

ITEM 9 - Information

September 21, 2011

Briefing on the Transforming Governance of the Washington Metropolitan Area Transit Authority: Phase 1 Recommendations Report by the Governance Work Group (GWG) Appointed by the Governors of Maryland and Virginia and the Mayor of the District

Staff Recommendation: Receive briefing on the enclosed recommendations for transforming governance of WMATA

Issues: None

Background: The GWG was established in January 2011 by the two Governors and the Mayor to make recommendations to improve governance at WMATA. As part of its work, the GWG requested and received research support from TPB staff on five topics related to WMATA board functions and funding needs. The report produced by TPB staff was presented to the TPB at its June 15 meeting. The GWG released its Phase 1 report for public comment on July 21. The public comment period ended on August 25.

TRANSFORMING GOVERNANCE OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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GOVERNANCE WORK GROUP PHASE I RECOMMENDATIONS



July 21, 2011



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EXECUTIVE SUMMARY

The Governance Work Group (GWG) was tasked with making initial recommendations on WMATA governance reform with a focus on the following seven issues:

1. Defined roles and responsibilities for the Board and Chair;
2. A recommendation on whether and how to require the Board to focus on high-level policy and objectives, and act as a regional body so that it takes official regional, rather than unofficial individual, action;
3. A recommended coordinated process for appointing Board members with an appropriate mix of attributes and qualifications, including staggered terms and a uniform compensation process;
4. A recommendation on whether the jurisdictional veto should be limited through legislative action and/or Compact amendments;
5. A recommendation on whether to establish a legal State Safety Oversight (SSO) entity with enforcement powers;
6. A recommendation on whether and how to require the Board to decide matters through a clear, accessible public input process; and
7. A defined role for the federal government in WMATA governance.

The GWG recognizes that the Board's proposed Bylaws are an encouraging step towards implementing improved Board governance. The proposed, overarching Board member roles and responsibilities include:

- Ensuring a Safe and Reliable System
- Exercising Fiduciary Responsibility
- Engaging in Strategic Regional Leadership
- Overseeing Planning, Operations and Customer Service
- Exercising Individual Responsibility as a Member of the Board
- Evaluating CEO, Board Secretary, General Counsel and Inspector General

In addition, the Proposed Bylaws delineate a clear role for the Board Chair and its accompanying responsibilities, including facilitating the work of the Board, establishing a strong Board and CEO relationship and fostering Board communication with external stakeholders.

The GWG is pleased with the evaluation and self-review that the Board has undertaken while developing its new Bylaws and revised Procedures. It is evident that the Board has made significant progress in addressing governance issues. However, the GWG identified several areas where clarification or more information is needed in order to enhance the Board's roles and responsibilities and promote a high-level, policy-setting focus, including the following:

- Establish a budget development and performance measurement process;
- Develop a multi-year strategic plan; and
- Coordinate the budget planning process with funding jurisdictions.

In addition, **the GWG recommends** legislative action at the jurisdictional level to revise the Board member appointment process to achieve a balanced and effective Board. Specifically, **the GWG recommends:**

- implementing a ridership requirement;
- setting a general, overarching Board composition concept;
- codifying Board member qualification requirements; and
- providing an opportunity for advisory input from the Governance Committee when a jurisdiction is filling a Board member vacancy.

In addition to a Governance Committee-led orientation process for WMATA Board members, **the GWG recommends** that the Board also implement an orientation program for jurisdictional staff and other key stakeholders involved in WMATA.

The GWG recommends that Board members serve staggered, 4-year terms, with a maximum of two consecutive terms. **The GWG also recommends** that a Board Chair term be set at two consecutive years.

Taking into account the various jurisdictions' treatment of Board member compensation, **the GWG recommends** that the WMATA Board member compensation policy be determined by each jurisdiction and the federal government respectively, provided that there is a publicly disclosed letter on file identifying what the compensation entails. The issue of compensation for Board service by salaried elected officials and public sector employees remains open for discussion within the GWG. That discussion will be influenced by the frequency of and time commitment for Board and Committee meetings, which will be reduced in the future as the Board spends more time on high-level policy and less on day-to-day WMATA operations.

The GWG supports the Board's proposed Bylaws and revised Procedures which require a jurisdiction that anticipates using its jurisdictional veto provide notice and for the Board Chair to attempt to resolve the conflict in advance of an actual Board vote. While the GWG understands that there is a role for the jurisdictional veto in WMATA governance, the GWG encourages further discussion on its appropriate use.

The GWG believes that the structure of WMATA's SSO, the current Tri-State Oversight Committee (TOC), needs to evolve into a more robust entity with enforcement authority. The GWG supports the TOC's recent efforts to better establish and formalize the relationship between the Board and the TOC through comments on the Bylaws. In addition the GWG supports the evaluation of a Compact amendment to further define the TOC's legal oversight and enforcement authority.

The GWG recognizes the need for a timely and accessible public input process that ensures the Board receives comments in advance of its decision-making. While the Board's proposed Bylaws are a positive step in accomplishing this goal, **the GWG further encourages** the Board and Board staff to enhance the public's awareness of WMATA's public communication and response policies.

With regard to defining the role of the federal government in WMATA governance issues, **the GWG will pursue further consultation** with the appropriate Congressional delegations as well as the GAO report.

INTRODUCTION

On January 10, 2011, Virginia Governor Bob McDonnell, Maryland Governor Martin O'Malley and District of Columbia Mayor Vincent Gray announced an implementation plan and schedule that presented actions to be taken by the Signatories and the WMATA Board to address WMATA's governance problems. They created a Governance Work Group (GWG) to implement some of these actions, with appropriate input from appointing authorities, local jurisdictions and stakeholders.

This draft report represents the GWG's initial phase of recommendations, regarding the following issues: Board member and Chair roles and responsibilities, including a focus on high-level policy; Board member appointment process, including term limits and compensation; use of the jurisdictional veto; enhanced authority for the Tri-State Oversight Commission (TOC); public input in the Board's decision-making process; and the role of the federal government in WMATA governance.

Comprehensive efforts to improve governance, leadership, and accountability at WMATA are currently underway. The GWG recognizes the extensive work of the WMATA Board over the past six months and appreciates the opportunities for continued collaboration with the WMATA Staff, Board and Governance Committee.

The WMATA Board of Directors released revised Procedures and draft Bylaws for Public Comment in April 2011. Once formalized, the first ever, permanent WMATA Bylaws will outline a comprehensive scope of board roles and responsibilities as well as clarify the Board's focus on policy, financial direction and Metro's relationship with its customers and jurisdictional partners. The GWG submitted formal written comments in response to the draft documents, offering suggestions for clarification and mechanisms for enhanced Board effectiveness. In addition, the GWG was afforded the opportunity to present an update on its work to date and a general overview of recommendations to the Governance Committee in late May 2011.

The following GWG recommendations are the result of extensive research regarding best practices of peer transit agencies and continuous cooperation and collaboration between the member jurisdictions. The U.S. Government Accountability Office's (GAO) separate analysis of WMATA governance, released on June 30, 2011 will continue to inform the GWG, the U.S. Congress and federal executive branch's approach to WMATA governance and any deliberations on potential Compact amendments.

I. Defined Roles and Responsibilities of the Board and Chair

A review of thirteen peer transit agencies revealed that eight have formally developed roles or responsibilities for their Boards. WMATA's recently Proposed Bylaws are a valuable first step in ensuring that the Board has clearly identified roles and responsibilities and will act as a governing and policy-making body. In developing the proposed Bylaws, the WMATA Board has conducted a self-assessment of its operations and thus far, it proves to be an effective review. Proposed Bylaw Article II states that, "the Board is primarily responsible for policy, financial direction and WMATA's relationships with its customers, jurisdictional partners and signatories," and sets out clear, overarching responsibilities with further details, including:

1. Ensure Safe and Reliable System
2. Exercise Fiduciary Responsibility
3. Engage in Strategic Regional Leadership
4. Oversee Planning, Operations and Customer Service
5. Exercise Individual Responsibility as a Member of the Board
6. Evaluate the CEO, Board Secretary, General Counsel and Inspector General

A transit system's success requires all governance entities to have clearly delineated roles and responsibilities and a commitment to adhere to them. To that end, the proposed Bylaws adequately outline broad, overarching Board responsibilities with clear, specific objectives within each topic area. However, further refinement to the individual objectives, including regularly scheduled performance measure reviews, will enable the Board to set key targets and ensure transparency, accountability and stakeholder input.

Furthermore, additional coordination is needed between WMATA and the funding jurisdictions that operates within reasonable timeframes and is based on best practices of public agencies.

The GWG recommends that the WMATA Board take into consideration the following recommendations:

- Establish budget development and performance measurement process;
- Develop a multi-year strategic plan; and
- Coordinate the budget planning process with funding jurisdictions.

The GWG recommendations pertaining to multi-year strategic planning are outlined in further detail in Section II of this report, which provides recommendations for the Board to focus on high-level policy and act as a regional body.

The recommendations submitted by the GWG on the need for clarified Board roles and responsibilities are intended to lead to and tie in with the recommendations on an increased focus on high-level policy by the Board. To that end, the GWG supports the GAO report's observation that there is a high frequency of WMATA Board meetings. The GWG encourages the Board to address the issue of setting an appropriate number of Board meetings. Once the Board emerges from its current transition period, this will help facilitate a focus on high-level policy and ultimately decrease the frequency of Board meetings.

In addition the GWG submitted the following comment to the WMATA Board on its revised Procedures:

“It is not necessary that every committee meet monthly or that any committee be a committee of the whole.”

In an effort to maintain clear Board member roles and responsibilities and facilitate effective communication, **the GWG recommends** that the Board implement an orientation program for jurisdictional staff and other key stakeholders involved in WMATA governance. Currently, the Board's proposed Bylaws, Article XII.B, only require the Governance Committee to “implement an orientation program to assist all Board members in understanding the transit system and their individual and Board roles and responsibilities, while building cohesion among Members.”

Board Chair

With regard to the responsibilities of the Board Chair, seven of the thirteen peer agencies examined have formally developed roles or responsibilities for their Chairs. The WMATA Board's Proposed Bylaws have developed a clear description of the Chair's role and responsibilities. Proposed Bylaw Article III states that the Board Chair is "dedicated to facilitating the work of the Board, encouraging the creation of common ground and consensus that moves the Board's work forward in a manner that promotes and enhances WMATA's overall mission."

Proposed Article III further details the Board Chair's roles and responsibilities in the categories of facilitating the work of the Board, establishing a strong Board and CEO relationship and fostering Board communication with external stakeholders." In addition, Proposed Bylaw Article III provides that the Chair "shall be elected without regard to jurisdiction of residence or representation," and Proposed Bylaw Article III follows the Compact § 7 requirement to annually elect a Chair without further requirements or limitations, thus permitting a Chair to serve more than a single one-year term.

The Board's recent action to allow a Chair to serve more than one year is an important change and should serve to improve the consistency of Board governance in the years ahead. It is important to note that under this revised structure, the Chair position would still be voted on annually by the members of the Board.

The GWG recommends that the Chair term be set at two consecutive years. By limiting the Chair term to two years, the GWG supports the BOT recommendation for immediate action, which advised increasing the term length of the Chair from one to two years. Based upon a review of peer agency practices, Board Chair term lengths are typically between one and three years, as was the case at nine of the thirteen agencies examined. Of the remaining four agencies, one had a Chair term length of four years, one had a six year limit and two allowed Chairs to serve indefinitely.

II. Board Focus on High-Level Policy, Acting as a Regional Body

A governance report by the WMATA Riders Advisory Council (RAC) urged the WMATA Board to spend more time discussing and developing policies on issues such as land use, fares, budget and service. It said "the Board currently spends very little time defining high-level policy... The Board needs to devote the necessary time to define broad policies with which to shape later decisions." The RAC also called on the Board to "act as a regional body rather than as individuals."

The GWG believes that a transit board has three main areas of responsibility:

1. Setting the strategic direction of the transit agency and monitoring progress;
2. Providing management support in implementing the strategic and operating plan; and
3. Assuring corporate control of the agency that reflects its public roles and responsibilities.

While WMATA has made progress on elements of strategic planning, **the GWG has identified** this as an opportunity to significantly benefit the governance of the agency and encourages the Board to continue to take a stronger role in strategic management. This is a vehicle for the Board to exercise its responsibility for setting the policy direction of the agency. The Transportation Research Board (TRB) has also identified several key transit board responsibilities associated with strategic and business planning, including: a focus on policy; being strategic; achieving goals and improving transit system performance.

For WMATA – operating in a large, diverse metropolitan region – a strategic planning process may help develop regional consensus behind policies, by reflecting the input of jurisdictions, riders and other stakeholders. This in turn should enhance long term organizational continuity and give clearer direction to staff to manage the system, perhaps reducing a frequent practice at WMATA of setting policy on an ad hoc basis; often bringing inappropriate or unnecessary operational issues to the Board. Strategic planning is a key Board activity and can create the environment among the Board, management and stakeholders to improve internal and external relationships.

To be effective, strategic planning is not a one-time event, but an ongoing, dynamic process. It must be linked to the annual budget process, capital programming and prioritization and agency performance measures. The board should adopt both a mission and vision of the agency, multi-year strategic goals and annual objectives to achieve those goals. The board should also set performance measures and milestones based on objectives in order to monitor progress. To be effective, the Board should align or re-align resources to achieve the goals.

One clear key to success in strategic management is effective involvement of stakeholders. The process of developing a plan should include mechanisms to involve stakeholders and improve transparency and public input. A well crafted strategic planning process – with direct Board involvement – will focus the Board on establishing policies, provide for a longer-term focus, improve communication with stakeholders and establish buy-in around a longer term direction for the agency.

The WMATA Board of Directors is planning to launch a strategic planning effort in the summer of 2011, which the GWG applauds. However, **the GWG recommends** that a process be established in the Bylaws, to ensure that strategic planning is incorporated into the regular, ongoing activities of the Board and agency. It appears that strategic planning efforts have been attempted in the past at WMATA, but it was viewed as a responsibility of the staff. Many transit agencies and Boards have requirements for performance-based and strategic management planning practices, including the following:

- Los Angeles County MTA
- New York MTA
- Philadelphia SEPTA
- San Francisco MTA
- Dallas DART
- Portland TriMet

In addition, the U.S. Congress considers strategic management so vital that it has mandated that all federal agencies have a strategic planning process. Under the Government Performance and Results Act agencies are required to develop multi-year strategic plans, annual performance plans, and annual performance reports.

While the WMATA Board of Directors' Proposed Bylaws and accompanying Work Plan identify the importance of developing and implementing a Strategic Plan, **the GWG recommends** that this task be further clarified, outlined and developed so that the Bylaws sufficiently reflect the agency's vision and mission and appropriately incorporate its goals, objectives, performance measures, and review/reporting mechanisms. There are many areas that the Board, agencies and stakeholders can consider to improve communication and business practices:

- Develop and share a Strategic Plan for the agency that includes a shared Mission and Vision that is widely communicated, understood and shared by stakeholders.
- Develop Specific Goals that help to implement the strategic plan and guide development of supporting actions, such as business plans, budgets, performance measures and other plans.
- Introduce a more detailed and longer range Business Planning process to assure that the Board and Stakeholders understand the longer term consequences of actions proposed today and to improve long term continuity.
- Assure that cooperative financial planning is a two-way street with the contributing jurisdictions providing funding forecasts that can be used for advanced planning and the Agency supporting more detailed and multi-year forecasts of needs.

Specifically, **the GWG provided the following comments** on the WMATA Board's Proposed Bylaws:

Article II.B.1: Propose that the business plan update be conducted at a specific interval rather than simply "from time to time."

- a. RECOMMENDED LANGUAGE: the Board shall approve a six-year business plan, which is updated every two years.*

In general, with regard to the overall financial process, the Board should provide a more structured work plan in the development of the budget and ensure that WMATA provides appropriate financial reporting to the funding partners.

Article II.C.10: In addition to the adoption of "key performance and service standards" that "provide policy guidance regarding the quantity and quality of service," the Board should include language requiring a review mechanism to be implemented on a regular basis in order to measure and/or monitor such performance and service standards.

The comments submitted to the Board by the GWG also stated that the GWG is open to alternative timeframes, other than six-years, for a multi-year business plan. The WMATA Board will continue to explore Strategic Planning and the development of Key Performance Indicators (KPIs) this summer. As identified on the Board's Work Plan, they will integrate KPI information with Strategic Planning to assure safe and reliable service from Metro,

a high performing organization. **The GWG recommends** that the detailed work developed in these Strategic Planning sessions be adequately reflected in the Board’s Bylaws and Procedures.

Additionally, improved and enhanced coordination is needed between WMATA and the funding jurisdictions to establish a timely budget development process, in order to coordinate with executive and legislative budget cycles in the jurisdictions. There is a need for more clarity with regard to GM/CEO responsibilities and Board responsibilities in the budget development process. The Board should ensure that the WMATA staff continues to provide timely and consistent budget updates and financial reports to the funding partners.

The GWG recommends that the GM/CEO develop an annual work plan, similar to the New York Metropolitan Transportation Authority that outlines what is reviewed by the Board in each month. In order to improve the WMATA budget planning process, the GWG suggests that further research be conducted on ways to increase coordination among WMATA and the budget cycles of the three jurisdictions. The potential for streamlining WMATA’s financial and KPI reporting process through enhanced jurisdictional coordination should also be explored.

Specifically, **the GWG provided the following comment** to the Board’s Proposed Bylaws:

Article II.C.8: ADD: The Board shall provide for a structured budget process that is developed in consultation with the funding jurisdictions and includes key milestones in the process for coordination and input. Additionally, the annual budget shall include a multi-year fiscal plan with projected expenses and revenues, which is developed in consultation with the jurisdictions.

III. Coordinated Board Member Appointment Process

WMATA’s Board of Directors falls in line with the majority of its peer transit agencies with a composition of both elected officials and non-elected officials being appointed to the Board. However, WMATA makes no stipulations regarding Board members’ places of residence and only one of its members, the federal representative, is required to be a regular rider of the Metro system. In addition, WMATA does not have a formal experiential component in its Board appointment process. Furthermore, unlike all of its peers, WMATA does not have a formal policy regarding term lengths and limits; members may serve indefinitely according to the discretion of the authority that appoints them.

Given the variance in board membership nationally and the variances in how the three WMATA jurisdictions appoint board members, **the GWG recommends** a balanced approach to the issue of member qualifications, terms and compensation. While consistency is helpful, the jurisdictions each have a unique history and individual sets of local circumstances to consider on the issue of board member qualifications, and length of service. The important policy goal for the appointing authorities is to ensure that their representation and process for selecting members supports the mission of the WMATA board and contributes to a positive direction for the system. In order to achieve a balanced and effective Board, **the GWG recommends** that the following initiatives be implemented:

- **Ridership Requirement**

Each jurisdiction should be required to ensure that the Director and Alternates make an effort to use the Metro system on a regular basis in order to familiarize themselves with customer service and operational issues. This could be done through legislation mandating that the members be a user of the system or also through the semi-annual self-report/review of membership commitment, including Board meeting attendance and frequent use of the system.

- **Experiential Requirement/ Tri-Jurisdictional Appointment Process**

The three Signatories should develop an expectant list of qualifications and experiences to be represented by the overall Board. Once the priorities are identified, they can be used as a selection criteria mechanism in filling vacancies as they arise. In addition, the appointing authorities should confer annually to review Board composition and Board member commitment by using a checklist of the qualities and experiences they have deemed priorities. This would include information from the Committee and Board meeting attendance records of the WMATA Board members and Alternates for the previous year.

The GWG recommends that each jurisdiction pass legislation that formalizes an understanding of the balance of qualifications and experiences of Board members and promotes consistency across the region. For example, Board members should be required to have experience in at least one of the following areas: transit, transportation or land use planning; transit, transportation or other public sector management; engineering; finance; public safety; homeland security; human resources or law. In addition, the legislation should require the Board members to submit semi-annual reports to the Governor or Mayor, where applicable, documenting their attendance at WMATA Board meetings and any other meeting where they serve in their official WMATA Board member capacity. This would enable each Signatory to ensure that his appointees adequately complete their service obligations, and would allow him/her to take affirmative steps to enforce active participation, if necessary.

The GWG also recommends that the Governance Committee has the opportunity to provide input to the Signatories when a Board member vacancy arises and that the mechanism for providing such input be incorporated in the Bylaws. The Governance Committee could provide an advisory letter identifying the experiences and qualifications that would be most helpful to the overall Board composition when filling the vacancy.

- **Board Member Terms and Term Limits**

The National Capital Region Transportation Planning Board's review of thirteen peer transit agencies shows a range of requirements with respect to the length of Board member terms and the use of term limits. Among these agencies, terms range from two to seven years with seven boards utilizing four year terms. Only three of the boards mandate term limits with the range of the combined terms being between six and twelve years. Transit board member terms tend to range from two to seven years.

In WMATA's history there have been over one-hundred board members (including alternates) and only a dozen or so have served for eight or more years. Existing requirements by the

appointing authorities are inconsistent: Maryland established three year terms and the General Services Administration (GSA) appointed members have four-year term limits.

The GWG recommends that WMATA board members and alternates be limited to two consecutive four year terms. This would allow elected officials serving consecutive four year terms to maintain consistent representation but also ensure Board vitality and allow for a frequent review of a member's commitment.

In order to implement this proposal, appointing authorities in Maryland, Virginia and the District of Columbia should introduce legislation, which would provide for a transition into a new system of staggered terms of four-years with two term limits. For the first period, existing members would likely serve a term of between two and five years to allow for staggered terms. For purposes of the overall term limits, an appointment of less than three years should not be counted. Additionally, it is recommended that members be allowed to continue service until replaced or reappointed by the respective appointing authority.

- **Board Member Compensation and Appropriateness of Elected Officials serving on the Board**

Current compensation policies differ significantly between the jurisdictions and are impacted by elected officials and federal or state employees who may serve on the WMATA board. In some cases, members are not allowed to receive any compensation. In others, some appointing authorities have combined the duties of Board members and/or alternates with related job duties which have blurred the distinctions on how members are compensated for activities directly related to the WMATA Board.

Given the disparity, **the GWG recommends** that the WMATA Board member compensation policy be developed by the jurisdictions and the federal government respectively, provided that a publicly disclosed letter remains on file identifying what the compensation entails. The issue of compensation for Board service by salaried elected officials and public sector employees remains open for discussion within the GWG. That discussion will be influenced by the frequency of and time commitment for Board and Committee meetings, which will be reduced in the future as the Board spends more time on high-level policy and less on day-to-day WMATA operations.

Given the variance in how the three jurisdictions deal with the issue of elected official representation on the WMATA Board, **the GWG does not have a recommendation** on this topic other than to maintain that the Signatories' overriding goal should be to ensure the necessary qualifications and experiences are represented by the overall Board.

IV. Use of the Jurisdictional Veto

The WMATA Compact reserves the right of any Signatory jurisdiction to veto an action of the majority of the Board of Directors. The veto option is provided in the Compact by the requirement that all Board actions received at least one affirmative vote from each Signatory of the Compact. The so-called jurisdictional veto protects the interests of each Signatory, requiring a higher threshold of regional consensus on critical matters. Viewed negatively, the Compact

creates the opportunity for one jurisdiction to leverage use of the veto for parochial, or narrow, interests.

In practice over the past 35 years the three jurisdictions have used the veto only rarely and usually to reinforce a position on a particular financial matter. In the last three years the veto has been used only once, to emphasize a point, over a relatively modest allocation of funds.

The jurisdictional veto remains a fallback safety mechanism for each jurisdiction to protect itself while simultaneously providing a strong incentive for the negotiation of controversial matters. The threat of jurisdictional veto ensures serious discussion and protects any one jurisdiction from being unilaterally forced to accept the decision of the other two.

The GWG understands that there is a role for the jurisdictional veto in WMATA governance. For the reasons outlined above **the GWG supports** the Board's proposed Bylaws requiring a jurisdiction that anticipates using its veto to provide advance notice and to follow the steps called for in the Board's Procedures for such action. However, **the GWG encourages** further discussion on the appropriate use of the jurisdictional veto.

Proposed Bylaws Article VIII, part H establishes a means to resolve inter-signatory disputes without the use of the jurisdictional veto, and proposed Article III, part A.7 makes it the Chair's responsibility to facilitate the process. The proposed Bylaws also seek to avoid situations in which the jurisdictional veto might be exercised by encouraging active communication and collegiality among Board members, the setting of common goals and consensus building. (*See: Article II.D.4 and Article III.A.5*) The revised Procedures IV, part C. Board and Committee Meetings- Limiting Jurisdictional Vetoes, establishes that "every Board member, will, whenever possible, provide advance notice to the Chair whenever he or she intends to exercise a jurisdictional veto. The Chair will facilitate the resolution of such disputes in order to limit jurisdictional vetoes." Ideally such notice will be provided no later than the conclusion of the Board Committee meeting with jurisdiction on the matter.

The GWG understands the intent of the notice requirement is to call attention to the seriousness of the matter subject to veto and to initiate an intensified discussion and negotiations period under the leadership of the Board Chair to try and resolve the conflict in advance of an actual Board vote.

While the GWG believes that current WMATA Board members understand the negative consequences of exercising a veto and the repercussions of abusing this privilege the GWG encourages further discussion on the appropriate use of the jurisdictional veto.

V. State Safety Oversight Agency as Legal Entity

Following a series of safety incidents involving passenger and employee fatalities on the WMATA Metrorail system and the executive and legislative branches of the U.S. government proposing to provide regulatory authority to the Federal Transit Administration (FTA) for enhancing State Safety Oversight (SSO) programs across the nation, Governor O'Malley, Governor McDonnell, and then-DC Mayor Adrian Fenty met in April, 2010 to agree on a plan of action, entitled *Moving the TOC Forward*, for addressing WMATA's safety problems and

improving the Tri-State Oversight Committee (TOC), the SSO agency for the WMATA Metrorail system designated under federal law and regulation. As a result of this meeting the Governors and Mayor granted authority and policy-making discretion to the Maryland and Virginia Transportation Secretaries and the Director of the District Department of Transportation (DDOT), as the TOC Executive Committee, to formulate uniform policies and protocols for the TOC and solve oversight issues in a more rapid and efficient manner.

The current structure and function of the TOC has presented challenges in the implementation of the SSO program. TOC is not a legal entity, but was created by the three member jurisdictions through an MOU in 1997. Thus, the TOC lacks clear authority to conduct oversight that is not dependent upon the acquiescence of WMATA.

The GWG believes that improving transportation safety is a major priority throughout the Washington region. As such, the TOC should be provided the authority to institute and enforce safety program activities.

The TOC submitted the following comment on the Board's Proposed Bylaws and **the GWG agrees** that inclusion of this language in the Bylaws would better establish and formalize the Board's relationship with the TOC:

Article XII.B: ADD LANGUAGE IN SMALL CAPS: ... the [Safety and Security] Committee reviews the WMATA System Safety Program Plan for consistency with safety goals, receives AND RESPONDS TO periodic reports AND COMMUNICATIONS from the Tri-State Oversight Committee (TOC), WHICH IS RECOGNIZED BY WMATA AND DESIGNATED BY THE COMMONWEALTH OF VIRGINIA, THE STATE OF MARYLAND, AND THE DISTRICT OF COLUMBIA AS THE STATE SAFETY OVERSIGHT AGENCY OVER WMATA'S RAIL FIXED GUIDEWAY SYSTEM, and works with THE TOC, Federal Transit Administration and the National Transportation Safety Board, as appropriate, to review the status of Authority safety and to assure that all safety recommendations from any internal or external safety review or investigation are handled expeditiously and effectively.

The *Moving the TOC Forward* document proposed a *Metro Safety Commission* (MSC) which would be a distinct legal entity created by the District of Columbia, Maryland, and Virginia. Unlike the current TOC, the new MSC would have its own governance organization, employees, and legal/administrative structure, and would be created through a multistate Compact among the three jurisdictions and ratified by Congress, or as an amendment to the existing Compact governing WMATA. However, an enhanced oversight entity like the MSC may require significantly more resources to operate than is currently allotted for the TOC. While the jurisdictions are not opposed to allotting more resources to the TOC, given current fiscal constraints, any proposed, immediate enhancement to the TOC's oversight structure would be most prudent if undertaken using existing resources.

Currently, staff from the three member jurisdictions, along with the TOC and its Executive Committee, are evaluating the implementation of a Compact amendment to create an MSC as a successor to the TOC, with a defined organizational structure and clear legal authority to conduct safety and security oversight of WMATA's Metrorail system. The specific duties, authority, and responsibilities of the MSC would be defined in the Compact amendment and operated by an entity equivalent in staff and resources to the current TOC. **The GWG supports** the TOC's

recent actions to bolster its enforcement authority and strengthen its relationship with the WMATA Board.

VI. Public Input in Board Decision-Making Process

According to the Report on Governance of WMATA by the Riders' Advisory Council (RAC), Board decision-making should include a clear and accessible public input process. The RAC suggested that before voting on most decisions the WMATA Board should allow more time for information to be shared with the public for input to be solicited. The Transportation Research Board (TRB) has also noted key recommendations related to public outreach, including: 1) public involvement should be early and proactive; 2) timely information should be provided to the public; and, 3) explicit consideration should be given to the public input collected. The GWG shares an interest in creating opportunities for meaningful and timely public input to the WMATA Boards' decision-making process.

Through the WMATA Compact, there has always been a robust Public Hearing requirement for Board actions on fare and service changes. The Board established a public comment process at Board meetings a number of years ago and created the Riders' Advisory Council (RAC) and the Accessibility Advisory Committee to receive more formal public input from a representative group of riders and system users.

The WMATA Board Governance Committee has recognized the concerns and recommendations of the RAC by proposing expanded public input opportunities, including the following:

- The opportunity for the public to speak at WMATA Board Committee meetings at the Chair's discretion;
- The elimination of limitations on the frequency that an individual can offer comments to the WMATA Board during the public comment period;
- The institution of a proscribed methodology for Board members to collectively respond to communications from the public both directly and through the General Manager/Chief Executive Officer; and
- Procedures to encourage the posting of all or nearly all Committee and Board public session agenda material on the WMATA website in advance of meetings.

The GWG welcomes the extension of the Public Comment period process to Committee meetings and encourages Committee Chairs to maximize the topics open for public input at these meetings. **The GWG also encourages** the Board and Board staff to inform the public about the process which WMATA uses to respond to communications addressed to the Board.

Specifically **the GWG submitted the following comment** on the Board's Proposed Bylaws:

Article VII – ADD: The Board empowers the CEO to establish appropriate public and stakeholder involvement processes that allow for early and proactive engagement to inform board policy decision-making.

VII. Use of Executive Session

The GWG also believes that an excessive use of Executive Sessions reduces Board transparency and may result in the Board reaching decisions without adequate public review. Therefore, the GWG urges the Board to limit the use of Executive Sessions, provide more detail on items on Executive Session agendas and take matters that have been discussed in Executive Session to both a public Committee review and discussion as well as a Board meeting for action to allow time for adequate public review.

Specifically, **the GWG provided the following comments** on the WMATA Board's Proposed Bylaws and Procedures in order to clarify statements of purpose and process for Executive Sessions:

Article X, Sections A & B: COMMENT: In finalizing the bylaws, WMATA should give consideration to the Open Meetings laws of the jurisdictions, to mirror as closely as possible the policies for executive sessions, including the allowable exceptions for closed sessions and procedures for them.

Article X, Section B. Procedures for Executive Session: ADD the following language to the second paragraph:

“Agenda items that the Board wishes to remove from a published Board or Committee agenda should only be removed from the Board or Committee agenda in a public session of the Board or Committee and the reason for removal should be publicly stated.”

VIII. Role of the Federal Government

The federal General Services Administration appoints primary members and alternates to serve on the WMATA Board on behalf of the federal government. The first federal members of the Board were appointed for terms of four years. In addition, one of the primary federal Board members must be a regular passenger and customer of WMATA's bus or rail service. Expansion of the WMATA Board to include two federal appointments was a key condition to the Congress and President's approval of a ten year, \$1.5 billion authorization of federal funds for WMATA's Capital Improvement program. **The GWG will pursue further consultation** with the appropriate Congressional delegations as well as the recently released GAO report on WMATA governance issues.

CONCLUSION

This report represents an update on the GWG's initial phase of recommendations for improving WMATA governance, which were developed in consensus among the three jurisdictional partners. The GWG has met regularly, in a spirit of cooperation, to discuss important regional issues pertaining to WMATA governance. Recent actions by the WMATA Board and Governance Committee, including the introduction of Bylaws and revised Procedures, have not only been instructive to the work of the GWG but also demonstrate that the Board understands the need for reform.

The GWG looks forward to continued cooperation and collaboration with the WMATA Staff, Board and Governance Committee throughout the process of finalizing the Bylaws and Procedures, developing a Strategic Plan, coordinating a budget planning process and moving into the second phase of GWG recommendations, including the drafting of potential legislation and Compact amendments, the role of alternates and overall size of the Board. The U.S. Government Accountability Office report, initiated by Senator Mikulski, continues to be invaluable in assisting both the WMATA Board and the regional funding partners in these efforts.

