

## NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

### MEMORANDUM

**TO:** Chairman Martin E. Nohe and Members  
Northern Virginia Transportation Authority

**FROM:** Michael Longhi, Chief Financial Officer

**DATE:** November 7, 2019

**SUBJECT:** Revisions to Policy 20 – Regional Revenue (70% Funds)

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1. **Purpose:** To seek Northern Virginia Transportation Authority (NVTA) approval of changes to Policy 20 – Regional Revenue (70% Funds) to implement Virginia Code changes, as recommended by the Finance Committee.
2. **Suggested Motion:** *I move Authority approval of the attached changes to the Authority's Policy 20 – Regional Revenue (70% Funds).*
3. **Background:**
  - a. Policy 20 – Regional Revenue (70% Funds) was adopted by the Authority on December 5, 2014. This Policy has not been revised since adoption.
  - b. The 2019 General Assembly Session produced two Bills which impact the NVTA Regional Revenue Fund:
    - (i) **SB1468:** This Bill, patroned by Senator Black, provides the Authority:
      1. Flexibility to pay operating and administrative expenses through assessments to member jurisdictions or via a transfer from the Regional Revenue Fund (70% revenues).
      2. Transfer the responsibility for the HB599 ratings from VDOT to the NVTA.
    - (ii) **SB1716:** This Bill is related to funding for the I-81 Corridor Improvements. The Bill provides for additional funding to the Authority, which the Commonwealth estimates as:
      1. FY2020 -\$9.4 million
      2. FY2021 - \$13.8 million
      3. FY2022 and beyond - \$19.5 million
      4. The additional funds are not bondable.
4. **Proposed Policy Changes:** Policy 20 must be changed to reflect the two Bills noted above. The proposed changes reflect:

- a. The Authority's flexibility in the use of Regional Revenues for operational and administrative expenses. (SB1468)
- b. The transfer of responsibility of conducting the HB599 evaluation to the Authority.
- c. The recognition that Regional Revenue Funds generated pursuant to SB1716 are subject to different legal requirements than Regional Revenue Funds generated under HB2313.
- d. Preserves the 'flow of funds' required in the Virginia Code and NVTAs Master Indenture of Trust.
- e. Updates the policy for the evolution of NVTAs staff titles and roles.
- f. Improves the clarity and consistency of the overall document.

**Coordination:** Council of Counsels  
Bond Counsel (McGuireWoods LLC)  
Financial Advisor (PFM)

**Attachment:** Draft Policy 20 – Regional Revenue (70% Funds)

# NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

## Policy Number 20 – Regional Revenue Funds (70% Funds)

**I. Purpose.** Virginia Code of Virginia §33.2-~~2509~~-2510 directs the Northern Virginia Transportation Authority (“NVTA” or the “Authority”) to use 70 percent of the revenue collected (the “Regional Revenue Funds”) ~~and fees, interest earnings, plus the~~and NVTA bond proceeds for (i) transportation projects selected by the Authority that are contained in Transaction 2040 and its updates or (ii) mass transit capital projects that increase capacity benefitting those counties and cities embraced by the NVTA. The Standard Project Agreement for Funding (SPA) is the mechanism NVTA shall use to govern the distribution and use of Regional Revenue Funds and for the NVTA to ensure that such funds are spent in accordance with the Virginia Code and Authority policies. NVTA recognizes that Regional Revenue Funds generated pursuant to SB1716 (2019) are subject to different legal requirements than Regional Revenue Funds generated under HB2313 (2013).

## **II. General.**

**A. Regional Revenue Funds** ~~generated by HB2313 (2013), as amended, will be distributed, subject to any outstanding Bond Indentures will be distributed, in accordance with the Virginia Code and NVTA’s Master Indenture of Trust dated as of December 1, 2014 as Supplemented (the “NVTA Indenture”)~~ as follows:

1. Revenues generated by HB2313 (2013) are first pledged for debt service, and will be included in debt capacity calculations. NVTA will segregate the Regional Revenue Funds generated under SB1716 (2019) (the “SB1716 Regional Revenue Funds”) from the Regional Revenue Funds generated under HB2313 (the “HB2313 Regional Revenue Funds”).
2. The SB1716 Regional Revenue Funds cannot be used to support bonds or other debt of NVTA. As such, once the segregation described in II.A.1. above has occurred, the SB1716 Regional Revenue Funds will immediately be credited to the General Fund established under the NVTA Indenture (the “General Fund”).
3. Revenues generated by SB1716 (2019) cannot be used for The HB2313 Regional Revenue Funds are pledged to pay debt service and will be included in NVTA’s debt capacity calculations or debt service payments.
4. The HB2313 revenues Regional Revenue Funds will be used, applied in priority following order on a monthly basis:  
~~To pay debt service on bonds issued by the Authority and secured by a pledge of such monies.~~

- a) To fund ~~refill~~ a Working Capital Reserve and/or Debt Service Reserve equal to at least six (6) months of the budgeted at an amount determined by the Authority of no less than \$120 million and a shortfalls, if any in any fund each Bond Debt sService Reserve Funds Fund for NVTA’s senior bonds Debt Service Reserve as required by any outstanding applicable Bond Indentures, annual Regional NVTA Funds under the NVTA Indenture;-;
- b) To restore the balance in any Debt Service Reserve Fund that may be established under the NVTA Indenture to its Reserve Requirement in accordance with the NVTA Indenture;
- c) To fund any Subordinate Debt Service Fund for any subordinate bonds that NVTA may issue in accordance with the NVTA Indenture;
- d) To fund any Rebate Fund established for any series of NVTA bonds as provided in the NVTA Indenture to provide for the payment of any rebate amounts for such series determined under Section 148 of the Internal Revenue Code; and
- e) Any balance remaining after the foregoing deposits have been made shall be transferred to the General Fund.

5. Amounts in the General Fund, which will consist of both SB1716 Regional Revenue Funds and HB2313 Regional Revenue Funds, will be applied as follows as more particularly described in NVTA's annual operating budgets:

- a) To fund or ~~refill~~ maintain a Working Capital Reserve at a total in an amount determined by the Authority NVTA of ~~no~~ not less than \$120 million-;:
- b) To fund cost of issuance and other debt-related fees and services-;:
- c) ~~For~~ To fund “pay-as-you-go” (PayGo Pay-Go) projects approved by the Authority NVTA-; and
- d) To fund make transfers to the Operating Fund established under the NVTA Indenture to pay NVTA’s annual administrative and operating expenses as determined annually by Authority adoption of its Annual Operating Budget, in accord with SB1468 (2019)- to the extent not provided for from other sources as authorized under SB1468 (2019).

5.6. Each project financed by Regional Funds must meet the following criteria as well as be approved by NVTA and subject to all applicable laws:

- a. Project must be in the current regional long range transportation plan, the (TransAction) 2040 plan and its updates, and be rated in accordance with HB599 599; Code of Virginia § 33.2-257 (“VDOT Rating”) if required, or a mass transit capital project that increases capacity.

- b. Must reflect the Authority's priority for selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project;:-
- c. Must be located only in jurisdictions ~~localities~~ embraced by the Authority or in adjacent ~~localities~~ jurisdictions but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the ~~localities~~ jurisdictions embraced by the Authority; ~~and~~:-
- d. Must result in each ~~locality's~~ jurisdiction's total long-term benefit being approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the ~~locality~~ jurisdiction jurisdiction.

~~The HB2313 derived Regional Funds must be distributed in the following order of priority in accordance with the bond Master Indenture of Trust dated as of December 1, 2014, as supplemented :~~

~~To fund all senior debt service requirements.~~

~~To fund all debt service reserve requirements (if due).~~

~~To fund subordinate debt service requirements (if due).~~

~~To fund all rebate fund requirements (if due).~~

~~C.B.~~ The SPA— Standard Project Agreement is the guiding document regarding the responsibilities of each party in reference to project funding using Regional Revenue Funds.

### III. Responsibilities.

#### A. Executive Director.

1. Is responsible to assign a ~~project coordinator~~ Transportation Planner to monitor each project to ensure compliance with the SPA Standard Project Agreement.
2. The Executive Director will make guidelines available to the recipient as necessary to assist with compliance of the SPA Standard Project Agreement.
3. Written requests for supplemental project funding shall be submitted to the Executive Director for review. The Executive Director will present a recommendation to the Finance Committee for consideration. The Finance Committee may make a recommendation on any such request to the Authority for final determination.
4. The Executive Director will review written requests from recipients to advance a project to a future phase. The requests will be shared with the Finance Committee for consideration. The Finance Committee may make a recommendation on any such request to the Authority for final determination. The SPA Standard Project Agreement doesn't prevent a recipient from self-funding a future phase of an approved project and

seeking reimbursement from the Authority based on the original or modified cash flow projections.

5. The Executive Director will advise the recipient in writing of questionable uses of any funding which comes to the Authority's attention. The Executive Director will provide a report of the incident and make recommendations for resolution to the Finance Committee. The Finance Committee will forward the issue and possible resolution to the Authority. Additional funding will be withheld until final resolution of the matter.

## **B. Chief Financial Officer (CFO) Reporting to Executive Director.**

1. The CFO has primary responsibility to ensure Regional ~~funds~~ Revenue Funds are properly safeguarded and disbursed.
2. The CFO will be responsible for ensuring recipient project cash flow requirements are periodically updated to properly manage the project needs of the recipient.
3. The CFO will manage the requisition process, as outlined in the SPA Standard Project Agreement, for cash flow purposes to facilitate reimbursement to the recipient within 20 days of receiving a completed and approved requisition request.
4. The CFO will manage the Authority's cash position to ensure availability of funds to meet programmed reimbursement requests.

## **C. Program Coordinator Principal, Transportation Planning and Programming.**

1. The Principal, Transportation Planning and Programming's team ~~NVTA's program coordinator~~ will be responsible for assigning a Transportation Planner for monitoring projects on behalf of the NVTA so as to ensure compliance with ~~this Agreement and all statutes required under the Code of the applicable Standard Project Agreement, NVTA's policies and the~~ Virginia Code.
2. The assigned ~~program coordinator~~ Transportation Planner is charged with overseeing, managing, reviewing and processing, in consultation with the NVTA's Executive Director and ~~its~~ CFO, all payment requisitions submitted by recipients for projects. He/she will also notify the recipient of the reasons why a payment requisition has been declined.
3. The assigned Transportation Planner ~~program coordinator~~ will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth in Appendix A to the applicable Standard Project Agreement or to the Project Budget and Cash Flow as set forth in Appendix B to the applicable Standard Project Agreement.
4. In consultation with the Executive Director, Principal, Transportation Planning and Programming's team and assigned Transportation Planner ~~program coordinators~~ will

conduct periodic reviews to ensure that the project remains in compliance with the agreed upon project scope.

5. The Transportation Planner ~~program coordinator~~ will ensure that written certification is received for matching project funds and for compliance with VDOT requirements, if the project is to be accepted into the VDOT system for maintenance.

#### **D. Recipients.**

1. Each recipient is responsible to ensure work is performed in accordance with all applicable federal, state and local laws and regulations, and the SPA.
2. Each recipient must perform or have performed all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisition necessary to complete the project.
3. A recipient must acknowledge the requirements of the NVTA's Resolution 14-08 NORTHERN VIRGINIA TRANSPORTATION AUTHORITY ('NVTA') POLICY FOR USE OF 70% FUNDS UNDER 2013 VA. ACTS CH. 766 REGARDING FUNDING OF PROJECTS UNDERTAKEN BY NVTA OR ON ITS BEHALF WITH THE DISTRICT OF COLUMBIA, VIRGINIA, ANY OTHER STATE OR A POLITICAL SUBDIVISION THEREOF, OR THE UNITED STATES OF AMERICA, if applicable.
4. A recipient must name the Authority and its bond trustee as additional insureds on insurance policies associated with the project.
5. A recipient must certify that it will use the project for its intended purpose for the duration of its useful life.
6. A recipient must acknowledge that the Authority will not be responsible for operating or maintaining the project upon completion.
7. A recipient must comply with will federal and state requirements for other funding sources which may be used to fund the project and certify that it has adhered to all applicable laws and regulations, as well as the requirements of the agreement.

**Approved by the Finance Committee:** December 5, 2014

**Approved by Northern Virginia Transportation Authority:** December 11, 2014

[Revision 1:](#)

[Approved by the Finance Committee:](#)

[Approved by the Northern Virginia Transportation Authority:](#)

