

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1089 (Delegate Barron, *et al.*)

Environment and Transportation

Finance

Metro Oversight Enhancement Act

This bill amends the Washington Metropolitan Area Transit Authority (WMATA) compact to explicitly outline the powers and responsibilities of the Inspector General and his/her office. The bill also requires the Office of the Inspector General (OIG) and its suboffices or divisions to be funded with a grant of at least 0.05% of WMATA's annual operating budget. **The bill takes effect June 1, 2018, and is contingent on similar acts being enacted by the Commonwealth of Virginia and the District of Columbia, as specified.**

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances. WMATA has an existing OIG that operates in a similar manner to that which is required by the bill and is funded with approximately 0.28% of WMATA's operating budget.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Appointment of the Inspector General

WMATA's board of directors must appoint an Inspector General without regard to political affiliation and solely on the basis of integrity and demonstrated ability. The board may not appoint an individual who served as an executive or manager of WMATA within the last

five years. If the board removes the Inspector General, it must report the reasons for doing so to specified government entities in Maryland, Virginia, the District of Columbia, and the federal government. The OIG must be operationally and functionally independent from WMATA.

Responsibilities and Powers

The Inspector General must prepare and, subject to board approval, adopt an annual work plan. The Inspector General is authorized to engage in numerous oversight and enforcement functions, including (1) auditing, evaluating, investigating, and inspecting any function, activity, process, or operation conducted by WMATA; (2) receiving and investigating complaints; (3) providing information and evidence to the appropriate oversight or law enforcement agencies; and (4) issuing public reports. Any individual member of WMATA's board may request that the Inspector General undertake an audit or investigation. The audits, investigations, and inspections must adhere to the quality assurance standards specified by the bill. Any audits or investigations conducted by the Inspector General that are related to safety or the board itself are not subject to board approval.

In order to accomplish his/her duties, the Inspector General may, among other things, (1) supersede any claim of privilege to obtain full and unrestricted access to WMATA's records, information, and data, in a certain manner; (2) subpoena witnesses, administer oaths, take testimony, and compel the production of documentation; (3) when necessary, access the head of any public entity; and (4) require WMATA employees to report fraud, waste, corruption, illegal acts, and abuse.

Reports

The OIG must issue regular reports, as specified, including reports regarding its findings; reports regarding the discovery of egregious problems, abuse, or deficiencies; and an annual report containing specified information. All reports must be submitted to specified government entities in Maryland, Virginia, the District of Columbia, and the federal government. The annual report must be completed and posted to a public website, as specified. All reports and other materials generated by the office are subject to WMATA's public access to records and privacy policies.

Current Law/Background: More information on recent safety and funding issues with Metrorail can be found in the **Appendix – Metrorail Safety and Funding**.

WMATA History and Governance

WMATA was established in 1967 through an interstate compact among Maryland, Virginia, and the District of Columbia. The original purpose was construction and operation of a rapid rail transit system for the Washington metropolitan area. Maryland's overall participation in the Washington metropolitan transit system consists of the provision of annual funding to WMATA for the capital and operating costs of Metrorail, Metrobus, and MetroAccess systems. Funding for Maryland's portion of WMATA costs is the sole responsibility of the State.

The Metro Board of Directors is responsible for determining WMATA policy and providing oversight of the funding, operation, and expansion of WMATA transit facilities. The board is comprised of eight voting members and eight alternate members. Maryland, Virginia, the District of Columbia, and the federal government each appoint two voting and two alternate members.

WMATA – Office of the Inspector General

WMATA's compact requires the board of directors to appoint an Inspector General. WMATA's current OIG was authorized and established in April 2006 by [Board of Directors Resolution 2006-18](#). Its responsibilities include supervising and conducting independent audits, investigations, and reviews of Metro programs and operations in order to (1) promote economy, efficiency, and effectiveness and (2) prevent and detect fraud, waste, and abuse. OIG allows anyone, including Metro employees, contractors, customers, and other members of the public, to make a report or complaint as long as there is a good-faith basis for doing so.

OIG currently has 35 staff and its budget for fiscal 2018 is \$5.1 million. This is approximately 0.28% of WMATA's total fiscal 2018 operating budget of \$1.8 billion.

Additional Information

Prior Introductions: None.

Cross File: SB 894 (Senator Feldman) - Finance.

Information Source(s): Maryland Department of Transportation; Montgomery and Prince George's counties; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2018
md/lgc Third Reader - March 20, 2018

Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Metrorail Safety and Funding

Metrorail Safety

After a fatal Metrorail crash on the Red Line between Takoma and Fort Totten, the July 2012 enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21) included provisions granting the Federal Transit Administration (FTA) new regulatory and enforcement responsibilities governing the federal State Safety Oversight (SSO) Program. MAP-21 requires that a rail transit agency's SSO agency (1) be legally and financially independent of the rail transit agency it oversees and (2) have investigative and enforcement authority to ensure that its safety findings are addressed. Subsequently, FTA found that the Washington Metropolitan Area Transit Authority's (WMATA) SSO agency failed to comply with MAP-21's requirements and, in October 2015, assumed direct safety oversight for the WMATA Metrorail system. By February 2017, FTA began withholding federal transit funding until the compact signatories – Maryland, Virginia, and the District of Columbia – establish a compliant SSO agency.

Washington Metrorail Safety Commission Compact

In response to FTA's actions, Chapter 3 of 2017 established the Washington Metrorail Safety Commission (MSC) compact and designated MSC to act as the SSO agency for the WMATA Metrorail system. Identical legislation was also approved by the other compact signatories and given federal approval in August 2017. MSC is funded independently of WMATA by the compact signatories and, when available, by federal funds. The compact signatories must unanimously agree on adequate funding levels for MSC and make equal funding contributions to cover the portion of operating costs not funded by federal funds.

The enactment of MSC legislation is only the first step in fully establishing MSC and restoring withheld federal transit funding, however. FTA indicates that in order for it to certify MSC as WMATA's SSO agency, the compact signatories must also:

- submit a certification and documentation to FTA showing that MSC (1) is independent from WMATA; (2) has enforcement and investigation authority; (3) has adequate staffing and training; (4) has FTA grant recipient status; and (5) has met general program requirements;
- participate in a transitional hand-off period whereby FTA officials work side-by-side with new MSC officials to ensure that they are capable of conducting all oversight responsibilities required by federal law; and

- verify with FTA that MSC’s enforcement and oversight capabilities, as well as its inspection, investigation, and audit activities, are adequate and meet all statutory requirements.

The compact signatories are currently working toward certification.

WMATA Funding

WMATA’s operations are funded through operating revenues and subsidies provided by the compact signatories. Since fiscal 2012, WMATA has seen a decline in ridership, resulting in decreased operating revenues. Service quality and reliability issues, combined with the disruptions caused by WMATA’s maintenance initiative, are cited as leading factors in the decline in ridership. WMATA instituted fare increases and a reduction of service for fiscal 2018 in order to address the decrease in operating revenues.

WMATA’s six-year capital program is comprised of mostly state, local, and federal funds. General parameters on capital funding levels are typically established in a six-year Capital Funding Agreement developed through negotiations between WMATA and its local funding partners.

WMATA Report

In April 2017, WMATA released a report, *Keeping Metro Safe, Reliable, and Affordable*, which proposed a number of changes to WMATA funding and operations. The report called for compact signatories to establish a “stable revenue source to generate \$500 million per year” for capital projects. The report further stated that WMATA has \$25 billion in unfunded capital needs and will need \$15.5 billion over the next 10 years for its most critical capital projects. Additionally, the report notes that, without a change to WMATA’s business model, operating subsidies from compact signatories will continue to increase.

Compact signatories have yet to agree on a stable revenue source for WMATA, although some organizations and government officials have suggested a regional sales tax as a potential source. In a letter dated September 11, 2017, Maryland Governor Laurence J. Hogan, Jr. committed an additional \$500 million over four years (\$125 million per year) for WMATA from the Transportation Trust Fund. The funds are contingent upon Virginia, the District of Columbia, and the federal government doing the same. In the letter, Governor Hogan stated that the increased funding “would give the region and the jurisdictions who are party to the compact four years to formulate a long-term, more permanent solution to WMATA’s fiscal challenges.”