



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

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*Agenda item # 9*

### **RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD**

**January 19, 2021**

#### **MOTION**

**Made By: Ms. Hynes, 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.
    - i. This exclusion is not intended for expenses related to the day to day operations of WMATA's legal department.
  - d. Any service increases approved by the WMATA Board pursuant to Section 33.2-1526.1(J) of the *Code of Virginia*.
  - e. 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.
  - f. 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 December 15 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 at least every two years.

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## CTB Decision Brief

### **Title: Update to 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 CTB approved the Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA) CTB on September 18, 2018. The policy requires CTB review every two years. DRPT's recommendations for changes to the policy were reviewed with the CTB at its Workshop on December 11, 2020

**Facts:** DRPT recommends two changes to the policy resulting from legislation approved during the 2020 General Assembly as well as other minor clarifications resulting from consultation with the Northern Virginia Transportation Commission (NVTC). The 2020 General Assembly approved HB 1586 adding a legislative exclusion for service increases approved by the WMATA Board and SB848 changing the due date of the annual report on the performance and conditions of WMATA from November 1 to December 15. Additionally the 2020 General Assembly approved a budget amendment, HB 30, directing the NVTC to convene a working group on the effectiveness of the three percent cap on WMATA operating assistance increases. NVTC approved the working group report in November 2020 and submitted it to the chairs of the Virginia House Appropriations and Senate Finance and Appropriations Committees. The DRPT Director participated in the working group, and DRPT worked collaboratively with NVTC on the proposed changes to the policy. DRPT and NVTC are recommending two additional clarifications, including addition of language clarifying that the exclusion for legal expenses does not include day-to-day operations of the WMATA legal department and adding language clarifying that the policy will be reviewed *at least* every two years.

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

**Action Required by CTB:** Approval of the attached resolution updating the Policy and Guidelines for Implementation of Governance and Funding Reforms for WMATA.

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