

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

DECEMBER 1, 1980.

To the Honorable Senate and House of Representatives:

This morning, as I have called the Great and General Court into a second special session, we directly confront an economic, and more importantly, a potential human calamity that responsible people must find a way to avoid.

As Governor, I must and do accept my responsibility for the continued operation of the MBTA. From the start, I have committed myself to do everything possible to keep the trains, trolleys, and buses running. It is inconceivable that there are those who feel their self interest best served by an MBTA shutdown.

With the decision of the Supreme Judicial Court, I can no longer unilaterally maintain transit service. Without prompt and affirmative action by the Advisory Board or your honorable bodies, the hopes, the livelihood and the safety of hundreds of thousands of people will be irreparably harmed.

In two previous messages, in late May and again in mid-November, I proposed reorganizations of the MBTA which increased state assistance to that system and in return increased state control of those portions of that system which the state funded. Advisory Board control was to be reduced to those areas where the local governments paid the majority of the service cost.

On both occasions, the proposals failed to be enacted.

Since Friday's court determination, I have met personally or through my staff with those people who have proposed reorganization and reform of the MBTA. After reviewing alternative proposals, I am here offering your honorable bodies a new comprehensive compromise plan: One that I hope all parties can unite behind; one that can once and for all put an end to the petty bickering that has long plagued the operation of the MBTA.

It is time to take politics out of the MBTA and to start managing that transportation system. We must stop the tug-of-war between competing interests.

The legislation I submit to you today provides for the following changes:

— The Board of Directors shall appoint a General Manager with Advisory Board approval.

— The Board of Directors is expanded by adding two members from outside the MBTA District. The Secretary of the Executive Office of Transportation and Construction shall be the Chairman.

— The outer 64 cities and towns will have the option to contract for service with private carriers.

— A designee of the Governor will serve on the Advisory Board with a vote equal to that of the largest community.

— Management shall have the inherent right, which cannot be bargained away, to:

direct, appoint, assign, employ, and promote employees;

plan and determine levels of services;

direct, supervise, control, and evaluate departments and programs;

ascribe duties and standards of productivity for all positions;

determine levels of staffing and training;

determine whether goods or services should be made, leased, contracted for, or purchased;

assign overtime;

hire part-time employees.

— The Authority is prohibited from entering into any agreements to allow pension benefit payments to include overtime earnings;

— The Authority is no longer required by statute to provide a guard or employee for every two cars of a passenger train;

— The Authority shall establish a productivity and conduct committee for each bargaining unit, consisting of management and labor, which committee shall recommend the establishment of standards of productivity and conduct of employees.

— The Authority is prohibited from entering into a contract which provides for automatic cost-of-living salary adjustments.

In considering this proposal, it is important to remember how we came to this critical moment.

The Advisory Board, which consists of the Mayor, Chairmen of Boards of Selectmen or City Managers from the 79 cities and towns in

the MBTA District by statute must approve *all* expenditures of the MBTA, whatever the source of the funds.

On December 27, 1979, the Advisory Board approved a \$302 million budget for 1980. At that time, the MBTA advised Boston Mayor Kevin White, Chairman of the Advisory Board, that additional money would be needed because the approved budget did not include funds for the new Braintree service, Light Rail Vehicle Maintenance Program, cost-of-living adjustments granted by previous management, additional electrical power costs for the new Blue Line cars; Boston & Maine labor settlements and expansion of THE RIDE for the handicapped.

After a series of meetings with Advisory Board representatives, it was agreed that the MBTA was, in fact, in real need of an additional \$41 million to support those programs and to maintain essential service through 1980. This was supported by the Advisory Board's Finance and Executive Committees which recommended approval of these funds upon compliance related to union-management issues. Many of those issues are subject to collective bargaining.

The MBTA's historical problems must be addressed or we will be faced with the devastating effects of a shutdown and the system will function year-by-year, from crisis to crisis, with little chance for continued improvements. In spite of longstanding problems today, today's MBTA Management has achieved substantial progress resulting in tangible improvements.

For example:

— Vehicle availability has improved with some 98% of all scheduled trips made daily. We now have an average of 845 buses available for service every day, while only 838 are needed to meet schedules.

— The percentage of missed bus trips has decreased to 1.9% out of all trips scheduled.

— The average daily number of Light Rail Vehicles available for service has improved from 56 in 1978 to 75 in 1980.

— Silverbird Rapid Transit car availability has increased from 56 in 1978 to 65 in 1980.

— Overtime spending today is at the lowest level in the past four years.

— Absenteeism has been reduced dramatically, while disciplinary action has increased.

— The transportation manpower level has been reduced since 1978, while the Authority has made substantial service improvements.

- Commuter Rail ridership has increased by 20% over 1979.
- Arrests by MBTA Police have increased more than 50% for the first nine months of 1980 over the same period last year.
- The MBTA Construction Directorate will have awarded over \$200 million in construction contracts by the end of this year, thereby creating more than 6,000 new construction jobs throughout the Commonwealth.

These are only some of the improvements that are occurring at the MBTA now on a regular basis. Adequate yearly budgets will insure further progress and allow MBTA Management to institute long-range plans for service improvements and cost-saving measures.

The Advisory Board has steadfastly refused throughout 1980 to approve the money which everyone agrees is required. The MBTA reached the \$302 million approved budget level on November 18, 1980. If we are to continue to provide public transportation, money is needed to run the MBTA.

The Supplementary Budget includes funds for the following:

— Total Operating Wages and Fringe Benefits	\$12,135,058
— Materials and Other Items	6,933,792
— Interest on Short-Term Borrowings	3,861,032
— Fuel	6,454,601
— Commuter Rail Operations	11,564,797
— Private Carrier Operations for Local Service	87,189
Total Operating Expenses and Taxes	\$41,036,469

Two weeks ago I requested the Legislature to meet in special session to consider legislation which would permit the MBTA to continue providing mass transit services through 1980. At that time, there remained an option to ensure continued transit services if legislation was not approved. That option was for the Governor to issue an Executive Order and assume control of the MBTA.

On November 18, 1980, after the Legislature adjourned, I issued Executive Order #189 to allow the MBTA to continue to provide for some 600,000 daily trips.

The Supreme Court, in a ruling issued November 28, 1980, declared that Executive Order #189 was beyond the powers granted to the Governor.

In accordance with the Supreme Court ruling, it is now clear that the resolution to the MBTA situation lies with the Legislature.

A shutdown of one of the largest transit systems in the country is totally unacceptable in human and economic terms. Further, a shutdown of the MBTA would cost in excess of \$16 million just to close the system down and start up again on January 1, 1981. For example, \$3.5 million for the payment of fixed charges; \$3 million for payments to the Boston & Maine Railroad; and \$3 million for materials and services contracts already in process. It is also our obligation to protect the multi-million dollar investment in equipment and facilities, as stated in the decision of the Supreme Court.

The compromise I offer here meets the essential concerns of all parties. Legislators from communities outside the MBTA will be represented on the Board of Directors for the first time. Legislators within the MBTA District gain the management rights and continued local accountability they have required. And most importantly, this proposal offers the framework for all sides to work cooperatively in keeping the transit system running and in making it run more efficiently.

I urge you to take expeditious and decisive action in meeting this crisis to resolve the long-term structural problems of the MBTA.

Respectively submitted,

EDWARD J. KING,
Governor of the Commonwealth.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT RELATIVE TO THE STRUCTURE OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

Whereas, the deferred operation of this Act would tend to defeat its purpose, which is to restructure the Massachusetts Bay Transportation Authority in order to prevent disruption of transportation service; 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. Section 3 of Chapter 161A of the General Laws,
2 as most recently amended by section 13 of chapter 480 of the Acts
3 of 1979, is hereby amended by striking out subsection (d) and
4 inserting in place thereof the following:

5 (d) To appoint and employ officers, including a general manager,
6 agents, and employees to serve at the pleasure of the directors,
7 except as may otherwise be provided in collective bargaining agree-
8 ments, and to fix their compensation and conditions of employ-
9 ment; provided, however, the authority may bind itself by contract
10 to employ not more than five senior officers but no such contract
11 shall be for a period of more than five years. The advisory board
12 shall approve the appointment of a general manager.

13 The authority shall annually, on or before January first, submit
14 a schedule of salaries of all its employees and any proposed in-
15 creases therein to the secretary of administration for his review.
16 Said secretary may make recommendations to the authority on
17 said salary structure and shall advise the authority of the prevailing
18 rates that the commonwealth pays for similar services.

1 SECTION 2. Said chapter 161A is hereby amended by striking

2 out section six, as most recently amended by chapter 1140 of the
3 acts of 1973, and inserting in place thereof the following section:

4 *Section 6.* The affairs of the authority shall be managed by a
5 board of seven directors, hereinafter in this chapter called the
6 directors, one of whom shall be the secretary, who shall be the
7 chairman and shall serve without compensation, six of whom shall
8 be appointed by the governor and who shall serve co-terminus with
9 the governor, one with the approval of the advisory board, one
10 with the approval of the fourteen cities and towns, and one with the
11 approval of the sixty-four cities and towns. The approval of the
12 fourteen cities and towns shall be determined by a majority vote of
13 their mayors, or city managers in the cases of Plan D or Plan E
14 cities, and chairmen of selectmen with the vote of each city and
15 town counted as on said advisory board; provided that fifty percent
16 or more of the total votes as set forth in said section seven is
17 represented at such meeting. Two of the appointees of the governor
18 shall not be residents of the area constituting the authority, one
19 shall be experienced in transportation, one a member of organized
20 labor who shall be a member of a national or international labor
21 organization, and one experienced in administration and finance.
22 No more than four of the seven directors shall be members of the
23 same political party.

24 Any director may be removed for cause by the governor and any
25 vacancy in the office of a director shall be filled, by appointment of
26 the governor with the approval applicable to such vacancy. Section
27 three of chapter twelve shall not apply to said board of directors.
28 The six directors appointed by the governor shall receive a salary of
29 seven thousand five hundred dollars. A majority of the directors
30 shall constitute a quorum, but a majority vote of the entire mem-
31 bership of the board of directors shall be required to take any
32 particular action.

1 SECTION 3. Said chapter 161A is hereby further amended by
2 adding after section 7 the following section:

3 *Section 7A.* A designee of the Governor shall be a member of the
4 advisory board, and shall have the same number of votes on said
5 board as the city or town with the greatest number of votes on said
6 board; provided, however, that the designee shall not be consid-

7 ered a voting member on the approval of any appointment to the
8 board of directors, or the position of general manager.

9 The number of votes of the designee shall be in addition to the
10 total number of votes of each city and town as determined by the
11 authority, based upon the most recent annual assessment.

1 SECTION 4. Section 11 of said chapter 161A, as inserted by
2 chapter 563 of the acts of 1964, is hereby amended by adding the
3 following two paragraphs:

4 Any of the sixty-four cities and towns may for the purpose of
5 providing local bus service enter into agreements with any person
6 lawfully authorized to operate any motor bus on any public way
7 therein for the carrying of passengers for hire.

8 Said city or town shall in all respects have the same powers and
9 duties in respect to such private bus carriers as are provided by law
10 for the Department of Public Utilities, except as to safety of
11 equipment and operations, schedules, and routes not being, how-
12 ever, considered safety of equipment and operations for purposes
13 of this paragraph; and provided that the authority shall be notified
14 of the establishment of any such contract local service, but shall not
15 have control or jurisdiction over said service.

1 SECTION 5. Section 19 of said Chapter 161A is hereby amend-
2 ed by striking out the first sentence, as appearing in Section 18 of
3 Chapter 563 of the Acts of 1964, and inserting in place thereof the
4 following sentences: The Directors shall have authority to bargain
5 collectively with labor organizations representing employees of the
6 Authority and to enter into agreements, with such organizations
7 relative to wages, salaries, hours, working conditions, health ben-
8 efits, pensions and retirement allowances of such employees;
9 provided, however, that the Directors shall have no authority to
10 bargain collectively with respect to matters of inherent manage-
11 ment right which shall include the right:

12 (i) to direct, appoint, employ and promote officers, agents and
13 employees and to determine the standards therefor.

14 (ii) (A) to discharge and terminate employees subject to the
15 provisions of clauses (B) and (C).

16 (B) No action set forth in clause (A) shall be sustained if, in a

17 proceeding invoked in accordance with the provisions of clause
18 (C), the employee shall establish by a preponderance of the evi-
19 dence that it was based upon race, color, religion, sex, age, national
20 origin, handicapping condition, marital status, or political affilia-
21 tion of the employee; a reprisal against the employee for disclosure
22 of information by an employee which the employee reasonably
23 believes evidences a violation of any law, rule or regulation or
24 mismanagement, a gross waste of funds, or abuse of authority; a
25 reprisal against any employee for the refusal of any person to
26 engage in political activity; or was based upon a violation of law.

27 (C) The parties may include in any written agreement a grievance
28 procedure culminating in final and binding arbitration which may
29 be invoked in the event any employee of the authority is aggrieved
30 by any action taken under clause (A).

31 (iii) to plan and determine the levels of service provided by the
32 authority.

33 (iv) to direct, supervise, control, and evaluate the departments,
34 units, and programs of the authority; to classify the various posi-
35 tions of the authority and ascribe duties and standards of produc-
36 tivity therefor.

37 (v) to develop and determine levels of staffing and training;

38 (vi) to determine whether goods or services should be made,
39 leased, contracted for, or purchased on either a temporary or
40 permanent basis.

41 (vii) to assign and apportion overtime.

42 (viii) to hire part-time employees.

43 The authority is hereby prohibited from entering into any agree-
44 ment to make pension benefit payments to its employees that are
45 determined in a manner that includes the amount of overtime
46 earnings of said employees.

47 The authority is hereby prohibited from entering into a contract
48 which provides for automatic cost-of-living salary adjustments
49 which are based on changes in the Consumer Price Index or other
50 similar adjustments unless specifically authorized by law.

1 SECTION 6. Section 19F of said chapter 161A, as appearing in
2 section 2 of chapter 405 of the acts of 1978, is hereby amended by
3 striking out paragraph 8 and inserting in place thereof the follow-
4 ing paragraph:

5 8. Such other factors, not confined to the foregoing, which are
6 normally or traditionally taken into consideration in the determi-
7 nation of wages, hours and conditions of employment through
8 voluntary collective bargaining, mediation, fact-finding, arbitra-
9 tion or otherwise between parties, in the public service of the
10 commonwealth, and which are not precluded from bargaining
11 under section nineteen.

1 SECTION 7. Said chapter 161A is hereby further amended by
2 striking out section 29, as appearing in section 18 of chapter 563 of
3 the acts of 1964, and inserting in place thereof the following
4 section:

5 *Section 29.* The authority is authorized and directed from time
6 to time to take all necessary action to secure any federal assistance
7 which is or may become available to the commonwealth or any of
8 its subdivision, for any of the purposes of this chapter. If any
9 federal law, administrative regulations or practice requires any
10 action relating to such federal assistance to be taken by any depart-
11 ment or instrumentality of the commonwealth other than the
12 authority, such other department or instrumentality is authorized
13 and directed to take all such action, including without limitation
14 filing applications for assistance, supervising the expenditure of
15 federal grants or loans to the foregoing, and the authority is hereby
16 authorized and directed to take all actions necessary to permit
17 such other department or instrumentality to comply with all feder-
18 al requirements. If the provisions of any federal law, administrative
19 regulation, or practice governing federal assistance for the pur-
20 poses of this chapter are inconsistent with any provisions of this
21 chapter to the extent that the commonwealth or its subdivisions are
22 prohibited or potentially prohibited from receiving such assist-
23 ance, the chairman of the authority shall, within thirty days after
24 the federal government has notified him that an inconsistency may
25 exist, notify the governor, and the clerks of the house and senate of
26 such inconsistency.

1 SECTION 8. Chapter 161 of the General Laws is hereby
2 amended by striking out section 91A, inserted by chapter 101 of the
3 acts of 1935.

1 SECTION 9. The directors of the authority, and each of the
2 bargaining units within the authority, are hereby directed to estab-
3 lish for each said bargaining unit a productivity and conduct
4 committee to be composed of three members of management
5 chosen by the directors and three members of the respective bar-
6 gaining unit, to be chosen by the officers thereof.

7 Said committees shall recommend the establishment of stand-
8 ards of productivity, and conduct of employees for each respective
9 bargaining unit no later than June thirtieth, nineteen hundred and
10 eighty-one.

11 The directors shall review, revise and implement said standards
12 no later than thirty days after receiving such recommendations,
13 and shall file a report with the clerk of the house of representatives
14 on each set of standards as they are implemented.

1 SECTION 10. Notwithstanding the provisions of subsection (i)
2 of section five of chapter one hundred and sixty-one A of the General
3 Laws, chapter one hundred and fifty-one of the acts of nineteen
4 hundred seventy-nine and section twenty A of chapter fifty-nine of
5 the General Laws, the board of directors of the Massachusetts Bay
6 Transportation Authority may by an affirmative vote of the direc-
7 tors, restore to the budget for the calendar year nineteen hundred
8 and eighty any of or all itemized reductions which the advisory
9 board may make or may have made in any budget or supplement-
10 ary budget submitted to it provided, however, that the amounts so
11 restored to any such budgets shall not cause it to exceed the total
12 sum of three hundred and forty-three million, one hundred sixty-
13 six thousand eight hundred forty-six dollars. Said budget shall
14 cover all expenditures incurred by the Massachusetts Bay Trans-
15 portation Authority Board of Directors during the calendar year
16 from January 1, 1980 through December 31, 1980, including those
17 costs incurred pursuant to Executive Order No. 189, issued on
18 November 18, 1980.

1 SECTION 11. Commencing with the commonwealth's fiscal
2 year nineteen hundred and eighty-four, beginning on July first
3 nineteen hundred and eighty-three, the Massachusetts Bay Trans-
4 portation Authority shall operate on a fiscal year cycle coinciding
5 with that of the commonwealth.

6 The board of directors of said authority, shall prepare a plan to
7 implement said fiscal year change and shall submit for approval
8 said plan to the Secretary of Administration and Finance not later
9 than the first Wednesday of December nineteen hundred and
10 eighty-one.

1 SECTION 12. The Board of Directors serving on the effective
2 date of this act shall continue to serve until their successors are duly
3 appointed.

1 SECTION 13. All positions vacant or which become vacant, on
2 or after the effective date of this act, shall remain vacant; provided,
3 that vacancies for which there exists a critical need may be filled
4 upon certification of said critical need by the Secretary of Adminis-
5 tration and Finance. No employee covered under a collective
6 bargaining agreement shall be terminated, except as provided
7 under the provisions of any such agreement, as a result of this act.

1 SECTION 14. The provisions of this act are severable, and if
2 any of its provisions or an application thereof shall be held uncon-
3 stitutional by any court of competent jurisdiction, the decision of
4 such court shall not affect or impair any of the remaining provi-
5 sions or other applications thereof.