

Union Calendar No. 162

115TH CONGRESS
1ST SESSION

H. J. RES. 76

[Report No. 115-227]

Granting the consent and approval of Congress for the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to a enter into a compact relating to the establishment of the Washington Metrorail Safety Commission.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. HOYER (for himself, Ms. NORTON, Mr. SARBANES, Mr. CONNOLLY, Mr. DELANEY, Mr. BEYER, Mr. BROWN of Maryland, Mr. RASKIN, and Mrs. COMSTOCK) submitted the following joint resolution; which was referred to the Committee on the Judiciary

JULY 17, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the resolving clause and insert the part printed in *italic*]

JOINT RESOLUTION

Granting the consent and approval of Congress for the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to a enter into a compact relating to the establishment of the Washington Metrorail Safety Commission.

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

Whereas an effective and safe Washington Metropolitan Area Transit Authority system is essential to the commerce and prosperity of the National Capital region;

Whereas the Tri-State Oversight Committee, created by a memorandum of understanding amongst these 3 jurisdictions, has provided safety oversight of the Washington Metropolitan Area Transit Authority;

Whereas 49 U.S.C. 5329 requires the creation of a legally and financially independent state authority for safety oversight of all fixed rail transit facilities;

Whereas the District of Columbia, the Commonwealth of Virginia, and the State of Maryland intend to create a Washington Metrorail Safety Commission to act as the state safety oversight authority for the Washington Metropolitan Area Transit Authority system under 49 U.S.C. 5329; and

Whereas this compact is created for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and for the increase of their safety, commerce, and prosperity.

1 *Resolved by the Senate and House of Representatives*
 2 *of the United States of America in Congress assembled,*
 3 ~~That the consent and approval of Congress is hereby given~~
 4 ~~for the Commonwealth of Virginia, the State of Maryland,~~
 5 ~~and the District of Columbia to enter into a compact for~~

1 the safety oversight of the Washington Metropolitan Area
 2 Transit Authority Metrorail system (known as the Metro-
 3 rail Safety Commission Interstate Compact); which has
 4 been negotiated by representatives of the State, the Com-
 5 monwealth, and the District, substantially as follows:

6 “ARTICLE I

7 “DEFINITIONS

8 “1. As used in this MSC Compact, the following
 9 words and terms shall have the meanings set forth below,
 10 unless the context clearly requires a different meaning.
 11 Capitalized terms used herein, but not otherwise defined
 12 in this MSC Compact, shall have the definition set forth
 13 in regulations issued under 49 U.S.C. § 5329, as they may
 14 be revised from time to time.

15 “(a) ‘Alternate Member’ means an alternate
 16 member of the Board;

17 “(b) ‘Board’ means the board of directors of
 18 the Commission;

19 “(c) ‘Commission’ means the Washington Met-
 20 rorail Safety Commission;

21 “(d) ‘Member’ means a member of the Board;

22 “(e) ‘MSC Compact’ means this Washington
 23 Metrorail Safety Commission Interstate Compact;

24 “(f) ‘Public Transportation Agency Safety Plan’
 25 means the comprehensive agency safety plan for a

1 rail transit agency required by 49 U.S.C. § 5329
2 and the regulations issued thereunder, as may be
3 amended or revised from time to time;

4 “(g) ‘Public Transportation Safety Certification
5 Training Program’ means the federal certification
6 training program, as established and amended from
7 time to time by applicable federal laws and regula-
8 tions, for federal and state employees, or other des-
9 ignated personnel, who conduct safety audits and ex-
10 aminations of public transportation systems, and
11 employees of public transportation agencies directly
12 responsible for safety oversight;

13 “(h) ‘Safety Sensitive Position’ means any posi-
14 tion held by a WMATA employee or contractor des-
15 ignated in the Public Transportation Agency Safety
16 Plan for the WMATA Rail System and approved by
17 the Commission as directly or indirectly affecting the
18 safety of the passengers or employees of the
19 WMATA Rail System;

20 “(i) ‘Signatory’ means the State of Maryland,
21 the Commonwealth of Virginia, and the District of
22 Columbia;

23 “(j) ‘State’, ‘state’, or ‘jurisdiction’ means the
24 District of Columbia, the State of Maryland, or the
25 Commonwealth of Virginia;

1 “(k) ‘Washington Metropolitan Area Transit
2 Authority’ or ‘WMATA’ is the entity created by the
3 WMATA Compact, which entity is responsible for
4 providing certain rail fixed guideway public trans-
5 portation system services;

6 “(l) ‘WMATA Compact’ means the Washington
7 Metropolitan Area Transit Authority Compact, ap-
8 proved November 6, 1966 (80 Stat. 1324; D.C. Offi-
9 cial Code § 9-1107.01 et seq.); and

10 “(m) ‘WMATA Rail System’ or ‘Metrorail’
11 means the rail fixed guideway public transportation
12 system and all other real and personal property
13 owned, leased, operated, or otherwise used by
14 WMATA rail services and shall include WMATA rail
15 projects under design or construction by owners
16 other than WMATA.

17 “ARTICLE II

18 “PURPOSE AND FUNCTIONS

19 “2. The Signatories to the WMATA Compact hereby
20 adopt this MSC Compact pursuant to 49 U.S.C. § 5329.
21 The Commission created hereunder shall have safety regu-
22 latory and enforcement authority over the WMATA Rail
23 System and shall act as the state safety oversight author-
24 ity for WMATA under 49 U.S.C. § 5329, as may be

1 amended from time to time. WMATA shall be subject to
2 the Commission's rules, regulations, actions, and orders.

3 “3. The purpose of this MSC Compact is to create
4 a state safety oversight authority for the WMATA Rail
5 System, pursuant to the mandate of federal law, as a com-
6 mon agency of each Signatory, empowered in the manner
7 hereinafter set forth to review, approve, oversee, and en-
8 force the safety of the WMATA Rail System, including,
9 without limitation, to:

10 “(a) Have exclusive safety oversight authority
11 and responsibility over the WMATA Rail System
12 pursuant to federal law, including, without limita-
13 tion, the power to restrict, suspend, or prohibit rail
14 service on all or part of the WMATA Rail System
15 as set forth in this MSC Compact;

16 “(b) Develop and adopt a written state safety
17 oversight program standard;

18 “(c) Review and approve the WMATA Public
19 Transportation Agency Safety Plan;

20 “(d) Investigate hazards, incidents, and acci-
21 dents on the WMATA Rail System;

22 “(e) Require, review, approve, oversee, and en-
23 force Corrective Action Plans developed by WMATA;
24 and

1 “(f) Meet other requirements of federal and
2 State law relating to safety oversight of the
3 WMATA Rail System.

4 “ARTICLE III

5 “ESTABLISHMENT AND ORGANIZATION

6 “A. Washington Metrorail Safety Commission

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

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

13 “B. Board Membership

14 “6. The Commission shall be governed by a Board
15 of 6 Members with 2 Members appointed or reappointed
16 (including to fill an unexpired term) by each Signatory
17 pursuant to the Signatory’s applicable laws.

18 “7. Each Signatory shall also appoint or reappoint
19 (including to fill an unexpired term) one Alternate Mem-
20 ber pursuant to the Signatory’s applicable laws.

21 “8. An Alternate Member shall participate and take
22 action as a Member only in the absence of one or both
23 Members appointed from the same jurisdiction as the Al-
24 ternate Member’s appointing jurisdiction and, in such in-
25 stances, may cast a single vote.

1 ~~“9. Members and Alternate Members shall have back-~~
2 ~~grounds in transit safety, transportation, relevant engi-~~
3 ~~neering disciplines, or public finance.~~

4 ~~“10. No Member or Alternate Member shall simulta-~~
5 ~~neously hold an elected public office, serve on the WMATA~~
6 ~~board of directors, be employed by WMATA, or be a con-~~
7 ~~tractor to WMATA.~~

8 ~~“11. Each Member and Alternate Member shall serve~~
9 ~~a 4-year term and may be reappointed for additional~~
10 ~~terms; except that, each Signatory shall make its initial~~
11 ~~appointments as follows:~~

12 ~~“(a) One Member shall be appointed for a 4-~~
13 ~~year term;~~

14 ~~“(b) One Member shall be appointed for a 2-~~
15 ~~year term; and~~

16 ~~“(c) The Alternate Member shall be appointed~~
17 ~~for a 3-year term.~~

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

20 ~~“13. Members and Alternate Members shall be enti-~~
21 ~~itled to reimbursement for reasonable and necessary ex-~~
22 ~~penses and shall be compensated for each day spent meet-~~
23 ~~ing on the business of the Commission at a rate of \$200~~
24 ~~per day or at such other rate as may be adjusted in appro-~~
25 ~~priations approved by all of the Signatories.~~

1 “14. A Member or an Alternate Member may be re-
 2 moved or suspended from office only for cause in accord-
 3 ance with the laws of such Member’s or Alternate Mem-
 4 ber’s appointing jurisdiction.

5 “C. Quorum and Actions of the Board

6 “15. Four Members shall constitute a quorum, and
 7 the affirmative vote of 4 Members is required for action
 8 of the Board. Quorum and voting requirements under this
 9 paragraph may be met with one or more Alternate Mem-
 10 bers pursuant to section 8.

11 “16. The Commission action shall become effective
 12 upon enactment unless otherwise provided for by the Com-
 13 mission.

14 “D. Oath of Office

15 “17. Before entering office, each Member and Alter-
 16 nate Member shall take and subscribe to the following
 17 oath (or affirmation) of office or any such other oath or
 18 affirmation as the constitution or laws of the Signatory
 19 he or she represents shall provide:

20 “I, _____; hereby solemnly
 21 swear (or affirm) that I will support and defend the Con-
 22 stitution and the laws of the United States as a Member
 23 (or Alternate Member) of the Board of the Washington
 24 Metrorail Safety Commission and will faithfully discharge
 25 the duties of the office upon which I am about to enter.

1 “E. Organization and Procedure

2 “18. The Board shall provide for its own organization
3 and procedure. Meetings of the Board shall be held as fre-
4 quently as the Board determines, but in no event less than
5 quarterly. The Board shall keep minutes of its meetings
6 and establish rules and regulations governing its trans-
7 actions and internal affairs, including, without limitation,
8 policies regarding records retention that are not in conflict
9 with applicable federal record retention laws.

10 “19. The Commission shall keep commercially rea-
11 sonable records of its financial transactions in accordance
12 with accounting principles generally accepted in the
13 United States of America.

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

17 “21. The Commission shall adopt 5 U.S.C. § 552(a)-
18 (d) and (g), and 5 U.S.C. § 552b, as both may be amended
19 from time to time, as its freedom-of-information policy
20 and open-meeting policy, respectively, and shall not be
21 subject to the comparable laws or policies of any Signa-
22 tory.

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

1 ~~“23. The Commission shall adopt a policy on conflict~~
2 of interest that shall be consistent with the regulations
3 issued under 49 U.S.C. § 5329, as they may be revised
4 from time to time; which, among other things, places ap-
5 propriate separation between Members, officers, employ-
6 ees, contractors, and agents of the Commission and
7 WMATA.

8 ~~“24. The Commission shall adopt and utilize its own~~
9 administrative procedure and procurement policies in con-
10 formance with applicable federal regulations and shall not
11 be subject to the administrative procedure or procurement
12 laws of any Signatory.

13 ~~“F. Officers and Employees~~

14 ~~“25. The Board shall elect a Chairman, Vice Chair-~~
15 man, Secretary, and Treasurer from among its Members,
16 each for a 2-year term and shall prescribe their powers
17 and duties.

18 ~~“26. The Board shall appoint and fix the compensa-~~
19 tion and benefits of a chief executive officer who shall be
20 the chief administrative officer of the Commission and who
21 shall have expertise in transportation safety and one or
22 more industry-recognized transportation safety certifi-
23 cations.

24 ~~“27. Consistent with 49 U.S.C. § 5329, as may be~~
25 amended from time to time, the Commission may employ,

1 under the direction of the chief executive officer, such
2 other technical, legal, clerical, and other employees on a
3 regular, part-time, or as-needed basis as it determines nec-
4 essary or desirable for the discharge of its duties.

5 “28. The Commission shall not be bound by any stat-
6 ute or regulation of any Signatory in the employment or
7 discharge of any officer or employee of the Commission,
8 but shall develop its own policies in compliance with fed-
9 eral law. The MSC shall, however, consider the laws of
10 the Signatories in devising its employment and discharge
11 policies, and when it deems it practical, devise policies con-
12 sistent with the laws of the Signatories.

13 “29. The Board may fix and provide policies for the
14 qualification, appointment, removal, term, tenure, com-
15 pensation benefits, worker’s compensation, pension, and
16 retirement rights of its employees subject to federal law.
17 The Board may also establish a personnel system based
18 on merit and fitness and, subject to eligibility, participate
19 in the pension, retirement, and worker’s compensation
20 plans of any Signatory or agency or political subdivision
21 thereof.

22 “ARTICLE IV

23 “POWERS

24 “A. Safety Oversight Powers

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

4 “(a) Adopt, revise, and distribute a written State
5 Safety Oversight Program;

6 “(b) Review, approve, oversee, and enforce the adop-
7 tion and implementation of WMATA’s Public Transpor-
8 tation Agency Safety Plan;

9 “(c) Require, review, approve, oversee, and enforce
10 the adoption and implementation of any Corrective Action
11 Plans that the Commission deems appropriate;

12 “(d) Implement and enforce relevant federal and
13 State laws and regulations relating to safety of the
14 WMATA Rail System; and

15 “(e) Audit every 3 years the compliance of WMATA
16 with WMATA’s Public Transportation Agency Safety
17 Plan or conduct such an audit on an ongoing basis over
18 a 3-year time frame.

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

21 “(a) Conduct, or cause to be conducted, inspections,
22 investigations, examinations, and testing of WMATA per-
23 sonnel and contractors, property, equipment, facilities,
24 rolling stock, and operations of the WMATA Rail System,
25 including, without limitation, electronic information and

1 databases through reasonable means, which may include
2 issuance of subpoenas;

3 “(b) Enter upon the WMATA Rail System and, upon
4 reasonable notice and a finding by the chief executive offi-
5 cer that a need exists, upon any lands, waters, and prem-
6 ises adjacent to the WMATA Rail System, including, with-
7 out limitation, property owned or occupied by the federal
8 government, for the purpose of making inspections, inves-
9 tigation, examinations, and testing as the Commission
10 may deem necessary to carry out the purposes of this MSC
11 Compact, and such entry shall not be deemed a trespass.
12 The Commission shall make reasonable reimbursement for
13 any actual damage resulting to any such adjacent lands,
14 waters, and premises as a result of such activities;

15 “(c) Compel WMATA’s compliance with any Corre-
16 tive Action Plan or order of the Commission by such
17 means as the Commission deems appropriate, including,
18 without limitation, by:

19 “(1) Taking legal action in a court of com-
20 petent jurisdiction;

21 “(2) Issuing citations or fines with funds going
22 into an escrow account for spending by WMATA on
23 Commission-directed safety measures;

24 “(3) Directing WMATA to prioritize spending
25 on safety-critical items;

1 ~~“(4) Removing a specific vehicle, infrastructure~~
 2 ~~element, or hazard from the WMATA Rail System;~~
 3 ~~and~~

4 ~~“(5) Compelling WMATA to restrict, suspend,~~
 5 ~~or prohibit rail service on all or part of the WMATA~~
 6 ~~Rail System with an appropriate notice period dic-~~
 7 ~~tated by the circumstances;~~

8 ~~“(d) Direct WMATA to suspend or disqualify from~~
 9 ~~performing in any Safety Sensitive Position an individual~~
 10 ~~who is alleged to or has violated safety rules, regulations,~~
 11 ~~policies, or laws;~~

12 ~~“(e) Compel WMATA’s Office of the Inspector Gen-~~
 13 ~~eral, created under WMATA Board Resolution 2006-18,~~
 14 ~~or any successor WMATA office or organization having~~
 15 ~~similar duties, to conduct safety-related audits or inves-~~
 16 ~~tigations and to provide its findings to the Commission;~~
 17 ~~and~~

18 ~~“(f) Take such other actions as the Commission may~~
 19 ~~deem appropriate consistent with its purpose and powers.~~

20 ~~“32. Action by the Board under section 31(e)(5) shall~~
 21 ~~require the unanimous vote of all Members present and~~
 22 ~~voting. The Commission shall coordinate its enforcement~~
 23 ~~activities with appropriate federal and State governmental~~
 24 ~~authorities.~~

25 ~~“B. General Powers~~

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

3 “(a) Sue and be sued;

4 “(b) Adopt, amend, and repeal rules and regulations
5 respecting the exercise of the powers conferred by this
6 MSC Compact;

7 “(c) Create and abolish offices, employments, and po-
8 sitions (other than those specifically provided for in this
9 MSC Compact) necessary or desirable for the purposes of
10 the Commission;

11 “(d) Determine a staffing level for the Commission
12 that is commensurate with the size and complexity of the
13 WMATA Rail System, and require that employees and
14 other designated personnel of the Commission, who are re-
15 sponsible for safety oversight, be qualified to perform such
16 functions through appropriate training, including, without
17 limitation, successful completion of the Public Transpor-
18 tation Safety Certification Training Program;

19 “(e) Contract for or employ consulting attorneys, in-
20 spectors, engineers, and such other experts necessary or
21 desirable and, within the limitations prescribed in this
22 MSC Compact, prescribe their powers and duties and fix
23 their compensation;

24 “(f) Enter into and perform contracts, leases, and
25 agreements necessary or desirable in the performance of

1 lished by the Commission and federal law, status updates
 2 of outstanding Corrective Action Plans, Commission direc-
 3 tives, and on-going investigations. A copy of each such re-
 4 port shall be provided to:

5 “(a) The Administrator of the Federal Transit
 6 Administration;

7 “(b) The Governor of Virginia, the Governor of
 8 Maryland, and the Mayor of the District of Colum-
 9 bia;

10 “(c) The Chairman of the Council of the Dis-
 11 trict of Columbia;

12 “(d) The President of the Maryland Senate and
 13 the Speaker of the Maryland House of Delegates;

14 “(e) The President of the Virginia Senate and
 15 the Speaker of the Virginia House of Delegates; and

16 “(f) The General Manager and each member of
 17 the board of directors of WMATA.

18 “36. The Commission may prepare, publish, and dis-
 19 tribute such other safety reports that it deems necessary
 20 or desirable.

21 “B. Annual Report of Operations

22 “37. The Commission shall make and publish an an-
 23 nual report on its programs, operations, and finances,
 24 which shall be distributed in the same manner provided
 25 by section 35.

1 “38. The Commission may also prepare, publish, and
2 distribute such other public reports and informational ma-
3 terials as it deems necessary or desirable.

4 “C. Annual Independent Audit

5 “39. An independent annual audit shall be made of
6 the financial accounts of the Commission. The audit shall
7 be made by qualified certified public accountants selected
8 by the Board, who shall have no personal interest, direct
9 or indirect, in the financial affairs of the Commission or
10 any of its officers or employees. The report of audit shall
11 be prepared in accordance with generally accepted audit-
12 ing principles and shall be distributed in the same manner
13 provided by section 35. Members, employees, agents, and
14 contractors of the Commission shall provide access to in-
15 formation necessary or desirable for the conduct of the
16 annual audit.

17 “D. Financing

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

22 “41. The Signatories shall unanimously agree on ade-
23 quate funding levels for the Commission and make equal
24 contributions of such funding, subject to annual appro-

1 priation, to cover the portion of Commission operations
2 not funded by federal funds.

3 “42. The Commission may borrow up to 5% of its
4 last annual appropriations budget in anticipation of re-
5 ceipts, or as otherwise set forth in the appropriations
6 budget approved by all of the Signatories, from any lawful
7 lending institution for any purpose of this MSC Compact,
8 including, without limitation, for administrative expenses.
9 Such loans shall be for a term not to exceed 2 years, or
10 at such longer term approved by each Signatory pursuant
11 to its laws as evidenced by the written authorization by
12 the Mayor of the District of Columbia and the Governors
13 of Maryland and Virginia, and at such rates of interest
14 as shall be acceptable to the Commission.

15 “43. With respect to the District of Columbia, the
16 commitment or obligation to render financial assistance to
17 the Commission shall be created, by appropriation or in
18 such other manner, or by such other legislation, as the
19 District of Columbia shall determine; provided, that any
20 such commitment or obligation shall be approved by Con-
21 gress pursuant to the District of Columbia Home Rule
22 Act, approved December 24, 1973 (87 Stat. 774; D.C. Of-
23 ficial Code § 1-201.01 et seq.).

24 “44. Pursuant to the requirements of 31 U.S.C. §§
25 1341, 1342, 1349 to 1351, and 1511 to 1519, and D.C.

1 Official Code §§ 47-105 and 47-355.01 to 355.08 (collec-
2 tively, the ‘Anti-Deficiency Acts’), the District cannot obli-
3 gate itself to any financial commitment in any present or
4 future year unless the necessary funds to pay that commit-
5 ment have been appropriated and are lawfully available
6 for the purpose committed. Thus, pursuant to the Anti-
7 Deficiency Acts, nothing in the MSC Compact creates an
8 obligation of the District in anticipation of an appropria-
9 tion for such purpose, and the District’s legal liability for
10 the payment of any amount under this MSC Compact does
11 not and may not arise or obtain in advance of the lawful
12 availability of appropriated funds for the applicable fiscal
13 year.

14 “E. Tax Exemption

15 “45. The exercise of the powers granted by this MSC
16 Compact shall in all respects be for the benefit of the peo-
17 ple of the District of Columbia, the Commonwealth of Vir-
18 ginia, and the State of Maryland and for the increase of
19 their safety, commerce, and prosperity, and as the activi-
20 ties associated with this MSC Compact shall constitute the
21 performance of essential governmental functions, the
22 Commission shall not be required to pay any taxes or as-
23 sessments upon the services or any property acquired or
24 used by the Commission under the provisions of this MSC
25 Compact or upon the income therefrom, and shall at all

1 times be free from taxation within the District of Colum-
2 bia, the Commonwealth of Virginia, and the State of
3 Maryland.

4 “F. Reconsideration of Commission Orders

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

8 “47. Consistent with section 16, the filing of a peti-
9 tion for reconsideration shall not act as a stay upon the
10 execution of a Commission order, or any part of it, unless
11 the Commission orders otherwise. WMATA may appeal
12 any adverse action on a petition for reconsideration as set
13 forth in section 48.

14 “G. Judicial Matters

15 “48. The United States District Court for the East-
16 ern District of Virginia, Alexandria Division, the United
17 States District Court for the District of Maryland, South-
18 ern Division, and the United States District Court for the
19 District of Columbia shall have exclusive and original ju-
20 risdiction of all actions brought by or against the Commis-
21 sion and to enforce subpoenas under this MSC Compact.

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

25 “H. Liability and Indemnification

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

13 “51. The Commission shall be liable for its contracts
14 and for its torts and those of its Members, Alternate Mem-
15 bers, officers, agents, employees, and representatives com-
16 mitted in the conduct of any proprietary function, in ac-
17 cordance with the law of the applicable Signatory (includ-
18 ing, without limitation, rules on conflict of laws) but shall
19 not be liable for any torts occurring in the performance
20 of a governmental function. The exclusive remedy for such
21 breach of contract or tort for which the Commission shall
22 be liable, as herein provided, shall be by suit against the
23 Commission. Nothing contained in this MSC Compact
24 shall be construed as a waiver by the District of Columbia,

1 the Commonwealth of Virginia, or the State of Maryland
2 of any immunity from suit.

3 “I. Commitment of Parties

4 “52. Each of the Signatories pledges to each other
5 faithful cooperation in providing safety oversight for the
6 WMATA Rail System, and, to affect such purposes, agrees
7 to consider in good faith and request any necessary legisla-
8 tion to achieve the objectives of this MSC Compact.

9 “J. Amendments and Supplements

10 “53. Amendments and supplements to this MSC
11 Compact shall be adopted by legislative action of each of
12 the Signatories and the consent of Congress. When one
13 Signatory adopts an amendment or supplement to an ex-
14 isting section of this MSC Compact, that amendment or
15 supplement shall not be immediately effective, and the pre-
16 viously enacted provision or provisions shall remain in ef-
17 fect in each jurisdiction until the amendment or supple-
18 ment is approved by the other Signatories and is con-
19 sented to by Congress.

20 “K. Withdrawal and Termination

21 “54. Any Signatory may withdraw from this MSC
22 Compact, which action shall constitute a termination of
23 this MSC Compact.

24 “55. Withdrawal from this MSC Compact shall be by
25 a Signatory’s repeal of this MSC Compact from its laws,

1 but such repeal shall not take effect until 2 years after
 2 the effective date of the repealed statute and written no-
 3 tice of the withdrawal being given by the withdrawing Sig-
 4 natory to the governors or mayor, as appropriate, of the
 5 other Signatories.

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

8 “(a) A mechanism for concluding the operations
 9 of the Commission;

10 “(b) A proposal to maintain state safety over-
 11 sight of the WMATA Rail System in compliance
 12 with applicable federal law;

13 “(c) A plan to hold surplus funds in a trust for
 14 a successor regulatory entity for 4 years after the
 15 termination of this MSC Compact; and

16 “(d) A plan to return any surplus funds that
 17 remain 4 years after the creation of the trust.

18 “I. Construction and Severability

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

21 “58. If any part or provision of this MSC Compact
 22 or the application thereof to any person or circumstances
 23 be adjudged invalid by any court of competent jurisdiction,
 24 such judgment shall be confined in its operation to the
 25 part, provision, or application directly involved in the con-

1 troversy in which such judgment shall have been rendered
2 and shall not affect or impair the validity of the remainder
3 of this MSC Compact or the application thereof to other
4 persons or circumstances; and the Signatories hereby de-
5 clare that they would have entered into this MSC Compact
6 or the remainder thereof had the invalidity of such provi-
7 sion or application thereof been apparent.

8 “M. Adoption; Effective Date

9 “59. This MSC Compact shall be adopted by the Sig-
10 natories in the manner provided by law therefor and shall
11 be signed and sealed in 4 duplicate original copies. One
12 such copy shall be filed with the Secretary of State of the
13 State of Maryland; the Secretary of the Commonwealth
14 of Virginia; and the Secretary of the District of Columbia
15 in accordance with the laws of each jurisdiction. One copy
16 shall be filed and retained in the archives of the Commis-
17 sion upon its organization. This MSC Compact shall be-
18 come effective upon the enactment of concurring legisla-
19 tion by the District of Columbia, the Commonwealth of
20 Virginia, and the State of Maryland; and consent thereto
21 by Congress and when all other acts or actions have been
22 taken; including; without limitation; the signing and exe-
23 cution of this MSC Compact by the Governors of Mary-
24 land and Virginia and the Mayor of the District of Colum-
25 bia.

1 ~~“N. Conflict of Laws~~

2 ~~“60. Any conflict between any authority granted~~
 3 ~~herein, or the exercise of such authority, and the provi-~~
 4 ~~sions of the WMATA Compact shall be resolved in favor~~
 5 ~~of the exercise of such authority by the Commission.~~

6 ~~“61. All other general or special laws inconsistent~~
 7 ~~with this MSC Compact are hereby declared to be inappli-~~
 8 ~~eable to the Commission or its activities.”.~~

9 *CONSENT AND APPROVAL OF CONGRESS*

10 *SECTION 1. The consent and approval of Congress is*
 11 *hereby given for the Commonwealth of Virginia, the State*
 12 *of Maryland, and the District of Columbia to enter into*
 13 *a compact for the safety oversight of the Washington Metro-*
 14 *politan Area Transit Authority Metrorail system (known*
 15 *as the Metrorail Safety Commission Interstate Compact),*
 16 *which has been negotiated by representatives of the State,*
 17 *the Commonwealth, and the District, substantially as fol-*
 18 *lows:*

19 ~~“ARTICLE I~~

20 ~~“DEFINITIONS~~

21 ~~“1. As used in this MSC Compact, the following words~~
 22 ~~and terms shall have the meanings set forth below, unless~~
 23 ~~the context clearly requires a different meaning. Capitalized~~
 24 ~~terms used herein, but not otherwise defined in this MSC~~
 25 ~~Compact, shall have the definition set forth in regulations~~

1 *issued under 49 U.S.C. § 5329, as they may be revised from*
2 *time to time.*

3 “(a) ‘*Alternate Member*’ means an alternate
4 *member of the Board;*

5 “(b) ‘*Board*’ means the board of directors of the
6 *Commission;*

7 “(c) ‘*Commission*’ means the Washington Metro-
8 *rail Safety Commission;*

9 “(d) ‘*Member*’ means a member of the Board;

10 “(e) ‘*MSC Compact*’ means this Washington
11 *Metrorail Safety Commission Interstate Compact;*

12 “(f) ‘*Public Transportation Agency Safety Plan*’
13 *means the comprehensive agency safety plan for a rail*
14 *transit agency required by 49 U.S.C. § 5329 and the*
15 *regulations issued thereunder, as may be amended or*
16 *revised from time to time;*

17 “(g) ‘*Public Transportation Safety Certification*
18 *Training Program*’ means the federal certification
19 *training program, as established and amended from*
20 *time to time by applicable federal laws and regula-*
21 *tions, for federal and state employees, or other des-*
22 *ignated personnel, who conduct safety audits and ex-*
23 *aminations of public transportation systems, and em-*
24 *ployees of public transportation agencies directly re-*
25 *sponsible for safety oversight;*

1 “(h) ‘Safety Sensitive Position’ means any posi-
2 tion held by a WMATA employee or contractor des-
3 ignated in the Public Transportation Agency Safety
4 Plan for the WMATA Rail System and approved by
5 the Commission as directly or indirectly affecting the
6 safety of the passengers or employees of the WMATA
7 Rail System;

8 “(i) ‘Signatory’ means the State of Maryland,
9 the Commonwealth of Virginia, and the District of
10 Columbia;

11 “(j) ‘State’, ‘state’, or ‘jurisdiction’ means the
12 District of Columbia, the State of Maryland, or the
13 Commonwealth of Virginia;

14 “(k) ‘Washington Metropolitan Area Transit Au-
15 thority’ or ‘WMATA’ is the entity created by the
16 WMATA Compact, which entity is responsible for
17 providing certain rail fixed guideway public trans-
18 portation system services;

19 “(l) ‘WMATA Compact’ means the Washington
20 Metropolitan Area Transit Authority Compact, ap-
21 proved November 6, 1966 (80 Stat. 1324; D.C. Offi-
22 cial Code § 9–1107.01 et seq.); and

23 “(m) ‘WMATA Rail System’ or ‘Metrorail’
24 means the rail fixed guideway public transportation
25 system and all other real and personal property

1 *owned, leased, operated, or otherwise used by WMATA*
2 *rail services and shall include WMATA rail projects*
3 *under design or construction by owners other than*
4 *WMATA.*

5 *“ARTICLE II*

6 *“PURPOSE AND FUNCTIONS*

7 *“2. The Signatories to the WMATA Compact hereby*
8 *adopt this MSC Compact pursuant to 49 U.S.C. § 5329.*
9 *The Commission created hereunder shall have safety regu-*
10 *latory and enforcement authority over the WMATA Rail*
11 *System and shall act as the state safety oversight authority*
12 *for WMATA under 49 U.S.C. § 5329, as may be amended*
13 *from time to time. WMATA shall be subject to the Commis-*
14 *sion’s rules, regulations, actions, and orders.*

15 *“3. The purpose of this MSC Compact is to create a*
16 *state safety oversight authority for the WMATA Rail Sys-*
17 *tem, pursuant to the mandate of federal law, as a common*
18 *agency of each Signatory, empowered in the manner herein-*
19 *after set forth to review, approve, oversee, and enforce the*
20 *safety of the WMATA Rail System, including, without limi-*
21 *tation, to:*

22 *“(a) Have exclusive safety oversight authority*
23 *and responsibility over the WMATA Rail System*
24 *pursuant to federal law, including, without limita-*
25 *tion, the power to restrict, suspend, or prohibit rail*

1 *service on all or part of the WMATA Rail System as*
 2 *set forth in this MSC Compact;*

3 “(b) *Develop and adopt a written state safety*
 4 *oversight program standard;*

5 “(c) *Review and approve the WMATA Public*
 6 *Transportation Agency Safety Plan;*

7 “(d) *Investigate hazards, incidents, and acci-*
 8 *dents on the WMATA Rail System;*

9 “(e) *Require, review, approve, oversee, and en-*
 10 *force Corrective Action Plans developed by WMATA;*
 11 *and*

12 “(f) *Meet other requirements of federal and State*
 13 *law relating to safety oversight of the WMATA Rail*
 14 *System.*

15 “ARTICLE III

16 “ESTABLISHMENT AND ORGANIZATION

17 “A. *Washington Metrorail Safety Commission*

18 “4. *The Commission is hereby created as an instru-*
 19 *mentality of each Signatory, which shall be a public body*
 20 *corporate and politic, and which shall have the powers and*
 21 *duties set forth in this MSC Compact.*

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

24 “B. *Board Membership*

1 “6. *The Commission shall be governed by a Board of*
2 *6 Members with 2 Members appointed or reappointed (in-*
3 *cluding to fill an unexpired term) by each Signatory pursu-*
4 *ant to the Signatory’s applicable laws.*

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

8 “8. *An Alternate Member shall participate and take*
9 *action as a Member only in the absence of one or both Mem-*
10 *bers appointed from the same jurisdiction as the Alternate*
11 *Member’s appointing jurisdiction and, in such instances,*
12 *may cast a single vote.*

13 “9. *Members and Alternate Members shall have back-*
14 *grounds in transit safety, transportation, relevant engineer-*
15 *ing disciplines, or public finance.*

16 “10. *No Member or Alternate Member shall simulta-*
17 *neously hold an elected public office, serve on the WMATA*
18 *board of directors, be employed by WMATA, or be a con-*
19 *tractor to WMATA.*

20 “11. *Each Member and Alternate Member shall serve*
21 *a 4-year term and may be reappointed for additional terms;*
22 *except that, each Signatory shall make its initial appoint-*
23 *ments as follows:*

24 “(a) *One Member shall be appointed for a 4-year*
25 *term;*

1 “(b) One Member shall be appointed for a 2-year
2 term; and

3 “(c) The Alternate Member shall be appointed for
4 a 3-year term.

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

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

13 “14. A Member or an Alternate Member may be re-
14 moved or suspended from office only for cause in accordance
15 with the laws of such Member’s or Alternate Member’s ap-
16 pointing jurisdiction.

17 “C. Quorum and Actions of the Board

18 “15. Four Members shall constitute a quorum, and the
19 affirmative vote of 4 Members is required for action of the
20 Board. Quorum and voting requirements under this para-
21 graph may be met with one or more Alternate Members pur-
22 suant to section 8.

23 “16. The Commission action shall become effective
24 upon enactment unless otherwise provided for by the Com-
25 mission.

1 *“D. Oath of Office*

2 *“17. Before entering office, each Member and Alternate*
3 *Member shall take and subscribe to the following oath (or*
4 *affirmation) of office or any such other oath or affirmation*
5 *as the constitution or laws of the Signatory he or she rep-*
6 *resents shall provide:*

7 *“I, _____, hereby solemnly swear*
8 *(or affirm) that I will support and defend the Constitution*
9 *and the laws of the United States as a Member (or Alternate*
10 *Member) of the Board of the Washington Metrorail Safety*
11 *Commission and will faithfully discharge the duties of the*
12 *office upon which I am about to enter.*

13 *“E. Organization and Procedure*

14 *“18. The Board shall provide for its own organization*
15 *and procedure. Meetings of the Board shall be held as fre-*
16 *quently as the Board determines, but in no event less than*
17 *quarterly. The Board shall keep minutes of its meetings and*
18 *establish rules and regulations governing its transactions*
19 *and internal affairs, including, without limitation, policies*
20 *regarding records retention that are not in conflict with ap-*
21 *plicable federal record retention laws.*

22 *“19. The Commission shall keep commercially reason-*
23 *able records of its financial transactions in accordance with*
24 *accounting principles generally accepted in the United*
25 *States of America.*

1 *“20. The Commission shall establish an office for the*
2 *conduct of its affairs at a location to be determined by the*
3 *Commission.*

4 *“21. The Commission shall adopt 5 U.S.C. § 552(a)–*
5 *(d) and (g), and 5 U.S.C. § 552b, as both may be amended*
6 *from time to time, as its freedom-of-information policy and*
7 *open-meeting policy, respectively, and shall not be subject*
8 *to the comparable laws or policies of any Signatory.*

9 *“22. Reports of investigations or inquiries adopted by*
10 *the Board shall be made publicly available.*

11 *“23. The Commission shall adopt a policy on conflict*
12 *of interest that shall be consistent with the regulations*
13 *issued under 49 U.S.C. § 5329, as they may be revised from*
14 *time to time, which, among other things, places appropriate*
15 *separation between Members, officers, employees, contrac-*
16 *tors, and agents of the Commission and WMATA.*

17 *“24. The Commission shall adopt and utilize its own*
18 *administrative procedure and procurement policies in con-*
19 *formance with applicable federal regulations and shall not*
20 *be subject to the administrative procedure or procurement*
21 *laws of any Signatory.*

22 *“F. Officers and Employees*

23 *“25. The Board shall elect a Chairman, Vice Chair-*
24 *man, Secretary, and Treasurer from among its Members,*

1 *each for a 2-year term and shall prescribe their powers and*
2 *duties.*

3 *“26. The Board shall appoint and fix the compensa-*
4 *tion and benefits of a chief executive officer who shall be*
5 *the chief administrative officer of the Commission and who*
6 *shall have expertise in transportation safety and one or*
7 *more industry-recognized transportation safety certifi-*
8 *cations.*

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

15 *“28. The Commission shall not be bound by any stat-*
16 *ute or regulation of any Signatory in the employment or*
17 *discharge of any officer or employee of the Commission, but*
18 *shall develop its own policies in compliance with federal*
19 *law. The MSC shall, however, consider the laws of the Sig-*
20 *natories in devising its employment and discharge policies,*
21 *and when it deems it practical, devise policies consistent*
22 *with the laws of the Signatories.*

23 *“29. The Board may fix and provide policies for the*
24 *qualification, appointment, removal, term, tenure, com-*
25 *pensation benefits, worker’s compensation, pension, and re-*

1 *tirement rights of its employees subject to federal law. The*
 2 *Board may also establish a personnel system based on merit*
 3 *and fitness and, subject to eligibility, participate in the*
 4 *pension, retirement, and worker’s compensation plans of*
 5 *any Signatory or agency or political subdivision thereof.*

6 *“ARTICLE IV*

7 *“POWERS*

8 *“A. Safety Oversight Powers*

9 *“30. In carrying out its purposes, the Commission,*
 10 *through its Board or designated employees or agents, shall,*
 11 *consistent with federal law:*

12 *“(a) Adopt, revise, and distribute a written State Safe-*
 13 *ty Oversight Program;*

14 *“(b) Review, approve, oversee, and enforce the adoption*
 15 *and implementation of WMATA’s Public Transportation*
 16 *Agency Safety Plan;*

17 *“(c) Require, review, approve, oversee, and enforce the*
 18 *adoption and implementation of any Corrective Action*
 19 *Plans that the Commission deems appropriate;*

20 *“(d) Implement and enforce relevant federal and State*
 21 *laws and regulations relating to safety of the WMATA Rail*
 22 *System; and*

23 *“(e) Audit every 3 years the compliance of WMATA*
 24 *with WMATA’s Public Transportation Agency Safety Plan*

1 *or conduct such an audit on an ongoing basis over a 3-*
2 *year time frame.*

3 *“31. In performing its duties, the Commission, through*
4 *its Board or designated employees or agents, may:*

5 *“(a) Conduct, or cause to be conducted, inspections, in-*
6 *vestigations, examinations, and testing of WMATA per-*
7 *sonnel and contractors, property, equipment, facilities, roll-*
8 *ing stock, and operations of the WMATA Rail System, in-*
9 *cluding, without limitation, electronic information and*
10 *databases through reasonable means, which may include*
11 *issuance of subpoenas;*

12 *“(b) Enter upon the WMATA Rail System and, upon*
13 *reasonable notice and a finding by the chief executive officer*
14 *that a need exists, upon any lands, waters, and premises*
15 *adjacent to the WMATA Rail System, including, without*
16 *limitation, property owned or occupied by the federal gov-*
17 *ernment, for the purpose of making inspections, investiga-*
18 *tions, examinations, and testing as the Commission may*
19 *deem necessary to carry out the purposes of this MSC Com-*
20 *pact, and such entry shall not be deemed a trespass. The*
21 *Commission shall make reasonable reimbursement for any*
22 *actual damage resulting to any such adjacent lands, waters,*
23 *and premises as a result of such activities;*

24 *“(c) Compel WMATA’s compliance with any Correc-*
25 *tive Action Plan or order of the Commission by such means*

1 *as the Commission deems appropriate, including, without*
2 *limitation, by:*

3 “(1) *Taking legal action in a court of competent*
4 *jurisdiction;*

5 “(2) *Issuing citations or fines with funds going*
6 *into an escrow account for spending by WMATA on*
7 *Commission-directed safety measures;*

8 “(3) *Directing WMATA to prioritize spending on*
9 *safety-critical items;*

10 “(4) *Removing a specific vehicle, infrastructure*
11 *element, or hazard from the WMATA Rail System;*
12 *and*

13 “(5) *Compelling WMATA to restrict, suspend, or*
14 *prohibit rail service on all or part of the WMATA*
15 *Rail System with an appropriate notice period dic-*
16 *tated by the circumstances;*

17 “(d) *Direct WMATA to suspend or disqualify from*
18 *performing in any Safety Sensitive Position an individual*
19 *who is alleged to or has violated safety rules, regulations,*
20 *policies, or laws;*

21 “(e) *Compel WMATA’s Office of the Inspector General,*
22 *created under WMATA Board Resolution 2006–18, or any*
23 *successor WMATA office or organization having similar du-*
24 *ties, to conduct safety-related audits or investigations and*
25 *to provide its findings to the Commission; and*

1 “(f) Take such other actions as the Commission may
2 deem appropriate consistent with its purpose and powers.

3 “32. Action by the Board under section 31(c)(5) shall
4 require the unanimous vote of all Members present and vot-
5 ing. The Commission shall coordinate its enforcement ac-
6 tivities with appropriate federal and State governmental
7 authorities.

8 “B. General Powers

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

11 “(a) Sue and be sued;

12 “(b) Adopt, amend, and repeal rules and regulations
13 respecting the exercise of the powers conferred by this MSC
14 Compact;

15 “(c) Create and abolish offices, employments, and posi-
16 tions (other than those specifically provided for in this MSC
17 Compact) necessary or desirable for the purposes of the
18 Commission;

19 “(d) Determine a staffing level for the Commission
20 that is commensurate with the size and complexity of the
21 WMATA Rail System, and require that employees and
22 other designated personnel of the Commission, who are re-
23 sponsible for safety oversight, be qualified to perform such
24 functions through appropriate training, including, without

1 *limitation, successful completion of the Public Transpor-*
2 *tation Safety Certification Training Program;*

3 “(e) *Contract for or employ consulting attorneys, in-*
4 *spectors, engineers, and such other experts necessary or de-*
5 *sirable and, within the limitations prescribed in this MSC*
6 *Compact, prescribe their powers and duties and fix their*
7 *compensation;*

8 “(f) *Enter into and perform contracts, leases, and*
9 *agreements necessary or desirable in the performance of its*
10 *duties and in the execution of the powers granted under*
11 *this MSC Compact;*

12 “(g) *Apply for, receive, and accept such payments, ap-*
13 *propriations, grants, gifts, loans, advances, and other funds,*
14 *properties, and services as may be transferred or made*
15 *available to it by the United States government or any other*
16 *public or private entity or individual, subject to the limita-*
17 *tions specified in section 42;*

18 “(h) *Adopt an official seal and alter the same at its*
19 *pleasure;*

20 “(i) *Adopt and amend by-laws, policies, and proce-*
21 *dures governing the regulation of its affairs;*

22 “(j) *Appoint one or more advisory committees; and*

23 “(k) *Do such other acts necessary or desirable for the*
24 *performance of its duties and the execution of its powers*
25 *under this MSC Compact.*

1 *“34. Consistent with this MSC Compact, the Commis-*
2 *sion shall promulgate rules and regulations to carry out*
3 *the purposes of this MSC Compact.*

4 *“ARTICLE V*

5 *“GENERAL PROVISIONS*

6 *“A. Annual Safety Report*

7 *“35. The Commission shall make and publish annually*
8 *a status report on the safety of the WMATA Rail System,*
9 *which shall include, among other requirements established*
10 *by the Commission and federal law, status updates of out-*
11 *standing Corrective Action Plans, Commission directives,*
12 *and on-going investigations. A copy of each such report*
13 *shall be provided to:*

14 *“(a) The Administrator of the Federal Transit*
15 *Administration;*

16 *“(b) The Governor of Virginia, the Governor of*
17 *Maryland, and the Mayor of the District of Columbia;*

18 *“(c) The Chairman of the Council of the District*
19 *of Columbia;*

20 *“(d) The President of the Maryland Senate and*
21 *the Speaker of the Maryland House of Delegates;*

22 *“(e) The President of the Virginia Senate and*
23 *the Speaker of the Virginia House of Delegates; and*

24 *“(f) The General Manager and each member of*
25 *the board of directors of WMATA.*

1 *“36. The Commission may prepare, publish, and dis-*
2 *tribute such other safety reports that it deems necessary or*
3 *desirable.*

4 *“B. Annual Report of Operations*

5 *“37. The Commission shall make and publish an an-*
6 *nual report on its programs, operations, and finances,*
7 *which shall be distributed in the same manner provided by*
8 *section 35.*

9 *“38. The Commission may also prepare, publish, and*
10 *distribute such other public reports and informational ma-*
11 *terials as it deems necessary or desirable.*

12 *“C. Annual Independent Audit*

13 *“39. An independent annual audit shall be made of*
14 *the financial accounts of the Commission. The audit shall*
15 *be made by qualified certified public accountants selected*
16 *by the Board, who shall have no personal interest, direct*
17 *or indirect, in the financial affairs of the Commission or*
18 *any of its officers or employees. The report of audit shall*
19 *be prepared in accordance with generally accepted auditing*
20 *principles and shall be distributed in the same manner pro-*
21 *vided by section 35. Members, employees, agents, and con-*
22 *tractors of the Commission shall provide access to informa-*
23 *tion necessary or desirable for the conduct of the annual*
24 *audit.*

25 *“D. Financing*

1 *“40. The Commission’s operations shall be funded,*
2 *independently of WMATA, by the Signatory jurisdictions*
3 *and, when available, by federal funds. The Commission*
4 *shall have no authority to levy taxes.*

5 *“41. The Signatories shall unanimously agree on ade-*
6 *quate funding levels for the Commission and make equal*
7 *contributions of such funding, subject to annual appropria-*
8 *tion, to cover the portion of Commission operations not*
9 *funded by federal funds.*

10 *“42. The Commission may borrow up to 5% of its last*
11 *annual appropriations budget in anticipation of receipts,*
12 *or as otherwise set forth in the appropriations budget ap-*
13 *proved by all of the Signatories, from any lawful lending*
14 *institution for any purpose of this MSC Compact, includ-*
15 *ing, without limitation, for administrative expenses. Such*
16 *loans shall be for a term not to exceed 2 years, or at such*
17 *longer term approved by each Signatory pursuant to its*
18 *laws as evidenced by the written authorization by the*
19 *Mayor of the District of Columbia and the Governors of*
20 *Maryland and Virginia, and at such rates of interest as*
21 *shall be acceptable to the Commission.*

22 *“43. With respect to the District of Columbia, the com-*
23 *mitment or obligation to render financial assistance to the*
24 *Commission shall be created, by appropriation or in such*
25 *other manner, or by such other legislation, as the District*

1 *of Columbia shall determine; provided, that any such com-*
2 *mitment or obligation shall be approved by Congress pursu-*
3 *ant to the District of Columbia Home Rule Act, approved*
4 *December 24, 1973 (87 Stat. 774; D.C. Official Code § 1–*
5 *201.01 et seq.).*

6 *“44. Pursuant to the requirements of 31 U.S.C. §§*
7 *1341, 1342, 1349 to 1351, and 1511 to 1519, and D.C. Offi-*
8 *cial Code §§ 47–105 and 47–355.01 to 355.08 (collectively,*
9 *the ‘Anti-Deficiency Acts’), the District cannot obligate*
10 *itself to any financial commitment in any present or future*
11 *year unless the necessary funds to pay that commitment*
12 *have been appropriated and are lawfully available for the*
13 *purpose committed. Thus, pursuant to the Anti-Deficiency*
14 *Acts, nothing in the MSC Compact creates an obligation*
15 *of the District in anticipation of an appropriation for such*
16 *purpose, and the District’s legal liability for the payment*
17 *of any amount under this MSC Compact does not and may*
18 *not arise or obtain in advance of the lawful availability*
19 *of appropriated funds for the applicable fiscal year.*

20 *“E. Tax Exemption*

21 *“45. The exercise of the powers granted by this MSC*
22 *Compact shall in all respects be for the benefit of the people*
23 *of the District of Columbia, the Commonwealth of Virginia,*
24 *and the State of Maryland and for the increase of their*
25 *safety, commerce, and prosperity, and as the activities asso-*

1 *ciated with this MSC Compact shall constitute the perform-*
2 *ance of essential governmental functions, the Commission*
3 *shall not be required to pay any taxes or assessments upon*
4 *the services or any property acquired or used by the Com-*
5 *mission under the provisions of this MSC Compact or upon*
6 *the income therefrom, and shall at all times be free from*
7 *taxation within the District of Columbia, the Common-*
8 *wealth of Virginia, and the State of Maryland.*

9 *“F. Reconsideration of Commission Orders*

10 *“46. WMATA shall have the right to petition the Com-*
11 *mission for reconsideration of an order based on rules and*
12 *procedures developed by the Commission.*

13 *“47. Consistent with section 16, the filing of a petition*
14 *for reconsideration shall not act as a stay upon the execu-*
15 *tion of a Commission order, or any part of it, unless the*
16 *Commission orders otherwise. WMATA may appeal any ad-*
17 *verse action on a petition for reconsideration as set forth*
18 *in section 48.*

19 *“G. Judicial Matters*

20 *“48. The United States District Court for the Eastern*
21 *District of Virginia, Alexandria Division, the United States*
22 *District Court for the District of Maryland, Southern Divi-*
23 *sion, and the United States District Court for the District*
24 *of Columbia shall have exclusive and original jurisdiction*

1 *of all actions brought by or against the Commission and*
2 *to enforce subpoenas under this MSC Compact.*

3 *“49. The commencement of a judicial proceeding shall*
4 *not operate as a stay of a Commission order unless specifi-*
5 *cally ordered by the court.*

6 *“H. Liability and Indemnification*

7 *“50. The Commission and its Members, Alternate*
8 *Members, officers, agents, employees, or representatives shall*
9 *not be liable for suit or action or for any judgment or decree*
10 *for damages, loss, or injury resulting from action taken*
11 *within the scope of their employment or duties under this*
12 *MSC Compact, nor required in any case arising or any*
13 *appeal taken under this MSC Compact to give a super-*
14 *sedeas bond or security for damages. Nothing in this para-*
15 *graph shall be construed to protect such person from suit*
16 *or liability for damage, loss, injury, or liability caused by*
17 *the intentional or willful and wanton misconduct of such*
18 *person.*

19 *“51. The Commission shall be liable for its contracts*
20 *and for its torts and those of its Members, Alternate Mem-*
21 *bers, officers, agents, employees, and representatives com-*
22 *mitted in the conduct of any proprietary function, in ac-*
23 *cordance with the law of the applicable Signatory (includ-*
24 *ing, without limitation, rules on conflict of laws) but shall*
25 *not be liable for any torts occurring in the performance of*

1 *a governmental function. The exclusive remedy for such*
2 *breach of contract or tort for which the Commission shall*
3 *be liable, as herein provided, shall be by suit against the*
4 *Commission. Nothing contained in this MSC Compact shall*
5 *be construed as a waiver by the District of Columbia, the*
6 *Commonwealth of Virginia, or the State of Maryland of any*
7 *immunity from suit.*

8 *“I. Commitment of Parties*

9 *“52. Each of the Signatories pledges to each other*
10 *faithful cooperation in providing safety oversight for the*
11 *WMATA Rail System, and, to affect such purposes, agrees*
12 *to consider in good faith and request any necessary legisla-*
13 *tion to achieve the objectives of this MSC Compact.*

14 *“J. Amendments and Supplements*

15 *“53. Amendments and supplements to this MSC Com-*
16 *pact shall be adopted by legislative action of each of the*
17 *Signatories and the consent of Congress. When one Signa-*
18 *tory adopts an amendment or supplement to an existing*
19 *section of this MSC Compact, that amendment or supple-*
20 *ment shall not be immediately effective, and the previously*
21 *enacted provision or provisions shall remain in effect in*
22 *each jurisdiction until the amendment or supplement is ap-*
23 *proved by the other Signatories and is consented to by Con-*
24 *gress.*

25 *“K. Withdrawal and Termination*

1 *“54. Any Signatory may withdraw from this MSC*
2 *Compact, which action shall constitute a termination of this*
3 *MSC Compact.*

4 *“55. Withdrawal from this MSC Compact shall be by*
5 *a Signatory’s repeal of this MSC Compact from its laws,*
6 *but such repeal shall not take effect until 2 years after the*
7 *effective date of the repealed statute and written notice of*
8 *the withdrawal being given by the withdrawing Signatory*
9 *to the governors or mayor, as appropriate, of the other Sig-*
10 *natories.*

11 *“56. Prior to termination of this MSC Compact, the*
12 *Commission shall provide each Signatory:*

13 *“(a) A mechanism for concluding the operations*
14 *of the Commission;*

15 *“(b) A proposal to maintain state safety over-*
16 *sight of the WMATA Rail System in compliance with*
17 *applicable federal law;*

18 *“(c) A plan to hold surplus funds in a trust for*
19 *a successor regulatory entity for 4 years after the ter-*
20 *mination of this MSC Compact; and*

21 *“(d) A plan to return any surplus funds that re-*
22 *main 4 years after the creation of the trust.*

23 *“L. Construction and Severability*

24 *“57. This MSC Compact shall be liberally construed*
25 *to effectuate the purposes for which it is created.*

1 *“58. If any part or provision of this MSC Compact*
2 *or the application thereof to any person or circumstances*
3 *be adjudged invalid by any court of competent jurisdiction,*
4 *such judgment shall be confined in its operation to the part,*
5 *provision, or application directly involved in the con-*
6 *troversy in which such judgment shall have been rendered*
7 *and shall not affect or impair the validity of the remainder*
8 *of this MSC Compact or the application thereof to other*
9 *persons or circumstances, and the Signatories hereby de-*
10 *clare that they would have entered into this MSC Compact*
11 *or the remainder thereof had the invalidity of such provi-*
12 *sion or application thereof been apparent.*

13 *“M. Adoption; Effective Date*

14 *“59. This MSC Compact shall be adopted by the Sig-*
15 *natories in the manner provided by law therefor and shall*
16 *be signed and sealed in 4 duplicate original copies. One*
17 *such copy shall be filed with the Secretary of State of the*
18 *State of Maryland, the Secretary of the Commonwealth of*
19 *Virginia, and the Secretary of the District of Columbia in*
20 *accordance with the laws of each jurisdiction. One copy*
21 *shall be filed and retained in the archives of the Commission*
22 *upon its organization. This MSC Compact shall become ef-*
23 *fective upon the enactment of concurring legislation by the*
24 *District of Columbia, the Commonwealth of Virginia, and*
25 *the State of Maryland, and consent thereto by Congress and*

1 *when all other acts or actions have been taken, including,*
 2 *without limitation, the signing and execution of this MSC*
 3 *Compact by the Governors of Maryland and Virginia and*
 4 *the Mayor of the District of Columbia.*

5 *“N. Conflict of Laws*

6 *“60. Any conflict between any authority granted here-*
 7 *in, or the exercise of such authority, and the provisions of*
 8 *the WMATA Compact shall be resolved in favor of the exer-*
 9 *cise of such authority by the Commission.*

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

13 *RIGHT TO ALTER, AMEND, OR REPEAL*

14 *SEC. 2. The right to alter, amend, or repeal this joint*
 15 *resolution is expressly reserved. The consent granted by this*
 16 *joint resolution shall not be construed as impairing or in*
 17 *any manner affecting any right or jurisdiction of the*
 18 *United States in and over the region that forms the subject*
 19 *of the Compact.*

20 *CONSTRUCTION AND SEVERABILITY*

21 *SEC. 3. It is intended that the provisions of this Com-*
 22 *pact shall be reasonably and liberally construed to effectuate*
 23 *the purposes thereof. If any part or application of this Com-*
 24 *pact, or legislation enabling the Compact, is held invalid,*
 25 *the remainder of the Compact or its application to other*
 26 *situations or persons shall not be affected.*

1 *INCONSISTENCY OF LANGUAGE*

2 *SEC. 4. The validity of this Compact shall not be af-*
3 *fectured by any insubstantial differences in its form or lan-*
4 *guage as adopted by the State of Maryland, the Common-*
5 *wealth of Virginia, and the District of Columbia.*

6 *EFFECTIVE DATE*

7 *SEC. 5. This joint resolution shall take effect on the*
8 *date of enactment of this joint resolution.*

Union Calendar No. 162

115TH CONGRESS
1ST Session

H. J. RES. 76

[Report No. 115-227]

JOINT RESOLUTION

Granting the consent and approval of Congress for the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to a enter into a compact relating to the establishment of the Washington Metrorail Safety Commission.

JULY 17, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed