

SB0265/513320/1

BY: Senator Feldman

AMENDMENTS TO SENATE BILL 265
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; in line 10, strike “making this Act contingent on the taking effect of another Act;” and substitute “establishing the Washington Metrorail Safety Commission; establishing the Metrorail Safety Commission Interstate Compact; granting the Commission safety, regulatory, and enforcement authority over the Washington Metropolitan Area Transit Authority Rail System and the power to act as the State safety oversight authority for WMATA; specifying the membership, powers, organization, and duties of the Commission; making the Compact contingent on the adoption of the Compact by certain other jurisdictions; making this Act an emergency measure;”; in line 11, strike “the membership of”; and in line 15, after “7-709” insert “and 10-208”.

AMENDMENT NO. 2

On page 2, after line 9, insert:

“10-208.”

PREAMBLE

WHEREAS, THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, A PARTNERSHIP BETWEEN THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF VIRGINIA, AND THE STATE OF MARYLAND, PROVIDES TRANSPORTATION SERVICES TO MILLIONS OF PEOPLE EACH YEAR AND THE SAFETY OF ITS SYSTEM IS PARAMOUNT; AND

(Over)

WHEREAS, AN EFFECTIVE AND SAFE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY SYSTEM IS ESSENTIAL TO THE COMMERCE AND PROSPERITY OF THE NATIONAL CAPITAL REGION; AND

WHEREAS, THE TRI-STATE OVERSIGHT COMMITTEE, CREATED BY A MEMORANDUM OF UNDERSTANDING AMONGST THESE THREE JURISDICTIONS, HAS PROVIDED SAFETY OVERSIGHT OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY; AND

WHEREAS, AN AMENDMENT TO 49 U.S.C. 5329 REQUIRES THE CREATION OF A LEGALLY AND FINANCIALLY INDEPENDENT STATE AUTHORITY FOR SAFETY OVERSIGHT OF ALL FIXED RAIL TRANSIT FACILITIES; AND

WHEREAS, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF VIRGINIA, AND THE STATE OF MARYLAND WANT TO CREATE A WASHINGTON METRORAIL SAFETY COMMISSION TO ACT AS THE STATE SAFETY OVERSIGHT AUTHORITY FOR THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY SYSTEM UNDER 49 U.S.C. 5329; AND

WHEREAS, THIS ACT IS CREATED FOR THE BENEFIT OF THE PEOPLE OF THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF VIRGINIA, AND THE STATE OF MARYLAND AND FOR THE INCREASE OF THEIR SAFETY, COMMERCE, AND PROSPERITY;

NOW, THEREFORE, THE STATE OF MARYLAND, THE COMMONWEALTH OF VIRGINIA, AND THE DISTRICT OF COLUMBIA, HEREAFTER REFERRED TO AS THE SIGNATORIES, COVENANT AND AGREE AS FOLLOWS:

ARTICLE I.

DEFINITIONS

1. AS USED IN THIS TITLE, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW, UNLESS THE CONTEXT CLEARLY REQUIRES A DIFFERENT MEANING. CAPITALIZED TERMS USED HEREIN, BUT NOT OTHERWISE DEFINED IN THIS ACT, SHALL HAVE THE DEFINITIONS SET FORTH IN REGULATIONS ISSUED UNDER 49 U.S.C. 5329, AS THEY MAY BE REVISED FROM TIME TO TIME.

(A) "ALTERNATE MEMBER" MEANS AN ALTERNATE MEMBER OF THE BOARD.

(B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE COMMISSION.

(C) "COMMISSION" MEANS THE WASHINGTON METRORAIL SAFETY COMMISSION.

(D) "MEMBER" MEANS A MEMBER OF THE BOARD.

(E) "MSC COMPACT" MEANS THE METRORAIL SAFETY COMMISSION INTERSTATE COMPACT CREATED BY THIS ACT.

(F) "PUBLIC TRANSPORTATION AGENCY SAFETY PLAN" MEANS THE COMPREHENSIVE AGENCY SAFETY PLAN FOR A RAIL TRANSIT AGENCY REQUIRED UNDER 49 U.S.C. 5329.

(G) “PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM” MEANS THE FEDERAL CERTIFICATION TRAINING PROGRAM FOR FEDERAL AND STATE EMPLOYEES, OR OTHER DESIGNATED PERSONNEL, WHO CONDUCT SAFETY AUDITS AND EXAMINATIONS OF PUBLIC TRANSPORTATION SYSTEMS, AND EMPLOYEES OF PUBLIC TRANSPORTATION AGENCIES DIRECTLY RESPONSIBLE FOR SAFETY OVERSIGHT AS ESTABLISHED AND AMENDED FROM TIME AND TIME BY APPLICABLE FEDERAL LAWS AND REGULATIONS.

(H) “SAFETY SENSITIVE POSITION” MEANS ANY POSITION HELD BY A WMATA EMPLOYEE OR CONTRACTOR DESIGNATED IN THE PUBLIC TRANSPORTATION AGENCY SAFETY PLAN FOR THE WMATA RAIL SYSTEM AS DIRECTLY AFFECTING THE SAFETY OF THE PASSENGERS OR EMPLOYEES OF THE WMATA RAIL SYSTEM.

(I) “SIGNATORY” MEANS THE STATE OF MARYLAND, THE COMMONWEALTH OF VIRGINIA, AND THE DISTRICT OF COLUMBIA.

(J) “STATE”, “STATE”, “JURISDICTION”, AND “JURISDICTION” INCLUDE THE DISTRICT OF COLUMBIA, THE STATE OF MARYLAND, AND THE COMMONWEALTH OF VIRGINIA.

(K) “WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY” OR “WMATA” IS THE ENTITY CREATED BY THE WMATA COMPACT, WHICH IS RESPONSIBLE FOR PROVIDING CERTAIN RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEM SERVICES.

(L) “WMATA COMPACT” MEANS THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT (PUBLIC LAW 89-774; 80 STAT. 1324).

(M) (1) “WMATA RAIL SYSTEM” MEANS THE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEM AND ALL OTHER REAL AND PERSONAL PROPERTY OWNED, LEASED, OPERATED, OR OTHERWISE USED BY WMATA RAIL SERVICES.

(2) “WMATA RAIL SYSTEM” INCLUDES THE METRORAIL CAPITAL PROJECTS UNDER DESIGN OR CONSTRUCTION BY OWNERS OTHER THAN WMATA, INCLUDING THE DULLES CORRIDOR METRORAIL PROJECT MANAGED BY THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY.

ARTICLE II.

PURPOSE AND FUNCTIONS

2. THE SIGNATORIES TO THE WMATA COMPACT HEREBY ADOPT THIS MSC COMPACT PURSUANT TO 49 U.S.C. 5329. THE COMMISSION CREATED UNDER THIS SECTION SHALL HAVE SAFETY, REGULATORY, AND ENFORCEMENT AUTHORITY OVER THE WMATA RAIL SYSTEM AND SHALL ACT AS THE STATE SAFETY OVERSIGHT AUTHORITY FOR WMATA. WMATA SHALL BE SUBJECT TO THE COMMISSION’S RULES, REGULATIONS, ACTIONS, AND ORDERS.

3. THE PURPOSE OF THIS MSC COMPACT IS TO CREATE A STATE SAFETY OVERSIGHT AUTHORITY FOR THE WMATA RAIL SYSTEM, PURSUANT TO THE MANDATE OF FEDERAL LAW, AS A COMMON AGENCY OF EACH SIGNATORY, EMPOWERED IN THE MANNER HEREINAFTER SET FORTH TO REVIEW, APPROVE,

(Over)

OVERSEE, AND ENFORCE THE SAFETY OF THE WMATA RAIL SYSTEM, INCLUDING, WITHOUT LIMITATION, TO: (I) HAVE SAFETY OVERSIGHT RESPONSIBILITY OVER THE WMATA RAIL SYSTEM; (II) DEVELOP AND ADOPT A WRITTEN STATE SAFETY OVERSIGHT PROGRAM STANDARD; (III) REVIEW AND APPROVE THE WMATA PUBLIC TRANSPORTATION AGENCY SAFETY PLAN; (IV) INVESTIGATE HAZARDS, INCIDENTS, AND ACCIDENTS ON THE WMATA RAIL SYSTEM; (V) REVIEW, APPROVE, AND ENFORCE CORRECTIVE ACTION PLANS; AND (VI) MEET OTHER REQUIREMENTS OF FEDERAL AND STATE LAW RELATING TO SAFETY OVERSIGHT OF THE WMATA RAIL SYSTEM.

ARTICLE III.

ESTABLISHMENT AND ORGANIZATION

A. WASHINGTON METRORAIL SAFETY COMMISSION.

4. THERE IS HEREBY CREATED THE WASHINGTON METRORAIL SAFETY COMMISSION, AN INSTRUMENTALITY OF EACH SIGNATORY, WHICH SHALL BE A PUBLIC BODY CORPORATE AND POLITIC, AND WHICH SHALL HAVE THE POWERS AND DUTIES SET FORTH IN THIS MSC COMPACT AND SUCH ADDITIONAL POWERS AND DUTIES AS MAY BE CONFERRED UPON IT PURSUANT TO LAW.

5. THE COMMISSION SHALL BE FINANCIALLY AND LEGALLY INDEPENDENT FROM WMATA.

B. BOARD OF DIRECTORS.

6. THE COMMISSION SHALL BE GOVERNED BY A BOARD OF SIX MEMBERS APPOINTED AS FOLLOWS:

(A) TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR OF VIRGINIA;

(B) TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR OF MARYLAND; AND

(C) TWO MEMBERS SHALL BE APPOINTED BY THE MAYOR OF THE DISTRICT OF COLUMBIA.

7. THE GOVERNOR OF VIRGINIA, GOVERNOR OF MARYLAND, AND MAYOR OF THE DISTRICT OF COLUMBIA SHALL EACH ALSO APPOINT ONE ALTERNATE MEMBER.

8. AN ALTERNATE MEMBER SHALL PARTICIPATE AND TAKE ACTION AS A MEMBER ONLY IN THE ABSENCE OF ONE OR BOTH MEMBERS FROM THE SAME JURISDICTION AS THE ALTERNATE MEMBER'S APPOINTING JURISDICTION AND, IN SUCH INSTANCES, SHALL CAST A SINGLE VOTE.

9. MEMBERS AND ALTERNATE MEMBERS SHALL HAVE BACKGROUNDS IN TRANSPORTATION, TRANSIT, SAFETY, PUBLIC FINANCE, OR ENGINEERING.

10. NO MEMBER OR ALTERNATE MEMBER SHALL SIMULTANEOUSLY HOLD OTHER ELECTIVE OR APPOINTIVE PUBLIC OFFICE.

11. EACH MEMBER AND ALTERNATE MEMBER SHALL SERVE A FOUR-YEAR TERM; EXCEPT THAT, EACH SIGNATORY SHALL MAKE ITS INITIAL APPOINTMENTS AS FOLLOWS:

(A) ONE MEMBER SHALL BE APPOINTED FOR A FOUR-YEAR TERM;

(B) ONE MEMBER SHALL BE APPOINTED FOR A TWO-YEAR TERM;

AND

(C) THE ALTERNATE MEMBER SHALL BE APPOINTED FOR A THREE-YEAR TERM.

12. ANY PERSON APPOINTED TO FILL A VACANCY SHALL SERVE FOR THE UNEXPIRED TERM.

13. MEMBERS AND ALTERNATE MEMBERS SHALL BE ENTITLED TO REIMBURSEMENT FOR REASONABLE AND NECESSARY EXPENSES AND SHALL BE COMPENSATED FOR EACH DAY SPENT ON THE BUSINESS OF THE COMMISSION AT A PER DIEM RATE OF \$200 PER DAY, OR AS MAY BE ADJUSTED BY APPROPRIATIONS APPROVED BY ALL OF THE SIGNATORIES.

14. A MEMBER OR AN ALTERNATE MEMBER MAY BE REMOVED OR SUSPENDED FROM OFFICE ONLY FOR CAUSE IN ACCORDANCE WITH THE LAWS OF THE MEMBER'S OR ALTERNATE MEMBER'S APPOINTING JURISDICTION.

C. QUORUM AND ACTIONS OF THE BOARD.

15. FOUR MEMBERS SHALL CONSTITUTE A QUORUM, AND THE AFFIRMATIVE VOTE OF FOUR MEMBERS IS REQUIRED FOR ACTION OF THE BOARD. QUORUM AND VOTING REQUIREMENTS UNDER THIS SECTION MAY BE MET WITH ONE OR MORE ALTERNATE MEMBERS PURSUANT TO § 8 OF THIS ARTICLE III.

16. COMMISSION ACTION SHALL BECOME EFFECTIVE UPON ENACTMENT UNLESS OTHERWISE PROVIDED FOR BY THE COMMISSION.

D. OATH OF OFFICE.

17. BEFORE ENTERING OFFICE, EACH MEMBER AND ALTERNATE MEMBER SHALL TAKE AND SUBSCRIBE TO THE FOLLOWING OATH (OR AFFIRMATION) OF OFFICE OR ANY SUCH OTHER OATH OR AFFIRMATION AS THE CONSTITUTION OR LAWS OF THE SIGNATORY THE MEMBER REPRESENTS SHALL PROVIDE:

“I, _____, HEREBY SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL SUPPORT AND DEFEND THE CONSTITUTION AND THE LAWS OF THE UNITED STATES AS A MEMBER (OR ALTERNATE MEMBER) OF THE BOARD OF THE WASHINGTON METRORAIL SAFETY COMMISSION AND WILL FAITHFULLY DISCHARGE THE DUTIES OF THE OFFICE UPON WHICH I AM ABOUT TO ENTER.”

E. ORGANIZATION AND PROCEDURE.

18. THE BOARD SHALL PROVIDE FOR ITS OWN ORGANIZATION AND PROCEDURE. MEETINGS OF THE BOARD SHALL BE HELD AS FREQUENTLY AS THE BOARD DETERMINES. THE BOARD SHALL KEEP MINUTES OF ITS MEETINGS AND ADOPT RULES AND REGULATIONS GOVERNING ITS TRANSACTIONS AND INTERNAL AFFAIRS, INCLUDING POLICIES REGARDING RECORDS RETENTION THAT ARE NOT IN CONFLICT WITH APPLICABLE FEDERAL LAW.

19. THE COMMISSION SHALL KEEP COMMERCIALY REASONABLE RECORDS OF ITS FINANCIAL TRANSACTIONS.

20. THE COMMISSION SHALL ESTABLISH AN OFFICE FOR THE CONDUCT OF ITS AFFAIRS AT A LOCATION TO BE DETERMINED BY THE COMMISSION.

21. MEETINGS OF THE BOARD SHALL BE OPEN TO THE PUBLIC UNLESS CLOSED PURSUANT TO ADOPTED BOARD POLICY, AND COMMISSION DOCUMENTS SHALL BE AVAILABLE TO THE PUBLIC UNLESS DEEMED CONFIDENTIAL PURSUANT TO ADOPTED COMMISSION POLICY. THE COMMISSION SHALL ADOPT OPEN MEETING AND FREEDOM OF INFORMATION POLICIES BASED ON THE PRINCIPLES OF TRANSPARENCY AND PUBLIC ACCESS CONTAINED IN THE FEDERAL FREEDOM OF INFORMATION ACT, 5 U.S.C. 552(A)-(C), AND, THEREFORE, SHALL NOT BE SUBJECT TO THE SOMETIMES CONFLICTING OPEN MEETING AND FREEDOM OF INFORMATION LAWS OF ANY INDIVIDUAL SIGNATORY.

22. REPORTS OF INVESTIGATIONS OR INQUIRIES ADOPTED BY THE BOARD SHALL BE MADE PUBLICLY AVAILABLE. THE COMMISSION SHALL DEVELOP APPROPRIATE POLICIES TO PROTECT THE INTEGRITY OF ITS INVESTIGATIONS AND THE SECURITY OF THE WMATA RAIL SYSTEM. THE COMMISSION'S POLICY SHALL ENSURE THAT THE MAYOR OF THE DISTRICT OF COLUMBIA AND THE GOVERNORS OF MARYLAND AND VIRGINIA AND THEIR DESIGNEES HAVE PROMPT AND FULL ACCESS TO ANY AND ALL RECORDS HELD BY THE COMMISSION. INVESTIGATIVE REPORTS PREPARED PURSUANT TO 49 C.F.R. 674 MAY NOT BE ADMITTED AS EVIDENCE OR USED IN A CIVIL ACTION FOR DAMAGES RESULTING FROM A MATTER MENTIONED IN THE REPORT.

23. THE COMMISSION SHALL ADOPT A POLICY ON CONFLICT OF INTEREST, WHICH SHALL BE CONSISTENT WITH THE REGULATIONS ISSUED UNDER 49 U.S.C. 5329, AS THEY MAY BE REVISED FROM TIME TO TIME, WHICH, AMONG OTHER THINGS, PLACES APPROPRIATE SEPARATION BETWEEN

MEMBERS, OFFICERS, EMPLOYEES, CONTRACTORS, AND AGENTS OF THE COMMISSION AND WMATA.

24. THE COMMISSION SHALL ADOPT AND UTILIZE ITS OWN ADMINISTRATIVE PROCEDURE AND PROCUREMENT POLICIES IN CONFORMANCE WITH APPLICABLE FEDERAL REGULATIONS AND SHALL NOT BE SUBJECT TO THE ADMINISTRATIVE PROCEDURE OR PROCUREMENT LAWS OF ANY SIGNATORY.

F. OFFICERS AND EMPLOYEES.

25. THE BOARD SHALL ELECT A CHAIRMAN AND A VICE CHAIRMAN FROM AMONG ITS MEMBERS FOR A TWO-YEAR TERM AND SHALL ELECT, OR APPOINT FROM COMMISSION STAFF, A SECRETARY AND TREASURER, AND PRESCRIBE THEIR POWERS AND DUTIES.

26. THE BOARD SHALL APPOINT AND FIX THE COMPENSATION AND BENEFITS OF A CHIEF EXECUTIVE OFFICER WHO SHALL BE THE CHIEF ADMINISTRATIVE OFFICER OF THE COMMISSION AND WHO SHALL HAVE A BACKGROUND IN TRANSPORTATION SAFETY AND ONE OR MORE INDUSTRY RECOGNIZED TRANSPORTATION SAFETY CERTIFICATIONS.

27. CONSISTENT WITH 49 U.S.C. 5329, AS AMENDED, THE COMMISSION MAY EMPLOY, UNDER THE DIRECTION OF THE CHIEF EXECUTIVE OFFICER, SUCH OTHER TECHNICAL, LEGAL, CLERICAL, AND OTHER EMPLOYEES ON A REGULAR, PART-TIME, OR AS-NEEDED BASIS AS IN ITS JUDGMENT MAY BE NECESSARY OR DESIRABLE FOR THE DISCHARGE OF ITS DUTIES.

28. THE COMMISSION SHALL NOT BE BOUND BY ANY STATUTE OR REGULATION OF ANY SIGNATORY IN THE EMPLOYMENT OR DISCHARGE OF ANY OFFICER OR EMPLOYEE OF THE COMMISSION.

29. THE BOARD MAY FIX AND PROVIDE POLICIES FOR THE QUALIFICATIONS, APPOINTMENT, REMOVAL, TERM, TENURE, COMPENSATION, PENSION, AND RETIREMENT RIGHTS OF ITS EMPLOYEES AND MAY ESTABLISH, IN ITS DISCRETION, A PERSONNEL SYSTEM BASED ON MERIT AND FITNESS AND, SUBJECT TO ELIGIBILITY, PARTICIPATE IN THE PENSION AND RETIREMENT PLANS OF ANY SIGNATORY, OR POLITICAL SUBDIVISION OR AGENCY THEREOF.

ARTICLE IV.

POWERS

A. SAFETY OVERSIGHT POWERS.

30. IN CARRYING OUT ITS PURPOSES, THE COMMISSION, THROUGH ITS BOARD OR DESIGNATED EMPLOYEES OR AGENTS, SHALL, CONSISTENT WITH 49 U.S.C. 5329, AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED THEREUNDER:

(A) ADOPT, REVISE, AND DISTRIBUTE A WRITTEN STATE SAFETY OVERSIGHT PROGRAM;

(B) REVIEW, APPROVE, OVERSEE, AND ENFORCE THE ADOPTION AND IMPLEMENTATION OF THE WMATA PUBLIC TRANSPORTATION AGENCY SAFETY PLAN;

(C) REQUIRE, REVIEW, APPROVE, OVERSEE, AND ENFORCE THE ADOPTION AND IMPLEMENTATION OF ANY CORRECTIVE ACTION PLANS THE COMMISSION DEEMS APPROPRIATE;

(D) IMPLEMENT AND ENFORCE RELEVANT FEDERAL AND STATE LAWS AND REGULATIONS RELATING TO SAFETY OF THE WMATA RAIL SYSTEM; AND

(E) AUDIT EVERY THREE YEARS THE COMPLIANCE OF WMATA WITH THE PUBLIC TRANSPORTATION AGENCY SAFETY PLAN OR CONDUCT SUCH AN AUDIT ON AN ONGOING BASIS OVER A THREE-YEAR TIME FRAME.

31. IN PERFORMING ITS DUTIES, THE COMMISSION, THROUGH ITS BOARD OR DESIGNATED EMPLOYEES OR AGENTS, MAY:

(A) CONDUCT, OR CAUSE TO BE CONDUCTED, INSPECTIONS, INVESTIGATIONS, EXAMINATIONS, AND TESTING OF THE PROPERTY, EQUIPMENT, FACILITIES, ROLLING STOCK, AND OPERATIONS OF THE WMATA RAIL SYSTEM, INCLUDING ELECTRONIC INFORMATION AND DATABASES;

(B) ENTER UPON THE WMATA RAIL SYSTEM AND, UPON REASONABLE NOTICE AND A FINDING BY THE CHIEF EXECUTIVE OFFICER THAT A NEED EXISTS, UPON ANY LANDS, WATERS, AND PREMISES ADJACENT TO THE WMATA RAIL SYSTEM FOR THE PURPOSE OF CONDUCTING INSPECTIONS, INVESTIGATIONS, EXAMINATIONS, AND TESTING AS THE COMMISSION MAY DEEM NECESSARY TO CARRY OUT THE PURPOSES OF THIS MSC COMPACT, AND THE ENTRY SHALL NOT BE DEEMED A TRESPASS. THE COMMISSION SHALL MAKE REASONABLE REIMBURSEMENT FOR ANY ACTUAL DAMAGE RESULTING TO THE ADJACENT LANDS, WATERS, AND PREMISES AS A RESULT OF SUCH ACTIVITIES;

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(C) COMPEL COMPLIANCE BY WMATA WITH ANY CORRECTIVE ACTION PLAN OR ORDER OF THE COMMISSION BY MEANS THE COMMISSION DEEMS APPROPRIATE, INCLUDING:

- (1) ISSUING SUBPOENAS;
- (2) TAKING LEGAL ACTION IN A COURT OF COMPETENT JURISDICTION;
- (3) ISSUING CITATIONS OR FINES;
- (4) DIRECTING WMATA TO PRIORITIZE SPENDING ON SAFETY-CRITICAL ITEMS;
- (5) REMOVING A SPECIFIC VEHICLE, INFRASTRUCTURE ELEMENT, OR HAZARD FROM THE WMATA RAIL SYSTEM; AND
- (6) RESTRICTING, SUSPENDING, OR PROHIBITING RAIL SERVICE, WITH APPROPRIATE NOTICE, ON ALL OR PART OF THE WMATA RAIL SYSTEM;

(D) DIRECT WMATA TO SUSPEND OR DISQUALIFY FROM PERFORMING IN A SAFETY SENSITIVE POSITION AN INDIVIDUAL WHO HAS VIOLATED SAFETY RULES, REGULATIONS, POLICIES, OR LAWS IN A MANNER THAT THE COMMISSION DETERMINES MAKES THAT INDIVIDUAL UNFIT FOR THE PERFORMANCE IN THE POSITION; AND

(E) TAKE ANY OTHER ACTIONS THAT THE COMMISSION DEEMS APPROPRIATE, CONSISTENT WITH ITS PURPOSES AND POWERS.

32. THE COMMISSION SHALL COORDINATE ITS ENFORCEMENT ACTIVITIES WITH APPROPRIATE FEDERAL AND STATE GOVERNMENTAL AUTHORITIES.

B. GENERAL POWERS.

33. IN ADDITION TO THE POWERS AND DUTIES SET FORTH ABOVE, THE COMMISSION MAY:

(A) SUE AND BE SUED;

(B) ADOPT, AMEND, AND REPEAL RULES AND REGULATIONS RESPECTING THE EXERCISE OF THE POWERS CONFERRED BY THIS MSC COMPACT;

(C) CREATE AND ABOLISH OFFICES, EMPLOYMENTS, AND POSITIONS (OTHER THAN THOSE SPECIFICALLY PROVIDED FOR IN THIS MSC COMPACT) AS IT DEEMS NECESSARY OR DESIRABLE FOR THE PURPOSES OF THE COMMISSION;

(D) DETERMINE A STAFFING LEVEL FOR THE COMMISSION THAT IS COMMENSURATE WITH THE SIZE AND COMPLEXITY OF THE WMATA RAIL SYSTEM, AND REQUIRE THAT EMPLOYEES AND OTHER DESIGNATED PERSONNEL OF THE COMMISSION, WHO ARE RESPONSIBLE FOR SAFETY OVERSIGHT, BE QUALIFIED TO PERFORM SUCH FUNCTIONS THROUGH APPROPRIATE TRAINING,

INCLUDING SUCCESSFUL COMPLETION OF THE PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM;

(E) CONTRACT FOR OR EMPLOY CONSULTING ATTORNEYS, INSPECTORS, ENGINEERS, AND OTHER EXPERTS THAT ARE DEEMED NECESSARY OR DESIRABLE AND WITHIN THE LIMITATIONS PRESCRIBED IN THIS MSC COMPACT, PRESCRIBE THEIR POWERS AND DUTIES, AND FIX THEIR COMPENSATION;

(F) ENTER INTO AND PERFORM CONTRACTS, LEASES, AND AGREEMENTS AS MAY BE NECESSARY OR DESIRABLE FOR THE PERFORMANCE OF ITS DUTIES AND IN THE EXECUTION OF THE POWERS GRANTED UNDER THIS MSC COMPACT;

(G) APPLY FOR, RECEIVE, AND ACCEPT PAYMENTS, APPROPRIATIONS, GRANTS, GIFTS, LOANS, ADVANCES, AND OTHER FUNDS, PROPERTIES, AND SERVICES THAT ARE TRANSFERRED OR MADE AVAILABLE TO IT BY THE UNITED STATES GOVERNMENT OR ANY OTHER PUBLIC OR PRIVATE ENTITY OR INDIVIDUAL, SUBJECT TO THE LIMITATIONS SPECIFIED IN § 42 OF ARTICLE V;

(H) ADOPT AN OFFICIAL SEAL AND ALTER THE SEAL AT ITS PLEASURE;

(I) ADOPT AND AMEND BYLAWS, POLICIES, AND PROCEDURES GOVERNING THE REGULATION OF ITS AFFAIRS;

(J) APPOINT ONE OR MORE ADVISORY COMMITTEES; AND

(K) DO ALL ACTS AND THINGS NECESSARY OR DESIRABLE TO THE PERFORMANCE OF ITS DUTIES AND THE EXECUTION OF ITS POWERS UNDER THIS MSC COMPACT.

34. CONSISTENT WITH § 24 OF ARTICLE III OF THIS MSC COMPACT, THE COMMISSION SHALL PROMULGATE RULES AND REGULATIONS TO CARRY OUT THE PURPOSES OF THIS MSC COMPACT.

ARTICLE V.

GENERAL PROVISIONS

A. ANNUAL SAFETY REPORT.

35. THE COMMISSION SHALL MAKE AND PUBLISH ANNUALLY A STATUS REPORT ON THE SAFETY OF THE WMATA RAIL SYSTEM. A COPY OF EACH REPORT SHALL BE PROVIDED TO THE ADMINISTRATOR OF THE FEDERAL TRANSIT ADMINISTRATION, THE GOVERNOR OF VIRGINIA, THE GOVERNOR OF MARYLAND, THE MAYOR OF THE DISTRICT OF COLUMBIA, AND THE GENERAL MANAGER AND EACH MEMBER OF THE BOARD OF DIRECTORS OF WMATA.

36. THE COMMISSION MAY PREPARE, PUBLISH, AND DISTRIBUTE ANY OTHER SAFETY REPORTS THAT IT DEEMS NECESSARY OR DESIRABLE.

B. ANNUAL PROGRAMS, OPERATIONS, AND FINANCES REPORT AND OTHER REPORTS.

37. THE COMMISSION SHALL MAKE AND PUBLISH AN ANNUAL REPORT ON ITS PROGRAMS, OPERATIONS, AND FINANCES, WHICH SHALL BE DISTRIBUTED

IN THE SAME MANNER PROVIDED BY § 35 OF THIS ARTICLE V FOR THE ANNUAL SAFETY REPORT.

38. THE COMMISSION MAY ALSO PREPARE, PUBLISH, AND DISTRIBUTE ANY OTHER PUBLIC REPORTS AND INFORMATIONAL MATERIALS THAT IT DEEMS NECESSARY OR DESIRABLE.

C. ANNUAL AUDIT.

39. AN INDEPENDENT ANNUAL AUDIT SHALL BE MADE OF THE FINANCIAL ACCOUNTS OF THE COMMISSION. THE AUDIT SHALL BE MADE BY QUALIFIED CERTIFIED PUBLIC ACCOUNTANTS SELECTED BY THE BOARD, WHO SHALL HAVE NO PERSONAL INTEREST, DIRECT OR INDIRECT, IN THE FINANCIAL AFFAIRS OF THE COMMISSION OR ANY OF ITS OFFICERS OR EMPLOYEES. THE REPORT OF AUDIT SHALL BE PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING PRINCIPLES AND SHALL BE DISTRIBUTED IN THE SAME MANNER PROVIDED BY § 35 OF THIS ARTICLE V FOR THE ANNUAL SAFETY REPORT. MEMBERS, EMPLOYEES, AGENTS, AND CONTRACTORS OF THE COMMISSION SHALL PROVIDE ACCESS TO INFORMATION NECESSARY OR DESIRABLE FOR THE CONDUCT OF THE ANNUAL AUDIT.

D. FUNDING.

40. COMMISSION OPERATIONS SHALL BE FUNDED, INDEPENDENTLY OF WMATA, BY THE SIGNATORY JURISDICTIONS AND, WHEN AVAILABLE, BY FEDERAL FUNDS.

41. THE SIGNATORY JURISDICTIONS SHALL UNANIMOUSLY AGREE ON ADEQUATE FUNDING LEVELS FOR THE COMMISSION AND MAKE EQUAL FUNDING

CONTRIBUTIONS, SUBJECT TO ANNUAL APPROPRIATION, TO COVER THE PORTION OF COMMISSION OPERATIONS NOT FUNDED BY FEDERAL FUNDS.

42. THE COMMISSION MAY BORROW IN ANTICIPATION OF RECEIPTS, FROM ANY LAWFUL LENDING INSTITUTION FOR ANY PURPOSE OF THIS COMPACT, INCLUDING ADMINISTRATIVE EXPENSES. THE LOANS SHALL BE FOR A TERM NOT TO EXCEED TWO YEARS, OR A LONGER TERM APPROVED BY EACH JURISDICTION PURSUANT TO THEIR LAWS AS EVIDENCED BY THE WRITTEN AUTHORIZATION OF THE MAYOR OF THE DISTRICT OF COLUMBIA AND THE GOVERNORS OF MARYLAND AND VIRGINIA AND AT THE RATES OF INTEREST THAT ARE ACCEPTABLE TO THE COMMISSION.

43. WITH RESPECT TO THE DISTRICT OF COLUMBIA, THE COMMITMENT OR OBLIGATION TO RENDER FINANCIAL ASSISTANCE TO THE COMMISSION SHALL BE CREATED, FOR EACH FISCAL PERIOD, BY APPROPRIATION OR IN SUCH OTHER MANNER, OR BY SUCH OTHER LEGISLATION, AS THE DISTRICT OF COLUMBIA SHALL DETERMINE, PROVIDED THAT ANY COMMITMENT MUST BE APPROVED BY THE FEDERAL GOVERNMENT PURSUANT TO SECTION 603 OF THE DISTRICT OF COLUMBIA HOME RULE ACT, APPROVED DECEMBER 24, 1973, 87 STAT. 790, PUB. L. 93-198, D.C. OFFICIAL CODE § 1-206.03 (2012 REPL.).

44. PURSUANT TO THE PROVISIONS OF (I) THE FEDERAL ANTI-DEFICIENCY ACT, 31 U.S.C. §§ 1341, 1342, 1349-1351, AND 1511-1519 (2008) (THE "FEDERAL ADA"), AND D.C. OFFICIAL CODE §§ 1-206.03(E) AND 47-105; (II) THE DISTRICT OF COLUMBIA ANTI-DEFICIENCY ACT, D.C. OFFICIAL CODE §§ 47-355.01 - 355.08 (THE "D.C. ADA" AND (I) AND (II) COLLECTIVELY, AS AMENDED FROM TIME TO TIME, THE "ANTI-DEFICIENCY ACTS"); AND (III) SECTION 446 OF THE DISTRICT OF COLUMBIA HOME RULE ACT, D.C. OFFICIAL CODE § 1-204.46, THE DISTRICT OF COLUMBIA CANNOT OBLIGATE ITSELF TO

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ANY FINANCIAL COMMITMENT IN ANY PRESENT OR FUTURE YEAR UNLESS THE NECESSARY FUNDS TO PAY THAT COMMITMENT HAVE BEEN APPROPRIATED BY THE CONGRESS OF THE UNITED STATES (THE “CONGRESS”) AND ARE LAWFULLY AVAILABLE FOR THE PURPOSE COMMITTED. THUS, PURSUANT TO THE ANTI-DEFICIENCY ACTS, NOTHING IN THIS MSC COMPACT CREATES AN OBLIGATION OF THE DISTRICT OF COLUMBIA IN ANTICIPATION OF AN APPROPRIATION BY CONGRESS FOR SUCH PURPOSE, AND THE DISTRICT OF COLUMBIA’S LEGAL LIABILITY FOR THE PAYMENT OF ANY AMOUNT UNDER THIS MSC COMPACT DOES NOT AND MAY NOT ARISE OR OBTAIN IN ADVANCE OF THE LAWFUL AVAILABILITY OF APPROPRIATED FUNDS FOR THE APPLICABLE FISCAL YEAR AS APPROVED BY CONGRESS.

IF, PRIOR TO SUCH COMMITMENT BEING MADE BY OR ON BEHALF OF THE DISTRICT OF COLUMBIA, LEGISLATION IS ENACTED BY THE CONGRESS GRANTING THE GOVERNING BODY OF THE DISTRICT OF COLUMBIA PLENARY POWER TO CREATE OBLIGATIONS, THE COMMITMENT BY THE DISTRICT OF COLUMBIA SHALL BE BY CONTRACT OR AGREEMENT BETWEEN THE GOVERNING BODY OF THE DISTRICT OF COLUMBIA AND THE COMMISSION TO UNDERTAKE ITS ROLE IN SAFETY OVERSIGHT.

E. EXERCISE OF POWERS.

45. THE EXERCISE OF THE POWERS GRANTED BY THIS MSC COMPACT SHALL IN ALL RESPECTS BE FOR THE BENEFIT OF THE PEOPLE OF THE DISTRICT OF COLUMBIA, COMMONWEALTH OF VIRGINIA, AND STATE OF MARYLAND AND FOR THE INCREASE OF THEIR SAFETY, COMMERCE, AND PROSPERITY, AND AS THE ACTIVITIES ASSOCIATED WITH THIS MSC COMPACT SHALL CONSTITUTE THE PERFORMANCE OF ESSENTIAL GOVERNMENTAL FUNCTIONS, THE COMMISSION SHALL NOT BE REQUIRED TO PAY ANY TAXES OR ASSESSMENTS UPON THE

SERVICES OR ANY PROPERTY ACQUIRED OR USED BY THE COMMISSION UNDER THE PROVISIONS OF THIS MSC COMPACT OR UPON THE INCOME THEREFROM, AND SHALL AT ALL TIMES BE FREE FROM TAXATION WITHIN THE DISTRICT OF COLUMBIA, COMMONWEALTH OF VIRGINIA, AND STATE OF MARYLAND.

F. WMATA RIGHT TO PETITION COMMISSION.

46. WMATA SHALL HAVE THE RIGHT TO PETITION THE COMMISSION FOR RECONSIDERATION OF AN ORDER BASED ON RULES AND PROCEDURES DEVELOPED BY THE COMMISSION.

47. CONSISTENT WITH § 16 OF ARTICLE III, THE FILING OF A PETITION FOR RECONSIDERATION SHALL NOT ACT AS A STAY UPON THE EXECUTION OF A COMMISSION ORDER, OR ANY PART OF IT, UNLESS THE COMMISSION ORDERS OTHERWISE.

G. COURTS OF JURISDICTION.

48. THE UNITED STATES DISTRICT COURTS FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION, UNITED STATES DISTRICT COURTS FOR MARYLAND, SOUTHERN DIVISION, AND UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF COLUMBIA SHALL HAVE EXCLUSIVE AND ORIGINAL JURISDICTION OVER ALL ACTIONS BROUGHT BY OR AGAINST THE COMMISSION AND TO ENFORCE SUBPOENAS UNDER THIS MSC COMPACT.

49. THE COMMENCEMENT OF A JUDICIAL PROCEEDING SHALL NOT OPERATE AS A STAY OF A COMMISSION ORDER UNLESS SPECIFICALLY ORDERED BY THE COURT.

H. LIABILITY OF COMMISSION AND ITS MEMBERS, OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES.

50. THE COMMISSION AND ITS MEMBERS, ALTERNATE MEMBERS, OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES SHALL NOT BE LIABLE FOR SUIT OR ACTION OR FOR ANY JUDGMENT OR DECREE FOR DAMAGES, LOSS, OR INJURY RESULTING FROM ACTION TAKEN WITHIN THE SCOPE OF THEIR EMPLOYMENT OR DUTIES UNDER THIS MSC COMPACT, NOR REQUIRED IN ANY CASE ARISING OR ANY APPEAL TAKEN UNDER THIS MSC COMPACT TO GIVE A SUPERSEDEAS BOND OR SECURITY FOR DAMAGES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROTECT A PERSON FROM SUIT OR LIABILITY FOR DAMAGE, LOSS, INJURY, OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND WANTON MISCONDUCT OF THE PERSON.

51. THE COMMISSION SHALL BE LIABLE FOR ITS CONTRACTS AND FOR ITS TORTS AND THOSE OF ITS MEMBERS, ALTERNATE MEMBERS, OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES COMMITTED IN THE CONDUCT OF ANY PROPRIETARY FUNCTION, IN ACCORDANCE WITH THE LAW OF THE APPLICABLE SIGNATORY (INCLUDING, WITHOUT LIMITATION, RULES ON CONFLICT OF LAWS) BUT SHALL NOT BE LIABLE FOR ANY TORTS OCCURRING IN THE PERFORMANCE OF A GOVERNMENTAL FUNCTION. THE EXCLUSIVE REMEDY FOR A BREACH OF CONTRACT OR TORT FOR WHICH THE COMMISSION SHALL BE LIABLE, AS HEREIN PROVIDED, SHALL BE BY SUIT AGAINST THE COMMISSION. NOTHING CONTAINED IN THIS MSC COMPACT SHALL BE CONSTRUED AS A WAIVER BY THE DISTRICT OF COLUMBIA, MARYLAND, OR VIRGINIA OF ANY IMMUNITY FROM SUIT.

I. PLEDGE OF FAITHFUL COOPERATION BY SIGNATORIES.

52. EACH OF THE SIGNATORIES PLEDGES TO EACH OTHER FAITHFUL COOPERATION IN PROVIDING SAFETY OVERSIGHT FOR THE WMATA RAIL SYSTEM, AND, TO EFFECT SUCH PURPOSES, AGREES TO CONSIDER IN GOOD FAITH AND REQUEST ANY NECESSARY LEGISLATION TO ACHIEVE THE OBJECTIVES OF THIS MSC COMPACT.

J. AMENDMENTS AND SUPPLEMENTS TO COMPACT.

53. AMENDMENTS AND SUPPLEMENTS TO THIS MSC COMPACT SHALL BE ADOPTED BY LEGISLATIVE ACTION OF EACH OF THE SIGNATORIES AND THE CONSENT OF CONGRESS. WHEN ONE SIGNATORY ADOPTS AN AMENDMENT OR SUPPLEMENT TO AN EXISTING SECTION OF THIS MSC COMPACT, THAT AMENDMENT OR SUPPLEMENT SHALL NOT BE IMMEDIATELY EFFECTIVE, AND THE PREVIOUSLY ENACTED PROVISION OR PROVISIONS SHALL REMAIN IN EFFECT IN EACH JURISDICTION UNTIL THE AMENDMENT OR SUPPLEMENT IS APPROVED BY THE OTHER SIGNATORIES AND IS CONSENTED TO BY CONGRESS.

K. WITHDRAWAL FROM COMPACT BY SIGNATORY.

54. ANY SIGNATORY MAY WITHDRAW FROM THIS MSC COMPACT, WHICH ACTION SHALL CONSTITUTE A TERMINATION OF THIS MSC COMPACT.

55. WITHDRAWAL FROM THIS MSC COMPACT SHALL BE BY THE ENACTMENT OF LEGISLATION REPEALING THE STATUTORY AUTHORITY FOR THIS MSC COMPACT, BUT THE REPEAL MAY NOT TAKE EFFECT UNTIL ONE YEAR AFTER THE EFFECTIVE DATE OF THE LEGISLATION AND UNTIL WRITTEN NOTICE OF THE WITHDRAWAL HAS BEEN GIVEN BY THE WITHDRAWING STATE TO THE EXECUTIVE OF EACH OTHER MEMBER JURISDICTION. IN THE EVENT OF A

(Over)

WITHDRAWAL OF ONE OF THE SIGNATORIES FROM THE WMATA COMPACT, THIS MSC COMPACT SHALL BE TERMINATED AS OF THE SAME DATE.

56. PRIOR TO TERMINATION OF THIS MSC COMPACT, THE COMMISSION SHALL PROVIDE EACH SIGNATORY:

(A) A MECHANISM FOR CONCLUDING THE OPERATIONS OF THE COMMISSION;

(B) A PROPOSAL TO MAINTAIN STATE SAFETY OVERSIGHT OF THE WMATA RAIL SYSTEM; AND

(C) A PLAN TO RETURN SURPLUS FUNDS THAT MAY EXIST UPON THE TERMINATION OF THIS MSC COMPACT AFTER THE PAYMENT OF, AND THE RESERVATION OF FUNDS FOR PAYMENT OF, ALL OF ITS DEBTS AND OBLIGATIONS.

L. LIBERAL CONSTRUCTION.

57. THIS MSC COMPACT SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE THE PURPOSES FOR WHICH IT IS CREATED.

58. IF ANY PART OR PROVISION OF THIS MSC COMPACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS ADJUDGED INVALID BY ANY COURT OF COMPETENT JURISDICTION, THE JUDGMENT SHALL BE CONFINED IN ITS OPERATION TO THE PART, PROVISION, OR APPLICATION DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED AND SHALL NOT AFFECT OR IMPAIR THE VALIDITY OF THE REMAINDER OF THIS MSC COMPACT OR ITS APPLICATION TO OTHER PERSONS OR CIRCUMSTANCES, AND THE SIGNATORIES HEREBY DECLARE THAT THEY

WOULD HAVE ENTERED INTO THIS MSC COMPACT OR THE REMAINDER OF THE COMPACT HAD THE INVALIDITY OF THE PROVISION OR ITS APPLICATION BEEN APPARENT.

M. MANNER OF ADOPTION OF COMPACT.

59. THIS MSC COMPACT SHALL BE ADOPTED BY THE SIGNATORIES IN THE MANNER PROVIDED BY LAW THEREFOR AND SHALL BE SIGNED AND SEALED IN FOUR DUPLICATE ORIGINAL COPIES. ONE COPY SHALL BE FILED WITH THE SECRETARY OF STATE OF THE STATE OF MARYLAND, ONE COPY WITH THE SECRETARY OF THE COMMONWEALTH OF VIRGINIA, AND ONE COPY WITH THE SECRETARY OF THE DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAWS OF EACH JURISDICTION. ONE COPY SHALL BE FILED AND RETAINED IN THE ARCHIVES OF THE COMMISSION UPON ITS ORGANIZATION. THIS MSC COMPACT SHALL BECOME EFFECTIVE UPON THE ENACTMENT OF CONCURRING LEGISLATION BY THE DISTRICT OF COLUMBIA, MARYLAND, AND VIRGINIA, AND CONSENT BY THE CONGRESS OF THE UNITED STATES AND WHEN ALL OTHER ACTS OR ACTIONS HAVE BEEN TAKEN, INCLUDING, WITHOUT LIMITATION, THE SIGNING AND EXECUTION OF THIS MSC COMPACT BY THE GOVERNORS OF MARYLAND AND VIRGINIA AND THE MAYOR OF THE DISTRICT OF COLUMBIA.

N. CONFLICT OF LAWS.

60. ANY CONFLICT BETWEEN ANY AUTHORITY GRANTED HEREIN, OR THE EXERCISE OF THE AUTHORITY, AND THE PROVISIONS OF THE WMATA COMPACT SHALL BE RESOLVED IN FAVOR OF THE EXERCISE OF THE AUTHORITY BY THE COMMISSION.

61. ALL OTHER GENERAL OR SPECIAL LAWS INCONSISTENT WITH THIS MSC COMPACT ARE HEREBY DECLARED TO BE INAPPLICABLE TO THE COMMISSION OR ITS ACTIVITIES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not take effect until a similar Act is enacted by the Commonwealth of Virginia and by the District of Columbia; that the Commonwealth of Virginia and the District of Columbia each is requested to concur in this Act of the General Assembly of Maryland by the enactment of a similar Act; that the Department of Legislative Services shall notify the appropriate officials of the Commonwealth of Virginia, the District of Columbia, and the United States Congress of the enactment of this Act; and that upon the concurrence in this Act by the Commonwealth of Virginia and by the District of Columbia and approval by the United States Congress, the Governor of the State of Maryland shall issue a proclamation declaring this Act valid and effective and shall forward a copy of the proclamation to the Director of the Department of Legislative Services.”;

in line 10, strike “2.” and substitute “3.”; in the same line, after “That” insert “, subject to Section 2 of this Act.”; and strike beginning with “shall” in line 10 down through “Assembly” in line 14 and substitute “is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted”.