

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

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MEMORANDUM

TO: Chair Phyllis J. Randall and Members
Northern Virginia Transportation Authority

FROM: Michael Longhi, Chief Financial Officer

DATE: December 10, 2020

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

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 proposed changes to the Authority's Policy 20 – Regional Revenue (70% Funds).*
3. **Background:**
 - a. Policy 20 – Regional Revenue (70% Funds) was last revised in October 2019, to reflect the General Assembly providing the Authority flexibility to pay operating costs from the Regional Revenue Fund (SB 1468) and the receipt of funding related to the I-81 Corridor Improvements (SB1716/HB2718).
 - b. The 2020 General Assembly Session through the Omnibus Transportation Bill HB1414/SB890 took two actions to partially restore NVTA funding diverted in 2018:
 - i. \$20 Million in State Revenues: \$20 million in state monies to be transferred on an annual basis. This fixed \$20 million per year transfer is to NOT be used in the determination of the NVTA debt capacity (Bondable Funds). The rationale for not using these funds to determine debt capacity is that as a fixed amount transfer it has neither economic growth capacity nor the revenue significance of a dedicated tax levy.
 - ii. Regional Congestion Relief Fee (Grantor's Tax): This revenue will be used in determination of the NVTA debt capacity and represents Bondable Funds. On a pre-COVID basis, this revenue was estimated to produce \$30 million in revenue. However, the Governor delayed the full implementation of the tax in FY2021, and adjusting for COVID-19 the revenue is estimated to result in; \$11.1 million in FY2021, \$19.5 million in FY2022, and \$24 million in FY2023. This revenue is expected to reach \$30 million in FY2024.

- c. Expected to result in \$20 million when fully implemented, the I-81 Interstate Operations and Enhancement Program revenues are not permitted to be used to support bonds or debt of NVTA by Virginia Code.

Coordination: Regional Jurisdiction and Agency Coordinating Committee
NVTA Financial Advisor (PFM)
Council of Counsels

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

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

Policy Number 20 – Regional Revenue (70% Funds)

I. **Purpose.** *Virginia Code* §33.2- 2510 directs the Northern Virginia Transportation Authority (“NVTA” or the “Authority”) to use 70 percent of the revenue collected (the “Regional Revenue Funds”) interest earnings, 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 ~~not all Regional Revenue Funds generated pursuant to SB1716 (2019) are subject to different legal requirements than Regional Revenue Funds generated under HB2313 (2013) are legally bondable or desired to be listed as bondable sources of revenue.~~

II. General.

A. Regional Revenue Funds 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. 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”).~~ by the following revenue sources:

- a. Sales and Use Tax (HB2313, 2013)
- b. Interstate Operations and Enhancement Program (SB1716/~~;~~HB2718, 2019)
- c. Commonwealth Transportation Fund Transfer (HB1414, 2020)
- d. Regional Congestion Relief Fee (HB1414, 2020)

~~2. The SB1716 Regional Revenue Funds Interstate Operations and Enhancement Program are not permitted by legislation to be used to support bonds or other debt of NVTA.~~

~~1. The Commonwealth Transportation Fund Transfer revenue cannot~~ will not be used to support bonds or other

~~2. 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. The ~~HB2313 Regional Revenue Funds~~ Sales and Use Tax and Regional Congestion Relief Fee Revenue (Bondable Funds) are pledged to pay debt service and will be included in NVTA’s debt capacity calculations.

4. The ~~HB2313 Regional Revenue Funds~~ Bondable Funds will be applied in following order on a monthly basis:
 - a) To ~~—~~ fund each Bond Debt Service Fund for NVTA’s senior bonds as required 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. Remaining a~~ Amounts in the General Fund, ~~which will consist of both SB1716 Regional~~

~~6.5. 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 maintain a Working Capital Reserve in an amount determined by NVTA of not less than \$120 million-;
- b) To fund cost of issuance and other debt-related fees and services-;
- c) To fund “pay-as-you-go” (Pay-Go) projects approved by NVTA; and
- d) To make transfers to the Operating Fund established under the NVTA Indenture to pay NVTA’s annual administrative and operating expenses to the extent not provided for from other sources as authorized under SB1468 (2019).

~~7.6.~~ 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 (TransAction), and be rated in accordance with HB 599;
- 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 embraced by the Authority or in adjacent 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 jurisdictions embraced by the Authority; and

- d. Must result in each 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 jurisdiction.

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- B. The 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 ~~Transportation Planner~~ staff to monitor each project to ensure compliance with the Standard Project Agreement (SPA).
2. The Executive Director will make guidelines available to the recipient as necessary to assist with compliance of the 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 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 Revenue Funds are properly safeguarded and disbursed.
2. The CFO will ~~be responsible for ensuring call on Jurisdictions and Agencies with active SPA's to recipient project cash flow requirements are~~ periodically ~~updated-update~~ project cash flow projections to properly manage the project needs of the recipient.
3. The CFO will manage the requisition process, as outlined in the 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. Principal, Transportation Planning and Programming.

1. The Principal, Transportation Planning and Programming will be responsible for assigning ~~a Transportation Planner for staff to~~ monitoring projects on behalf of the NVTA so as to ensure compliance with the applicable Standard Project Agreement, NVTA's policies and the Virginia Code.
2. The assigned ~~NVTA staff member Transportation Planner~~ is charged with overseeing, managing, reviewing and processing, in consultation with the NVTA's Executive Director and 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 ~~NVTA staff member Transportation Planner~~ 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 and assigned ~~NVTA staff member Transportation Planner~~ will conduct periodic reviews to ensure that the project remains in compliance with the agreed upon project scope.
5. The ~~NVTA staff member Transportation Planner~~ 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 NVRTA's Resolution 14-08 NORTHERN VIRGINIA TRANSPORTATION AUTHORITY ('NVRTA') POLICY FOR USE OF 70% FUNDS UNDER 2013 VA. ACTS CH. 766 REGARDING FUNDING OF PROJECTS UNDERTAKEN BY NVRTA 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: October 17, 2019

Approved by the Northern Virginia Transportation Authority: November 14, 2019

Revision 2:

Approved by the Finance Committee:

Approved by the Northern Virginia Transportation Authority: