



Massachusetts' Experience with Hard and Soft Receiverships

Why the Soft Receivership Model Makes Sense for the MBTA

by James Stergios

Last week Pioneer Institute called for the MBTA to be placed in “soft receivership,” or what is often called a finance control board. The purposes of this policy brief are to consider Massachusetts’ experience with two recent receiverships, and to provide useful background for the new special commission established by Governor Charlie Baker to analyze the causes of the current situation at the MBTA and the reforms and governance changes needed to improve it.

Often when people think about receiverships, they think of the extreme action taken in the cities of Detroit and Central Falls. In these cases, an emergency manager was appointed and overseen by a judge to enact structural reforms of operations. The emergency managers’ main focus was the reduction of long-term legacy costs (pensions, retiree health insurance) and alignment of long-term spending trends (driven by wage and benefit agreements) with likely revenues. In neither case did the emergency manager have the power to reduce debt unilaterally—that required a federal bankruptcy judge.

In calling for a “soft receivership” for the MBTA, Pioneer does not seek such wide-ranging powers. Perhaps the best way to describe what we are looking for is to describe the powers granted to the full receivership in Chelsea and the “soft receivership” in Springfield. The major distinction between these Massachusetts interventions is that in the case of the City of Chelsea, the receiver obtained the power to break so-called Chapter 150E protections—that is, protections afforded collectively bargained wages and benefits. In the case of the “soft receivership” in Springfield, no such power was granted.

An additional distinction — and the one that technically distinguishes between a receivership and a control board — is the degree of local participation in the decision making. In Chelsea, the receiver, appointed by the state, was granted extraordinary executive authority, while the office of Mayor was vacated and the City Council only allowed to serve in an advisory capacity (though the

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receiver retained certain expedited authority to enact zoning changes). There was no large-scale line of credit provided, only sufficient funds to cover the expenses of the Receiver's Office. In Springfield, the Control Board, a five-member body (the state acting through the Secretary of Administration and Finance appointing three members), served with the Mayor and the President of the City Council. Although they acted together, meeting in open session, the Control Board uniquely possessed all executive and legislative authority along with the \$52 million line of credit, disbursements being subject to the approval of the Secretary of Administration and Finance.

It is this latter model, often called a "finance control board," that we are seeking. More specifically, we seek:

- An emergency, time-limited board that would signal an urgency to bringing the T into a state of good repair.
- A board composed of individuals with extensive knowledge of transit, finance, technology and customer service.
- Legislative direction to focus solely on maintenance and to postpone other expansion commitments until the Authority reaches a state of good repair (the new board would remain in place until the T meets benchmarks for on-time arrivals and other performance metrics).
- Legislatively derived powers to: (1) swiftly rationalize fare and fee schedules (up or down) based on business considerations, restructure the bus service, and operate with the broad control over work rules; (2) re-open procurements, where appropriate, and shift greater risk to vendors; (3) temporarily suspend the so-called Pacheco Law, which limits competitive bidding, drives up maintenance costs and impedes accountability for performance; and (4) make its pension finances transparent to the public and shift asset management to the state pension system.

Finally, we would urge discussions among the governor and our congressional delegation so that the MBTA control board would have their support in

seeking flexibility from federal and state legislative mandates, such as Buy America provisions and overly prescriptive federal regulations, which extend production times and increase operating costs.

What was accomplished through state interventions in Chelsea and Springfield?

The Chelsea and Springfield experiences were the actions of a creditor and guarantor of last resort (the State) stepping in to avoid additional liabilities — and further damage to the lives of the cities' residents. In both cases, corruption, a lack of professional management, and a loss of faith in the future of the two cities had driven away hope, residents and businesses, and therefore the value of home and commercial property, the source of most municipal revenue, collapsed. The state directs significant resources towards these cities, covering about 90 percent of all school expenditures and more than \$280 million (or 60 percent) of the Springfield budget, predominantly through restricted purpose funds.

In both cases, intervention was felt to be the responsible course of action because the state served as the majority investor and shareholder. It could not see the cities decline or continue to flounder. As the state considers a path forward for the MBTA, we believe it is important to consider the experiences and policy innovations—in essence, the lessons we learned—from Chelsea and Springfield.

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Similarities

At face value, the Chelsea and Springfield cases were similar in that both cities were facing bankruptcy and confronting difficulties that went beyond the purely fiscal. Chelsea had been poised on the edge of

bankruptcy for some years, narrowly averting it until 1991, while Springfield had been managing to avoid financial collapse since a state bailout authorized deficit-financed bonds in the mid-1980s. In addition, both faced a general economic free fall as jobs and middleclass families began to depart for better schools in safer suburbs.

In both the Chelsea and Springfield interventions, the state made the establishment of professional management with a focus on fiscal management a key plank in its efforts. These teams had an impressive list of achievements in both cities:

1. They ensured, often starting from scratch, that there were adequate financial tools in place, including systems to ensure accurate and real-time access to financial, employment and service contract data. They put into place computer systems, real-time data software, data capturing efforts, and pro-formas, among other useful tools.
2. They standardized and established policies. This included standardizing benefits packages, unifying the general fund, establishing general and fiscal policies, creating a capital budget, and establishing an operating budget encompassing all revenues and expenditures so that financial plans for future years as well as cash management in the immediate term were based on the full financial picture. The teams also established performance measures and missions, and began to track city employee performance accordingly.
3. They gained direct oversight over the city budget, municipal employees, external contracts and the coordinated state resources. As part of this effort, there were full reviews of all expenditures in search of efficiencies in the delivery of services as well as access to all accounts, when necessary, to ensure that key services were maintained. The overall budget was brought back in line with existing revenues, and opportunities for competitive bidding of services were firmly established including, where appropriate, privatization (in order to lower head counts and health care and pension liabilities). To the degree possible, both teams

sought, and seek, to improve the provision of services. Finally, this work included oversight of contracts, especially ones related to infrastructure.

4. They coordinated and rationalized government structures. In Chelsea, staff from the receiver's office were placed atop each of the core functional areas of government and advanced a top-down approach to reform. Despite their efforts, streamlining of government structures was limited until the very end of the three-year receivership, when the receiver working with the civic leaders sought and obtained community endorsement of a city manager form of government, which finally overhauled the general structure and various offices reporting to the City Manager.

In Springfield, at the administrative level this process started earlier, with the control board working to streamline deep within the existing structures and reduce the number of reports to the City Council and the Mayor. As a result, the number of direct reports to the Mayor fell from 38 to 11. Consolidations occurred between the parks and building departments; the planning, economic and community development, and building code functions; and the health and human services functions. The Mayor led the effort to change the overall governance structure, expanding participation by increasing the number of city councilors from 9 to 13 members. In 2009, the mayor's terms was extended from two to four years.

5. They revamped the economic development function and put into place key economic growth measures to ensure a focus on increasing business growth.
6. They redirected the municipal police department. In Chelsea, the critical action was the implementation of a department-wide community-based policing initiative. In Springfield, an early push to remove the police commissioner was followed by the involvement of the state police in revamping data use, tamping down critical crime in key

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neighborhoods and finally the arrival of former EOPS Secretary Ed Flynn as commissioner. Flynn drove numerous changes in policing, deployment and accountability practice.

In both Chelsea and Springfield, change to the police came within a three-year horizon. In the case of Chelsea, the state's office for administration and finance (EOAF) retained the ability to renew the receivership twice for an additional year. Springfield's initial term was similar; the term of the Control Board was extended.

7. They had an initial phase that was focused on cutting immediate losses and "cauterizing" long-term cash pressures. The second phase was a focus on streamlining service delivery. The third and final phase focused on setting up the structures that could lead to an effective form of government (performance metrics, accountability, strategic planning and phasedown) after the end of the receivership.
8. Finally, in both cases, a stronger up front definition of "success" would have been helpful in providing the residents as well as community and business leaders greater certainty. The lack of a statutory, criteria-based exit was, we believe, a missed opportunity to provide incentives for change.

Differences

Many of the differences between Chelsea and Springfield follow from Chelsea being a full receivership while in Springfield the state's control was mitigated by the creation of a control board. Others follow from Chelsea's proximity to Boston and other local circumstances.

1. Being unconnected to community relationships and power structures, the Chelsea receivership made hard decisions often without structures to air local concerns and impacts. In Chelsea, this took roughly four and a half years. In Springfield, under the Control Board, the presence on the board of the Mayor and the City Council President ensured that local concerns

and needs were aired and factored into decision making. In practice, the votes and deliberation of the Springfield Finance Control Board (SFCB), as a multi-member body, are bound by the requirements of the open meeting law, and occur at public meetings, whereas in Chelsea the receiver could reach such decisions in the privacy of his office.

By the very nature of the circumstances each community faced, outsider status allowed an independent approach to decision making, unhampered by long traditions and existing status quo relationships, which can stifle difficult but needed decisions. Each had its own form of balancing the necessary and the acceptable; while the Receivership could be more draconian in its approach, the Control Board has adopted a slower, steadier approach.

2. Chelsea's proximity to Boston gave it options and immediate opportunities for revenue generation that were not available to Springfield. Proximity to Boston and to Logan Airport meant that the Receiver could work with MassPort to move employee parking and rental car storage into Chelsea. In addition, MassPort frontloaded its annual payments to Chelsea, resulting in a one-time payment of roughly \$5 million, allowing the City to cover some of its outstanding obligations. The same use was made of the excise tax payments the city gained from the rental car business. Most importantly over the long-term, proximity to Boston meant that once the pieces of baseline stability were in place, the city could hope to remake itself and benefit from the heated Boston housing market. The completion of the Zakim Bridge reduced the driving time to downtown Boston to only minutes. Springfield, like most other older, industrialized cities outside of Greater Boston, lacks these options.
3. In Chelsea, the Weld administration's desire to see innovation implemented in the city led to a strong receivership that could undertake difficult reforms that went well beyond limited cost cutting and budget rationalizations.

Examples include the reduction of available surpluses in the assessing department's overlay account for tax abatements, implementation of a trash fee and the imposition of increased fees. The receiver implemented a variety of far-reaching reforms touching on everything from public construction, privatization of services and budget and civil service processes. In Springfield, the control board had to take a more process-oriented approach, involving existing structures and practice to a far greater degree. For the SFCB, in practice that meant engaging consultants to analyze existing conditions, develop work plans to improve service delivery, and modernize or replace management. While the SFCB did undertake a small number of privatizations, its focus was on competitive bidding opportunities.

4. In Springfield, to a far higher degree than in Chelsea, there was a significant issue of uncollected property taxes on tax title properties, estimated at \$38 million. At the time of the establishment of the control board, there were approximately 2,000 tax delinquent properties within the city. In response, the SFCB hired an outside consultant and several attorneys to work with the Land Court to fast-track tax foreclosure cases. The control board and the City over time had on file with the Land Court thousands of cases and collected tens of millions of dollars in back taxes.
5. The long-term impact in Chelsea was arguably deeper. The form of Chelsea's city government was changed substantially with the adoption of a city manager. The hand-off to the city manager was also tightly coordinated, with the city manager's first two years in existence, in effect, an extension of the receivership. Two examples for illustrative purposes: The City of Chelsea did not achieve an investment grade bond rating until after receivership; and the financial and operational system changes not completed by the official end of the receivership were completed by the city manager. As noted above, the City of Springfield's governmental

structures have been adjusted modestly, with rationalization concentrated at the lower levels.

6. A final difference is that in 2005 the state complemented the SFCB's work with an effort to target transportation, environmental and housing investments into three residential neighborhoods abutting the metro/downtown area. This initiative, undertaken by the EOAF and the then extant Office for Commonwealth Development, and involving close coordination with the EOPS, coordinated and refocused redevelopment on areas of the city where EOPS' public order strategy was active. It undertook actions and made a series of "small bore" investments valued at \$14 million in sidewalk and streetscape repair, the creation of new housing units, the repair of 13 city parks, industrial park infrastructure and the cleanup of dozens of nuisance sites in the city.

Conclusions and Recommendations

Pioneer believes that in the case of the MBTA, the finance control board approach is superior to the Chelsea full receivership approach. Here is why:

1. Political reality: The MBTA is essential to the region and we cannot risk failure. While we believe current cost structures, salaries and benefits are not sustainable over time, we are in an emergency situation and prefer solid steps forward toward sustainability. To put it bluntly, there is no likelihood the legislature would allow for a full Chelsea-style receivership, and even if they did it is likely that the Carmen's Union would make its power felt through work-to-rule and even more damaging actions.
2. Stickiness of reforms: A more consultative process — without what would be justifiably perceived by the Carmen's Union as an attack on existing wage and benefit agreements — would give reforms undertaken a greater chance of continuing unchallenged after the control board's term comes to an end.
3. Public process: The control board approach would allow for fast action in adopting best management practices but slower progress in

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addressing long-term issues of sustainability. With the votes and deliberation of the MBTA control board bound by open meeting law requirements, there are important opportunities to engage the public. That said, to do its work in a more public fashion, the control board will need adequate funds to engage consultants to analyze existing conditions, develop work plans to improve service delivery and modernize management practices.

A finance control board is not a panacea for all of the MBTA's future woes, but it is a proven mechanism for stabilizing and improving operations and planning in a compressed timeframe.

While both Chelsea and Springfield continue to face their own unique challenges today, the dramatic change in governance, and the tools that came with it, provided both cities a strong foundation for future decision-making. Similarly, a finance control board is not a panacea for all of the MBTA's future woes, but it is a proven mechanism for stabilizing and improving operations and planning in a compressed timeframe. Such a break with the past is the only way to position the T to make real progress on longstanding challenges.

We highlight the following lessons from the Chelsea and Springfield experiences that are applicable to resolving the MBTA's current crisis:

1. Ensure strong involvement from EOAF and as needed from the treasurer's, comptroller's and revenue offices and departments. A transparent system of financial reporting and best practices can have considerable impact on agencies that repeatedly craft deficient budgets. Standardization of policy, the establishment of performance measures and missions, and performance tracking are a critical part of this work.
2. Financial control should include crucial operations and even exemptions from current law. The board would need the power to swiftly rationalize fare and fee schedules (up or down) based on business considerations, restructure the bus service and operate with the broad control over work rules. The board needs the power to re-open procurements, where appropriate, and shift greater risk to vendors. Additionally, to increase operational efficiency, it would need the power to temporarily set aside, if need be, the so-called Pacheco Law, which limits competitive bidding, drives up maintenance costs and impedes accountability for performance. Finally, the control board would need the power to make its pension finances transparent to the public and shift asset management to be the state pension system.
3. There should be a quarterly report to the public, with a press conference, reviewing the progress made at the MBTA. The public's continued engagement throughout the effort to bring high-quality service to the MBTA is needed. A key piece of this report must be how the T is and will in the future define excellence (on-time performance, rider comfort and amenities), and how it will communicate with users on a daily basis (e.g., publicly available performance metrics, strategic planning).
4. After an initial phase of reforms (budget reprioritization, consolidations, redeployment of resources, specific privatizations, etc.), there should be a two-part public process that re-engages the public in understanding the MBTA of the future: (1) Review the progress made and the likely time needed to conclude the control board's work; and (2) Begin a dialogue about the right governance structure for the MBTA to ensure that we never end up in the situation we have found ourselves in again.
5. The MBTA should further emphasize growth of non-fare and non-parking fee revenue as a key initiative. Given its service of Boston and surrounding communities, the T will likely have many opportunities for revenue generation available to it in a way that is similar to Chelsea. Given the value of real estate within the 495

loop, it is an obvious first place to look (sales, leases, etc.), though other opportunities will also be available.

6. Reform efforts should not forget to consider the almost 300-member MBTA Police, who protect users on our many subway and commuter lines, bus routes, and ferry lines. While there are clearly operational and budget issues that may come under the purview of the control board, due consideration should be given to the public safety risks that can occur whenever an agency is in the midst of cultural and operational change.



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