

Tentative Decisions of Working Group on Organization and Transfer of Functions

The Working Group on Organization and Transfer of Functions (“WGF”) has been charged with the responsibility of reviewing the County Executive’s proposal to establish a new transit authority as embodied in MC24-15, which would have, among other things, enabled the County to establish that agency, give the agency certain powers, and transfer certain transit functions to the new authority (and transfer employees related thereto, subject to certain conditions). In addition to these organizational matters, WGF was also asked to focus on those governmental functions, and related employees, that might be transferred to the proposed transit authority and which, when and how such transit functions might be transferred to the new agency.

The County Executive’s goal in making his proposal was to maximize the likelihood of the successful development and operation of Phase I of the RTS network at the earliest possible time by creating a new transit authority with the requisite powers to accomplish that goal, by reforming procurement and personnel procedures, by allowing the new authority to make investments in transit infrastructure, incur debt and make expenditures unconstrained by existing Charter limits.

Members of the public, some public officials and some members of the Task Force have expressed concerns and offered criticism of the previously introduced legislation. The challenge for WGF and the Task Force is, bearing in mind the original objectives, to offer suggestions of how the original proposal can be improved and strengthened.

All of the concerns and criticism of the proposal can be summarized in the statement that the public needs to be more comfortable that the transit authority will be more accountable to elected officials and, through them, to the public. While there is general recognition that the process of implementing transit projects can be streamlined, the public must be confident that when it comes to decisions to tax, incur debt and spend money, elected officials must be able to ensure that they approve the major decisions and have oversight of the manner in which the authority performs its duties. It is contemplated that the Task Force Report will consist of text, a draft of revised proposed enabling legislation and exhibits. WGF has several recommendations as to how the legislation may be modified to achieve these goals. Enabling legislation would provide that:

1. The Council would be authorized to create a governing board of the authority consisting of up to 7 members, nominated by the County Executive and confirmed by the County Council. Governing board members would serve staggered 4 year terms. When appointing board members, the Council and Executive should consider factors such as term limits, geographic representation, limits on service by members

on other boards and commissions, and whether and how to include transit use as part of the criteria for eligibility to be appointed.

2. The creation of special tax districts, the imposition of a special tax, and the setting of tax rates, would be by action of the Council¹.
3. The Council shall require the authority to submit a multi-year capital improvements program to the Council for consideration and approval. This would include a capital budget, which would include a proposal for how revenues would be raised either to directly defray capital costs or to pay debt service on debt the proceeds of which fund capital costs. The content of the capital improvements program would be the same as that required for all County agencies. The Council shall also have the power to require the authority to submit an operating budget both for the internal operations of the authority and for the operations of the transit programs within the authority's jurisdiction. It is contemplated that the process for Council review and approval of operating budgets would follow the same budget development process as that for the County government. The process for amending the authority's capital improvements program, or capital or operating budgets would be the same as that for County agencies.
4. All recommendations of the authority to take real property through the exercise of eminent domain would be conditional until reviewed and approved by the Council through its Capital Improvements Program and budget approval processes. As part of its decision process the Council shall ensure that any real property takings are consistent with Title 12 of the Real Property Article of the State Code and substantially consistent with all adopted Master Plans including the Countywide Transit Corridors Functional Master Plan.
5. All dedicated transit revenues would be paid into one or more special funds; the principal and income of which could only be used to fund authority activities and in accordance with authority bond indentures and related requirements.
6. The Council shall require annual independent financial and regular periodic management audits to ensure that there are adequate internal controls within the authority, and such audits shall be submitted to the Council and published for public review.
7. Implementing legislation shall provide that the authority will develop and periodically report performance metrics that inform the public on the efficiency and efficacy of authority operations
8. The enabling legislation would subject the authority, its board and staff to County ethics laws, and its personnel, functions and activities to review by the County's Inspector General similar to that by County agencies.

¹ MC24-15 already makes these points clear; however, so many people have spoken as though the authority has been given these powers without reference to the Council that it is essential that this be clarified and reiterated.

9. The authority shall participate in Montgomery County's Open Government Initiative to a level consistent with County Executive Branch agencies.
10. The enabling legislation will provide for and encourage the creation of inter-jurisdictional agreements that will promote cooperation with inter-county and regional transit service as well as with other appropriate transportation providers, and that would authorize agreements with municipalities where appropriate.
11. A member of the Task Force proposed an alternative to establish a regional transit authority. This proposal was not adopted.

Organization Activities of the Montgomery County Transit Authority

If it is assumed that the Maryland General Assembly enacts enabling legislation that will empower Montgomery County to establish a transit authority, and if it is further assumed that the County enacts local implementing legislation, and that the members of the governing board are nominated and confirmed, the governing board acting for the new authority will need to undertake the following activities:

1. The County government will need to make an initial appropriation of funds for the authority during its organizational period, and before it has revenues to support its organizational and initial planning activities.
2. Appoint an Interim or Acting General Manager or Chief Executive Officer to assist the governing board through its organizational phase. Similarly, the governing board will also require an acting chief financial officer (Treasurer), and an acting general counsel. The governing board will need to determine whether and to what extent it will need to conduct searches for senior management officers of the authority. It is anticipated that the search and engagement of these senior officers will take between 6 and 9 months.
3. Adopt major policies and procedures. These will include rules and regulations governing meetings, personnel policies and compensation plans; procurement policies; and, other important policies. To the extent that employees of the authority become part of a bargaining unit for collective bargaining purposes, and to the extent required by law, such members of a bargaining unit shall be a part of a merit system; otherwise personnel policies of the authority shall be established by the authority in its discretion.
4. Hire senior managers and employees. The General Manger will supervise the hiring of personnel managers and information systems managers. Procurement managers will be hired after the creation of personnel policies. The policies themselves will be developed by the General Manager, in cooperation with the governing board and one or more consultants engaged for the purpose.
5. With respect to various administrative functions, the authority will make judgments, based on the recommendations of the General Manager and other advisors, which

administrative, accounting and financial reporting functions will be performed by employees of the authority, employees of the County, or a combination of government employees and consultants, until workload and budgetary considerations justify full-time authority employees.

6. With respect to the planning, design, and construction of the RTS network, the General Manager, with the review and approval of the governing board, will select an Assistant General Manager for Development.
7. With respect to the operation of the Ride-On bus system, there are two different models for how these labor arrangements could be moved forward. These models appear to answer previous questions and concerns that have been raised. It will be the responsibility of senior management at the Transit Authority, County, and UFCW Local 1994 to decide the best model once the Transit Authority is functional.
8. The authority will need to commence substantive review of its proposed capital improvements program, capital budget, operating budget, and other organic documents that will require submission to the Council and Executive for review and approval. The authority will also need to undertake discussions with the Maryland Department of Transportation to determine the working relationship between relevant State agencies and the authority (and County, where appropriate) with respect to the development and operation of the RTS network.
9. With respect to the operation of the RTS network, except to the extent that planning for future operations of the RTS network is necessary in connection with any potential procurement of goods and services, it is not contemplated that an operational staff will be engaged during the organizational phase.
10. The authority will adopt a plan for the integration of RTS network services with those of Ride-On and other transit and transportation services. This plan will include the reconfiguration of the Ride-On bus system to support the RTS network. These integration and reconfiguration plans will be modified as various RTS network corridors become operational, and on an on-going basis.

It is not possible, nor is it necessary, to specifically prescribe when various activities will commence and when various personnel will be hired. Such decisions will be made at the appropriate time by the authority.

Finance Recommendations from the Transfer of Functions Working Group

With regard to provisions of the enabling legislation which allow for a special tax to be imposed, WGF recommends to the Finance Working Group that it include an appropriate limit on the real property tax surcharge that could be imposed by the Council with respect to the creation of a dedicated revenue source for Phase I of the RTS network.