

**Maryland General Assembly
Joint Committee on Federal Relations
2016 Interim
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Delegate Alfred C. Carr, Jr., Co-chair**

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991
Joint Committee on Federal Relations

December 12, 2016

The Honorable Thomas V. Mike Miller, Jr, Co-Chair
The Honorable Michael E. Busch, Co-Chair
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Federal Relations respectfully submits the attached report on its activities during the 2016 interim. The committee's primary focus this interim was a briefing held on November 2 on draft legislation that would establish a federally-mandated Metrorail Safety Commission (MSC) to provide safety oversight of the Washington Metropolitan Area Transit Authority Metrorail System. The committee also conducted its annual review of interstate compacts and sent a letter to Maryland's congressional delegation on a federal legislative matter.

Please let us know if the committee can provide any further information or assistance as the MSC legislation proceeds during the 2017 session. The committee looks forward to continuing its role as a forum for discussion of important issues in State-federal relations.

Sincerely,

Handwritten signature of Brian J. Feldman in black ink.

Brian J. Feldman
Senate Co-chair

Handwritten signature of Alfred C. Carr, Jr. in black ink.

Alfred C. Carr, Jr.
House Co-chair

BJF:ACC/SDK:LMV/nac

Enclosure

cc: Mr. Warren G. Deschenaux
Ms. Carol L. Swan
Mr. Ryan Bishop

Joint Committee on Federal Relations 2016 Interim Summary Report

Briefing on Metrorail Safety Commission Draft Legislation

On November 2, the committee was briefed by the Maryland Department of Transportation (MDOT) and others on draft legislation proposed for enactment in the District of Columbia (D.C.), Maryland, and Virginia, to establish a Metrorail Safety Commission. The commission would serve as a common agency of the three jurisdictions to meet the jurisdictions' federally-mandated obligation to establish an agency that is financially and legally independent of the Washington Metropolitan Area Transit Authority (WMATA) to provide safety oversight of the WMATA Metrorail System.

The Federal Transit Administration (FTA) has been providing temporary safety oversight of the WMATA Metrorail System since October 2015. The jurisdictions' current oversight body, the Tri-State Oversight Committee, has been determined by FTA to be incapable of providing adequate safety oversight due to its inability to enforce its safety findings. The U.S. Secretary of Transportation and FTA have given the three jurisdictions until February 2017 to establish a new safety oversight program to reassume oversight from FTA. It is expected that the deadline will not be met, however, since the legislative sessions in Maryland and Virginia begin in January (consideration of the legislation is already underway in D.C.), and once legislation is enacted in all three jurisdictions, additional time will be needed to get the commission up and running. FTA has authority to withhold certain federal transit funding (up to \$8 million in funding for Maryland) if the deadline is not met.

The draft legislation establishing the new Metrorail Safety Commission was developed through a collective effort of the three jurisdictions' transportation agencies, supported by the Metropolitan Washington Council of Governments (COG). Input and feedback was solicited from select legislators from each of the jurisdictions and from FTA. COG hired a law firm (Bean, Kinney & Korman) to help draft the legislation and ensure that it would meet federal requirements and be consistent with the laws of each jurisdiction.

At the committee's November 2 briefing, testimony was provided by Kevin Reigut (Assistant Secretary of Operations, MDOT), Mark Viani (Bean, Kinney & Korman), Chuck Bean (Executive Director, COG), Phil Mendelson (D.C. Council Chair), and Robert Fogel (Vice Chair, Metro Riders Advisory Council). An overview of the draft legislation was provided, and certain aspects of it were highlighted. Under the draft legislation:

- the commission is governed by a board of directors consisting of six members and three alternates, serving four-year terms, with each jurisdiction appointing two members and one alternate;

- the board members must have backgrounds in transportation, transit safety, public finance, or relevant engineering principles;
- a board member cannot simultaneously hold an elected public office;
- the board appoints an executive director that will lead the commission staff and manage day-to-day operations;
- the commission is funded, independently of WMATA, by the three jurisdictions, through equal contributions, and, when available, by federal funds (the commission does not have the authority to levy taxes);
- the commission must adopt the federal Freedom of Information Act and Government in the Sunshine Act as its freedom of information and open meeting policies;
- the commission reviews, approves, oversees, and enforces WMATA's safety plan; sets and updates minimum safety standards for WMATA; and may require and enforce corrective action plans;
- the commission has inspection and investigative powers; and
- the commission's enforcement powers include (1) taking legal action in court; (2) issuing citations or fines; (3) directing WMATA to prioritize spending on safety-critical items; (4) removing a specific vehicle, infrastructure element, or hazard from the WMATA rail system; (5) compelling WMATA to restrict, suspend, or prohibit rail service on all or part of the system with an appropriate notice period dictated by the circumstances; (6) directing WMATA to suspend or disqualify individuals from performing in safety sensitive positions who are alleged to or have violated safety rules, regulations, policies, or laws; and (7) compelling WMATA's Office of the Inspector General to conduct safety-related audits or investigations.

It is expected that the legislation will be introduced in Maryland as an Administration bill during the 2017 session.

Questions or concerns raised by committee members and other interested General Assembly members invited to attend the briefing are summarized below, along with summaries of the responses provided by those testifying.

Question: What level of new funding would Maryland need to contribute and what would be the source of the funding?

Answer: [Kevin Reigrut, MDOT] The preliminary analysis is that the costs will range from \$4.0 to \$6.0 million annually (depending largely on how the commission's board of directors constructs the commission's operations), with an expected \$1.5 million annually provided by the federal government, and the remainder shared equally by the

three jurisdictions. That would result in a cost to Maryland of between \$830,000 and \$1.5 million annually. The State would also no longer be spending money on the Tri-State Oversight Committee, thus reducing the net cost. The transportation agencies have been working with a consultant to look at staffing models/levels. Estimates for the number of staff for the commission range from 10-12 personnel to up to 30 personnel. The Tri-State Oversight Committee has been funded out of the Transportation Trust Fund and it is expected that would also be the case for the commission. Sufficient available funding has been identified in the Transportation Trust Fund. The Governor views this commission as separate from WMATA and does not consider funding for the commission to be part of a contribution to WMATA.

Question: Will the board members of the commission be subject to the same concern that has been raised about WMATA board members of having differing divisions of loyalty between what's best for Metrorail and the interests and views of those who appointed them?

Answer: [MDOT] One key difference from the WMATA board is that in the Metrorail Safety Commission structure there is not a "jurisdictional veto" where there must be at least one vote from each jurisdiction for an action to be approved. On the commission, board members from two of the three jurisdictions would be able to take action they felt was needed without the support of the third jurisdiction. Any *de facto* "jurisdictional veto" in the form of a jurisdiction withholding funding for the commission would risk the commission not meeting federal requirements and potentially subject the jurisdictions to the withholding of federal transit funding.

Question: Is there a risk that the commission's orders imposed on WMATA could increase WMATA's costs and therefore the funding Maryland must contribute to WMATA? Is the commission being given too much unchecked authority?

Answer: [MDOT] That is difficult to answer definitively, but with the appointees to the commission's board of directors coming from the three jurisdictions, they should have an understanding of the constraints that the jurisdictions are up against in providing funding to WMATA to implement safety actions. The independence of the commission is a federal requirement. The three jurisdictions' collective control over the level of funding for the commission provides a backstop to the commission growing in size and scope without agreement of the jurisdictions.

[Chairman Mendelson] The fact that the entities largely responsible for the drafting of the legislation to date (the jurisdictions' transportation agencies) are those that would be affected by cost increases provides some confidence that significant cost increases are less likely to occur. The agencies would have been drafting the legislation with an awareness of that possibility. That said, he is open to making changes to the legislation as D.C. also does not want runaway spending.

Question: What is the process for the appointment of board members?

Answer: [MDOT] It is left up to the appointing jurisdictions' law.

Question: Will a companion bill be introduced with the draft legislation, defining how the appointments will be made in Maryland?

Answer: [MDOT] Companion legislation is not being generated to date. Without companion legislation, appointments would be governed by existing Maryland law.

Question: Why does the safety oversight that the commission would provide not already exist in WMATA's Inspector General office?

Answer: [MDOT] This level of oversight is not addressed in the WMATA compact. It was not built into the structure of WMATA when it was first established.

Question: What will the relationship between the commission and COG be? Will any resources/expertise be shared?

Answer: [Chuck Bean, COG] While COG is serving in a support role to get the commission set up and there may be some collaboration once it is set up, COG's staff does not have the skill set needed for the safety oversight activities the commission will be undertaking. There has been some thought of COG providing administrative support (information technology, financial management, human resources, *etc.*) for the commission, but a private provider may be a better option for those services.

Robert Fogel, with the Metro Riders Advisory Council, emphasized the importance of the commission being independent from political pressures from the jurisdictions and of the commission receiving adequate funding. He also urged the commission, once organized, to seek input from riders on safety matters through public hearings and other approaches.

Chairman Mendelson, in his testimony, indicated that he planned to schedule a vote on the legislation by the full D.C. Council in early December 2016 (a committee hearing was held in October) and hoped to have as much agreement as possible on the legislation by then to facilitate identical legislation being enacted in each of the three jurisdictions. It was generally indicated, by Chair Mendelson, Kevin Reigrut, and Mark Viani, that further deliberations over the language of the legislation would continue in the weeks immediately following the November 2 hearing and Kevin Reigrut indicated that committee and other General Assembly members could provide their comments on the legislation to him. Kevin Reigrut indicated that MDOT understands that discussion of potential changes may come up during the legislative process but they are hoping to iron out as many issues ahead of time as possible.

Interstate Compacts

The committee annually conducts a review of Maryland's membership in various interstate compacts (covering the full number of compacts over a four-year cycle). The review focuses on whether Maryland's membership in the compacts continues to serve the interests of the State and/or whether any legislative modifications are needed. Committee staff sent questionnaires to the State agencies involved and prepared summaries of the responses for review by the committee members for the following interstate compacts:

- Atlantic States Marine Fisheries Compact;
- Middle Atlantic Interstate Forest Fire Protection Compact;
- Emergency Management Assistance Compact;
- Interstate Compact for Adult Offender Supervision;
- Interstate Compact for Juveniles;
- Jennings Randolph Lake Project Compact;
- Potomac River Bridges Towing Compact;
- Washington Metropolitan Area Transit Authority Compact;
- Washington Metropolitan Area Transit Regulation Compact; and
- Woodrow Wilson Bridge and Tunnel Compact.

These compacts cover management of fisheries of the Atlantic seaboard; prevention and suppression of wildland fires; interstate emergency management assistance; interstate supervision of adult offenders on probation or parole and interstate supervision of delinquent youth; management of the Jennings Randolph Lake Project; clearance of disabled vehicles from bridges crossing the Potomac River; governance of WMATA; regulation of passenger carriers such as bus and shuttle companies in the Washington Metropolitan Area; and an obsolete entity intended to fund, build, and maintain a new Woodrow Wilson Bridge.

With the exception of the Woodrow Wilson Bridge and Tunnel Compact (discussed below), the agencies involved with the compacts recommended Maryland's continued participation in each compact. MDOT indicated that there has been significant discussion in Maryland, Virginia, and D.C regarding the potential need for a comprehensive review of the WMATA compact, though no action has been taken to date. The committee did not focus on the WMATA compact in depth as part of its interstate compact review.

The Woodrow Wilson Bridge and Tunnel Compact was established in 1995 and was intended to create an independent authority to fund, build, maintain, and otherwise administer a new Woodrow Wilson Bridge on I-495/I-95 (Capital Beltway) between Maryland and Virginia, through D.C. An alternate method of funding the new Woodrow Wilson Bridge was used, however, and the independent authority was never fully established. The compact does not address any other current need. The committee chairs will introduce legislation during the 2017 session to repeal the compact.

While not typically a part of the interstate compact review, at the November 2 briefing, the committee was briefed by the Maryland Emergency Management Agency on the Emergency Management Assistance Compact. The compact establishes a framework for states to request assistance from other states during a Governor-declared emergency and for reimbursement for that assistance. In the recent past, Maryland has benefited from the compact as a requesting state for emergencies resulting from Hurricane Sandy, the Baltimore City demonstrations, Hurricane Joaquin, Winter Storm Jonas, and the Ellicott City flooding. Maryland was also an assisting state for emergencies in other states resulting from Hurricane Katrina, Hurricane Sandy, Texas flooding, and Hurricane Matthew.

Letter to Maryland's Congressional Delegation

In May, it was brought to the committee's attention that there was concern about the extent to which federal legislation reforming the federal Toxic Substances Control Act would limit states' authority to regulate chemical substances. A letter was sent on May 18 by the committee chairs (and on behalf of a number of the committee members) to the members of the State's congressional delegation, urging the delegation members to resist the inclusion of language in the reform legislation (H.R. 2576) that would unduly limit states' ability to regulate chemical substances that present serious health and safety concerns. The final legislation signed by the President on June 22 appears to have reached a middle ground on the issue of limiting authority of the states. The legislation generally preserves existing state restrictions on chemical substances as well as the ability of states to, in the future, regulate chemicals and/or their uses if they have not been evaluated and acted on by the U.S. Environmental Protection Agency.