

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
*District Department of Transportation*



Joint Public Hearing:

B21-828, the Metrorail Safety Commission Interstate Compact Establishment Act  
of 2016

Testimony of  
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Before the

Committee of the Whole

And the

Committee on Finance and Revenue

Council of the District of Columbia

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Room 412  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004



Good afternoon Chairman Mendelson, Chairman Evans and members of the Committee of the Whole and the Committee on Finance and Revenue. I am Leif Dormsjo, Director of the District Department of Transportation or DDOT. I am pleased to testify before you today on Bill 21-828, the Metro Safety Commission Interstate Compact Establishment Act of 2016.

The purpose of Bill 21-828 is to establish the Metrorail Safety Commission, through interstate compact, that will provide necessary safety oversight of the fixed guideway system operated by the Washington Metropolitan Area Transit Authority (WMATA), which I may also refer to as Metrorail.

This bill is critical to Metrorail safety. As proposed, the Metrorail Safety Commission will be the lead safety oversight agency of Metrorail, as prescribed in the requirements of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). In this capacity, the Commission will be charged with ensuring that WMATA is meeting safety standards and enforcing those safety standards. As an interstate compact, this legislation requires coordinated legislative action from all the signatory jurisdictions. This Compact will be between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. After discussions with our partner jurisdictions, it was decided that the District would take a leadership role and move legislation first. The Council's consideration of the legislation will be followed by consideration by our partner jurisdictions, with the goal of approval of identical legislation by all three jurisdictions no later than early in 2017 and Congressional ratification soon thereafter.

For more than a year, the three jurisdictions have been working together, with the assistance of the Metropolitan Washington Council of Governments, to identify the most appropriate mechanism for establishing this Commission. We have been working diligently to



ensure that this enabling legislation provides for a legally and financially independent organization that will satisfy the requirements under federal law. It is important to note that the governance structure of WMATA, which reflects the fact that the system provides service to three independent jurisdictions, is the most unique rail transit system in the country and necessitates a compact structure as has been defined in this legislation.

The Metrorail Safety Commission will assume the State Safety Oversight functions previously performed by the Tri-State Oversight Committee (TOC). The TOC was formed by a memorandum of agreement between DC, Maryland and Virginia and performed its duties pursuant to 49 Code Federal Regulations Part 659. Under those regulations, State Safety Oversight Agencies had no authority to enforce fines, civil actions or other penalties based on their findings. The Federal Transit Administration or (FTA) originally intended the State Safety Oversight program to function as a “cooperative” regulatory framework between the states and transit agencies. Indeed, it was not designed to operate under the traditional regulatory framework of fines and penalties. Given the new regulatory framework, all State Safety Oversight Agencies are undergoing a new FTA certification process. The adoption of this legislation is part of the certification process for the Metrorail Safety Commission and will imbue the Commission with the authority it needs to carry out its legislated mandate.

Once established, the Metrorail Safety Commission will be an independent agency, with all staff functions either housed within or contracted by the organization. Unlike many SSOAs, it will not be housed within a state agency. It will be funded by a combination of federal grant funds from FTA and equal contributions from each of the jurisdictions, to be made in an annual appropriation. The Commission will be governed by a six-member board of directors, with two members to be appointed by each jurisdiction. Additionally, each jurisdiction will appoint one



alternate. These appointments will be made in accordance with each jurisdiction's normal appointment procedures, which for the District means nomination by the Mayor and confirmation by the DC Council. Each member will have a background in transportation, transit safety, public finance or relevant engineering disciplines; be appointed to serve a four-year term with an option for reappointment to additional terms; and may not simultaneously hold elected public office.

At this point, I would like to point out a key change between the version of this bill that was introduced on July 11 and the updated version you have in front of you today. Jurisdictional staff members have heard the concerns about the need for transparency raised by legislators from each jurisdiction involved in this process, as well as from members of the public, including those who have testified here today. Let me assure you that the Commission will operate in an open and transparent fashion. The new version explicitly states in Section 21 that the Commission shall adopt the Federal Freedom of Information Act as its rules for open meeting and freedom of information policy. This removes the statement that the Commission board may adopt a different policy, which some have contended might lead to less restrictive policies. Nevertheless, much like Federal investigations of the National Transportation Safety Board, there are aspects of those investigations that will need to remain confidential while they are in progress. But the Commission will operate in an open and transparent fashion, including making sure all adopted final reports, annual reports and triennial system audits are made available to the public.

As I mentioned earlier, one of the key differences between this new Commission and its predecessor, the TOC, is that it will have enforcement powers consistent with Federal law under MAP-21. Those powers are enumerated in sections 30 and 31 of the legislation and include the following:



- Conduct investigations, inspections, examinations and testing of all Metrorail equipment, facilities, rolling stock and operations;
- Enter the Metrorail system for scheduled and unscheduled inspections
- Compel WMATA compliance with any Corrective Action Plan through citations, fines and other legal means;
- Restrict, suspend or prohibit rail service on part or all of the Metrorail system;
- Direct WMATA to remove personnel or contractors from Safety Sensitive Positions;
- Direct the WMATA Office of the Inspector General to conduct audits or investigations of safety-related matters and to provide the findings to the Commission.

Once this legislation passes in all three jurisdictions and receives Congressional ratification, the jurisdictions will begin the next phase of appointing the Commissioners, who will then hire an Executive Director and professional staff to build out the organization. The jurisdictions have engaged a management consultant, through the Metro Washington Council of Governments, to provide some benchmarks of other agencies across the country, including the FTA staffing associated with all of the surge activities occurring today. We are still working with the consultant to refine the details of the Commission's potential staffing needs.

Finally, I would like to highlight the collaborative work that has been undertaken by all three jurisdictions to get us to this point, and to commend my colleagues and the professional staff. Also, we would not have been able to get to this point without the hard work of the Metro Washington Council of Governments and the attorneys at Bean, Kinney & Korman. They have helped to provide additional balance and credibility to a process that could have easily gotten



mired in regional differences. It is essential that we continue to support each other through the legislative process to arrive at a final bill that can be approved by all three jurisdictions. We ask for your consideration and passage of this bill during this Council legislative session so that we may transmit that final version to Maryland and Virginia for consideration in their 2017 legislative sessions. This will keep us on track to establish the Metro Safety Commission around the middle of next year and get the organization up and running as expeditiously as possible.

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That concludes my testimony today on the Metrorail Safety Commission Interstate Compact Establishment Act of 2016. I want to thank you again for the opportunity to testify and I stand ready to respond to any questions you might have.

