

Chap. 581. AN ACT RELATIVE TO THE STRUCTURE OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

Be it enacted, etc., as follows:

SECTION 1. Section ninety-one A of chapter one hundred and sixty-one of the General Laws is hereby repealed.

SECTION 2. Section 3 of chapter 161A of the General Laws is hereby amended by striking out paragraph (d), as most recently amended by section 6 of chapter 1140 of the acts of 1973, and inserting in place thereof the following paragraph:-

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

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

SECTION 3. Said chapter 161A is hereby further amended by striking out section 6, as most recently amended by section 10 of said chapter 1140, and inserting in place thereof the following section:-

Section 6. The authority shall be managed by a board of seven directors, hereinafter in this chapter called the directors, one of whom shall be the secretary, who shall be the chairman and shall not be compensated therefor, six of whom shall be appointed by the governor and who shall serve coterminus with the governor, one with the approval of the advisory board, one with the approval of the fourteen cities and towns, and one with the approval of the sixty-four cities and towns. The approval of the fourteen cities and towns shall be determined by a majority vote of their mayors, or city managers in the cases of Plan D or Plan E cities, and chairmen of the boards of selectmen and town managers in towns having a town council form of government with the vote of each city and town counted as on said advisory board; provided that fifty per cent or more of the total votes as set forth in said section seven is represented at such meeting. The approval of the advisory board and of the sixty-four cities

ACTS, 1980. - Chap. 581.

and towns shall be determined by a majority vote of their mayors or city managers and chairmen of selectmen or town managers present and voting thereon with the vote of each city and town counted as on said advisory board; provided that fifty per cent or more of the total votes as set forth in said section seven is represented at such meeting. One of the appointees of the governor shall be experienced in transportation, one a member of organized labor who shall be a member of a national or international labor organization, and one experienced in administration and finance. No more than four of the seven directors shall be members of the same political party. Two of the appointees of the governor shall not be residents of the area constituting the authority.

Any director except the chairman may be removed for cause by the governor and any vacancy in the office of a director shall be filled, by appointment of the governor with the approval applicable to such under the provisions of section three of chapter twelve shall not apply to said board of directors. The six directors appointed by the governor shall receive a salary of seven thousand five hundred dollars. A majority of the directors shall constitute a quorum, but a majority vote of the entire membership of the board of directors shall be required to take any particular action.

SECTION 4. Said chapter 161A is hereby further amended by inserting after section 7 the following section:-

Section 7A. A designee of the governor shall be a member of the advisory board, and shall have the same number of votes on said board as the city or town with the greatest number of votes on said board; provided, however, that the designee shall not be considered a voting member on the approval of any appointment to the board of directors, or the position of general manager; provided, further, that in any case where the designee of the governor, and said city or town with the greatest number of votes shall vote the same, their combined vote shall equal the vote of said city or town; and provided, further, that an affirmative vote of at least one-third of the cities and towns present and voting shall be required for approval of any action or appointment.

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

SECTION 5. Said chapter 161A is hereby further amended by inserting after section 11 the following section:-

Section 11A. Any of the sixty-four cities and towns may for the purpose of providing local bus service enter into agreements with any person lawfully authorized to operate any motor bus on

ACTS, 1980. - Chap. 581.

any public way therein for the carrying of passengers for hire.

Said city or town shall have the same powers and duties in respect to such private bus carriers as are provided by law for the department of public utilities, except as to safety of equipment and operations, schedules, and routes not being, however, considered safety of equipment and operations for purposes of this paragraph; and provided that the authority shall be notified of the establishment of any such contract local service, but shall not have control or jurisdiction over said service.

SECTION 6. The third paragraph of section 12 of said chapter 161A, as appearing in section 18 of chapter 563 of the acts of 1964, is hereby amended by adding the following sentence:- The authority shall consult with the finance advisory board established by section ninety-seven of chapter six prior to the sale of any such notes as to the timing and terms thereof.

SECTION 7. Subsection (a) of section 12A of said chapter 161A, as appearing in section 15 of chapter 4 of the acts of 1976, is hereby amended by adding the following sentence:- The authority shall consult with the finance advisory board established by section ninety-seven of chapter six prior to the sale of any such notes as to the timing and terms thereof.

SECTION 8. Section 19 of said chapter 161A is hereby amended by striking out the first sentence, as appearing in section 18 of chapter 563 of the acts of 1964, and inserting in place thereof the following sentences:- The directors shall have authority to bargain collectively with labor organizations representing employees of the authority and to enter into agreements, with such organizations relative to wages, salaries, hours, working conditions, health benefits, pensions and retirement allowances of such employees; provided, however, that the directors shall have no authority to bargain collectively and shall have no authority to enter into collective bargaining agreements with respect to matters of inherent management right which shall include the right:

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

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

(B) No action set forth in (A) shall be sustained if, in a proceeding invoked in accordance with the provisions of such clause (C), the employee shall establish by a preponderance of the evidence that it was based upon race, color, religion, sex, age, national origin, handicapping condition, marital status, or political affiliation or activities or union activities or union organizing of the employees; a reprisal against the employee for disclosure of information by an employee which the employee

ACTS, 1980. - Chap. 581.

reasonably believes evidences a violation of any law, rule or regulation or mismanagement, a gross waste of funds, or abuse of authority; a reprisal against any employee for the refusal of any person to engage in political activity.

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

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

(iv) to direct, supervise, control, and evaluate the departments, units, and programs of the authority; to classify the various positions of the authority and ascribe duties and standards of productivity therefor.

(v) to develop and determine levels of staffing and training.

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

(vii) to assign and apportion overtime.

(viii) to hire part-time employees.

The authority is hereby prohibited from bargaining collectively or entering into any agreement to make pension benefit payments to its employees that are determined in a manner that includes the amount of overtime earnings of said employees.

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

SECTION 9. Section 19F of said chapter 161A, as appearing in section 2 of chapter 405 of the acts of 1978, is hereby amended by striking out paragraph 8 and inserting in place thereof the following paragraph: -

8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service of the commonwealth, and which are not precluded from bargaining under section nineteen.

SECTION 10. The second paragraph of section 23 of said chapter 161A, as appearing in section 18 of chapter 563 of the acts of 1964, is hereby amended by adding the following sentence: - No bonds of the authority shall be sold by the authority unless prior to such sale the authority shall have consulted with the finance advisory board established by section ninety-seven of chapter six as to the timing and terms thereof.

ACTS, 1980. - Chap. 581.

SECTION 11. The fourth paragraph of said section 23 of said chapter 161A, as amended by section 3 of chapter 650 of the acts of 1965, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- Subject to the requirement of consultation with the finance advisory board established by section ninety-seven of chapter six, the authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interests of the authority.

SECTION 12. Said chapter 161A is hereby further amended by striking out section 29, as appearing in section 18 of chapter 563 of the acts of 1964, and inserting in place thereof the following section:-

Section 29. The authority is authorized and directed from time to time to take all necessary action to secure any federal assistance which is or may become available to the commonwealth or any of its political subdivisions, for any of the purposes of this chapter. If any federal law, administrative regulations or practice requires any action relating to such federal assistance to be taken by any department or instrumentality of the commonwealth other than the authority, such other department or instrumentality is authorized and directed to take all such action, including without limitation filing applications for assistance, supervising the expenditure of federal grants or loans to the foregoing, and the authority is hereby authorized and directed to take all actions which are not inconsistent with state law and which are necessary to permit such other department or instrumentality to comply with federal requirements. If the provisions of any federal law, administrative regulation, or practice governing federal assistance for the purposes of this chapter are inconsistent with any provisions of this chapter to the extent that the commonwealth or its political subdivisions are prohibited or potentially prohibited from receiving such assistance, the chairman of the authority shall, within thirty days after the federal government has notified him that an inconsistency may exist, notify the governor, and the clerks of the house and senate of such inconsistency.

SECTION 13. Chapter 151 of the acts of 1979 is hereby amended by striking out section 8A and inserting in place thereof the following two sections:-

Section 8A. The budget of the Massachusetts Bay Transportation Authority shall not be greater than one hundred and four per cent of the budget approved for said authority for the preceding fiscal year, provided, however, that said budget may be increased by those amounts approved in accordance with section eight B.

ACTS, 1980. - Chap. 581.

Section 8B. The Massachusetts Bay Transportation Authority may increase the budget limit imposed by section eight A by the approval of a specified amount by a two-thirds vote of the members of the advisory board present and voting.

SECTION 14. Section 16 of said chapter 151 is amended by adding the following at the end thereof: -

; provided, however, that sections eight A and eight B shall not expire until December thirty-first, nineteen hundred and eighty-three, and the provisions of section two, and sections 15A through 15E inclusive, insofar as applicable to the provisions of section eight A, shall not expire until December thirty-first, nineteen hundred and eighty-three.

SECTION 15. The directors of the authority, and each of the bargaining units within the authority, are hereby directed to establish for each said bargaining unit a productivity and conduct committee to be composed of three members of management chosen by the directors and three members of the respective bargaining unit, to be chosen by the officers thereof.

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

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

SECTION 16. The authority is hereby authorized and directed to develop, implement and utilize an equipment maintenance information recording system for the authority. The authority shall establish a joint labor-management committee for the purpose of providing consultation and cooperation in the development of said equipment maintenance information recording system. Said systems reporting requirements shall include, but not be limited to, vehicle numbers, defects reported, defects found, cause determination, action taken, by whom, and duration of repair. Said system is to be developed, approved by the authority's board of directors, implemented in the automotive equipment maintenance department, and a report outlining said system filed in the office of the house clerk no later than the first Wednesday of January, nineteen hundred and eighty-two.

The clerk shall forward said report to the joint committees on transportation and post audit and oversight, and the report shall be reviewed by a subcommittee of the post audit and oversight committee, which shall be appointed by the chairman thereof.

Said subcommittee, in consultation with the transportation committee may make such recommendations as they deem neces-

sary to the authority with regard to said information system.

Said systems will be initially implemented in the automotive department and upon acceptance by the authority initiated in all other equipment maintenance departments as it applies to said departments.

SECTION 17. Commencing with the commonwealth's fiscal year nineteen hundred and eighty-four, beginning on July first, nineteen hundred and eighty-three, the Massachusetts Bay Transportation Authority shall operate on a fiscal year cycle coinciding with that of the commonwealth.

The board of directors of said authority shall prepare a plan to implement said fiscal year change and shall submit for approval said plan to the secretary of administration and finance not later than the first Wednesday of December, nineteen hundred and eighty-one.

Notwithstanding any general or special law to the contrary, commencing with the commonwealth's fiscal year nineteen hundred and eighty-four, all expenses of the authority shall be in accordance with an itemized budget. The authority, in consultation with the secretary of transportation and the advisory board, shall prepare and shall submit such budget for the ensuing fiscal year to the secretary and the advisory board not later than the date set by the commissioner of administration pursuant to section three of chapter twenty-nine of the General Laws for the submission of statements to the budget director.

The secretary shall review and make recommendations regarding such budget within thirty days after submission.

Within forty-five days after submission, the advisory board shall approve said budget as submitted or subject it to such itemized reductions therein as the advisory board shall deem appropriate. Such itemized reductions shall be accompanied by a clear delineation of the areas of services to be reduced and the degree of reduction of service including a statement by location, line, and mode of the level of maintainable service resulting from such itemized reduction. The advisory board shall vote on each item within the authority's budget and may subject the authority's proposed budget to itemized reductions as the advisory board may deem appropriate. The board of directors shall, no later than the first Wednesday in December file a copy of such budget with the governor. Said budget shall include all requests and recommendations of the authority for capital outlay programs and projects for the ensuing year.

Within three weeks after the convening of the general court the governor shall file a copy of the budget with the clerk of the house of representatives and the clerk of the senate. Said budget shall include all requests and recommendations of the

ACTS, 1980. - Chap. 581.

authority for capital outlay programs and projects for the ensuing year.

The governor shall include as a line item within the budget submitted pursuant to Section 2 of Article LXIII of the Amendments to the Constitution his recommendation for the share of the net cost of service at the Massachusetts Bay Transportation Authority to be paid by the commonwealth.

SECTION 18. Notwithstanding the provisions of subsection (i) of section five of chapter one hundred and sixty-one A of the General Laws, chapter one hundred and fifty-one of the acts of nineteen hundred and seventy-nine, section twenty-seven C of chapter twenty-nine of the General Laws and of section twenty A of chapter fifty-nine of the General Laws, the board of directors of the Massachusetts Bay Transportation Authority may by an affirmative vote of the directors, approve and restore to the budget for the calendar year nineteen hundred and eighty any or all itemized reductions which the advisory board may make or may have made in any budget or supplementary budget submitted to it; provided, however, that the amounts so approved and so restored to any such budgets shall not cause it to exceed the total sum of three hundred and forty-three million one hundred and sixty-six thousand eight hundred and forty-six dollars; and provided, further, that no amount in excess of three hundred and forty-three million dollars shall be spent unless the authority conducts its labor negotiations in accordance with chapter four hundred and five of the acts of nineteen hundred and seventy-eight. Said budget shall cover all expenditures incurred by the Massachusetts Bay Transportation Authority board of directors during calendar year nineteen hundred and eighty, including without limitation those costs incurred pursuant to Executive Order No. 189, issued on November eighteenth, nineteen hundred and eighty. The Local Aid Fund shall not be reduced by the amount of any funds restored pursuant to this section.

SECTION 19. In addition to the contract assistance authorized to be provided in section twenty-eight of chapter one hundred and sixty-one A of the General Laws, the commonwealth, acting by and through the executive office of administration and finance, may enter into an additional contract with the Massachusetts Bay Transportation Authority for contract assistance of a portion of the net cost of the calendar 1980 budget approved by the Advisory Board. In addition, for said year, the commonwealth shall provide assistance equal to the seventy-five per cent of the net cost of service in excess of three hundred and two million, one hundred and thirty thousand, three hundred and seventy-seven dollars authorized by the advisory board for operation of the authority for such year.



ACTS, 1980. - Chap. 581.

SECTION 20. One-third of said additional net cost of service assumed by the commonwealth pursuant to section fourteen C shall be included in any determination of total costs, charges, or fees, under the provisions of section twenty A of chapter fifty-nine of the General Laws, for the cities and towns within the jurisdiction of the authority.

SECTION 21. Section twenty A of chapter fifty-nine of the General Laws, as inserted by section twelve of chapter five hundred and eighty of the acts of nineteen hundred and eighty, shall apply to costs assessed upon member cities and towns of the Massachusetts Bay Transportation Authority, for the operation thereof, beginning calendar year nineteen hundred and eighty-one.

SECTION 22. The board of directors serving on the effective date of this act shall continue to serve until their successors are duly appointed.

SECTION 23. All positions vacant or which become vacant, on or after the effective date of this act, shall remain vacant; provided, that vacancies for which there exists a critical need may be filled upon certification of said critical need by the secretary of administration and finance; and provided, further, that said secretary shall report quarterly to the house and senate committees on ways and means the number, salary, title and job descriptions of all persons hired under the provisions of this section. No employee shall be terminated as part of any reduction in force, which result from enactment of this act, except in accordance with the provisions of the collective bargaining agreement in effect on the date of such termination.

SECTION 24. Section four of this act shall become inoperative on July first, nineteen hundred and eighty-three.

SECTION 25. The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions or other applications thereof.

Approved December 7, 1980.

EMERGENCY LETTER - December 8, 1980 @ 12:46 P.M.