

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 119

(Chair, Environment and Transportation Committee)(By
Request - Departmental - Transportation)

Environment and Transportation

Finance

**Washington Metropolitan Area Transit Authority - Washington Metrorail Safety
Commission - Establishment and Compact**

This emergency departmental bill establishes the Washington Metrorail Safety Commission (MSC) to act as the State safety oversight authority for the Washington Metropolitan Area Transit Authority (WMATA). The purpose of MSC is to review, approve, oversee, and enforce the safety of the WMATA rail system. MSC must be financially independent from WMATA.

The bill is contingent on similar acts being enacted in a specified manner by the Commonwealth of Virginia and the District of Columbia.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by between \$211,000 and \$878,000 per year beginning in FY 2018 to pay for the State's share of MSC's annual operational costs; this estimate includes savings from no longer having to provide funding for the Tri-State Oversight Committee (TOC); although the bill is an emergency bill, it is assumed that there is no effect on State expenditures in FY 2017. Significant federal fund revenues are contingent on passage of the bill because the Federal Transit Administration (FTA) is withholding 5% of State transit formula funding until MSC is certified for WMATA rail operations, as discussed below.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: The Maryland Department of Transportation (MDOT) has determined that this bill has minimal or no impact on small business (attached). The

Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Organization and Governance

MSC is governed by a six-member board of directors with two representatives each from Maryland, Virginia, and the District of Columbia. Four members of the board constitute a quorum and actions taken by the board are immediately effective unless otherwise specified. Consistent with specified federal laws and regulations, the board must develop its own organization system, procedures, and rules and regulations governing its transactions and internal affairs. Its meetings must generally be open to the public and reports of investigations or inquiries adopted by the board must be publicly available. MSC must adopt a conflict of interest policy consistent with federal law. MSC is not subject to the administrative procedure or procurement laws of any signatory jurisdiction. MSC must appoint a chief executive officer and may employ other technical, legal, clerical, and other employees as needed.

Safety Oversight Powers

MSC must (1) adopt, revise, and distribute a written State Safety Oversight Program; (2) review, approve, oversee, and enforce the adoption and implementation of the WMATA Public Transportation Agency Safety Plan; (3) require, review, approve, oversee, and enforce the adoption and implementation of any corrective action plans it deems appropriate; (4) implement and enforce relevant federal and state laws and regulations related to WMATA's rail system safety; (5) audit WMATA's compliance with the adopted safety plan in a specified manner; and (6) coordinate its enforcement activities with any appropriate federal and state governmental authorities.

MSC may (1) conduct inspections, investigations, examinations, and testing of personnel and contractors, property, equipment, facilities, rolling stock, and operations of the WMATA rail system; (2) enter the WMATA rail system and adjacent property for the purposes of conducting inspections, investigations, examinations, and testing; (3) compel compliance by WMATA with any order or corrective action plan in a specified manner; (4) direct WMATA to suspend or disqualify an individual from a safety sensitive position if he or she has violated safety rules, regulations, policies, or laws; (5) compel WMATA's Office of the Inspector General or any successor office to conduct safety-related audits or

investigations and to provide its findings to MSC; and (6) take any other actions it deems appropriate and consistent with its purposes and powers.

Funding

MSC operations must be funded independently of WMATA by the signatory jurisdictions and, when available, by federal funds. The signatory jurisdictions must unanimously agree on adequate funding levels for MSC and make equal funding contributions to cover the operations that are not funded by federal funds. MSC may borrow in anticipation of receipts from any lawful lending institution in a specified manner. The bill also includes provisions related only to the District of Columbia's funding portion.

General Requirements and Provisions

MSC must publish and distribute two annual reports: the first must be a status report on the safety of the WMATA rail system and the second must include information about its programs, operations, and finances. Additionally, an independent annual audit must be conducted on the financial accounts of MSC in a specified manner. The audit must be published and distributed in the same manner as the two annual reports.

The exercise of powers granted by the bill must, in all respects, be for the benefit of the people of Maryland, Virginia, and the District of Columbia. MSC may not be required to pay any taxes or assessments for the services or property it acquires or uses in Maryland, Virginia, and the District of Columbia. WMATA has the right to petition MSC for reconsideration of an order. The bill specifies three district courts that have exclusive and original jurisdiction over all actions brought by or against MSC and to enforce its subpoenas.

Finally, the bill includes provisions that (1) concern the liability responsibilities of MSC, its members, officers, agents, employees, and representatives; (2) establish a pledge of faithful cooperation by all signatories; (3) establish requirements for amending the compact; (4) authorize a signatory to withdraw from the compact; and (5) require the compact to be liberally construed.

Current Law/Background: 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. In 1973, WMATA purchased the assets of four major private bus companies operating in the 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.

After the fatal Metrorail crash on the Red Line between Takoma and Fort Totten, the July 6, 2012 enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21) included provisions granting FTA new regulatory and enforcement responsibilities governing the federal State Safety Oversight (SSO) Program. The purpose of the SSO Program is to oversee safety for rail transit systems. MAP-21 and the SSO Program require states (or, in the case of the WMATA Compact, the State of Maryland, the Commonwealth of Virginia, and the District of Columbia) to:

- designate an SSO agency (SSOA) that is a legal entity of the state and financially and legally independent from the rail system in the jurisdiction;
- obtain authority for the designated SSOA to oversee and enforce safety for each rail system in its jurisdiction;
- ensure the designated SSOA carries out an effective safety regulatory program; and
- ensure that the designated SSOA is staffed with qualified personnel.

After the enactment of MAP-21, FTA determined that the SSOA currently covering WMATA and TOC was not in compliance with the act's changes; TOC has no regulatory or enforcement authority over WMATA. MDOT advises that the three WMATA jurisdictions were given a February 9, 2017 deadline to establish an SSOA that meets MAP-21's requirements. On February 10, FTA notified the jurisdictions that, effective immediately, it is withholding 5% of federal fiscal 2017 transit formula funds until the SSO program is certified for WMATA rail operations. MDOT estimates that approximately \$2.8 million is being withheld from the State, and a total of \$4.8 million could be withheld for fiscal 2017 when a full year of funding is appropriated.

The governors of Maryland and Virginia and the Mayor of the District of Columbia co-signed a letter in February 2014, signaling that the jurisdictions would move forward with creating a new MSC to replace TOC. The compact being adopted by the bill grants MSC statutory, regulatory, and enforcement capabilities. Before it can be fully implemented, the compact must be passed by the legislative bodies of the three WMATA jurisdictions. The District of Columbia and Virginia both passed their compacts in February 2017.

State Revenues: As previously discussed, FTA has withheld approximately \$2.8 million in transit formula funds for the State in fiscal 2017, and may withhold a total of \$4.8 million total in fiscal 2017 because MSC was not established and certified for WMATA rail operations by the February 9, 2017 deadline. Similarly, FTA is likely to withhold funding in future years until MSC is certified. Therefore, passage of the bill (which is necessary for the establishment of MSC) may allow MDOT to regain the withheld federal funds for fiscal 2017 and ensures that federal fund revenues are not withheld in future fiscal years.

State Expenditures: As required by the bill, Maryland is responsible for one-third of the annual operational costs of MSC. MSC's operational costs are expected to be higher than TOC's because MSC's duties and responsibilities greatly exceed those of TOC. For example, MSC is required to audit WMATA on a regular basis and may perform inspections and compel WMATA to comply with its orders, whereas TOC has no regulatory or enforcement authority.

MDOT estimates that MSC requires about 14 full-time staff that includes 1 chief executive officer, 5 subject matter experts, 7 technical specialists, and 1 office manager; as these are MSC employees and not State employees, they are not counted as new positions in this analysis. After taking into consideration other potential costs, such as legal and clerical functions being contracted and additional transit- and safety-related technical experts being hired on an as needed basis, MDOT estimates MSC's annual operating expenditures to be between \$3.5 million and \$5.5 million. Of this total, federal grant funding of about \$533,000 is expected for each jurisdiction (totaling \$1.6 million) to help offset MSC's operating costs. The remaining \$1.9 million to \$3.9 million in operating costs must be split evenly between Maryland, Virginia, and the District of Columbia. This means that Maryland's share of MSC's operating costs is expected to be between \$633,000 and \$1.3 million each year.

Additionally, because MSC is replacing TOC, TTF expenditures decrease as MDOT no longer pays any operational costs associated with TOC. The fiscal 2018 budget includes \$422,000 in special funds from TTF for TOC. Assuming a similar amount would be appropriated in future years, the net effect on MDOT is an annual TTF expenditure increase of between \$211,000 and \$878,000 beginning in fiscal 2018.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Transportation; U.S. Department of Transportation; Department of Legislative Services

Fiscal Note History:
kb/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Washington Metropolitan Area Transit Authority – Metrorail Safety Commission – Establishment and Compact

BILL NUMBER: HB 119

PREPARED BY: Maryland Department of Transportation / The Secretary's Office
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS