

**REPORT OF THE
SECRETARY OF TRANSPORTATION**

**Review of the Washington Metropolitan Area
Transit Authority Board of Directors Membership**

**TO THE GOVERNOR OF VIRGINIA AND THE VIRGINIA
GENERAL ASSEMBLY**



**COMMONWEALTH OF VIRGINIA
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1 Executive Summary

The 2018 Virginia General Assembly directed the Secretary of Transportation to conduct a review of the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors membership provisions, whether the criteria used to determine membership eligibility serves the Commonwealth's best interests, and whether any changes to such representation can be made without an amendment to the WMATA Compact. The Virginia Department of Rail and Public Transportation (DRPT) assisted in crafting this report.

In order to comprehensively address the request made by the General Assembly, DRPT reviewed the WMATA Compact; the Review of Operating, Governance, and Financial Conditions at the Washington Metropolitan Area Transit Authority conducted by former United States Secretary of Transportation Ray LaHood; Chapter 377 of the 2012 Virginia Acts of Assembly; Chapters 854 and 856 of the 2018 Virginia Acts of Assembly and subsequent Commonwealth Transportation Board and Northern Virginia Transportation Commission (NVTC) implementation actions; and legislation enacted by the District of Columbia and the State of Maryland.

The WMATA Compact is itself silent on specific qualifications for Virginia's membership, instead delegating the Commonwealth's appointment authorities to the NVTC.¹ Nonetheless, subsequent action by the 2012 and 2018 Virginia General Assemblies enacted specific requirements on the NVTC for its selection of Virginia Board membership including the Secretary of Transportation or her designee as one principal member as well as a number of technical qualifications required for all Virginia members.²

The Secretary of Transportation finds that the existing statutory requirements for the Commonwealth of Virginia's representatives to the WMATA Board of Directors sufficiently serve the best interests of the Commonwealth. Virginia WMATA Board members must have: (i) experience in at least one of the fields of 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 (ii) knowledge of the region's transportation issues derived from working on regional transportation issues resolution.

Identical qualifications also have been enacted by the District of Columbia and the State of Maryland regarding their own WMATA Board membership provisions. Further, because the WMATA Compact delegates such authority to its member jurisdictions regarding board member qualifications, actions to change membership provisions have been and may continue to be made by their respective legislative bodies without amendment to the Compact.

¹ [Washington Metropolitan Area Transit Authority Compact of 1966](#)

² [Members of Transportation Commission](#)

2 Introduction

This document is the Secretary of Transportation’s review of the WMATA Board of Directors membership provisions presented to the Governor and the General Assembly consistent with Chapter 429 of the 2018 Acts of Assembly, which states:

The Secretary of Transportation (Secretary) shall conduct a review of the Washington Metropolitan Area Transit Authority Board of Directors membership provisions. Such review shall consider the criteria used to determine eligibility to represent the Commonwealth on the Washington Metropolitan Area Transit Authority and whether the current representation criteria serve the best interests of the Commonwealth. The Secretary shall also determine whether any changes to the Commonwealth’s representation can be made without an amendment to the Washington Metropolitan Area Transit Authority Compact.

The Secretary shall conclude the review by November 30, 2018, and shall submit to the Governor and the General Assembly an executive summary and a report of his findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

In order to comprehensively address the request made by the General Assembly, DRPT reviewed the WMATA Compact; the Review of Operating, Governance, and Financial Conditions at the Washington Metropolitan Area Transit Authority conducted by former United States Secretary of Transportation Ray LaHood; Chapter 377 of the 2012 Virginia Acts of Assembly; Chapters 854 and 856 of the 2018 Virginia Acts of Assembly and subsequent Commonwealth Transportation Board and NVTC implementation actions; and legislation enacted by the District of Columbia and the State of Maryland.

3 Washington Metropolitan Area Transit Authority Compact³

Virginia, Maryland, and the District of Columbia entered into the Washington Metropolitan Area Transit Authority Compact in 1966. The United States Congress authorized the creation of this compact “for the establishment of an organization empowered to provide necessary transit facilities” and further stated “that the development and administration of such transit facilities requires (1) cooperation among the federal, state and local government of the area, (2) financial participation by the federal government in the creation of major facilities that are beyond the financial capacity or borrowing powers of the private carriers, the District of Columbia and the local governments of the area, and (3) coordination of transit facilities with other public facilities and with the use of land, public and private.”

³ [Washington Metropolitan Area Transit Authority Compact of 1966](#)

The Compact is silent on the necessary qualifications of all WMATA Board members other than noting how each jurisdiction will appoint its members. For Virginia, NVTC will make the appointments.⁴ Specifically, the WMATA Compact states the following in regards to the WMATA Board and its members:

The Authority shall be governed by a Board of eight Directors consisting of two Directors for each Signatory and two for the federal government (one of whom shall be a regular passenger and customer of the bus or rail service of the Authority). For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia by the Council of the District of Columbia; for Maryland, by the Washington Suburban Transit Commission; and for the federal government, by the Secretary of the United States Department of Transportation. For Virginia and Maryland, the Directors shall be appointed from among the members of the appointing body, except as otherwise provided herein, and shall serve for a term coincident with their term on the appointing body. A Director for a Signatory may be removed or suspended from office only as provided by the law of the Signatory from which he was appointed. The nonfederal appointing authorities shall also appoint an alternate for each Director. In addition, the Secretary of the United States Department of Transportation shall also appoint two nonvoting members who shall serve as the alternates for the federal Directors. An alternate Director may act only in the absence of the Director for whom he has been appointed an alternate, except that, in the case of the District of Columbia where only one Director and his alternate are present, such alternate may act on behalf of the absent Director. Each alternate, including the federal nonvoting Directors, shall serve at the pleasure of the appointing authority. In the event of a vacancy in the office of Director or alternate, it shall be filled in the same manner as an original appointment.

4 Chapter 377 of the 2012 Acts of Assembly⁵

Chapter 377 of the 2012 Acts of Assembly made a number of changes regarding Virginia's WMATA Board Membership requirements. It provided that the NVTC must include the Secretary of Transportation or her designee as a principal member on the WMATA Board. It also provided additional requirements for the appointment and removal of Virginia members from the Board. As a result of this legislation action, *Code of Virginia* § 33.2-1907 now states that “a board member shall have (i) experience in at least one of the fields of transit planning, transportation planning, or land use planning; transit or transportation management or other public section management; engineering; finance; public safety; homeland security; human resources; or the law or (ii) knowledge of the region's transportation issues derived from

⁴ Established in *Code of Virginia* § 33.2-1907, the NVTC is comprised of non-legislative citizens from the counties of Arlington, Fairfax, and Loudoun as well as the cities of Alexandria, Fairfax, and Falls Church. The Speaker of the House and the Senate Rules Committee appoint members to serve on the NVTC. [Pursuant to Item 4-14 of Chapter 2 of the 2018 Special Session I Acts of Assembly](#), the Speaker of the House's appointees do not have to be members of the Virginia House of Delegates; however, the Senate Rules Committee must appoint state senators to serve.

⁵ [Chapter 377 of the 2012 Acts of Assembly](#).

working on regional transportation issues resolution.” Further, the board members cannot have served as a WMATA employee within one year of appointment and must be a regular user of WMATA services.⁶

The Maryland General Assembly in 2012⁷ and the District of Columbia City Council in 2013⁸ passed similar requirements for their appointees to the WMATA Board.

5 Review of Operating, Governance, and Financial Conditions at the Washington Metropolitan Area Transit Authority⁹

The 2017 General Assembly included Item 436 R in Chapter 836 of the 2017 Acts of Assembly directing:

The Secretary of Transportation shall initiate an objective review of the operating, governance and financial conditions at the Washington Metro Area Transit Authority. The objective review shall, at a minimum, analyze: (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 potential strategies to reduce the growth in such costs in the future; (iv) options to improve the sustainability of employee retirement plans; (v) safety and reliability; (vi) options to improve the efficiency of WMATA operations; and, (vii) other factors considered appropriate by the Secretary. To the extent practicable the review shall compare WMATA to other rail transit systems in the United States that have been in operations for more than 35 years and have an overall system length in excess of 35 miles. Further, the Secretary shall request the participation of the District of Columbia and the State of Maryland in such review and report the findings of his review to the Chairmen of the House Appropriations, Senate Finance and House and Senate Transportation Committees no later than November 15, 2017, with a follow-up report, if needed, submitted by June 30, 2018. Such report shall include a copy of the WMATA six year capital improvement program, as well as an accounting of assumed revenues generated and available by source and assumptions used regarding operating expenses to develop the capital improvement program.¹⁰

To satisfy this requirement, Governor Terry McAuliffe commissioned former United States Secretary of Transportation Ray LaHood to conduct an objective comparison of WMATA’s condition relative to its peers in order to identify opportunities for improvement and dispel myths about what needs to be done to fix the system.

⁶ [Code of Virginia § 33.2-1907.](#)

⁷ [Chapter 433 of the 2012 Laws of Maryland.](#)

⁸ [Code of the District of Columbia § 9-1108.11.](#)

⁹ [Review of the Operating, Governance and Financial Conditions at the Washington Metropolitan Area Transit Authority.](#)

¹⁰ [Item 436 R, Chapter 836 of the 2017 Acts of Assembly.](#)

Secretary LaHood is currently a senior policy advisory with DLA Piper. Prior to this, he served as Secretary of Transportation for President Barack Obama and previously as a Republican Congressman from Illinois. He completed his study and released a final report on December 5, 2017.

The LaHood Review focused primarily on issues such as operations, the capital program, a need for long-term sustainable funding, and governance. The Review noted that the WMATA Board, with eight principal members and eight alternate members serving with significant authority, was one of the largest boards in the country for transit providers. At the time, alternates were voting on matters in committee, making them equals with the principal directors. Additionally, the review pointed out that the WMATA Board includes local elected officials, which is uncommon for the majority of transit boards in the United States. However, the report did not recommend changes to the qualifications of the WMATA Board of Directors.

In order to improve the effectiveness of the operations of the WMATA Board by making it smaller, Secretary LaHood recommended that the agency install a temporary five-member reform board.¹¹ This reform board would be installed for approximately three years and would be comprised of a member each from Virginia, Maryland, the District of Columbia, and the federal government. The four appointees would then agree on a fifth person to serve as Chair. Finally, Secretary LaHood noted that such governance reforms could be made without changes to the WMATA Compact, which would have required legislative approval from all three jurisdictions and Congress and could have taken years.

6 Chapters 854 and 856 of the 2018 Acts of Assembly

While the LaHood Review recommended a five-member reform board, Virginia, Maryland, and the District of Columbia instead agreed to enforce existing requirements within the WMATA Compact, conferring the authority to the eight principal members of the board of directors and limiting the role of alternates. If WMATA did not comply with this directive by way of its own bylaws, the Virginia General Assembly granted authority to the Commonwealth Transportation Board to withhold 20 percent of operating and capital funding specifically allocated to WMATA pursuant to *Code of Virginia* § 33.2-1526.1(C)(3). The Commonwealth Transportation Board subsequently enacted a policy resolution at its September meeting which further specified:

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 of the Chapters 854 and 856 of the 2018 Acts of Assembly, the Commonwealth Transportation Board shall consider the following as prohibited activity 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 an Executive Session of the WMATA Board or

¹¹ [United States Secretary of Transportation Ray LaHood December 5, 2017 letter to Governor McAuliffe.](#)

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 sessions, shall not, on its own, be a basis for withhold funding.

The WMATA Board updated its bylaws on June 28, 2018, to comply with this requirement.¹² Additionally, the NVTC has passed changes to its bylaws to reflect these actions taken by the Virginia General Assembly and the Commonwealth Transportation Board.¹³

Chapters 854 and 856 of the 2018 Acts of Assembly also further clarified Virginia's qualifications for its WMATA Board of Directors members. 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.

7 Conclusion

The criteria used to determine eligibility to represent the Commonwealth on the Washington Metropolitan Area Transit Authority and the current representation criteria serve the best interests of the Commonwealth. The General Assembly has taken proactive steps over the past six years to ensure that this remains true. Specifically, the Virginia General Assembly has passed legislation that establishes sound qualifications for Virginia's WMATA Board members and ensures that the NVTC and the Commonwealth of Virginia have an appropriate voice in selecting both the principal directors and the alternates. That the District of Columbia and State of Maryland have enacted similar qualifications for their membership provisions reflects a general desire for the entire WMATA Board of Directors and its alternates to contribute significant and collective expertise in the governance of the mass transit system. Therefore, this report does not recommend making any changes to the membership eligibility and criteria.

As the current eligibility requirements were implemented without modification of the WMATA Compact, and the Compact itself delegates qualification authorities to its Signatories, any future changes could also be made without modification of the WMATA Compact.

¹² [Washington Metropolitan Area Transit Authority By-Laws.](#)

¹³ [Northern Virginia Transportation Commission By-Laws.](#)