



MEMORANDUM

TO: TPB Technical Committee
FROM: Kanathur Srikanth, Director Department of Transportation Planning
SUBJECT: Metro Rail Safety Commission Update
DATE: November 4, 2016

BACKGROUND

In April of 2015, a Memorandum of Understanding (MOU) between COG and Virginia, Maryland and the District of Columbia (referred herein as the three states) was executed to have COG serve as the designated recipient of FTA's 49 U.S.C. Section 5329(e) (State Safety Oversight SSO program) funds, and to provide decision support to the three states in their work to stand up the Metrorail Safety Commission (MSC). The MAP-21 Act required the states with an urban rail system to reconstitute the State Safety Oversight Agency (SSOA) established under earlier federal laws. The FTA provides grant funding to support the staffing and professional development of SSOA programs under its Section 5329 (e) program). Consistent with the previous law the three states established the Tristate Oversight Committee (TOC) to oversee Metrorail compliance with its safety plans and programs. The TOC was established in 1997 and the COG has been serving as the administrative agent of TOC since 1999. The TOC continues to operate while the three states work to reconstitute its responsibilities and authorities as required under MAP-21 and FAST Acts. In October 2015, the U.S. Secretary of Transportation directed the Federal Transit Administration (FTA) to assume temporary and direct safety oversight of the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. FTA is performing this safety oversight responsibility in collaboration with the TOC.

The FAST ACT (and previously MAP-21) directs States to assume greater responsibility for overseeing the safety of their rail fixed guideway systems. The new requirement was aimed to address the following deficiencies of the existing SSOAs: lack of adequate and consistent safety practices across the rail transit industry; lack of regulatory, oversight, and enforcement authority for state agencies; limited SSO program funding, staff, training, and other resources; and lack of SSO financial and legal independence from the rail transit agencies they oversee. The new law requires, among other things, that each SSOA be financially and legally independent from any rail transit agency it oversees, and has investigative and enforcement authority with respect to the safety of the rail transit system. To undertake this enhanced responsibility each state must ensure that its SSOA has the legal authority to review, approve, oversee, and enforce a rail transit agency safety plan and has staffing levels and qualifications commensurate with the number, size and complexity of the rail transit agencies in the program and that SSO program staff and contractors receive training and certification through FTA.

WORK ACTIVITIES TO ESTABLISH AN MSC

As the Designated Recipient for the FTA's SSOA program funds COG has been working since mid-2015 with representatives of the DC Department of Transportation, Maryland Department of Transportation and Virginia Department of Rail and Public Transportation on MSC-related work

activities. A MSC Policy Working Group was established to conduct the work. FTA Grants totaling \$2,043,320 from federal FY 2013 and \$2,062,034 from federal FY14 funds have been approved and secured. Annual Work Programs for COG's FY16 and FY17 were also developed.

The MSC Policy Working Group has held both bi-weekly and monthly meetings with the FTA to discuss transitioning the current TOC that has been overseeing Metrorail safety to the MSC. A detailed Work Program has been developed in coordination with the FTA outlining the tasks to be completed that will lead to the FTA's certification of the Metrorail Safety Commission.

Most of the work activities can be sorted under two groups: legal and management. The legal work activities are associated with having laws enacted in the three states (and eventually ratified by the US Congress) that would provide the MSC with the legal authority it needs to conduct its work activities including having the authority to compel WMATA to take safety corrective actions developed by the MSC. The management work activities relate to all aspects of the MSC as an organization and includes tasks such as establishing a governance structure, operational by-laws, staffing plans, housing the entity, etc.

Under the legal work activities COG and the policy team is working with a legal consultant together with the State's Attorneys on developing an MSC Compact (Bill to be enacted by the legislators in the three states) that will allow for the MSC to be a legal independent agency with enforcement powers. Hearings on the MSC Compact occurred last month in DC and Virginia and earlier this week in Maryland. The expectation is that the Compact will be passed in identical form by the DC City Council and both the Maryland and Virginia state legislatures and then ratified by the US Congress by mid-to late Spring next year. Once the compact is ratified, the MSC will be implemented.

Under the management work activities, a milestone timeline to stand-up the MSC has been developed and approved by the FTA. Some of the activities underway includes: developing a Conflict of Interest Policy that centers on the policies and procedures for identifying, documenting, eliminating, or sufficiently mitigating instances where the MSC is not legally or financially independent from WMATA as required by law, and developing a Program Standard describing the Washington MSC's approach to implementing the requirements of its SSO program over the Metrorail system which has been submitted to FTA for their review and comment. Additionally, COG and the policy team are working with a management consultant to develop an organizational management structure for the MSC and has been working on drafting position descriptions, governance documents, recommended housing options, and an implementation schedule. The goal of these documents is to provide a basic framework that the eventual MSC Executive Director, staff and Board of Commissioners can use to fully implement the MSC. All of the management work activities are anticipated to be completed by late Spring of 2017.

The completion of the legislative and management activities will enable the Metrorail Safety Commission to be up and running with its enhanced responsibilities and authority and replace the existing TOC.