



Northern Virginia Transportation Authority
The Authority for Transportation in Northern Virginia

GOVERNANCE AND PERSONNEL COMMITTEE

Thursday, February 28, 2018

9:00 AM

3040 Williams Drive, Suite 200

Fairfax, VA 22031

AGENDA

- I. Call to Order** Chair Randall
- II. Approval of the Meeting Summary of the February 15, 2018 Meeting**

Discussion/Information

- III. 2018 Legislative Update (Handouts attached and at meeting.)**
Monica Backmon, Executive Director/Tracy Baynard, Legislative Liaison

Closed Session

(If Required)

Adjournment

- IV. Adjournment**

Next Meeting

The next meeting of the Governance and Personnel Committee will be determined during the meeting.



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Thursday, February 15, 2018

9:00AM

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MEETING SUMMARY

I. Call to Order

Chair Randall

- Chair Randall called the meeting to order at 9:20AM.
- Attendees:
 - ✓ Members: Chair Randall: Mayor Meyer; Chair Cristol;
 - ✓ Authority Members: Mayor Rishell; Ms. Hynes;
 - ✓ Other Elected Officials: Councilmember Letty Hardi (representing City of Falls Church).
 - ✓ Staff: Monica Backmon (Executive Director); Michael Longhi (CFO); Carl Hampton (Investment & Debt Manager); Sarah Camille Hipp (Communications & Public Affairs Manager); Peggy Teal (Assistant Finance Officer);
 - ✓ Other Attendees: Tracy Baynard (NVTA Legislative Liaison as noted in item III); Ellen Posner (Counsel of Councils - Fairfax County); Tom Biesiadny (Fairfax County); Kate Mattice (NVTC); Penny Newquist (Loudoun County); Arthur Anderson (NVTA Bond Counsel); Bob Brown (Loudoun County); Ciara Williams (DRPT); Rich Roisman (TPB); Rick Canizales (Prince William County); Rob Dickerson (Counsel of Councils - Prince William County); Steve MacIsaac (Counsel of Councils - Arlington County).

II. Approval of Meeting Summary of the December 15, 2016 meeting

- Minutes of the January 5, 2018 meeting of the GPC were approved by acclamation.

Discussion/Information

III. 2018 Legislative Update

Monica Backmon, Executive Director/Tracy Baynard, Legislative Liaison

- Ms. Backmon opened the discussion by drawing the Committee's attention to the legislative summary prepared by Ms. Baynard.
- Ms. Baynard described the progress and status of all non WMATA bills potentially affecting the Authority and then described all of the bills related to WMATA.
 - ✓ House Bill 1285 would require an annual joint public meeting to present transportation projects proposed by the NVRTA, Northern Virginia Transportation Commission, the Virginia Railway Express and the Commonwealth Transportation Board.
 - ✓ Issues and concerns surrounding each bill were described and possible impacts reviewed.
 - ✓ Gas Tax Floor Bills are moving forward in the House and in the Senate:
 - One sets the Gas Tax Floor to 2013 levels.
 - One gradually phases Gas Tax Floor increases to 2013 levels.
 - ✓ All I-66 bills have been prospectively eliminated from current consideration. There are a few which may be technically active, but are effectively terminated.
 - ✓ Two WMATA Bills have "crossed over," and are expected to be sent to conference committees for negotiation. This occurred on Tuesday February 13th. The bills are expected to be amended as they proceed to committee.
 - ✓ HB1539 would impact the NVRTA through:
 - \$45 million from 30% funds for WMATA – although there are some questions regarding how the Bill is written.
 - \$30 million from existing Transient Occupancy Taxes (TOT).
 - ✓ SB 856 would impact the NVRTA through:
 - \$31 million from 30% funds for WMATA.
 - \$30 million from existing Transient Occupancy Taxes (TOT).
 - ✓ One big theme is what amount is to be sent to WMATA; the Senate Bill proposed \$154 million. The House Bill, where there is resistance to tax increases, proposed \$105 million.
 - ✓ There has been reaction to proposed Grantors Tax and TOT increases by realtors and the travel industry. The northern Virginia realtors and state realtors supported the tax increase contained in the 2013 bill. Although they are now concerned about the proposed increases in this year's bill.
 - ✓ The hotel industry did not support the TOT increase in 2013. They also do not like this year's proposed increase, largely because they feel it places them in a bad position compared with the Maryland and DC hotels.

- ✓ If the industry's objections are accepted, and the tax increases are scaled back, it will create shortfalls in the funds to be sent to WMATA.
 - ✓ The differences between Senate Bill 856 and House Bill 1539 were discussed.
 - ✓ Chair Cristol expressed concern regarding the claw-back provisions and reduction in NVTAs revenues in HB1539, noting the Bill does not fix the WMATA issues. She pointed out the funds to be sent to WMATA are probably not bondable, the bill further restricts WMATA to a 2% annual operating budget increase and reduces their board to five members.
- The NVTAs should have some comments going back to the legislature, but comments should be focused on the three C's (Constitutionality, Credibility and Creditworthiness) previously identified by the NVTAs.
 - Not all the funds going to WMATA under SB856 are bondable, and in particular, the Commonwealth funds that have been identified are not bondable.
 - Both the House and the Senate Bills do not go into effect unless Maryland and DC take appropriate action. Further, there are limits put on annual WMATA budget increases, and claw-backs proposed in HB 1539, but it is not clear at what levels they will take effect.
 - Referencing former Secretary LaHood's WMATA report, it was noted it matches up well with the principles which were identified by the Authority.
 - Most of the legislators are aware of the LaHood Report and there remain items to be negotiated in each Bill. The legislators have talked with Secretary LaHood.
 - The Committee discussed the two WMATA Bills at the Federal level.
 - The Authority has been in contact with Federal representatives and is working on these issues.
 - Arthur Andersen, the Authority's Bond Counsel, spoke about bond related legal questions revolving around the bills and the potential repeal of the TOT.
 - Mr. Anderson noted, that appropriation risk was clearly disclosed in all the Authority's documents related to the 2014 Bonds.
 - Due to the Authority's continuing disclosure agreements in the 2014 Bonds, the Authority will have to file an event notice with the Municipal Securities Rulemaking Board indicating that one of the three components of the bonds' security and payment support has been taken away. This event disclosure would be required to occur, at most, 10 days from the time the Governor signs the bill into law.
 - Staff noted, there are approximately \$63 million of the 2014 bonds still outstanding; these bonds currently have a 40 times debt service coverage ratio which will drop to 38 times coverage if the TOT revenue was taken away.

- There are multiple considerations related to the potential loss of the TOT. The NVTA needs to communicate with rating agencies, underwriters and bondholders regarding the considerations.
- The future impacts of these two bills as proposed:
 - ✓ The Authority's 2014 bond documents disclosed that the Commonwealth may eliminate the tax revenues supporting the bond's debt service. While not noted in the documents it was well understood by rating agencies that the Commonwealth had never done this before.
 - ✓ Any future NVTA borrowing will have to disclose that the appropriation risk materialized in 2018 due to the Commonwealth's actions.
 - ✓ If this takes place, the impact will spread statewide through Agencies and Authorities having a bond structure similar to the NVTA's.
- The Authority's Financial Advisor has stated a rating downgrade could occur if one of these bills is approved.
- The Authority staff will speak with the rating agencies, noting that the rating agencies' staffs are already aware of the various proposals.
- A question was posed: what happens if a jurisdiction does not meet its Maintenance of Effort (MOE) requirements? The Council of Counsels responded that there are some differences between two of the bills regarding how they deal with the MOE requirements and the final wording of the approved bill would be controlling.
- It was noted that the Chapter 766 revenues and the use of their proceeds by WMATA may need to be monitored to avoid tripping legislative 'kill switches'.
- Concerns about jurisdictions' potential reduction of 30% funds were discussed.
 - ✓ There are concerns the Senate bill wipes out all of the Arlington and Alexandria 30% funds.
 - ✓ There was a preference expressed that localities be allowed to determine the source of funding to meet the \$31 million WMATA transfer, with 30% being an option, not a mandate.
 - ✓ A bill amendment could be created to enable localities to use any source of funds for this purpose.
- The issue of ridership from non-compact jurisdictions using Metro's services was raised with a suggestion that any revenue stream being established to help support WMATA may need to originate from the Northern Virginia jurisdictions as a group, not solely from the compact jurisdictions.
 - ✓ Council of Counsels indicated this may create legal or constitutional issues.
- An analysis of the bills other considerations has been prepared by NVTC and will be distributed by email to Authority Members.

- Ms. Baynard recommended watching events develop in Conference Committee before taking positions regarding these bills. She will prepare written comments for NVTAs use on the impacts of changes in:
 - ✓ The 30% local revenues.
 - ✓ The elimination of the TOT.
 - ✓ The 'kill switch'.

IV. Adjournment 12:40PM

Next Meeting
February 28th, 2018 at 9AM

WMATA/Transit Funding Bills
February 23, 2018

	<p align="center"><u>HB 1539 (Hugo)</u></p>	<p align="center"><u>SB 856 (Saslaw)</u></p>
<p align="center"><u>WMATA and Regional Provisions</u></p>		
<p>New Funding for WMATA</p>	<ul style="list-style-type: none"> • Creates a WMATA Capital Fund: \$110 million/year <ul style="list-style-type: none"> ○ Restricted Fund for non-debt service capital purposes: <ul style="list-style-type: none"> ▪ Approximately \$30 million in existing state revenues: \$20 million from state recordation tax (Northern Virginia Transportation District Fund) and \$10 million from 1/3 of motor vehicle rental tax revenues. ○ Non-Restricted Fund for capital and debt service: <ul style="list-style-type: none"> ▪ \$45 million from existing NVTA 30% funds; and, ▪ Approximately \$30 million from the existing NVTA 2% Transient Occupancy Tax (TOT). 	<ul style="list-style-type: none"> • Creates a WMATA Capital Fund: \$135.4 million/year (excluding gas tax floor, which is discussed below) <ul style="list-style-type: none"> ○ Restricted Fund for non-debt service capital purposes: <ul style="list-style-type: none"> ▪ Approximately \$30 million in existing state revenues: \$20 million from state recordation tax (Northern Virginia Transportation District Fund) and \$10 million from 1/3 of motor vehicle rental tax revenues. ○ Non-Restricted Fund for capital and debt service: <ul style="list-style-type: none"> ▪ \$31 million from existing NVTA 30% funds based on WMATA formula. ▪ \$30 million from increasing the grantor's tax in NVTC jurisdictions (currently assessed at \$0.15/\$100 in NVTA jurisdictions and increased under the bill to \$0.25/\$100 in NVTC jurisdictions). ▪ \$45 million from 3% TOT for NVTC jurisdictions – repeals existing 2% TOT from NVTA jurisdictions, imposes 3% TOT on NVTC jurisdictions (also maintains 2% TOT on Prince William, Manassas and Manassas Park to be used for public transportation purposes).
	<ul style="list-style-type: none"> • TOT and NVTA 30% funding changes become effective 30 days after the District of Columbia and state of Maryland each enact legislation or take actions to provide their share of the \$500 million. • States that any NVTA funds used in Virginia for WMATA are essentially determined to be for the benefit of the NVTA jurisdictions. • Deposits/expenditures from this fund will not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions, and will not be used in any computation of or formula for public education funding. 	
<p>WMATA Board Composition</p>	<ul style="list-style-type: none"> • Near Term Reform Board (4-5 members): <ul style="list-style-type: none"> ○ Until July 1, 2021, limits NVTC to appoint one non-elected official to the WMATA Board. ○ Additional language permits a larger board size if Maryland and D.C. do not comply. • Longer-Term Board: <ul style="list-style-type: none"> ○ Changes permanent NVTC appointment to a single appointee, plus Secretary of Transportation or their designee. ○ Maintains the Governor's appointee as a Principal Director of WMATA. 	<ul style="list-style-type: none"> • Principals-Only Board (8 members): <ul style="list-style-type: none"> ○ Restricts participation of alternates. ○ 20% of funding from Commonwealth to be withheld if any alternates participate or take action as WMATA Board members when both appointed members by that same WMATA compact member are present.

WMATA/Transit Funding Bills
February 23, 2018

	<p align="center">HB 1539 (Hugo)</p>	<p align="center">SB 856 (Saslaw)</p>
<p>WMATA Operating Expense Limitation</p>	<ul style="list-style-type: none"> ● Stipulates that total operating assistance for WMATA cannot increase by more than 2% annually or CTB will withhold 50% of state funds: <ul style="list-style-type: none"> ○ Does not include: (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; 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. 	<ul style="list-style-type: none"> ● Stipulates that total operating assistance for WMATA cannot increase by more than 3% annually or CTB may withhold up to 20% of state funds: <ul style="list-style-type: none"> ○ Does not include: (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; 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.
<p>WMATA Strategic Plans/CIP/Reform Efforts</p>	<ul style="list-style-type: none"> ● Establishes a Metro Reform Commission (appointed by General Assembly (GA)): <ul style="list-style-type: none"> ○ Advises and makes recommendations to WMATA Compact Signatories on Wolf (National Capital Area Interest Arbitration Standards) Act. ○ Makes recommendations on reforms to the WMATA Compact. ○ Receives semiannual reports from WMATA. <ul style="list-style-type: none"> ▪ All state funding from Mass Transit Fund withheld if semiannual reports not received. ● Requires Secretary of Transportation to conduct Compact Review and report quarterly to GA and Metro Reform Commission on status of revising the WMATA Compact and implementation of reforms, including: <ul style="list-style-type: none"> ○ review of the legal and organizational structure of WMATA; ○ the composition and qualification of Board Members; ○ labor costs; ○ elimination of binding-arbitration; ○ addressing pension liabilities; and, ○ addressing safety improvements, financial and operational improvements. 	<ul style="list-style-type: none"> ● Requires WMATA to adopt capital improvement program (CIP) and Strategic Plan: <ul style="list-style-type: none"> ○ Detailed CIP covering the current fiscal year and, at a minimum, the next five fiscal years, with NVTC public hearing. ○ First strategic plan must include a plan to align services with demand and to satisfy recommendations included in LaHood Study. ○ 20% of funding from Commonwealth to be withheld if not completed by July 1, 2019, and in subsequent years. ● Requires WMATA Performance Annual Report (NVTC) to the Governor and the GA on the performance and condition of WMATA, including: <ul style="list-style-type: none"> ○ safety and reliability of rapid heavy rail and bus systems; ○ financial performance of WMATA related to rail and bus operations, including: farebox recovery, service per rider, cost per service hour; ○ potential strategies to reduce the growth in such costs and to improve the efficiency of WMATA operations; ○ use of the funds provided from the Capital Fund to improve the safety and condition of the rapid heavy rail mass transportation system; and, ○ ridership of rail and bus system.

WMATA/Transit Funding Bills
February 23, 2018

	HB 1539 (Hugo)	SB 856 (Saslaw)
NVTC WMATA Oversight & Reporting	<ul style="list-style-type: none"> Requires annual certification by NVTC of receipt of the following: <ul style="list-style-type: none"> WMATA's annual capital budget; WMATA's annual independent financial audit; WMATA's National Transit Database annual profile; and, Single audit reports. All funding from new WMATA Capital Fund will be withheld if certification is not received. 	
Gas Tax Floor	<p>No provision. HB 768 (Jones), which is being considered separately, includes a "stepped up" gas tax floor.</p>	<ul style="list-style-type: none"> Makes the following changes to the regional gas tax: <ul style="list-style-type: none"> Implements 2.1% tax at the distributor level for a gallon of unleaded gas; and, Places a floor on the gas tax at the statewide average wholesale price of a gallon of fuel on February 20, 2013, plus a distributor charge calculated by the Commissioner for that date. Additionally, SB 896 (Wagner), which is being considered separately, includes a gas tax floor.
Allocation of Proceeds from Gas Tax Floor	No provision.	<ul style="list-style-type: none"> Allocates additional revenues from imposition of the regional gas tax floor: <ul style="list-style-type: none"> In NVTC jurisdictions: 68.4% (approximately \$18.6 million) to WMATA Capital Fund and 31.6% (approximately \$8.6 million) to VRE. Outside NVTC: approximately \$18 million to VRE.
Expanded Use of C&I Tax	No provision.	<ul style="list-style-type: none"> Allows use of C&I to pay a portion of local share of WMATA funding.
"Kill Switch" Provisions	<ul style="list-style-type: none"> Ends Virginia's contributions enacted by HB 1539 on June 30 of any year in which Maryland and D.C. fail to provide their share of dedicated funding. 	<ul style="list-style-type: none"> Provisions of SB 856 generating additional revenues will expire on December 31 of any year in which the GA appropriates any such revenues for non-transportation purposes or transfers any additional revenues that are to be deposited into the WMATA Capital Fund or Commuter Rail Operating and Capital Fund. States that SB 856 will not activate the "kill switches" included in HB 3202 and HB 2313.
Labor Provisions	<ul style="list-style-type: none"> After July 1, 2018, no employee of a WMATA contractor for a WMATA project solely within the Commonwealth of Virginia shall be required to be a member of a labor union. 	No provision.
Maintenance of Effort	<ul style="list-style-type: none"> Includes a new Maintenance of Effort provision. 	No provision.

WMATA/Transit Funding Bills
February 23, 2018

<i>Statewide Provisions</i>	
	<u>HB 1539 (Hugo)</u>
State Prioritization	<p align="center"><u>SB 856 (Saslaw)</u></p> <ul style="list-style-type: none"> • Establishes statewide prioritization process to allocate transit funds. <ul style="list-style-type: none"> ○ Process for state of good repair capital projects to be based on federal asset management requirements. ○ Process for major expansion projects to be based on SMART SCALE factors. • Directs the Department of Rail and Public Transportation (DRPT) and the Transit Service Delivery Advisory Committee (TSDAC) to develop and implement a process (no later than July 1, 2019), to be used in the development of the FY 2020-25 Six-Year Improvement Program (SYIP).
DPRT Transit Funding Allocation	<ul style="list-style-type: none"> • Restructures the allocation of transit operating and capital funding based upon previous years' average as follows: <ul style="list-style-type: none"> ○ At least 31% to be used for operating costs for properties excluding WMATA; ○ 12.5% to be used for statewide capital improvements for properties excluding WMATA; ○ 53.5% to NVTTC for WMATA operating and capital assistance; ○ 3% for special projects (<i>current amount</i>).
State Fiscal Cliff	<ul style="list-style-type: none"> • Restructures the allocation of transit operating and capital funding based upon previous years' average as follows: <ul style="list-style-type: none"> ○ At least 28.9% to be used for operating costs for properties excluding WMATA; ○ 18.4% to be used for statewide capital improvements for properties excluding WMATA; ○ 49.9% to NVTTC for WMATA operating and capital assistance; ○ 2.8% for special projects. • Reauthorizes transportation bonds for single year of \$50 million match for federal Passenger Rail Investment and Improvement Act (PRIIA) funds.