



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

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*Agenda item # 12*

### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 16, 2019

#### MOTION

**Made By: Ms. Hynes, Seconded By: Mr. Johnsen**

**Action: Motion Carried, Unanimously**

#### **Title: Washington Metropolitan Area Transit Authority (WMATA) Annual Reporting – Fiscal Year 2019**

**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 required 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 first enactment clause 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.

2. The seventh enactment clause 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.

3. The eighth enactment clause 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.

**WHEREAS**, the Commonwealth Transportation Board approved policy and guidelines to implement the enactment clauses by resolution of the Board on September 18, 2018; and

**WHEREAS**, the Virginia Department of Rail and Public Transportation has completed a review of WMATA's compliance with such requirements, in consultation with the Office of the Attorney General, and has presented their findings to the Board; and

**NOW THEREFORE, BE IT RESOLVED** that the Board hereby adopts the following findings relative to WMATA's compliance for Fiscal Year 2019:

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

1. WMATA has met the requirements of the statute and Board policy for FY2019.
2. No enforcement action to be taken for FY2019.

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

1. WMATA has met the requirements of the statute and Board policy for FY2019.
2. No enforcement action to be taken for FY2019.

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

1. WMATA has met the minimum requirements for compliance with the statute and CTB policy.
2. WMATA shall improve the level of detail provided in the Capital Improvement Program and enhance capital program reporting in the future, based on the negotiated terms of the regional capital funding agreement.
3. No enforcement action to be taken for FY2019.

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

1. WMATA has met the minimum requirements for compliance with the statute and CTB policy.
2. WMATA was under a time constraint to produce the first strategic plan, which is very general and lacks specificity.
3. The strategic plan was developed internally by WMATA staff with limited input from the Board or jurisdictions.
4. Board policy requires an update every 36 months. The next strategic plan should be developed in a more open and inclusive manner, with enough time allotted to allow for meaningful input.
5. No enforcement action to be taken for FY2019.

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## CTB Decision Brief

### **Title: Washington Metropolitan Area Transit Authority (WMATA) Annual Reporting – Fiscal Year 2019**

**Issue:** In accordance with the CTB Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA) that was approved by the CTB on September 18, 2018, WMATA must provide notifications to DRPT by July 1 of each year regarding its compliance with four specific legislative and CTB policy requirements. DRPT is required to 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 the CTB policy. A resolution approving DRPT's recommendations as presented is required.

**Facts:** WMATA provided the required notifications for FY 2019-2020 actions to DRPT in two separate letters dated June 27, 2019. DRPT staff reviewed and analyzed the information received from WMATA and DRPT Director Jennifer Mitchell presented DRPT's findings and recommendations to the CTB at its workshop on September 17, 2019. The four specific legislative and CTB Policy requirements that WMATA must document compliance with include the annual adoption of a detailed Capital Improvement Program (CIP), the adoption or update of a Strategic Plan at least every 36 months, a 3% cap on growth in total Virginia operating assistance from the previous fiscal year, and restrictions on the participation by Alternate Directors to the WMATA Board. WMATA must also certify that it held public hearings on the CIP and Strategic Plan prior to adoption. DRPT found that WMATA met the standards for compliance with all four legislative and CTB Policy requirements in FY 2019.

**Recommendation:** Based on its analysis of the required information received from WMATA, DRPT recommends that the CTB take no enforcement actions against WMATA related to its FY 2019 compliance with the 2018 CTB Policy. DRPT will continue to be actively involved in the development of WMATA's annual budgets and CIPs to ensure compliance with the statute and CTB Policy. DRPT will make advisory comments to WMATA related to the development of its next CIP and Strategic Plan as described in Director Mitchell's presentation to the CTB on September 17, 2019.

**Action Required by CTB:** Approval of the attached resolution certifying that the CTB will take no enforcement actions against WMATA related to its FY 2019 compliance with the 2018 CTB Policy.

**Options:** Approve, Deny or Defer.