

Consent Item (B) 12-09-2021

Presented and Adopted: December 9, 2021

SUBJECT: REFORMS TO OFFICE OF INSPECTOR GENERAL

2021-46

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPLITAN AREA TRANSIT AUTHORITY

WHEREAS, Pursuant to Compact §§ 9 (a) and (d) the Inspector General is a permanent officer of WMATA and the Office of Inspector General (OIG) is a permanent independent and objective unit of WMATA; and

WHEREAS, The Board has previously approved the scope of duties, responsibilities, power and authority of the OIG (Res. 2006-18, 2007-33, and 2011-20); and

WHEREAS, On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act of 2021 (the "Infrastructure Act"); and

WHEREAS, In Section 30019(c) of the Infrastructure Act, Congress recognized the importance of a strong and independent OIG and requires the Board adopt certain reforms to the OIG as a condition of funding for WMATA; and

WHEREAS, Under Section 30019(c) of the Infrastructure Act, the Secretary of Transportation may not provide any amounts to WMATA under Section 602(f) of the Passenger Rail Investment and Improvement Act of 2008 until the Secretary certifies that the Board has passed a resolution adopting the reforms to the OIG set forth in Section 30019(c) of the Infrastructure Act, attached hereto as Attachment A;

WHEREAS, The Board also recognizes the importance of a strong and independent OIG, and the Board wishes to adopt the reforms to the OIG set forth in Section 30019(c) of the Infrastructure Act;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors adopts and directs staff to implement the reforms to the Office of Inspector General set forth in Section 30019(c) of the Infrastructure Investment and Jobs Act of 2021 as limited by that section, attached hereto as Attachment A; and be it finally

Motioned by Mr. Smedberg, seconded by Dr. Hadden Loh

Ayes: 8- Mr. Smedberg, Ms. Babers, Mr. Slater, Ms. Kline, Mr. Letourneau, Dr. Hadden Loh, Mr. Drummer and Ms. Martin-Proctor

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Compact Section 8(b).

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure No.:
2.1 Board of Directors

***PRIIA Reauthorization in the Bipartisan infrastructure bill, the
Infrastructure Investment and Jobs Act (IIJA) – H.R. 3684***

***SEC. 30019. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SAFETY, ACCOUNTABILITY, AND INVESTMENT.***

(a) Definitions.— In this section:

(1) BOARD.— The term “Board” means the Board of Directors of the Transit Authority.

(2) COMPACT.— The term “Compact” means the Washington Metropolitan Area Transit Authority Compact consented to by Congress under Public Law 89-774 (80 Stat. 1324).

(3) COVERED RECIPIENT.— The term “covered recipient” means—

(A) (i) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(ii) the Committee on Homeland Security and Governmental Affairs of the Senate;

(iii) the Committee on Transportation and Infrastructure of the House of Representatives; and

(iv) the Committee on Oversight and Reform of the House of Representatives;

(B) (i) the Governor of Maryland;

(ii) the President of the Maryland Senate; and

(iii) the Speaker of the Maryland House of Delegates;

(C) (i) the Governor of Virginia;

(ii) the President of the Virginia Senate; and

(iii) the Speaker of the Virginia House of Delegates;

(D) (i) the Mayor of the District of Columbia; and

(ii) the Chairman of the Council of the District of Columbia; and

(E) the Chairman of the Northern Virginia Transportation Commission.

(4) INSPECTOR GENERAL; OFFICE OF THE INSPECTOR GENERAL.— The terms “Inspector General” and “Office of Inspector General” mean the Inspector General and the Office of Inspector General, respectively, of the Transit Authority.

(5) TRANSIT AUTHORITY.— The term “Transit Authority” means the Washington Metropolitan Area Transit Authority established under Article III of the Compact.

(b) Reauthorization of Capital and Preventive Maintenance Grants to Washington Metropolitan Area Transit Authority.— Section 601(f) of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432; 122 Stat. 4970) is amended by striking “an aggregate amount” and all that follows through the period at the end and inserting “\$150,000,000 for each of fiscal years 2022 through 2030.”.

(c) Funds for Washington Metropolitan Area Transit Authority’s Inspector General.— Title VI of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432; 122 Stat. 4968) is amended by adding at the end the following:

“SEC. 602. FUNDING FOR INSPECTOR GENERAL.

“(a) Definitions.— In this section:

“(1) COMPACT.— The term ‘Compact’ means the Washington Metropolitan Area Transit Authority Compact consented to by Congress under Public Law 89-774 (80 Stat. 1324).

“(2) SECRETARY.— The term ‘Secretary’ means the Secretary of Transportation.

“(3) TRANSIT AUTHORITY.— The term ‘Transit Authority’ has the meaning given the term in section 601(a)(2).

“(b) Funding for Office of Inspector General of the Washington Metropolitan Area Transit Authority.— Subject to subsection (c), of the amounts authorized to be appropriated for a fiscal year under section 601(f), the Secretary shall use \$5,000,000 for grants to the Transit Authority for use exclusively by the Office of Inspector General of the Transit Authority for the operations of the Office in accordance with Section 9 of Article III of the Compact, to remain available until expended.

“(c) Matching Inspector General Funds Required From Transit Authority.— The Secretary may not provide any amounts to the Transit Authority for a fiscal year under subsection (b) until the Transit Authority notifies the Secretary that the Transit Authority has made available \$5,000,000 in non-Federal funds for that fiscal year for use exclusively by the Office of Inspector General of the Transit Authority for the operations of the Office in accordance with Section 9 of Article III of the Compact. ”.

(d) Reforms to Office of Inspector General.—

(1) SENSE OF CONGRESS.— Congress recognizes the importance of the Transit Authority having a strong and independent Office of Inspector General, as codified in subsections (a) and (d) of Section 9 of Article III of the Compact.

(2) REFORMS.— The Secretary of Transportation may not provide any amounts to the Transit Authority under section 601(f) of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432; 122 Stat. 4968) (as amended by subsection (b)), until the Secretary of Transportation certifies that the Board has passed a resolution that—

(A) provides that, for each fiscal year, the Office of Inspector General shall transmit a budget estimate and request to the Board specifying the aggregate amount of funds requested for the fiscal year for the operations of the Office of Inspector General;

(B) delegates to the Inspector General, to the extent possible under the Compact and in accordance with each applicable Federal law or regulation, contracting officer authority, subject to the requirement that the Inspector General exercise that authority—

(i) in accordance with Section 73 of Article XVI of the Compact, after working with the Transit Authority to amend procurement policies and procedures to give the Inspector General approving authority for exceptions to those policies and procedures; and

(ii) only as is necessary to carry out the duties of the Office of Inspector General;

(C) delegates to the Inspector General, to the extent possible under the Compact and in accordance with each applicable Federal law or regulation—

(i) the authority to select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Office of Inspector General, subject to the requirement that the Inspector General exercise that authority in accordance with—

(I) subsections (g) and (h) of Section 12 of Article V of the Compact; and

(II) personnel policies and procedures of the Transit Authority; and

(ii) approving authority, subject to the approval of the Board, for exceptions to policies that impact the independence of the Office of

Inspector General, but those exceptions may not include the use of employee benefits and pension plans other than the employee benefits and pension plans of the Transit Authority;

(D) (i) ensures that the Inspector General obtains legal advice from a counsel reporting directly to the Inspector General; and

(ii) prohibits the counsel described in clause (i) from—

(I) providing legal advice for or on behalf of the Transit Authority;

(II) issuing a legal opinion on behalf of the Transit Authority or making a statement about a legal position of the Transit Authority; or

(III) waiving any privilege or protection from disclosure on any matter under the jurisdiction of the Transit Authority; and

(E) requires the Inspector General to—

(i) post any report containing a recommendation for corrective action to the website of the Office of Inspector General not later than 3 days after the report is submitted in final form to the Board, except that—

(I) the Inspector General shall, if required by law or otherwise appropriate, redact—

(aa) personally identifiable information;

(bb) legally privileged information;

(cc) information legally prohibited from disclosure; and

(dd) information that, in the determination of the Inspector General, would pose a security risk to the systems of the Transit Authority; and

(II) with respect to any investigative findings in a case involving administrative misconduct, whether included in a recommendation or otherwise, the Inspector General shall publish only a summary of the findings, which summary shall be redacted in accordance with the procedures set forth in subclause (I);

(ii) submit a semiannual report containing recommendations of corrective action to the Board, which the Board shall transmit not later than 30 days after receipt of the report, together with any comments the Board determines appropriate, to—

(I) each covered recipient described in subsection (a)(3)(A); and

(II) any other recipients that the Board determines appropriate; and

(iii) not later than 2 years after the date of enactment of this Act and 5 years after the date of enactment of this Act, submit to each covered recipient a report that—

(I) describes the implementation by the Transit Authority of the reforms required under, and the use by the Transit Authority of the funding authorized under—

(aa) chapter 34 of title 33.2 of the Code of Virginia;

(bb) section 10-205 of the Transportation Article of the Code of Maryland; and

(cc) section 6002 of the Dedicated WMATA Funding and Tax Changes Affecting Real Property and Sales Amendment Act of 2018 (1-325.401, D.C. Official Code); and

(II) contains—

(aa) an assessment of the effective use of the funding described in subclause (I) to address major capital improvement projects;

(bb) a discussion of compliance with strategic plan deadlines;

(cc) an examination of compliance with the reform requirements under the laws described in subclause (I), including identifying any challenges to compliance or implementation; and

(dd) recommendations to the Transit Authority to improve implementation.

(e) Capital Program and Planning.—

(1) CAPITAL PLANNING PROCEDURES.— The Transit Authority may not expend any amounts received under section 602(b) of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432; 122 Stat. 4968), (as added by subsection (c)), until the General Manager of the Transit Authority certifies to the Secretary of Transportation that the Transit Authority has implemented—

(A) documented policies and procedures for the capital planning process that include—

(i) a process that aligns projects to the strategic goals of the Transit Authority; and

(ii) a process to develop total project costs and alternatives for all major capital projects (as defined in section 633.5 of title 49, Code of Federal Regulations (or successor regulations));

(B) a transit asset management planning process that includes —

(i) asset inventory and condition assessment procedures; and

(ii) procedures to develop a data set of track, guideway, and infrastructure systems, including tunnels, bridges, and communications assets, that complies with the transit asset management regulations of the Secretary of Transportation under part 625 of title 49, Code of Federal Regulations (or successor regulations); and

(C) performance measures, aligned with the strategic goals of the Transit Authority, to assess the effectiveness and outcomes of major capital projects.

(2) ANNUAL REPORT.— As a condition of receiving amounts under section 602(b) of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432; 122 Stat. 4968) (as added by subsection (c)), the Transit Authority shall submit an annual report detailing the Capital Improvement Program of the Transit Agency approved by the Board and compliance with the transit asset management regulations of the Secretary of Transportation under part 625 of title 49, Code of Federal Regulations (or successor regulations), to—

(A) each covered recipient; and

(B) any other recipient that the Board determines appropriate.

(f) Sense of Congress.— It is the sense of Congress that the Transit Authority should—

(1) continue to prioritize the implementation of new technological systems that include robust cybersecurity protections; and

(2) prioritize continued integration of new wireless services and emergency communications networks, while also leveraging partnerships with mobility services to improve the competitiveness of the core business.

(g) Additional Reporting.—

(1) IN GENERAL.— Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the congressional committees described in paragraph (2) a report that—

(A) assesses whether the reforms required under subsection (d) (relating to strengthening the independence of the Office of Inspector General) have been implemented; and

(B) assesses—

(i) whether the reforms required under subsection (g) have been implemented; and

(ii) the impact of those reforms on the capital planning process of the Transit Authority.

(2) CONGRESSIONAL COMMITTEES.— The congressional committees described in this paragraph are—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate;

(C) the Committee on Transportation and Infrastructure of the House of Representatives; and

(D) the Committee on Oversight and Reform of the House of Representatives.