

1 **COMMITTEE PRINT**
2 **Committee of the Whole**
3 **December 14, 2016**
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7 A BILL
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10 B21-828
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13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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18 To enact the Metrorail Safety Commission Interstate Compact to provide necessary safety
19 oversight of the rail fixed guideway system operated by the Washington Metropolitan
20 Area Transit Authority as required by Moving Ahead for Progress in the 21st Century
21 Act.
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24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this
25 act may be cited as the “Washington Metrorail Safety Commission Establishment Act of 2016”.

26 Sec. 2 The District of Columbia hereby consents to, adopts and enacts the Metrorail
27 Safety Commission Interstate Compact, substantially as follows:

28 **“PREAMBLE**

29 “WHEREAS, the Washington Metropolitan Area Transit Authority, an interstate compact
30 agency of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland,
31 provides transportation services to millions of people each year, the safety of whom is paramount;

32 “WHEREAS, an effective and safe Washington Metropolitan Area Transit Authority system
33 is essential to the commerce and prosperity of the National Capital region;

56 “(e) “MSC Compact” means the Washington Metrorail Safety Commission
57 Interstate Compact created by this act;

58 “(f) “Public Transportation Agency Safety Plan” means the comprehensive
59 agency safety plan for a rail transit agency required by 49 U.S.C. § 5329 and the regulations
60 thereunder, as may be amended or revised from time to time;

61 “(g) “Public Transportation Safety Certification Training Program” means the
62 federal certification training program, as established and amended from time and time by applicable
63 federal laws and regulations, for federal and state employees, or other designated personnel, who
64 conduct safety audits and examinations of public transportation systems, and employees of public
65 transportation agencies directly responsible for safety oversight;

66 “(h) “Safety Sensitive Position” means any position held by a WMATA
67 employee or contractor designated in the Public Transportation Agency Safety Plan for the
68 WMATA Rail System and approved by the Commission as directly or indirectly affecting the
69 safety of the passengers or employees of the WMATA Rail System;

70 “(i) “Signatory” means the State of Maryland, the Commonwealth of Virginia,
71 and the District of Columbia;

72 “(j) “State”, “state”, or “jurisdiction” means the District of Columbia, the State of
73 Maryland, and the Commonwealth of Virginia;

74 “(k) “Washington Metropolitan Area Transit Authority” or “WMATA” is the
75 entity created by the WMATA Compact, which entity is responsible for providing certain rail fixed
76 guideway public transportation system services;

77 “(l) “WMATA Compact” means the Washington Metropolitan Area Transit
78 Authority Compact (Public Law 89–774; 80 Stat. 1324); and

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“ARTICLE III

“ESTABLISHMENT AND ORGANIZATION

“A. Washington Metrorail Safety Commission

“4. The Commission is hereby created as an instrumentality of each Signatory, which shall be a public body corporate and politic, and which shall have the powers and duties set forth in this MSC Compact.

“5. The Commission shall be financially and legally independent from WMATA.

“B. Board Membership

“6. The Commission shall be governed by a Board of six Members with two Members appointed or reappointed (including to fill an unexpired term) by each Signatory pursuant to the Signatory’s applicable laws.

“7. Each Signatory shall also appoint or reappoint (including to fill an unexpired term) one Alternate Member pursuant to the Signatory’s applicable laws.

“8. An Alternate Member shall participate and take action as a Member only in the absence of one or both Members appointed from the same jurisdiction as the Alternate Member’s appointing jurisdiction and, in such instances, may cast a single vote.

“9. Members and Alternate Members shall have backgrounds in transit safety, transportation, relevant engineering disciplines, or public finance.

“10. No Member or Alternate Member shall simultaneously hold an elected public office, serve on the WMATA board of directors, be employed by WMATA, or be a contractor to WMATA.

123 “11. Each Member and Alternate Member shall serve a four-year term and may be
124 reappointed for additional terms; except that, each Signatory shall make its initial appointments
125 as follows:

126 “(a) one Member shall be appointed for a four-year term;

127 “(b) one Member shall be appointed for a two-year term; and

128 “(c) the Alternate Member shall be appointed for a three-year term.

129 “12. Any person appointed to fill a vacancy shall serve for the unexpired term.

130 “13. Members and Alternate Members shall be entitled to reimbursement for
131 reasonable and necessary expenses and shall be compensated for each day spent meeting on the
132 business of the Commission at a rate of \$200 per day or at such other rate as may be adjusted in
133 appropriations approved by all of the Signatories.

134 “14. A Member or an Alternate Member may be removed or suspended from office
135 only for cause in accordance with the laws of such Member’s or Alternate Member’s appointing
136 jurisdiction.

137 **“C. Quorum and Actions of the Board**

138 “15. Four Members shall constitute a quorum. The affirmative vote of four Members
139 is required for action of the Board, other than as provided in Section 32. Quorum and voting
140 requirements under this paragraph may be met with one or more Alternate Members pursuant to
141 Section 8.

142 “16. The Commission action shall become effective upon enactment unless otherwise
143 provided for by the Commission.

144 **“D. Oath of Office**

145 “17. Before entering office, each Member and Alternate Member shall take and
146 subscribe to the following oath (or affirmation) of office or any such other oath or affirmation as
147 the constitution or laws of the Signatory he or she represents shall provide:

148 “I, _____, hereby solemnly swear (or affirm) that I will support and defend the
149 Constitution and the laws of the United States as a Member (or Alternate Member) of the
150 Board of the Washington Metrorail Safety Commission and will faithfully discharge the
151 duties of the office upon which I am about to enter.”

152 **“E. Organization and Procedure**

153 “18. The Board shall provide for its own organization and procedure. Meetings of the
154 Board shall be held as frequently as the Board determines, but in no event less than quarterly.
155 The Board shall keep minutes of its meetings and establish rules and regulations governing its
156 transactions and internal affairs, including, without limitation, policies regarding records
157 retention that are not in conflict with applicable federal record retention laws.

158 “19. The Commission shall keep commercially reasonable records of its financial
159 transactions in accordance with accounting principles generally accepted in the United States of
160 America.

161 “20. The Commission shall establish an office for the conduct of its affairs at a
162 location to be determined by the Commission.

163 “21. The Commission shall adopt the Federal Freedom of Information Act 5 U.S.C. §
164 552(a)-(d) and (g), and Government in the Sunshine Act, codified at 5 U.S.C. 552b, as both may
165 be amended from time to time, as its freedom of information policy and open meeting policy,
166 respectively, and shall not be subject to the comparable laws or policies of any Signatory.

167 “22. Reports of investigations or inquiries adopted by the Board shall be made publicly
168 available.

169 “23. The Commission shall adopt a policy on conflict of interest that shall be
170 consistent with the regulations issued under 49 U.S.C. § 5329, as they may be revised from time
171 to time, which, among other things, places appropriate separation between Members, officers,
172 employees, contractors, and agents of the Commission and WMATA.

173 “24. The Commission shall adopt and utilize its own administrative procedure and
174 procurement policies in conformance with applicable federal regulations and shall not be subject
175 to the administrative procedure or procurement laws of any Signatory.

176 **“F. Officers and Employees**

177 “25. The Board shall elect a Chairman, Vice Chairman, Secretary, and Treasurer from
178 among its Members, each for a two-year term and shall prescribe their powers and duties.

179 “26. The Board shall appoint and fix the compensation and benefits of a chief
180 executive officer who shall be the chief administrative officer of the Commission and who shall
181 have expertise in transportation safety and one or more industry-recognized transportation safety
182 certifications.

183 “27. Consistent with 49 U.S.C. § 5329, as may be amended from time to time, the
184 Commission may employ, under the direction of the chief executive officer, such other technical,
185 legal, clerical, and other employees on a regular, part-time, or as-needed basis as it determines
186 necessary or desirable for the discharge of its duties.

187 “28. The Commission shall not be bound by any statute or regulation of any Signatory
188 in the employment or discharge of any officer or employee of the Commission, but shall develop
189 its own policies in compliance with federal law. The MSC shall, however, consider the laws of

190 the Signatories in devising its employment and discharge policies, and when it deems it practical,
191 devise policies consistent with the laws of the Signatories.

192 “29. The Board may fix and provide policies for the qualification, appointment,
193 removal, term, tenure, compensation benefits, worker’s compensation, pension, and retirement
194 rights of its employees subject to federal law. The Board may also establish a personnel system
195 based on merit and fitness and, subject to eligibility, participate in the pension, retirement, and
196 worker’s compensation plans of any Signatory or agency or political subdivision thereof.

197 **“ARTICLE IV**

198 **“POWERS**

199 **“A. Safety Oversight Powers**

200 “30. In carrying out its purposes, the Commission, through its Board or designated
201 employees or agents, shall, consistent with federal law:

202 “(a) adopt, revise, and distribute a written State Safety Oversight Program;

203 “(b) review, approve, oversee, and enforce the adoption and implementation of
204 WMATA’s Public Transportation Agency Safety Plan;

205 “(c) require, review, approve, oversee, and enforce the adoption and
206 implementation of any Corrective Action Plans that the Commission deems appropriate;

207 “(d) implement and enforce relevant federal and State laws and regulations
208 relating to safety of the WMATA Rail System; and

209 “(e) audit every three years the compliance of WMATA with WMATA’s
210 Public Transportation Agency Safety Plan or conduct such an audit on an ongoing basis over a
211 three-year time frame.

212 “31. In performing its duties, the Commission, through its Board or designated
213 employees or agents, may:

214 “(a) conduct, or cause to be conducted, inspections, investigations,
215 examinations, and testing of WMATA personnel and contractors, property, equipment, facilities,
216 rolling stock, and operations of the WMATA Rail System, including, without limitation,
217 electronic information and databases through reasonable means, which may include issuance of
218 subpoenas;

219 “(b) enter upon the WMATA Rail System and, upon reasonable notice and a
220 finding by the chief executive officer that a need exists, upon any lands, waters, and premises
221 adjacent to the WMATA Rail System, including, without limitation, property owned or occupied
222 by the federal government, for the purpose of making inspections, investigations, examinations,
223 and testing as the Commission may deem necessary to carry out the purposes of this MSC
224 Compact, and such entry shall not be deemed a trespass. The Commission shall make reasonable
225 reimbursement for any actual damage resulting to any such adjacent lands, waters, and premises
226 as a result of such activities;

227 “(c) compel WMATA’s compliance with any Corrective Action Plan or order
228 of the Commission by such means as the Commission deems appropriate, including, without
229 limitation, by:

230 “(1) taking legal action in a court of competent jurisdiction;

231 “(2) issuing citations or fines with funds going into an escrow account
232 for spending by WMATA on Commission-directed safety measures;

233 “(3) directing WMATA to prioritize spending on safety-critical items;

234 “(4) removing a specific vehicle, infrastructure element, or Hazard from
235 the WMATA Rail System; and

236 “(5) compelling WMATA to restrict, suspend, or prohibit rail service
237 on all or part of the WMATA Rail System with an appropriate notice period dictated by the
238 circumstances;

239 “(d) direct WMATA to suspend or disqualify from performing in any Safety
240 Sensitive Position an individual who is alleged to or has violated safety rules, regulations,
241 policies, or laws;

242 “(e) compel WMATA’s Office of the Inspector General, created under
243 WMATA board resolution 2006-18, or any successor WMATA office or organization having
244 similar duties, to conduct safety-related audits or investigations and to provide its findings to the
245 Commission; and

246 “(f) take such other actions as the Commission may deem appropriate
247 consistent with its purpose and powers.

248 “32. Action by the Board under Section 31 (c)(5) shall require the unanimous vote of
249 all Members present and voting. The Commission shall coordinate its enforcement activities with
250 appropriate federal and State governmental authorities.

251 **“B. General Powers**

252 “33. In addition to the powers and duties set forth above, the Commission may:

253 “(a) sue and be sued;

254 “(b) adopt, amend, and repeal rules and regulations respecting the exercise of
255 the powers conferred by this MSC Compact;

256 “(c) create and abolish offices, employments, and positions (other than those
257 specifically provided for in this MSC Compact) necessary or desirable for the purposes of the
258 Commission;

259 “(d) determine a staffing level for the Commission that is commensurate with
260 the size and complexity of the WMATA Rail System, and require that employees and other
261 designated personnel of the Commission, who are responsible for safety oversight, be qualified
262 to perform such functions through appropriate training, including, without limitation, successful
263 completion of the Public Transportation Safety Certification Training Program;

264 “(e) contract for or employ consulting attorneys, inspectors, engineers, and
265 such other experts necessary or desirable and, within the limitations prescribed in this MSC
266 Compact, prescribe their powers and duties and fix their compensation;

267 “(f) enter into and perform contracts, leases, and agreements necessary or
268 desirable in the performance of its duties and in the execution of the powers granted under this
269 MSC Compact;

270 “(g) apply for, receive, and accept such payments, appropriations, grants, gifts,
271 loans, advances, and other funds, properties, and services as may be transferred or made
272 available to it by the United States government or any other public or private entity or individual,
273 subject to the limitations specified in Section 42;

274 “(h) adopt an official seal and alter the same at its pleasure;

275 “(i) adopt and amend by-laws, policies, and procedures governing the
276 regulation of its affairs;

277 “(j) appoint one or more advisory committees; and

301 **“B. Annual Report of Operations**

302 “37. The Commission shall make and publish an annual report on its programs,
303 operations, and finances, which shall be distributed in the same manner provided by Section 35.

304 “38. The Commission may also prepare, publish, and distribute such other public
305 reports and informational materials as it deems necessary or desirable.

306 **“C. Annual Independent Audit**

307 “39. An independent annual audit shall be made of the financial accounts of the
308 Commission. The audit shall be made by qualified certified public accountants selected by the
309 Board, who shall have no personal interest, direct or indirect, in the financial affairs of the
310 Commission or any of its officers or employees. The report of audit shall be prepared in
311 accordance with generally accepted auditing principles and shall be distributed in the same
312 manner provided by Section 35. Members, employees, agents, and contractors of the
313 Commission shall provide access to information necessary or desirable for the conduct of the
314 annual audit.

315 **“D. Financing**

316 “40. The Commission’s operations shall be funded, independently of WMATA, by the
317 Signatory jurisdictions and, when available, by federal funds. The Commission shall have no
318 authority to levy taxes.

319 “41. The Signatories shall unanimously agree on adequate funding levels for the
320 Commission and make equal contributions of such funding, subject to annual appropriation, to
321 cover the portion of Commission operations not funded by federal funds.

322 “42. The Commission may borrow up to five percent (5%) of its last annual
323 appropriations budget in anticipation of receipts, or as otherwise set forth in the appropriations

324 budget approved by all of the Signatories, from any lawful lending institution for any purpose of
325 this Compact, including, without limitation, for administrative expenses. Such loans shall be for
326 a term not to exceed two years, or at such longer term approved by each Signatory pursuant to its
327 laws as evidenced by the written authorization by the Mayor of the District of Columbia and the
328 Governors of Maryland and Virginia, and at such rates of interest as shall be acceptable to the
329 Commission.

330 “43. With respect to the District of Columbia, the commitment or obligation to render
331 financial assistance to the Commission shall be created, by appropriation or in such other
332 manner, or by such other legislation, as the District of Columbia shall determine; provided, that
333 any such commitment or obligation shall be approved by Congress pursuant to the District of
334 Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-
335 201.01 *et seq.*).

336 “44. Pursuant to the requirements of 31 U.S.C. §§ 1341, 1342, 1349 to 1351, and 1511
337 to 1519, and D.C. Official Code §§ 47-105 and 47-355.01 to 355.08 (collectively, the “Anti-
338 Deficiency Acts”), the District cannot obligate itself to any financial commitment in any present
339 or future year unless the necessary funds to pay that commitment have been appropriated and are
340 lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts,
341 nothing in the MSC Compact creates an obligation of the District in anticipation of an
342 appropriation for such purpose, and the District’s legal liability for the payment of any amount
343 under this MSC Compact does not and may not arise or obtain in advance of the lawful
344 availability of appropriated funds for the applicable fiscal year.

345 **“E. Tax Exemption**

346 “45. The exercise of the powers granted by this MSC Compact shall in all respects be
347 for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the
348 State of Maryland and for the increase of their safety, commerce, and prosperity, and as the
349 activities associated with this MSC Compact shall constitute the performance of essential
350 governmental functions, the Commission shall not be required to pay any taxes or assessments
351 upon the services or any property acquired or used by the Commission under the provisions of
352 this MSC Compact or upon the income therefrom, and shall at all times be free from taxation
353 within the District of Columbia, the Commonwealth of Virginia, and the State of Maryland.

354 **“F. Reconsideration of Commission Orders**

355 “46. WMATA shall have the right to petition the Commission for reconsideration of an
356 order based on rules and procedures developed by the Commission.

357 “47. Consistent with Section 16, the filing of a petition for reconsideration shall not act
358 as a stay upon the execution of a Commission order, or any part of it, unless the Commission
359 orders otherwise. WMATA may appeal any adverse action on a petition for reconsideration as
360 set forth in Section 48.

361 **“G. Judicial Matters**

362 “48. The United States District Courts for the Eastern District of Virginia, Alexandria
363 Division, the United States District Courts for the District of Maryland, Southern Division, and
364 the United States District Courts for the District of Columbia shall have exclusive and original
365 jurisdiction of all actions brought by or against the Commission and to enforce subpoenas under
366 this MSC Compact.

367 “49. The commencement of a judicial proceeding shall not operate as a stay of a
368 Commission order unless specifically ordered by the court.

369 **“H. Liability and Indemnification**

370 “50. The Commission and its Members, Alternate Members, officers, agents,
371 employees, or representatives shall not be liable for suit or action or for any judgment or decree
372 for damages, loss, or injury resulting from action taken within the scope of their employment or
373 duties under this MSC Compact, nor required in any case arising or any appeal taken under this
374 MSC Compact to give a supersedeas bond or security for damages. Nothing in this paragraph
375 shall be construed to protect such person from suit or liability for damage, loss, injury, or
376 liability caused by the intentional or willful and wanton misconduct of such person.

377 “51. The Commission shall be liable for its contracts and for its torts and those of its
378 Members, Alternate Members, officers, agents, employees, and representatives committed in the
379 conduct of any proprietary function, in accordance with the law of the applicable Signatory
380 (including, without limitation, rules on conflict of laws) but shall not be liable for any torts
381 occurring in the performance of a governmental function. The exclusive remedy for such breach
382 of contract or tort for which the Commission shall be liable, as herein provided, shall be by suit
383 against the Commission. Nothing contained in this MSC Compact shall be construed as a waiver
384 by the District of Columbia, the Commonwealth of Virginia, or the State of Maryland of any
385 immunity from suit.

386 **“I. Commitment of Parties**

387 “52. Each of the Signatories pledges to each other faithful cooperation in providing
388 safety oversight for the WMATA Rail System, and, to affect such purposes, agrees to consider in
389 good faith and request any necessary legislation to achieve the objectives of this MSC Compact.

390 **“J. Amendments and Supplements**

391 “53. Amendments and supplements to this MSC Compact shall be adopted by
392 legislative action of each of the Signatories and the consent of Congress. When one Signatory
393 adopts an amendment or supplement to an existing section of this MSC Compact, that
394 amendment or supplement shall not be immediately effective, and the previously enacted
395 provision or provisions shall remain in effect in each jurisdiction until the amendment or
396 supplement is approved by the other Signatories and is consented to by Congress.

397 **“K. Withdrawal and Termination**

398 “54. Any Signatory may withdraw from this MSC Compact, which action shall
399 constitute a termination of this MSC Compact.

400 “55. Withdrawal from this MSC Compact shall be by a Signatory’s repeal of this MSC
401 Compact from its laws, but such repeal shall not take effect until two years after the effective
402 date of the repealed statute and written notice of the withdrawal being given by the withdrawing
403 Signatory to the governors or mayors, as appropriate, of the other Signatories.

404 “56. Prior to termination of this MSC Compact, the Commission shall provide each
405 Signatory:

406 “(a) a mechanism for concluding the operations of the Commission;

407 “(b) a proposal to maintain state safety oversight of the WMATA Rail System
408 in compliance with applicable federal law;

409 “(c) a plan to hold surplus funds in a trust for a successor regulatory entity for
410 four years after the termination of this MSC Compact; and

411 “(d) a plan to return any surplus funds that remain four years after the creation
412 of the trust.

413 **“L. Construction and Severability**

414 “57. This MSC Compact shall be liberally construed to effectuate the purposes for
415 which it is created.

416 “58. If any part or provision of this MSC Compact or the application thereof to any
417 person or circumstances be adjudged invalid by any court of competent jurisdiction, such
418 judgment shall be confined in its operation to the part, provision, or application directly involved
419 in the controversy in which such judgment shall have been rendered and shall not affect or
420 impair the validity of the remainder of this MSC Compact or the application thereof to other
421 persons or circumstances, and the Signatories hereby declare that they would have entered into
422 this MSC Compact or the remainder thereof had the invalidity of such provision or application
423 thereof been apparent.

424 **“M. Adoption; Effective Date**

425 “59. This MSC Compact shall be adopted by the Signatories in the manner provided
426 by law therefor and shall be signed and sealed in four duplicate original copies. One such copy
427 shall be filed with the Secretary of State of the State of Maryland, the Secretary of the
428 Commonwealth of Virginia, and the Secretary of the District of Columbia in accordance with the
429 laws of each jurisdiction. One copy shall be filed and retained in the archives of the Commission
430 upon its organization. This MSC Compact shall become effective upon the enactment of
431 concurring legislation by the District of Columbia, the Commonwealth of Virginia, and the State
432 of Maryland, and consent thereto by Congress and when all other acts or actions have been
433 taken, including, without limitation, the signing and execution of this MSC Compact by the
434 Governors of Maryland and Virginia and the Mayor of the District of Columbia.

435 **“N. Conflict of Laws**

436 “60. Any conflict between any authority granted herein, or the exercise of such
437 authority, and the provisions of the WMATA Compact shall be resolved in favor of the exercise
438 of such authority by the Commission.

439 “61. All other general or special laws inconsistent with this MSC Compact are hereby
440 declared to be inapplicable to the Commission or its activities.”.

441 Sec. 3. Applicability.

442 (a) This act shall apply after the enactment of concurring legislation by the State of
443 Maryland and the Commonwealth of Virginia, the signing and execution of the Metrorail Safety
444 Commission Interstate Compact by the Mayor of the District of Columbia and the Governors of
445 Maryland and Virginia, and approval of the Metrorail Safety Commission Interstate Compact by
446 the United States Congress.

447 (b) This act shall apply upon the date of inclusion of its fiscal effect in an approved
448 budget and financial plan.

449 (c) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect
450 in an approved budget and financial plan, and provide notice to the Budget Director of the
451 Council of the certification.

452 (d)(1) The Budget Director shall cause the notice of the certification to be published in
453 the District of Columbia Register.

454 (2) The date of publication of the notice of the certification shall not affect the
455 applicability of this act.

456 Sec. 4. Fiscal impact statement.

457 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
458 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
459 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

460 Sec.5. Effective date.

461 This act shall take effect following approval by the Mayor (or in the event of a veto by
462 the Mayor, action by the Council to override the veto), a 30 day period of Congressional review
463 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
464 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
465 Columbia Register.