

MassDOT and MBTA Legislative Reform Efforts



Haven't MassDOT and the MBTA been subject to several major reform efforts over the past few years?

Yes, but none have been as focused on comprehensively fixing the MBTA as is H3347, *An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority*.

Chapter 25 of the Acts of 2009 created the Massachusetts Department of Transportation as a consolidated agency made up of the Highway, Aeronautics, and Rail & Transit Divisions, as well as the Registry of Motor Vehicles. While this effort changed many things about how the MassDOT agencies work and collaborate, the MBTA was explicitly left out of the MassDOT consolidation, was exempted from many of the provisions and requirements of Chapter 25, and today remains an independent authority. Underlining this point, MassDOT and MBTA each had separate boards following the passage of Chapter 25, although with the same members.

Chapter 132 of the Acts of 2012 required a number of small reforms at the MBTA, including increased penalties for fare evaders and a report on the potential for the MBTA to sell commuter ferry facilities to Massport.

Chapter 46 of the Acts of 2013 provided additional operating assistance for the MBTA, required that the T meet certain budgetary benchmarks, and mandated the use of capital funds for the Green Line Extension project and the South Coast Rail project, among other fiscal initiatives.

What can a Fiscal & Management Control Board bring to the MBTA that the recent reforms have not?

Important though these and other related efforts were, none of them were as complete or as focused on deep, sustained organizational change as is H3347, *An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority*. To fix the governance, management, operating, and spending problems at the MBTA, H3347 proposes a Fiscal Management & Control Board (FMCB) because it is a proven mechanism for bringing intensive and disciplined focus to troubled public entities. The five members of the Board, along with a Chief Administrative Officer hired by the Governor to work with the Board, would not constitute a new layer of bureaucracy, but would instead provide much-needed capacity to tackle the MBTA's pervasive problems.

Won't the creation of the FMCB detract from the efforts to create one unified MassDOT overseeing an integrated transportation system?

No, on the contrary, the creation of the FMCB will strengthen the MBTA and all of the MassDOT agencies. Since 2009, MassDOT has been moving toward integration, but the needs of the MBTA are so great and so pressing that they

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require the full attention of the FMCB so as to not swamp the other parts of MassDOT that still need work. The FMCB will report to the Secretary of Transportation, who will be responsible for coordinating the work of MassDOT and the FMCB-governed MBTA. MassDOT 'shared service' departments will continue to support the needs of the MBTA.

Didn't Chapter 25 of the Acts of 2009 require MBTA employees to receive their health insurance through the Group Insurance Commission? Wasn't that a major reform?

Yes and no. The most significant of the small number of MBTA-related items in Chapter 25 of the Acts of 2009 is in Section 140, which removed health care from collective bargaining and required all MBTA employees, retirees, and their dependents to receive their health insurance through the Commonwealth Group Insurance Commission (GIC).

This change was partly a result of the work of the independent Transportation Finance Commission, which had identified the growing costs of health care as a major 'budget buster' for the MBTA, and recommended that the T switch to receiving health insurance through the GIC, which serves all other Commonwealth employees, retirees, and dependents. At the time, it was estimated that the switch to GIC would save the MBTA \$20 million in annual operating costs.

Chapter 25 was signed into law in June of 2009. In January of 2010, the MBTA shifted its small number of non-union employees into the GIC. The process of shifting the majority of its unionized employees took another 4.5 years, however, due to resistance from the largest of the MBTA unions and the rollover provision in its collective bargaining agreement, which delayed implementation of the GIC transition until the end of the extant contracts. This process has still not been completed, and not all MBTA employees have yet been brought into the GIC. Local 589, the largest of the MBTA unions, fought the shift both with the U.S. Department of Labor and in court, ultimately costing the MBTA \$71 million in lost anticipated savings.

In the end, the Legislature had to amend Chapter 25 to provide for the creation of an MBTA Health & Welfare Trust, and an arbitrator awarded the benefits that would be provided by that Trust in order to essentially maintain the status quo, further costing the T \$10.5 million annually in expected savings.

The legislative intention of this important reform, as captured in Chapter 25 of the Acts of 2009, was to save the MBTA money. In the end, the success of this reform was greatly compromised and the savings are not as anticipated.

Would the Fiscal & Management Control Board be able to re-open collectively bargained contracts?

No. The Fiscal & Management Control Board would have no authority to change collectively bargained agreements with MBTA employees, only contracts like that with Keolis Commuter Services to operate the MBTA Commuter Rail system. Any FMCB authority with respect to collective bargaining would need to be explicitly defined in the legislation creating the FMCB.

Chapter 242 of the Acts of 2012 created a single board for MassDOT and the MBTA. Doesn't that provide sufficient oversight to fix the MBTA?

No. Although Chapter 242 of the Acts of 2012 eliminated a stand-alone MBTA Board and gave responsibility for MBTA oversight to the MassDOT Board, the MassDOT- and MBTA-related work done by the Board remains mostly distinct (due to differences in the financial, regulatory, and legal underpinnings of the two agencies).

Furthermore, the MassDOT Board is not constituted to provide the type of intensely focused scrutiny and support now needed by the MBTA, in part because it also remains responsible for the Registry of Motor Vehicles and the MassDOT Highway, Aeronautics, and Rail & Transit Divisions. The MassDOT Board ably handles many issues in the limited time available to it during its single monthly meeting, but it is not designed to 'get into the weeds' on the type of long-standing financial and management challenges facing the T, many of which have persisted in the six years since the creation of the MassDOT Board and the three years since the stand-alone MBTA board was eliminated.

The Panel's report called for a renewed emphasis on 'own-source' revenues at the MBTA. Haven't recent legislative reforms also required the MBTA to explore raising revenue through sponsorships and naming-rights?

Yes, but those efforts have been limited and the Panel recommended a more holistic approach to leveraging the T's real estate and other assets. Chapter 46 of the Acts of 2013 required the MBTA to solicit proposals for private entities to 'sponsor' MBTA facilities, an effort that failed to attract meaningful private interest. Chapter 46 also required the submission of a report on the sponsorship initiative, including a description of MBTA attempts to increase sponsorship opportunities. This reporting requirement echoed an earlier, very similar requirement included in Chapter 132 of the Acts of 2012.

The Panel chose to highlight the issue of own-source revenue both to make the point that the MBTA has avenues available to raise revenue beyond that provided by taxpayers, municipalities, and riders, and to underline the community-building power of the MBTA. Thoughtful, creative leveraging of the MBTA's assets – as we are seeing now with the Parcel 13/Hynes Convention Center project – cannot only provide financial benefits for the MBTA but also transportation and place-making benefits for riders and neighborhoods.

The Panel's report also called for 5- and 20-year capital plans. The MBTA already publishes a capital plan every year. What else is needed?

The MBTA is required by Chapter 161A, its enabling statute, to publish a five-year 'rolling' Capital Improvement Program (CIP) every year. But while the process of developing the CIP requires a substantial investment of staff time, the Panel uncovered that the actual execution of the capital program described in each year's CIP is lacking. The MBTA appears to spend approximately half of the capital dollars available to it each year, further compounding the already overwhelming problem of backlogged, unmet maintenance needs. For this reason, the Panel called for the development of nested 5- and 20-year capital plans, both intended

to be strategically focused on bringing the MBTA up to the standard of a modern, reliable public transportation agency. The Panel also anticipated that these new capital plans would be performance-based, and tightly tied to the actual implementation of the capital program through performance management techniques.

H3347, *An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority*, calls for allowing the MBTA to make use of the Design-Build construction method. Wasn't that permission granted in 2009?

No. Chapter 149A of the Acts of 2009 provided the MassDOT Highway Division with the authority to use construction methods such as Design-Build and Construction Manager at-Risk without project-by-project approval from the Office of the Inspector General. This authority was not extended to the MBTA.

H3347, *An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority*, calls for shifting the salaries of MBTA capital personnel to the operating budget. Wasn't that requirement imposed in 2013?

No. Section 62 of the Chapter 46 of the Acts of 2013 required the MassDOT Highway Division to transfer employees from the capital to operating budgets by June of 2016. This provision did not apply to the MBTA.

None of the recent legislative changes made relative to the MBTA have touched on the type of much-needed reform laid out in H3347, *An Act for a Reliable, Sustainable Massachusetts Bay Transportation Authority*. H3347 will provide a Fiscal & Management Control Board that can drive overall fundamental organizational change at the T. H3347 will also provide the FMCB with the tools it needs – for procurement, contracting, and workplace reform – to give the riding public and the taxpayers a reliable, modern public transit system.