June 24, 2015

Re: Legislative Action on the MBTA Reforms

Dear Members of the Massachusetts General Court:

Four months after the T's collapse this past February, the state has reached a pivotal moment in which the Legislature must make crucial decisions on the future of the state's key public transit system. If lawmakers adopt a bill with only incremental changes, rather than providing the Governor with the full complement of tools to fix the T, they will doom the MBTA's future and undermine the state's economy.

As drafted, the Joint Committee on Transportation's bill proposes only incremental changes. It will not help the state to create a world class transit system because it ignores the most salient factors plaguing the T's ability to deliver safe and reliable service.

To truly fix the T, the Legislature must adopt reforms to address unequivocally the two essential problems that the Foundation has repeatedly documented: 1) the T's operating budget is structurally and unsustainably out of balance and 2) the T cannot maintain its assets and this is causing a rapid deterioration in transit services. In sum, the T's structure is fundamentally broken and must be fixed. Failing that, we will not have a viable transit system in the near future.

The T confronts massive operating budget shortfalls that expand each year and will reach a projected $450 million in FY 2020 and $800 million by FY 2024. Furthermore, the MBTA must balance its annual budget in order to address its alarming maintenance backlog and borrow sufficient money to make much-needed capital investments and ongoing improvements to its infrastructure.

As with any budget challenge, the options for addressing it are few: raise revenue, decrease expenses or use a combination of the two. The Legislature must tackle this staggering budget gap by seeking ways to grow MBTA revenues and reduce expenses.

The Legislature should provide the Governor the ability to raise fares beyond the statutory limit of five percent every two years. The state should not impose an arbitrary limit on fare increases when the T's expenses are growing at more than twice that rate. In addition to removing the rate cap, elected officials should review all of the T's revenue sources and require the T to grow its "own-sources" of revenue to help address the longstanding revenue challenges in a meaningful way.

Addressing the expense side of the ledger is also vital to the T's turnaround, and in particular lawmakers must focus on the Pacheco law and binding arbitration.

First, the Legislature should suspend for five years the Pacheco law. While the Foundation supports the concept of ensuring equal footing for state employees and private contractors in competitive procurement, in practice the law does not do that. Instead, it impedes the ability of state government to leverage its resources in the most efficient manner by constructing extraordinary barriers for both agencies looking to procure services and contractors seeking to bid.

The Pacheco law requires state agencies to compare the cost of providing a service by the private sector with the cost of the public sector, assuming public employees deliver that service in the most "cost-efficient" manner. However, it does not provide a framework for determining cost-efficiency, and once a project begins, no one determines if the public sector in fact met that standard.

The Pacheco law has hindered the T's fundamental ability to maintain and repair its assets. Over the past five years, the barriers created by the Pacheco law have contributed to T's inability to spend $2.2 billion in available funds to keep the system operating. Fixing the nearly $7 billion backlog of repair needs requires far greater flexibility in procurement protocols. Otherwise, transit services will continue to degrade.

The Legislature should provide the Governor with final approval over binding arbitration decisions, another reasonable request when one considers that labor and benefits are the biggest expense of the MBTA. Binding arbitration is unavailable to any other state or municipal employee. In cases of municipal arbitration, the local legislative body has the authority to accept or reject an arbitrator's decision if it considers it unaffordable, and MBTA management should be provided the same right. The T's binding arbitration structure has increased expenses by tens of millions annually. The MBTA can simply not afford to continue awarding overly generous benefits.

Should lawmakers fail to adopt these crucial reforms, the state will face a dilemma, each with a profound impact on the state's residents: transfer hundreds of millions of taxpayer dollars to the MBTA at the expense of increased investments in local aid, education, economic development and public safety <u>or</u> dramatically reduce transit services in order to balance the T's budget.

As the House and Senate deliberate, the Foundation's recommendations remain unchanged and grow more urgent with each passing day:

- Create a Fiscal Management and Control Board (FMCB) with the necessary authority and a clear governing structure controlled by the Governor to bring a heightened focus, sense of urgency and increased accountability to the management of the MBTA.
- Provide the FMCB with tools to control escalating MBTA operating costs, particularly a five-year moratorium on the Pacheco law.
- Eliminate final binding arbitration for MBTA unions.
- Give the FMCB the authority to increase MBTA fare revenues above the statutorily imposed five percent cap every two years.
- Separate the T's operating and capital budgets with established revenue sources and uses.
- Guarantee state funding to cover debt service costs from Central Artery mitigation projects, debt transferred before 2000 and the costs to move T personnel from the capital to the operating budget.

Fixing the MBTA is the Legislature's most important responsibility this year, and the impact of its decisions cannot be overstated. A set of incremental changes that only partially addresses the complex and deeply entrenched issues at the T is not enough. Rather, the Legislature must adopt a comprehensive and far-reaching reform package that will revise the T's budget structure, enable capital investment and foster a customer-focused culture. The T's long-term viability depends on it.

Eileen McAnneny

Eileen McAnneny, President