

# TRANSFORMING GOVERNANCE OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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## GOVERNANCE WORK GROUP RECOMMENDATIONS REPORT



December 13, 2011



*presented by*

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## EXECUTIVE SUMMARY

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

Since the release of the implementation plan, the GWG has met regularly, in a spirit of cooperation, to discuss important regional issues pertaining to WMATA governance. Over the past year, the WMATA Board and Governance Committee have also worked diligently to undertake an impressive self-review, resulting in the Board's first-ever Bylaws, revised Procedures and Code of Ethics and the initiation of WMATA's strategic plan.

This report represents the GWG's recommended actions to be taken not only by the Board but the three Signatories and transportation executives. The GWG recommends that the successful implementation of these reforms include action taken by the Board, legislation adopted at the jurisdictional level and a Memorandum of Understanding, to be signed by the three transportation executives.

### *Recommendations to the Board*

While the GWG recognizes that the Board's new Bylaws and strategic planning process are an encouraging step towards reforming and enhancing Board governance, the GWG encourages the Board to continue working toward their successful integration into Board operations. Specifically **the GWG also recommends** that the Board:

- Establish a clear budget development and performance measurement process and schedules;
- Coordinate the budget planning process with funding jurisdictions; and
- Develop a multi-year strategic plan, established in the Bylaws, so that it is incorporated into the regular, ongoing activities of the Board and agency.

As a way to promote leadership and regional cooperation with a focus on long-term policy, **the GWG recommends** that a Board Chair serve at least two consecutive years but no more than four. This recommendation can be implemented without amending the Compact as the Compact requires that the Board hold an annual election, but does not prohibit the reelection of the incumbent Chair. Furthermore, **the GWG urges** the Board to review the Board and committee meeting schedule and reduce the frequency of meetings where appropriate.

With regard to modifying the size and/or structure of the board or the role of the alternate Board members, at this time the **GWG recommends** that the Board commit to implementing a system of smaller committees with a stronger role for Committee Chairs, whereby each committee consists of at least four but no more than eight Board members. The GWG believes that this restructuring would encourage the localities to work together within each member jurisdiction to develop a consensus on Board policy considerations prior to formal committee votes. The

streamlining of committee operations will help facilitate more efficient Board meetings with a focus on high-level, long-term policy. In addition, the GWG believes that smaller committees will provide greater opportunities for Board members to specialize in a specific area of interest and gain expertise.

**The GWG encourages** the Board to abide by the tenets set out in the Bylaws and revised Procedures, which require a jurisdiction that anticipates using its jurisdictional veto to provide advance notice and call on the Board Chair to attempt to resolve the conflict in advance of an actual Board vote.

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 Bylaws and Procedures 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. In addition, **the GWG reiterates** its suggestion that the Board examine the Open Meetings laws of the three jurisdictions to mirror as closely as possible the policies for Executive Sessions.

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

### *Legislation at the Jurisdictional Level*

In order to provide a coordinated process for appointing Board members, with an appropriate mix of attributes and qualifications, the GWG recommends adopting legislation at the jurisdictional level. Specifically, in order to achieve a more balanced and effective Board, **the GWG recommends** that the legislation:

- Implement ridership, attendance and reporting requirements;
- Codify Board member qualification requirements; and
- Transition the Board appointments to a system of staggered terms with term limits, whereby Board members and alternates are limited to two consecutive 4-year terms.

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 the entity responsible for compensation annually discloses the amount of, and justification for, the compensation for each Board member. 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 believes** that the structure of WMATA's State Safety Oversight (SSO) program, currently operated by the Tri-State Oversight Committee (TOC), needs to evolve into a more robust entity with enforcement authority. The GWG supports the TOC's previous 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 TOC's development of a proposed safety-related Compact amendment which would further define, clarify and bolster the TOC's legal oversight and enforcement authority. The GWG will continue to work with the TOC as discussions remain underway.

### *Memorandum of Understanding*

**The GWG recommends** that a Memorandum of Understanding be signed by the three transportation executives to ensure the practice of a meaningful, annual review of Board performance, the furtherance of a coordinated appointment process, and an overall balance of expertise represented on the board. Specifically, the goals of the Memorandum of Understanding are to:

- Set a general, overarching Board composition concept;
- Review and discuss WMATA's annual assessment of Board performance;
- Accept recommendations from the WMATA Governance Committee suggesting beneficial areas of subject matter expertise which subsequent Board appointees could provide;
- Commit to an annual joint meeting with the Governors, Mayor, WMATA General Manager and Chief Executive Officer and Board Chair to discuss WMATA progress and challenges; and
- Evaluate the Board's implementation of the GWG's recommendations approximately one year after the release of this report.

The GWG looks forward to continued cooperation and collaboration with WMATA Staff, the Board and the Governance Committee throughout the process of implementing the various recommendations discussed in greater detail throughout this report. The GWG will continue to work together to draft legislation and other implementation and review mechanisms necessary to ensure the meaningful review of the WMATA Board's performance, progress and remaining challenges.

## **INTRODUCTION**

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;
5. A recommendation on whether to establish a legal State Safety Oversight (SSO) entity with enforcement powers and in what form;
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.

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

The WMATA Board of Directors adopted new Procedures and their first-ever set of Bylaws in July 2011. The Bylaws 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 for reform 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, continuous cooperation and collaboration between the member jurisdictions, stakeholder input and public comments. The U.S. Government Accountability Office's (GAO) separate analysis of WMATA governance, released on June 30, 2011 also helped to inform the GWG's approach to WMATA governance and ongoing deliberations on potential Compact amendments.

## **RECOMMENDATIONS**

### **I. Defined Roles and Responsibilities of the Board and Chair**

A review of thirteen peer transit agencies revealed that eight have formally developed roles and responsibilities for their Boards. WMATA's 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 Bylaws, the WMATA Board conducted a self-assessment of its operations and thus far, it proves to have been an effective review. 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 WMATA Board’s 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 to establish best practices. **The GWG recommends** that the WMATA Board:

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

In addition, the GWG concurs with the GAO report’s observation that there is a high frequency of WMATA Board meetings. **The GWG recommends** that the Board review its annual schedule of Board and Board Committee meetings and reduce the frequency of meetings where appropriate. As indicated in comments made to the board by the GWG in May 2011, “*it is not necessary that every committee meet monthly or that any committee be a committee of the whole.*” Furthermore, as will be discussed in greater detail later in this report, the GWG specifically recommends that the WMATA Board reduce the size of each of its committees to include at least four, but no more than eight, Board members.

In an effort to maintain clear Board member roles and responsibilities and facilitate effective communication, **the GWG recommends** that the WMATA staff implement an orientation program for jurisdictional staff and other key stakeholders involved in WMATA governance. Currently, the Board’s Bylaw, Article XII.B only requires 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**

Seven of the thirteen peer transit agencies reviewed have formally developed roles or responsibilities for their Chairs. The WMATA Board's Bylaws outlined a clear description of the Chair's role and responsibilities. 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."

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, Bylaw Article III provides that the Chair "shall be elected without regard to jurisdiction of residence or representation," and 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 GWG applauds the Board's action to eliminate the practice of annual, jurisdictional rotation of the Chair position. The GWG believes that a multi-year Chair term provides greater stability, consistency and leadership to the Board. 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.

**Furthermore, the GWG recommends** that a Chair serve for at least two consecutive years but no more than four 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. The RAC report stated that, "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 report 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 these 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 launched a strategic planning effort during 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' 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 subsequently incorporate its goals, objectives, performance measures, and review/reporting mechanisms in the future.

With regard to the Board's ongoing strategic planning process, 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 draft 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.*

The comments submitted to the Board by the GWG also stated that the GWG is open to alternative timeframes, other than the proposed six-year business plan, and encourages the Board to commit to developing a multi-year business plan. While the final version of the Bylaws did not incorporate the GWG recommendation verbatim, the Board did address the need for a more consistent schedule for updates and the provision now reads as follows:

Article II.C.2: Create and adopt a budget, the fare structure, service levels and a business plan which shall be updated regularly.

- *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.*

This provision, which is now found under Article II.C.5, was not revised by the Board. Therefore, **the GWG further urges** the Board to adopt language in the Bylaws that require a performance and service review mechanism be implemented on a regular basis.

The WMATA Board continues to explore Strategic Planning and the development of Key Performance Indicators (KPIs). As identified on the Board's Work Plan, they will integrate KPI information with Strategic Planning to assure safe and reliable service from Metro, in order to ensure and maintain a high performing organization. **The GWG recommends** that the detailed work developed in these Strategic Planning sessions be adequately reflected and updated 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 GWG urges the Board** to 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 WMATA General Manager and Chief Executive Officer 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 draft 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.*

The GWG welcomes the following Bylaw provision:

Article II.C.3 Provide for a structured budget process developed in consultation with jurisdictional funding partners, including key milestones in the process for coordination and input. The GWG looks forward to the Board's successful implementation of this recommendation and will continue to work with the Board and the funding jurisdictions to ensure adequate coordination, planning and communication.

### **III. Coordinated Board Member Appointment Process**

The WMATA Board of Directors falls in line with the majority of its peer transit agencies with a Board comprised of both elected officials and non-elected officials. However, WMATA makes no stipulations regarding Board members' places of residence and only one of its members, a federal representative, is required to be a regular rider of the Metro system. In addition,

historically there have been no formal experiential qualification requirements for Board members. Furthermore, unlike all of its peers, the WMATA Board does not have a formal policy regarding term lengths and limits; members may serve indefinitely at 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:

#### **A. Ridership and Attendance; Reporting Requirement**

**The GWG recommends** that each jurisdiction adopt legislation requiring Principal Directors and Alternates to use the WMATA system's bus, rail or paratransit service on a regular basis in order to familiarize themselves with customer service, operational and performance issues. In addition, the legislation should require the Board members to submit annual reports to the Governor or Mayor, where applicable, affirming his or her use of the system as a rider, and documenting attendance at WMATA Board and assigned Board committee meetings and any other meeting where they serve in their official WMATA Board member capacity. This would enable each Signatory to ensure that his/her appointees adequately complete their service obligations, and would allow him/her to take affirmative steps to enforce active participation, if necessary.

#### **B. Experiential Requirement/ Tri-Jurisdictional Appointment Process**

The GWG recommends that the three Signatories 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 on the Board as they arise. In addition, the transportation executives 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 adopt legislation that formalizes expectations for 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.

**The GWG also recommends** that the Governance Committee be afforded an opportunity to provide input to the appointing authorities when a Board member vacancy arises. The

Governance Committee could provide an advisory letter to the applicable appointing authorities identifying the experiences and qualifications that would be most helpful to the overall Board composition when filling the vacancy.

In addition to developing and adopting legislative requirements, **the GWG recommends** that a Memorandum of Understanding be signed by the three transportation executives as an additional implementation mechanism to ensure the practice of a meaningful, annual review of Board performance, the furtherance of a coordinated appointment process, and an overall balance of expertise represented on the board. Specifically, the goals of the Memorandum of Understanding are to:

- Set a general, overarching Board composition concept;
- Review and discuss WMATA's annual assessment of Board performance;
- Accept recommendations from the WMATA Governance Committee suggesting beneficial areas of subject matter expertise which subsequent Board appointees could provide;
- Commit to an annual joint meeting with the Governors, Mayor, WMATA General Manager and Chief Executive Officer and Board Chair to discuss WMATA progress and challenges; and
- Evaluate the Board's implementation of the GWG's recommendations approximately one year after the release of this report.

### **C. 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 running 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 Board member's commitment.

In order to implement this proposal, Maryland, Virginia and the District of Columbia should adopt legislation which would provide for a transition into a new system of staggered, four-year terms with a maximum limit of two consecutive terms. For purposes of the overall term limits, an initial appointment of less than three years should not be counted. Additionally, the GWG recommends that members be allowed to continue service until replaced or reappointed by the respective appointing authority to prevent extended vacancies.

## **D. Board Member Compensation & 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 the entity responsible for compensation annually discloses the amount of and justification for the compensation of each Board member. 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 Board's Bylaws, Article VIII, part H, establish a means to resolve inter-signatory disputes without the use of the jurisdictional veto, and Article III, part A.7 makes it the Chair's responsibility to facilitate this process. The 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 that there is a role for the jurisdictional veto in WMATA governance. For the reasons outlined above **the GWG supports** the Board’s Bylaws and revised Procedures, which require 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. The GWG will continue to assess the Board’s use of the jurisdictional veto and if necessary will review potential alternatives to address any mis-use.

The GWG understands that the intent of the advance notice requirement is to call attention to the seriousness of the matter subject to a jurisdictional veto and to initiate an intensified discussion and negotiations period under the leadership of the Board Chair in order attempt to 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 remains committed to working together and with the Board to ensure efficient and effective Board operations. The GWG will re-visit this issue and identify any opportunities for improvement or alternative approaches, if necessary, at an annual review of the Board’s implementation of the GWG’s recommendations for governance reforms.

## **V. Strengthening the State Safety Oversight Agency**

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 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 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 comments on the Board's draft Bylaws and **the GWG agrees** that the Board's inclusion of this language in the Bylaws establishes and formalizes 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 replace the current TOC and exist as 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 this type of 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 opportunity to draft 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.

Pursuing this option allows for increased oversight of WMATA's safety, security and service reliability without adding unnecessary financial burdens or additional levels of bureaucracy. Instead, the new MSC would build upon the strengths of the current TOC while operating with an enhanced degree of authority and responsibility. **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 Committee Chair's discretion;
- The removal 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 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 draft 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.*

While this specific language was ultimately not included in the Bylaws, the GWG is encouraged by the Board's Procedures, III. A-C pertaining to Board communication with the public. The GWG remains committed to working together to ensure meaningful public participation and will continue to work with the Board and WMATA staff, to continue to improve the WMATA public input process.

## **VII. Use of Executive Session**

The GWG 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 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 draft 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.”*

The GWG reiterates its recommendation that the Board 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 their corresponding procedures.

In addition, while the GWG's suggested language was not included in the Board's Bylaws, the GWG is encouraged by the Board's Procedures. VI, which state that, “at the conclusion of each executive session, the Board or Committee shall reconvene in an open meeting to certify by an affirmative vote that only those matters identified prior to convening the executive session and only matters authorized by Bylaws Article X were heard, considered or discussed in the preceding executive session.” The GWG will continue to assess the need for any additional guidelines as necessary.

## **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 continue to work with** the appropriate

Congressional delegations and representatives of the federal government on WMATA governance reform as necessary.

## **IX. Structure and Size of the Board**

The GWG received compelling comments from various perspectives on the issue of the role of the alternates and potential modifications to the Board's structure and size. While some stakeholders oppose the current role of the alternates on the WMATA Board, and specifically their ability to vote at the committee level, others value the opportunity for individual jurisdictional representation that is provided by the alternates.

At this time, **the GWG recommends** that the Board commit to implementing a system of smaller committees with a stronger role for Committee Chairs. Based upon various public comments, stakeholder input and discussions with the Board, the GWG encourages the Board to implement a revised committee structure whereby each committee consists of at least four but no more than eight Board members. The GWG believes that this restructuring would encourage the localities to work together within each member jurisdiction to develop a consensus on Board policy considerations prior to formal committee votes. The streamlining of committee operations will help facilitate more efficient Board meetings with a focus on high-level, long-term policy. In addition, the GWG believes that smaller committees will provide greater opportunities for Board members to specialize in a specific area of interest and gain expertise.

Moving forward, the role of the alternate Board members and the overall size of the Board will remain important items for discussion. While smaller committees and a stronger role for the committee Chair should ultimately improve Board functionality, the GWG will continue to explore alternative options. For example, if the revised committee structure does not result in more effective Board operations, the GWG may pursue other structural changes, such as reducing the role of the alternate Board members in order to make the Board smaller and more efficient.

## **CONCLUSION**

This report represents the initial phase of recommendations for advancing WMATA governance reform and was 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 taken by the WMATA Board and Governance Committee, including the adoption 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 WMATA Staff, the Board and the Governance Committee throughout the process of implementing the Bylaws and Procedures, developing a strategic plan, coordinating a budget planning process and putting into practice the various GWG recommendations. The GWG will continue to work together to introduce legislation in each jurisdiction in the near future, in order to employ several of these recommendations and requirements in greater detail. 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. Furthermore, the GWG remains committed to working together to ensure the practice of a timely and meaningful review of WMATA's performance, progress and remaining challenges.

## APPENDIX I

### **GWG RECOMMENDATIONS REPORT *IMPLEMENTATION MECHANISMS***

#### **Recommendations to the Board**

The GWG applauds the Board's recent efforts to improve governance and encourages the successful implementation of the first-ever Bylaws and recently revised Procedures. The GWG also recommends the following:

- The Board Chair serves at least two but no more than four consecutive years;
- The Board commits to implementing a system of smaller committees with a stronger role for the Committee Chair, whereby each committee consists of a minimum of four but no more than eight Board members;
- Coordinates the WMATA budget planning process with the funding jurisdictions;
- Establish a clear budget development and performance measurement process and schedules;
- Establish a process in the Bylaws to ensure the strategic planning is incorporated into the regular, ongoing activities of the Board and agency;
- Review the Board's annual schedule of Board and Board committee meetings and reduce the frequency of meetings where appropriate;
- Abide by the advance notice and conflict resolution tenets of the Bylaws and Procedures when there is the potential for use of the jurisdictional veto;
- Enhance the public's awareness of WMATA's public communication and response policies;
- Limit the use of Executive Sessions, provide more detail on items on Executive Session agendas and examine the Open Meetings laws of the three jurisdictions to mirror as closely as possible the policies for Executive Sessions.

#### **Recommendations to the WMATA General Manager and Chief Executive Officer**

- Develop an annual work plan, similar to the New York Metropolitan Transportation Authority that outlines what is reviewed by the Board in each month.

#### **Recommendations to the WMATA Staff**

- Develop and implement an orientation program for jurisdictional staff and other key stakeholders involved in WMATA.

#### **Legislation at the Jurisdictional Level**

The three jurisdictions will work together to introduce legislation in the 2012 legislative session to:

- Implement ridership, attendance and reporting requirements, including:
  - Expectation that Board members are regular riders of the system;
  - Annual reporting requirement indicating attendance at Board and Board-related meetings and affirming his or her use of the system as a rider.

- Codify Board member qualification requirements:
  - Board members shall have experience in at least one of the following:
    - Transit, transportation or land use planning;
    - Transit, transportation or other public sector management;
    - Engineering;
    - Finance;
    - Public safety;
    - Homeland security;
    - Human resources;
    - Law; or
    - Knowledge of the region’s transportation issues derived from working on regional transportation issue resolution.
- Transition the Board appointments to a system of staggered 4-year terms with a maximum limit of two consecutive terms; and
- Require that the entity responsible for compensation annually discloses the amount, and justification for, the compensation for each Board member.

### **Memorandum of Understanding**

The goals of the Memorandum of Understanding, to be signed by the three transportation executives, are:

- Set a general, overarching Board composition concept;
- Review and discuss WMATA’s annual assessment of Board performance;
- Accept recommendations from the WMATA Governance Committee suggesting beneficial areas of subject matter expertise which subsequent Board appointees could provide;
- Commit to an annual joint meeting with the Governors, Mayor, WMATA General Manager and Chief Executive Officer and Board Chair to discuss WMATA progress and challenges; and
- Evaluate the Board’s implementation of the GWG’s recommendations approximately one year after the release of this report.

### **Potential Compact Amendments Currently Under Review**

- Discussions remain ongoing among the Tri–State Oversight Committee (TOC) executives regarding the potential for amending the Interstate Compact or proposing other federal legislation, in the next year or two, to strengthen the existing TOC and provide it with greater enforcement authority.
- The goal is to create a Metro Safety Commission (MSC), as successor to the Tri-State Oversight Committee (TOC), with a defined organizational structure and clear legal authority to conduct safety and security oversight of WMATA’s Metrorail system.