

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 362

An Act to amend and reenact § 33.2-1526.1 of the Code of Virginia and to repeal the eighth enactment of Chapter 854 and the eighth enactment of Chapter 856 of the Acts of Assembly of 2018, relating to the Commonwealth Mass Transit Fund.

[H 1496]

Approved March 23, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 33.2-1526.1 of the Code of Virginia is amended and reenacted as follows:

§ 33.2-1526.1. Use of the Commonwealth Mass Transit Fund.

A. All funds deposited pursuant to § 33.2-1524.1 into the Commonwealth Mass Transit Fund (the Fund), established pursuant to § 33.2-1526, shall be allocated as set forth in this section.

B. From funds available pursuant to subsection D, ~~beginning in fiscal year 2022~~, up to \$50 million shall be allocated to the Washington Metropolitan Area Transit Authority as matching funds to federal and other funds provided by the Federal Transit Administration, the District of Columbia, and the State of Maryland. However, such funds shall only be provided if the District of Columbia and the State of Maryland each provide an amount equal to one-third of the funding provided by the Federal Transit Administration to the Washington Metropolitan Area Transit Authority. The funds provided by the Commonwealth shall not exceed the funds provided by the District of Columbia or the State of Maryland.

C. The Board may establish policies for the implementation of this section, including the determination of the state share of operating, capital, and administrative costs related to mass transit. For purposes of this section, capital costs may include debt service payments on local or agency transit bonds. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes as set forth in this section. No funds from the Fund shall be allocated without a local match from the recipient.

D. Each year the Director of the Department of Rail and Public Transportation shall make recommendations to the Board for the allocation of funds from the Fund. Such recommendations, and the final allocations approved by the Board, shall adhere to the following, *except as provided in subsection E*:

1. ~~Twenty-seven~~ *Twenty-four and one-half* percent of the funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency as established by the Board. Such measures and their relative weight shall be evaluated every three years ~~and, if redefined by the Board, shall be published and made available for public comment at least one year in advance of being applied and shall be finalized 6 months prior to the fiscal year of implementation.~~ The Washington Metropolitan Area Transit Authority (WMATA) ~~and the commuter rail system jointly operated by the Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (PRTC), established pursuant to Chapter 19 (§ 33.2-1900 et seq.)~~ shall not be eligible for an allocation of funds pursuant to this subdivision.

2. ~~Eighteen~~ *Seventeen* percent of the funds shall be allocated for capital purposes and distributed utilizing the transit capital prioritization process established by the Board pursuant to § 33.2-214.4. ~~The Washington Metropolitan Area Transit Authority WMATA and the commuter rail system jointly operated by NVTC and PRTC, established pursuant to Chapter 19 (§ 33.2-1900 et seq.)~~ shall not be eligible for an allocation of funds pursuant to this subdivision.

3. *Three and one-half* percent of funds may be allocated to NVTC for distribution to the commuter rail system jointly operated by NVTC and PRTC, established pursuant to Chapter 19 (§ 33.2-1900 et seq.), for operating and capital purposes. The amount of funds distributed pursuant to this subdivision and the selection of systems receiving funds pursuant to this subdivision shall be based on service delivery factors including effectiveness and efficiency as established by the Board. Such measures and their relative weight shall be evaluated every three years and shall be finalized six months prior to the fiscal year of implementation. Any funds remaining after such distribution shall be redistributed to subdivision 2.

4. ~~Forty-six~~ *Forty-six and one-half* percent of the funds shall be allocated to the ~~Northern Virginia Transportation Commission~~ NVTC for distribution to WMATA for capital purposes and operating assistance, as determined by the Commission. *All allocations pursuant to this subdivision shall not exceed 50 percent of the total operating and capital assistance required to be provided by NVTC or other Virginia entities in the approved WMATA budget. If the default allocation pursuant to this subdivision exceeds an amount equal to 50 percent of the total operating and capital assistance required*

to be provided by NVTC or other Virginia entities in the approved WMATA budget, the remaining funds shall be redistributed to subdivision 2. No contributions made to WMATA pursuant to § 33.2-3401 by the Commonwealth or NVTC shall be relevant for the purposes of administering this subdivision.

4. 5. Six percent of the funds shall be allocated by the Board for the Transit Ridership Incentive Program established pursuant to § 33.2-1526.3.

5. 6. Two and one-half percent of the funds shall be allocated for special programs, including ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation. Remaining funds may also be used directly by the Department of Rail and Public Transportation to (i) finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout the Commonwealth or (ii) finance up to 80 percent of the cost of development and implementation of projects with a purpose of enhancing the provision and use of public transportation services.

E. The Board may consider the transfer of funds from subdivisions D 2 and 5 6 to subdivision D 1 in times of statewide economic distress or statewide special need.

F. The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Fund revenues in order to ensure stability in providing operating and capital funding to transit entities from year to year, provided that such balance shall not exceed five percent of revenues in a given biennium.

G. The Board may allocate up to 3.5 percent of the funds set aside for the Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.

H. Funds allocated to the Northern Virginia Transportation Commission (NVTC) for WMATA pursuant to subdivision D 3 4 shall be credited to the Counties of Arlington ~~and~~, Fairfax, *and Loudoun* and the Cities of Alexandria, Fairfax, and Falls Church. ~~Beginning in the fiscal year when service starts on Phase II of the Silver Line, such funds shall also be credited to Loudoun County.~~ Funds allocated pursuant to this subsection shall be credited as follows:

1. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC, which shall use 95 percent state aid for these payments.

2. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Local transit subsidies and local capital costs of Loudoun County shall not be included. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

I. Appropriations from the Fund are intended to provide a stable and reliable source of revenue, as defined by P.L. 96-184.

J. Notwithstanding any other provision of law, funds allocated to WMATA may be disbursed by the Department of Rail and Public Transportation directly to WMATA or to any other transportation entity that has an agreement to provide funding to WMATA.

K. In any year that the total Virginia operating assistance in the approved WMATA budget increases by more than three percent from the total operating assistance in the prior year's approved WMATA budget, the Board shall withhold an amount equal to 35 percent of the funds available under subdivision D 3 4. The following items shall not be included in the calculation of any WMATA budget increase: (i) any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any capital project approved by the WMATA Board before or after the effective date of this provision; (iii) any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity; and (iv) any service increases approved by the WMATA Board.

L. The Board shall withhold 20 percent of the funds available pursuant to subdivision D 3 4 if (i) any alternate directors participate or take action at an official WMATA Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate directors.

M. The Board shall withhold 20 percent of the funds available pursuant to subdivision D 4 unless (i) WMATA has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the Northern Virginia Transportation Commission (NVTC), and (ii) WMATA has adopted or updated a strategic plan within the preceding 36 months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by NVTC.

The strategic plan shall require (a) an assessment of state of good repair needs; (b) a review of the performance of fixed-route bus service, including schedules, route design, connectivity, and vehicle sizes; (c) an evaluation of opportunities to improve operating efficiency of the transit network, including reliability of trips and travel speed; (d) an examination and identification of opportunities to share services where multiple transit providers' services overlap; and (e) an examination of opportunities to improve service in underserved areas.

N. The Board shall withhold 20 percent of the funds available pursuant to subdivision D 4 unless WMATA prepares and submits a proposed detailed annual operating budget and any proposed capital expenditures and projects for the following fiscal year to the Board by April 1 of each year. The budget shall include information on expenditures, indebtedness, pensions and other liabilities, and other information as prescribed by the Board. Additionally such funds shall be withheld if the Commonwealth's and Northern Virginia Transportation Commission's representatives to the WMATA Board of Directors and the WMATA General Manager fail to annually address the Commonwealth Transportation Board regarding the WMATA budget, system performance, and utilization of the Commonwealth's investment in the WMATA system.

O. The Board shall withhold 20 percent of the funds available pursuant to subdivision D 3 unless the commuter rail system jointly operated by Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, established pursuant to Chapter 19 (§ 33.2-1900 et seq.), submits a detailed annual operating budget and any proposed capital expenditures and projects for the following fiscal year to the Board by February 1 of each year. The operating plan and budget shall include information on expenditures, indebtedness, and other information as prescribed by the Board.

2. That the eighth enactment of Chapter 854 and the eighth enactment of Chapter 856 of the Acts of Assembly of 2018 are repealed.

3. That for fiscal year 2024, the Director of the Department of Rail and Public Transportation may deviate from the allocation requirements in subsection D of § 33.2-1526.1 of the Code of Virginia, as amended by this act, when making recommendations to the Commonwealth Transportation Board (Board) for allocation of funds from the Commonwealth Mass Transit Fund (the Fund). For fiscal year 2024, the Board may utilize the allocation requirements for the Fund provided for in subsection D of § 33.2-1526.1 of the Code of Virginia, as it was in effect prior to the effective date of this act, for the purpose of transitioning to the allocation requirements of this act.