

TESTIMONY OF CHARLES CHIEPPO BEFORE THE JOINT COMMITTEE ON TRANSPORTATION

May 11, 2015

Chairman McGee, Chairman Strauss, members of the committee, I appreciate the opportunity to speak before you today. My name is Charlie Chieppo; I am a senior fellow at Pioneer Institute and the principal of Chieppo Strategies LLC. I would like to deliver some more general remarks in support of Governor Baker's MBTA reform legislation, then turn it over to former Inspector General and current Pioneer Institute Research Director Greg Sullivan to address a few issues in more detail.

For more than 15 years, I have written and spoken about the dire condition of the MBTA. But since the T's collapse this winter, I have to say that even I am stunned at just how bad things are. I truly believe this is the last, best chance to save this authority, which is so critical to the economic well-being of our region.

I would like to focus on three issues in my testimony: The urgent need for a fiscal and management control board, for the T to be released from provisions of the so-called Pacheco Law, and the troubling condition of the MBTA Retirement Fund.

Gov. Baker made some excellent appointments to the MassDOT board last week. But no matter how capable those individuals are, they lack the power to do what's needed to fix the MBTA, and spending the time the T requires would force them to ignore other important transportation concerns.

There are a couple of issues in particular that I would like to highlight. I have made very clear my belief that fixing the MBTA will ultimately require additional revenue. But the events of the last four months have demonstrated that giving more money to the T as it exists today is like pouring water into a glass that has no bottom. One of the most important things we can do to fix that is to tie additional funding to the achievement of specific customer service-oriented performance metrics. The MBTA desperately needs a transparent performance management system and that would be one of the key functions of the fiscal and management control board.

Another power the control board would have that the MassDOT board does not is the ability to review all contracts entered into by the MBTA before the control board's creation. Commuter rail and paratransit head a long list of contracts that deserve a close look.

I think it's important to look at the actual language of the Pacheco Law, the nation's most restrictive anti-privatization legislation. First, instead of an apples-to-apples cost comparison, it mandates that the cost of a private contract be compared to what costs would be were public employees to work in the "most cost-efficient manner." That cost

is whatever the State Auditor says it would be, and public employees are never actually required to perform to that level.

The law also includes a provision that adds foregone tax revenue to the price of a private bid if any portion of the work is performed outside Massachusetts. There is no corresponding allowance for tax revenue that would be generated from private, taxable entities performing the work.

The law even goes so far as to limit how much a private company working on a state contract may be reimbursed for the compensation of its officers and managers. The commonwealth should focus on getting value for taxpayer dollars, not private pay scales.

Finally, there is the unlimited power the Pacheco law gives to the State Auditor, who can strike down a contract for reasons as vague as his or her opinion that it is “not in the public interest.” For two MBTA privatization proposals, the previous auditor raised a series of objections, demanded more than 3,000 pages of documentation, then reserved the right to raise more objections if his initial ones were addressed successfully. When it came to cost comparisons, he did things like determine that gasoline would be taxable if a bus were managed by a private operator, even though that bus would serve the same public purpose.

The Pacheco Law has done exactly what it was meant to do: make the process so arbitrary and onerous that no privatizations are ever attempted. There have been less than 10 attempts in the more than 21 years since the law was passed. Greg Sullivan will provide more information about its operation at the MBTA.

Finally, every T employee and retiree in this room today has reason to be very concerned about his or her pension. The MBTA Pension Fund was 95 percent funded in 2006, but by 2012 it was just 68 percent funded, with an unfunded liability of \$726 million. In fiscal 2012, contributions covered just 71 percent of the costs accrued that year.

The state of the T pension fund became front-page news when it was disclosed it lost all of a \$25 million investment. Amazingly, the money was invested by a former head of the MBTA Pension Fund.

By a quirk of history, the T pension fund is legally categorized as “private,” which means it is not subject to public oversight and we have limited knowledge of exactly why things have taken such a turn for the worse in recent years. The Governor’s bill would change that by subjecting the fund to the public records act. It would also require a much-needed, fully independent audit of the MBTA Retirement Fund according to Governmental Accounting Board Standards.

The need for a fiscal and management control board, relief from the Pacheco law and transparency regarding the MBTA Retirement Fund are just three of the reasons why I urge you to enact the Governor’s legislation. I will now turn it over to Greg Sullivan for a deeper dive into three specific issues.