

TRANSFORMING GOVERNANCE OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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IMPLEMENTATION PLAN AND SCHEDULE FOR WMATA GOVERNANCE REFORM



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presented by

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to

Mayor Vincent C. Gray
District of Columbia

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EXECUTIVE SUMMARY

On November 17, 2010, the Joint WMATA Governance Task Force (Task Force), sponsored by the Greater Washington Board of Trade (BOT) and the Metropolitan Washington Council of Governments (COG), issued *Moving Metro Forward: Report of the Joint WMATA Governance Review Task Force*. The Commonwealth of Virginia (VA), the State of Maryland (MD), and the District of Columbia (DC) welcomed the results of the report and remain united in their commitment to work together to advance reforms of WMATA. Since then, WMATA's Riders' Advisory Council (RAC) issued their *Report on Governance of the Washington Metropolitan Area Transit Authority*. Both the Task Force report and the RAC report reflect timely, significant, and thoughtful work on the part of Task Force and RAC members, which MD, DC, and VA, the Signatory jurisdictions to the WMATA Compact (Signatories), applaud.

As indicated in the Task Force report, "A growing number of area leaders and industry experts believe that significant shortcomings in the Washington Metropolitan Area Transit Authority's (WMATA) governance structure have contributed to a serious decline in Metro's performance." This has led to "declining public confidence in the ability of the Metro system to meet the region's needs" that has become "a major concern for regional leaders in both the public and private sectors." Furthermore, an April 2010 report by the Congressional Research Service (CRS) highlighted concerns that the WMATA Board of Directors "lacks the subject expertise and political independence" necessary to make the best decisions for WMATA.

The Signatories agree that while the original framework for the Board may have been appropriate, a new approach is needed to effectively oversee the management and operations of the nation's second largest rail transit system and sixth largest bus network. WMATA must ensure the safety, security and reliability of its services. To accomplish this goal, it is critical that an effective governance structure is in place. MD, VA, and DC must work together with the WMATA Board of Directors, its federal partners, and other stakeholders in the immediate-, medium-, and long-term to make certain that Metro's governance structure strengthens WMATA's role in meeting the mobility needs of the National Capital Region (Region).

On November 23, 2010, then-Mayor-elect Vincent C. Gray, Governor Martin O'Malley, and Governor Robert F. McDonnell directed their transportation executives to develop a comprehensive implementation plan and schedule for WMATA governance within 45 days. To do so, MD Transportation Secretary Beverley K. Swaim-Staley, VA Transportation Secretary Sean T. Connaughton, former District Transportation Director Gabe Klein, and Interim District Transportation Director Terry Bellamy reached out to and solicited input from key stakeholders, including Congressional members that represent WMATA's service area, the WMATA Board Chair, the Tri-State Oversight Committee (TOC), WMATA Interim General Manager Richard Sarles, the Washington Suburban Transit Commission Chair (WSTC), the Northern Virginia Transportation Commission Chair (NVTC), the DC Council Chair, representatives of the General Services Administration (GSA), and the WMATA Riders' Advisory Council (RAC). Due to the limited time to complete this Implementation Plan and Schedule, this outreach was

informal. However, to achieve the goals of the Task Force report, stakeholders were and must continue to be involved.

This Implementation Plan and Schedule is intended to serve as an aggressive response to strong concerns the Governors and Mayor have about WMATA performance and accountability, with immediate actions, as well as a process to resolve longer-term issues. It is a means to presenting concrete actions to be taken by the Signatories and the WMATA Board in the immediate-, medium-, and long-term to address WMATA's governance problems. Many of the recommendations contained in this Implementation Plan and Schedule appear to have wide acceptance among VA, MD, and DC. However, structural changes to the Board membership and WMATA Compact amendments require additional work. Certain questions remain among key stakeholders about those issues, though there appears to be a growing consensus that some actions to improve governance at WMATA are needed. It is important to note that a U.S. Government Accountability Office (GAO) report on WMATA governance was commissioned by U.S. Senator Barbara A. Mikulski, and is expected to be completed by July 1, 2011. This report will inform the U.S. Congress and federal executive branch's approach to WMATA governance and their deliberations on any potential Compact amendments.

The Board should be commended for defining the next General Manager as a Chief Executive Officer, with a clear delineation from the Board's policy-setting role. The Board also recently established a Committee on Governance to review the recommendations of the Task Force report directed to the Board, which also represents a positive step. To further these efforts, this Implementation Plan and Schedule recommends that immediate actions be taken, including urging the WMATA Board of Directors to implement a multi-year, regionally-focused chairmanship, working within the existing Compact. A joint letter will be sent to the WMATA Board to communicate this intent. This would assist in providing a longer-term policy focus of the Board, as well as ensuring a regional approach.

Additionally, the Signatories' Transportation Secretaries and Director will continue as the WMATA Governance Work Group (Work Group), in order to implement some of the recommendations, with appropriate input from appointing authorities, local jurisdictions and stakeholders. The WMATA Board should formally be consulted in the process. While the Task Force recommended creation of a WMATA Governance Commission, the Secretaries and Director believe that, given the questions regarding such structural changes, a non-permanent working group is appropriate to undertake a number of recommendations in the near-term.

Within the first six months of this implementation plan, the Work Group will define roles and responsibilities of the Board and Chair, in consultation with the Board of Directors. These roles and responsibilities may include business and financial planning practices recommended for adoption that will assist the Board in focusing on regional policy-level activities from a long-term perspective. Attaining regional and federal government consensus on roles and responsibilities is a critical step to informing potential future legislative actions. This will require additional outreach to appointing authorities defined in the Compact (WSTC, NVTC, DC Council, and GSA) and other key stakeholders, including partners in the federal executive branch (including GSA and the

U.S. Department of Transportation). Additionally, the Work Group will recommend a coordinated process for appointing Board members, including staggered terms and a uniform compensation policy.

Within the first year of this implementation plan, the Work Group will draft any legislation needed to implement governance changes. Specifying those actions will be the Work Group's detailed, critical thinking and recommendations on roles and responsibilities, stakeholder input, and consultations with the Region's Congressional delegation, as well as federal partners.

Within 24 months, any necessary legislation or WMATA Compact amendments would be the subject of action by the legislative and executive branches of the federal government, and local and state governments in VA, MD, and DC. Although discussions on the amendments will be initiated immediately in the coming year, it is the Signatories' shared understanding, based on prior experience, that it may take at least two years to have the Compact amendments adopted by all three legislative bodies, and the federal government, in identical form.

WMATA GOVERNANCE REFORM

IMPLEMENTATION PLAN

IMMEDIATE ACTIONS

There is an immediate need to improve governance, leadership, and accountability at WMATA. The WMATA Board of Directors is scheduled to meet on January 27, 2010. Prior to this meeting, certain members have and will be appointed to take the place of others. During this meeting, the Board would normally select a new Chair, welcome new members, and adopt a new set of Board Procedures. While structural changes to the Board are under consideration and will require additional input, it is clear from the Task Force and RAC reports that WMATA would benefit from immediate action where there is consensus. Therefore, the Board should be notified of regional expectations that certain practices and policies be replaced with others consistent with Task Force and RAC recommendations.

ACTION ITEM #1: Urge WMATA, in writing, to establish a multi-year regional Chairman and implement the Task Force's recommendations directed to the WMATA Board (see **Appendix**, page 14).

MONTHS ONE TO SIX

This phase will focus on defining roles and responsibilities of the Board and Chair, and developing regional and federal government consensus, a critical step in informing any actions to enact structural changes. Fundamental to that is a spirit of cooperation among the Signatories,

which created WMATA. The Governors and Mayor meet regularly on important regional issues, providing a forum for continued discussion about WMATA governance.

Because of the importance of WMATA to the individual Signatory jurisdictions and to the Region, a spirit of cooperation among the WMATA Signatories is critical. As the Task Force pointed out in *Moving Metro Forward*, in April 2010, Governor O'Malley, Governor McDonnell, and then-DC Mayor Adrian Fenty met to agree on a plan of action to cooperatively address WMATA's safety problems, focusing on improvements to the Tri-state Oversight Committee (TOC), the State Safety Oversight (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 MD and VA 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, efficient manner.

The spirit of cooperation that the Signatories demonstrated through their April 2010 meeting to improve safety at WMATA should continue such that the Governors and Mayor, and their Transportation Secretaries and Director, work together with the appointing authorities to improve governance, leadership, and accountability at WMATA. Establishment of a larger WMATA Governance Commission, as envisioned by the Task Force, however, would be premature without further discussions with the appointing authorities and other stakeholders. Still, it is important that the Governors and Mayor cooperate with key stakeholders to respond to those Task Force recommendations directed to the WMATA Governance Commission for implementation (see **Appendix**, page 14). Key stakeholders include the appointing authorities, representatives from the TOC and RAC, the GSA Administrator, and others who share a vested interest in improving WMATA governance.

During this initial phase of implementation, the MD and VA Transportation Secretaries and DDOT Director will continue as the WMATA Governance Work Group (Work Group), with appropriate input from appointing authorities, local jurisdictions, stakeholders, and the WMATA Board. Its focus will be on critical, deliberative discussions to propose, analyze, and finalize reforms for legislative action and/or Compact amendments that will be pursued for enactment in later phases of implementation.

While not addressed by the Task Force report, the role of the federal government in WMATA governance should be considered, in light of the federal government's unique interest in WMATA with respect to the dedicated funding it provides and the significant role WMATA's transit systems play in transporting the federal workforce. Such consideration will be undertaken in consultation with federal partners, including points of contact in the federal executive branch (GSA Administrator and U.S. Department of Transportation).

It is also important during the initial phase of implementation to consider two other issues not addressed in the Task Force report, in consultation with key stakeholders and regional and federal partners. This includes the RAC recommendation that the Board be required to focus on high-

level policy and objectives, act as a regional body so that WMATA staff responds less to guidance from individual members outside of official regional action, and decide matters through a clear, accessible public input process (see **Appendix**, page 15). Second, consideration should be given to safety-related Compact amendments (either through a new SSO Compact or through WMATA Compact amendments) that provide for a legal SSO entity with enforcement powers, as recommended by the Governors and Mayor in April 2010 as a long-term means to enhance safety oversight of WMATA's Metrorail system (see **Appendix**, page 15). During this time, the TOC Executive Committee will continue to meet regularly to address safety issues at WMATA and advise the Governors and Mayor of issues and concerns that may need their level of attention.

ACTION ITEM #2: The Work Group will report back within six months to the Governors and Mayor with:

- Defined roles and responsibilities for the Board and Chair, including 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;
- A recommended coordinated process for appointing Board members with an appropriate mix of attributes and qualifications, including staggered terms and a uniform compensation process;
- A recommendation on whether the jurisdictional veto should be limited through legislative action and/or Compact amendments, based on consultations with the Board's Governance Committee;
- A recommendation on whether to establish a legal SSO entity with enforcement powers;
- A recommendation on whether and how to require the Board to decide matters through a clear, accessible public input process;
- A defined role for the federal government in WMATA governance, in light of its unique interest in WMATA, based on consultations with points of contact identified in the federal executive branch; and
- Implementation options to achieve reform.

The Work Group will seek to provide these recommendations to the Governors and Mayor with formal input from the WMATA Board and key stakeholders. The process should allow for public participation.

ACTION ITEM #3: The Work Group will engage the WMATA Board's Governance Committee in order to assist the Board in implementing recommended reforms that require Board action.

MONTHS SEVEN TO TWELVE

This phase will include developing any legislation or Compact amendments that are absolutely necessary to agreed-upon WMATA governance reforms. A number of Task Force recommendations will require the Executives of the Signatories to coordinate consideration of the issues they seek to address, in consultation with local jurisdictions, the MD, VA, and DC Congressional delegations, and the federal executive branch. This includes coming to agreement

prior to pursuing Compact amendments on how the Governors, Mayor, and GSA will coordinate the process for appointing Board members, the role of alternate members, and firmly defining the roles and responsibilities of the Board and Chair. Such agreement must, at minimum, come from the Signatories, area delegation members, and the federal executive branch since MD, VA, and DC, and the federal government must enact Compact-amending legislation containing identical language.

These and other reforms will be the subject of actions taken by the Signatory jurisdictions, in consultation with local jurisdictions, the MD, VA, and DC Congressional delegation, and federal executive branch agencies (including GSA and DOT) in the first twelve months of implementation to prepare the way for the adoption of Compact amendments during the 2012 state legislative sessions in MD and VA.

ACTION ITEM #4: The Work Group will develop any draft legislation needed to implement reforms. This will follow consultations with the Congressional delegation, federal executive branch agencies, appointing authorities and local jurisdictions in the Region. Consultations will focus on the role of alternate members, Board member terms and/or term limits, qualifications and the selection process for the Chair. Federal interests should also be considered, including appropriate federal participation on the Board, given the dedicated funding the federal government provides to WMATA and the significant role WMATA's transit systems play in the effectiveness and efficiency of the federal workforce in the Region. Implementation of reforms may take the form of Compact amendments, and/or local and state legislation. The intent of this action is to ensure consensus on any necessary Compact amendment language prior to the Signatories' 2012 legislative sessions.

ACTION ITEM #5: Introduce and enact local and state legislation identified as appropriate vehicles for WMATA governance reform.

ACTION ITEM #6: Draft and finalize Compact amendments that would reflect the outcome of consultations with the Congressional delegation, federal executive branch agencies, and all the Appointing Authorities and local jurisdictions in the Region.

MONTHS THIRTEEN TO TWENTY-FOUR

Any absolutely necessary legislation or WMATA Compact amendments would be the subject of action by the legislative and executive branches of the federal government, and local and state governments in VA, MD, and DC. Based on prior experience, it may take at least two years to have the Compact amendments adopted by all three legislative bodies, and the federal government, in identical form.

ACTION ITEM #7: Finalize and advocate for enactment of the Compact amendments.

WMATA GOVERNANCE REFORM

WORK PLAN IMPLEMENTATION SCHEDULE

January 2011 <i>Immediate Action Items</i>	<ul style="list-style-type: none"> • Communicate to WMATA Board regional expectations that they implement procedural reforms. • Establish WMATA Governance Work Group.
January through June 2011 <i>Defining roles and responsibilities</i>	<ul style="list-style-type: none"> • Board of Directors to implement procedural changes. • Workgroup to report back with: <ul style="list-style-type: none"> – Defined roles and responsibilities for the Board and Chair, including 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 action; – A recommended coordinated process for appointing Board members with an appropriate mix of attributes and qualifications, including staggered terms and a uniform compensation process; – A recommendation on whether the jurisdictional veto should be limited through legislative action and/or Compact amendments, based on consultations with the Board's Governance Committee; – A recommendation on whether to establish a legal SSO entity with enforcement powers; – A recommendation on whether and how to require the Board to decide matters through a public input process; – A defined role for the federal government in WMATA governance, in light of its unique interest in WMATA, based on consultations with points of contact identified in the federal executive branch; and – Implementation options to achieve reform. • Workgroup to seek input from WMATA Board, NVTC, WSTC, Congressional staff, legislators, the federal Executive branch, other stakeholders and the public. • Review GAO report on WMATA Governance; develop and evaluate benefits of alternatives for implementation of structural changes.
July through December 2011 <i>Agreement on structural changes, draft legislation</i>	<ul style="list-style-type: none"> • The Governors and Mayor will meet in Summer 2011 to finalize agreement on legislative steps and any necessary structural changes, and communicate regional expectations to the WMATA Board. • Draft legislation to implement structural changes.
January through December 2012 <i>Legislative action</i>	<ul style="list-style-type: none"> • Introduce any necessary legislation for January 2012 legislative sessions. • Seek federal approval of Compact amendments.

Summary of Joint Task Force Recommendations and Recommended Actions

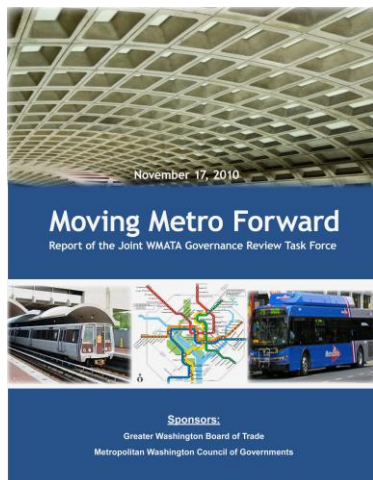
Board of Trade Recommendations	Comments	Recommended Action
Delineation of Responsibilities		
Create a WMATA Governance Commission.	Decisions on structural changes require consultations with the Congressional delegation. Some Task Force-recommended tasks for the Governance Commission are short-term in nature and can be achieved through other means.	Create a jurisdictional Work Group to undertake Task Force-recommended tasks for the Governance Commission.
Define the Board's responsibilities.	Implement. Regional consensus will benefit the Board.	Work Group to take action, in consultation with key stakeholders and federal partners.
Define the General Manager as the Chief Executive Officer.	The Board has already implemented this through their December 16, 2010 resolution and their recruitment process for the next WMATA General Manager.	Completed.
Composition of the Board		
Implement a coordinated process for appointing a Board with the right balance of attributes.	Such a process should be defined.	Work Group to take action, in consultation with key stakeholders and federal partners.
Amend the Compact to enable selection of the most qualified Board members.	There should be agreement on Board member qualifications and a process to achieve the appropriate balance of attributes. This recommendation may or may not require Compact amendments.	Work Group to take action, in consultation with key stakeholders and federal partners.
The Board should immediately restore the role of alternate members to that stated in the Compact.	The Board's Governance Committee is reviewing, having requested WMATA's General Counsel to provide a legal opinion on the role of alternates by January 16, 2011.	Work Group to take action, in consultation with key stakeholders and federal partners.
The Signatories should eliminate the role of alternates and increase the number of primary members from 2 to 3 for each Appointing Authority. One member should be designated by the Chief Executive of each Signatory.	Decisions on structural changes to the Board should occur following consultation with the delegation and definitions of roles and responsibilities.	Work Group to take action, in consultation with key stakeholders and federal partners.

Board of Trade Recommendations	Comments	Recommended Action
Composition of the Board (continued)		
The WMATA Governance Commission should introduce 4-year terms, staggered to ensure stability, including a maximum of one renewal.	This recommendation has merit and will be considered as part of the definition of a coordinated appointment process.	Work Group to take action, in consultation with key stakeholders and federal partners.
The WMATA Governance Commission should develop a uniform compensation policy.	Compensation levels need to take into account how jurisdictions treat this matter for similar Boards and Commissions.	Work Group to take action, in consultation with key stakeholders and federal partners.
Role of the Chair		
Develop a role description for the Board Chair.	Implement. Regional consensus will benefit the Board.	Work Group to take action, in consultation with key stakeholders and federal partners.
The Board should end the custom of rotating the Chairmanship and select a regionally-focused Chair from among its members, immediately under existing Compact.	Implement.	Executives to urge Board to implement immediately under existing Compact.
The Board should increase the term length of the Chair from one to two years.	Implement. The Compact requires an annual election of the Chair, but this recommendation may be implemented through Board policy.	Executives to urge Board to implement immediately under existing Compact.
The Signatories should amend the Compact to allow for selection of a Chair from outside the Board's membership, increase the Chair's term to 4 years, and agree on appropriate compensation for the Chair.	Decisions on structural changes to the Board should occur following consultation with the delegation and definitions of roles and responsibilities.	Work Group to take action, in consultation with key stakeholders and federal partners.
Decision-Making		
The Board should adopt a policy to limit use of the veto to matters relating to the budget or to system expansion.	The MD, VA, and DC transportation executives support a review of appropriate use of the veto. The Board's Governance Committee is reviewing the issue, having requested WMATA's General Counsel to provide a legal opinion on the role of the jurisdictional veto by January 16, 2011.	Executives will urge the Board to complete their review of the issue and provide input to the Signatories.
The Signatories should determine the appropriate role of the jurisdictional veto in WMATA's decision-making process and give serious consideration to eliminating it entirely through a Compact amendment.		Work Group to take action, in consultation with key stakeholders and federal partners.

Board of Trade Recommendations	Comments	Recommended Action
Decision-Making (continued)		
The Board should adopt a policy that all changes to committees and procedures require a majority vote, and establish a committee structure that is better-suited to WMATA's challenges, including committees on governance, safety and customer relations.	The Board created a Governance Committee, and has tasked it with reviewing the Task Force and RAC recommendations, as well as recommending a standing set of bylaws formalizing the Board's committee structure.	Executives to urge Board to implement immediately under existing Compact.
The Board should develop an orientation process and other leadership activities for Board members.	The Board's Governance Committee is to develop an orientation process.	Executives to urge Board to implement immediately under existing Compact.

APPENDIX:

SUMMARY OF JOINT TASK FORCE, RAC, AND SAFETY OVERSIGHT RECOMMENDATIONS



“The [Joint] Task Force recommends that the WMATA Governance Commission take the following actions in the immediate future, working within the terms of the Compact:

- ❖ Clearly define the Board’s responsibilities and set a uniform role description for Board members
- ❖ Clearly define the Chair’s responsibilities and role description
- ❖ Agree to and implement a coordinated process for appointing a WMATA Board with the right balance of attributes to serve Metro and the region
- ❖ Introduce staggered, 4-year terms, including a maximum of one renewal, for all Board members
- ❖ Develop a uniform compensation policy for all Board members to address inconsistencies in the current arrangements”

“The [Joint] Task Force recommends that the WMATA Board take the following actions in the immediate future to improve the functionality of the Board and its relationship with the General Manager and WMATA staff:

- ❖ Define the General Manager as WMATA’s Chief Executive Officer and give him or her clear authority and autonomy to oversee day-to-day management of WMATA
- ❖ Restore the role of alternate members to that stated in the Compact, which provides for their participation only when primary members are absent
- ❖ End the custom of annual rotation of the Chairmanship and select a regionally-focused Chair from among its membership
- ❖ Increase the term of the Chair from one to two years
- ❖ Adopt a policy to limit use of the veto to matters relating to the budget or to system expansion
- ❖ Adopt a policy that all changes in committees and procedures require a majority vote of the Board and establish a formal committee structure with committees on governance, safety, and customer relations at a minimum
- ❖ Develop an orientation process and other leadership activities for Board members”

“The [Joint] Task Force recommends that the Signatories to the WMATA Compact initiate action to make the following changes to the Compact:

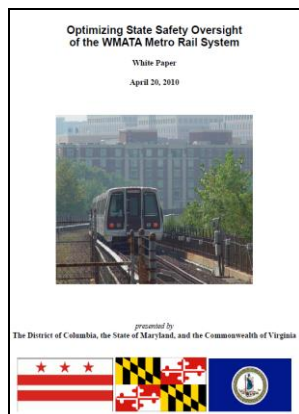
- ❖ Give the Appointing Authorities greater flexibility to select the most qualified Board members, whether they be elected or non-elected
- ❖ Eliminate the role of alternates and increase the number of primary members from two to three for each Appointing Authority, resulting in a 12-member Board, with one member appointed by the Chief Executive of each Signatory
- ❖ Enable the WMATA Governance Commission to appoint a Chair from outside the Board’s membership, agree on the compensation for the Chair, and increase the length of the Chair’s term to four years
- ❖ Determine the appropriate role for the veto in WMATA’s decision-making process, and give serious consideration to eliminating it entirely”



“The following recommendations in the RAC report were not addressed in the BOT/COG report, but we urge implementation:

- **The Board should focus on high-level policy and objectives.**
- **The Board should act as a body and staff should respond less to guidance from individual members outside of official action.**
- **Board decision-making should include a clear and accessible public input process.”**

-- Dec. 1, 2010 Response to COG and BOT Report on WMATA Governance, p. 6



“The Metro Safety Commission would provide for the safety oversight of the WMATA Metro Rail system, having the power to conduct and enforce the safety oversight of Metro, sue and be sued, and hire and fire staff. In this way, the MSC would ensure that all issues identified, from policy to staff-level, are no longer facilitated and processed by the three jurisdictions individually. The MSC, under its legal authority, would promulgate its own policies, rules, and regulations that dictate staff-level decisions and ensure that the MSC can effectively respond to critical oversight issues in a timely manner.”

-- *Optimizing State Safety Oversight of the WMATA Metro Rail System*, p. 6

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