

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

11.

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

FROM: Monica Backmon, Chief Executive Officer
Tracy Baynard, McGuire Woods Consulting, LLC

DATE: January 6, 2022

SUBJECT: 2022 General Assembly Session Update

Purpose: To update the Northern Virginia Transportation Authority (NVTA) of Proposed Budget and Legislative Activity from the 2022 General Assembly Session.

Discussion: As of the time of writing this memo, we have reviewed Governor Northam's proposed budget for FY2022, FY 2023 and FY 2024. We have fewer than usual introduced bills due to a ransomware attack and are waiting for Governor-elect Youngkin's inauguration before seeing his budget and policy initiatives. Below is an overview of proposals released so far.

Transportation Funding General

The December revenue reforecast shows increases in transportation revenue sources across the board. If these projections are realized, it means the Authority will benefit from an increase in funding from the Interstate Operations and Enhancement Program (IOEP). The Authority gets 8.4% of IOEP funding each year.

FY 2022 Initiatives in HB 29/SB29

As noted in December, the Northam administration is using the increased transportation revenues to replenish revenue sharing funding to make up money for FY 23 and FY 24. [Item 447 A-4](#) provides an additional \$40.480 million in FY 2022 for the Revenue Sharing Program. The FY 23-24 biennium budget also proposes increased funding for the Revenue Sharing Program to return funding once again to the previous schedule. Once again, the General Assembly is asked to allocate funding over the statutory \$100 million cap -- \$197.288 million for FY 23 and \$208.066 million in FY 24.

Governor Northam agrees that some of the FY21 general fund surplus should be allocated to the Commonwealth Transportation Fund - \$115.8 million for six new initiatives in [Item 447.10 B 8-13](#), ranging from multi-use trails, the regional Spaceport, the I-64 "gap" and an interchange project near the Norfolk Naval Base. This funding is allocated in FY 22. There is an additional \$207.204 million in general fund revenue allocated for multi-use trails in FY 2023 in HB30/SB30.

The Northam administration followed through on a recommendation of the Joint Legislative Audit and Review Commission related to whether localities responsible for maintaining pavements and bridges are receiving sufficient state funding. [Item 451 H](#) study language includes an assessment of current conditions of city streets. This evaluation will include a review of the current formula used for distributing city street payments and an assessment of possible partnerships with VDOT to provide services. Recommendations are due by December 1, 2023. You'll note at the top of the item a projected increased FY 2022 transfer of revenue to NVTA of \$58.492 million. This represents the revenue update.

Implementation of New Revenue from the Federal Infrastructure Investment and Jobs Act (IIJA)

The Northam administration's proposed budgets include numerous specific initiatives to implement some portion of the Federal IIJA. Specific timing of spending the money is dependent on when the federal funds are received and having federal guidance in hand.

- Allocates \$43.47 million in FY 2022, \$44.33 million in FY 2023 and \$45.22 million for FY 2024 from the new resiliency PROTECT Program
- Allocates \$34.08 million in FY 2022, \$34.768 million in FY 2023 and \$35.464 million in FY 2024 from the new Carbon Reduction Program
- FY 2023-2024 biennium budget includes language directing the Commonwealth Transportation Board to develop a strategy for using funding from two new programs:
 - Bridge replacement, rehabilitation or construction including both state and local maintained bridges. This work will build upon already completed work by VDOT to review recommendations related to bridge asset management. Virginia is projected to receive \$107 million a year for 5 years from this program.
 - National Electric Vehicle Formula Program. The plan shall consider national designated electric charging corridors, opportunities to partner with the private sector and to be in compliance with future federal guidance. Virginia is projected to receive \$21.3 million a year for 5 years for this program.

TO: Chair Phyllis J. Randall and Members
Governance and Personnel Committee

FROM: Monica Backmon, Chief Executive Officer
Tracy Baynard, McGuireWoods Consulting LLC

DATE: January 12, 2022

RE: Update on the 2022 Virginia General Assembly Session

An update with additional information since the distribution of the January Authority meeting packet.

Attached is a presentation summarizing the transportation initiatives Governor Northam has included in his proposed budgets. This is another summary of the information we provided earlier.

- For cities and towns note Slide 6 which provides additional details on the City Streets Maintenance Payments Study

HB142-Amending Policy of the Transit Ridership Incentive Program

Delegate McQuinn (D-Richmond) has introduced [House Bill 142](#) which is meant to provide the Commonwealth Transportation Board (CTB) with more flexibility to award funding from the Transit Ridership Incentive Program (TRIP). Section E of the bill would set minimums for funding for two programs – Free or low-income fares and regional transit service.

Current Policy

Free/Low-Income capped at 25%
75% available for regional transit service

Proposed New Policy

At least 25% for free/low-income
At least 25% for regional service
50% can be used for either option

Members of the Authority have shown interest in both programs but at this time most applications have been related to free/low-income fare pilots due to the pandemic's impact on ridership and desire to expand access to transit service. If approved, this change in policy would give CTB greater flexibility to fund current fund requests but may reduce the preference for large transit systems such as we have in Northern Virginia for the regional transit service initiatives. Staff is seeking locality reaction to the proposed changes.

HB297-Temporary Suspension of Regional Fuels Tax

Delegate McNamara (R-Roanoke) has introduced [House Bill 297](#) which would suspend all regional fuels taxes from July 1, 2022 to June 30, 2023. Staffs of several organizations are reviewing the bill to confirm its impact. If the bill is as broad as it seems it would suspend regional gas tax revenue for PRTC, NVTC, the VRE CROC Fund and the Metro Capital Fund.

HB261-Locality Authority to Lower Speed Limits

Delegate Wyatt (R-New Kent) has introduced [House Bill 261](#). Section A4 permits local government to lower speed limits by up to 10 mph on any road in your boundaries based on a

traffic engineering study and analysis. Current law limits speed reduction to 25 mph. Local staff have been alerted about the bill and we await their review.

districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;

(4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of \$0.125 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of \$0.10 per \$100 of assessed value in any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code; and

(5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.

2. That § 3 of the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended and reenacted as follows:

§ 3. The net proceeds of the Bonds *authorized* by § 2 shall be used exclusively for the purpose of providing funds for paying the costs incurred or to be incurred for construction or funding of transportation projects pursuant to § ~~33.1-23.4-01~~ 33.2-365 of the Code of Virginia, including but not limited to environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs and other financing expenses. Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

3. That the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended by adding sections numbered 3.1 and 3.2 as follows:

§ 3.1. *The Commonwealth Transportation Board is hereby further authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the Transportation Development and Revenue Bond Act (§ 33.2-1700 et seq. of the Code of Virginia), as amended from time to time, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series .." at one time in an aggregate principal amount not to exceed an additional \$50 million for a total authorization of \$3.05 billion, plus costs. The issuance of any bonds under this act is subject to the provisions of subsection C of § 33.2-1527 of the Code of Virginia.*

§ 3.2. *The net proceeds of the additional bonds authorized in § 3.1 of this enactment shall be used exclusively for the Commonwealth of Virginia to match federal funds provided for capital projects by the Washington Metropolitan Area Transit Authority.*

4. That § 58.1-802.2 and Article 10 (§ 58.1-1742) of Chapter 17 of Title 58.1 of the Code of Virginia are repealed.

5. That each county or city that is a member of the Potomac Rappahannock Transportation Commission, but not a member of the Northern Virginia Transportation Authority, as of January 1, 2018, shall expend or disburse for the support of public transportation an amount that is at least equal to the average annual amount expended or disbursed for such purposes by the county or city, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2015, and June 30, 2018.

6. That the provisions of this act, except for §§ 33.2-214.3, 33.2-286, and 33.2-1526.1 of the Code of Virginia, as created by this act, and § 58.1-638 of the Code of Virginia, as amended by this act, shall not become effective until 30 days after the District of Columbia and the State of Maryland each enact legislation or take actions to provide dedicated funding for the Washington Metropolitan Area Transit Authority (WMATA). The percentage of funding provided by the Commonwealth for its share of WMATA funding pursuant to this act beginning with the fiscal year that this act becomes effective, and each fiscal year thereafter, shall be proportional to the amount of funding provided by the District of Columbia and Maryland relative to their respective share of WMATA funding in that fiscal year.

7. That the Commonwealth Transportation Board shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the Code of Virginia, as created by this act, if (i) any alternate directors participate or take action at an official Washington Metropolitan Area Transit Authority (WMATA) Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate directors.

8. That, beginning July 1, 2019, the Commonwealth Transportation Board (the Board) shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the

Code of Virginia, as created by this act, each year unless (i) the Washington Metropolitan Area Transit Authority (WMATA) has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the Northern Virginia Transportation Commission, and (ii) WMATA has adopted or updated a strategic plan within the preceding 36 months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by the Northern Virginia Transportation Commission. In order to satisfy the requirements of clause (ii) of this enactment, the first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017.

9. That the Department of Rail and Public Transportation shall develop a prioritization process as required by § 33.2-214.3 of the Code of Virginia, as created by this act, for the Commonwealth Transportation Board's consideration. The Board shall implement the prioritization process required by § 33.2-214.3 of the Code of Virginia, as created by this act, no later than July 1, 2019, and use such process for the development of the Six-Year Improvement Program for fiscal years 2020 through 2025.

10. That the Commonwealth Transportation Board shall (i) adopt the guidelines required by § 33.2-286 of the Code of Virginia, as created by this act, by December 1, 2018, and (ii) develop and adopt a plan for phased implementation of the requirements for submissions of the strategic plans required to be developed over a period of five years. No agency subject to § 33.2-286 of the Code of Virginia, as created by this act, shall be penalized for not submitting a strategic plan pursuant to such section, provided that the agency is in compliance with the phased implementation schedule adopted by the Commonwealth Transportation Board.

11. That notwithstanding the provisions of subdivision C 1 of § 33.2-1526.1 of the Code of Virginia, as created by this act, for fiscal year 2019 the funds allocated to support the operating costs of transit shall be distributed as follows: (i) the first \$54 million of such funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for purposes deemed to be eligible by the Board and (ii) the remaining amount of such funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency, as established by the Board.

12. That (i) the Washington Metropolitan Area Transit Authority (WMATA) was established pursuant to an interstate compact between Virginia, Maryland, and the District of Columbia to operate a regional mass transit system in the Washington, D.C., metropolitan area; (ii) WMATA is currently the second largest rapid heavy rail mass transportation system and the sixth largest bus mass transportation system in the United States; (iii) Section 16 of the WMATA compact embodies the funding principle that "the payment of the costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments"; (iv) the operation of the rapid heavy rail mass transportation system and the bus mass transportation system by WMATA provides particular and substantial benefit to the persons living, traveling, commuting, and working in those localities embraced by the Northern Virginia Transportation Commission; (v) the benefits to such persons include not only access to the rapid heavy rail mass transportation system and the bus mass transportation system operated by WMATA but also the lessened congestion on roadways and highways as a result of such operations; and (vi) on a typical weekday more than 340,000 trips are taken on WMATA in Virginia. On the basis of these facts, the General Assembly finds that dedicated funding is appropriate and necessary to support the capital needs of WMATA's rapid heavy rail mass transportation system.

13. That Virginia shall seek to appoint members to the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors (i) with experience in transit, transportation, or land use planning; transit, transportation, or other public-sector management; engineering; finance; public safety; homeland security; human resources; or the law and (ii) who are familiar with the WMATA system.

14. That, for projects initiated by the Washington Metropolitan Area Transit Authority on and after July 1, 2018, and located solely within the Commonwealth, bidders, offers, contractors, or subcontractors (i) shall not, as a condition of the contract, be required to enter into or adhere to or prohibited from entering into or adhering to agreements with one or more labor organizations and (ii) shall not otherwise be discriminated against for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations.

15. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions shall remain in effect.

16. That should any provision of this act changing the allocation of existing revenues in the Code of Virginia be declared invalid by a court of competent jurisdiction, the amendments to the

relevant section of the Code of Virginia made by this act shall expire, and such section shall revert to the language in the Code of Virginia in effect on January 1, 2018.

17. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

18. That the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015 is amended and reenacted as follows:

12. That the provisions of this act amending §§ 33.2-1530, 58.1-815.4, ~~58.1-1741~~, and 58.1-2289 of the Code of Virginia shall expire if the Commonwealth collects sales and use tax from remote sellers on sales made into the Commonwealth pursuant to legislation enacted by the federal government that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state.