



MEETING MATERIALS

**For NVTC WMATA Committee Meeting
January 16, 2019**



**NVTC WMATA COMMITTEE MEETING
WEDNESDAY, JANUARY 16, 2019
NVTC Conference Room – Suite #620
2300 Wilson Blvd. – Arlington, VA 22201**

8:30 A.M.

AGENDA

1. Approval of the December 19, 2018 Interim WMATA Committee Meeting Summary
2. NVTC WMATA Committee 101
3. WMATA Committee and Board of Directors Items
4. Other Items of Jurisdictional Importance

Members

Cathy Hudgins (Chairman)
Matt Letourneau
Paul Smedberg
David Meyer
David Snyder
Christian Dorsey
Canek Aguirre



**NVTC INTERIM WMATA COMMITTEE
MEETING SUMMARY
NVTC Conference Room, Suite #620 – Arlington, Virginia
December 19, 2018**

NVTC Interim WMATA Committee Members Present:

Paul Smedberg, Chairman
Christian Dorsey
Cathy Hudgins
Dave Snyder

NVTC Interim WMATA Committee Members Absent:

Matt Letourneau

Other NVTC Commissioners Present:

Jennifer Mitchell

Others Present:

Kate Mattice	Greg Potts	Penny Newquist
Andrew D’huyvetter	Deb Wake	
Allan Fye	Kathy Matusiak	
Patricia Happ	Tim Roseboom	
Matt Cheng	Todd Horsley	
Joey de St. Aubin	Chris Ziemann	

Chairman Smedberg started the meeting at 8:36 A.M.

The committee accepted the minutes of the previous meeting with no objections.

Patricia Happ provided an update on the Regional Fare Payment Program. She outlined jurisdictional concerns regarding the delays in the project to upgrade outdated fare payment technology, as these delays imperil local transit system’s ability to collect revenue and modernize or expand their bus fleets. She asked the WMATA Board members to request an update to the Finance and Capital Committee on this element of the Regional Fare Payment Program in early 2019.

Mr. Dorsey provided an overview of the WMATA General Manager’s proposed FY2020 budget. The proposed budget also includes initiatives to increase ridership totaling approximately \$20 million; Virginia’s portion of the additional subsidy would be above Virginia’s three percent cap. The committee discussed their concerns that these initiatives could trigger a withholding of state funds, and that budget offsets would be necessary to implement these or other improvements that exceeded Virginia’s three percent operating cap. DRPT Director Mitchell agreed with the committee’s interpretation and encouraged the Virginia WMATA Board members to scrutinize the methodology and justification of the specific service increases proposed by the General Manager.

Andrew D’huyvetter briefed the committee on a letter drafted by NVTC staff that conveys NVTC’s comments on the General Manager’s proposed FY2020 WMATA Budget. The letter will be brought to the

Commission in January and submitted during a public comment period later that month. He provided an overview of the letter's concerns that the proposed budget would exceed Virginia's three percent cap and trigger a withholding of state funds. The committee discussed the letter and offered suggestions to strengthen the concerns regarding the three percent cap. Mr. Snyder advocated stronger language over these concerns and pointed out that the net subsidy impact to the jurisdictions is over three percent. Director Mitchell asked NVTC staff to include a reference to Maryland's three percent cap in the letter.

Cathy Hudgins arrived at 9:10 A.M.

Director Mitchell provided an overview of the status of DRPT's negotiations with WMATA on the implementation of an agreement between the two parties regarding Virginia's dedicated capital funding. She provided DRPT's interpretation of Virginia's funding legislation and proposed mechanisms to provide some stability to the Virginia funding localities. Chairman Smedberg requested that DRPT organize a conference call with the appropriate jurisdictional staff to continue the conversation.

Dave Snyder left at 9:30 A.M.

Matt Cheng provided an overview of WMATA's mitigation plan for the 2019 shutdown of the Blue and Yellow lines south of Ronald Reagan Washington National Airport Station. Director Mitchell informed the committee that DRPT's six-year plan included funding assistance for the supplementary service and encouraged jurisdictional partners to work with DRPT staff on their cost estimates and funding requests as soon as possible. Mr. Dorsey asked if temporary dedicated bus lanes were on the table, and Director Mitchell responded that she was open to working with of Commonwealth partners to evaluate the idea. She also provided an update that DRPT was working with Amtrak to lower the step-up cost which would potentially provide more service to rail commuters.

Kate Mattice updated the Committee on NVTC's idea of using a DRPT demonstration grant to begin a coordinated marking campaign to get riders back to transit after the summer shutdown.

Mr. Dorsey congratulated Ms. Mattice on her receiving of the Ronald F. Kirby Award for Collaborative Leadership from the Metropolitan Washington Council of Governments.

Mr. D'huyvetter then briefed the committee on a recent issue between WMATA and VRE. WMATA recently notified MARC and VRE that WMATA would end the practice of offering free Metrobus rides to VRE and MARC riders at the end of the year. The practice was based on a fare buy down agreement that was adopted by the WMATA Board but was never implemented. VRE and MARC have sent WMATA a response asking for WMATA to reconsider the termination of free Metrobus rider for MARC and VRE riders.

Mr. D'huyvetter reminded the committee that its first committee meeting of January would be on the third Wednesday (January 16).

Chairman Smedberg adjourned the meeting at 10:01 A.M.



OVERVIEW OF NVTC WMATA COMMITTEE

I. Background and Scope of the Committee

As one of four committees created in NVTC's last update to its By-Laws in October 2018, NVTC's WMATA Committee provides NVTC-wide regional guidance to the Virginia appointees to the WMATA Board of Directors and a framework for sharing institutional knowledge. The committee serves as a venue to discuss WMATA issues directly affecting the NVTC region including but not limited to: WMATA budget decisions that affect jurisdictional subsidies, service changes that affect Virginia riders, and actions that affect Northern Virginia transit providers.

The WMATA Committee also ensures that member jurisdictions' issues are elevated to WMATA when appropriate and discusses and recommends to the Commission NVTC-wide regional positions on WMATA issues through consensus-based deliberations. HB1539 increased NVTC's oversight and policy role with WMATA. The WMATA Committee provides leadership and support to NVTC staff in the development of WMATA related oversight objectives, policies, procedures, and agreements, including but not limited to NVTC's annual report to the General Assembly and Governor on the financial and operational performance of WMATA.

NVTC plays an important role in how Northern Virginia manages its relationship with WMATA. The WMATA Committee is one of many avenues in which NVTC discusses issues related to WMATA. Commission meetings offer a monthly opportunity for Commissioners to hear from and engage with the Virginia WMATA Board members and for the Commission to take formal policy positions on WMATA related issues. NVTC also coordinates a regional staffing structure, which includes staff from NVTC, DRPT, and each jurisdiction, to staff the Virginia WMATA Board members and prepare for monthly WMATA Board meetings. These parallel structures allow Virginia to speak with one voice on WMATA matters.

II. WMATA Committee Membership

- Cathy Hudgins (Chairman)
- Christian Dorsey
- Dave Snyder
- David Meyer
- Paul Smedberg
- Matt Letourneau
- Canek Aguirre

III. Meeting Times

The WMATA Committee has met monthly on the third Wednesday of the month from 8:30-10:00am. NVTC staff recommend keeping this meeting time but adjusting the frequency to align with the strategic role of the committee as outlined in the attached schedule. NVTC staff also propose that committee members may request a WMATA Committee meeting at the discretion of the WMATA Committee Chair. Requested meetings should be made at least a week in advance to allow the required public meeting notification. Where possible, a requested meeting will be scheduled on the evening of a full NVTC Commission meeting.

IV. Quorum and Electronic Participation Policy

To obtain a quorum, a majority of the committee members (four) must be physically present. Occasions may arise when a Commissioner is unable to be physically present at a committee meeting. NVTC passed a policy governing electronic participation in NVTC committee meetings in 2014. A Commissioner may request a call-in option under certain circumstances. The call-in option may only be enabled if a quorum is physically assembled at the primary meeting location. Such electronic participation by a Commissioner shall be limited each calendar year to two committee meetings or 25 percent of the meetings, whichever is fewer. With five NVTC WMATA Committee meetings anticipated in 2019, this limits each Commissioner to utilizing only one call-in for committee meetings each year. Additional information and requirements are provided in the attached electronic participation policy document.



NVTC WMATA Committee – Proposed 2019 Schedule

Month	NVTC WMATA Committee Meetings
January 16	<ul style="list-style-type: none"> • Overview of the NVTC WMATA Committee • 2019 NVTC WMATA Committee Schedule • WMATA FY20 Budget Work Session
February	<i>No Meeting</i>
March	<i>No Meeting</i>
April 17	<ul style="list-style-type: none"> • Recommend Approval to the Commission of certain WMATA Documents • Work Session on Strategies to Reduce Costs and Improve efficiencies of WMATA • Bus Transformation Study (?)
May	<i>No Meeting</i>
June 19	<ul style="list-style-type: none"> • Work Session on Strategies to Reduce Costs and Improve efficiencies of WMATA
July	<i>No Meeting</i>
August	<i>No Meeting</i>
September 18	<ul style="list-style-type: none"> • Recommend Approval to the Commission of the Annual Report on the Performance and Condition of WMATA • NVTC priorities in upcoming WMATA FY21 budget
October	<i>No Meeting</i>
November	<i>No Meeting</i>
December 18	<ul style="list-style-type: none"> • FY21 WMATA Proposed Budget Work Session (invitation extended to DRPT Director) • Review letter of FY21 Budget Comments to WMATA

In consultation with the Chair and jurisdictional staff, NVTC staff may recommend additional agenda items as appropriate to the scale, scope, and schedule of the Committee.



ADDITIONAL RESOURCES

**For NVTC WMATA Committee Meeting
January 16, 2019**

WMATA Committee
Except from NVTC By-Laws (October 2018)

10. COMMITTEES

A. General Provisions

- (1) The Commission shall, at its January annual organizational meeting, or thereafter, establish such committees as it deems appropriate. Such committees shall continue throughout the calendar year unless dissolved. The Commission shall designate the chairman and membership of each such committee unless expressly provided for elsewhere in these By-Laws.
- (2) Excluding the Executive Committee, the Commission chairman shall not also serve as the chairman of a committee unless determined otherwise by an affirmative vote that includes (a) not less than two-thirds of the Commission members present and voting and (b) Commission members from not less than two thirds of the member jurisdictions.
- (3) To encourage participation by all member jurisdictions, the Commission shall strive to distribute Commission leadership and committee leadership and membership among all members from the member jurisdictions.
- (4) All committees shall adhere to all open meeting requirements contained in the Virginia Code including those pertaining to notice, minutes, and public attendance. All members of NVTC are eligible to attend meetings of all NVTC's committees and subcommittees, including closed meetings, but only committee members shall be eligible to vote at committee meetings.

C. WMATA Committee

- (1) Membership: There shall be a WMATA Committee consisting of the two alternate members appointed by the Commission to the WMATA Board of Directors, one of whom shall be the WMATA Committee chair; the Chairman of the Commonwealth Transportation Board or his designee appointed by the Commission as a principal member to the WMATA Board of Directors; the principal member appointed by the Commission to the WMATA Board of Directors; and Commission members drawn from other member jurisdictions not already represented by the foregoing members.
- (2) Charge: The WMATA Committee shall:
 - (a) Provide NVTC-wide regional guidance to the Virginia appointees to the WMATA Board of Directors and a framework for sharing institutional knowledge.
 - (b) Serve as a venue for discussion of WMATA issues directly affecting the NVTC region including but not limited to WMATA budget decisions that affect jurisdictional subsidies, service changes that affect Virginia riders, and actions that affect Northern Virginia transit providers.
 - (c) Ensure that member jurisdictions' issues are elevated to WMATA when appropriate.

(d) Discuss and recommend to the Commission NVTC-wide regional positions on WMATA issues through consensus-based deliberations.

(e) Provide leadership and support to NVTC staff in the development of WMATA-related oversight objectives, policies, procedures, and agreements, including but not limited to NVTC's annual report to the General Assembly and Governor on the financial and operational performance of WMATA (§33.2-3403).

(3) Meetings: The WMATA Committee shall meet as necessary to align with activities of and decisions coming before the WMATA Board of Directors.

Key Policy Changes in the Omnibus Transit Funding Bill (HB1539/SB856, 2018)

WMATA Capital Fund

1. Establishes a new dedicated WMATA Capital Fund
 - Redirects state, local and regional funds to support Virginia's contribution to WMATA's major capital rehabilitation and other WMATA projects.

WMATA Governance and NVTC Reporting

1. Requires NVTC Certification of WMATA Reporting
 - Requires NVTC to certify annually that it has received the WMATA capital budget, results of independent financial audit, NTD profile, and FTA-required single audit before Virginia funds are provided to WMATA.
2. Requires NVTC Reporting on WMATA Benchmarking and Performance
 - Requires NVTC to report to the Governor and the General Assembly annually a set of benchmarking and performance data on both the rail and bus systems, information on financial performance, operational cost containment strategies, how funds were used to address safety and condition, and ridership.
3. Places a 3% cap on growth in Virginia's operating budget subsidy
 - Requires Virginia's contribution to WMATA's annual operating budget to not increase by more than three percent from the previous year or CTB shall withhold an amount equal to 35 percent of DRPT's allocations to WMATA (with some limited exceptions).
4. Limits Role of Alternates on WMATA Board
 - Requires CTB to withhold 20 percent of DPRT funds to WMATA if "any alternate members participate or take action at an official [WMATA] Board meeting." WMATA is already working on bylaw changes to address this.
5. Requires WMATA Budget/Strategic Plan and NVTC Public Meetings
 - Requires CTB to withhold 20 percent of DRPT funds to WMATA unless WMATA adopts 1) a "detailed capital improvement program" for five fiscal years, plus holds a public hearing in an NVTC locality; 2) an updated strategic plan, with a public hearing in an NVTC locality. The strategic plan needs to address items from the LaHood study.
6. Creates Metro Reform Commission
 - Creates a four-member commission appointed by the General Assembly to make recommendations on reforms to the conditions used in binding arbitration.

Other legislative changes

1. Generates additional funding from placing a floor on the regional gas tax to support WMATA and VRE
 - Creates a new dedicated capital and operating fund for VRE from these funds @\$15m/year
2. Changes the allocation of state funding for all other transit agencies to be based upon performance factors for both transit capital and operating funds.



Adopted 11-06-14

POLICY GOVERNING ELECTRONIC PARTICIPATION IN NVTC COMMITTEE MEETINGS

Occasions may arise when a Commissioner of the Northern Virginia Transportation Commission (NVTC) is unable to be physically present at a committee meeting. Under certain circumstances, Virginia law permits members to participate in meetings through electronic means such as telephone and video conferencing. The law limits the instances in which this may occur, prescribes procedures that must be followed when a member participates in a meeting through electronic means, and requires that a written policy governing such participation be adopted. This Policy, as hereafter set forth, sets forth the instances when a Commissioner may participate in a NVTC committee meeting electronically and the procedures that apply.

Circumstances When Electronic Participation Is Permitted

A Commissioner may participate in a NVTC committee meeting through electronic means from a remote location not open to the public under the following circumstances:

1. A Commissioner shall notify the Chair on or before the day of the meeting that such Commissioner is unable to attend the committee meeting due to an emergency or personal matter, and shall identify with specificity the nature of the emergency or personal matter. NVTC shall record the specific nature of the emergency or personal matter and the remote location from which the Commissioner participated. If the Commissioner's participation from a remote location is disapproved because such participation would violate the provisions of this Policy, such disapproval shall be recorded.
2. Such participation by the Commissioner shall be limited each calendar year to two committee meetings or 25 percent of the meetings, whichever is fewer.
3. A Commissioner may notify the Chair that such Commissioner is unable to attend a committee meeting due to a temporary or permanent disability or other medical condition that prevents the Commissioner's physical attendance. NVTC shall record this fact and the remote location from which the Commissioner participated.

Procedural Requirements

Participation by a Commissioner of NVTC as authorized above shall be only under the following conditions:

1. A quorum of NVTC is physically assembled at the primary or central meeting location.
2. NVTC is able to make arrangements for the voice of the committee member who is participating remotely to be heard by all persons at the primary or central meeting location.
3. This Policy shall be applied strictly and uniformly, without exception, to all Commissioners and without regard to the identity of the Commissioner requesting to participate remotely or the matters that will be considered at the committee meeting.



Adopted 11-06-14

GUIDELINES FOR NVTC's POLICY GOVERNING ELECTRONIC PARTICIPATION IN COMMITTEE MEETINGS

The determination of whether requests by Commissioners to participate in NVTC committee meetings from remote locations complies with NVTC's Policy Governing Electronic Participation in Meetings ("Policy") shall be made by the NVTC Chair subject to final approval by the Commission. The following guidelines shall be used by the Chair and NVTC in considering and acting upon requests:

1. The policy applies only to NVTC committee meetings when the technology is available to accommodate remote participation, which includes NVTC's conference room (Suite #620, 2300 Wilson Blvd., Arlington VA).
2. Notification of the request to participate electronically shall be provided by the Commissioner seeking to participate remotely to the Chair at the earliest practicable time not later than eight hours before the meeting start time. It may be provided verbally but should be followed up in writing as soon as possible.
3. The Commissioner may participate in the committee meeting, including work sessions and closed sessions, using all available electronic means including telephone and video conferencing provided the Commissioner participating remotely can be heard by all those in attendance at the location of the meeting. In the event that the means used for participation in the meeting, or other circumstances at the remote location, are disruptive to the meeting, the Chair, subject to Commission approval, may deny or withdraw the approval to participate remotely, including during the meeting. While not required, the Commissioner participating remotely is encouraged to view the meeting via television or the internet to the extent it is available.
4. For purposes of the Policy, the term "emergency" shall have its common meaning including dictionary definitions defining the term as: "a dangerous or serious situation, such as an accident, that happens suddenly or unexpectedly and needs immediate action." (Cambridge online dictionary).
5. For purposes of the Policy, a personal matter includes circumstances that prevent a member from physically attending a meeting including personal and business travel.

6. For purposes of the Policy, a temporary or permanent disability and a medical condition that prevents physical attendance at the meeting should be evident based on the nature of the disability or the condition.
7. The Commissioner requesting to participate electronically shall provide sufficient specificity as to the nature of the emergency or personal matter as is necessary for the Chair, and the Commission, to determine whether the circumstances warrant remote participation.
8. Medical verification of a medical condition or physical disability shall not be required.
9. More than one Commissioner may participate electronically at the same meeting.
10. Remote participation shall be permitted only under circumstances where all attendees at the regular meeting location, including the public, can, at a minimum, hear and possibly see the remote member.
11. NVTC's Commission Secretary shall be responsible for documenting the request to participate electronically, the reasons why it is necessary, the remote location from which the Commissioner participated electronically, and the Commission's approval or disapproval.
12. NVTC's Commission Secretary shall be responsible for ensuring a Commissioner does not participate electronically for emergency or personal reasons more than two times per calendar year.



***Updated to reflect January
Commission Meeting
discussion and action**

January XX, 2019

Chairman
Hon. Matthew F. Letourneau

Vice Chairman
Hon. Katie Cristol

Secretary/Treasurer
Hon. Sharon Bulova

City of Alexandria
Hon. Canek Aguirre
Hon. Elizabeth B. Bennett-Parker

Arlington County
Hon. Katie Cristol
Hon. Christian Dorsey
Hon. Libby Garvey

Fairfax County
Hon. Sharon Bulova
Hon. John C. Cook
Hon. John W. Foust
Hon. Catherine M. Hudgins
Hon. Jeffrey C. McKay

City of Fairfax
Hon. David Meyer

City of Falls Church
Hon. David F. Snyder

Loudoun County
Hon. Matthew F. Letourneau
Hon. Ron A. Meyer

Commonwealth of Virginia
Hon. Paul C. Smedberg

Virginia General Assembly

Senate
Sen. Adam Ebbin
vacant

House of Delegates
Del. David LaRock
Hon. James M. LeMunyon
Mr. M. David Skiles
Mr. Raul "Danny" Vargas

Executive Director
Katherine A. Mattice

Ms. Jennifer Ellison
Board Corporate Secretary
Washington Metropolitan Area Transit Authority (WMATA)
600 Fifth Street, NW
Washington, D.C. 20001

Re: Comments on Proposed Fiscal Year 2020 Budget (Docket XXXX)

Dear Ms. Ellison:

On behalf of the Northern Virginia Transportation Commission (NVTC), I write to convey comments and concerns regarding Washington Metropolitan Area Transit Authority's (WMATA's) proposed FY2020 budget as part of its public comment period.

Overall, NVTC supports the budget's focus on system preservation and state of good repair projects, increasing ridership, maximizing operating efficiency, and increasing non-fare revenues. However, we are fundamentally concerned that without offsets to the operating budget, the proposed new initiatives to drive ridership growth are beyond the three percent cap instituted in Virginia's recently legislation, HB1539/SB586 (2018), and would trigger a withholding of state funds that our jurisdictions use to pay their obligations to WMATA.

Last year's Virginia General Assembly session was a landmark one for WMATA with the passage of dedicated capital funding. Along with the funding commitments also made by Maryland and the District of Columbia, this new dedicated capital fund will put WMATA on the path to achieving a safe and reliable transit system. However, Virginia and Maryland's legislation came with conditions that reflect the regional concern of the unsustainable growth of WMATA's operating costs.

In particular, the Virginia legislation puts a three percent cap on the annual operational subsidy growth to Virginia localities with only limited exceptions. The Commonwealth Transportation Board (CTB) passed policy guidance in September 2018 (attached) that stated the conditions for withholding funds. Based upon the guidance by the CTB, we are concerned that the proposed WMATA FY2020 operating budget does not meet these conditions and could trigger the withholding of Virginia's state funds that are used by our localities to fund both capital and operating subsidies.

Further, in addition to a withholding of vital state funds to our jurisdictions, we are concerned that any violation of the withholding provisions of HB1539/SB586 (2018) could imperil the dedicated capital funding itself. Any decision to withhold funding so soon after the introduction of dedicated funding could damage the regional political consensus that resulted in the landmark dedicated capital funds for WMATA.

Proposed FY2020 Operating Budget

NVTC appreciates that the operating budget avoids service cuts and general fare increases, reduces costs through management actions and competitive contracting, increases non-fare revenues, restores some Automatic Train Operations, and caps Virginia's base jurisdictional subsidy increase at three percent. As WMATA continues to refine the operating budget, we are interested in exploring the initiatives proposed to drive ridership and revenue growth that can be achieved within the Virginia required three percent cap, such as various pass enhancements and late-night service partnership. We are supportive of the addition of unlimited Metrobus in various pass products, and we strongly encourage you to engage with our local transit systems in finding an equitable method to including them in WMATA's pass offerings as well.

NVTC appreciates the intent of the new initiatives to drive ridership growth. We formally request that you look for additional management efficiencies and/or additional revenues that would enable the most effective of these ridership growth initiatives to move forward, thereby staying within the three percent cap.

Proposed FY2020 Capital Budget and FY2020-2025 Capital Improvement Program

NVTC supports the priorities of the FY2020 Capital Budget and FY2020-2025 Capital Improvement Program (CIP) to deliver capital investments that focus on safety, system preservation, and a state of good repair. With the recent passage of dedicated capital funding for WMATA, we look forward to reviewing projections of funding sources and uses for the six-year period of the Capital Improvement Plan as required by the Virginia legislation.

While the passage of dedicated capital funding for WMATA in Virginia was a historic success, the funding solution requires our local jurisdictions to obligate a significant share of local revenues to Virginia's share of dedicated funding. This means our jurisdictions have fewer funding sources available to fund any unexpected gaps in WMATA's budget. As a result, the reauthorization of the Passenger Rail Investment and Improvement Act (PRIIA) is vital to keeping WMATA's capital subsidy growth to a level our jurisdictions can afford and reinforces the importance of WMATA to the federal workforce. We encourage continued and urgent advocacy for the renewal of federal capital funding under PRIIA to allow WMATA to address state of good repair needs.

NVTC and its jurisdictions are invested in WMATA's success. As such, we must continue to ensure that the WMATA budget reflects and supports the priorities of safety and reliability without violating any of the withholding provision under Virginia's HB1539/SB856 (2018). We look forward to working with WMATA and other funding jurisdictions to balance resources and new initiatives as part of the FY2020 budget process.

Sincerely,

Matthew F. Letourneau
Chairman

Attachment: Approval of Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA) – Resolution of the Commonwealth Transportation Board, September 2018



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 3

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

September 18, 2018

MOTION

Made By: Mr. Whitworth, Seconded By: Mr. Kasprowicz

Action: Motion Carried, Unanimously

Title: Approval of Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA)

WHEREAS, the Commonwealth Transportation Board (CTB), the Northern Virginia Transportation Commission (NVTC), and the jurisdictions that comprise the NVTC, who provide local funding and receive transit service from the Washington Metropolitan Area Transit Authority (WMATA), are mutually interested in the success of the WMATA; and

WHEREAS, WMATA was established pursuant to an interstate compact between Virginia, Maryland, and the District of Columbia to operate a regional mass transit system in the Washington, D.C. metropolitan area; and

WHEREAS, NVTC was founded in part to represent the interests of the Commonwealth of Virginia during the establishment of WMATA; and

WHEREAS, NVTC's member jurisdictions – the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington and Fairfax – are the current WMATA Compact funding partners, with Loudoun County to become a funding partner in advance of the start of operations on Phase 2 of the Silver Line; and

WHEREAS, Section 33.2-1936 of the *Code of Virginia* establishes that the Northern Virginia Transportation District has unique needs and that the operation of the rapid heavy rail mass transportation system and the bus mass transportation system by WMATA provides particular and substantial benefit to the persons living, traveling, commuting, and working in the localities embraced by the NVTC; and

WHEREAS, Section 33.2-3401 of the *Code of Virginia*, pursuant to Chapter 854 of the 2018 Virginia Acts of Assembly, establishes a WMATA Capital Fund to provide Virginia's agreed upon share of regional dedicated capital funding to WMATA; and

WHEREAS, Section 33.2-1526.1 of the *Code of Virginia*, pursuant to Chapter 854 of the 2018 Virginia Acts of Assembly, restructures the Commonwealth Mass Transit Fund so that 53.5 percent of its funds shall be annually allocated to NVTC for distribution to WMATA on behalf of its local jurisdictions for capital purposes and operating assistance ("Commonwealth Mass Transit Fund WMATA Allocation"), as determined by NVTC; and

WHEREAS, the enactment clauses of Chapter 854 of the 2018 Virginia Acts of Assembly requires the Commonwealth Transportation Board to withhold funding available to WMATA pursuant to Section 33.2-1526.1(C)(3) of the *Code of Virginia* Allocation under the following conditions:

1. The seventh enactment requires the CTB shall withhold 20 percent of the funds available if (i) any alternate directors participate or take action at an official WMATA Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA Compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate directors.
2. The eighth enactment requires that, beginning July 1, 2019, the CTB shall withhold 20 percent of the funds available each year unless (i) WMATA has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the NVTC; and (ii) WMATA has adopted or updated a strategic plan within the preceding 36 months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by the NVTC. The first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017.
3. The first enactment requires that, in any year that the total Virginia operating assistance in the approved WMATA budget increases by more than 3 percent from the total operating assistance in the prior year's approved WMATA budget, the Board shall withhold an amount equal to 35 percent of the funds available. The following items shall not be included in the calculation of any WMATA budget increase: (i) any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any capital project approved by the WMATA Board before or after the effective date of this provision; and (iii) any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity.

WHEREAS, it is in the best interest of the CTB, NVTC, and the jurisdictions that are WMATA Compact funding partners to ensure that WMATA receives the full allocation of funding from the Commonwealth Mass Transit Fund that is distributed by the NVTC on behalf of its jurisdictions; and

NOW THEREFORE, BE IT RESOLVED that the Board hereby adopts the following policy and guidelines to govern future Board decisions related to the Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority enacted by the General Assembly of Virginia in 2018:

Participation by Alternate Directors of the WMATA Board (Enactment Clause 7 of Chapter 854 of the 2018 Virginia Acts of Assembly)

1. The CTB shall withhold funding if the WMATA Board of Directors has not adopted bylaws that prohibit the participation of alternate directors specified in clause (ii) of Enactment Clause 7.
2. When determining whether to withhold funding in response to an action taken by an alternate director that is prohibited by clause (i) of Enactment Clause 7, the CTB shall consider the following as prohibited activities by alternate directors at an official WMATA Board or committee meeting (unless the alternate director is acting in the absence of a Board director who serves on the committee): (i) participating in the discussion among Board directors; (ii) making or seconding a motion; (iii) voting on motions, resolutions or other Board actions; (iv) being counted toward the required quorum; (v) attendance or participation in any Executive Session of the WMATA Board or its committees; (vi) any action in violation of WMATA Bylaws in regards to the activities of alternate directors. Attendance by alternate directors at official WMATA Board or committee meetings, excluding Executive Sessions, shall not be a basis for withholding funding, nor shall the provision of information or reports to directors at a WMATA committee meeting in response to a request to do so by the director chairing the committee meeting.
3. WMATA shall provide a written notification to the CTB by July 1 of each year that it has adopted bylaws that prohibit the participation of alternate directors specified in clause (ii) of Enactment Clause 7 and that no violations of the bylaws by alternate directors have occurred during the previous year.
4. WMATA shall immediately notify the CTB in writing if a violation of its bylaws by an alternate director or some other action prohibited by this CTB policy occurs.

Adoption of a Detailed Capital Improvement Program (Enactment Clause 8(i) of Chapter 854 of the 2018 Virginia Acts of Assembly)

1. The CTB shall withhold funding if:
 - a. Beginning July 1, 2019, WMATA has not annually adopted or updated by July 1 of each year a detailed capital improvement program covering the current fiscal year and the next five fiscal years, including projections of funding sources and uses for the six-year period.
 - b. Beginning July 1, 2019, WMATA has not annually held by July 1 of each year at least one public hearing on such capital improvement program held in a locality embraced by the NVTC.
2. WMATA shall provide a written notification to the CTB by July 1 of each year that it has: (i) adopted a capital improvement program that complies with the above requirements; and (ii) held a public hearing on the capital improvement program in a locality embraced by the NVTC.

Adoption or Update of a Strategic Plan (Enactment Clause 8(ii) of Chapter 854 of the 2018 Virginia Acts of Assembly)

1. The CTB shall withhold funding if:
 - a. Beginning July 1, 2019, the WMATA Board has not adopted or updated a strategic plan within the preceding 36 months. After submission of the first strategic plan, WMATA must submit updated plans every 3 years thereafter.
 - b. Beginning July 1, 2019, WMATA has not held at least one public hearing on such strategic plan held in a locality embraced by the NVTC.
2. The first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017.
3. WMATA shall provide a written notification to the CTB by July 1 of the year of any strategic plan update that it has: (i) adopted or updated a strategic plan that complies with the above requirements; and (ii) held a public hearing on the strategic plan or strategic plan update in a locality embraced by the NVTC.

3% Cap on Growth in Total Virginia Operating Assistance (Enactment Clause 1 of Chapter 854 of the 2018 Virginia Acts of Assembly)

1. The CTB shall withhold funding if:
 - a. The total operating subsidy for Virginia in the current year approved WMATA budget increases (effective July 1) by more than 3 percent over the prior year approved WMATA budget (as of June 30).

2. The following items shall not be included in the calculation of any WMATA budget increase:
 - a. Any service, equipment, or facility that is required by any applicable law, rule, or regulation.
 - i. Includes, but is not limited to, compliance with any safety directives to WMATA issued by the Metrorail Safety Commission (MSC), the Federal Transit Administration (FTA), the National Transportation Safety Board (NTSB) or any other relevant safety oversight agency; actions taken to comply with the Americans with Disabilities Act (ADA); and actions taken to comply with Title VI requirements.
 - b. Any major capital project approved by the WMATA Board before or after the effective date of this provision.
 - i. Includes operating subsidy increases related to major capital projects that improve WMATA's state of good repair, support a major system expansion project (such as the planned Potomac Yard Metrorail Station in Alexandria and the Silver Line Metrorail Phase 2 project in Fairfax and Loudoun Counties), and respond to service disruptions caused by implementation of approved capital projects to address state of good repair needs or from emergency system shutdowns.
 - c. Any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity.
 - d. Operating subsidies for specific WMATA transit services that are funded in whole by one or more WMATA member jurisdictions and/or from other non-WMATA funding sources.
 - e. Regularly-scheduled adjustments of the inputs to the regional subsidy allocation formulas by WMATA.
3. WMATA shall provide a written notification to the CTB no later than July 1 of each year of the annual growth in total Virginia operating assistance, including a detailed description of the costs contributing to the increased operating subsidy and a year over year comparison of such costs. WMATA shall also provide a detailed description and justification of costs considered exempt from the calculation of the annual growth rate in operating subsidy. The written notification shall include sufficient documentation to allow the CTB to perform its own verification of the annual growth rate and amount of total Virginia operating assistance.
4. By July 1 of each year, WMATA shall notify the CTB if it is scheduled or plans to adjust the regional subsidy allocation formulas in the budget to be proposed for the next fiscal year.

Resolution of Withholding of Funds

1. The CTB will release any withheld funding upon approval or implementation of an approved mitigation action.
 - a. The CTB will determine what constitutes an approved mitigation action, except that approval by the WMATA Board of a budget amendment reducing the amount of annual operating assistance required by Virginia to no more than 3 percent greater than the prior year shall be considered an approved mitigation action for a violation of the restriction related to the 3% cap on growth in Virginia operating assistance.
2. The CTB shall retain as a penalty any funding withheld during a fiscal year in response to a violation for which there is no mitigation.

Additional Considerations

1. The CTB, the Virginia Department of Rail and Public Transportation (DRPT), WMATA, the NVTC, and NVTC's member jurisdictions shall proactively collaborate to avoid activities that would require the CTB to withhold funding.
2. WMATA shall submit the documents required to demonstrate compliance to DRPT by the deadlines specified. DRPT will analyze the information received from WMATA and present to the CTB, in September of each year (beginning in 2019), a recommendation on enforcement actions, if any, that are required to be taken by this policy.
3. DRPT will provide regular reports to the CTB on observations related to compliance with this policy throughout the year.
4. After November 1 of each year, the NVTC shall present to the CTB the findings included in its report on the performance and condition of WMATA required under Section 33.2-3403 of the *Code of Virginia*.
5. The CTB reserves the right to approve exceptions to this policy at any time in response to special or extraordinary circumstances.
6. Given that the condition of the WMATA system may change over time, the CTB will consider revisions and/or updates to these guidelines every two years.

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CTB Decision Brief

Title: Approval of Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA)

Issue: The enactment clauses of Chapter 854 of the 2018 Virginia Acts of Assembly require the CTB to withhold funding available to WMATA pursuant to Section 33.2-1526.1(C)(3) under certain conditions. The Department of Rail and Public Transportation (DRPT) recommends that the CTB approve the proposed policy and guidelines for determining the conditions under which it must withhold funding from WMATA.

Facts: During the 2018 session, the General Assembly established a new WMATA Capital Fund to provide Virginia's share of new regional dedicated capital funding to WMATA. The same legislation restructured the Mass Transit Trust Fund (MTTF) so that 53.5% of the funding from the MTTF shall be allocated to the Northern Virginia Transportation Commission (NVTC) each year for distribution to WMATA on behalf of its member jurisdictions. The legislation also included a number of required reforms and conditions with which WMATA must comply to receive its full amount of annual funding from the Commonwealth. WMATA shall submit the documents required to demonstrate compliance to DRPT each year. The CTB is charged with determining WMATA's compliance with the required reforms and conditions and shall withhold funding in instances of non-compliance as specified in the legislation. The CTB may also restore funding when WMATA returns to a state of compliance. As the funding to be withheld from WMATA for occasions of non-compliance shall be deducted from the annual allocation from the MTTF to the NVTC, DRPT consulted extensively with NVTC in the development of the proposed Policy and Guidelines for Implementation of Governance and Funding Reforms for WMATA. The proposed policy and guidelines will assist the CTB in performing an objective annual review of WMATA's compliance with the required reforms and conditions.

Recommendation: DRPT recommends that the CTB approve the proposed Policy and Guidelines for Implementation of Governance and Funding Reforms for WMATA.

Action Required by CTB: Approval of the attached resolution adopting the proposed Policy and Guidelines for Implementation of Governance and Funding Reforms for WMATA as an official CTB policy.

Options: Approve, Deny or Defer.



HANDOUTS

**For NVTC WMATA Committee Meeting
January 16, 2019**

Commission Meetings

Occur Monthly

- Discuss and inform Commissioners through the WMATA portion of the agenda
- Written report from the WMATA Committee and WMATA Board Members
- Take formal action on NVTC policy positions on WMATA

NVTC WMATA Committee

Occur Bimonthly

- Provides a forum for consensus based recommendations to the Commission on WMATA policy positions
- Provides strategic guidance to staff on WMATA related policy matters and NVTC's responsibilities from HB1539

Regional Staffing Structure

Occur Biweekly

- NVTC staff coordinate a regional staffing structure that includes DRPT and jurisdictional staff
- Prepares Virginia WMATA Board members for WMATA Board meetings
- Builds consensus on Virginia issues related to WMATA and facilitates multi-jurisdictional representation