3 Existing Regulations

This chapter reviews federal and state regulations related to the provision of fixed-route regional bus service.

3.1 Background

Operation of fixed-route bus service between points within Massachusetts is regulated at several different levels of government. These regulations are based on laws that have been enacted over many decades, addressing issues of competition, originally between the steam railroads and later among the emerging local and regional electric railway and bus services. Older sections of the Massachusetts General Laws that are the basis of bus regulation have not always been amended to reflect changes incorporated in later federal and state legislation. Consequently, issues of jurisdiction are not always clear.

This chapter summarizes the various laws and regulations that would have to be complied with in the establishment of new or revised regional bus service in Massachusetts. Some background material on these laws is included to assist in understanding how they have evolved over time and how conflicts have arisen.

3.2 Federal Regulation of Intercity Bus Service

Until 1982, interstate transportation of passengers by bus was regulated by the federal government, through the Interstate Commerce Commission. State jurisdiction over interstate bus routes extended only to intrastate transportation of passengers on those routes. In many cases one carrier held only interstate operating rights on a particular highway, and another carrier held only intrastate rights. Under the Bus Regulatory Reform Act of 1982, the federal government retained control of entry into the interstate bus industry through standards of safety and financial reliability, but regulation of routes and

schedules was abolished. Requirements for registration as a motor carrier are contained in Title 49 United States Code (U.S.C.) Sec. 13902.

Under the 1982 act, states and their political subdivisions were prohibited from regulating intrastate transportation of passengers by any motor carrier operating interstate service on the same route. This regulatory relief extended to buses of an interstate carrier operating entirely intrastate. An exception to this removal of regulatory authority from states was that it did not apply to intrastate commuter bus operations. However, commuter bus operations were not defined in the law. Based on historical usage, the term commuter bus operations would pertain to those on which most riders make repetitive daily trips, often using discounted multiple-ride tickets or unlimited-use passes. (Federal restrictions on state regulation of bus service appear in 49 U.S.C. Sec. 14501.)

3.3 Massachusetts Regulation of Fixed-Route Bus Service

Regulation of bus service by the Commonwealth of Massachusetts is nearly as old as the bus industry itself, with the first regulatory laws having been enacted in 1916. Provisions for bus regulation at the local and state levels were first codified as Chapter 159A of the General Laws in 1931, and this chapter has been amended many times since then. Today, Chapter 159A applies to those intrastate operations over which state and local jurisdiction were not preempted by the Bus Regulatory Reform Act of 1982. Nevertheless, as this chapter stood in 2011, it did not fully address conflicts with other state and federal laws.

Chapter 161A was enacted in 1964, creating the Massachusetts Bay Transportation Authority (MBTA), followed by Chapter 161B in 1973, which authorized the formation of regional transit authorities (RTAs) throughout the state. Certain provisions in Chapters 161A and 161B supersede provisions in Chapter 159A, but Chapter 159A has not been updated to reference those provisions. The three chapters are discussed in detail below.

3.3.1 Chapter 159A

Starting in 1925, statewide regulation of bus service was under the Massachusetts Department of Public Utilities (DPU). In 1998, the DPU was replaced by the Department of Telecommunications and Energy (DTE). In 2007, most of the functions of the DTE, including regulation of bus companies, were transferred to a newly constituted DPU. Some sections of the Massachusetts General Laws enacted between 1998 and 2007 have not been updated to reflect the return of the DPU. In this discussion, all powers now held by the DPU are referred to as such, even if the laws still refers to these as powers of the DTE.

Massachusetts laws pertaining to bus operation do not define a separate category of intercity bus service. Under Section 1 of Chapter 159A, operators of most fixed-route intrastate bus service within Massachusetts must first obtain licenses from the licensing authority of each city or town within which the route is to operate. The licensing authority is defined as the city council or the town selectmen. If a carrier's application for a municipal license has not been acted on within 60 days, or has been rejected, the law provides that the applicant may appeal to the DPU, which may, after examination of the facts, issue a license in lieu of one from the municipality. Chapter 159A designates the Massachusetts Department of Transportation as the licensing authority for operation over any road formerly under the jurisdiction of the Massachusetts Turnpike Authority or the Metropolitan District Commission.

Under Section 2 of Chapter 159A, every municipal license for fixed-route bus service must specify the route or routes over which the service is to operate and may limit the number of vehicles to be operated. The operation must also conform to such rules or regulations as the licensing authority adopts. Chapter 159A does not mention regulation of stop locations within a municipality, but it is apparently allowed under the general provision for rules and regulations. In addition, Massachusetts General Laws Chapter 40, Section 22, provides that cities or towns may make ordinances, bylaws, or rules "for the regulation of carriages and vehicles used therein."

Under Section 3 of Chapter 159A, for a proposed route of 20 or more miles in length, if a carrier has obtained municipal licenses from the two end communities and all but one intervening community, or from all but two intervening communities if there are more than seven, the DPU may issue a license for service through the one or two communities from which municipal licenses have not been obtained; such licenses from the DPU are restricted to closed-door operation. This power by the DPU to override a decision by a community is similar to its power enumerated in Section 1.

Section 7 of Chapter 159A provides that in addition to obtaining municipal licenses, an operator of fixed-route intrastate bus service must obtain from the DPU a certificate declaring that public convenience and necessity require the operation. Like the municipal licenses, the certificate must specify the route or routes over which the service is to operate. It may also contain conditions including an expiration date. Chapter 159A, Section 7A allows for the transfer between carriers of these DPU certificates and the associated municipal licenses, in whole or in part, subject to approval of the DPU. A full summary of DPU certificates of public convenience and necessity (CPCNs) issued to bus operators still in business in Massachusetts is included in the appendix of this study.

Section 7 also allows for revocation for cause of a certificate by the DPU after a public hearing. Section 4 provides that municipalities may also order the revocation of licenses they have issued for fixed-route bus operation. However, if the licensee does not consent in writing to an order within 30 days, the revocation is invalid unless approved by the DPU.

Section 11A specifies that Chapter 159A regulations do not apply to school bus services operated by a private carrier under a written contract with a municipality, municipal board, or school, provided that such operation is paid for through general funds rather than user charges.

Historically, it has generally been the practice of the DPU not to grant authority for more than one carrier at a time to operate a given bus route. The purpose of this policy has been to maintain the financial viability of routes that could not withstand competition. However, state law does not appear to prohibit issuance of operating rights for the same route to more than one carrier at the discretion of the regulatory agencies. There have been cases of overlapping rights being granted to two or more carriers when it appeared that no individual carrier was willing and able to provide enough capacity to meet expected demand. For example, after the New Haven Railroad discontinued passenger service between Boston and Cape Cod, Almeida Bus Lines and the Plymouth & Brockton Street Railway Company were both granted rights to operate buses between Boston and Hyannis.

3.3.2 Chapter 161A

The act that created the MBTA in 1964 both exempted it from much state and local regulation and transferred to the MBTA some of the regulatory powers that had been exercised by the DPU. Specifically, Section 3(i) of Chapter 161 A exempts the MBTA from municipal licensing requirements for bus routes as well as from regulation by the DPU except concerning matters of safety, routes and schedules not being considered matters of safety.

Under Section 5(k), concerning private carriers operating within the MBTA district either independently or under contract with the MBTA, the MBTA is given the same regulatory powers as the DPU, except with respect to matters of safety. In practice, this has allowed the MBTA to issue certificates of public convenience and necessity for routes entirely within its district and to approve or disapprove of transfers between carriers of existing certificates for service entirely within the MBTA district. The DPU has retained jurisdiction over issuance or transfer of certificates for routes partly or entirely outside the MBTA district.

New certificates issued by the MBTA between 1964 and 1982 stipulated that they would become invalid if the MBTA determined that service by the certificate holder was infeasible and that the MBTA intended to implement new

service on the same route either directly or through a contract with another carrier. In mid-1982 the MBTA stopped issuing new certificates of public convenience and necessity, instead executing what it called “service agreements” with carriers seeking new certificates.

Service agreements differed from certificates mostly in that they included expiration dates ranging from a few months up to five years. The purpose of this change was to prevent carriers from seeking monetary compensation for revocation of certificates for routes they were either no longer operating or on which they were providing inadequate service.

The boundaries of the MBTA district have changed over time. When the MBTA was first established in 1964, the district was specified in Chapter 161A, Section 1 as the 14 cities and towns of the former Metropolitan Transit Authority district and 64 surrounding cities and towns that were then in the Boston Standard Metropolitan Statistical Area. One additional town subsequently joined but later withdrew. Separate formulas were applied for assessment of shares of the net cost of service among the two groups of communities; the 14 cities and towns were assessed at a higher rate than the 64 (or 65) cities and towns. These were often referred to simply as the “inner 14” and the “outer 64 (or 65).”

Under legislation enacted in 1999, the MBTA district was expanded to 175 cities and towns. These included the former 78 cities and towns and 97 additional ones. Each of the added 97 had in 1999 either operating or under construction an MBTA commuter rail station within its boundaries or within a directly bordering city or town.

For purposes of assessment of the net cost of service, the 175 cities and towns were divided into three groups. A group of 14 cities and towns were the same as the previous inner 14. Of the former group of 64 cities and towns, 51 were served directly in 1999 either by MBTA bus, rail rapid transit, or commuter rail or by the MBTA’s paratransit service, THE RIDE. These were included in a new assessment group of 51 cities and towns. The other 13 were placed along with the 97 added communities in the new category of “other served communities”; all 110 of these communities have an MBTA service in a neighboring community.

The language in Chapter 161A pertaining to regulation by the MBTA of private carrier bus service within the MBTA district was moved from Section 5(k) to Section 5(j) but not amended by the 1999 legislation. It is therefore somewhat unclear as to the MBTA’s jurisdiction over routes that are entirely within the 175 city and town district but are not entirely within the former 64 city and town district. Section 5(j) refers to the powers extending to “the area constituting the authority at the time the authority is established,” but that could be interpreted

either as the time of establishment in 1964 or the time of reestablishment in 1999.

3.3.3 Chapter 161B

Chapter 161B authorized the creation of RTAs throughout Massachusetts. Unlike the MBTA, the RTAs are prohibited by Section 25 of this chapter from operating any mass transit services directly. In contrast, Section 6(f) empowers RTAs to contract with other parties to operate transit service within their districts. Under Section 6(i), operators of such contract bus services must still obtain municipal licenses for the routes involved if they do not already have them. However, this section also exempts RTAs from DPU jurisdiction, except concerning matters of safety. Consequently, DPU-issued certificates of public convenience and necessity are not required for bus routes operated under contract for RTAs.

Any private company that operated bus service with the proper licenses and certificates within an RTA district area prior to the formation of the RTA was authorized under Section 8(j) to continue to do so without a contract from the RTA. The company may also implement without a contract additional services if authorized by the RTA, subject to approval of the DPU. In effect, this means that if the company does not already hold a certificate of public convenience and necessity for the additional service, it must obtain one from the DPU, but that the RTA would be empowered to block the granting of such a certificate. In the case of a dispute over competing DPU and RTA regulatory powers, Section 16 empowers the DPU to resolve the issue.

Overlapping MBTA and RTA Jurisdictions

Section 2 of Chapter 161B specified 10 RTAs that could be organized under that chapter and listed individual cities and towns that could be included in each RTA. All of these were entirely outside of the limits of the then 78-municipality MBTA district, and there was no overlap between any two proposed RTAs.

Eventually all 10 originally authorized RTAs were organized. As permitted in Section 3, most RTAs have expanded to include cities and towns not specified in the original legislation. In contrast, several municipalities that were listed as potential RTA members have not joined one.

Section 3 also authorized the formation of RTAs in addition to those specifically authorized in the legislation. These new RTAs could not overlap the MBTA district, and four additional RTAs were organized under the original Section 3 guidelines. A subsequent amendment permitted RTAs to include cities or towns within the 78 municipality MBTA district in which the MBTA operated no fixed-route bus service. Several RTAs subsequently expanded

their membership to include municipalities in the MBTA district; MWRTA, serving the MBTA district's MetroWest area municipalities, is the only new RTA that has been formed under this amendment.

The 97 additional municipalities incorporated into the MBTA district in 1999 are the municipalities that have joined MWRTA since its creation in 2006, the entire service areas of CATA, LRTA, MVRTA, BAT, and GATRA, portions of MART and WRTA, and the SRTA community Freetown. The RTAs in western Massachusetts (BRTA, FRTA, and PVTA) as well as the three RTAs serving the Cape and Islands (CCRTA, VTA, and NRTA) do not overlap with the expanded MBTA district.

Section 3(i) of Chapter 161A grants to the MBTA the power "To provide mass transportation service, whether directly, jointly, or under contract, on an exclusive basis, in the area constituting the authority." The provision of mass transportation service in an RTA district is also an exclusive power of the RTAs, according to Section 6(i) of the RTA enabling legislation, Chapter 161B. With overlapping MBTA and RTA district municipal membership, these two provisions are clearly inconsistent.

The MBTA is granted wide operational latitude in its enabling legislation. Section 5(j) of Chapter 161A provides that "whenever the authority desires to add new routes for service in any area, it shall give preference in the operation of such routes to the private carrier then serving such area unless the authority concludes that such carrier has not demonstrated an ability to render such service according to the standards of the authority, that such service can be operated directly by the authority at substantially lesser expense to the authority and the public than if operated by such private carrier, or that for substantial and compelling reasons in the public interest, operation by such private carrier is not feasible."

The RTA enabling legislation, Chapter 161B, requires that all bus service provided for RTAs must be operated by parties other than the RTAs themselves. These other parties can include "government agencies, municipalities, authorities, private transportation companies, railroads, corporations, and other concerns." To the extent that private carriers are operating service in parts of an RTA that are now also part of the expanded MBTA district, either independently or under contract with RTAs, these private carriers are granted by Chapter 161A first priority for operation of any new routes initiated by the MBTA in those areas.

In practice, since 1999 the MBTA itself has not initiated new bus services in communities with joint MBTA/RTA district membership. All new bus services in these communities either have been added at the direction of the RTA or have been introduced by private carriers operating without contracts.