



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

September 20, 2023

MOTION

Made By: Ms. Sellers, **Seconded By:** Ms. Hynes

Action: Motion Carried, Unanimously

Title: 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, Fairfax, and Loudoun — are the current WMATA Compact funding partners; 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, established 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* allocates 46.5 percent of the Commonwealth Mass Transit Fund 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 Commonwealth Mass Transit Fund WMATA allocation cannot exceed 50 percent of the total WMATA operating and capital assistance required from the WMATA Compact funding partners from Virginia; and

WHEREAS, the enactment clauses of Chapter 854 of the 2018 and Chapter 363 of the 2023 Virginia Acts of Assembly requires the Commonwealth Transportation Board to withhold funding available to WMATA pursuant to Section 33.2-1526.1(D)(4) of the *Code of Virginia* Allocation under the following conditions:

1. Section 33.2-1526.1(K) 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. Section 33.2-1526.1(L) 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. Section 33.2-1526.1(M) requires that 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.

4. Section 33.2-1526.1(N) requires that the CTB shall withhold 20 percent of the funds available each year unless (i) WMATA has prepared and submitted a detailed proposed annual operating budget and any proposed capital expenditures and projects for the following fiscal year to the CTB by April 1; and (ii) the Commonwealth's and NVTC's principal representatives to the WMATA Board and the WMATA General Manager annually address the CTB regarding the WMATA budget, system performance, and utilization of the Commonwealth's investment in the WMATA system.

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:

3% Cap on Growth in Total Virginia Operating Assistance (33.2-1526.1(K))

1. The CTB shall withhold funding if the total operating subsidy for Virginia in the current year approved WMATA budget increases (effective July 1) by more than three 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 including, but 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, including operating subsidy increases related to major capital projects that improve WMATA's state of good repair, support a major system expansion project 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. 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.

Participation by Alternate Directors of the WMATA Board (Section 33.2-1526.1(L))

- 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 Section 33.2-1526.1(L).
- 2. When determining whether to withhold funding in response to an action taken by an alternate director that is prohibited by Section 33.2-1526.1(L), 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 Section 33.2-1526.1(L) 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 (Section 33.2-1526.1(M))

1. The CTB shall withhold funding if:
 - a. 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. 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 (Section 33.2-1526.1(M))

1. The CTB shall withhold funding if:
 - a. 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. WMATA has not held at least one public hearing on such strategic plan held in a locality embraced by the NVTC.

2. WMATA's strategic plan shall include the following five components: (a) an assessment of state of good repair needs; (b) a review of the performance of fixed-route bus service; (c) an evaluation of the opportunities to improve operating efficiency of the transit network; (d) an examination and identification of opportunities to share services where multiple transit providers' services overlap; and (e) an examination of opportunities to improve service in underserved areas.
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.

Submission of a Detail Annual Operating Budget and Capital Expenditures and Projects (Section 33.2-1526.1(N))

1. The CTB shall withhold funding if:
 - a. WMATA has not prepared and submitted a detailed proposed annual operating budget and any proposed capital expenditures and projects for the following fiscal year to the CTB by April 1 of each year.
 - b. The Commonwealth's and NVTC's principal representatives to the WMATA Board and the WMATA General Manager fail to annually address the CTB regarding the WMATA budget, system performance, and utilization of the Commonwealth's investment in the WMATA system.
2. The proposed annual operating budget submitted by WMATA to the CTB shall include information on expenditures, indebtedness, pensions, and other liabilities, and other information as prescribed by the CTB. The budget submission shall also include the audited financial statements for each defined-benefit pension plan to which WMATA contributes for the previous fiscal year, presented in accordance with the Governmental Accounting Standards Board (GASB) Statement Number 67.

Resolution of Withholding of Funds

1. The CTB will release any withheld funding upon approval or implementation of an approved mitigation action. 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 percent 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, 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, 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.

BE IT FURTHER RESOLVED, that all versions of the Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA) approved by the Board prior to this action are superseded by this revised policy and are hereby rescinded.

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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: Section 33.2-1526.1 (K), (L), (M), and (N) require the CTB to withhold funding available to WMATA pursuant to Section 33.2-1526.1(D)(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. DRPT's recommendations for changes to the policy were reviewed with the CTB at its Workshop on July 18, 2023.

Facts: DRPT recommends changes to the policy resulting from legislation approved during the 2023 General Assembly as well as another minor clarifications resulting from the start of operations of Phase 2 of the Silver Line. The 2023 General Assembly approved HB 1496 and SB 1079, adding additional provisions which the CTB can use to withhold funds from WMATA. The CTB can withhold funding to WMATA if WMATA does not provide a detailed operating budget to the CTB and if it specified WMATA representatives do not annually address the CTB. Additionally, DRPT recommends specifying what WMATA must include in its strategic plan by adding the same requirements that urban transit agencies in Virginia must follow. DRPT worked collaboratively with NVTC and WMATA on the proposed changes to the policy. DRPT is also recommending the addition of Loudoun County as a current WMATA Compact funding partner following the start of operations of Phase 2 of the Silver Line.

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.