



State Safety Oversight (SSO) Program Review:

An assessment of the Department of Public Utilities (DPU); a comparison of similar SSOs; and considerations to make the MBTA safer.

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Executive Summary

Recent incidents at the MBTA and a scathing review by the Federal Transit Administration (FTA) have increased attention on the Authority's shortcomings on safety issues. The matter is especially pressing given the fact that the federally designated State Safety Oversight (SSO) agency for the T's rapid transit operations, the Department of Public Utilities (DPU), is alarmingly understaffed, underfunded and unprepared for the role. Known more for its regulation of gas, power and water utilities, the DPU has only a handful of employees assigned to MBTA oversight; that function accounts for less than 2 percent of the total DPU budget of \$21 million.

Since its official designation as an SSO in 1996, the DPU has provided some oversight, including random inspections, safety audits and setting standards for track inspection and materials. However, as recently as 2019, the FTSA has issued 16 findings of non-compliance and "inadequate safety oversight" by the DPU. The FTA report raised significant questions about the ability of the DPU – as currently constituted, governed and staffed – to meet its legal obligations as SSO.

The 31 SSOs across the country fall into one of four categories: 1) a state department of transportation; 2) a public utilities commission; 3) a public safety department; or 4) a standalone, independent entity. Massachusetts currently has agencies equivalent to the first three, but none comparable to the fourth model.

The paper further examines two independent out-of-state SSO models: the Public Transportation Safety Board in New York State, and the Washington Metrorail Safety Commission. Both have broad power to conduct inspections, investigate accidents and order corrective action.

Massachusetts lawmakers have two chief options for reforming the SSO program and improving MBTA oversight:

Moving the SSO function to a different, existing oversight entity; or



Creating a new entity charged with administering the SSO and potentially other transit oversight.

The MBTA Advisory Board notes that the transition to a new gubernatorial administration in January and the pending appointment of a new MBTA general manager marks a particularly important opportunity to address the MBTA's challenges through an enhanced SSO function. Established under statute to represent the 176 cities and towns in the MBTA district, the MBTA Advisory Board stands ready to be a partner in that effort.

Introduction

The MBTA is under unprecedented scrutiny for its recent safety record. An August, 2022, Safety Management Inspection (SMI) report by the Federal Transit Administration (FTA) is just the latest independent assessment to determine that the MBTA is falling short on basic safety measures, putting riders at risk and eroding the public's faith in the system.

With a new gubernatorial administration and legislative session just weeks away, state leaders and other MBTA stakeholders are presented with a moment to reassess safety oversight at the agency. Governor-elect Healey has proposed appointing a Transportation Safety Chief to conduct a full safety review of the state's transportation system (including, the MBTA and Regional Transit Authorities, as well as roads and bridges). There appears to be political will and momentum to adopt substantial reforms so that riders feel safe boarding and riding an MBTA subway car, rail car, bus, trolley, or ferry. But what specific reforms will accomplish that?

In recent months, particular attention has been paid to the role of the Department of Public Utilities (DPU) as the Commonwealth's State Safety Oversight (SSO) entity. The SSO is a federally-mandated program that oversees safety at rail transit systems that are not otherwise overseen by the Federal Railroad Administration (FRA). In Massachusetts, the SSO oversees heavy-rail rapid transit (i.e., Red, Orange, and Blue Line subway) and light-rail (i.e., Green Line and Mattapan High Speed Line) safety at the MBTA. Because it shares track with freight railways, the MBTA's commuter rail safety is overseen by the

FRA. The FTA has criticized the DPU for failing to adequately oversee MBTA safety, writing in its 2022 SMI report that, “DPU has not used its authority to ensure the identification and resolution of safety issues at MBTA,” and, “DPU [has] been slow to complete corrective actions to address safety concerns.”

The FTA is not the only entity to question the DPU’s ability to effectively oversee safety. Former US DOT Secretary Ray LaHood -- a co-author of the 2019 Safety Review Panel report on deficiencies in the MBTA’s safety systems -- has urged the Legislature in recent testimony to remove SSO authority from the DPU and to instead create an independent safety management agency dedicated to rail safety.

Given the spotlight on the Department of Public Utilities as the designated SSO entity in Massachusetts, this paper will explore the history of the SSO program at the federal level and how the SSO program has been implemented in Massachusetts. It will also compare SSO models in other states and regions that are home to large public transportation rail systems. The goal of this paper is to inform ongoing conversations about how to best implement the SSO program here in Massachusetts. We consider a set of options for a future SSO program, including keeping SSO authority with the DPU, moving it to a different existing entity, or creating a new, independent entity. It will ultimately be up to state leaders to determine the best course forward.

This paper does not focus on safety oversight of MBTA or RTA buses, commuter rail, paratransit, or ferries, all of which are outside of the scope of the SSO program. However, these modes must be considered equally important in order to safeguard all trips, and it could make sense to incorporate some or all of these into a consolidated safety oversight structure within an existing or new entity.

The MBTA is essential to the economic and social health and vibrancy of Massachusetts. The Authority is facing the most challenging moment in its 125-year history of operating subway service and its 60-year history as a state-controlled independent authority. Transit safety is first among many areas of concern in need of reform, investment, and improvement across the Commonwealth’s public transportation network. The incoming

Healey-Driscoll Administration, the legislature, the MBTA Board of Directors, and other partners must face these challenges head-on to get the MBTA back on track. The MBTA Advisory Board stands ready to be a partner in these efforts, and hopes that this paper is a meaningful contribution to our shared work ahead.

History of the SSO Program at the Federal Level

The State Safety Oversight program has a long and complex history. In 1991, Congress required for the first time that the FTA establish a program providing for state-government-conducted oversight of the safety and security of rail systems -- such as subway and light-rail systems -- not otherwise regulated by the FRA. The result was the creation of the State Safety Oversight program, which the FTA put into effect in 1996 after years of regulatory development and feedback from affected states and agencies. At the implementation of the law in 1996, only a handful of states -- including Massachusetts -- had SSO entities. By 2005, twenty-six state oversight agencies had developed and implemented SSO programs affecting forty-four rail systems that serve millions of passengers each day. SSO's report annually to the FTA as well as to state government bodies (e.g., the Governor, Legislature, and/or a transit authority Board of Directors).

The purpose of the State Safety Oversight program is to oversee safety at rail transit systems. SSOs play an important coordinating function between transit agencies, states, and the federal government. They implement and conduct audits and risk assessments that are meant to uncover issues before they result in incidents or accidents. SSO's inspect infrastructure, but they also assess the culture and practices of transit agencies, to encourage systemic, proactive safety changes and improvements rather than reactionary responses to incidents. However, when incidents do occur, SSOs also play an essential role in assessing the causes and making recommendations for changes. In furtherance of this goal and in the interests of transparency and accountability, transit agencies are required to report significant incidents to the SSO and the FTA within two hours of the event's occurrence.

According to federal law, the FTA must certify that each state SSO is capable of overseeing rail safety. If a state SSO office fails to obtain certification for its SSO Program, FTA is prohibited from releasing *any* funds to public transportation agencies throughout that state until certification is achieved. This component of the law speaks to the serious and significant role the SSO program plays in ensuring rider safety.

FTA provides federal funds through the SSO Formula Grant Program for eligible states to develop or carry out their SSO programs. Many states choose to supplement this federal funding with state funding to ensure that the SSO has the resources needed to properly oversee its rail agencies.

The SSO program is not static, and Massachusetts lawmakers and regulators should expect Congress to continue to update it over time. At each evolution in the history of the SSO program, Congress has chosen to strengthen -- not weaken -- the program. Reforms of the SSO program in Massachusetts should account for the likelihood that future federal requirements will include stricter oversight, more detailed and timely reporting, and more significant resources and attention.

Requirements of SSO agencies seeking certification by the FTA. Every eligible State must establish a State Safety Oversight program that:

- Is financially and legally independent from any transit agency it oversees
- Does not directly provide public transportation services in the area with an RTA that the SSO oversees
- Does not employ any individual responsible for administering a transit agency
- Has authority to review, approve, oversee, and enforce a safety plan for agencies it oversees
- Audits every agency's compliance with safety plan requirements at least once every three years
- Has investigative and enforcement authority at the transit agencies it oversees
- Reports to the FTA and appropriate state-level authorities (e.g. Board of Directors) at least once every year

History of the SSO Program in Massachusetts

The DPU is the designated SSO for the MBTA, which is the only transit agency in Massachusetts that operates services that fall under the SSO program's jurisdiction. DPU derives its oversight powers from M.G.L. Chapter 159 and from M.G.L. Chapter 161A, Section 3(i), the MBTA's enabling statute, which says that the MBTA is *exempt* from DPU oversight *except*, "as to safety of equipment and operations." While the SSO program at the federal level was formalized in the early 1990s, DPU's oversight of the MBTA predates these federal requirements by decades. For example, 2009 Congressional testimony by DPU's Brian Christy notes that in 1980, "the [DPU] mandated hours-of-service regulations for rail transit operators," including the MBTA.

The below sections of this paper briefly describe the DPU's history and current functions -- which span a wide range of regulatory areas -- as well as the current status of DPU oversight. But it remains unclear whether prior Massachusetts legislatures envisioned the significant and essential safety oversight role that the DPU plays today, or whether the DPU's authority resulted more organically from its long history of regulating private railroads and streetcar operators. This is an area of ongoing research that may inform current legislators and other stakeholders about whether or not the DPU is the right entity to oversee safety at the MBTA going forward.

Overview of The Department of Public Utilities (DPU)

The DPU is an adjudicatory state agency led by three Commissioners appointed by the Secretary of the Executive Office of Energy and Environmental Affairs (EEA) with approval by the Governor. The Commission's three members are required by state law to have a background or expertise in electricity or natural gas matters (but not transportation), and no more than two members may be members of the same political party. The EEA Secretary designates one of the Commissioners as Chairperson. The DPU is well-known as an overseer and regulator of investor-owned electric power, natural gas, and water companies in Massachusetts. In addition to these core responsibilities and the SSO program, the DPU regulates the safety of intra-state bus companies, moving companies, and transportation network companies.

The Department of Public Utilities traces its history back to the 1885 creation of the Massachusetts Board of Gas Commissioners, which exercised general supervision over gas (i.e. gas light) companies, including over safety and rates charged to customers. In 1919, the Legislature merged the Public Service Commission (which had authority over railroads, street railways, and steamship companies) and the Board of Gas and Electric Light Commissioners (with authority over power companies, gas companies, and water companies) to create the Department of Public Utilities. Subsequent legislative changes have created the entity as currently constituted.

In addition to its substantial and prominent work overseeing electric and gas utilities, the DPU has a sizable transportation portfolio. Its Transportation Network Company Division regulates ridesharing companies such as Uber and Lyft. Its Transportation Oversight Division regulates moving companies, towing companies, and intra-state passenger bus companies not regulated by federal entities.

The FY23 state budget allocates DPU's budget is \$21 million, with suballocations that include:

- \$356,384 for the Transportation Oversight Division
- \$1,917,570 for oversight of Transportation Network Companies
- \$1,357,265 from FTA's annual grant for the SSO Program

It is unclear from state budget documents whether DPU allocates additional state resources to the SSO program beyond the \$1.3M provided by the federal government.

Regulation of Transportation Network Companies

In 2016, Governor Charlie Baker signed *An Act Regulating Transportation Network Companies*, which initiated regulation of TNC's and placed their oversight under the DPU. DPU promulgated its first TNC regulations on September 22, 2017. DPU's oversight of TNCs includes, but is not limited to: company permitting, certifying drivers, requiring sufficient levels of insurance, and protecting the data of TNC users. In 2019, TNCs provided 91.1 million rides in Massachusetts (compared with approximately 382.4 million

public transit rides in the Commonwealth in 2019). DPU does not inspect TNCs vehicles, but does require all vehicles to meet RMV regulations, including annual inspections.

A November, 2021, audit by the Office of State Auditor Suzanne Bump found that the DPU failed to follow its own regulations in its oversight of TNCs. The DPU did not ensure that TNCs were conducting background checks, imposing sanctions against drivers with suspended or revoked permissions, or investigating and resolving complaints lodged by consumers. For example, the audit found the DPU only performed one of the seven quarterly audits of the national background record check information maintained by Uber and Lyft that it should have conducted during the audit period. DPU planned to take corrective action in response to this audit.

Regulation of Moving and Towing Companies

The DPU regulates household moving companies (e.g., Atlas Movers, Allied Van Lines, and Mayflower Transit) with intra-state operations in Massachusetts (the Federal Motor Carrier Safety Administration regulates interstate moves). These regulations include setting requirements for licensing and insurance that all movers must meet. It also investigates complaints from customers.

The DPU also regulates towing companies, including requiring these companies to register and be licensed, and setting maximum allowable rates for involuntary towing.

A review of DPU regulations and annual reports seems to indicate that the department does not inspect vehicles or perform on-site safety inspections as part of its regulatory oversight of these entities.

Regulation of Passenger Bus Companies

Under M.G.L. Chapter 159A and 220 CMR 155.00, the Transportation Oversight Division of the DPU regulates the operations of intrastate motor bus carriers in Massachusetts. DPU has had a role in safety oversight of bus service since at least 1925, and its jurisdiction extends to public and private bus operators, including the MBTA and RTA. However, these quasi-public authorities are only subject to DPU regulations related to

matters of safety, as their enabling statutes exempt them from other areas of oversight such as scheduling and rate setting that were historically part of DPU's mandate. While DPU no longer regulates the schedules and rates of private bus service, all private operators of fixed-route intrastate bus service must still meet basic safety and operational requirements and obtain a certificate from the DPU before commencing operations.

DPU's certification of both public and private bus operators includes the inspection of vehicles. The Department may take a bus out of service if it fails an inspection. It requires bus operators to record maintenance and repair activities, and to make these records available to the Department for review.

DPU also certifies individual bus drivers and dictates operational practices. For example, DPU requires bus drivers (including MBTA and RTA drivers) to make a full stop at railroad crossings. According to DPU regulations, all public and private bus operators must report to the Department on all "accidents" that result "in loss of life or serious personal injury or considerable property damage."

Current DPU Oversight of the MBTA

As the SSO in Massachusetts, the DPU is responsible for the oversight of equipment safety and operations for all Rail Fixed Guideway Public Transportation Systems (RFGPTS) in the state. The MBTA is the only transit authority in Massachusetts which operates a rail system, so it is the only entity subject to the DPU's SSO oversight. The Department's SSO Program Manager reports to the Director for Transportation Oversight, who reports to the DPU Chairperson.

DPU's program standards are laid out in Massachusetts regulations, and include a number of components that are monitored by department staff. The department annually reviews, tests, and approves the MBTA's System Safety Plan, which is developed by MBTA staff. Oversight includes performing random inspections of MBTA light and heavy rail subway cars and operation facilities, including visits to all carhouses and maintenance facilities. Division staff review and participate in the MBTA's internal safety audits to further enhance compliance and safety plans. The Division also conducts external safety

audits which are designed to monitor compliance with program requirements. DPU meets formally with the MBTA's Chief Safety Officer monthly, at least quarterly with other members of the safety team, and meets at least annually with the MBTA Board of Directors.

The DPU's regulations include specific requirements for certain components of MBTA operations and maintenance. For example, they include standards for track inspection (e.g., maximum intervals between inspections), and requirements for the deployment and use of rail ballast materials to keep track infrastructure safe for vehicles and riders.

On occasion, the DPU has had significant impact on the MBTA's operations. For example, in the wake of a 2009 Green Line crash at Government Center in Boston, the DPU became the first rail transit oversight agency in the country to prohibit train operators and bus operators from using a cell phone or having a cell phone in his or her possession while on duty.

But DPU has also been urged by FTA regulators to make improvements. For example, in October 2019, FTA's triennial audit of DPU's SSO program resulted in 16 findings of non-compliance. More recently, the FTA's SMI found that the DPU had not adequately used its authority to ensure safety at the MBTA, writing:

“Despite MBTA’s recent safety performance, FTA determined that DPU has not been actively engaged in overseeing the MBTA’s Safety Management System (SMS), including safety risk management and safety assurance activities. While DPU has the authority to require MBTA to take expedited action to implement its SMS and address other safety concerns, the agency rarely invokes its authority to compel such action....MBTA’s lack of effective safety risk management has been compounded by the DPU’s at times inadequate safety oversight...The DPU has responsibility to enforce the MBTA’s Public Transportation Safety Plan (PTASP), which implements SMS. The DPU has not consistently required or enforced timely assessment and mitigation of safety risk for passenger operations to prevent organizational blindness to emerging safety concerns.”

Two FTA requirements highlighted in the SMI deserve particular attention:

1. Adequate staffing for transit oversight at the DPU remains a concern, and the department will need to continue to add experienced staff to properly oversee one of the nation's busiest rail systems. According to the SMI, *"As part of FTA's 2019 SSO audit, FTA found that DPU did not have a staffing level commensurate with the actual oversight needs of the MBTA. The FTA required DPU to develop, submit, and implement a revised workload assessment that reflects an appropriate staffing level for overseeing the MBTA, a revised technical training plan, and a plan for hiring and training personnel and/or contractors to fill the identified staffing needs."*

Since that time, DPU has expanded both its staff and the agency's technical capacity to conduct oversight activities. The DPU has a full-time SSO Director and six full-time equivalent (FTE) field staff, including two Compliance Officers, three Engineers, and one Auditor. The DPU also has considerable engagement from DPU's Director of Transportation Oversight and, more recently, from DPU's Chairman. DPU also has access to contractor resources to provide additional expertise in rail transit disciplines. The DPU is still working to address FTA's 2019 findings more fully regarding staffing and technical capacity, including recruiting two more engineers, two auditors, three compliance officers, one assistant director, and one Rail Specialist at a director level. Many of these positions have been added to DPU's budget in the last year.

2. Recent governance changes at the MBTA have clouded the independence between the MBTA and DPU. According to the SMI, *"FTA reviewed DPU's independence from MBTA again during the 2019 SSO audit. Since that time however, the FMCB has been replaced by a new Board for MBTA, consisting of seven members, including the Secretary of Transportation, who reports directly to the Governor. The remaining Board Members are appointed by the Governor. As a result, FTA finds that DPU must review its independence from MBTA, given shared agency reporting relationships to the Governor and the Governor's role in appointing MBTA Board Members and approving DPU's three-member*

Commonwealth Utilities Commission. This assessment must include review of organizational mechanisms, including recusals, limited reporting relationships, and other features that provide legal separation between the two agencies and ensure DPU's independence to take enforcement action against MBTA.”

The FTA's SMI report has raised significant questions about the ability of the DPU -- as currently constituted, governed, and staffed -- to meet the requirements and perform the legally mandated functions of the SSO. The incoming Healey-Driscoll Administration and Legislature should incorporate these questions and concerns into their plans for safety and operational improvements at the MBTA.

Comparisons to Peer States/Agencies

The thirty-one SSOs across the country fall into one of the following major categories or types of organization: (1) a state department of transportation, equivalent to MassDOT, (2) a public utilities commission, equivalent to the DPU, a (3) a public safety department, equivalent to the Executive Office of Public Safety and Security, and (4) a standalone, independent entity focused on transit safety, which currently has no equivalent in Massachusetts state government.

SSO Oversight of Fixed Guideway Rail Systems with the Highest Ridership

Transit Agency Overseen by SSO	Metro Region	Heavy Rail Rapid Transit Annual Ridership in Millions (2019)	Light Rail Rapid Transit Ridership in Millions (2019)	Total Ridership in Millions (2019)	State	Designated SSO	SSO Type
New York City Subway	New York City	2,700		2,700	NY	New York Public Transportation Safety Board	Independent Board/Authority
Washington Metro	DC	238		238	DC/MD/VA	Washington Metrorail Safety Commission (WMSC)	Independent Board/Authority
Chicago Transit Authority	Chicago	218		218	IL	Illinois Department of Transportation	State DOT
MBTA	Boston	152	47	199	MA	Massachusetts Department of Public Utilities	Public Utility Commission
BART	San Francisco Bay	123		123	CA	California Public Utilities Commission	Public Utility Commission
SEPTA	Philadelphia	90	24	114	PA	Pennsylvania Department of Transportation	State DOT
Metro Rail	Los Angeles	42	51	93	CA	California Public Utilities Commission	Public Utility Commission
PATH	New York City	90		90	NY/NJ	Overseen by FRA	Overseen by FRA
MARTA	Atlanta	64		64	GA	Georgia Department of Transportation	State DOT
Muni	San Francisco Bay		49	49	CA	California Public Utilities Commission	Public Utility Commission
MAX Light Rail	Portland		38	38	OR	Oregon Department of Transportation	State DOT
San Diego Trolley	San Diego		38	38	CA	California Public Utilities Commission	Public Utility Commission
DART	Dallas		28	28	TX	Texas Department of Transportation	State DOT
Link	Seattle		25	25	WA	Washington State Department of Transportation	State DOT
Denver RTD	Denver		25	25	CO	Colorado Public Utilities Commission	Public Utility Commission
METRO Light Rail	Minneapolis		24	24	MN	Minnesota Department of Public Safety	Department of Public Safety
Metrорail	Miami	18		18	FL	Florida Department of Transportation	State DOT
METRO RAIL	Houston		18	18	TX	Texas Department of Transportation	State DOT
UTA TRAX	Salt Lake City		17	17	UT	Utah Department of Transportation	State DOT
Valley Metro Rail	Phoenix		15	15	AZ	Arizona Department of Transportation	State DOT
PATCO	Philadelphia	11		11	NJ/PA	New Jersey Department of Transportation	State DOT
State Island Railway	New York City	8		8	NY	New York Public Transportation Safety Board	Independent Board/Authority
Baltimore Metro	Baltimore	7		7	MD	Maryland Department of Transportation	State DOT
RTA Rapid Transit	Cleveland	6		6	OH	Ohio Department of Transportation	State DOT

The two independent authorities -- which have no equivalent in Massachusetts government today -- are described below.

SSO and Transit Oversight in New York State

In 1984, the New York State Legislature created the Public Transportation Safety Board (PTSB), the first board of its kind in the nation and one modeled after the National Transportation Safety Board. The PTSB is statutorily responsible for the safety oversight of all public transportation systems operating in New York State that receive State Transit Operating Assistance (STOA), including rail, commuter-rail, and bus transit. The mission of the PTSB is to reduce the number, rate, and severity of public transportation accidents.

The PTSB has broad, legislatively mandated powers to enable it to fulfill its mission, including:

- Establishing accident reporting, investigation and analysis procedures
- Conducting comprehensive accident investigations
- Taking a proactive role in public safety by reviewing, approving and monitoring system safety program plans submitted by each public transportation system
- Conducting system safety program field audits
- Analyzing critical safety issues and concerns
- Recommending the establishment of new safety legislation, rules and regulations, and transportation system procedures based on accident investigations, special studies and audits

According to its annual report, since 1984, the PTSB has investigated more than 2,400 bus and rail accidents and issued approximately 2,500 recommendations to bus and rail properties to improve safety. The areas addressed by the recommendations have included: management oversight, bus driver training, bus and rail vehicle designs, maintenance procedures to ensure supervisory and mechanic accountability, commitment of capital resources to improve safety deficiencies, emergency communications, highway grade crossing gates and approaches, preventative maintenance procedures, rail tracks and signals, subway tunnel ventilation, emergency plans and procedures, and train operator hours of service and fatigue.

In addition to its oversight of rail, the PTSB has broad, legislatively mandated powers and duties that enable it to effectively improve public transportation safety for those bus transportation systems that receive, either directly or indirectly, any statewide mass transportation operating assistance. The PTSB is statutorily responsible for investigating and analyzing serious bus accidents. In the wake of an accident, it recommends actions to be taken to reduce the possibility of similar accidents from occurring.

The Board is administratively housed within the New York State Department of Transportation, with staff support provided by professionals from the Department's Office of Modal Safety and Security (OMSS), but it reports to an independent board, not directly to the Commissioner (i.e., Secretary) of Transportation.

New York PTSB's seven-member board includes the following appointees:

- The State Commissioner of Transportation (appointed by Governor, and equivalent to the Secretary of Transportation in Massachusetts)
- Two members appointed directly by the Governor
- Two members recommended by the President of the State Senate
- Two members recommended by the Speaker of the Assembly

New York state law requires that at least one of the appointees from each of these categories, "shall have competence and experience in connection with the operation, design or management of public transportation facilities and systems". This leaves the possibility that some members may not meet this requirement.

New York state law has additional appointment requirements, including that three of the members must be from the MTA region, and the from other parts of the state. All appointees to the board other than the commissioner are made with the advice and consent of the State Senate. The Governor designates the Chairperson. Members serve a six-year term. The MTA Inspector General is an *ex-officio* eighth member of the board but has no vote on matters outside of the operations of the MTA. The Commissioner of Transportation and the MTA Inspector General may delegate all their authority on the Safety Board, including but not limited to their right to vote, to their designees by providing

notice to the Executive Director of the Safety Board. No other member of the Safety Board may delegate his or her authority. Board members receive a \$150 per diem as compensation for their services and are reimbursed for expenses.

The PTSB meets every other month -- six times per year. It receives approximately \$3 million per year from the FTA in operating funds. The SSO program of the PTSB has 9 full-time employees plus contractors who equate to 5 FTEs.

The PTSB's SSO program oversees the the Metropolitan Transportation Authority (MTA) New York City Transit (NYCT) Department of Subways (DOS), the Staten Island Railway (SIR), and the Niagara Frontier Transportation Authority (NFTA) Metro Rail System.

SSO at WMATA (Washington, D.C., Metro)

In October 2015, after a series of significant safety incidents and at the direction of the Secretary of Transportation, FTA began asserting direct safety authority over the Washington Metropolitan Area Transit Authority's (WMATA's) Metrorail system. At the time, this was an unprecedented step for the FTA. WMATA and the MBTA remain the only transit agencies in the country subject to this level of scrutiny.

In response to a clear need to increase safety oversight at WMATA, the states of Virginia and Maryland and the District of Columbia created the Washington Metrorail Safety Commission (WMSC), which was signed into law in August, 2017, and assumed safety oversight of Metrorail in March, 2019. The WMSC is an independent agency created by these jurisdictions with the approval of Congress and the President. The WMSC superseded an earlier Tri-State Oversight Committee. WMSC oversees and enforces safety practices at WMATA's rail system and is also responsible for safety event investigations in the rail system.

Six commissioners, and three alternates, serve on the commission's board. The District of Columbia, Maryland and Virginia each appoint two commissioners and one alternate. Each member is required by law to have expertise in transportation safety or related fields.

A review of the nine appointees shows this requirement is taken seriously. The Chairman, Christopher Hart, formerly served as chairman of the NTSB from 2014 to 2017 and holds a Bachelor of Science in Engineering and a Master of Science in Engineering from Princeton University.

The commission's daily operations are led by the Chief Executive Officer who oversees a highly trained staff that regularly conducts inspections, audits, reviews and other oversight. David L. Mayer, PhD, is WMSC's first-ever chief executive officer. Dr. Mayer previously served as the Chief Safety Officer of the New York Metropolitan Transportation Authority (MTA), a position he held from December 2014 through May 2018.

Unlike New York's PTSB, which is housed administratively within NYS DOT, WMSC handles all aspects of its own operations (e.g., administration, payroll, IT) with the financial support of federal grants and funding from Virginia, Maryland and the District of Columbia.

The Federal Transit Administration certified the commission to assume direct oversight responsibility for Metrorail in March 2019, meeting the nationwide federal deadline for jurisdictions with rail transit systems to establish SSOs.

WMSC has independent access to WMATA systems and data, and has used this access to uncover safety issues that were not properly reported, including a runaway train in March, 2021. This incident was not reported to the WMSC or FTA, as it should have been, but was discovered by the WMSC after a review.

WMSC regularly issues audit reports about the safety of the system. It issued six of these in 2021. These audits typically lead to Corrective Action Plans (CAPs) which must be completed by WMATA. WMSC issues two annual reports: (1) on the safety of WMATA's rail system, and (2) a report on WMSC's own operations (i.e., budget, staffing, etc.)

According to WMSC's annual report, one substantial difference between the commission and Metrorail's oversight under the earlier Tri-State Oversight Committee is the

commission's significant enforcement authority. Among other powers, the commission can require Metrorail to restrict, partially suspend or even completely shut down rail service on individual lines or across the entire system.

WMSC's used this power within months of assuming oversight responsibilities. After a derailment of the WMATA Blue Line on October 12, 2021, the WMSC ordered WMATA to immediately remove all 7000 Series railcars from service until WMATA developed and implemented a plan for their safe return. After corrective action by the agency, these vehicles have been brought back online in phases over the course of 2022.

Roughly half of WMSC's \$5,062,000 annual budget is funded, in equal parts, by the three governments served by WMATA. Federal grants cover the other half, amounting to over \$2.5 million. The Commission has 18 full-time employees.

- Staff and office space: \$3,855,000
- Contractors: \$1,025,000
- Travel and Training: \$87,000
- Equipment and Maintenance: \$95,000

Discussion of DPU Alternatives

Since the challenging winter of 2015, the Legislature has chosen to strengthen and clarify the role of the Governor in management of the MBTA. While earlier MBTA governance models sought to establish its independence from the corner office, legislation signed in 2021 by Governor Baker strengthened the connection between the MBTA and the corner office. Under current law, the Governor appoints five of the seven Board Members, and the Secretary of Transportation serves *ex-officio* as a sixth member. The MBTA Advisory Board appoints the seventh member. The Governor appoints a super-majority of members of the MBTA Board of Directors and all of the members of the DPU. It's understandable that such an arrangement would raise questions about the DPU's independence from the MBTA, and the DPU's future ability to independently oversee safety at the MBTA.

Any proposed changes must be developed with significant input from the FTA, which is closely following the MBTA's safety deficiencies and which will need to certify a future SSO entity. Massachusetts lawmakers have at least two feasible options for reforming the SSO program and improving the oversight of subway and light rail safety at the MBTA:

Moving the SSO program to a different, existing oversight entity

The Legislature could choose to task a different, existing entity with administration of the SSO program. Such an entity would need to be independent of the MBTA, and be able to demonstrate sufficient independence from the Governor (assuming no change in the MBTA's governance structure). For example, the Legislature could choose to move SSO responsibilities to the State Auditor (elected directly by voters), the Inspector General (who is appointed by the Governor, Attorney General, and Auditor), or the MBTA Advisory Board, which is comprised of local mayors and other municipal officials.

Creating a new entity charged with administering the SSO (and potentially administering other transit oversight)

The Legislature could choose to create an entirely new state entity charged with administering the SSO program. This new entity could keep a narrow focus on rail safety -- similar to the WMSC at WMATA -- or its responsibilities could be expanded to include oversight of a broader set of public transit and private passenger transportation oversight. For example, the Legislature could transfer bus safety oversight and TNC oversight from the DPU to this new entity. It could also move any state-level commuter-rail safety oversight to this entity, as is the case with the New York PTSB.

The creation of a new state agency would mark a bold, new approach for oversight of safety for public transportation in Massachusetts, but one that follows the model set forth by New York state and the Washington, D.C., metro area. An independent entity would have clear lines of responsibility, and, unlike the DPU, would be able to focus exclusively on transit safety, as both New York's PTSB and Washington's WMSC do. Moving safety oversight to an independent entity may also provide greater future flexibility as federal regulatory requirements change. While an independent entity perhaps holds the greatest

promise for a durable solution to rail and transit safety, creating, staffing, and resourcing this organization will require a significant effort from state leaders. WMSC took more than a year and a half between its creation in the law and its assumption of oversight responsibilities at WMATA.

The independent entity should be governed by a board with sufficiently diverse appointment authority such that its independence from the MBTA is unquestioned. As long as the majority of the MBTA's board members are appointed by the Governor, the SSO's governance board should have a minority of gubernatorial appointees.

Each of the approaches described above has significant benefits and drawbacks. Under any option, the Legislature and the Healey-Driscoll Administration must treat these reforms as essential to building back trust with MBTA riders, employees, and stakeholders. Consistent and effective independent oversight won't just happen with a one-time governance reform. Change will only be durable when our elected and appointed officials at the highest levels provide sustained attention and the commitment of sufficient resources to build a best-in-class oversight entity. This will take years to accomplish, and Massachusetts must avoid a repeat of the dire situation that prompted the FTA to take the nearly unprecedented steps that it did in 2022.

Conclusion and Next Steps for Investigation

The MBTA is at a precarious moment -- one that holds both opportunity and risk. Its current General Manager, Steve Poftak, has announced he will resign in early January. Governor Baker is expected to appoint an interim GM, and then Governor-elect Healey will choose a new, permanent leader. With a new Administration and new executive leadership at the T, safety must be first among many areas of concern in need of reform, investment, and improvement. The incoming Healey-Driscoll Administration, the legislature, the MBTA Board of Directors, and other partners must face these challenges head-on to get the MBTA back on track. The MBTA Advisory Board stands ready to be a partner in these efforts, and hopes that this paper is a meaningful contribution to our shared work ahead.