



# COMMONWEALTH of VIRGINIA

Office of the Governor

Aubrey L. Layne, Jr.  
Secretary of Transportation

October 2, 2017

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

The Honorable Ronald A. Villanueva  
Chairman, House Transportation Committee  
Post Office Box 61005  
Virginia Beach, Virginia 23466

Dear Senator Carrico & Delegate Villanueva:

Pursuant to language contained in House Bill 2136 and Senate Bill 1251:

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.

This letter provides the third quarterly update on the McAuliffe Administration's efforts to fulfill these requirements.

On August 28, 2017, Governor McAuliffe and Secretary LaHood met with Maryland's Governor Hogan and District of Columbia's Mayor Bowser to provide an update on the ongoing objective, top-down review of WMATA led by Secretary LaHood. The Secretary conducted an objective comparison of WMATA's condition relative to peer transit agencies in order to

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identify areas for potential improvement and to examine the validity of concerns raised by stakeholders.

Secretary LaHood noted that the existing WMATA Board continues to function poorly due to its large size and a structure that encourages a highly parochial, rather than systemic approach to operating a regional transit system. To remedy this situation, he is proposing that WMATA be governed temporarily by a smaller 'reform' board. Secretary LaHood also addressed the key funding challenges WMATA faces in its efforts to rebuild the system. Virginia continues to support GM Paul Wiedefeld's efforts to meet this crisis head on, as well his need for \$500 million from the region for capital expenses. Secretary LaHood's review will be completed in October and will be made public at that time.

In a parallel effort, the Northern Virginia Transportation Commission (NVTC) convened a Governance Committee in the spring to initiate a review of WMATA governance issues outlined in this legislative mandate. The committee, with representation from each of the NVTC local jurisdictions, commissioned a benchmarking analysis to investigate a range of options and recommendations to address WMATA governance issues – including options that may not necessitate amendments to the WMATA Compact. NVTC completed its work and issued a resolution adopting principles for WMATA reform. In that resolution, the NVTC proposed recommendations regarding WMATA's governance structure, compensation of WMATA Board members, the composition of the Board and necessary experience of its members, the Board's fiduciary and other conflicts of interest, and the jurisdictional veto. Enclosed, you will find a copy of the September 7, 2017 resolution.

The funding and governance challenges WMATA faces in the coming year are not mutually exclusive. The system celebrated its 30<sup>th</sup> anniversary in 2006; however, it did not begin funding the maintenance and rehabilitation that the system needed until 2016. The system is just now catching up to that decade of underinvestment, and as a result there is a large capital backlog that needs to be funded. Additionally, the vicious cycle of neglecting maintenance that has resulted in lower reliability, which has hurt ridership and reduced revenues. We need to figure out how to get riders back on the system. Governor McAuliffe is committed to coming up with a funding proposal to meet Virginia's fair share of this \$500 million. Virginia looks forward to this conversation with its General Assembly in January.

Virginia, Maryland, and the District of Columbia agree that WMATA is critical for the Washington, D.C. region. It provides key regional connectivity, and removes hundreds of thousands of vehicles a day from the region's congested roadways. If you have any questions or comments regarding these efforts, please do hesitate to contact me.

Sincerely,



Aubrey L. Layne, Jr.

Enclosure

**RESOLUTION #2342**

**SUBJECT:** NVTC Principles for WMATA Reform

**WHEREAS:** The Washington Metropolitan Area Transit Authority (WMATA) is critical to Northern Virginia and the Commonwealth's transportation network and economic growth;

**WHEREAS:** The Northern Virginia Transportation Commission (NVTC) was founded in part to represent the interests of the Commonwealth during the establishment of WMATA;

**WHEREAS:** The General Assembly, through Enactment Clause 4 of HB2136/SB1251 (2017), directed the Secretary of Transportation, in coordination with the Northern Virginia Transportation Commission, to 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);

**WHEREAS:** 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.

**WHEREAS:** NVTC seeks to provide its recommendations to the Secretary of Transportation on these matters through this and subsequent resolutions;

**WHEREAS:** NVTC supports a legal and organizational WMATA Board structure that recognizes that Virginia is unique in the WMATA Compact region in that its local governments – the cities of Alexandria, Falls Church, and Fairfax and the counties of Arlington and Fairfax – are the Compact funding partners, with Loudoun County becoming a funding partner as the Silver Line Phase 2 becomes operational;

- WHEREAS:** NVTC supports the role of the federal government in providing dedicated funding for WMATA through the Passenger Rail Investment and Improvement Act (PRIIA), which provides \$150 million per year in dedicated funding to support capital improvements to WMATA, with the requirement that Maryland, the District of Columbia and Virginia provide matching funds;
- WHEREAS:** NVTC endorses the continued investment by the Commonwealth to provide funds that partially support NVTC jurisdictions' contributions to WMATA as well as matching funds under PRIIA;
- WHEREAS:** Under current law, the Virginia Secretary of Transportation or his/her designee and any NVTC Commissioner appointed by the Northern Virginia Transportation Commission are authorized to serve as members of the WMATA Board;
- WHEREAS:** Peer transit agency, foundation, and corporate boards in the United States average between 11.5 and 13.5 members and do not include alternate members. The current WMATA Board includes 16 members, eight of which are alternates with no full Board voting rights;
- WHEREAS:** No other peer transit agency uses alternates on their boards, and current WMATA alternates perform all the work of voting board members, including voting in committees, but cannot vote during full Board meetings;
- WHEREAS:** The WMATA Board has nine committees with four to 16 members each, tied for the most board committees among transit agencies peers. Between 2016 and 2017 each WMATA Board member attended an average of 41 meetings;
- WHEREAS:** Effective membership on the WMATA Board requires a large commitment of its members' time and energy. Compensation for that time should not be provided by entities that may represent real or perceived conflicts of interest for WMATA Board members;
- WHEREAS:** In November 2016, as a response to recommendations from a strategic advisor, the WMATA Board adopted an updated Code of Ethics that requires annual training on identifying and resolving actual and apparent conflicts, making disclosures and acknowledgments, and rules regarding acceptance of gifts;
- WHEREAS:** Board members, either corporate representatives with business connections or elected officials who must both represent the interests of their constituents while also representing WMATA's interest, must engage in rigorous and ongoing analysis of the ethics and balance of these multiple interests and responsibilities;
- WHEREAS:** The veto by a single jurisdiction inhibits jurisdictional collaboration and impedes regional policy decisions on the WMATA Board;
- WHEREAS:** A Department of Rail and Public Transportation review of WMATA operational cost drivers found that while WMATA's operational cost metrics are similar to peer transit agencies, it does have greater costs associated with rail maintenance activities;

**WHEREAS:** The WMATA General Manager, in his April 2017 Action Plan, expressed a desire to address operational cost drivers noting that, without changes, operating cost increases will outpace revenue growth by approximately 50 percent and the current public subsidy requirement for day-to-day operations would grow from \$980 million to \$1.6 billion annually in 10 years;

**WHEREAS:** On June 1, 2017, NVTC endorsed the spirit and direction of the WMATA General Manager's April 2017 Action Plan to significantly reform operations at WMATA that would yield reductions in operating and capital costs absent changes to the WMATA Compact;

**WHEREAS:** NVTC maintains interest in identifying near and long-term changes to reduce WMATA's operating costs to control the overall growth in jurisdictional contributions to no more than three percent per year; and

**WHEREAS:** In November 2016, WMATA's unfunded pension liability was estimated at \$1 billion with total plan assets at \$3.6 billion, and while comparable to peer transit and governmental agencies, poses a financial risk to its funding jurisdictions.

**NOW, THEREFORE, BE IT RESOLVED** that the Northern Virginia Transportation Commission, pursuant to items (i) and (ii) of Enactment Clause 4 of HB2136/SB1251, recommends the following:

**1. WMATA Governance Structure:**

- The WMATA Board should be comprised of 12 members, with three members representing each jurisdiction and the federal government.
- Federal government representation should be contingent upon the continued dedicated federal funding of at least \$150 million per year.
- The WMATA Board members from Virginia should include one member appointed by the Commonwealth and two members appointed by NVTC.
- All Virginia members of the WMATA Board should serve on NVTC.
- The term of each WMATA Board member should continue to be four years, limited to two terms.
- WMATA should reduce the number of committees and committee meetings.
- All WMATA Board members should have full voting authority (no alternates).

**2. Compensation:**

- WMATA Board members should receive equal financial compensation, to be paid by WMATA.

**3. Board Composition and Experience:**

- The WMATA Board should include a mix of elected and nonelected members, each of whom has experience in transit planning, transportation planning, or land use planning; transit or transportation management or other public-sector management; engineering; finance; public safety; homeland security; human resources; or the law; or knowledge of the region's transportation issues derived from working on the resolution of regional transportation issues. Some members of the Board should have significant senior executive experience with rail systems, transit agencies, airlines, airports, ports, or other transportation providers.
- All members of the WMATA Board should be familiar with the WMATA transit system.

**4. Board Fiduciary and Other Conflicts of Interest:**

- The WMATA Board should engage in a robust review of its policies on conflicts of interests and fiduciary interests so that it will maintain its strong commitment to ethics pertaining to fiduciary duties and conflicts of interest.

**5. Jurisdictional Veto:**

- The use of the jurisdictional veto should be eliminated.

**BE IT FURTHER RESOLVED** that NVTC, pursuant to items (iii) of Enactment Clause 4 of HB2136/SB1251, recommends the following:

- In labor negotiations, the WMATA General Manager and Board should have greater authority to make operational decisions that improve the system's cost effectiveness without jeopardizing safety, including the use of tools such as competitive contracting of targeted functions.
- WMATA's annual operational cost increases should be comparable to those of its funding jurisdictions, and the jurisdictional subsidies it sets should hold within the three percent annual cap recommended by the General Manager in his April 2017 Action Plan, and that to maintain such funding discipline should be a mandatory factor used in consideration of establishing labor costs through collective bargaining or subsequent arbitration.


- NVTC endorses an amendment to the Wolf Act (National Capital Area Interest Arbitration Standards Act of 1995, Pub L. 104-50) that would require arbitrators in WMATA contract arbitrations to consider these fiscal restrictions in all cases.

**BE IT FURTHER RESOLVED** that NVTC, pursuant to item (iv) of Enactment Clause 4 of HB2136/SB1251, calls upon the WMATA General Manager and Board to identify a specific plan to address its unfunded pension liability and other post-employment benefits.

**BE IT FURTHER RESOLVED** that NVTC, pursuant to item (v) of Enactment Clause 4 of HB2136/SB1251, calls upon the WMATA's General Manager and Board, to take measures to ensure the safety of riders and employees, including safety in the event of a homeland security emergency in the national capital area.

**BE IT FURTHER RESOLVED** that NVTC recommends that the WMATA Board direct the General Manager to set forth, by January 1, 2018, a detailed business plan for implementing the operational reforms outlined in his April 2017 Action Plan and any other actions necessary to meet the requirements of item (vi) of Enactment Clause 4 of HB2136/SB1251 (2017) so the legislatures of the respective jurisdictions will have the opportunity to review such plan prior to the commencement of their legislative sessions.

Approved on this 7<sup>th</sup> day of September 2017.



Jeffrey C. McKay  
Chairman



Matthew F. Letourneau  
Secretary-Treasurer