

Metrorail Safety Commission

March 13, 2018

Agenda Item # 3 – Action

Adoption of Bylaws of the Metrorail Safety Commission

Background

The Commission will review the Draft Bylaws and upon discussion will be asked to adopt the Bylaws to facilitate the first business meeting of the Metrorail Safety Commission. The Bylaws are composed of nine (9) Articles which establish the structure, responsibilities and basic workings of the MSC Board. The Metrorail Safety Commission (MSC) Bylaws outlined in this document has been developed consistent with the enabling legislations in the District of Columbia, Maryland and Virginia, the joint resolution of Congress in 2017 (115 H.J. Res. 76, 131 Stat. 1093), and informed by best business practice suitable to the nature of business of the MSC. By virtue of the MSC Board's adoption, the Bylaws provide a framework for the MSC's organization and management.

Issues

None

Staff

Recommendation

Receive briefing from staff and adopt Resolution MSC 01-2018.

Metrorail Safety Commission Bylaws

DRAFT

March 13, 2018

Table of Contents

Introduction and Executive Summary	3
MSC Bylaws	4
I. Meetings	4
II. Conflicts of Interest Policy.....	10
III. Officers.....	10
IV. Reports and Accountability.....	11
V. Non-Disclosure Obligations.....	12
VI. Rules and Regulations.....	13
VII. Advisory Committees.....	15
VIII. Indemnification of Board Members and Personnel	16
IX. Reservation of Powers.....	16
X. Amendments to Bylaws and SOPs.....	16

DRAFT

Introduction and Executive Summary

Article III.E.18 of the compact establishing the Metrorail Safety Commission notes that the MSC Board shall provide for its organization and procedures for conducting its business.

The Metrorail Safety Commission (MSC) Bylaws outlined in this document has been developed consistent with the enabling legislations in The District of Columbia, Maryland and Virginia, the joint resolution of Congress in 2017 (115 H.J. Res. 76, 131 STAT. 1093), and informed by best business practice suitable to the nature of business of the MSC.

The Bylaws are composed of nine (9) Articles which establish the structure, responsibilities and basic workings of the MSC Board. The Bylaws are silent on details of Board appointments, membership requirements, compensation, and other matters that are dictated completely by the MSC Compact. By virtue of the MSC Board's adoption, the Bylaws provide a framework for the MSC's organization and management. The Bylaws also detail the delegation of authority by the Board to the MSC Executive Director and the MSC Board so that the MSC can effectively function as mandated.

referenced

As the MSC must be established in accordance with federal requirements under the Moving Ahead for Progress in the 21st Century Act (MAP-21), TRA utilized the latest FTA guidance materials regarding MAP-21 compliance. The content of this deliverable was also informed by the **Task 1** survey of State Safety Oversight Agencies (SSOAs) and other oversight entities. In particular, the standards and procedures of SSOAs most comparable to the MSC and of SSOAs implementing MAP-21 enhancements were reviewed.

MSC Bylaws

I. Meetings

A. Open Meetings Policy

1. The meetings of the Board shall be open to the public in accordance with the federal Government in the Sunshine Act, codified as 5 United States Code (U.S.C.) §552b, unless a duly called closed meeting is held as described in Section G below.
2. At least seven (7) calendar days before each meeting, the Board shall make a public announcement, including written notice, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. Such announcement shall be made unless the Board determines by a recorded vote that MSC business requires that such meeting be called at an earlier date, in which case the MSC shall make a public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

B. Freedom of Information Policy

1. The MSC adheres to transparency and public access provisions of the Federal Freedom of Information Act (FOIA/federal FOIA), codified at 5 U.S.C. §552.
2. Public requests for a copy of an MSC document shall be made to the Executive Director.
 - a. To the extent it is subject to disclosure, the requested document shall be provided to the requesting party, with the requestor paying the cost of document production in advance.
 - b. Should the Executive Director or designee determine the requested document is not subject to disclosure, that determination will be transmitted in writing to the requestor.
 - c. A requestor may dispute the determination that a document is not subject to disclosure by filing a written appeal to the Board within 90 business days of notification of denial of request.
 - i. The Board shall take action upon any such appeal within 10 business days of receipt and transmit the determination to the requestor in writing.
 - ii. A decision by the Board denying production of the requested document shall be final and may be appealed by the requestor to the federal courts of the signatory jurisdiction within which the requestor resides within 30 calendar days of receipt.

C. Records

1. Board meeting records shall be maintained in accordance with FOIA requirements. The Secretary shall ensure that the Board Meeting schedule, Agendas, and Meeting Minutes are posted on the MSC website.

2. The Board may publish summary reports of adopted investigations, safety reports, or inquiries in accordance with its Open Meetings and FOIA policies referenced in Sections A and B above, and consistent with federal regulations governing State Safety Oversight, as set forth at 49 C.F.R 674.23 or any successor regulation.
3. The Mayor of the District of Columbia and the Governors of Maryland and Virginia and their designees (executive) shall be provided with prompt and full access to any and all records held by the MSC, provided however, that access to such records does not constitute a waiver of the confidentiality of sensitive records that would not otherwise be subject to production under FOIA. The MSC Board may hold a closed meeting to discuss with legal counsel the release and means of release of protected information sought by an executive of a jurisdiction. If any document is provided to a city, state, or an executive thereof, the document is no longer covered under the FOIA requirements adopted by the MSC and is subject to disclosure under the open records laws of that jurisdiction. The document may still be protected from disclosure depending on the laws of the applicable jurisdiction.

D. Meetings to Elect Officers

1. At its initial meeting, the Board shall establish a process for the election of officers, and at subsequent annual meetings, the Board shall elect its officers to each serve a two-(2) year term commencing immediately, as determined in the Compact. Officer terms shall not supersede the overall term limits of overall Board membership. Officers are: Chair, Vice Chair, Secretary, and Treasurer. Their duties are set forth in Article III of these Bylaws.
2. An election may take place during a regular or special meeting of the Board. In the event an officer is unable to complete a term, a special election shall be held by the Board to elect a Member to serve in that position for the duration of the term. A special election may take place during a regular or special meeting of the Board. The elected member shall be an individual from the same jurisdiction from which the replaced Board member was Appointed.

E. Regular Meetings

Regular meetings of the MSC Board shall be held not less often than monthly at a date and time to be determined by the Board. The meetings will be held at the MSC offices, or at such other location as the Board may designate, or in the notice of call of a given meeting. If the meeting date occurs on a legal holiday (as recognized by any MSC jurisdiction), said meeting shall be held on the next business day unless otherwise determined by the Board. The calendar of regular meetings shall be posted on the MSC's web site.

F. Special Meetings

Special meetings of the Board, including emergency meetings, may be called by the Chair and shall be called by the Chair on request of any two (2) or more Members. The Chair may consider requests from the Washington Metropolitan Area Transit Authority (WMATA); federal, state, and local government entities; or other stakeholders for the Board to convene a special meeting.

G. Closed Meetings

1. Closed meetings of the Board or its committees may only be held for the following purposes:
 - a. A session for which the sole purpose is to have MSC personnel brief the Board concerning the ongoing or incomplete investigation of an accident, incident, hazard, or other safety issue, or a draft report or investigation;
 - b. Discussion or consideration of legal or investigative issues related to proposed MSC enforcement action;
 - c. Discussion or consideration of evidence of a classified nature; matters specifically authorized under criteria established by an Executive Order to be kept secret; or matters affecting national security or the security of the WMATA Metrorail system;
 - d. Discussion or consideration of trade secrets or commercial or financial information obtained from a person which is privileged or confidential;
 - e. Discussion or consideration of matters specifically exempted from disclosure by statute, provided that such statute:
 - i. Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - ii. Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
 - f. Discussion or consideration of investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
 - i. Interfere with enforcement proceedings;
 - ii. Deprive a person of a right to a fair trial or an impartial adjudication;
 - iii. Constitute an unwarranted invasion of personal privacy;
 - iv. 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;
 - v. Disclose investigative techniques and procedures; or
 - vi. Endanger the life or physical safety of law enforcement personnel;
 - g. Consultation with legal counsel and briefings by MSC personnel, consultants or attorneys pertaining to anticipated or pending negotiations, litigation, arbitration, or other legal matters such as issuance of a subpoena;
 - h. Discussion or consideration of MSC internal personnel matters such as: employment, assignment, appointment, promotion, demotion, or disciplinary action;
 - i. Discussion or consideration of the condition, acquisition or disposition of property in which the MSC has or may have an interest.
2. No meeting of the Board shall become a closed meeting unless there shall have been recorded an affirmative majority vote to that effect stating which of the purposes set forth above was the basis for closing the meeting, and the designated MSC legal personnel has

confirmed publicly that the purpose of the closed meeting is limited to one (1) or more of the criteria listed above. A decision to close a meeting and the individual votes of each Member must be published on the MSC website within one (1) calendar day of the vote taken to hold a closed meeting.

3. No votes shall be taken in the closed meeting.
4. Portions of the closed meeting not subject to the foregoing or other exemptions to the Government in the Sunshine Act must be documented in published minutes in accordance with Secs. I-2 and I-5 below. The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or non-exempt portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting, or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

H. Quorum

1. Four (4) Members shall constitute a quorum for conducting business, including calling meetings to order and taking up Agenda items. For actions of the Board, the affirmative vote of at least four (4) Members is required, with the exception of an action where a unanimous vote is required, as described in Section J-1 below. Quorum and voting requirements may be met with one (1) or more Alternate Members; provided, however, that an Alternate Member from one jurisdiction may count for quorum purposes only if both Members of the Board from that jurisdiction are not present. The Board may adjourn a meeting while awaiting the presence of a quorum.
2. Board Members and Alternate Members may attend meetings and participate in votes via teleconference or videoconference. The meeting's Chair, however, must be physically present at meetings.
3. The Board Chair will serve as the meeting's Chair at all meetings. In the event of the Board Chair's absence, the Vice Chair shall serve as the meeting's Chair.

I. Order of Business

1. Preparation of Agenda: The Executive Director, in conjunction with the Chair, shall be responsible for the preparation of the Agenda. At the request of two (2) or more Members, the Board may direct a matter to be placed upon the Agenda, or any individual Member or Alternate Member may work with the Chair to place an item on the Agenda. A report on recent MSC activities, presented by the Executive Director or a designee, shall be a standing item on each regular meeting Agenda.
2. Delivery and Electronic Posting of Agenda: The Agenda and relevant supporting materials will ordinarily be delivered to the Board Members via mail or e-mail at least two (2) business days in advance of the meeting to which they pertain. Items that cannot be transmitted via e-mail due to Security Sensitive Information (SSI) or file size will be made

available to Board Members at a designated physical site for viewing or a designated website for secure downloading at least two (2) business days in advance of the meeting to which they pertain. The Agenda will be also posted on the MSC website at least two (2) business days in advance of a regularly scheduled Board meeting. SSI or otherwise protected information may be omitted from the publicly posted version.

3. Consent Agenda: Items of routine nature and noncontroversial shall be placed on the Consent Agenda. All such items may be approved by one (1) blanket motion. Prior to action on the Consent Agenda, any Board Member may request that any item be withdrawn from the Consent Agenda for separate consideration.
4. Call to Order and Meeting Procedures: The meeting of the Board shall be called to order by the Chair or in his/her absence, by the Vice Chair. Meetings shall be conducted in accordance with *Robert's Rules of Order Newly Revised*, 11th ed. (Da Capo Press, 2011).
5. Meeting Minutes: The Board Secretary shall be responsible for the development, distribution, and if applicable, the publication of meeting minutes for consideration and approval by the Board at its next meeting. Draft minutes shall be e-mailed to Board members along with the Agenda for the next Board meeting as described in Section I-1 above.

J. Actions of the Board

1. The Board reserves to itself the following actions:
 - a. Adopt, amend, or repeal rules and regulations;
 - i. Program Standard;
 - ii. Bylaws;
 - iii. Standard Operating Procedures (SOPs);
 - iv. Resolutions;
 - v. MSC Budget:
 - (1) Regular approval;
 - (2) Change orders or cancellations to contracts executed by the Executive Director;
 - (3) Overrule a budgetary action approved by the Executive Director.
 - b. Take administrative or legal action:
 - i. Issue subpoenas;
 - ii. Initiate or respond to administrative law proceedings;
 - iii. Initiate or respond to lawsuits;
 - iv. Enter into, amend, or abolish agreements with a Federal or State Governmental authority:
 - (1) Memoranda of Understanding;
 - (2) Memoranda of Agreement;
 - (3) Intergovernmental Agreement.
 - c. Appoint Advisory Committees;
 - d. Hire, terminate or take other action regarding the Executive Director;

- e. Refer a matter to the WMATA Inspector General, the Executive Director, MSC personnel, or to an Advisory Committee for consideration;
 - f. Order WMATA to suspend or disqualify from performing in any Safety Sensitive Position an individual who is alleged to or has violated safety rules, regulations, policies, or laws;
 - g. Order WMATA to remove a specific piece of equipment or facility from service for investigative reasons and/or to address a present safety concern;
 - h. Issue citations or fines to WMATA in accordance with enforcement authority provided by the Compact and MSC SOPs;
 - i. Order WMATA to restrict, suspend, or prohibit rail service on all or part of the WMATA Metrorail System with an appropriate notice to WMATA and its component jurisdictions as dictated by the circumstances (Note: unanimous approval is required to shut down service);
 - j. As permitted by the Compact, to delegate powers and responsibilities to the MSC Executive Director or personnel;
 - k. Other actions required by or necessary to carry out the Board's mission and responsibilities under the Compact.
2. Actions which may either be undertaken by the Board or, delegated at its discretion to the Executive Director are:
- a. Directives to WMATA, including but not limited to the directives that the Executive Director is authorized to issue in Article V;
 - b. Create or abolish offices, employments, or positions within the MSC;
 - c. Publish or distribute safety reports, in accordance with the Compact, these Bylaws, FOIA and the opinion of MSC legal counsel:
 - i. Inspection Memoranda, special studies, audit reports, or investigation reports subject to disclosure;
 - ii. Redacted or summary Inspection Memoranda, special studies, audit reports, or investigation reports;
 - iii. Tracking logs or summary information.
 - d. Issue or disposition of petition:
 - i. From WMATA (e.g. petition for reconsideration of an MSC Order);
 - ii. From a member of the public (e.g. petition to act on a reported hazardous condition);
 - iii. To a Federal, State, or local unit of government (e.g. Federal Transit Administration [FTA], National Transportation Safety Board [NTSB], U.S. Congress);
 - e. Seek funding from eligible sources;
 - f. Execute purchases or contracts exceeding \$50,000 in value or 5 years in duration.

K. Votes

In acting upon every motion, the vote shall be taken by roll call or by voice vote. The vote of each Member on each motion shall then be entered in the record. The Secretary shall call the names of all Members present when a roll call vote is ordered or required. Each Member

present shall verbally respond with either “Aye,” “No,” or “Abstain.” Abstentions shall be counted toward a quorum, but are not counted as an affirmative vote toward a majority for taking an action.

II. Conflicts of Interest Policy

The MSC is committed to maintaining its legal and financial independence from WMATA, so that its opinions, findings, conclusions, judgments, and recommendations will be impartial and objective. The Board and MSC personnel will comply with its Conflicts of Interest Policy for Metrorail Safety Commission.

III. Officers

A. Chair

1. The Chair shall be responsible for:
 - a. Presiding over Board meetings and conferring with the Executive Director on the Agenda for the meetings;
 - b. Administering the Oath of Office to Board Members, pursuant to the Compact, unless such Member has already taken an oath prior to his or her first meeting in accordance with the laws of that Member’s jurisdiction;
 - c. Ensuring, through MSC staff, the prompt and full provision of records to the Mayor of the District of Columbia and Governors of Maryland and Virginia, pursuant to the Compact and Article I of these Bylaws.

B. Vice Chair

1. The Vice Chair shall be responsible for:
 - a. Presiding over Board meetings in the absence of the Chair,
 - b. Performing the duties of the Chair as directed by the Chair, or in the event the Chair is indisposed or conflicted from performing his or her duties.

C. Secretary

1. The Secretary or, upon vote of the Board, an MSC personnel designee under the Secretary’s supervision, shall be responsible for distributing Board meeting Agendas and accompanying materials to all Members, preparing minutes of the meetings for approval of the Board, and keeping records of the meetings. Such records shall be retained at the MSC offices.

D. Treasurer

1. The Treasurer or, upon vote of the Board, an MSC personnel designee under the Treasurer’s supervision, shall be responsible for:
 - a. Initiating the Annual Independent Audit of the MSC pursuant to the Compact Legislation and Article IV of these Bylaws;
 - b. Keeping appropriate and required records of financial transactions of the Commission;

- c. Receiving requests from the Executive Director or Board Members pursuant the MSC budget and bringing such requests before the Board for review and approval.

E. Personnel

The personnel shall conduct the day-to-day State Safety Oversight functions of the MSC under the supervision of the Executive Director, implement the MSC Program Standard, and develop reports and other documentation for the Executive Director and Board. Specific activities to be carried out by the personnel and the methods thereof are enumerated in the MSC Standard Operating Procedures.

IV. Reports and Accountability

A. Annual Safety Report

In conformance with 49 CFR 674.13, the MSC must provide a publicly available annual status report on the safety of the WMATA Metrorail system and distribute it to certain key stakeholders. The Annual Safety Report may include information on MSC directives, completed audits and significant findings, highlighted accident/incident investigations, data on Corrective Action Plans (CAPs) and safety-related trends or key performance indicators. This reporting will generally occur after the MSC has reviewed and approved WMATA's annual Public Transportation Agency Safety Plan (PTASP) update and annual internal audit report and certification of compliance with the PTASP, and after the MSC has submitted its annual State Safety Oversight Agency (SSOA) report to the FTA.

A copy of each MSC Annual Safety Report shall be provided to: the FTA Administrator; the Mayor of the District of Columbia and Governors of Maryland and Virginia; the Chair of the DC Council; the President of the Maryland Senate and the Speaker of the Maryland House of Delegates; the President of the Virginia Senate and the Speaker of the Virginia House of Delegates; and the General Manager and each Member of the Board of Directors of WMATA, and be available to the public. This report is further detailed in Article V of these Bylaws.

B. Annual Report of Operations

The Board shall make and publish annually a report on its programs, operations, and finances, which shall be distributed in the same manner as the Annual Safety Report. The Annual Operations Report may include updates on federal requirements, changes to SSO program implementation, reports on program finances, staffing, training and certification, use of contractors, and other noteworthy efforts or new initiatives.

C. Annual Independent Audit

An independent Annual Audit shall be made of the financial accounts of the MSC. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest, direct or indirect, in the financial affairs of the MSC or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be distributed in the same manner as the Annual Safety Report.

Members, employees, agents, and contractors of the MSC shall provide access to information necessary or desirable for the conduct of the Annual Audit.

V. Non-Disclosure Obligations.

Each Member and Alternate Member shall subscribe to a statement confirming his or her agreement to be bound by the following obligations relating to disclosure of information received in his or her capacity as a Member or Alternate Member:

A. Throughout the duration of this Agreement, the Member or Alternate Member may receive certain proprietary information in the course of his or her service on the Board.

1. For all the purposes of these Bylaws, "Confidential Information" shall mean and include any data or information that is designated as proprietary or confidential when provided to the Board or to the MSC by a third party or by MSC personnel (including other Board members) or contractors, which information is not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: (i) any form of marketing plan, strategies, financial information or projections, operations, sales quotes or estimates, business plans, performance results which may be related to the past, present and/or future business activities of said party, its subsidiaries and affiliated companies; (ii) plans for products or services, and customer or supplier lists; (iii) any scientific, technical data or information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, knowledge, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets, trademarks and copyrights; (v) any information relating to an investigation being conducted by or under the auspices of the MSC; and (vi) any other information that should reasonably be recognized as confidential information of a person or entity providing that information to the Board. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information.

2. The Member or Alternate Member acknowledges that the Confidential Information is either proprietary to the party disclosing it to the Board or is sensitive information the disclosure of which may result in prevent or delaying the MSC's ability to fulfill its obligations.

3. Notwithstanding anything in the foregoing statement to the contrary, Confidential Information shall not include any such information which: (i) was known by the Member or Alternate Member prior to receiving the Confidential Information in the course of his or her duties as a Member or Alternate Member; (ii) becomes rightfully known to the Member or Alternate Member from a third party source not known, after diligent inquiry, by the Member or Alternate Member to be under an obligation to maintain confidentiality; (iii) is

or shall become publicly available through no fault or failure to act by the Member or Alternate Member in breach of the obligations assumed by the Member or Alternate Member pursuant to these Bylaws; or, (iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.

B. Use of Confidential Information

1. The Member or Alternate Member herein agrees to make use of the Confidential Information solely for the purpose and in connection with the current or contemplated business of the MSC and not for any purpose other than that which has been stipulated and contained herein, unless otherwise authorized by prior written consent by the Board or a duly authorized representative of the Board.

2. Notwithstanding anything in the foregoing clauses to the contrary, the Member or Alternate Member may be compelled to disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method. If the Member or Alternate Member, or the MSC acting on behalf of the Member or Alternate Member, is unable to obtain or does not seek a protective order to prevent the required disclosure and the Member or Alternate Member is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

C. Return of Confidential Information

1. Upon completion or expiration of the Member's or Alternate Member's term, the Member or Alternate Member shall immediately return and deliver to the Board, or such other individual as the Board may designate, all tangible material and/or information representing or exemplifying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving therefrom and all other documents, materials, notes or copies ("Notes") which may have been converted to any computerized media in the form of any image, data or word processing files either manually or by image capture or any other form of work product that may be based on or include any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination Member's or Alternate Member's term or (ii) at such time as the Disclosing Party may so request. Alternatively, with the prior written consent of the Board, the Member or Alternate Member may immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify to the Board in writing such destruction of the material and or information.

VI. Rules and Regulations

A. Roles and Responsibilities

The MSC shall be vested with all the rights, powers, duties, privileges, and immunities established by the Compact Legislation, Pub. Law 115-43, 131 Stat. 1093 (August 22, 2017).

B. Executive Director Responsibilities

1. The Board is ultimately responsible for all SSOA activity. The Board delegates to its appointee and employee, the Executive Director, certain functions. The Executive Director is responsible for ensuring that day-to-day SSOA activities are executed effectively and in accordance with Federal requirements, MSC Board requirements, and the MSC Program Standard and Standard Operating Procedures.
2. The Board shall appoint and fix the compensation and benefits of the Executive Director, who shall be the chief administrative officer for the MSC and SSOA Accountable Executive. The Executive Director shall have expertise in transportation safety and maintain one (1) or more industry-recognized transportation safety certifications.
3. The Executive Director bears primary responsibility for hiring, managing, and handling any other action with regard to MSC personnel, and maintenance of its physical plant consistent with the Budget. The Executive Director shall ensure that any personnel, contractor, or other agent of the MSC is qualified to carry out his or her responsibilities in accordance with the requirements of the Board, MSC Program Standard, MSC Standard Operating Procedures, and, as applicable, the FTA Public Transportation Safety Certification Training Program.
4. The Executive Director shall have the following powers, unless otherwise provided by resolution of the Board. These powers shall be in addition to any other powers conferred by these Bylaws.
 - a. To determine and prescribe the duties of new and existing positions and the qualifications for employment;
 - b. To determine compliance and approve plans for compliance with applicable regulations and requirements for government entities and in particular FTA-regulated entities;
 - c. To hire, promote, demote, or terminate personnel;
 - d. To take all personnel action with respect to personnel, including to grant or authorize the granting of vacation, sick leave, other leave of absence and to establish or modify other employee benefits, and to take other personnel-related actions, subject to applicable laws;
 - e. To create temporary positions and to make temporary appointments thereto for periods not exceeding one (1) year's duration.
5. The Executive Director is authorized to approve, or award agreements, contracts, or purchase orders not exceeding \$50,000 in value or 5 years in duration without explicit Board authorization for:

- a. Professional, technical, or advisory services, including but not limited to the services of consultants, lawyers, engineers, technicians, inspectors, investigators, and experts of any kind;
 - b. Maintenance, repair, rehabilitation, or other operating expenses pertaining to the MSC physical plant (offices, vehicles, equipment);
 - c. Acquisition of (including the leasing of) office space, vehicles, materials, equipment or supplies;
 - d. Utility, information technology support, or other services;
 - e. Insurance or brokerage services; and
 - f. Settlement of claims.
6. As authorized by the Board, and in accordance with the Compact Legislation, the MSC Program Standard, and applicable federal laws and regulations, the Executive Director may execute certain enforcement actions on behalf of the MSC upon WMATA:
- a. Executive Director is authorized to issue the following Directives to WMATA without action by the Board:
 - i. Order WMATA to create a Corrective Action Plan (CAP);
 - ii. Order WMATA to implement a CAP;
 - iii. Order WMATA to conduct a Hazard Analysis;
 - iv. Order WMATA or MSC personnel to conduct an investigation, examination, or perform testing of WMATA personnel and contractors, property, equipment, facilities, rolling stock, and operations of the WMATA Metrorail System;
 - v. Order a stay upon the execution of an Order previously issued by MSC personnel (Board-issued Orders may only be modified by the Board).
 - b. Executive Director must secure Board authorization to, and on an emergency basis (i.e. outside a formally convened Board Meeting or Special Meeting but subject to Board ratification) may order WMATA's Office of the Inspector General, or any successor WMATA office or organization having similar duties, to conduct safety-related audits or investigations and to provide its findings to the MSC;
 - c. Executive Director must take any other enforcement actions as directed by the Board.
- C. Executive Director Reporting to Board
1. Annual Safety Report
The Executive Director shall develop, or delegate development of, the Annual Safety Report as described in Article IV of these Bylaws and present it to the Board for adoption at a meeting.
 2. Annual Operations Report
The Executive Director is responsible for developing the Annual Operations Report as described in Article IV of these Bylaws and for presenting it to the Board for formal adoption at a meeting.

VII. Advisory Committees

The Board has the authority to appoint Advisory Committees to support the execution of its duties. The Board shall determine the membership and appointment of members to such committees, including the potential delegation of appointment authority to the Executive Director. Advisory Committees execute their duties at a working-group level and, as such, do not hold formal, open meetings.

VIII. Indemnification of Board Members and Personnel

As authorized by the Compact, the Commission shall indemnify and hold harmless Board Members and MSC personnel to the extent permitted by law and under the Compact for those actions taken within the scope of their employment or duties under the Compact.

IX. Reservation of Powers

The powers not delegated by these Bylaws are reserved to the MSC Board. The powers vested by or pursuant to these Bylaws in the Executive Director and MSC personnel shall not be construed or deemed to limit the authority of the Board to act in any instance. If such authority is exercised by the Board, it shall not be construed or deemed to affect the power of the Executive Director, or MSC personnel to act in similar cases thereafter, unless so determined by the Board.

X. Amendments to Bylaws and SOPs

These Bylaws may be amended by resolution duly adopted at any regular or special meeting of the Board , provided that notice of intention to present such resolution shall be given to all Board Members at least five (5) business days in advance of the meeting at which the motion to adopt such resolution will be made. Such notice may be given by any Member or by the Secretary at the request of any Member. The Executive Director may propose amendments to the Bylaws to the Board for consideration and adoption at a Board meeting.