



COMMONWEALTH of VIRGINIA

Office of the Governor

Shannon Valentine
Secretary of Transportation

October 1, 2018

The Honorable Charles W. Carrico
Chairman, Senate Transportation Committee
Post Office Box 1100
Galax, Virginia 24333

The Honorable David E. Yancey
Chairman, House Transportation Committee
Post Office Box 1163
Newport News, Virginia 23601

Dear Chairman Carrico and Chairman Yancey:

Virginia Code § 33.2-3101 requires the Secretary of Transportation to provide a quarterly update on Virginia's efforts to work with its counterparts in Maryland and the District of Columbia, as well as the Northern Virginia Transportation Commission (NVTC), on necessary reforms of the Washington Area Metropolitan Transit Authority (WMATA) to support a viable transit system.

This letter serves as the update for the quarter ending September 30, 2018. It has come to my attention that three previous quarterly updates were not submitted by the deadline. Because these reports are generated within agencies, I have reorganized my office to take direct responsibility to ensure that future reports are submitted on time with complete information on the work being done. My focus has been on addressing the objectives of HB 1539, and the update below will demonstrate the coordination and collaboration that is taking place to implement reforms and reinforce accountability of the WMATA system.

Virginia Code § 33.2-3101 requires:

[t]hat the Secretary of Transportation, in coordination with the Northern Virginia Transportation Commission, shall engage his counterparts in Maryland and Washington, D.C., and the appropriate officials in the federal government for the purpose of revising the Washington Metropolitan Area Transit Authority Compact of 1966 and implementing other reforms necessary to ensure the near-term and long-term viability of the Washington Area Metropolitan Transit Authority (WMATA). In doing so, the Secretary shall develop, propose, and seek agreement on reforms related to the following: (i) the legal and organizational structure of WMATA; (ii) the composition and qualifications of the WMATA Board of Directors and the length of terms of its members; (iii) labor costs and labor relations; (iv) measures necessary to resolve WMATA's unfunded pension liability and other postemployment benefits; (v) measures necessary to better ensure the safety of riders and employees, including safety in the event of a homeland security emergency in

the national capital area; and (vi) financial and operational improvements necessary to ensure that WMATA's performance is at least as efficient as its closest comparable transit systems in the United States. The Secretary shall report to and consult quarterly beginning June 30, 2017, with the Chairmen of the House and Senate Transportation Committees regarding activity taken in accordance with this enactment.

- I) Former United States Secretary of Transportation Ray LaHood conducted a review of WMATA in 2017 and concluded that changes to the Compact would require legislative approval from all three jurisdictions and Congress, which could take years. Secretary LaHood recommended that the jurisdictions identify funding and make improvements to the system without opening the WMATA Compact to assist WMATA and its customers now, and Maryland, DC, the Commonwealth Transportation Board (CTB), and the Virginia Department of Rail and Public Transportation (DRPT) have followed these recommendations. Based on this, the Virginia General Assembly passed legislation during the 2018 session (Chapter 854 of the 2018 Acts of Assembly) that identified funding and implements reforms without changing the WMATA Compact; and the CTB has established guidelines that ensure these reforms are properly implemented and followed.
- II)

While the LaHood report recommended a five-member reform board, Virginia, DC, and Maryland agreed to enforce the requirement within the WMATA Compact, limiting the authority to the 8 principal Board Directors and limiting the role of the Alternates. 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 principal 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) attending or participating in any Executive Session of the WMATA Board or its committees; (vi) performing any action in violation of WMATA Bylaws with respect to the activities of Alternate Directors. Attendance by Alternate Directors at official WMATA Board or committee meetings, excluding Executive Sessions, shall not, on its own, be a basis for withholding funding.

WMATA revised its bylaws on June 28, 2018, to comply with this requirement. 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 Enactment Clause 7 and that no violations of the bylaws by Alternate Directors have occurred during the previous year. 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.

After two months of working through the process, coordinating with NVTC, WMATA, DC, and Maryland, at its September meeting, the CTB passed a resolution requiring the CTB to withhold 20 percent of funding available to WMATA pursuant to Section 33.2-1526.1(C)(3) of the *Code of Virginia* if the WMATA Board of Directors has not adopted bylaws that prohibit participation of

alternate directors as specified in Enactment Clause 7 of Chapter 854 of the 2018 Acts of Assembly.

Additionally, NVTC is in the process of establishing a permanent WMATA Committee to advise the regional WMATA Board member on perspectives from the member jurisdictions. This committee will meet once a month and is intended: i) for commissioners to have focused discussions on WMATA-related issues to help inform NVTC's principal WMATA Board member of areas of jurisdictional concern; and ii) to review and provide guidance on any NVTC products related to recent WMATA funding legislation. DRPT staff provides support to the committee, in addition to supporting the Governor's appointee to the WMATA Board.

Chapter 854 of the 2018 Acts of Assembly also clarifies the qualifications of the WMATA Board of Directors. Virginia's representatives on the WMATA Board will be familiar with the WMATA system and will have experience in transit, transportation, or land use planning; transit, transportation, or other public-sector management; engineering; finance; public safety; homeland security; or the law.

There is also language in the 2017 Washington Metrorail Safety Commission Interstate Compact, Code of Virginia § 33.2-3101 which requires that the Commission's Board of Directors have backgrounds in transit safety, transportation, relevant engineering disciplines, or public finance. The Compact further stipulates that no member of the Board shall simultaneously hold an elected public office, serve on the WMATA Board of Directors, be employed by WMATA, or be a contractor to WMATA.

- III) Based on the 2018 legislation, included in the September resolution, the CTB requires that in any
- IV) year that the total Virginia operating assistance in the approved WMATA budget increases by more than three percent from the total operating assistance in the prior year's approved WMATA budget, the CTB shall withhold an amount equal to 35 percent of the funds available in Section 33.2-1526.1(C)(3). The General Assembly requires this in the first enactment clause of Chapter 854 of the 2018 Acts of Assembly.

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. 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.

- V) Chapter 696 of the 2017 Acts of Assembly established an Interstate Compact with Maryland and the District of Columbia creating the Metro Safety Commission (MSC). The General Assembly created the MSC to comply with federal law requiring state safety oversight of rail transit systems. It is legally and financially independent of WMATA, ensuring that its priority is safety, and it

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consists of three representatives each from Virginia, Maryland, and the District of Columbia. The federal government assumed control of safety oversight for WMATA in 2015, and the jurisdictions are required to take over oversight by April 2019. If they do not, Virginia will lose 100 percent of its federal transit funding.

DRPT staff has been working closely with its counterparts in the two other jurisdictions to meet the April 2019 deadline. Virginia has appointed its three members: i) Mark Rosenker, former National Transportation Safety Board member; ii) Greg Hull, former American Public Transportation Association Director of Security and Operations; and iii) Barbara Reese, former Deputy Secretary of Transportation (alternate). Since April 2018, the jurisdictions have hired many of the MSC staff, including David Mayer, former Chief Safety Officer of the New York Metropolitan Transit Authority, who serves as the Executive Director.

On September 6, 2018, the Federal Transit Administration (FTA) outlined the process for certification and transition of oversight responsibilities; and on September 10, 2018, the MSC Board voted to authorize the Executive Director to submit the final program documentation to receive certification from the FTA. The MSC submitted that documentation on September 25, 2018, in order to meet the April 2019 deadline for certification.

Additionally, NVTC is working on its initial WMATA Performance Report to the General Assembly, which is due on November 1, 2018. NVTC intends to approve this report at its October 4, 2018, meeting. Section 33.2-3403 of the Code of Virginia requires the report to review i) the safety and reliability of the rapid heavy rail mass transportation system and bus network; ii) the financial performance of WMATA related to the operations of the rapid heavy rail mass transportation system, including farebox recovery, service per rider, and cost per service hour; iii) the financial performance of WMATA related to the operations of the bus mass transportation system, including farebox recovery, service per rider, and cost per service hour; iv) potential strategies to reduce the growth in such costs and to improve the efficiency of WMATA operations; v) use of the funds provided from the WMATA Capital Fund to improve the safety and condition of the rapid heavy rail mass transportation system; and vi) ridership of the rapid heavy rail mass transportation system and the bus mass transportation system.

- VI)** NVTC's WMATA Performance Report will review i) the safety and reliability of the rapid heavy rail mass transportation system and bus network; ii) the financial performance of WMATA related to the operations of the rapid heavy rail mass transportation system, including farebox recovery, service per rider, and cost per service hour; iii) the financial performance of WMATA related to the operations of the bus mass transportation system, including farebox recovery, service per rider, and cost per service hour; iv) potential strategies to reduce the growth in such costs and to improve the efficiency of WMATA operations; v) use of the funds provided from the WMATA Capital Fund to improve the safety and condition of the rapid heavy rail mass transportation system; and vi) ridership of the rapid heavy rail mass transportation system and the bus mass transportation system.

Chapter 854 of the 2018 Acts of Assembly also requires that, beginning July 1, 2019, the CTB shall withhold 20 percent of the funds available each year unless (i) WMATA has adopted a

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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 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 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.

In its guidelines, the CTB states that funding will be withheld if:

- 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.
- Beginning July 1, 2019, WMATA has not held at least one public hearing on such strategic plan held in a locality embraced by NVTC.

The strategic plan adopted to comply with such requirements shall include a provision 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. 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 NVTC.

Also, as discussed in an earlier report, WMATA continues to work on a study of its bus services. The ongoing WMATA Bus Transformation Study will be a regionally developed mobility strategy to define the roles of buses and their operators, embrace innovations, and create a plan to advance these objectives. WMATA has outlined five goals for this project: i) meeting customer expectations and demands; ii) adapting to changing technology and a changing mobility landscape; iii) addressing a sub-optimal cost structure; iv) defining regional agency roles and responsibilities; and v) refreshing the approach to determine who pays for bus services. Public involvement is key, as WMATA plans to conduct focus groups, surveys, and public workshops.

My office is committed to working with you and the General Assembly to continue improving the efficiency and effectiveness of WMATA. As always, if you have any questions, please do not hesitate to contact me. Thank you for the opportunity to work together to ensure accountability and transparency of this significant transportation asset.

With warmest regards,



Shannon Valentine

cc: The Honorable Mark L. Keam, Virginia House of Delegates