and  
64 notwithstanding any MBTA provision, or local ordinance to the contrary, the board shall have  
65 the following powers:

66 (1) to amend the annual or supplemental budgets of the MBTA including the  
67 establishment, increase or decrease of any appropriations and spending authority for all aspects  
68 of the MBTA;

69 (2) to implement and maintain uniform budget guidelines and procedures for all  
70 departments;

71 (3) to amend, formulate and execute capital budgets, including to amend any borrowing  
72 authorization, or finance or refinance any debt in accordance with law;

73 (4) to amortize operational deficits in an amount and for such term as the secretary  
74 approves on an annual basis;

75 (5) to develop and maintain a uniform system for all financial planning and operations in  
76 all departments, offices, boards, commissions, committees, agencies or other units of the MBTA;

77 (6) to review and approve or disapprove all proposed contracts for goods or services;

78 (7) notwithstanding any general or special law to the contrary, to establish, increase, or  
79 decrease any fee, rate, or charge, for any service, license, permit or other activity, otherwise  
80 within the authority of the MBTA;

81 (8) notwithstanding any MBTA ordinance to the contrary, to appoint, remove, supervise  
82 and control all MBTA employees and have control over all personnel matters; the board shall  
83 hold all existing powers to hire and fire and set the terms and conditions of employment held by  
84 other employees or officers of the MBTA, whether or not elected; the board shall have the  
85 authority to exercise all powers otherwise available to the MassDOT Board of Directors  
86 regarding contractual obligations during a fiscal emergency; and no MBTA employee or officer  
87 shall hire, fire, transfer or alter the compensation or benefits of any employee except with the  
88 written approval of the board. The board may delegate or otherwise assign these powers with the  
89 approval of the secretary;

90 (9) to alter the compensation of officials of the MBTA to reflect the fiscal emergency and  
91 changes in the responsibilities of the officials as provided by this act;

92 (10) to employ, retain, and supervise such managerial, professional and clerical staff as  
93 are necessary to carry out its responsibilities, with the approval of the secretary. The board, with  
94 the approval of the secretary, shall have authority to set the compensation, terms, and conditions  
95 of employment of its own staff. The compensation of personnel hired pursuant to this subsection  
96 shall be determined and fixed by the board and paid directly from the trust established in section  
97 1. Staff hired under this subsection shall be deemed employees of the commonwealth, except  
98 such employees as the board formally designates independent contractors, but chapters 31 and  
99 150E of the General Laws shall not apply to such employees.

100 (11) to reorganize, consolidate or abolish departments, commissions, boards, offices or  
101 functions of the MBTA, in whole or in part, and to establish such new departments,  
102 commissions, boards, offices or functions as it deems necessary, and to transfer the duties,  
103 powers, functions and appropriations of a department, commission, board or other unit to  
104 another;

105 (12) to appoint in consultation with the secretary persons to fill vacancies on any board,  
106 committee, department, or office acting in an advisory capacity to the board;

107 (13) to sell, lease, or otherwise transfer real property and other assets of the MBTA with  
108 the approval of the secretary;

109 (14) to purchase, lease, or otherwise acquire property or other assets on behalf of the  
110 MBTA with the approval of the secretary;

111 (15) to promulgate rules and regulations governing the operation and administration of  
112 the MBTA;

113 (16) to alter or rescind any action or decision of any, employee, board or commission  
114 within 14 days after receipt of notice of such action or decision;

115 (17) to suspend in consultation with the secretary such rules and regulations of the  
116 MBTA and to promulgate rules and regulations necessary to carry out this act;

117 (18) to suspend any requirements under section 52 to 55 of chapter 7 of the General Laws  
118 provided that the finance board provides the legislature with at least 30 days notice with an  
119 explanation for the suspension;

120 (19) to exercise all powers under the General Laws and this or any other special act, any  
121 provision or ordinance that any official of the MBTA may exercise, acting separately or jointly.  
122 With respect to any such exercise of powers by the board, the officials of the MBTA shall not  
123 rescind or take any action contrary to such action by the board so long as the board continues to  
124 exist;

125 (20) to levy fines on vendors for failing to maintain on-time rates, vehicle cleanliness,  
126 fare collections, station maintenance, and staff training; and

127 (21) to develop a long range plan for MBTA financial and structural sustainability,  
128 included but not limited to an analysis of debt and contemplated expansion, specifically  
129 identifying expansion which is strictly necessary as a result of a legally binding agreements and  
130 other proposals that may not be financially viable.

131 SECTION 4. Within 60 days after the appointment of the board, the board shall make a  
132 preliminary report to the secretary of administration and finance and to the house and senate  
133 committees on ways and means. The report shall present a preliminary analysis of the fiscal  
134 crisis of the MBTA and the board's preliminary finance and management plans to address the  
135 MBTA's operating and structural deficits, and the feasibility of the commonwealth assuming  
136 portions of the MBTA's debt.

137 SECTION 5. Within 60 days after the appointment of the board, the board shall establish  
138 a liaison to the Office of the Attorney General and a liaison to the Office of the Inspector  
139 General. Such liaison shall be responsible for, but not limited to, providing the Attorney General  
140 and Inspector General with any concern that, in the opinion of the board, warrants further  
141 investigation.



142 SECTION 6. (a) If the board established by section 3 concludes that its powers are  
143 insufficient to restore fiscal stability to the MBTA, it shall so notify the secretary for  
144 administration and finance, and shall forward to them a statement of the reasons why it has been  
145 unable to restore fiscal stability to the MBTA. Upon receipt of such statement, the secretary for  
146 administration and finance may terminate the existence of the board, notwithstanding section 3,  
147 and may appoint a receiver for the MBTA for a period as they may determine. The secretary may  
148 at any time and without cause remove the receiver and appoint a successor, or terminate the  
149 receivership. The secretary shall determine the salary of the receiver, which salary shall be  
150 payable by the MBTA.

151 (b) The receiver shall have the following powers:-

152 (1) all powers of the finance control board under section 3. Such powers shall continue in  
153 the receiver and shall remain through the period of any receivership;

154 (2) the power to exercise any function or power of any officer or employee, whether  
155 elected or otherwise, specifically including the following powers:

156 (A) to order the modification of service within the MBTA;

157 (B) to regulate the construction of buildings;

158 (3) the power to file a petition in the name of the MBTA under Chapter 9 of Title 11 of  
159 the United States Code, and to act on the MBTA's behalf in any such proceeding.

160 (c) Upon the appointment of a receiver, the finance control board shall be abolished, and  
161 the receiver shall exercise all the powers of the finance control board under the General Laws,  
162 special laws, the MBTA charter and ordinances.

163 SECTION 7. (a) The board shall submit reports to the house and senate committees on  
164 ways and means not later than April 1, July 1, October 1, and January 1 of each year of its  
165 existence, which shall provide a detailed accounting of all loan funds expended pursuant to  
166 section 2. The accounting shall itemize by recipient the amount of any stipends paid pursuant to  
167 section 4.

168 (b) The board shall submit a report to the house and senate committees on ways and  
169 means not later than 5 days before the award of any no-bid contract to any private person or  
170 entity. This report shall disclose: (1) the terms of the anticipated contract, including but not  
171 limited to all monetary compensation; (2) the identity of the contractor and any subcontractor or  
172 affiliate of such contractor that would benefit under the contract; (3) a specific finding by the  
173 board that not using a competitive bidding process under the circumstances is necessary to  
174 ensure the provision of essential services to the MBTA; and (4) a certification by the board that it  
175 engaged in arms-length negotiations with the contractor and that the terms of the contract  
176 represent the best possible arrangement for the MBTA under the circumstances.

177 (c) The finance control board shall submit a report to the house and senate committees on  
178 ways and means not later than 5 days before the award of any contract if, at any time within 3  
179 years before the effective date of this act, any member of the finance control board or any  
180 employee or officer of the executive office of administration and finance served as an employee,  
181 member or general or limited partner of the contractor, its owners or affiliates. The report shall  
182 also disclose whether, at any time within 3 years before the effective date of this act, any  
183 member of the finance control board or any employee or officer of the executive office of  
184 administration and finance was required to file a statement pursuant to the Securities Exchange  
185 Act of 1934 as beneficial owner of more than 10 per cent of a class of the contractor's equity

186 securities. This report shall disclose the terms of the anticipated contract, including but not  
187 limited to all monetary compensation, and the identity of the contractor and any subcontractor or  
188 affiliate of such contractor that would benefit under the contract.

189 SECTION 8. This act shall be effective notwithstanding any enabling statute provision or  
190 ordinance to the contrary.