

Metrorail Safety Commission

May 22, 2018

Agenda Item # 3 – Informational

Staff Report

Background	Updates and reports on ongoing activities following the May 8, 2018 Metrorail Safety Commission Board Meeting.
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Issues	None
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Staff Recommendation	Receive staff report
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From: [Ouellette, Audra \(FTA\)](#)
To: pwiedefeld@wmata.com
Cc: [Garcia Crews, Terry \(FTA\)](#)
Subject: Notification Re: 5% Withholding of Urbanized Area Formula Funds in Absence of Certified State Safety Oversight Program (SSOP) for Washington Metropolitan Area Transit Authority (Metrorail)
Date: Wednesday, May 09, 2018 9:47:10 AM
Attachments: [FTA Fact Sheet on Withholding of Full FFY18 Funds DC-MD-VA.pdf](#)

Good Morning, Mr. Wiedefeld:

As explained in our letter dated February 10, 2017, the Federal Transit Administration (FTA) is withholding the full five percent (5%) of your Urbanized Area Formula Funds until a certified State Safety Oversight Program (SSOP) for Washington Metropolitan Area Transit Authority (Metrorail) is in place. As a result, FTA is immediately withholding five percent of fiscal-year 2018 Section 5307 Urbanized Area Formula Funds to transit systems in Maryland, Virginia, and the District of Columbia. The amount to be withheld from all three jurisdictions totals approximately \$16.1 million. Formula funds withheld from your State's Urbanized Areas are shown on the attached spreadsheet.

Federal law requires that states with federally-funded rail transit agencies establish a State Safety Oversight Agency (SSOA) responsible for safety oversight of those agencies pursuant to an SSOP. In the absence of a certified SSOP, future appropriations will also be subject to withholding. It is important to note the formula funds are being withheld and not forfeited. The funds will once again be available when FTA certifies an SSOP for Metrorail. Please note that Maryland, Virginia, and the District of Columbia have established the Metrorail Safety Commission (MSC); however, the work of the MSC must result in a certified SSOP. Upon certification, all of the withheld funds will be released.

If you have any questions, please feel free to contact me.

Sincerely,

Theresa "Terry" Garcia Crews

Regional Administrator

United States Department of Transportation

Federal Transit Administration-Region III

1760 Market Street, Suite 500

Philadelphia, PA 19103

Telephone: 215.656.7263

Cell phone: 267.353.4970 (Telework contact due to inclement weather)

FTA funds withheld from DC-MD-VA due to the absence of a State Safety Oversight Program

Amounts based on funding authorized under The Fixing America's Surface Transportation Act (FAST) and The Further Extension of Continuing Appropriations Act, 2018 (Public Law 115-123).

State	Urbanized Area	Designated Recipients	Urbanized Area Grant Program Apportionment	Amount Withheld (5%)	Amount available to Urbanized Areas after withholding	Notes
DC	Washington, DC-VA-MD	Washington Metropolitan Area Transit Authority (WMATA); Maryland Transit Administration (MTA); Potomac and Rappahannock Transportation Commission (PRTC)	\$185,196,406	\$9,259,820	\$175,936,586	The funds are apportioned by FTA to the entire urbanized area. The three designated recipients listed have a local agreement that determines the amount each recipient will receive.
MD	Baltimore, MD	Maryland Transit Administration (MTA)	\$71,114,985	\$3,555,749	\$67,559,236	
MD	Aberdeen-Bel Air South-Bel Air North, MD	Maryland Transit Administration (MTA)	\$3,356,863	\$167,843	\$3,189,020	
MD	MD Statewide Apportionment	Maryland Transit Administration (MTA)	\$13,550,765	\$677,538	\$12,873,227	The small urbanized areas in Maryland are listed below.
VA	Virginia Beach, VA	Hampton Roads Transit (HRT)	\$18,593,655	\$929,683	\$17,663,972	
VA	Richmond, VA	Greater Richmond Transit Company (GRTC) and the City of Petersburg	\$12,271,785	\$613,589	\$11,658,196	The funds are apportioned by FTA to the entire urbanized area. The two designated recipients listed have a local agreement that determines the amount each recipient will receive.
VA	Roanoke, VA	Greater Roanoke Transit Company (GRTC)	\$2,806,372	\$140,319	\$2,666,053	
VA	VA Statewide Apportionment	Virginia Department of Rail and Public Transportation (VDRPT)	\$14,269,492	\$713,475	\$13,556,017	The small urbanized areas in Virginia are listed below.
TOTAL			\$321,160,323	\$16,058,016	\$305,102,307	

Statewide Apportionment Detail Information

Urbanized Areas in Maryland Statewide Apportionment	\$13,550,765	\$677,538	\$12,873,227	The state governor determines how the statewide apportionment is distributed among the urbanized areas listed. These are urbanized areas with population greater than 50,000 and less than 200,000.
Cumberland, MD-WV-PA Frederick, MD Hagerstown, MD-WV-PA Lexington Park-California-Chesapeake Ranch Estates, MD Salisbury, MD-DE Waldorf, MD Westminster-Eldersburg, MD				
Urbanized Areas in Virginia Statewide Apportionment	\$14,269,492	\$713,475	\$13,556,017	The state governor determines how the statewide apportionment is distributed among the urbanized areas listed. These are urbanized areas with population greater than 50,000 and less than 200,000.
Blacksburg, VA Bristol-Bristol, TN-VA Charlottesville, VA Fredericksburg, VA Harrisonburg, VA Kingsport, TN-VA Lynchburg, VA Staunton-Waynesboro, VA Williamsburg, VA Winchester, VA				

Metrorail Safety Commission

MEMORANDUM

To: Metrorail Safety Commission Board
From: Nicholas Ramfos, COG
Date: May 22, 2018
RE: MSC CEO Employment Agreement and Offer Letter Status

The MSC CEO offer letter and Employment Agreement sent to David Mayer was accepted and signed on May 10, 2018. Dr. Mayer's official start date with the MSC will be June 4, 2018. COG staff will be working on developing an MSC "briefing book" and will set up a series of meetings as part of the on-boarding process. These activities will assist in bringing Dr. Mayer up to speed with the latest status of mobilizing the MSC and work still needed to submit the MSC's certification application to the FTA for review and approval by September 30, 2018.

Metrorail Safety Commission

MEMORANDUM

To: Metrorail Safety Commission Board
From: Nicholas Ramfos, COG
Date: May 22, 2018
RE: CLA and KKR Management Administration and Legal Services
Contract Extension

The current contracts between COG, CliftonLarsenAllen (CLA) for MSC Management Administrative Services and Kaplan, Kirsch and Rockwell (KKR) for MSC Legal Services will be extended to June 30, 2019. The current contracts expire on June 30, 2018.

The total value of the contract extension for CLA will not exceed \$2,700,000. These costs include administrative (\$230,000), FTE Payroll for 14 FTE's (\$2,300,000), Insurance (\$85,000) and PEO Services (\$70,000).

The total value of the contract extension for KKR will not exceed \$370,000.

Metrorail Safety Commission

MEMORANDUM

To: Metrorail Safety Commission Board
From: Nicholas Ramfos, COG
Date: May 22, 2018
RE: MSC Office Space and Furniture Status

COG is in the process of evaluating proposals received from vendors through a competitive bid process through existing contracts. Proposals received include options to buy and lease furniture. It is expected that the review process will be finalized this week and that a staff recommendation can be made to the MSC Board.

Work has commenced on wall demolition and construction and the installation of new carpet and fresh paint. This will allow for the office space is suitable for MSC employee use by early June. COG also has a contingency plan for office space in COG's offices for a few weeks in the event the MSC's offices and/or furniture as well as cabling is not complete prior to Dr. Mayer's June 4th start date.



Metropolitan Washington Council of Governments-Metro Safety Commission

Megan Dowe | 202.683.6597
Business Development Executive
Megan.Dowe@cort.com

May 17, 2018



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WorkPlace Solutions

Commercial Rental Quote

Quote #: 968624

Date: 05-18-2018

Expires: 06-17-2018

BILL TO:

Metropolitan Washington Council Of Gover

SHIP TO:

Metropolitan Washington Council Of Gover

777 N Capital Street Ne-4th Floor

Washington, DC

Customer Name	Customer Phone / Email	CORT District	Lease Term	Delivery Date
Metropolitan Washington Council Of Gover	(202)-962-3252/ rkonrad@mwkog.org	Washington	12-month(s)	06-13-2018

Qty	Description	Open Market	Dimension	Individual Rate	Total Rate
2	Hobbs Ii Chair	✓	32X33X38	\$40.00	\$80.00
1	Eileen Grey Accent Table	✓	19.5DX21.5H	\$12.80	\$12.80
2	Rt Ped Exec Desk Dk Choc 36x72	✓	72.00X36.00X29.50	\$40.00	\$80.00
1	Left Ped Exec Desk Dk Choc 36x72	✓	72.00X36.00X29.50	\$40.00	\$40.00
1	Bridge Dk Choc	✓		\$15.60	\$15.60
1	Left Ped Return Dk Choc 22x48	✓	48.00X22.00X29.50	\$23.60	\$23.60
1	Rt Ped Return Dk Choc 22x48	✓	48.00X22.00X29.50	\$23.60	\$23.60
1	Box/File Cabinet, Locking Dk Choc	✓	36.00X24.00X21.00	\$26.80	\$26.80
1	2 Door Cabinet, Locking Dk Choc	✓	36.00X24.00X21.00	\$26.80	\$26.80
1	Closed Storage Hutch Dk Choc	✓	72.00X16.00X44.00	\$33.20	\$33.20
2	Aeron Chair		25.75W X 16X41-45H	\$51.52	\$103.04
12	Work Chair Mesh With Arms		28 X 37.75 X 42.75	\$12.51	\$150.12
2	Healthcare Guest Chair			\$12.51	\$25.02
11	Clamp On Power 2 Plugs/4 Usb		8X3X4	\$8.83	\$97.13
22	Tall H Leg 30d		30X4X27.875	\$3.68	\$80.96
10	48" Wire Manager		47.5X2.5X1.125	\$0.36	\$3.60
1	72x30 Worksurface Steel Grey Oak		72X30X1.125	\$14.72	\$14.72
1	48x22 Bridge Steel Grey Oak		48X22X1.13	\$5.88	\$5.88
10	48x30 Worksurface White		48X30X1.13	\$16.92	\$169.20
10	48" M Bar		45.75X2.50X3.50	\$0.36	\$3.60
1	Reception Counter Steel Grey Oak		73X14X42	\$25.76	\$25.76
1	Tall H Leg 22d		22X4X27.875	\$3.68	\$3.68
11	Mobile Ped Box/File W Cushion White/Grey Oak		15.625X19.25X20.4375	\$24.28	\$267.08
11	Ped Cushion		16.125X19.25X1.5	\$0.36	\$3.96
1	60" Wire Manager		59.5X2.5X1.125	\$0.36	\$0.36

WorkPlace Solutions

Commercial Rental Quote

Quote #: 968624
Date: 05-18-2018
Expires: 06-17-2018

Qty	Description	Open Market	Dimension	Individual Rate	Total Rate
1	Mbar For 72" Worksurface		69.75X2.5X3.5	\$0.36	\$0.36
11	Panel Cable 67hx48w Ao2		67X48	\$7.20	\$79.20
8	Panel Energy 67hx48w Ao2		67X48	\$9.20	\$73.60
2	Power Entry Whip 6' Ao2			\$2.00	\$4.00
10	Receptacle Duplex B Ao2			\$0.40	\$4.00
13	Panel End Cap 67h Ao2		67"H	\$0.80	\$10.40
2	Connector 2 Way 67h 90 Deg Ao2		67"	\$1.60	\$3.20
3	Connector 3 Way 67h 90 Deg Ao2		67"	\$2.40	\$7.20
3	Connector 4 Way 67h 90 Deg Ao2		67"	\$2.80	\$8.40

Subtotal	\$1,506.87
Customer Protection Program	\$180.82
Sales Tax	\$0.00

Total Monthly Rent	\$1,687.69
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NJPA Member Number

NJPA # 64744

Delivery & Installation to be performed during normal business hours.

One Time Charges

Security Deposit	\$1,687.69
Delivery, Set-Up, & Final Pickup	\$500.00
System Install & Tear Down	\$2,083.00
One Time Tax	\$0.00
Total Contract Charge (Rental and One Time)	\$24,522.97
Total Due Prior to Delivery	\$4,270.69

CORT Consultant

Vienna Lee

(703)-322-8655

Vienna.Lee@cort.com

CORT Sales Professional

Megan Dowe

(202)-683-6597

Megan.Dowe@cort.com

CORT Gov Dept Info.

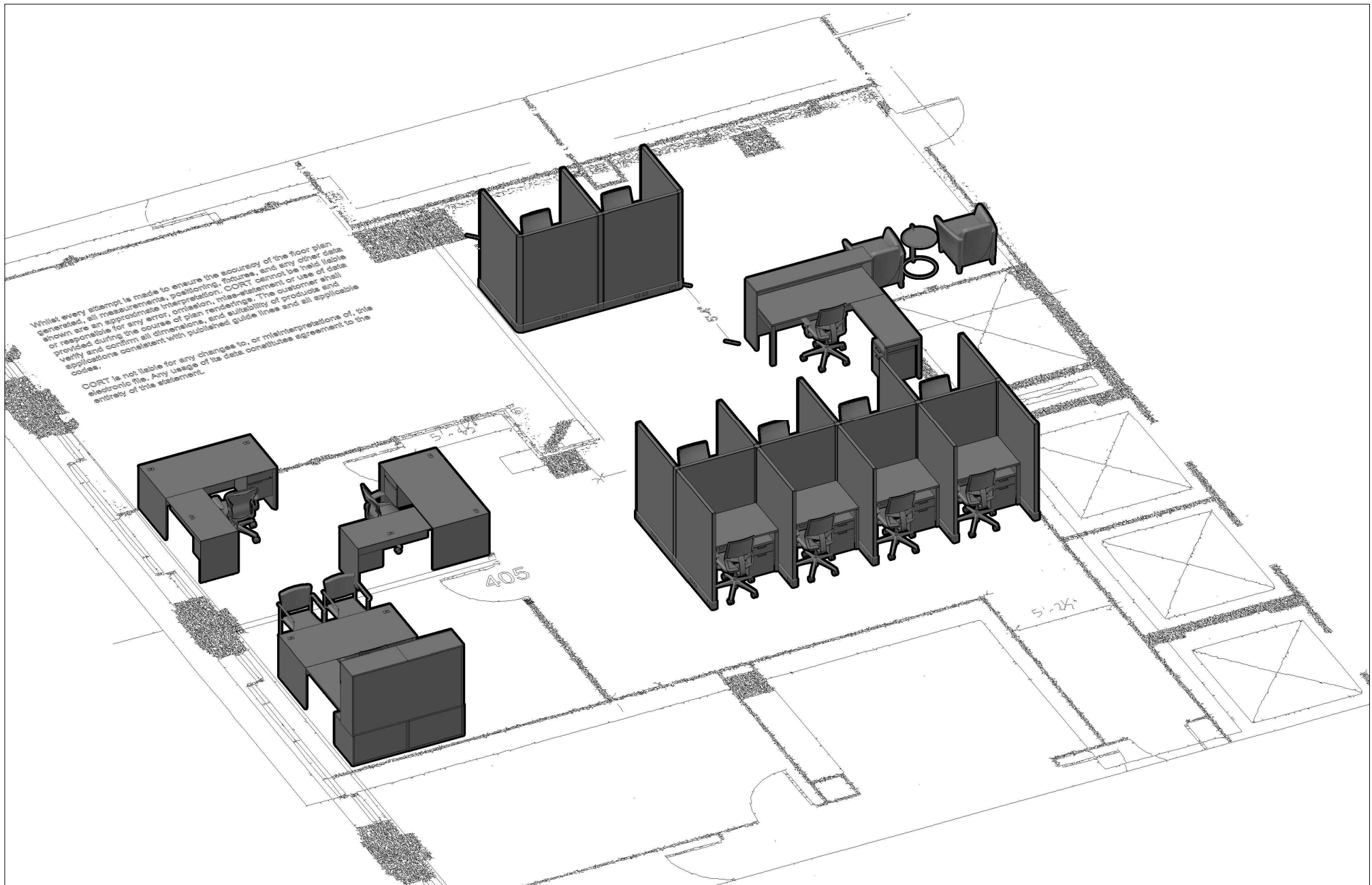
CORT Government Dept
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govsales@cort.com

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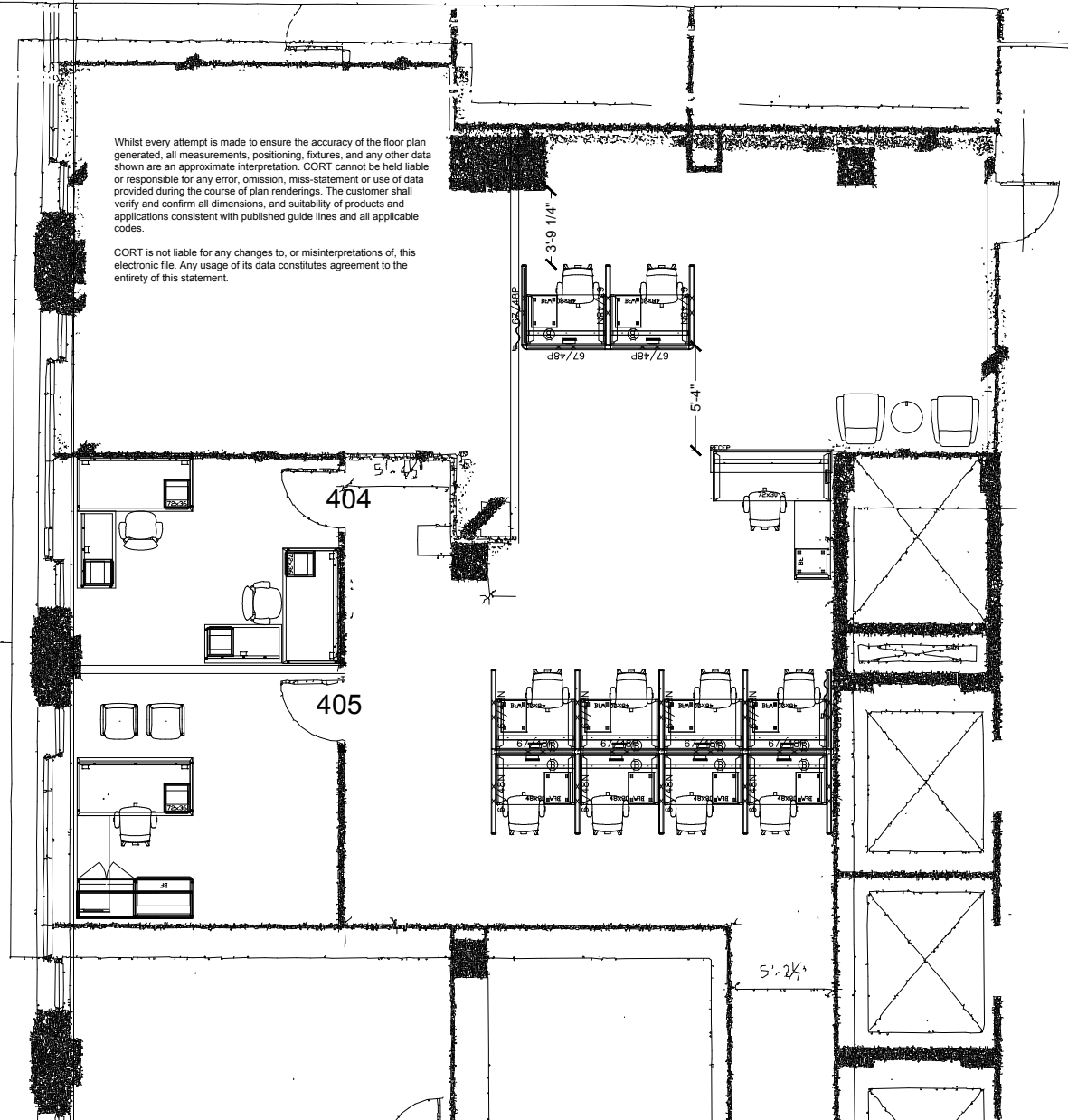
PROJECT NAME MWCOG
 DISTRICT Washington DC-1
 VERSION DATE 05-16-18

Scale: Not To Scale
 Drawn By: Annette DeJong
 Drawing Location: W:\Washington - 1 - 2\K-L-M-N-O\MWCOG

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PROJECT NAME MWCOG
DISTRICT Washington DC-1
VERSION DATE 05-16-18

Scale: Not To Scale
Drawn By: Annette DeJong
Drawing Location: W:\Washington - 1 - 2\K-L-M-N-O\MWCOG

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BENEFITS AND FEATURES

- Durable, 1.5" thick dark chocolate laminate finish provides a non-glare surface. Knife edge on surfaces and legs
- All components have soft-close drawers for easy access; the hutch features assisted lift up door with soft-close
- Strong attention to details with satin chrome finish grommets on desk surfaces and anodized aluminum handles/pulls
- Secure contents with locking drawers that have full extension ball-bearing suspensions
- Furniture will be level on any surface with adjustable leveling glides
- Meets/exceeds ANSI/BIFMA standards

*Specification changes that may alter these features may occur without notice.
Product availability may vary by each city. DK17-609b*

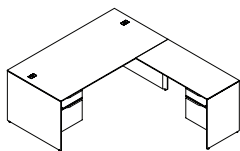
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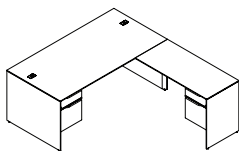
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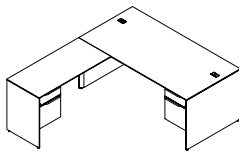
NEX™ SERIES



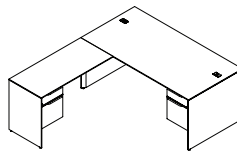
6024589 / 6034853
Right L Exec Desk Configuration
72" x 84" x 29.5"



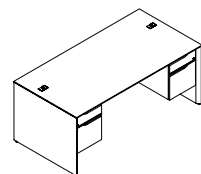
6034854/6034853
Right L Jr. Exec Desk Configuration
66" x 78" x 29.5"



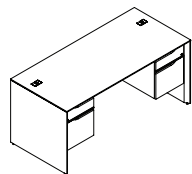
6024588 / 6034852
Left L Exec Desk Configuration
72" x 84" x 29.5"



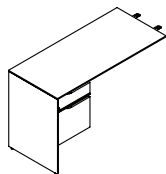
6034855/6034852
Left L Jr. Exec Desk Configuration
66" x 78" x 29.5"



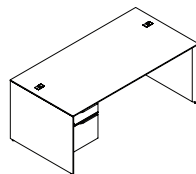
6004356 Double Ped Exec Desk
36" x 72" x 29.5"



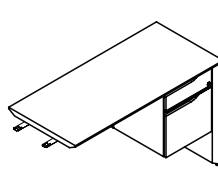
6014365 Double Ped Jr Exec Desk
30" x 66" x 29.5"



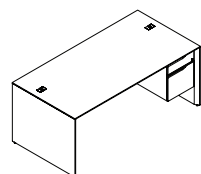
6034852 Left Ped Return
22" x 48" x 29.5"



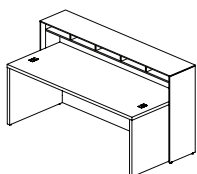
6024589 Left Ped Exec Desk
36" x 72" x 29.5"



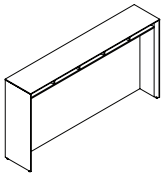
6034853 Right Ped Return
22" x 48" x 29.5"



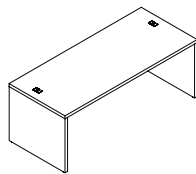
6024588 Right Ped Exec Desk
36" x 72" x 29.5"



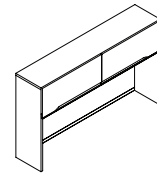
6024587 / 6665835
Reception Configuration
81" x 33"



6024587 Reception Counter
81" x 43" x 16"



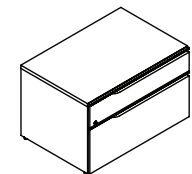
6665835 Table
33" x 78" x 29.5"



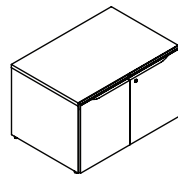
6205334 Closed Storage
Hutch 16" x 72" x 44"



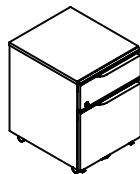
6402534 Wardrobe With Doors
20" x 30" x 65"



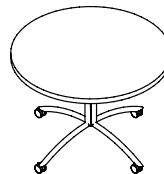
6065012 Lateral Box / File Cabinet
24" x 36" x 21"



6104548 2 Door Storage Credenza
24" x 36" x 21"



6354408 Box/File Mobile Pedestal
16" x 18" x 20"



6665833 42" Round Table on Casters
42" x 42" x 29.5"

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BENEFITS AND FEATURES

- High quality, 100% top grain black leather upholstery is designed for durability.
- Executive chair has adjustable tilt positioning to accommodate your working posture. Pneumatic lift and height adjustable arms create a custom fit for your arms and body.
- Guest chair has a sled base with polyurethane arm rests.
- Built to withstand rigorous daily use, meets all current ANSI and BIFMA performance standards.
- Weight rated to 300 pounds. All chairs meet CA 133 requirements.

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7004985 Executive Chair
27" x 27.25" x 42.75-46.5"



7014738 Jr Executive Chair
27" x 27" x 36-39.75"



7055374 Guest Chair
23.75" x 26.5" x 36.25"

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® GREENGUARD is a registered trademark of the GREENGUARD Environmental Institute.

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STAKS™ RECEPTION

BENEFITS AND FEATURES

- Efficient use of space to ensure staff stays productive while keeping papers and working material out-of-sight.
- Contents stay secure with locking file drawers.
- Durable and scratch-resistant laminate tops on all components
- Quiet drawer sliding action provided by steel ball-bearing suspensions. File drawers will accommodate letter or legal size folders.
- Designed and built to withstand long-term use, meeting or exceeding all current ANSI and BIFMA performance standards.

Specification changes that may alter these features may occur without notice.
Product availability may vary by each city. DK16- 701

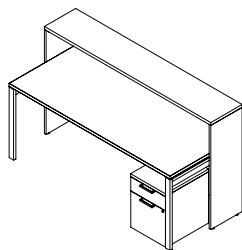
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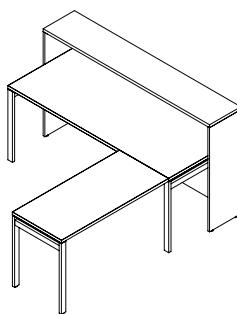
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STAKS™ RECEPTION



8410009 Worksurface - Steel Grey Oak 72" x 30"
 8410005 Tall H Leg 30" h
 8410069 Reception Counter – Steel Grey Oak 73" x 14" x 42"
 8410019 Mobile Box/File Pedestal 16.125" x 19.25" x 20.375"
 8411043 Worksurface – White 72" x 30"



8410009 Worksurface - Steel Grey Oak 72" x 30"
 8410005 Tall H Leg 30" h
 8410011 Bridge/Return 66" x 22"
 8410048 Bridge/Return 48" x 22"
 8411010 Support H Leg 28" h
 8410069 Reception Counter – Steel Grey Oak 73" x 14" x 42"
 8411043 Worksurface - White 72" x 30"
 8411044 Bridge/Return - White 66" x 22"
 8410049 Bridge/Return - White 48" x 22"

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BENEFITS AND FEATURES

- Scaled to make smaller offices feel roomier and support active workspaces with lower height surfaces, compact storage and layered work areas.
- Durable and scratch-resistant laminate tops on all product offerings.
- Contents are secure with locking pedestals, file drawers and doors.
- Furniture will be level on any surface with adjustable leveling glides.
- Smooth drawer sliding action provided by steel ball-bearing suspensions. File drawers will accommodate letter or legal size folders.
- Designed and built to withstand long-term use, meeting or exceeding all current ANSI and BIFMA performance standards.

*Specification changes that may alter these features may occur without notice.
Product availability may vary by each city. DK16-833*

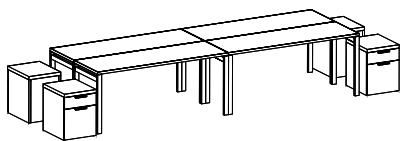
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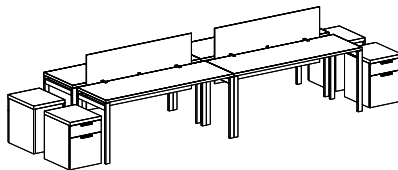
STAKS™ SERIES



TYPICAL 1:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411024 Mobile Pedestal File 16.125"x19.25"x20.375"

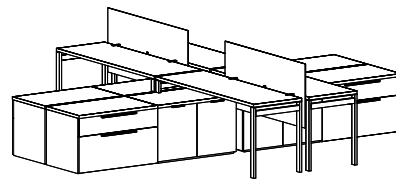


TYPICAL 2:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411035 Work Surface Above/Below Panel 54"

8411024 Mobile Pedestal File 16.125"x19.25"x20.375"



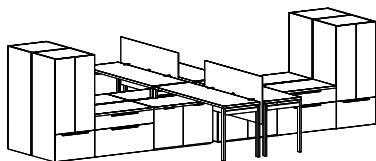
TYPICAL 3:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411035 Work Surface Above/Below Panel 54"

8411021 Low Height Door Cabinet 36"x21.875"x21.875"

8411022 Low Height Box/File 36"x21.875"x21.875"



TYPICAL 4:

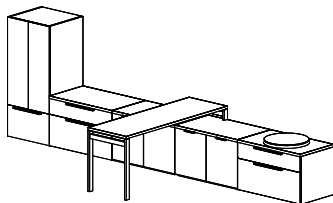
Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411035 Work Surface Above/Below Panel 54"

8411021 Low Height Door Cabinet 36"x21.875"x21.875"

8411022 Low Height Box/File 36"x21.875"x21.875"

8411023 Storage Tower 24"x21.875"x54"



TYPICAL 5:

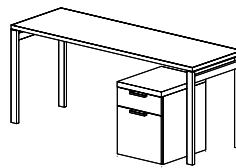
Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411023 Storage Tower 24"x21.875"x54"

8411022 Low Height Box/File 36"x21.875"x21.875"

8411021 Low Height Door Cabinet 36"x21.875"x21.875"

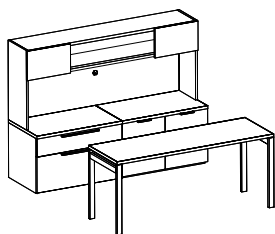
8411031 Round Cushion 20"



TYPICAL 6:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411024 Mobile Pedestal File 16.125"x19.25"x20.375"



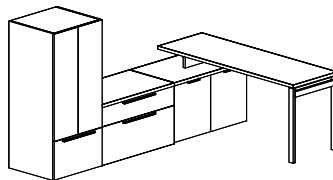
TYPICAL 7:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411021 Low Height Door Cabinet 36"x21.875"x21.875"

8411022 Low Height Box/File 36"x21.875"x21.875"

8411020 High Back Organizer Hutch with Sliding Door 72"x31"



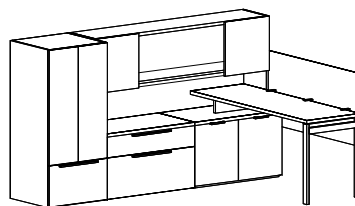
TYPICAL 8:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411023 Storage Tower 24"x21.875"x54"

8411022 Low Height Box/File 36"x21.875"x21.875"

8411021 Low Height Door Cabinet 36"x21.875"x21.875"



TYPICAL 9:

Choice of White or Steel Grey Oak Rectangular Worksurface
Available in the following sizes:
22x48, 22x66, 22x72, 30x48, 30x66, 30x72

8411023 Storage Tower 24"x21.875"x54"

8411022 Low Height Box/File 36"x21.875"x21.875"

8411021 Low Height Door Cabinet 36"x21.875"x21.875"

8411020 High Back Organizer Hutch with Sliding Door 72"x31"


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An aerial view of a modern office space featuring a grid of cubicles. The cubicles are constructed from light-colored panels and are arranged in a complex, interconnected pattern. Each cubicle is equipped with a desk, a computer monitor, a keyboard, and an office chair. Some cubicles have additional features like a small round table or a white storage cabinet. A large red rectangular overlay is positioned in the upper left corner of the image, containing the text 'PANEL SYSTEMS' in white, bold, sans-serif capital letters.

PANEL SYSTEMS

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Customized panels, work surfaces and components create comfortable, flexible work stations that meet employee needs as well as space requirements.

- Employees are more efficient, satisfied and productive.
- Less wasted space means more money saved.

Using a steel rod the height of the panel, panel connectors create a tight and secure fit.

- 600-lb. test panels and 250-lb. test work surfaces are among the most durable available today.

Panel connector's unique design aligns panels automatically.

- Work stations are fast and easy to assemble, disassemble or reconfigure as needs change.

All hanging components, including primary work surfaces, keyboard trays and corner work surfaces adjust in 1" increments.

- Employees can customize their environments to maximize comfort, efficiency and safety.
- Work stations meet ADA (American Disabilities Act) requirements and can easily accommodate wheelchairs.

Work stations come complete with fully articulating keyboard trays, wrist guards and mouse trays for left- or right-handed employees.

- Ergonomic design helps prevent work-related injuries and can reduce workers' compensation liability.

67" high acoustical panels have an NRC (Noise Reduction Coefficient) of .60 and an STC (Sound Transmission Coefficient) of 28.

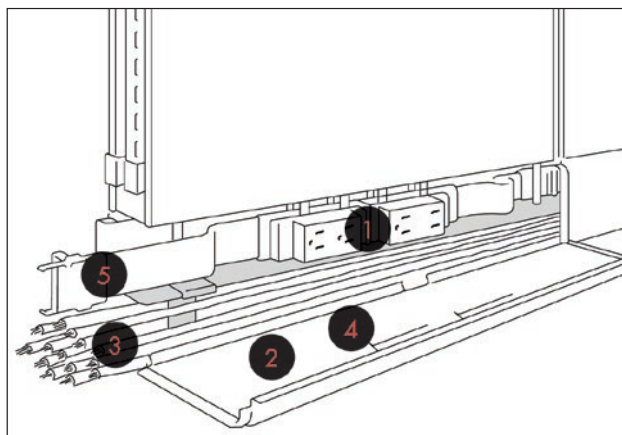
- Panels help create a private work environment and promote productivity by reducing visual and audio distractions.

The Panel System products meet all ANSI (American National Standards Institute) and BIFMA (Business and Institutional Furniture Manufacturers Association) standards.

- Work stations will be safe, durable and comfortable.

Powered panels supply four circuits (eight wires), including one dedicated circuit for sensitive equipment. Clearly labeled, interchangeable receptacles determine which circuits are being accessed. This energy system can support highly sophisticated technology and the specialized power it requires.

1. Clearly labeled, interchangeable receptacles simplify installing equipment and protect special equipment.
2. A hinged base cover makes maintenance or changes easy and safe, saving on installation costs and downtime.
3. Electrified panels can handle twenty 25-pair cables. Non-electrified panels can accommodate forty 25-pair cables.
4. All panels have a minimum of two receptacle access points per side.
5. The one-piece lower harness design requires no additional electrical components at panel corner connectors, simplifying specifications and reducing installation costs.



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AFFINITY

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- Ergonomic design for optimum comfort
- Adjustable lumbar support with six positions
- Hard dual wheel casters for mobility; rolls easily over carpet and hard floors
- Height adjustable arms, seat sliding mechanism and tilt lock
- GreenGuard Gold certification
- Weight rated to 310 pounds
- Meets or exceeds all current ANSI and BIFMA performance standards



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7034621 Work Chair with Arms
28 x 28 x 37.75 - 42.75



7034622 Work Chair - Armless
28 x 28 x 37.75 - 42.75



7034623 Stool with Arms
28 x 28 x 46 - 52

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Gianni Guest Chair for Directors Office



Hobbs Chair for Reception area



Eileen Grey for reception area

SUMMARY SHEET – IS IT A PUBLIC MEETING?

Introduction. In general, all portions of all meetings of the Metrorail Safety Commission (MSC) must be open to the public. However, not all gatherings or activities of the MSC or subsets of Commissioners are considered “meetings”, and those sessions may be conducted without public notice and attendance. The chart below provides a brief summary of whether or not a gathering is a meeting.

The discussion following the chart summarizes the subject matter that can be exempted from the public meeting requirement and discussed in a closed session.

Meeting	NOT a Meeting
<ul style="list-style-type: none"> Quorum of officers required to enable MSC to act (i.e., 4 Members or Alternates) Deliberations determine or result in the joint conduct or disposition of agency business 	Gathering of less than a quorum of Commissioners – no agency action can be taken
Participation in person, via telephone conference or video conference, constituting a quorum	Deliberations and vote conducted entirely in writing
Session convened by MSC, under MSC control, if a quorum is present	<p>A session</p> <p>(a) NOT under MSC’s control (i.e., agenda determined or session hosted by entity other than MSC) and</p> <p>(b) In which MSC will not take action</p> <p><u>Examples:</u></p> <ul style="list-style-type: none"> Informational briefing to MSC by FTA, FWSO, TOC or WMATA Informational briefing by MSC to another body Technical work sessions

Closed sessions. Under specific circumstances, MSC can deliberate and take action (i.e., vote) in closed session if the subject matter being discussed is addressed in one of the exemptions listed below.¹ Closed sessions are meetings that are exempt from being held as public meetings.

Before MSC moves to closed session, counsel for the MSC must publicly state that, in his or her opinion, the meeting may be closed to the public and identify the exemption(s) justifying the closed session.

The agency must maintain a transcript, electronic recording, or minutes of any closed session. The meeting record must summarize the discussion; record any action, including a vote; and identify any documents considered in connection with any action.

- 5 U.S.C. 552b(c)(2) (“Exemption 2”):** allows agencies to conduct closed meetings if they are discussing **internal personnel rules and practices of an agency**. This exemption allows closed meeting discussion of internal agency policy matters, but not does not protect discussions that affect the public interest, such as the employment of a high-ranking agency official.²
- 5 U.S.C. 552b(c)(3) (“Exemption 3”):** allows agencies to conduct closed meetings if they are discussing **subjects that are exempt from disclosure by statute**, if such statute (A) requires that the matters be

¹ Exemptions under 5 U.S.C. 552b(c)(1), (8), and (9)(A) apply to circumstances not relevant to MSC’s mandate.

² Issues before the MSC may be subject to more than one exemption. Deliberations concerning the appointment of MSC’s CEO would likely not be protected under this exemption alone. However, the potential disclosure of personal information that such discussions entailed was exempt under Exemption 6, discussed below.

withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. This exemption is very narrow and MSC must demonstrate, with specificity, that the subject matter proposed for closed session falls under the nondisclosure provisions of such statute. The current statutes governing transit system state safety oversight do not contain such provisions.

- **5 U.S.C. 552b(c)(4) (“Exemption 4”)**: allows agencies to conduct closed meetings if they are discussing subjects that are considered **trade secrets and commercial or financial information** obtained from a person and privileged or confidential. Meetings may be closed under this exemption where the subject matter is a production or process that has a direct relationship with an innovative end effort. Meetings may also be closed under this exemption where the subject matter is financial and/or commercial, which the courts interpret broadly, with the subject matter only being required to relate to commerce.
- **5 U.S.C. 552b(c)(5) (“Exemption 5”)**: allows agencies to conduct closed meetings if they are discussing **information that involves accusing a person of a crime or formally censuring any person**.
- **5 U.S.C. 552b(c)(6) (“Exemption 6”)**: allows agencies to conduct closed meetings **if discussions may disclose information of a personal nature where the disclosure would constitute a clearly unwarranted invasion of personal privacy**. Evaluation of whether such information can be discussed in closed session involves a balancing test to determine whether the discussion of such personal information is “clearly unwarranted”. Information need not be intimate or embarrassing to qualify for protection under this exemption. Information such as a person’s name and address, place and date of birth, date of marriage, employment history and/or medical history is sufficiently personal to support the application of the exemption.
- **5 U.S.C. 552b(c)(7) (“Exemption 7”)**: allows agencies to conduct closed meetings if they are discussing **information that discloses investigatory records compiled for law enforcement purposes** if the disclosure of such information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.
- **5 U.S.C. 552b(c)(9)(B) (“Exemption 9B”)**: allows agencies to conduct closed meetings if the **premature disclosure of information under discussion would frustrate an agency action**, unless the agency has already disclosed the nature of the action to the public. Courts have interpreted this exemption extremely narrowly and will require government to demonstrate a “reasonable likelihood” of any harm to future agency actions if the agency’s decision to disclose such information is challenged.
- **5 U.S.C. 552b(c)(10) (“Exemption 10”)**: allows agencies to conduct closed meetings if they are discussing **subjects that include the agency’s issuance of a subpoena or the agency’s participation in a civil action or proceeding, action in a foreign court, an arbitration, or formal agency adjudication or other action involving a determination on the record after opportunity for a hearing**.

A memorandum discussing open meeting requirements and exemptions in greater detail has been provided to the Commissioners.

Metrorail Safety Commission

MEMORANDUM

To: Metrorail Safety Commission Board
From: Nicholas Ramfos, COG
Date: May 22, 2018
RE: Status of MSC Insurance Policies

- **Public Officials and Professional Errors and Omissions** – The MSC insurance is set for a June 1st inception date as requested by the MSC Board and Foy Insurance will be sending binding documents this week
- **General Liability coverage:**
 - Rob Holt has been working with Casualty for Lexington Insurance, (AIG), to discuss terms for MSC's **General Liability** coverage.
 - Tort Liability for the MSC has been addressed in the attached memo from Kaplan, Kirsch and Rockwell.
- Once the General Liability is in place, a discuss with the MSC Board will need to be held on the following:
 - **Umbrella** – Will sit over the GL, Employers Liability, and eventually Auto
 - **Excess Professional E+O**
- **Auto** – There is no vehicle information at the moment but can get coverage easily once one is chosen.

SUMMARY SHEET – SCOPE OF METRORAIL SAFETY COMMISSION IMMUNITY AND INDEMNITY

Introduction. The Metrorail Safety Commission (MSC) and its personnel are protected by broad immunity from suit when performing their official duties.

- The Metrorail Compact indemnifies the MSC, its Members, Alternate Members, officers, agents, employees and representatives from liability arising from action taken within the scope of such persons' duties under the Compact (Metrorail Compact, Sec. 50).
- The Compact also obligates the Commission to liability under the contracts it enters into and for torts for which it may be responsible when conducting a proprietary (i.e., commercial) function, but shields the MSC and its associated personnel from liability when carrying out a governmental function (Metrorail Compact, Sec. 51). Section 51 of the Compact also provides that nothing in the Compact may be construed as a waiver of immunity by any of the District of Columbia, Commonwealth of Virginia or State of Maryland.

These additional elements apply to MSC's indemnity and immunity:

- In those narrow instances where the MSC may be liable in tort, action against the MSC will be governed by the laws of the jurisdiction in which the alleged harm occurred (Metrorail Compact Sec. 51), but must be brought in one of the following Federal District Courts: the Eastern District of Virginia, Alexandria Division; District of Maryland, Southern Division, and District of Columbia (Metrorail Compact Sec. 48).
- MSC's contractors, as "agents" of MSC, would be entitled to limitation of liability under Section 50 and indemnification under Section 51 of the Metrorail Compact as long as they are acting within the scope of their duties to MSC.
- Although the standards vary slightly among the District of Columbia, Maryland, and Virginia, governmental functions are generally those intended solely for the public benefit, with no remuneration to the public body, whereas proprietary functions are those that could be carried out by a private commercial entity. Because MSC is a public entity created for the purpose of overseeing the policies and activities of another public entity, most of its actions are likely to be considered governmental.
- MSC would be responsible for the costs to seek dismissal of an improperly filed action. None of the District of Columbia, Maryland, or Virginia have enacted fee shifting statutes entitling a public entity to recover attorneys' fees and related costs in an action to which it is immune to suit.

A memorandum discussing the scope of MSC's indemnity and immunity in greater detail has been provided to the Commissioners.



KAPLAN KIRSCH ROCKWELL

M E M O R A N D U M

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT

TO: Metrorail Safety Commission

FROM: Kaplan Kirsch & Rockwell LLP

DATE: 5/22/2018 11:30:11 AM

SUBJECT: Immunity from Suit

You have asked us to address questions related to the prospective tort liability of the Metrorail Safety Commission (“MSC”) and its Board members, agents, contractors, and employees. The specific questions and responses follow.

QUESTIONS PRESENTED:

1. Is MSC is entitled to any limitation on tort liability?

Brief answer: Yes, the MSC Compact limits the liability of MSC Members, Alternates, officers, agents, employees and representatives when engaging in actions related to implementing the mandate of the Commission.

2. How broad is the scope of the indemnification conferred by the MSC Compact?

Brief Answer: Under the law of all three of the signatory jurisdictions, the limitation on liability extends quite broadly as long as the action that gave rise to the tort liability was undertaken by the Members, Alternates, officers, agents, employees and representatives, which includes contractors, and is undertaken within the scope of the person’s employment by the MSC.

3. Does the MSC’s immunity under the Compact also shield it from costs such as attorneys’ fees?

Brief Answer: The Compact does not provide for payment of a successful litigant’s attorneys’ fees by MSC, and the applicable statutes in the three member jurisdictions do not lead to a different conclusion.

1. QUESTION ONE: Is MSC is entitled to any limitation on tort liability?

Section H. 50 of the Compact sets forth the extent of the protection from liability of MSC Members, Alternates and other personnel, as follows:

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

Pub. L. 115-54, 131 Stat. 1093, Article V.H.50 (2017). In addition, the Compact specifically makes the MSC responsible for actions of its Members, Alternates, officers, agents, employees and representatives “committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory... [but the MSC is not] liable for any torts occurring in the performance of a governmental function.” *Id.* at Article V.H.51.

As a result, the scope of the Compact’s protection requires, first, a determination whether a particular action derives from the MSC acting in a “proprietary” or “governmental” function. Because of the Compact’s reference to the laws of the signatory jurisdictions, and because cases related to the activities of the MSC may be brought in the federal courts of each of the member states, *id.* at Article V.G.48, it is necessary to look at the laws in each of the jurisdictions with respect to proprietary vs. governmental functions to fully assess the scope of the protection provided by the Compact.

Under the laws of all three Signatories: Given the activities of the MSC (an oversight, approval and regulatory role, rather than an operations role) and the fact that these activities are sanctioned by legislative authority, they are likely to be considered governmental rather than proprietary in nature. They confer no special corporate or pecuniary benefit. The conclusion that MSC’s function is essentially governmental is strengthened by the fact that federal law requires the States to create a “legally and financially independent state authority for safety oversight of all fixed rail transit facilities”. 49 U.S.C. § 5329. Therefore, this is something that the states *have* to do; they are not setting out based on their own initiative to create a private advantage or a profit. The activities involved with providing safety oversight of the transportation system are likely to be considered governmental/ministerial, as opposed to operation of a transportation system which in some circumstances can be considered proprietary or discretionary.

The activities of the MSC are unlikely to be considered proprietary, subject to the specific exceptions in each jurisdiction discussed below:

- **Under the laws of Virginia:** Although Virginia does waive immunity up to the maximum insurable amount in damages for governmental actions by an employee, if the actions of a private person would also give rise to an action (Va. Code Ann. § 8.01-195.3 (2017)), this immunity applies only to actions brought in Virginia state courts and not federal courts. The latter are the courts of jurisdiction according to the Compact (Va. Code Ann. § 33.2-3101, Article V.G.1 (2017)). Therefore, this exemption will not apply to the MSC.

The Supreme Court of Virginia has said that “[t]he underlying test is whether the act is for the common good of all without the element of special corporate benefit, or pecuniary benefit. If it is, there is no liability, if it is not, there may be liability” (*Hoggard v. Richmond*, 172 Va. 150 (1939)). A function is categorized as governmental if it is carried out solely for the public good or welfare, whereas a government agency engages in a proprietary function when it assumes a task that a private corporation would undertake, such as operation of facilities or renting property. See, e.g., *City of Virginia Beach v. Carmichael Dev. Co.*, 259 Va. 493 (2000). A governmental function advances or protects general public health or safety. *Fenon v. City of Norfolk*, 203 Va. 551 (1962).

Examples of cases where the Courts have drawn the governmental vs. proprietary distinction in Virginia include:

- “[T]he regulation of traffic or a similar activity intended to protect the general public safety is a governmental function.” *Transportation Inc. v. Falls Church*, 219 Va. 1004 (1979).
- “[T]he routine maintenance of a municipality’s streets” is a proprietary function. *Bialk v. City of Hampton*, 242 Va. 56 (1991).

However, there was a case where firefighters were found to be carrying out a proprietary function as they were taking down a wall five days after a fire and not in immediate response to the emergency. In addition, this funding was based on evidence of improper, unskillful and negligent performance of the demolition work. *Burson v. Bristol*, 176 Va. 53 (1940).

- **Under the laws of the District of Columbia:** The governmental-proprietary test was discarded in DC in favor of a “discretionary-ministerial” test. *Wade v. District of Columbia*, 310 A. 2d. 857 (D.C. 1973). The generally accepted test is “whether a particular activity involves a legislative, administrative, or regulatory policy decision or merely implements such a decision. Only the former type of action, a policy decision, is a “discretionary function” which should be immune from second-guessing by a jury.” *McKethan v. WMATA*, 588 A.2d 708, 713 (D.C. 1991)). Courts “generally define ‘discretionary’ acts as those involved in the formulation of policy, while ‘ministerial’ acts are defined as those related to the execution of policy.” *Id.* At 715. “Discretionary acts

include administrative decisions "establishing plans, specifications, or schedules of operations...Where there is room for policy judgment and decision, there is discretion"
Id.

The negligent operation of a vehicle owned or controlled by the District of Columbia and that was operated by an employee of the District of Columbia and acting within the scope of their employment will always be considered proprietary. (D.C. Code § 2-412 (2018)). However, as the employees of the MSC will not be employees of the District of Columbia, this exemption will not apply.

The D.C. Court of Appeals has drawn some specific conclusions that are relevant to potential matters involving the MSC's implementation of its functions:

- The provision of mass transportation is a proprietary function. *WMATA v. O'Neill*, 633 A.2d 834 (DC 1993). The MSC, however, is not providing mass transportation but is engaged in a purely governmental function pursuant to a specific federal and tri-state legislative mandate.
- The designing and planning of a transportation system are governmental activities because they involve quasi-legislative policy decisions which are discretionary in nature. Only the negligent operation of such a system or the negligent implementation of such a design may be characterized as proprietary. *Id.*
- **Under the laws of Maryland:** Although Maryland does waive immunity up to \$200,000 in damages for governmental actions (Md. Code Ann., State Gov't. § 12-104 (2017)), Maryland does not waive any immunity for government actions in federal courts, which are the courts of jurisdiction in the Compact. Therefore, this exemption will not apply to the MSC.

There is no universally accepted or all-inclusive test to determine whether a given act of a municipality is private or governmental in its nature, but the question is usually determined by the public policy recognized in the jurisdiction where it arises. Under Maryland law, here the act in question is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest, it is governmental in its nature. *Baltimore v. State ex rel. Blueford*, 195 A. 571 (1937).

Courts in Maryland have drawn some specific conclusions that are relevant to potential matters involving the MSC's implementation of its functions:

- A child was at a city run camp where she was permitted to swim by the camp director without special instruction. The child drowned. The city was found to be carrying out a governmental function as they were legislatively to authorized operate recreation facilities and derived no profit from doing so. *Austin v. City of Baltimore*, 405 A.2d 255 (1979).
- A municipality is considered responsible to maintenance of its public streets and highways. As a result, the building and maintenance of public streets and sidewalks is considered a proprietary duty, even though it is primarily for the public benefit. *Higgins v. City of Rockville*, 587 A.2d 1168 (1991).

The express language in the compact assuming liability for torts arising out of proprietary functions (Pub. L. 115-54, 131 Stat. 1093, Article V.H.51 (2017)), means that the MSC will be liable for suit only for any actions that it carries out which are not considered governmental. Further, as none of the Signatories waive their immunity to suit in federal court with respect to government actions, and since the Compact establishes federal courts as the forum for actions against the MSC, it will be immune from suit in federal court with respect to government actions. Based on the analysis above of the MSC powers and their legislative authority, all of the actions of the MSC are likely to be considered governmental “in accordance with the laws of the applicable Signatory.” *Id.* Therefore, the MSC will not be liable in tort unless it can be shown that, in carrying out such an activity, it acted outside of its powers and authority and/or conferred a special corporate or pecuniary benefit to a person.

2. HOW BROAD IS THE SCOPE OF INDEMNIFICATION CONFERRED BY THE MSC COMPACT?

A contractor would likely be considered an “agent” or “representative” of the MSC and would therefore be protected by the Compact’s limitations of liability (Sec. V.H. 50) and indemnification (Article V.H.51). Recently, the Fourth Circuit held that a government contractor could rely on the immunity of the government body it was in contract with if it could prove that “(1) the government authorized the contractor’s actions and (2) the government ‘validly conferred’ that authorization, meaning it had acted within its constitutional power.” (*Cunningham v. General Dynamics Information Technology, Inc.*, 4th Cir. No. 17-1592 (Decided Jan. 24, 2018)). This decision relied on a test set out by the Supreme Court in *Yearsley v. W.A. Ross Construction Co.*, 339 U.S. 18, 20-21 (1940), to determine whether a contractor is considered an agent of the government.

Based on this decision, and its affirmation of the test set out in *Yearsley*, contractors are likely to be considered agents of the MSC and covered by the indemnification provisions of the compact if they can satisfy the test in *Yearsley*. Any of the actions carried out by contractors pursuant to the compact would presumably be authorized by the MSC under contract and ongoing contract management. Further, the compact itself authorizes the MSC to, in respect to contractors “prescribe their powers and duties” (Article IV.B.33(e)). Any actions that are not so authorized

would be unlikely to be covered by the indemnity conferred by the compact, nor would it be reasonable for a contractor to expect to be indemnified for any unauthorized actions. As to the second limb of the test, the compact conveys the MSC with the authority under federal law to enter into contracts that are “necessary and desirable in the performance of its duties and in the execution of the powers granted under this MSC Compact” (Article IV.B.33.(f)).

3. DOES THE MSC’S IMMUNITY UNDER THE COMPACT ALSO SHIELD IT FROM ATTORNEYS’ FEES?

Virginia, Maryland, and the District of Columbia all adhere to the so-called “American Rule,” which provides that each party shall be responsible for its own attorney fees and costs of litigation, absent a specific contractual or statutory provision to the contrary. *See Reineck v. Lemen*, 792 S.E.2d 269, 274-75 (Va. 2016); *Bainbridge St. Elmo Bethesda Apartments, LLC v. White Flint Express Realty Grp. Ltd. P’ship, LLLP*, 164 A.3d 978, 984 (Md. 2017); *Assidon v. Abboushi*, 16 A.3d 939, 942 (D.C. 2011). There are very limited common law exceptions to this rule, such as in the case of entirely baseless or vexatious litigation. *See, e.g., Bruce v. Potomac Elec. Power Co.*, 162 A.3d 177, 186-87 (D.C. 2017). The various fee-shifting statutes in Virginia, Maryland, and the District of Columbia, do not appear to authorize an award of attorney fees or costs if an action were filed against MSC for which MSC was immune. While too numerous to list, such statutes generally authorize attorney fees in domestic relations cases, against the government in government-benefit cases, or where citizens act as private attorneys general. None of the statutes in any of the three states appear to provide for assessment of attorney’s fees against MSC.

To: Kanti Srikanth
Subject: RE: FTA Summarizes Procedures for Assumption and Relinquishment of Direct Safety Oversight of Rail Fixed Guideway Public Transportation Systems

From: Sharmila Samarasinghe [<mailto:sharmila.samarasinghe@drpt.virginia.gov>]
Sent: Friday, May 11, 2018 2:42 PM
To: Bud Frank <bfrank@mdot.state.md.us>; Jennifer Mitchell <j.mitchell@drpt.virginia.gov>; Kanti Srikanth <ksrikanth@mwkog.org>; Pat Pscherer <ppscherer@mdot.state.md.us>; Todd McIntyre <todd.mcintyre@dc.gov>; Nicholas Ramfos <nramfos@mwkog.org>
Subject: Fwd: FTA Summarizes Procedures for Assumption and Relinquishment of Direct Safety Oversight of Rail Fixed Guideway Public Transportation Systems

I have not read this yet but very pertinent to our collective situation

----- Forwarded message -----

From: Federal Transit Administration <usdotfta@public.govdelivery.com>
Date: Fri, May 11, 2018 at 10:53 AM
Subject: FTA Summarizes Procedures for Assumption and Relinquishment of Direct Safety Oversight of Rail Fixed Guideway Public Transportation Systems
To: <sharmila.samarasinghe@drpt.virginia.gov>

FTA has [summarized](#) its standard operating procedures that describe the agency's process to assume and relinquish temporary direct safety oversight if a State Safety Oversight Program is nonconforming, inadequate, or FTA uncovers serious risks/issues.

The Fixing America's Surface Transportation (FAST) Act [granted FTA the authority](#) to temporarily assume direct administration of a State Safety Oversight Program (SSOP) if it is nonconforming, inadequate, or FTA uncovers serious risks/issues.

Links:

[Standard Operating Procedures for Assumption and Relinquishment of Direct Safety Oversight of Rail Fixed Guideway Public Transportation Systems Fact Sheet](#)
[FAST Act Safety Program Fact Sheet](#)



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The mission of DRPT is to facilitate and improve the mobility of the citizens of Virginia and to promote the efficient transport of goods and people in a safe, reliable, and cost-effective manner.

Assumption and Relinquishment of Direct Safety Oversight of Rail Fixed Guideway Public Transportation Systems

FTA's Temporary Assumption Authority

The Fixing America's Surface Transportation (FAST) Act granted the Federal Transit Administration (FTA) the authority to temporarily assume direct administration of a State Safety Oversight Program (SSOP) in the event of a nonconforming, inadequate, or incapable SSOP. Specifically, the statute outlines three situations where FTA must assume the safety oversight of an SSOP:

1

SSOP "is not being carried out in accordance" with 49 U.S.C. § 5329

2

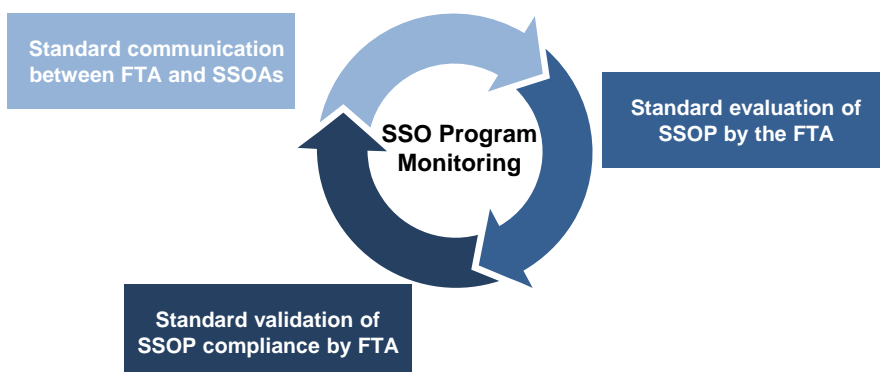
SSOP "has become inadequate to ensure enforcement of Federal safety regulation"

3

SSOP "is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death or personal injury"

State Safety Oversight Program Monitoring

FTA monitors States SSOP's via monthly check-ins with each SSO agency (SSOA). The FTA assesses the SSOP utilizing standard evaluation criteria tied directly to FTA SSO regulations. The FTA confirms that the SSOPs are both compliant with federal regulation and effective in safety oversight. The FTA evaluates available historical SSOP triennial audit findings and evaluates other risks and issues at an SSOA and/or RFGPTS which come to the FTA's attention.



FTA's Assumption and Relinquishment Process

While monitoring SSOPs, if the FTA uncovers risks/issues that reach a level of concern where regular check-ins will not remedy the situation, the FTA will escalate identified risks/issues to the FTA Administrator, who will determine if temporary direct administration of an SSOP is required. If required, FTA performs an assessment to inform the forthcoming assumption decision. The assessment kicks off the FTA's process, which consists of the following five distinct phases:

Assessment

Decision

Planning

Execution

Relinquishment

Phase	Description
Assessment	Gather and validate information on SSOP identified as potentially at-risk of nonconforming or ineffective
Decision	Determination is made to temporarily administer safety oversight of an SSOP
Planning	Develop a tailored plan for the FTA to temporarily assume direct administration of safety oversight of an SSOP
Execution	Conduct direct safety oversight for the SSOA and assist the SSOA to resolve deficiencies
Relinquishment	Recertification SSOP per 49 USC § 5329(e)(8)(B)(ii).



U.S. Department of Transportation
Federal Transit Administration



FACT SHEET:
PUBLIC TRANSPORTATION SAFETY AND OVERSIGHT
Chapter 53 Section 5329

	FY15	FY16	FY17	FY18	FY19	FY20
SSO Formula	\$22,293,250	\$22,694,529	\$23,148,419	\$23,634,536	\$24,135,588	\$24,647,262

PROGRAM PURPOSE: This section requires FTA to implement and maintain a national public transportation safety program to improve the safety of all public transportation systems that receive federal funding. The safety program includes a national public transportation safety plan, a safety certification training program, a public transportation agency safety plan, and a state safety oversight program. Under the FAST Act, section 5329 provides for a temporary Federal assumption of rail transit safety oversight, under certain circumstances. This section also authorizes FTA to issue restrictions and prohibitions to address unsafe conditions or practices, and to withhold funds for non-compliance with safety requirements.

Statutory References: 49 U.S.C. Section 5329 / FAST Section 3013, 3020, 3021, 3022

Eligible Recipients: States with rail fixed guideway public transportation systems not under the jurisdiction of the Federal Railroad Administration are eligible to receive grants through the SSO formula program.

Applicability: Section 5329 applies to States and local governmental authorities, and any other operator of a public transportation system that receives financial assistance under chapter 53.

National Public Transportation Safety Plan

FTA is drafting a proposed National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive federal funding. This will include safety performance criteria and minimum transit safety standards.

Public Transportation Safety Certification Training Program

FTA has established an Interim Safety Certification Training Program for those directly responsible for safety oversight of public transportation systems and the State personnel who conduct safety audits of rail transportation systems.

Public Transportation Agency Safety Plans

FTA is drafting a proposed regulation establishing requirements for each recipient or State to have a comprehensive agency safety plan that includes:

- Board of Directors approval of the plan
- Method for identifying and evaluating safety risks
- Strategies to minimize hazard risk
- A process for conducting an annual review
- Performance targets based on safety performance criteria and state of good repair requirements
- Assignment of a trained safety officer
- A comprehensive staff training program

State Safety Oversight Program

Every State that has a rail fixed guideway public transportation system must have a State Safety Oversight Program that:

- Is responsible for oversight of rail transit safety within that State.
- Adopts and enforces Federal and State safety laws
- Establishes a State Safety Oversight Agency and determines staffing and training for the agency. The State Safety Oversight Agency must:
 - Be financially and legally independent from public transportation entities
 - Not provide rail fixed guideway public transportation service
 - Not employ any person who is responsible for the administration of the public transportation program
 - Have authority to review and enforce implementation of agency safety plans of transit agencies within the State
 - Have investigative and enforcement authority regarding the safety of the rail transit systems within the State
 - Conduct triennial audits of the compliance of the rail transit systems that it oversees
 - Provide an annual status report to the FTA, the Governor, and the Board of Directors

Enforcement Authority

- FTA may temporarily assume the administration of a State's State Safety Oversight Program after making a determination that the program is not being carried out in accordance with the requirements of section 5329; is inadequate to ensure enforcement of Federal safety regulations; or is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death, or personal injury. If a State fails to correct such deficiencies, FTA may withhold up to 5 percent of section 5307 funds required to be appropriated for use in the State or an urbanized area.
- If a transit agency fails to correct noncompliance with Federal laws relating to the safety of public transit systems, FTA either may withhold or direct the use of Federal funding.
- FTA may issue nationwide transit safety directives, and targeted safety directives to specific transit agencies.
- FTA may issue restrictions or prohibitions on operations due to a substantial risk of death or personal injury as a result of unsafe conditions and/or practices.

What's Changed?

- Temporary federal assumption of SSO programs
- Explicit authority to issue nationwide safety directives and prohibit/restrict operations
- Requires the National Public Transportation Safety Plan to include minimum safety standards (other than vehicle performance standards)
- Requires FTA to conduct a review of public transportation safety standards and protocols, and issue a report with recommendations and actions to improve the safety of the public transportation industry
- Requires a study and report on evidentiary protection for safety program data
- Requires a Notice of Proposed Rulemaking (NPRM) on transit driver safety & risk of assault

For Additional Information on FTA and the FAST Act, please visit: www.fta.dot.gov/fast.html