



**Governance Committee**

**Item IV-A**

**September 11, 2014**

**Review of Ethics Changes Proposed by  
Jurisdictional Attorneys General**

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

Action  Information

MEAD Number:  
200750

Resolution:  
 Yes  No

**TITLE:**

Review of Proposed Ethics Changes

**PRESENTATION SUMMARY:**

Review changes to Board Code of Ethics proposed by jurisdictional attorneys.

**PURPOSE:**

The purpose of this item is to obtain Governance Committee review of changes to Board Code of Ethics proposed by jurisdictional attorneys.

**DESCRIPTION:**

The Board and leadership of WMATA are responsible for fostering high ethical standards for WMATA, its officers and employees, thereby strengthening public confidence that WMATA's programs are conducted with impartiality and integrity. The Board adopts a Code of Ethics to assure the highest degree of confidence and public trust in WMATA, and that the judgment of Board Members will not be compromised or affected by conflicting interests or the appearance of a conflict of interest.

**Key Highlights:**

- The Board Code of Ethics is a document that addresses a number of Board responsibilities including (but not limited to) resolving actual and apparent conflicts; making disclosures and acknowledgments; and addressing any violations.
- The Governance Committee asked staff to review changes to the Code of Ethics proposed by jurisdictional attorneys, and recommend appropriate revisions.

**Background and History:**

On January 23, 2014, the Governance Committee requested a review of the Board Code of Ethics in comparison to the Code of Ethics for the Metropolitan Washington Airports Authority (MWAA) Board. On March 13, 2014, the Governance Committee discussed the impact of adopting key MWAA ethics provisions. On April 24, 2014, the Governance Committee reviewed a draft revised Code of Ethics and related Bylaws clarification. On June 24, 2014, WMATA received proposed changes to the draft Code of Ethics from jurisdictional attorneys. On July 24, the Board addressed some of the proposed changes by approving Principles of Board Fiduciary Duties and Confidentiality.

**Discussion:**

The Governance Committee is considering adopting key provisions from the Metropolitan Washington Airports Authority (MWAA) Board Code of Ethics. The Governance Committee has prepared a working draft revised WMATA Code of Ethics based to the greatest extent possible on the MWAA Code. The Governance Committee wants to review revisions to this draft proposed by jurisdictional attorneys.

**FUNDING IMPACT:**

No funding impact because this is a matter of Board governance.	
Project Manager:	Kathryn Pett
Project Department/Office:	Office of General Counsel & Office of the Board Secretary

**TIMELINE:**

<b>Previous Actions</b>	On January 23, 2014, the Governance Committee requested a staff review and recommendation for revisions of the current Board of Code of Ethics in comparison to the Code governing the MWAA Board. On March 13, 2014, the Governance Committee discussed the impact of adopting key MWAA ethics provisions. On April 24, 2014, the Governance Committee reviewed a draft revised Code of Ethics and related Bylaws revision. On July 24, 2014, the Board approved Principles of Board Fiduciary Duties and Confidentiality.
<b>Anticipated actions after presentation</b>	Revise Code of Ethics to include Principles of Board Fiduciary Duties and Confidentiality, and as directed by Governance Committee in response to the changes proposed by jurisdictional attorneys. Seek Board approval of same.

**RECOMMENDATION:**

Governance Committee direct revisions to Board Code of Ethics in response to the changes proposed by jurisdictional attorneys.

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article III. Definitions</p> <p>Substantial Interest or Duty</p>	<p>Defines Substantial Interest or Duty, for purposes of conflicts, with exclusions for interests such as bank accounts and mutual funds.</p>	<p>Add two additional exclusions:</p> <ol style="list-style-type: none"> <li>1. any property owned, operated or managed by a Member's respective Jurisdiction;</li> <li>2. a Member's duty to represent or advocate on behalf of the jurisdiction</li> </ol>	<p>Modify AGs' proposed addition No. 1. Accept the proposal that Board members are not excluded from participating in matters when their jurisdictions have such a property interest but require the Member to disclose the interest prior to taking action. This approach would accommodate the AGs goal to allow Members to participate and the MWAA Code's goal (on which this provision is based) of transparency around apparent conflicts</p> <p>Decline AGs' proposed addition No. 2. This addition is not necessary as the current draft recognizes that Board members represent their jurisdictions' views and policies. See, Article II.C "Duty of Care." The additional language is confusing because a Member's duty to represent a Jurisdiction is not an "exclusion" of a Substantial Interest or Duty but is itself an affirmative duty.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article IV. Conflicts of Interest</p> <p>Apparent Conflict</p>	<p>Defines apparent conflict of interest as conduct beyond actual conflicts that would make a reasonable person question the Member's ability to act fairly and objectively. Establishes a per se rule that a benefit of \$25 or greater from a party with an interest in a matter before the board has an apparent conflict.</p>	<p>Remove the definition of apparent conflict and the per se rule.</p>	<p>Retain the Committee's current draft as necessary to achieve the Board's goals of transparency and accountability to the public.</p> <p>This language was identified by the Governance Committee as necessary to achieve the intent of the ethics code. The provision adopts a reasonable person standard and a per se rule limit based on ethics codes from MWAA and LACMTA.</p> <p>The Committee's language is consistent with best practices in the transit industry.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article V. Conflicts of Interest</p> <p>Divestment in Lieu of Recusal</p>	<p>Allows a Board member to return a benefit that gives rise to an apparent conflict in order to resolve the conflict and participate</p>	<p>Remove the divestment option. In effect, members would not be able to resolve conflicts through divesting and would be prohibited from acting based on the receipt of campaign contributions received even if without actual knowledge of the Board Member.</p>	<p>Retain the Committee's draft provision as necessary to accommodate Board Members who receive campaign contributions as elected officials.</p> <p>Elected Board members receive campaign contributions from many sources, and may not be able to determine at the time of receipt whether contributors have an interest in a matter before the Board. Later, when a matter arises in which a contributor has an interest, such as a joint development opportunity, the Board member will identify an apparent conflict of interest. The provision permits the Board member to return the benefit and participate in the matter, provided the Ethics Committee concurs that it cures the conflict. The divestment option achieves the Board's goals of disclosure and transparency without disenfranchising Board Members.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article V. Conflicts of Interest</p> <p>Compact-Required Participation</p>	<p>Board members may participate in a matter if required by section 8(a) of the Compact.</p> <p>The provision contemplates an unusual circumstance, such as an emergency, in which in order to reach a quorum the Board needs a member with a conflict to participate after full and public disclosure.</p>	<p>Remove Compact-required participation.</p> <p>AGs suggest that it is unneeded because Board members have alternates who can act for them in the event of a conflict.</p>	<p>Retain Committee's draft allowing for Compact-required participation so that the Board may act in limited circumstances such as emergencies without invoking a jurisdictional veto. WMATA cannot amend the Compact on its own.</p> <p>AGs' suggestion does not account for circumstances where alternates may not be available.</p>
<p>Article VII. Gifts</p> <p>Gifts to charities designated by members</p>	<p>General rule is that Board members may not designate another party to receive a Gift. There is an exception that would allow Board members to designate a charitable recipient to receive the gift following approval by Ethics Officer.</p>	<p>Remove exception to general rule due to the potential for abuse.</p>	<p>Accept the AGs' suggestion and remove the exception to the general rule.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
Article VII. Gifts Surrendering Gifts	Improper gifts are surrendered to the Ethics Officer.	Replace Ethics Officer with Ethics Committee.	Retain the Committee's draft, which follows the MWAA code. This procedure shields all Board members from association with an improper gift. It also allows for immediate disposition of an improper gift without the need to call a special meeting of the Ethics Committee.
Article IX. Use of Official Position Nepotism	Prohibits hiring or contracting with Household Members. More extended family, "Relatives," may be hired or party to a contract but the Board member cannot participate in those decisions.	Remove provision regarding Relatives.	Retain the Committee's draft, which sets one standard for closer family, "Household Members" (no hiring or contracting), and a different standard for more distant family, "Relatives" (members do not participate in decisions regarding hiring or contracting). The provisions are not mutually exclusive, as suggested by the AG's revision.
Article IX. Use of Official Position Post-WMATA Restrictions	Extends "revolving door" external employment prohibition from one year to two.	Limit prohibition to one year.	Retain the Committee's draft, which aligns WMATA with the MWAA Code.



**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article X. Disclosures and Acknowledgments</p> <p>Fiduciary Duties</p>	<p>Requires yearly acknowledgment of fiduciary duties.</p>	<p>Remove acknowledgment of fiduciary duties.</p>	<p>Retain the Committee's draft.</p> <p>Annual acknowledgment of Board member fiduciary duties contributes to strong ethics and sound governance. It is also consistent with other annual acknowledgment requirements under the Code and annual ethics training for Board members.</p>
<p>Article XI. Other Reports of Potential Conflicts and Suspected Ethics Violations</p>	<p>Explains that the statements of interests and potential violations submitted by Interested Parties and Joint Developers are intended to assist Board Members' with their disclosure requirements.</p>	<p>Remove explanation.</p>	<p>Retain the Committee's draft.</p> <p>The provision was added at the Committee's direction that the Code better explain compliance procedures.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
Article XII. Ethics Officer Investigations	Requires Ethics Officer to cease investigation of matters that involve criminal conduct, and refer it to the appropriate prosecutor.	Adds that the Ethics Committee must consent to the referral. As a result, the Ethics Officer would continue the investigation until receiving Ethics Committee approval—potentially interfering with a criminal investigation.	<p>Modify Committee's draft.</p> <p>Retain Committee's draft to the extent that upon discovering potential criminal conduct, the Ethics Officer should cease her investigation and refer the matter without delay to someone authorized to conduct criminal investigations so as not to interfere with a potential criminal matter.</p> <p>Strike "to the appropriate prosecutor" and replace with "to the WMATA Inspector General," who is the designated Board agent to handle criminal matters. Retain language requiring Ethics Officer to advise the Board Chair and Board Secretary.</p>
Article XIII. Ethics Committee Recommendation	Charges Ethics Committee to give special consideration to what information it includes in its public report to the Board to emphasize the privacy rights of Board members who have had an ethical matter decided by the Ethics Committee.	Delete provision.	Accept AGs' deletion.

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
<p>Article XIII. Ethics Committee</p> <p>Sanctions</p>	<p>Board determines sanctions. List of possible sanctions is not all-inclusive. Restates language of Compact Section 10 for willful violations of provision.</p>	<p>Modifies provision to require collaboration with Board member's jurisdiction to determine appropriate sanction; limits Board to list of possible sanctions.</p> <p>Also purports to modify Section 10 of the Compact by requiring concurrence of respective Jurisdiction in situation that, under Compact, gives authority to Board in limited situations for willful violation of Compact provision.</p>	<p>Modify Committee's draft.</p> <p>Compact section 10(b) makes the Board responsible for determining sanctions: "Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employee." The AGs' proposal would have the Board cede authority given to it under the Compact without a Compact amendment approved by the Signatories and Congress.</p> <p>Compromise by requiring Board to confer with member's jurisdiction before making a decision but leaving ultimate decision regarding to Board as set forth in Compact.</p>
<p>Appendix 1, Exceptions to Rule Against Accepting Gifts</p>	<p>Exception 4: Board members may accept free attendance from for speaking engagements sponsored by Prohibited Sources.</p>	<p>Add travel and lodging and do not require that Board member is participating on behalf of WMATA.</p>	<p>Retain Committee's draft. The provision follows MWAA's code, which does not permit the Authority to pay for travel or lodging.</p>

**Review of Code of Ethics Revisions Proposed by Attorneys General (June 24, 2014)**

Provision	WMATA Governance Committee Draft	AGs' Proposed Revision	Comments and Recommendation
	Exception 7: Competitive and random prizes up to \$25 dollars may be accepted from Prohibited Sources in certain circumstances.	Remove \$25 limit.	Retain Committee's draft. The provision follows MWAA's code, which has a \$25 limit.
	Exception 8: Members may accept ceremonial gifts from Prohibited Sources on WMATA's behalf, then turn them over to the Ethics Officer.	Remove requirement to turn over to Ethics Officer.	Retain Committee's draft. The provision follows MWAA's code, which requires members to surrender improper gifts to the Ethics Officer.