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Testimony of Inspector General Jeffrey S. Shapiro, Esq., CIG
Before the Joint Committee on Transportation
Regarding Safety Oversight of the Massachusetts Bay Transportation Authority
May 8, 2023
State House, Room A-2

I. Introduction

Good afternoon, Chairman Crighton, Chairman Straus, and Members of the Committee.

My name is Jeffrey Shapiro, and I am honored to serve as the Commonwealth's Inspector General.

Thank you for allowing me to testify before your Committee today regarding safety oversight at the Massachusetts Bay Transportation Authority (MBTA). Unfortunately, this topic is on the minds of nearly every individual who uses public transportation within the eastern core of the Commonwealth.

II. The Massachusetts Office of the Inspector General: Independent Role

As Inspector General, I lead an independent, statewide agency charged with the broad mission to prevent and detect fraud, waste and abuse in government spending and the misuse of public assets at the state and local levels. Under my office's enabling statute, I have the ability to obtain information from all agencies, secretariats, constitutional offices, departments, and branches of government at the state and local levels, with the exception of the Legislature. I would expect to have this same level of oversight should any new agency be created as a result of legislative action.

The Commonwealth is fortunate to have the first-in-the-nation statewide Inspector General's Office (OIG), which serves as a model across the nation and within the national Association of Inspectors General as to what it means to have a truly independent OIG. A successful OIG must have personal and structural independence, the ability to conduct audits and investigations, and broad authority that extends to the actions of public officials, personnel, contractors and program beneficiaries. A successful OIG is charged with promoting efficiency and effectiveness; has a mandate to prevent and detect fraud, waste and abuse; is nonpartisan; and is headed by an IG appointed for a set term on the basis of integrity and qualifications.

III. The OIG's Internal Special Audit Unit

In 2009, the Legislature created an Internal Special Audit Unit within the OIG to monitor the quality, efficiency and integrity of the Massachusetts Department of Transportation (MassDOT) and the Massachusetts Bay Transportation Authority. Consistent with that directive, the ISAU audits, investigates and reviews how public and private transportation funds are spent. In addition, Section 196 of Chapter 46 of the Acts of 2015 requires the OIG to evaluate the MBTA's efforts to save public funds by privatizing some of its services. The ISAU has uncovered millions of dollars in questionable spending and potential cost savings; has helped to end wasteful practices; and has identified needed internal controls and process improvements. The ISAU accomplishes its impactful work with a six-person staff and a budget of \$577,604.

IV. Safe and Reliable Public Transportation: Focus on Finding Solutions

Regarding safety oversight for the MBTA, in my opinion the most productive path forward must be focused on finding solutions. While the Administration, the Legislature, the MBTA and the OIG all have different missions, I believe that we all have a shared goal of making government work better. And in this particular matter, we share the goals of having public transportation that is safe, operational and reliable.

For the Commonwealth to meet its other governmental responsibilities – including economic development, environmental stewardship, and a recognition that for many people, public transportation is a critical access point for housing, jobs, education and healthcare – having a safe and reliable transit system is a necessity, not a luxury.

I applaud the immediate action steps that Governor Healey and Secretary Fiandaca have taken. They have affirmed the urgency of this issue and have begun to set a course correction. These first steps include:

- The appointment of Phillip Eng as the MBTA's new General Manager;
- Reconstituting the MBTA's Board, including:
 - Appointing Thomas Glynn as the MBTA's new Board Chair;
 - Appointing two new Members, Thomas McGee and Eric Goodwine; and
 - Reappointing three members, Chanda Smart, Robert Butler and Mayor Thomas Koch;
- The appointment of MassDOT's first ever Chief Safety Officer, Patrick Lavin;
- The appointment of James Van Nostrand as Chair of the Department of Public Utilities (DPU);
- The appointment of new DPU Commissioner Staci Rubin and the reappointment of Commissioner Cecile Fraser; and

- The appointment by the DPU of Robert Hanson as the Rail Transit Safety Director. Director Hanson has solid experience and credentials and has already made a difference as a significant force in the MBTA's current evaluation of its rail network, which has, unfortunately but necessarily, resulted in many of the newly added slow zones.

While these appointments clearly set a tone at the top, clarify some responsibilities, and send a message of the urgency of the moment, these changes in personnel and philosophy are not enough. The problems that the MBTA faces – and by default faced by the public we serve – require an approach that puts everything on the table. We need bold thinking.

The Commonwealth requires a significant structural change and a significant revisioning of its safety review for the MBTA. In essence, we need an intentional redesign based upon best practices in other jurisdictions coupled with the Federal Transit Administration (FTA) requirements for rail transit oversight with an unwavering commitment to:

- Better safety systems, policies, procedures and controls at the MBTA itself; and
- Better safety oversight of the MBTA: this means safety oversight as defined by the FTA, without an overburdened mandate or a split mission.

I applaud the Chairs of this Committee for convening this hearing and for Chairman Straus and Chairman Barrett for putting their ideas into proposed legislation that can be clearly discussed, refined, and debated. This is how democracy should work and is a positive step forward.

I have reviewed in detail HB 3452 and SB 2199, the two major bills before this committee today that involve changes to the safety approach at the MBTA.

I believe that the authors of these two bills and I agree that the status quo does not work and that the DPU is not the right agency to serve as the designated State Safety Oversight Agency pursuant to the requirements of the FTA. This is primarily due to the DPU's many other statutory responsibilities, including an expanding major role in launching and establishing the Commonwealth's significant investment in the budding offshore wind industry.

We also agree on the urgency by which short- and long-term solutions need to be crafted to lessen the negative impact on system users next week, next year and in the decades to come. The daily safety problems involving the MBTA – its vehicles, its stations and the impact to the traveling and commuting public – cannot be overstated and the urgent need for an immediate solution cannot be overemphasized. Nonetheless, we also need the fix to be the right solution.

I would like to focus on the elements from these bills that I think should be included in a final solution:

- The state safety oversight (SSO) role should be moved from the DPU to a new safety agency focused solely on the safety of the MBTA. In my view, it may make sense to have two divisions:

- One for light (Green Line) and heavy rail (Red, Orange & Blue lines), which aligns with the FTA's oversight authority¹
- And a Second for commuter rail, bus – including RTAs – and commuter boats.
- The OIG's independent, statewide oversight would include the newly created safety agency and would continue to encompass the MBTA and MassDOT.
- The new SSO agency must:
 - be legally and financially separate from the MBTA or MassDOT;
 - be independent of the Governor and the Secretary of Transportation;
 - be required to publicly post, in real time, its reports, findings and public letters, adopted accident reports, triennial reviews, open corrective action plans, and annual status reports on safety and operations of the MBTA;
 - have appropriate confidentiality safeguards to conduct its investigations;
 - be both proactive and reactive in its approach to safety;
 - have broad authority to subpoena records or witnesses and to compel the MBTA's compliance with any corrective action plan or order from the commission;
 - have appropriate statutory and regulatory authority to pursue enforcement actions via fines, service restrictions and suspension of MBTA employees; and
 - have an appropriate budget to hire and retain the diverse experts and professionally licensed individuals to carry out its statutory mission.
- The Board of the new SSO should be independent for a term certain, removable only for cause, with appropriate education and experience, with clear oversight and hiring/firing oversight of the agency's executive director.

As the Committee creates this new model, I suggest that other safety agencies – especially those for New York and Washington, D.C. – provide elements of a plan that are helpful, though none offer a wholesale fix that can simply be copied and dropped into Massachusetts.

Key components that Massachusetts should adopt from these models include:

- Independence;²
- Public reporting and transparency;³

¹ 49 CFR § 674.7.

² See, e.g., N.Y. Transp. Law § 216.

³ See, e.g., N.Y. PUB. TRANSIT SAFETY BD., 2021 ANNUAL PROGRAM STATUS REPORT 18 (2022), available at <https://www.dot.ny.gov/divisions/operating/oss/rail-repository/2021%20Annual%20Program%20Status%20Report%20Final%2009212022.pdf> (last visited May 5, 2023); WASH. METRORAIL SAFETY COMM'N, WASHINGTON METRORAIL SAFETY COMMISSION 2021 ANNUAL

- Proactive in performing role;⁴
- Statutory and regulatory authority to pursue enforcement actions;⁵
- Appropriate staffing and resources;⁶ and
- Independent oversight by an OIG.⁷

As I end my remarks, I need to address one essential change that the MBTA can make now, without the need for legislation. As I mentioned earlier, fixing the MBTA requires bold thinking, structural changes, and a sense of urgency. A critical foundation for this work is trusted communication from the MBTA and its leadership. Under the prior leadership, communications have often been incomplete, nuanced or silent. For example, for nearly one year, the traveling public has either been misled about the immediate benefits after the shutdowns or the cause and duration of the slow zones. Or worse, the information conveyed by the MBTA's leadership was thought to be accurate but turned out to be only partially accurate or simply inaccurate. Fixing a system so critical and so damaged can only be done if there is open, accurate and trusted communication with and among the stakeholders – most especially with the public.

In closing, I do believe that a new safety agency, as defined by the FTA, is needed. That agency should not be the OIG. Rather, the OIG would have oversight of the new safety agency. The OIG is ready and willing to serve on a working group to create the proper safety entity and is prepared

OPERATIONS REPORT (2022), available at <https://wmsc.gov/wp-content/uploads/2022/05/FINALWMSC2021-Annual-Report-OperationsPgs.pdf> (last visited May 5, 2023); WASH. METRORAIL SAFETY COMM'N, ANNUAL REPORT ON THE SAFETY OF THE WMATA RAIL SYSTEM IN 2021 (2022), available at <https://wmsc.gov/wp-content/uploads/2022/05/WMSC2021WMATASafetyAnnualReportFinalPages.pdf> (last visited May 5, 2023).

⁴ See, e.g., N.Y. PUB. TRANSIT SAFETY BD., 2021 ANNUAL REPORT PROGRAM STATUS 17 (2022) (277 accident investigations); WASH. METRORAIL SAFETY COMM'N, ANNUAL REPORT ON THE SAFETY OF THE WMATA RAIL SYSTEM IN 2021, at 17 (2022) (86 accident investigations).

⁵ The Washington Metrorail Safety Commission can require the Metrorail to restrict, partially suspend or completely shut down rail service on individual lines or across the entire system. See Pub. L. No. 115-54, § 1, 131 Stat. 1093, 1098 (2017). The Pennsylvania Department of Transportation's Rail Transit Safety Review Program may suspend rail transit services or suspend or redirect grant funding when a rail transit agency fails to address a safety violation or deficiency. See 74 Pa. Cons. Stat. § 1510(b). The California Public Utilities Commission is authorized to draft and issue citations for specific violations and levy penalties. CAL. PUB. UTIL. COMM'N, RESOLUTION ADOPTING A RAIL TRANSIT SYSTEM CITATION PROGRAM FOR ENFORCING COMPLIANCE WITH GENERAL ORDERS AND OTHER REQUIREMENTS INCLUDING PROCEDURES FOR APPEAL OF CITATIONS ISSUED TO RAIL TRANSIT SAFETY AGENCIES OPERATING PUBLIC TRANSIT RAIL FIXED GUIDEWAY SYSTEMS, Res. ST-163 (2014), available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/rail-safety-division/rtsb/res-st-163---final-approved.pdf>.

⁶ For example, the California Public Utilities Commission had 33 full-time employees and provided 62,868 hours of rail transit safety oversight in 2022. See CAL. PUB. UTILITIES COMM'N, CALENDAR YEAR 2022 REPORT OF STATE SAFETY OVERSIGHT ACTIVITIES FOR RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS IN CALIFORNIA 2, 6 (2023), available at <https://publicadvocatesprodtemp.cpuc.ca.gov/-/media/cpuc-website/divisions/rail-safety-division/rtsb/cpuc-ssoa-annual-report-cy2022.pdf> (last visited May 5, 2023).

⁷ See ASS'N OF INSPECTORS GEN., MODEL LEGISLATION FOR THE ESTABLISHMENT OF OFFICES OF INSPECTOR GENERAL (2002), available at [The Association of Inspectors General – Advancing Professionalism, Accountability & Integrity](#) (last visited May 5, 2023) (emphasizing the importance of independent oversight by Inspectors General).

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to designate this as a highest priority so that the timeline to develop such an entity can be accelerated. I believe that strong elements from each of these bills can be properly combined to develop much of the model safety agency that we seek to have operational here in Massachusetts.

With the approval of the Chairmen, I welcome any questions that they or the Committee Members may have regarding my testimony.

Thank you.