

Subject: Capital/PAYG- Status of Metro Safety Commission

**FY 2018 Proposed Budget
Budget Work Session Follow-up**

4/20/2017

The following information is provided in response to a request made by Mr. John Vihstadt at the work session on 4/4/2017, regarding bullet points on steps taken by Metro and the status of Metro Safety Commission activities.

The Metrorail Safety Commission (MSC) is an independent governmental entity being created to serve as WMATA's State Safety Oversight (SSO) commission. This comes in response to new requirements for SSO's under MAP-21 and the FAST Act. Previously, the Tri-State Oversight Committee (TOC) served in this role since 1997, however the FTA determined the TOC lacked enforcement authority over WMATA and took over safety oversight in 2015. A more detailed presentation composed by the VA Department of Rail & Public Transportation is attached. Below is a short list of the steps taken to form the MSC since February 2016 when the FTA set forth a February 2017 deadline for the creation of a SSO for WMATA:

- March 2015 – Virginia governor signed initial MOU creating MSC
- April 2015 to Current – Executive policy team from DC, MD, and VA has worked on the legal, structural, and legislative pieces to create the commission and to get approval from the participating jurisdictions.
- May 2016 – First draft of the Interstate Compact to create the MSC is drafted
- December 2016 – DC Council passed MSC bill
- February 2017 – VA passes MSC bill
- March 2017 – MD passes MSC bill
- Governor McAuliffe of Virginia and Governor Hogan of Maryland have both signed the uniform Metro Safety Commission (MSC) legislation that was approved by their state legislatures. The District of Columbia City Council still needs to make a technical correction to the legislation it passed in December 2016 to bring it into uniformity with the Virginia and Maryland legislation. Action by the DC City Council is expected soon.
- Congress will also need to ratify the legislation since it establishes an Interstate Compact, which requires Congressional approval. Congressional action will occur after the DC City Council takes its final action.

Virginia, Maryland and DC have been working together for the past year and continue to do so to stand up the MSC as a legally and financially independent state safety oversight organization. USDOT/FTA has been very involved in this effort.

Overview of the Metrorail Safety Commission

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Presentation Overview

- Introduction
- Regulatory Requirements
- Overview of Metro Safety Commission (MSC)
- Discussion

Introduction

State Safety Oversight (SSO)

- **1996:** FTA establishes SSO for rail systems not regulated by FRA
- **2012:** MAP-21 establishes new requirements for SSO
 - Legally and financially independent from rail system
 - Dedicated, trained, and qualified staff
- **2015:** FAST Act augments the FTA's safety authority
- **April 2016:** FTA issues new SSO Final Rule giving states 3 years to comply

Milestones Leading to the MSC

- **1997 to Present:** TOC formed via an MOU between VA, MD and DC and acted as WMATA's SSO
- **September 2015:** FTA cited TOC's lack of enforcement authority and took over safety oversight of WMATA
- **February 2016:** FTA threatened to begin withholding up to 5% of Federal Urbanized Area funds to VA-DC-MD if new SSO is not established by February 9, 2017
 - Approximately \$6M/year impact to Virginia
- FTA must certify that the MSC is able to assume safety oversight

Overview of Metro Safety Commission Legislation



Virginia Department of Rail and Public Transportation

MSC Development Process

- March 2015: Governor signed initial MOU creating MSC
- Since April 2015: DC-MD-VA Executive Policy Team has:
 - Identified and resolved policy issues
 - Evaluated potential legal structures for MSC
 - Incorporated FTA's Final Rule regulations (published in March 2016)
 - Hired independent legal advisors in February 2016 to draft final legislation
 - Created legislative working group in March 2016 to coordinate efforts
 - Sought and received FTA review and comments
 - Provided new Certification Work Plan to FTA
 - Engaged management consultant to benchmark other SSOs and present organization structure scenarios
 - Coordinated legislative approval process from DC, MD and VA, to be followed by Congressional approval

Policy Goals

- MSC will be an independent legal entity that performs safety oversight of WMATA metrorail
- Provide MSC with full safety oversight authority
- Have enforcement authority available under MAP-21 and FAST Act to compel action
- Create robust organization to match size and complexity of WMATA
- Assume all safety oversight responsibility from FTA once MSC is in place

Purpose and Functions

- DC, MD and VA will create the MSC pursuant to MAP-21, the FAST Act and the Final Rule to be the SSO agency for the WMATA Metrorail system
- The MSC is a common instrumentality of the signatories and will be financially and legally independent of WMATA
- Signatories – DC, MD and Virginia
 - Congressional ratification

Governance

- MSC is governed by a Board of Directors
 - 6 board members with 3 alternate members
 - Each signatory appoints 2 members and 1 alternate
 - Board members to have staggered terms
 - Member qualifications: background in transportation, safety, applicable engineering or public finance
 - Board elects its officers, establishes its bylaws, etc.
- Board appointed CEO will lead MSC staff and day-to-day operations

Administrative Powers

- Like WMATA, MSC operates as an independent governmental entity
 - Procurement, finance, personnel and records regulations based on federal law (not laws of the signatory jurisdictions)
- MSC Board will develop administrative and governance procedures through regulations
- MSC will adopt federal FOIA and open meeting laws
 - 5 U.S.C 552 (a)-(c) and 552b

Safety Powers

- The MSC is empowered to review, approve, oversee and enforce the safety plan of the WMATA rail system. The MSC may:
 - Review and approve WMATA's safety plan
 - Set and update minimum safety standards for WMATA
 - Require and enforce any Corrective Action Plans that the MSC deems appropriate

Enforcement Powers

- Compel compliance of MSC orders and standards by:
 - Taking legal action
 - Issuing citations or fines
 - Directing WMATA to prioritize spending on safety-critical items
 - Removing a vehicle, infrastructure element or hazard
 - Restricting, suspending or prohibiting rail service
 - Compelling WMATA to remove an individual from Safety Sensitive Position
 - Compelling WMATAs Office of the Inspector General to conduct safety-related audits or investigations
- MSC shall coordinate its enforcement activities with appropriate federal and state governmental authorities

Additional Powers and Procedures

- Investigate any emerging rail safety concerns
- Conduct inspections of WMATA property
 - MSC may access adjacent land to do perform inspections, if necessary
- Take primary responsibility for the investigation of accidents and prepare reports
- Audit WMATA's compliance with its own safety plan requirements

General Powers and Provisions

- The MSC must publish:
 - Annual Safety Report to FTA and signatories
 - Annual Report of Operations detailing its programs, operations and finances
 - Annual Independent Audit of its finances
- Due process provisions are included to permit WMATA to petition MSC to reconsider an order

Funding

- MSC is funded independently of WMATA
- FTA currently provides approximately \$1.5M/year in grants for SSO activities
- Non-Federal share to split equally by DC, MD, VA
- Virginia share estimated to be \$1M-\$2M/year
 - Jurisdictions currently examining organization structure
- DRPT expects to fund MSC through existing funding sources

Key Takeaways and Next Steps

- Safety is first and foremost the responsibility of WMATA
- Financial and legal independence is key to FTA Certification
- DC Council introduced legislation in July and plan to approve by December 2016
- Jurisdictions conducting early outreach now to identify major issues prior to 2017 legislative sessions

Discussion



Virginia Department of Rail and Public Transportation