

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
MEMORANDUM

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

FROM: Monica Backmon, Chief Executive Officer
Tracy Baynard, Sr. Vice President, McGuire Woods Consulting, LLC

DATE: January 5, 2023

SUBJECT: Update on 2023 General Assembly Session

1. **Purpose:** To update the Northern Virginia Transportation Authority (NVTA) on the 2023 General Assembly Session.
2. **Discussion:** The Virginia General Assembly Session starts at noon on Wednesday, January 11, 2023, and proposed legislation and resolutions are slowly showing up in the legislative system. To date, only one bill related to an Authority priority has been filed.
 - A. House Bill 1496 (Attachment A) is the result of stakeholders identifying a predictable allocation of operating funds for the Virginia Railway Express (VRE). Like the Washington Metropolitan Area Transit Authority (WMATA), VRE would receive a set percentage from the Commonwealth Mass Transit Fund (Fund). For VRE that amount is defined as 2.5% of the Fund. The legislation further requires the Commonwealth Transportation Board to adopt service delivery metrics which must be met to receive the funds. It is likely further discussion and fine-tuning will be needed on this legislation. Staff recommends that the Authority work closely with VRE and the Northern Virginia Transportation Commission to secure a successful outcome of this effort.
 - B. Governor Youngkin submitted his proposed amendments to the FY2023-2024 Biennium Budget in December 2022. Attachment B includes a list of key initiatives related to transportation. There are two of particular interest.
 - Item 373 directs the Secretary of Natural and Historic Resources to conduct work to assess and develop a strategy for intergovernmental and inter-agency coordination for flood resilience planning and implementation. This could benefit all local and regional infrastructure in addition to transportation.
 - Item 452 Q and R provide \$300 million for the Transportation Partnership Opportunity Fund (TPOF). Created in 2005, through the TPOF the Governor can provide grants, revolving loans or other financing tools and equity contributions to an agency or locality to help provide transportation infrastructure in support of economic development opportunities.

Both initiatives may have merit. Speaking with the Administration, members of key

committees and the Northern Virginia delegation to assess the level of interest among legislators, are the recommended next steps.

- C. Attachment C provides a schedule of the 2023 General Assembly Session. Final approval of the schedule will take place when the legislature convenes.

Attachments:

- A. House Bill 1496
- B. Governor Proposed Initiatives Via Budget Language
- C. 2023 General Assembly Calendar and Special Dates

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HOUSE BILL NO. 1496

Offered January 11, 2023

Prefiled January 3, 2023

A *BILL to amend and reenact §§ 33.2-1526.1 and 33.2-3500 of the Code of Virginia, relating to the Commonwealth Mass Transit Fund.*

Patron—Austin

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-1526.1 and 33.2-3500 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-1526.1. Use of the Commonwealth Mass Transit Fund.

A. All funds deposited pursuant to § 33.2-1524.1 into the Commonwealth Mass Transit Fund (the Fund), established pursuant to § 33.2-1526, shall be allocated as set forth in this section.

B. From funds available pursuant to subsection D, beginning in fiscal year 2022, up to \$50 million shall be allocated to the Washington Metropolitan Area Transit Authority as matching funds to federal and other funds provided by the Federal Transit Administration, the District of Columbia, and the State of Maryland. However, such funds shall only be provided if the District of Columbia and the State of Maryland each provide an amount equal to one-third of the funding provided by the Federal Transit Administration to the Washington Metropolitan Area Transit Authority. The funds provided by the Commonwealth shall not exceed the funds provided by the District of Columbia or the State of Maryland.

C. The Board may establish policies for the implementation of this section, including the determination of the state share of operating, capital, and administrative costs related to mass transit. For purposes of this section, capital costs may include debt service payments on local or agency transit bonds. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes as set forth in this section. No funds from the Fund shall be allocated without a local match from the recipient.

D. Each year the Director of the Department of Rail and Public Transportation shall make recommendations to the Board for the allocation of funds from the Fund. Such recommendations, and the final allocations approved by the Board, shall adhere to the following:

1. ~~Twenty-seven~~ *Twenty-four and one-half* percent of the 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. Such measures and their relative weight shall be evaluated every three years and, if redefined by the Board, shall be published and made available for public comment at least one year in advance of being applied. The Washington Metropolitan Area Transit Authority (WMATA) *and the Virginia Railway Express* shall not be eligible for an allocation of funds pursuant to this subdivision.

2. Eighteen percent of the funds shall be allocated for capital purposes and distributed utilizing the transit capital prioritization process established by the Board pursuant to § 33.2-214.4. The Washington Metropolitan Area Transit Authority shall not be eligible for an allocation of funds pursuant to this subdivision.

3. Forty-six and one-half percent of the funds shall be allocated to the Northern Virginia Transportation Commission for distribution to WMATA for capital purposes and operating assistance, as determined by the Commission.

4. Six percent of the funds shall be allocated by the Board for the Transit Ridership Incentive Program established pursuant to § 33.2-1526.3.

5. Two and one-half percent of the funds shall be allocated for special programs, including ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation. Remaining funds may also be used directly by the Department of Rail and Public Transportation to (i) finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout the Commonwealth or (ii) finance up to 80 percent of the cost of development and implementation of projects with a purpose of enhancing the provision and use of public transportation services.

6. *Two and one-half percent of the funds shall be allocated for operating purposes to the Commuter*

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HB1496

59 *Rail Operating and Capital Fund established pursuant to § 33.2-3500. The actual distribution of such*
60 *funds shall be based on service delivery factors established by the Board, which shall be based on*
61 *effectiveness and efficiency. Such factors and their relative weights shall be evaluated every three years.*
62 *If the actual distribution is less than the amount allocated pursuant to this section, the Board shall*
63 *allocate the remaining funds as provided in subdivision D 1.*

64 E. The Board may consider the transfer of funds from subdivisions D 2 and 5 to subdivision D 1 in
65 times of statewide economic distress or statewide special need.

66 F. The Department of Rail and Public Transportation may reserve a balance of up to five percent of
67 the Fund revenues in order to ensure stability in providing operating and capital funding to transit
68 entities from year to year, provided that such balance shall not exceed five percent of revenues in a
69 given biennium.

70 G. The Board may allocate up to 3.5 percent of the funds set aside for the Fund to support costs of
71 project development, project administration, and project compliance incurred by the Department of Rail
72 and Public Transportation in implementing rail, public transportation, and congestion management grants
73 and programs.

74 H. Funds allocated to the Northern Virginia Transportation Commission (NVTC) for WMATA
75 pursuant to subdivision D 3 shall be credited to the Counties of Arlington and Fairfax and the Cities of
76 Alexandria, Fairfax, and Falls Church. Beginning in the fiscal year when service starts on Phase II of
77 the Silver Line, such funds shall also be credited to Loudoun County. Funds allocated pursuant to this
78 subsection shall be credited as follows:

79 1. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality
80 using WMATA's capital formula shall be paid first by NVTC, which shall use 95 percent state aid for
81 these payments.

82 2. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the
83 related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall
84 include 20 percent of annual local bus capital expenses. Local transit subsidies and local capital costs of
85 Loudoun County shall not be included. Hold harmless protections and obligations for NVTC's
86 jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

87 I. Appropriations from the Fund are intended to provide a stable and reliable source of revenue, as
88 defined by P.L. 96-184.

89 J. Notwithstanding any other provision of law, funds allocated to WMATA may be disbursed by the
90 Department of Rail and Public Transportation directly to WMATA or to any other transportation entity
91 that has an agreement to provide funding to WMATA.

92 K. In any year that the total Virginia operating assistance in the approved WMATA budget increases
93 by more than three percent from the total operating assistance in the prior year's approved WMATA
94 budget, the Board shall withhold an amount equal to 35 percent of the funds available under subdivision
95 D 3. The following items shall not be included in the calculation of any WMATA budget increase: (i)
96 any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any
97 capital project approved by the WMATA Board before or after the effective date of this provision; (iii)
98 any payments or obligations of any kind arising from or related to legal disputes or proceedings between
99 or among WMATA and any other person or entity; and (iv) any service increases approved by the
100 WMATA Board.

101 L. The Board shall withhold 20 percent of the funds available pursuant to subdivision D 3 if (i) any
102 alternate directors participate or take action at an official WMATA Board meeting or committee meeting
103 as Board directors for a WMATA compact member when both directors appointed by that same
104 WMATA compact member are present at the WMATA Board meeting or committee meeting or (ii) the
105 WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate
106 directors.

107 **§ 33.2-3500. Commuter Rail Operating and Capital Fund.**

108 A. The General Assembly declares it to be in the public interest that developing and continuing
109 commuter rail operations and developing rail infrastructure, rolling stock, and support facilities to
110 support commuter rail service are important elements of a balanced transportation system in the
111 Commonwealth and further declares that retaining, maintaining, improving, and developing commuter
112 rail-related infrastructure improvements and operations are essential to the Commonwealth's continued
113 economic growth, vitality, and competitiveness in national and world markets.

114 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
115 Commuter Rail Operating and Capital Fund, referred to in this section as "the Fund." The Fund shall be
116 established on the books of the Comptroller and shall consist of funds deposited into the Fund pursuant
117 to § 58.1-2299.20 and other funds as may be set forth in a general appropriation act or allocated by the
118 Commonwealth Transportation Board. Such funds shall be paid into the state treasury and credited to the
119 Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
120 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert

121 to the general fund but shall remain in the Fund. The Comptroller shall disburse funds in the Fund
122 monthly to transportation districts established pursuant to Chapter 19 (§ 33.2-1900 et seq.) that on July
123 1, 2018, jointly operate a commuter rail system. The amount distributed to each transportation district
124 shall be determined by multiplying the total amount of funds available for disbursement by a fraction,
125 the numerator of which shall be such transportation district's share of funding for the commuter rail
126 service jointly operated by the two transportation districts and the denominator of which shall be the
127 total funding provided by both transportation districts for such commuter rail service.

128 C. If the transportation districts described in subsection B determine that such moneys distributed to
129 the districts exceed the amount required to meet the current capital and operating needs of the commuter
130 rail system, they may invest such excess moneys to the same extent as provided in subsection A of
131 § 33.2-1525 for excess funds in the Transportation Trust Fund.

132 D. *Within the Fund, there shall be established a separate subfund (the Subfund) into which revenues*
133 *dedicated to the Fund pursuant to § 33.2-1526.1 shall be deposited. Revenues deposited into the Subfund*
134 *shall be available for use by the Board for distribution to commuter rail systems for operating purposes*
135 *other than for the payment of, or security for, debt service on bonds or other indebtedness.*

136 E. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall
137 not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to
138 participating jurisdictions. Further, such revenues and moneys shall not be included in any computation
139 of, or formula for, a locality's ability to pay for public education, upon which appropriations of state
140 revenues to local governments for public education are determined. Any amounts deposited pursuant to
141 § 58.1-2299.20 shall be considered local funds when used to make a required match for state or federal
142 transportation grant funds.

**Transportation Initiatives Proposed by Governor in FY 23-24 Budget
December 15, 2022**

Item 125 – Airline Services Study -- VEDP

U. Out of this appropriation, \$1,200,000 the second year from the general fund is provided for a study to assess the viability of expanding airline services in the Commonwealth, of which \$200,000 shall be used to study how to increase capacity at the Roanoke Airport.

[link](#)

Item 373 – Fund Intergovernmental and Interagency Coordination for Flood Resilience Planning and Implementation – Secretary of Natural and Historic Resources

D. Included in the appropriation for this item is \$500,000 the first year and \$500,000 the second year from the general fund to consider and assess strategies and policies for the Commonwealth to improve intergovernmental and interagency coordination and to maximize federal funding opportunities in planning for and implementing flood resilience of both human and natural systems and infrastructures throughout the Commonwealth.

[link](#)

Item 434 B – Permit Use of GARVEE Bond Proceeds for IOEP Projects – Secretary of Transportation

~~10. The secretary shall ensure that any bonds issued pursuant to Article 4, Chapter 15 of Title 33.2 shall be programmed to eligible projects *eligible for funding selected and funded through the Interstate Operations and Enhancement Program or to the High Priority Projects Program pursuant to §33.2-370 or the Construction District Grant Program pursuant to §33.2-371. In any year such bonds proceeds are allocated to one or both of the programs, the secretary shall take all necessary action to ensure that each program is provided with the same overall amount of monies through the mix of bond proceeds, state revenues, and federal revenues provided to each program may vary as deemed appropriate by the secretary.*~~

[link](#)

Item 452 – Study Use of P3 for I-81, Replenish Transportation Partnership Opportunity Fund – VDOT

M. Included in this Item, \$500,000 from the general fund in the second year is provided to study the use of a public private partnership to accelerate the completion of improvements to the Interstate 81 corridor.

Q. Out of the June 30, 2022, uncommitted balance in the Virginia Transportation Infrastructure Bank, \$100,000,000 shall be transferred to the Transportation Partnership Opportunity Fund to support the purposes of the Transportation Partnership Opportunity Fund's program.

R. The Commonwealth Transportation Board shall provide \$200,000,000 to the Transportation Partnership Opportunity Fund established pursuant to § [33.2-1529.1](#), Code of Virginia, out of the revenue increases identified in the December 2022 revenue forecast of the Commonwealth Transportation Fund in the Six-Year Improvement Program adopted prior to July 1, 2023, for fiscal years 2024 through 2029.

[link](#)

Updated 1-3-23

2023 General Assembly Calendar and Special Dates

January 6, 2023 By 5:00 pm	Deadline to submit further redraft requests for pre-filed bills
January 10, 2023 By 12:00 pm	Staff will have all drafts for prefile bills ready for review
January 11, 2023 10:00 am	Deadline to prefile legislation
January 11, 2023 12:00 pm	Virginia General Assembly convenes
January 13, 2023 5:00 pm	Budget amendments from House and Senate members due
January 20, 2023 3:00 pm	Deadline to file a bill
February 5, 2023	House Appropriations and Senate Finance and Appropriations Committees finish work on their budget bills
February 7, 2023	Last Day for House and Senate to Finish Their Bills (Crossover) General Assembly budget amendments posted by noon
February 15, 2023	Deadline for putting Budget Bill in Conference
February 25, 2023	Virginia General Assembly Sine Die (projected)
TBD	Governor’s Amendments Due by Midnight
April 12, 2023	Reconvened (Veto) Day – April

Bill Limits

- House – 15
- Senate – 26: Maximum 20 pre-filed/6 filed after opening day