

# SENATE . . . . . No.

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Bruce E. Tarr***

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*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.

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PETITION OF:

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

# 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

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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

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

SECTION 2. Notwithstanding any general or special law to the contrary the secretary of administration and finance shall identify available funding mechanisms to assist the MBTA 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.

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

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

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

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

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

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

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

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

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

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

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

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

(10) to employ, retain, and supervise such managerial, professional and clerical staff as are necessary to carry out its responsibilities, with the approval of the secretary. The board, with the approval of the secretary, shall have authority to set the compensation, terms, and conditions of employment of its own staff. The compensation of personnel hired pursuant to this subsection shall be determined and fixed by the board and paid directly from the trust established in section 1. Staff hired under this subsection shall be deemed employees of the commonwealth, except such employees as the board formally designates independent contractors, but chapters 31 and 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;

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

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

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

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

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



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

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

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

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

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

(B) to regulate the construction of buildings;

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

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

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

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

(c) The finance control board shall submit a report to the house and senate committees on ways and means not later than 5 days before the award of any contract if, at any time within 3 years before the effective date of this act, any member of the finance control board or any employee or officer of the executive office of administration and finance served as an employee, member or general or limited partner of the contractor, its owners or affiliates. The report shall also disclose whether, at any time within 3 years before the effective date of this act, any member of the finance control board or any employee or officer of the executive office of administration and finance was required to file a statement pursuant to the Securities Exchange 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.