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# County Executive's Transit Task Force Public Draft Report and Recommendations



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# 1

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## Introduction

### 1.1 Reconvening the Transit Task Force

On April 6, 2015, Montgomery County Executive Isiah Leggett asked a reconvened Transit Task Force (“Task Force”) to study the legislation he proposed in the 2015 Session of the Maryland General Assembly which enables the establishment of a transit authority, develop procedures for soliciting community and business input to its deliberations, and provide advice and recommendations on how the proposed legislation may be improved (See Appendix 1). The County Executive added several new members to the Task Force, including several new community representatives (See Appendix 2).

The County Executive also asked that the Task Force review the full range of potential funding sources relating to the Rapid Transit System (“RTS”) network, and alternative ways in which various funding sources and revenues could be blended as part of an overall financial plan. Among the issues he asked the Task Force to consider were: (a) whether removing this unique investment in transit development and operation from the constraints of the Montgomery County Charter is necessary and appropriate in order to finance the development and operation of the RTS network; (b) whether use of “public-private partnership” techniques creates additional funding alternatives (both as a result of savings that

can be achieved through the design and construction of the network, and through the use of non-public entities to raise capital for the project; (c) whether changes in the relationship between the County and State with regard to projects like the RTS network (including the Corridor Cities Transitway) are necessary and, if so, the nature and extent of such changes; and (d) the advisability of transferring existing County transit functions to the proposed transit authority, and the complications such transfers would create.

## 1.2 Alternatives Considered

In reconvening the Task Force, the County Executive asked it to consider alternatives to his proposal for a quasi-independent transit authority, and invited people to propose workable alternatives. Those alternatives need to take into account, as did the County Executive's original proposal, the organizational and financial challenges we face. How do we generate the necessary energy and focus to sustain the significant effort required to develop and operate this major infrastructure program? How do we create flexible approaches that will enable us to hire talented people to manage the program, and engage the best contractors to use innovative methods to build and operate the highest quality system at the most reasonable cost in the most reasonable time? How do we meet the financial challenges presented by County Charter limits and technical requirements relating to use of debt to finance the program? Finding an alternative that achieves only some of these goals is insufficient. The Task Force identified the following alternative approaches:

### No Change

This approach urges that the transit function remain within the existing Montgomery County Department of Transportation ("MCDOT") structure, using the County's personnel and procurement rules and the technologies now available, and subject to the same fiscal constraints that now exist. Such an approach would be the simplest administratively, as it would not involve creating a new agency, but it would virtually assure development of the proposed RTS network at a slow pace

and at an expensive price. Some have suggested that the fundamental problem is cultural, and that hiring a “transit superstar” to head the existing department is a better solution than separating transit functions and placing them in either a new department or a new quasi-independent transit authority. The Task Force believes that, even if this theoretical improvement could be achieved, it would not address issues relating to burdensome personnel and procurement policies or the need for innovative financing techniques. If the County wishes to elevate investment in RTS, this would not accomplish that objective. Moreover, it would do nothing to address the serious funding limitations inherent in the County’s Charter limits and the characterization of debt used to fund the project as “County debt,” both of which are unavoidable if the RTS remains a project within a County department.

### **Stand-alone County Transit Department**

While the creation of a new transit department would enable the government to create an agency with singular focus, and new leadership and personnel, it would do nothing to address general personnel and procurement issues, and also does nothing to address the debt affordability issues described in (Item 1) above.

### **County Transit Financing Authority**

Under this approach, the County could either leave transit functions within MCDOT (first option above), or reorganize them into a new transit department (second option above), while at the same time create a transit finance authority with full power to issue debt and enter into agreements relating to the financing of development of the RTS network. The problem with this alternative is that issuance of debt by a finance authority that is performing services for County government agencies will not constitute independent debt. In addition to not addressing the full range of needed changes described above, it also does not allow the County to move ahead with a robust transit program while at the same time providing sufficient resources for other programs needed to maintain our quality of life.

## **Regional Transit Authority**

Some members of the Task Force urged the Task Force to consider a proposal that the Maryland General Assembly enable creation of a regional transit authority that would cover the principal Maryland counties immediately abutting the District of Columbia, and other counties adjoining them as appropriate (i.e., Montgomery, Prince Georges, Charles, Howard and Frederick Counties). This is a serious idea. However, it requires a great deal of further consideration. Such consideration, and the development of agreement with other participating jurisdictions, will take more time to evaluate than the Task Force has available. The time required for such consideration should not serve as an excuse or justification for delaying or impeding Montgomery County finding a solution to its transportation problems (especially if the agency established for the purpose has the ability to enter into inter-jurisdictional agreements that will permit extra-jurisdictional solutions). The regional transit authority, as presented to the Task Force, requires further consideration in several respects: (a) As presented, appointment of its members would be by the Governor, with no locally appointed members, but with the allocation of membership from local jurisdictions either based on population or revenues generated; (b) no assurance that Phase I of the RTS network (other than the CCT) would be developed under the auspices of such a regional entity, or developed at a pace consistent with the county's interests; and (c) while the major advantage of this approach would be to expand the reach and impact of the proposed RTS system to address current regional and multi-jurisdictional travel patterns, this inherently means less local control by the County over its decisions.

## **Montgomery County Transit Authority**

In assessing the strengths and weaknesses of the foregoing alternatives, the Task Force concluded that the creation of a local, county-focused, quasi-independent transit authority was the approach best calculated to achieve all of our goals. The Task Force also recognized that both policy-makers and members of the public raised a variety of issues which deserve attention and, in some instances, warrant changes in the County Executive's original proposal to make it both intrinsically

stronger and more acceptable. Parts III and IV of this Report address both the issues raised and how the Task Force proposed to address them.

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### **1.3 Prior Related Efforts**

The County Executive appointed the original members of the Task Force on February 23, 2011. The Executive's decision to form the Task Force had its basis in a 2002 Planning Board Report known as the Transportation Policy Report ("TPR"). The TPR was the result of an intensive two year study that looked at all road and transit projects identified in County master plans plus all other projects that appeared to address existing road congestion and the mobility needs of the future. Even with over 200 road and transit projects, the effort concluded that congestion would only get worse under plans existing at the time, leading to 14-15 hour workday congestion periods and many hours on weekends. Among other things, the TPR proposed a three tier transit system: Metrorail at the top level, a grid system of high capacity buses which is now being called the RTS as the second tier, and a third tier of local buses that would function as circulator or feeder buses to transport people to the other two tiers and provide service in areas lacking RTS service. Similar levels of transit service were called for in the County's 1964, 1969, and 1993 General Plans.

The Task Force delivered a Report dated May, 2012 that recommended an extensive network of bus rapid transit to serve as the "middle tier" of transit identified in earlier plans and the 2002 TPR.

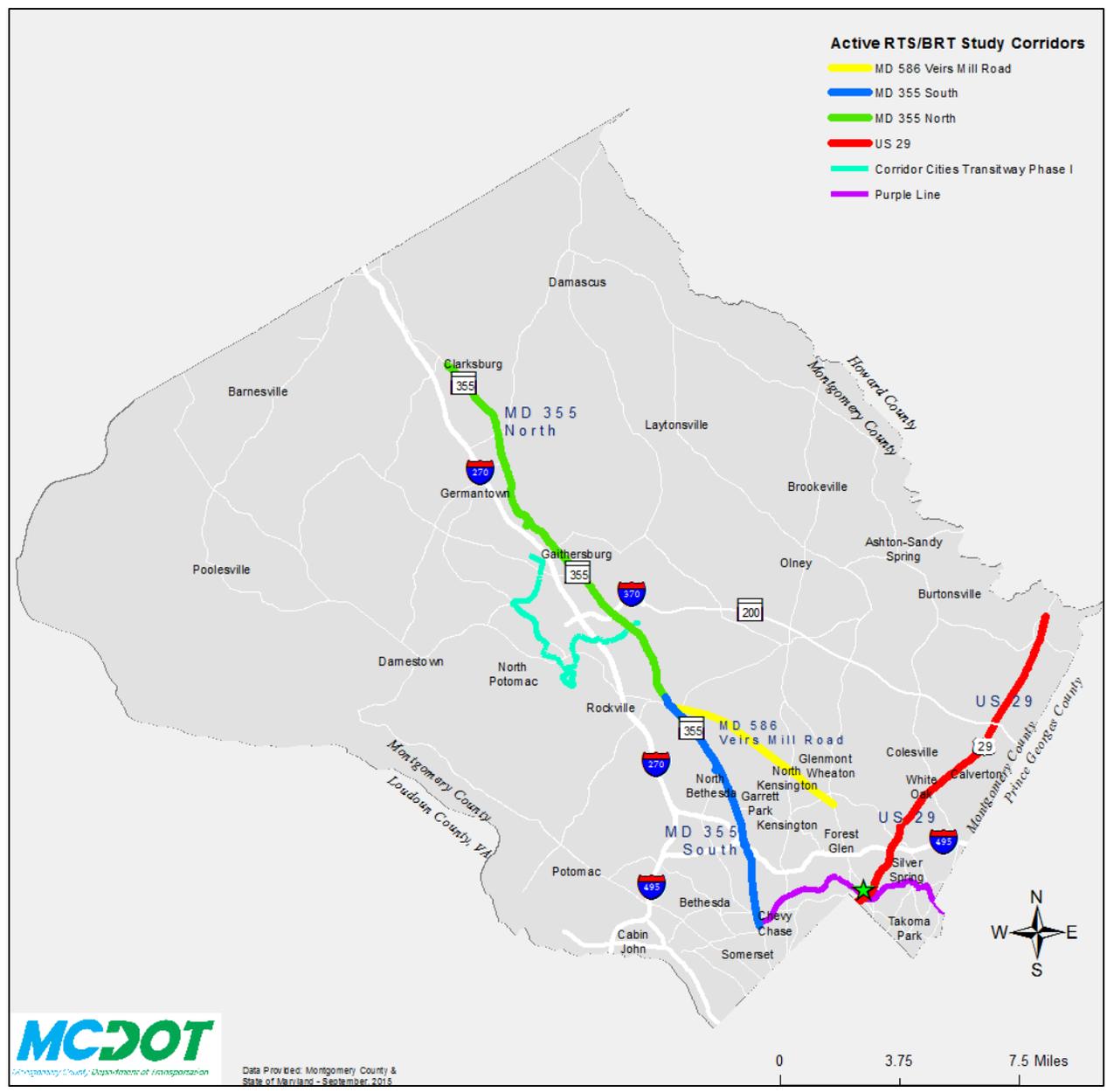
At the same time, the Montgomery County Planning Board, through its staff and consultants, was working on a study of various prior reports relating to the implementation of a bus rapid transit program in Montgomery County. Based on these studies, and following extensive public hearings, the Planning Board adopted its draft of an amendment to the County's Master Plan of Highways, which was referred to as a Draft Countywide Transit Corridors Functional Master Plan ("Draft Transit Master Plan"). The Draft Transit Master Plan was transmitted to the Montgomery County Council in 2013 for consideration. In late 2013, based on work performed by the Council's Committee on Transportation, Energy and Environment, and after extensive public hearings and amendment, the County Council adopted a Countywide Transit Corridors Functional Master Plan ("Transit Master Plan"), which remains in effect. As a result, the bus rapid transit ("BRT")/RTS concept recommended in the 2002 TPR and in the 2012 Task Force Report is formally part of the County's master plans and it can be funded, designed and implemented.

Conceptual planning has moved forward on four of the RTS corridors included in the Transit Master Plan: Maryland Route 355 North ("355N"); Maryland Route 355 South ("355S"); US Route 29 ("US29"); and Veirs Mill Road ("Veirs Mill"). While planning activities had previously begun on the Georgia Avenue North transit corridor, these efforts have been suspended as has state planning activity on Stage 2 of the CCT. Planning work on the four corridors that is underway is being performed by the Maryland Transit Administration ("MTA"), the State Highway Administration ("SHA") of the Maryland Department of Transportation ("MDOT"), and MCDOT. In addition, starting in 2014, and pursuant to Council instruction, MCDOT formed Corridor Advisory Committees ("CACs") for the four corridors to receive community input on various aspects of corridor planning and design.

In late 2014, the County Executive requested that MCDOT engage a consultant to study alternative ways in which the County could organize itself to implement and finance the development of a BRT-based RTS network that would include, as a

first phase, the four corridors noted above and the 9.1 mile first stage of the Corridor Cities Transitway (which will hereafter in this report be referred to as the "CCT"), a transit corridor that has been in planning under the auspices of MTA for several years.<sup>1</sup>

Figure 1-1: Phase 1 of the Montgomery County Rapid Transit System:



<sup>1</sup> The second stage of the CCT is anticipated to be part of a subsequent phase of RTS development.

The County Executive concluded that establishing a new Montgomery County transit authority to take on this very substantial and important project, as recommended in the 2012 Task Force Report, was the best way to proceed. The Executive then requested that the Montgomery County Delegation in the Maryland General Assembly introduce legislation that would provide the legal authority for Montgomery County to establish the transit authority, subject to certain requirements and limitations. The legislation (MC 24-15) was introduced on January 23, 2015. When it became clear that this legislation would not be enacted in the 2015 Session of the Maryland General Assembly, the Executive asked that it be withdrawn in February 2015.

As noted above, on April 6, 2015, the County Executive transmitted a letter to the Chair of the Task Force, asking that the Task Force be reconvened for the purpose of making recommendations to the Executive and Council on how the previously introduced legislation (MC 24-15) could be improved, so as to result in the most effective implementation of the RTS network.

The second round of Task Force meetings took place between April 22, 2015 and October 8, 2015 (See Appendix 4). These included meetings of the full Task Force, numerous meetings of its Working Groups (See Appendix 4), two (2) public forums convened exclusively to hear public views on the subject, and several sessions during which the Report of the Task Force was considered in detail, amended and adopted. All meetings of the Task Force and its Working Groups were open to the public, and except for sessions during which drafts of this Report were considered and marked-up by the Task Force, members of the public had the opportunity at each meeting to ask questions and make comments.

## 1.4 Scope

The scope of the Task Force's most recent effort and of this Report is to consider the previously proposed state enabling legislation that would have authorized the County to enact local legislation to create and operate a transit authority, and to propose modifications or alternatives to that legislation. The focus has been on

organizational and financing approaches to the implementation of an RTS system, not the planning and design of the corridors, which as described above is a separate ongoing effort.



# 2

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## Why Rapid Transit is Essential to the Economic Health of the County

### 2.1 Developments since Original Task Force Report

The Task Force report issued more than three years ago outlined many of the benefits of a countywide transit network and described some of the costs of inaction. The Task Force has not revisited those conclusions, but events that have transpired since the publication of the first Task Force report highlight the urgency of the need to find ways to extend the reach and scope of high quality transit services in the County. A brief review of the rationale for an RTS system may help to put the debate over how a transit network might be managed and financed in context.

The initial Task Force report noted that a rapid transit network would help to:

- Meet the need for new transportation capacity to accommodate projected population growth;
- Create vibrant communities for existing, as well as future, residents and employees;
- Implement previously adopted land use policies, including both the General Plan (the “Wedges and Corridors Plan”) as well as plans supporting

economic development in specific areas such as the Great Seneca Science Corridor (“GSSC”), White Flint, and White Oak;

- Reduce greenhouse gas emissions and the impact of economic activity on the environment; and
- Attract employers and generate the kinds of jobs needed to support the County’s tax base and a high standard of living for its residents.

In particular, the first Task Force report emphasized that without adequate transportation and housing options in Montgomery County, many of the jobs created over the coming decades - and the people who fill them - will be located in surrounding jurisdictions. If these jobs and workers are turned away, either as the result of an intentional effort to stop growth or because the County fails to provide the land use and transportation options that draw employers and residents, more people will move into adjoining jurisdictions farther from the core and generate traffic through Montgomery County as they drive to and from work. The result will be to suffer many of the negative effects of growth, especially traffic congestion, without capturing the benefits, such as tax revenue and jobs. The specific ways in which a countywide rapid transit network would help address the County’s economic development needs start with the increasingly clear and growing demand for walkable, mixed-use developments around transit hubs. Growing numbers of Americans are resistant to commuting long distances in a car. They made 10.7 billion trips on public transportation in 2013, the highest number since 1956.<sup>2</sup> These numbers represent a 37 percent transit increase since 1995. The number of miles traveled in cars and trucks per capita has dropped nine percent since 2005. Bike commuting is up 60 percent over the past decade, according to

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<sup>2</sup> American Public Transportation Association, Public Transportation Ridership Report, March 2014.

census data.<sup>3</sup> Americans are walking six percent more than in 2005, according to the Centers for Disease Control.<sup>4</sup>

The impact of these trends has become obvious in the Washington area real estate market, especially in the fiercely competitive market for office tenants. Since the first Task Force report was issued, the majority of leases for new office space in the Washington area have involved property in close proximity to a transit station.<sup>5</sup> Major employers –including employers with deep ties to the County – have made it clear that when their current leases expire they intend to find space near high-quality transit because their workers demand it, especially younger adults.

Relying on transit makes economic sense, given that transportation costs rival housing costs for many families. In auto-dependent suburbs, transportation accounts for 25 percent of household costs, compared to nine percent in walkable communities with good transit connections, according to the Federal Highway Administration.<sup>6</sup>

Commuters taking a train or bus instead of driving a car save more than \$10,000 on average per year, according to the American Public Transportation Association.<sup>7</sup> The economic benefits of transit are even more important to low- and moderate-income families – they spend on average 42 percent of their annual income on transportation, compared to 22 percent for middle-income families.<sup>8</sup>

Millennials (ages 18 to 34), in particular, want a variety of transportation choices, including transit. A study from the National Association of Realtors found that 62 percent of young adults aged 18 to 29 prefer to live in neighborhoods with transit

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<sup>3</sup> United States Census, American Community Survey Report, 2014. *Modes Less Traveled --Bicycling and Walking to Work in the United States: 2008-2012*.

<sup>4</sup> Centers for Disease Control and Prevention, 2012 Vital Signs report.

<sup>5</sup> Data from Jones Lang LaSalle, CoStar Group and Delta Associates, cited in The Washington Post, October 13, 2013.

<sup>6</sup> Federal Highway Administration, Fact Sheet: *Combined Transportation and Housing Decisions Saves Money and Builds Wealth*, 2014.

<sup>7</sup> American Public Transportation Association, Transit Savings Report, May 2014.

<sup>8</sup> Ibid.

options, sidewalks and businesses nearby.<sup>9</sup> In other words, our transit system is important to attracting the younger generation to Montgomery County.

Reliable transit has become a key indicator of future economic vitality in a metropolitan region. As a result, 38 metropolitan areas around the country have built light rail systems to attract businesses to areas around the rail stations.<sup>10</sup> Cities and suburban jurisdictions across the country – including Alexandria, Howard County, and Fairfax County – are planning or in some cases have already implemented rapid transit lines designed around bus vehicles in dedicated lanes.

Businesses seeking transit-served locations are driven by productivity concerns, as well as the need to attract and retain workers who prefer the kinds of mixed-use development and reduced reliance on automobile travel facilitated by high quality transit networks. The tendency of transit hubs to focus more intensive development with a wider range of uses around rapid bus and rail stations produces economic benefits through “agglomeration,” that is, when more people engaged in a wider variety of activities are brought together around a transit hub, more jobs cluster there too, boosting both wages and productivity compared to locations with a more dispersed, automobile-oriented development pattern. The benefits of agglomeration come from the increased opportunities for economic, social, and intellectual exchange afforded by concentrated centers of activity. According to research in the *Urban Studies Journal*, a 10 percent increase in transit seats per capita translates into \$1.5 million to \$1.8 billion in wage increases, depending on the size of the city.<sup>11</sup>

A recent study from the George Washington University Center for Real Estate and Urban Analysis suggests the greatest potential for future economic growth is in “walkable urban places,” which depend on quality public transportation and biking

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<sup>9</sup> National Association of Realtors, National Community Preference Survey, October 2013.

<sup>10</sup> *Governing* magazine, *How Car-Centric Cities Like Phoenix Learned to Love Light Rail* (by Daniel C. Vock), August 2015.

<sup>11</sup> Data from *Urban Studies Journal* cited in National Real Estate Investor, *Mass Transit to Shape Cities*, (by Byron Carlock), March 2015.

opportunities.<sup>12</sup> The study found that metropolitan areas ranking high for such walkable places have 38 percent higher GDP per capita than those ranking low. Offices in walkable districts rent for a 74 percent premium per foot over those in more auto-oriented settings. A study sponsored by the Federal Transit Administration points to Washington, DC and San Francisco as being national leaders in such transit-oriented development.<sup>13</sup>

This development, however, need not be limited to Metrorail or light rail stations. There is every reason to believe that bus rapid transit can attract private investment and generate productivity gains in the same way that rail or streetcar systems have produced these benefits.

A 2008 report on BRT in North America and Australia, written by the DC-based Breakthrough Technologies Institute, found that BRT can be used to promote transit-oriented development in a variety of settings.<sup>14</sup> According to this report, frequency, speed and convenience of the transit service, streetscape improvements, and visually appealing stations are important elements in helping non-rail-based transit generate economic development.

## 2.1 County's Demographic and Economic Shifts Require Emphasis on Transit

With current land use planning focused on transit-oriented development, Montgomery County is better positioned to attract more businesses and residents to communities that are changing for the better. Six sector and master plans approved by the County Council or currently in development follow the path of the proposed 16-mile Purple Line light rail: Bethesda Downtown, Chevy Chase Lake, Greater Lyttonsville, Silver Spring, Takoma/Langley and Long Branch. Other plans adopted in recent years rely on bus rapid transit as a centerpiece of the

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<sup>12</sup> Report prepared by Smart Growth America in partnership with Cushman and Wakefield and George Washington University Center for Real Estate and Urban Analysis, *Core Values: Why American Companies are Moving Downtown*, 2015.

<sup>13</sup> Federal Transit Administration Report No. 0050: *Trends in Transit-Oriented Development 2000-2010*, May 2014.

<sup>14</sup> Breakthrough Technologies, *Bus Rapid Transit and Transit Oriented Development: Case Studies on Transit Oriented Development Around Bus Rapid Transit Systems in North America and Australia*, 2008.

approach to balancing growth and transportation, including White Flint, Great Seneca Science Corridor, and White Oak Science Gateway.

The Bicycle Master Plan, launched in July 2015, proposes connections within the Corridor Cities Transitway to facilitate bike access to future transit stations from surrounding communities. Other recently drafted master plans (not yet considered by the Planning Board or the County Council), such as those for Westbard and Montgomery Village, recommend bikeways and bus rapid transit as part of transportation strategies.

Key to these plans are economic and demographic shifts in the County brought about by the economic meltdown of 2008. Most jurisdictions in the metropolitan DC area, including Montgomery County, have not regained median income levels reached before the downturn. From 2007 to 2013, County household income fell by 4.7 percent, a loss of \$4,849 per household, according to US Census data.<sup>15</sup>

The County's median income of \$98,326 as of 2013 consistently ranks among the highest in the nation, but high incomes are unevenly distributed among different ethnic and racial groups. Of County households, 35 percent of African-American residents and 34 percent of Hispanic residents earn less than \$50,000.

Most of the job growth from 2013 to 2014 occurred in mid- to low-paying jobs, including health services, transportation, utilities and construction. In the future, more than half of the forecasted jobs in education, health services, construction, retail, hospitality and other sectors are predicted to offer less than today's median County wage.

These trends highlight why the County needs to make a major commitment to rapid transit, not simply to attract employers and workers who have choices about where to lease an office building or buy a home, but to meet the needs of residents whose economic circumstances limit their options in selecting a place to live and work.

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<sup>15</sup> All Montgomery County data are from the US Census Bureau except for the population projection data, which are from the Maryland State Data Center.

The County has a pressing need to create better transportation access for people who earn less than the median County wage and rely on public transit to commute to their jobs, particularly given that the median wage is falling with the increasing proportion of lower-wage jobs in the County. These “captive” riders may find that owning and operating a car to commute to work either is cost prohibitive or takes a significant bite out of their household budget. At the same time, the limitations of our current transit system may reduce their economic as well as physical mobility, as some jobs are literally out of reach from the places where they can afford to live.

A rapid transit network can serve the needs and preferences of both “captive” and “choice” riders if it provides a high level of convenience and service. University of Minnesota researchers have found premium express buses have the greatest percentage of choice riders (96 percent), and local buses carry the greatest percentage of captive riders (52 percent).<sup>16</sup> This is why the County’s proposed rapid transit network incorporates dedicated right-of-way, off-board fare collection, and other elements designed to make the service as efficient as possible for riders.

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<sup>16</sup> Center for Transportation Studies, University of Minnesota. Understanding Transportation Impact of Transitways: Demographic and Behavioral Differences Between Transitway Riders and Other Transit Riders (by Jason Cao and Rachel Jordan), 2009.



# 3

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## The County Executive's Proposal

### 3.1 Introduction

The County Executive developed a legislative proposal for the 2015 Legislative Session of the Maryland General Assembly (MC 24-15) which was introduced on his behalf by the Chairs of the County's House and Senate delegations. The proposed enabling legislation would have authorized (but not required) the Montgomery County Council to enact local legislation to create a Montgomery County Transit Authority ("transit authority"). The transit authority would have operated within parameters set out in MC 24-15 and whatever additional limitations the County Council established in its legislation creating the transit authority. The transit authority would have been a quasi-independent governmental unit responsible for funding, financing, developing, and operating transit services in the County. The Executive thought such an authority was essential for the County to continue to expand its economic base and create live-walk communities of the future. The Executive considered a transit authority essential for the following:

- **Funding:** Current funding for transit comes primarily through the collection of a mass transit property tax. In addition, other funding is received from federal grants, the state, farebox collections, and transfers from other operations. Mass transit competes with all other County

programs for funding within the limits of the County's Charter, resulting in fluctuations in transit funding and limitations on making major capital investments. Under the County Executive's proposal, a separate funding source would have been authorized to fund both capital investment and operations, independent of the Charter limit.

- **Focus:** While the current structure of the Ride On transit program within MCDOT has proven successful, an agency whose singular focus is public transit will be better positioned to respond to the challenges of managing a long-term and large scale program of transit investment for the County. A review of models of independent transit authorities throughout the nation shows that this model has the potential to improve the quality and breadth of transit service available to County residents.

Without significant additional funds for transit, the County will not be able to move forward with its plans to develop comprehensive transit service in a timely manner, including crucial transportation infrastructure projects such as the RTS network. Without the funds to construct and operate these additional transit corridors, as well as operate our current transit systems, the County will not be able to fully implement several master plans critical to our economic future, because of the development triggers (either explicit or implicit) built into those plans related to the development and operation of transit service. In addition, ever-increasing traffic caused by the use of single occupancy vehicles has the potential to create significant additional congestion on state highways and county roads. This congestion has already reached the stage where the Washington D.C. Metropolitan Region "enjoys" the dubious distinction of being first in the country in traffic congestion.<sup>17</sup> This congestion could cause businesses and the jobs that they bring to either not come to the County, or relocate to another jurisdiction that is capable of meeting their transportation needs.

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<sup>17</sup> Texas A&M Transportation Institute Study of Traffic Congestion/INRIX, August 26 2015.

## 3.2 Review of MC 24-15

MC 24-15 can best be understood by reviewing this legislation in terms of four major topics: governance; finance and tax issues, labor relations; and inter-governmental relations.

### Governance Issues

#### Transit Authority – County Instrumentality

MC 24-15 made the transit authority an instrumentality of the County. This means that the legislation gave the County government on-going, substantial legislative powers to exercise control over the transit authority. In contrast, if the transit authority had been made an instrumentality of the State, legislative oversight would have been vested exclusively in the General Assembly.

#### Transit Authority – Functions Focused on Transit

MC 24-15 permitted the transit authority to engage in a broad range of activities related to building and operating a rapid transit system within the County. MC 24-15 authorized (but did not require) the County to transfer transit-related functions currently performed by County government to the transit authority, including Ride On bus service and the operation of parking lots and garages.

#### Transit Authority –Governing Body Appointed by County

MC 24-15 provided for the transit authority to be governed by a board of five members, appointed by the County Executive and confirmed by the County Council. The members' term of office, and provisions for removal of members were details left to County implementing legislation.

#### Transit Authority – Limited Power to Condemn

MC 24-15 authorized the County Council, in its implementing legislation, to empower the transit authority to condemn property. Within the confines of an important indirect limitation, the state legislation left to the County Council to decide by local law whether any limitations should be placed on the authority's condemnation power.

MC 24-15 placed an indirect limitation on the transit authority's power to condemn, because it required that the authority submit a 6-year Capital Improvement Program (CIP) to the County Council for approval. The CIP would have had to identify specifically any real property that the transit authority sought to acquire, giving the Council the opportunity to approve or reject each acquisition. In addition, MC 24-15 required that the transit authority's capital and operating budgets be consistent with its approved CIP and with applicable Master Plans. Hence, the County Council would have had considerable indirect control, through the CIP and Master Plans, over what property the authority acquired—whether by purchase or by condemnation proceedings.

#### Transit Authority – Council could Limit Applicability of County Charter

MC 24-15 authorized the County Council, in its implementing legislation, to designate which, if any, provisions of the Charter would apply to the transit authority—for example, the county merit system, centralized procurement, or County Attorney representation. The County Council exercises similar authority with respect to the Montgomery County Revenue Authority.

The County Council was thus empowered to grant to the transit authority a significant degree of independence and separation from the County government. County financing experts opined that this level of separation was important in order to prevent debt incurred by the transit authority from being considered as County debt by County auditors, bond rating agencies, and other fiscal oversight bodies.

#### Transit Authority Budget - Limited County Control

As noted above, MC 24-15 authorized the County Council, in its implementing legislation, to require the transit authority to submit a Capital Improvement Program for Council approval, and to require that the transit authority's capital and operating budgets be consistent with the CIP and applicable Master Plans. MC 24-15 specifically prohibited the Council from requiring the transit authority to submit its capital and operating budgets to the County for approval. This limitation in MC 24-15 sought to ensure that the transit authority would have a significant degree of independence from County government in fiscal matters.

## Finance/Tax Issues

### Special Taxing District

MC 24-15 authorized the County, by local law, to designate a “single” special taxing district that included the entire County. Under this legislation the County Council could (but was not required to) create a special taxing district to finance the cost of building and operating a transit system. MC 24-15 did not authorize the County Council to create multiple overlay districts, which would have permitted the Council to impose different tax burdens in different areas of the County.

### Special Tax - Exemption from Charter Limitation

MC 24-15 authorized the County Council to impose a special tax within the special taxing district to support the transit functions of the transit authority. This tax would be exempt from the upper limit on property taxes normally imposed under Charter § 305.

### Transit Authority - Issuance of Revenue Bonds Secured by Special Tax Revenues must have County Consent

MC 24-15 provided that if the Council imposed a special tax to support transit, the transit authority could issue revenue bonds secured by that special tax only with the approval of the Council. This approval was considered necessary because bond holders would look to the Council to levy a special tax each year in an amount sufficient to make the promised debt payments.

## Labor Relations Issues

### Transit Authority Employees/County Employees Held Harmless – Pay and Benefits – Merit System Rights

MC 24-15 provided that if the County transfers to the transit authority a transit function currently being performed by a County employee, that employee may, as a matter of right, transfer to the transit authority with no change in salary and benefits, including participation in the County's health and retirement plans. The employee would also retain all of her or his rights under the County's merit system until the transit authority adopted its own personnel regulations.

The employee could, however, elect to decline a transfer of employment to the transit authority; in that event, the employee would be entitled to her or his rights under the County's reduction-in-force policy.

### Transit Authority Employees/County Union Employees – Collective Bargaining Rights Held Harmless

MC 24-15 provided that if any County employees who are members of a collective bargaining unit transfer to the transit authority, the transit authority will be subject to the terms of any collective bargaining agreement applicable to those employees, and must engage in collective bargaining with those employees in accord with the provisions of a local law enacted by the County Council. The local law must provide these employees with collective bargaining rights substantially similar to those the employees enjoyed as County employees, including a provision for arbitration or other impasse resolution procedures with the certified representative (union) of the employees. The local law would also prohibit strikes and work stoppages.

MC 24-15 transferred to the transit authority with the union employees their current certified representative Municipal and County Government Employees Organization (MCGEO), unless the employees elected to decertify their representative in accordance with procedures set out in the collective bargaining law adopted by the County Council. In short, MC 24-15 held transferred union employees harmless by: 1) transferring with the employees their existing Collective Bargaining Agreement; 2) transferring with the employees their existing certified representative (MCGEO); and 3) ensuring that these employees would continue to enjoy substantially similar collective bargaining rights.

### Inter-government Relations Issues

#### Transit Authority - Right to Use State Rights-of-Way

MC 24-15 required that MDOT grant the transit authority use of State rights-of-way in connection with County transit functions, subject to reasonable conditions negotiated in good faith. The legislation also required MDOT to cooperate in the

design and construction of County transit facilities that would be located in State right of ways.

#### Transit Authority - Right to Enter into Contracts

MC 24-15 allowed the transit authority to enter into contracts with persons and other government units, including units of Federal, State, and Local Governments. The transit authority was also enabled to enter into agreements that would result in sharing facilities and operations.

### 3.4 County Executive Considerations in Proposing the Legislation

#### Limitations of Existing Funding

The Montgomery County Charter places limits on the County's ability to raise property taxes, issue debt, and authorize spending. Making the necessary investments in transit programs to promote economic growth and build the desired live-walk communities will require significant additional public investment which, in turn, will probably require additional taxing and debt issuance beyond what the Charter currently allows – particularly if we would like to see the RTS implemented on a relatively short timeline. The funding realities at the state and federal level indicate that it is not realistic to look to other levels of government to provide significant funding for the RTS. There is inadequate funding through the U.S. Department of Transportation's New Starts and Small Starts grant programs. Maryland has already received significant federal funding for other transit projects so it is unlikely that it will receive significant additional funding for the County's RTS needs.

Additionally, the state of Maryland is facing its own funding challenges. Resources in the state's Transportation Trust Fund have already been committed for the next six years, meaning that significant additional State funding for Montgomery's rapid transit requirements may be problematic. Accordingly, the County Executive concluded that if the County is to determine its own destiny regarding the development of transit infrastructure, it must be prepared to provide a significant

portion of the funding for the RTS. Establishing a transit authority would enable the County to exercise special taxing, bonding, and spending powers generally exempt from Charter limitations, thus creating the fiscal capacity necessary to meet County transit needs today and in the future.

### **Special Taxes and the Charter Limit on Property Tax Revenue**

Traditionally, transportation functions have been largely funded through property taxes. However, the County Charter stipulates that annual property tax revenue may not increase any faster than the rate of inflation, currently about 1.6 percent. Given other vital public spending demands (e.g., schools, public safety, etc.), this level of increase is not adequate to meet the funding needs for transit functions in the future. MC 24-15 was designed to solve this problem by exempting revenue raised through special property taxes on special taxing districts (authorized specifically to fund transit) from the Charter limit on property tax revenue. The County Council could take advantage of this exemption by drawing a special taxing district covering the entire County (MC 24-15 did not permit a special taxing district to cover anything less than the entire County), setting special property tax rates in the district, and dedicating these special revenues solely to the transit authority. This would provide a steady, reliable revenue stream dedicated to transit, giving the County the necessary resources to improve and maintain its transit systems in the long term.

### **Special Obligation Debt and Debt Affordability Guidelines**

The County has developed debt affordability guidelines to determine its debt capacity using a number of quantitative measures. The County follows these guidelines because of its desire to maintain its AAA bond rating, which is important to keeping the costs of borrowing low over a long period of time. Debt capacity analysis shows that the level of County debt is already projected to be at the upper end of current affordability guidelines without any projected investment in building an RTS. Exceeding these affordability limits could result in the County losing its AAA bond rating, which would likely increase the cost of borrowing, resulting in spending millions of dollars on debt service that might have been spent on other County services. Thus, issuing a significant amount of new, general obligation debt

to design and construct an RTS would not be optimal. In order to cover the capital costs of transit improvements without increasing the debt burden of the County, special obligation debt could be issued by the transit authority, not the County. The costs of servicing this special obligation debt would be paid from the special property tax revenues dedicated to the transit authority.

### **Special Operating Budgets, Maintenance of Effort, and Spending Affordability Guidelines**

The County has developed spending affordability guidelines that constrain year-over-year operating budget increases to no more than the level of growth in personal income, currently about 2.4 percent. Much of the allowed annual increase in the operating budget goes to support Montgomery County Public Schools (“MCPS”): This is necessary largely to satisfy the Maintenance of Effort (“MOE”) requirement that per-pupil public school funding not decrease year-over-year. Under this law, operating budget funding for MCPS must increase at the same rate as student enrollment (which has been steadily rising). As a result, there is limited capacity in the operating budget for spending to implement a new RTS. To create spending capacity for current and future transit projects, the transit authority will have its own operating budget separate from and outside of the general County operating budget. This would allow the County to move forward with development and operation of transit infrastructure and programs, through the transit authority without compromising spending for other important public priorities.

### **Developing Transit is Crucial to Meeting County Economic Development Goals**

Area master plans are a significant factor in determining the pace of economic development in Montgomery County. As noted earlier, key master plans contain staging triggers that must be met before additional development can move forward. In the case of the Great Seneca Science Corridor, staging is tied directly to the implementation of the Corridor Cities Transitway, a key component of RTS. In other cases, such as White Flint and White Oak Science Gateway, a key trigger is non-auto driver mode share. In White Flint, non-auto drive mode share must reach

a certain level before residential, commercial, and office development may exceed stated thresholds. In White Oak Science Gateway, the master plan recommends that all new development attain specified non-auto drive mode share levels, which will be difficult to achieve in many cases without implementation of the RTS. After extensive review of this issue, the County Executive concluded that developing a high quality RTS will play a strategic role in increasing non-auto drive mode share sufficiently to meet key master plan requirements. If future RTS projects are successful in significantly increasing non-auto drive mode share, development could result in adding over 56,000 new dwelling units and over 50 million square feet of new non-residential development countywide.<sup>18</sup> Studies suggest that unlocking this new development could potentially create up over 144,000 new jobs within the County.<sup>19</sup> Creating new jobs, increasing the County's population, and stimulating economic activity would increase County tax revenues significantly. An expanded tax base would strengthen the County's fiscal position and increase the breadth and quality of services available to its residents, as well as keeping tax burdens down for existing residents.

### 3.5 Criticism of County Executive's Proposal

The County Executive's proposal (MC 24-15) received significant criticism from some members of the public and was eventually withdrawn. The criticism centered around four major areas:

1. Lack of an open process for public review and comment before submitting the proposal;
2. Lack of accountability of the proposed transit authority to the public and elected officials;
3. Inadequate protections for employees transferring from the Ride On operation to the proposed authority; and

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<sup>18</sup> Report of Sage Policy Group, Inc. of its Study of the Economic and Fiscal Benefits Associated with the Proposed RTS Network, September, 2015.

<sup>19</sup> Ibid.

4. Lack of an upper limit on property taxes used to fund transit development and operations which, under normal circumstances, would violate current County Charter limits.

Other criticism has been offered by County Council staff. Focusing on two primary issues. First, staff argued that all of the functions proposed to be performed by a transit authority could be performed by the MCDOT. Staff further argued that separating transit services from the rest of MCDOT functions would sever a vital link between the provision of transit service and other key services such as traffic management and roadway design, construction, and maintenance. Moreover, staff argued that since the RTS corridors are primarily state highways, the transit authority will not have responsibility for designing and building the RTS infrastructure. That, according to Council staff and other critics, will be done by SHA; SHA has asserted primary responsibility for the design of the initial corridors, and some observers consider it unlikely that SHA would cede that responsibility to a transit authority any more than it has to MCDOT.

Council staff addressed a second focus of criticism at funding and financing issues. Staff suggested that existing funding tools are sufficient to design, build and operate an RTS. Staff specifically pointed to SB828, which was a state legislative proposal passed in the 2013 session of the Maryland General Assembly that authorizes the County to create special tax districts, and impose a special tax district property tax to pay for transportation-related capital costs in a special tax district. Under this line of reasoning, authority granted in SB828 already allows the County to enact a special tax to raise money to pay for the capital costs of transportation improvements, including the RTS, which would be exempt from Charter tax limits. Additionally, Council staff and other critics argued that since a transit authority would be offering revenue bonds instead of County general obligation debt, it would incur higher interest rates, thus increasing the financing costs to County taxpayers to develop transit infrastructure. Finally, critics raised the issue of how operating costs would be funded, arguing that there could be duplicative management costs to run two organizations (MCDOT and a transit authority).

Section 4 of this Report will explain how the Task Force has addressed each of these areas of concern.

# 4

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## Recommended Modifications to the County Executive's Proposal and Revisions to MC 24-15

The County Executive's goal in making his proposal was to maximize the likelihood of the successful development and operation of Phase I of an RTS network at the earliest possible time by

- creating a new transit authority with the requisite powers to accomplish that goal;
- reforming procurement and human resource procedures applicable to the new transit authority; and
- allowing the new transit authority to make investments in transit infrastructure, incur debt and make expenditures unconstrained by existing Charter, debt, and spending affordability limits.

All of the concerns and criticism of the proposal can be summarized in the observation that the public needs to be more comfortable that the transit authority will be sufficiently 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 transit authority performs its duties.

The Task Force's mission from the County Executive was to review his initial proposal (MC 24-15), and make recommendations that improve his proposal and address the criticisms from the community. In addition to reviewing the testimony received at the County's state delegation hearing in February, the Task Force held its own hearing on June 17, 2015. The testimony at the June 17 hearing closely mirrored testimony received at the February hearing. Again, there was considerable criticism that can be summed into the following four broad categories:

1. Inadequate process and public input in developing the initial proposal;
2. The proposed transit authority's lack of accountability to the public and elected officials;
3. An inadequate solution to the labor issue; and
4. Exceeding Charter limits on property taxation and providing taxation authority to a quasi-independent agency.

## **4.1 Issue 1 – Lack of Public Input and Process**

The Task Force has met almost weekly since April. The meeting schedule has been posted on the Task Force's web site <http://www.montgomerycountymd.gov/transit-task-force-2015/> and distributed to anyone who has requested it. The meetings have been open to the public and have been well attended. As stated above, the Task Force held a four-hour public forum in June to hear the public's support, concerns and issues regarding the County Executive's initial proposal, and another one in September, to get input on its draft report and recommendations. Once that input is received, this final report will be transmitted to the County Executive and Council.

## 4.2 Issue 2 – Lack of Accountability to the Public and Elected Officials

There was testimony at the February public hearing, and statements at the both public forums, regarding a perceived lack of transit authority accountability to the public and elected officials. While some of the concern was due to a lack of understanding of the proposal, some reflected legitimate concern that the County Council and County Executive's roles and authority would be significantly diminished under the provisions of MC 24-15. The Task Force has the following recommendations as to how the legislation may be modified to address these concerns:

1. The Council is authorized to create a governing board of the transit authority consisting of up to 7 members, nominated by the County Executive and confirmed by the County Council. Governing board members are to 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 for appointment. The Council shall have the power to remove members of the governing board for cause.
2. The Council shall require the transit authority to submit a multi-year capital improvements program ("CIP") 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 CIP would be the same as that required for all County agencies. The Council would 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 transit 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 transit authority's CIP, or capital or operating budgets, would be the same as that for County agencies.

3. The transit authority shall not be able to take real property through the exercise of eminent domain until each such property acquisition has been reviewed and approved by the Council through its CIP 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 County Master Plans, including the CTCFMP.
4. The County is authorized to create special taxing districts. The authority is authorized under state law to impose a special real property tax within the geographic area(s) contained in the special taxing districts created by the Council, with two important limitations: (a) a maximum tax rate of 7¢ per \$100 of real property assessed value for a County-wide special taxing district, and; (b) that any tax rate set by the authority shall be subject to disapproval by the Council. If the Council disapproves the tax rate set by the transit authority on or before June 15 in any fiscal year, the transit authority shall be limited in its authority to impose real property taxes to a rate or rates sufficient to enable the transit authority to fully pay the transit authority's capital debt obligations for that fiscal year. The Council and transit authority will then have until the end of the fiscal year (June 30) to negotiate a tax rate acceptable to the Council. If those negotiations fail, the transit authority will not be able to impose real property taxes in the coming fiscal year for any new capital expenditures or for new operating costs; its real property tax rate will be limited to the level needed to cover debt service on already outstanding bonds that have been approved by the Council.
5. The transit authority is authorized to impose an excise tax within the geographic area(s) contained in the special taxing districts created by the County up to an amount not to exceed 30 cents per gross rentable square

foot of leased commercial space subject to disapproval by the Council. The transit authority shall submit for Council approval by February 1st the establishment of an excise tax or any change in the excise tax rate that the transit authority proposes to take effect for the ensuing fiscal year. If the Council disapproves the excise tax rate imposed by the transit authority on or before June 15 of any fiscal year, then the transit authority shall be limited in its ability to impose excise taxes to the same excise tax rate that was imposed during the preceding fiscal year (or no excise tax if none was imposed during the preceding fiscal year). The Council and transit authority will then have until the end of the fiscal year (June 30) to negotiate an excise tax rate acceptable to the Council. If those negotiations fail, the excise tax rate will remain limited to the rate imposed during the preceding fiscal year.

6. The County shall collect all property and excise taxes as the agent of the transit authority.
7. All dedicated transit revenues would be paid into one or more transit authority special funds; the principal and income of which may only be used to fund transit authority activities, and in accordance with transit authority bond indentures and related requirements.
8. The Council shall require annual independent financial audits and regular periodic management audits to ensure that the transit authority has adequate internal controls. Such audits shall be submitted to the Council and published for public review.
9. The Council shall require the transit authority to develop and periodically report performance metrics that inform the public on the efficiency and efficacy of transit authority operations.
10. Council's implementing legislation shall subject the transit authority, its board and staff, to County ethics laws, and the personnel, functions and

activities of the transit authority to review by the County's Inspector General in a manner similar to County departments.

11. The transit authority shall participate in Montgomery County's Open Government Initiative to a level consistent with County Executive Branch agencies.
12. The enabling legislation will provide for and encourage the creation of inter-jurisdictional agreements that will promote both inter-county and regional transit service, and that would authorize agreements with municipalities where appropriate.

### **4.3 Issue 3 – An Inadequate Solution to the Labor Issue**

The County Executive's original proposal contemplated the transfer of Ride On transit functions and employees to the transit authority so that all County transit functions would be consolidated in the transit authority. This would have enabled integrated policy-making and management of County-controlled, transit-related activities. The original legislation contained detailed provisions (see Part III) seeking to protect the rights of Ride On employees, including members of the collective bargaining unit representing certain Ride On employees (MCGEO). MCGEO nonetheless raised objections to the original proposal.

The Task Force worked with MCGEO to explore alternatives that would fully protect Ride On employees while meeting the overall objective of achieving a coordinated transit operation in the County. The following alternative acceptable to MCGEO emerged:

All County employees who are members (or could be members) of a collective bargaining unit as designated under the County's collective bargaining law, and who are represented by MCGEO in public transportation related positions, including but not limited to Ride On and DGS employees, will remain as County employees; these employees will continue to be: 1) covered by their respective

collective bargaining agreements; 2) represented by MCGEO in the same manner, units, and capacity as they are currently; and 3) subject to applicable County collective bargaining law.

#### **4.4 Issue 4 – Exceeding Charter Limits on Property Taxation**

The dominant concern expressed at the February public hearing and June public forum was that the proposed legislation (MC 24-15) allowed any revenue raised by imposing special taxes in a special taxing district, if dedicated to paying the cost of County transit functions, to not be subject to the County's charter tax limit. This concern was based on the belief that providing the County Council with unlimited taxing authority was a violation of the public trust.

The Task Force in its deliberations recognized that the Charter limit was approved prior to 2008, when the State made substantive revisions to its MOE legislation, which mandates minimum local funding levels to help support the State's public K-12 education system. The passage of this legislation resulted in the strengthening of a number of provisions that significantly reduced a local governing bodies' flexibility to make decisions about how to best prioritize and allocate funds among their public programs.

Already, nearly half of the County's budget is mandated to be spent to support its K-12 public education system. Burgeoning growth in enrollments that are projected to continue into the future have created even more upward pressure on these required annual appropriations.

This fiscal constraint, plus the belief that in order to meet the County's economic development objectives, an RTS transit network needed to be developed on an expedited schedule, the Task Force concluded that a case could be made for exceeding the Charter limit, but not without limits. Therefore, as described in Part 5 of this Report, the Task Force supports creating a structure which would allow revenues generated for the purpose of supporting the County's transit program to exceed current Charter limits, subject to the limitations described more fully in Part

4.2 above. These limitations place major restrictions on the amount of special property tax that may be imposed. Depending upon the final financing plan approved by the County and State, funding sources other than the property tax will be utilized, thus further limiting the burden on the property tax.

## 4.5 Other Issues Raised

In addition to the critiques heard at the two public forums, other issues raised included:

The position that all of the functions proposed to be performed by a transit authority could be done by MCDOT, and that it is important to preserve the link between transit service and other key services such as traffic management and roadway design, construction, and maintenance;

The argument that since the RTS corridors are primarily state highways, a transit authority will not design and build the RTS infrastructure, so there is no justification for a quasi-independent agency. As noted earlier, some critics believe that SHA is no more likely to cede control over design and construction to a transit agency than to MCDOT;

The assertion that existing funding tools are sufficient to design, build and operate an RTS, pointing in specific to the Council's ability under SB 828 to create special taxing districts, and impose special tax district property taxes to pay for transportation-related capital costs with such taxes exempt from Charter limits.

The argument that since a transit authority would be offering revenue bonds instead of County general obligation debt, it would incur higher interest rates, thus increasing the costs to County taxpayers for developing transit infrastructure; and

The suggestion that operating costs may be unreasonably high because of duplicative management costs to run two organizations (MCDOT and the transit authority).

While some of these issues have some legitimacy, they are not necessarily based on completely accurate information or a full understanding.

**Argument 1** suggests that it would be preferable to keep MCDOT in charge of the RTS to preserve the link between transit and other key services. The Task Force would respond that, no matter what organization is chosen to implement the RTS, policy coordination will be necessary. The traffic signals for state highways in the county are currently managed by MCDOT, which requires policy coordination with SHA. Further, WMATA bus service is coordinated with County Ride On service. Moreover, the Purple Line will require coordination among six entities: SHA, MTA, the MTA concessionaire, MCDOT, Prince George's County, and WMATA. The County currently has agreements and shared responsibilities with MDOT/SHA and WMATA that work perfectly well. It is a logical assumption that similar agreements between the County government and a transit authority will be just as effective and efficient.

**Argument 2** anticipates that the transit authority will not have authority over design and construction of the system, and therefore is not needed. On the contrary, since a strong fiscal partnership between a transit authority and MDOT is anticipated (meaning the County will absorb a larger portion of the cost of this infrastructure program than is typical), it is reasonable to believe that the transit authority will enter into an agreement with MDOT (SHA & MTA) that allows the transit authority to contract for the planning, design, and construction of RTS infrastructure on state roads without the state ceding control and/or its approval authority for their rights of way.. For all of these reasons, maintaining that “a vital link” between roadway design, construction and maintenance would be severed if transit functions were transferred to a transit authority is a weak assumption.

**Argument 3**, asserting that current funding tools are sufficient, is incorrect for two reasons. First, the authority granted under SB 828 does not cover operational costs. If a transit authority were to pursue the broadest public private partnership (P<sup>3</sup>) approach (design, build, operate, maintain, and finance), it might have the ability to commit to the development (or capital cost) side of the partnership, but would

be challenged to commit to a multi-year operating agreement due to Charter limits on property tax increases and County spending affordability limits. Potential concessionaires could be reluctant to enter into agreements to provide design, build, operate, maintain, and finance services without certainty that the county could perform on making availability payments (payments that cover operating expenses and debt service requirements) over the life of the agreement. It may also be true that the underwriting of the financing of debt to fund capital costs could also be made more difficult by not having arranged for the funding of operating costs.

Second, even without pursuing a P<sup>3</sup> approach, the County will very likely be constrained in its capital program over the foreseeable future, if the financing has to remain within County bonding limits. While SB 828 may provide a solution for capital expenditures from a taxing and funding standpoint, it will still have challenges regarding its ability to issue the debt associated with a major transit development program. SB 828 would allow the County to impose a special district property tax, and would allow issuance of debt instruments to defray capital costs supported by those taxes, but such debt would be the debt of the County with all the concerns that creates (as described more fully in Part V below). The County is already approaching the upper bounds of debt affordability limits and with MPCS forecasting significant enrollment growth over the next ten years, it is very uncertain the County can accommodate (given current limits) the debt associated with both building the needed school facilities associated with that forecast, as well as the RTS development program without either unacceptable postponement of other county facilities such as roads, fire stations, police facilities, libraries, recreation centers and other general government facilities, or unacceptable delay in developing the RTS network. For the above reasons, the assertion that the County has sufficient tools to move development and operation of an RTS forward in a meaningful way without new taxing and spending authority is incorrect. The Task Force supports the position that establishment of a transit authority as the best solution to address these resource constraints.

**Argument 4** states that since a transit authority would be offering revenue bonds instead of County general obligation debt, it would incur higher interest rates, implying significantly higher costs to County taxpayers for developing the transit infrastructure. While there may be some premium associated with issuing revenue bonds instead of general obligation bonds, if there is such a premium it is likely to be insignificant since the transit authority will be an instrumentality of Montgomery County, and the structure of the bond issue (per the scenarios presented in Part 5 below) is sufficiently conservative as to render any difference slight. This will largely depend on the nature of the backing of proposed indebtedness. If reserves are sufficient, the debt may rate as well, or almost as well, as County general obligation bonds, despite not having the backing of the full faith and credit of the County. Also, if the recommendation of the Task Force relating to authority to set tax rates is adopted, including assurances of the payment of debt issued by the transit authority, the difference between transit authority revenue bonds and general obligation bonds is further narrowed. The County is highly respected in the municipal bond markets, with a strong track record of timely payment of any debt outstanding. It also has a long record of responsible fiscal management and this is very important to bond rating agencies and investors when deciding how to rate or to whether to purchase a jurisdiction's debt. Thus, as a quasi-independent agency of a County with a stellar financial track record, the transit authority might not end up with higher borrowing costs.

**Argument 5** is a concern about potential duplicative management between MCDOT and a transit authority. This concern is misplaced, because the management of a transit authority will be overseeing the development and operation of an RTS as opposed to the operation of the Ride On network and service. Even if RTS development and operations were inside the county government, there would still be a need for a significant amount of new resources for a management structure. The development of an RTS is a new initiative and there is currently insufficient capacity within MCDOT to provide the organizational and project management, design, construction management, or operations management for such an RTS program. Thus, significant additional resources would be necessary

for MCDOT to develop, operate and maintain this completely new infrastructure. The Task Force also suggests that there should be sizable savings from creating a transit authority because the procurement methods and rules, personnel hiring, and other administrative support functions will likely be more efficient and flexible than those of the county government. This should result in a net savings to taxpayers, not additional costs.

Finally, the integration of the Ride On and WMATA bus service to the RTS could create some savings, or the opportunity to increase service. As the RTS becomes operational, the County will have the option of either reducing resources spent on the transit routes no longer needed for Ride On or WMATA bus service, or it may redeploy Ride On vehicles to penetrate deeper into residential neighborhoods, thus encouraging ridership by putting the initial pick-up point for potential riders much closer to their front door.

## 4.6 Organizing Activities of the 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, makes an initial appropriation of funds for the transit authority during its organizational period, and that the members of the governing board are nominated and confirmed, the governing board acting for the new transit authority will need to undertake activities such as:

- Appoint an Interim or Acting General Manager or Chief Executive Officer;
- Adopt major policies and procedures, including those governing meetings, personnel policies, compensation plans, and procurement;
- Hire senior managers and employees;
- Determine which functions will be performed by the transit authority employees, County employees, or a combination thereof, until workload and budgetary considerations justify full-time transit authority employees;

- Select an Assistant General Manager for RTS network development;
- Commence substantive review of its proposed CIP, capital budget, operating budget, and other organic documents that will require submission to the Council and Executive for review and approval;
- Undertake discussions with the MDOT to determine the working relationship between relevant state agencies and the transit authority (and County, where appropriate) with respect to the development and operation of the RTS network, and;
- Working with the MCDOT, adopt a plan for the integration of RTS network services with those of Ride On and other transit services.

The activities listed above are illustrative only. It is not possible, nor is it necessary, to specifically prescribe when these or other various activities will commence. Such decisions will be made at the appropriate time by the transit authority.



# 5

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## Financing the Project

### 5.1 Background and Context

In his original proposal, the County Executive urged the creation of a new transit authority not only to breathe more creativity, energy, flexibility and new focus into our efforts to build and operate an expanded transit system – but also to increase the financial resources available to efficiently develop and operate such a system.

As discussed earlier in this Report, current constraints under the County Charter make such an investment in our future very difficult or, at best, will unacceptably delay its implementation and the realization of its benefits. Furthermore, to the extent bonded indebtedness is used to finance a significant portion of Phase I of the RTS network, if that debt is issued as “County debt” it will compete with County debt issued to fund other capital projects, and could affect the County’s credit ratings. Creating a transit authority that will allow the County to achieve its immediate and long term financing goals without those impediments is a worthy objective.

Historically, infrastructure projects of the type described in Phase I of the RTS network are not only developed in segments (in this situation, on a corridor-by-corridor basis), but financial plans are also developed separately for each segment. For the RTS, because each separate transit corridor is part of a larger system that is

being developed in an integrated and systematic manner, it is important to develop a comprehensive financial plan to address the whole. This will lead to a more efficient and cost-effective development process, and will enable members of the community to better understand the complete Phase I effort. If plans and financing were developed in isolation for each corridor, neither those involved in the planning nor members of the community would have a good sense of the complete cost picture.

The potential financing structures for Phase I of the RTS network presented in this Report take into account all five corridors and each element of development and operating costs. This comprehensive multi-corridor approach will allow the most effective development schedule and sequence, as well as the lowest total cost.

It is essential that debt incurred to implement the RTS not be carried on the County's balance sheet. If the debt were carried on the County's balance sheet, it would be subject to the County Charter, debt affordability limits, and other technical requirements relating to such debt. The alternative approach of a transit authority issuing independent debt envisions a more effective leveraging of County, State and Federal resources.

The Executive's proposal sought to tie all of these elements together. The Task Force has, in turn, sought to improve on these proposals by considering the constructive criticism and suggestions that have been made on their merits. In particular, the Task Force has improved the financial accountability of the proposed transit authority and has proposed limits on any new taxes that might be imposed for this purpose.

## **5.2 Issues Relating to Financing the Project**

Two primary issues have been raised concerning finance-related aspects of the transit authority proposal. Those issues have been addressed in some detail earlier in this Report, and are summarized here:

1. Transit authority financial decisions lacked sufficient accountability to elected officials.

The original proposal made the transit authority's capital improvement program subject to Council approval, but not its capital and operating budgets. Given the nature and scope of a capital improvement program ("CIP"), which includes all expenditures for real property and other significant assets, this afforded the Council a high level of effective control over the scope of what the transit authority could develop. Nonetheless, to increase the comfort level of elected officials and members of the public with the proposed new entity, the Task Force recommends that the Council be given express power to review and approve the transit authority's annual capital and operating budgets, in addition to approving its six-year CIP. Furthermore, the Task Force recommends that the transit authority be required to submit regular, independent financial and management audits to the Council and to make those audits available to the public.

2. The original proposal contained no limit on the amount of taxes that may be imposed to develop and operate the RTS network.

The Task Force is recommending that the new enabling legislation contain explicit maximum limits on taxes that could be imposed to support transit functions. Such maximum limits could only be increased by action of the Maryland General Assembly and Governor.

### **5.3 Estimated Capital and Operating Costs**

The starting point for arriving at a reasonable financial approach for Phase I requires preparing reasonable estimates of capital and operating costs. The County's transportation consultant, VHB, was engaged for this task by MCDOT.

VHB used approved land use and functional master plans, including the Transit Master Plan, to reflect an estimated development scope, and applied typical cost estimating techniques based on industry experience to estimate costs. Because designs have not reached a high level of detail, the capital cost estimates reflect

substantial contingencies (in many categories as high as 50 percent). In cooperation with MCDOT, and after consultation with MDOT representatives, VHB also developed a schedule setting forth the sequence and timing of design, construction, and commencement of operations for the five corridors, which was used to develop an estimate of when expenditures would be incurred. Materials comprising VHB's capital cost estimates are attached to this Report as Appendix 5a, and a summary of costs for Phase 1, is provided below in Table 5-1. It should be noted that some members of the Task Force believe the VHB capital cost estimates are in excess of the costs that should actually be incurred.

Table 5-1: 2015 Capital Cost Estimate Summary<sup>20</sup>

Corridor	Physical Construction Costs (\$ million)	Bus Costs (\$ million)	Land Acquisition (ROW) Cost (\$ million)	MOT, Mobilization, and Soft Costs (\$ million)	Total Cost (\$ million)
<b>RTS Corridors</b>					
MD 355 North	\$328.5	\$36.0	\$79.1	\$176.0	\$619.6
MD 355 South	\$242.1	\$21.6	\$29.9	\$129.2	\$422.8
US 29	\$108.4	\$31.2	\$0.2	\$60.0	\$199.9
Veirs Mill Rd	\$164.1	\$16.8	\$16.7	\$87.9	\$285.5
Maint. Facility	\$57.0	n/a	n/a	\$18.6	\$75.6
<b>Sub Total</b>	<b>\$900.1</b>	<b>\$105.6</b>	<b>\$125.9</b>	<b>\$471.7</b>	<b>\$1,603.4</b>
CCT (Phase 1)	600.0 <sup>21</sup>			34.5 <sup>22</sup>	\$634.5
<b>Total</b>					<b>2,237.9</b>

The cost of the CCT for the purpose of this cost estimate is \$634.5 million, and is based on the most recently available 15 percent design cost estimate from the MTA. While a 30 percent design estimate is anticipated in the near future, it is unavailable at this time. Thus, the total estimated cost for all five corridors of Phase I of the RTS network, including the maintenance facility, is \$2.238 billion.

VHB developed its operating cost estimates based on industry standards and local costs obtained from MCDOT (See Appendix 5b). These costs include material, contract and labor costs. Such costs were based on rapid transit vehicle (RTV)

<sup>20</sup> "ROW" refers to right-of-way and "MOT" to maintenance of traffic.

<sup>21</sup> 2012 MTA capital cost estimate for CCT, including buses and land acquisition, escalated to 2015 dollars.

<sup>22</sup> Assumption of remaining soft cost budget for planning (concept/preliminary engineering/30% design) and procurement.

operating frequencies, assuming 5-minute average headways during “peak” operating periods and 10-minute headways during “non-peak” periods. Amounts reflected in the operating cost table below are total operating expenses (before the application of fare box revenues). An assumption was also made that fares paid by riders (“fare box recovery”) would generate revenues equal to 25 percent of operating expenses. Some members of the Task Force expressed the view that this rate of fare box recovery was too low (in that Metrobus fare box recovery in Montgomery County averages approximately 36 percent). Other Task Force members doubted ridership projections for the RTS and therefore considered 25 percent fare box recovery too high. Documents reflecting the VHB operating cost estimates are also contained in Appendix 2, and are summarized below in Table 5-2 for Phase I, with the CCT in a separate line.

Table 5-2: Annual Operating and Maintenance (O&M) Cost Estimate<sup>23</sup>

Corridor	Corridor Length (miles)	Number of Buses	Total Annual O&M Cost (\$ million)	Average Cost/Mile (\$ million)	Average Cost/Bus (\$ million)
<b><u>RTS Corridors</u></b>					
MD 355 North	14.13	30	\$17.8	\$1.260	\$0.593
MD 355 South	7.67	18	\$11.0	\$1.434	\$0.611
US 29	11.02	26	\$14.7	\$1.334	\$0.565
Veirs Mill Rd	6.16	14	\$8.1	\$1.315	\$0.579
<b>Sub Total</b>	<b>38.98</b>	<b>88</b>	<b>\$51.6</b>		
CCT (Phase 1)	9.10	18	\$11.8	\$1.297	\$0.656
<b>Total</b>	<b>48.08</b>	<b>106</b>	<b>\$63.4</b>		

Table 5-3 below accomplishes two things. First, it shows a schedule for the full build-out of Phase I which included input from MCDOT and MDOT (See Appendix 5c). Second, it spreads costs (based on the VHB Capital Cost Estimate) through the period of development. This allocation was then used by the County’s financial consultant to develop financial models.

<sup>23</sup> Table contains cost data only; no farebox recovery of other revenue is accounted for in this data.

Table 5-3: RTS Phasing & Capital Cost Schedule

MONTGOMERY COUNTY RAPID TRANSIT SYSTEM PHASING & CAPITAL COST SCHEDULE (Current Dollars in \$M)														
	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	TOTAL
CCT	27.6	6.9												34.5
Subtotal	30.0	60.0	170.0	170.0	170.0	170.0	-	-	-	-	-	-	-	600.0
RTS Maintenance Fac.	57.6	66.9	170.0	170.0	170.0	170.0	-	-	-	-	-	-	-	634.5
		5.1	5.1	2.6	2.6	2.6	27.4	27.4	27.4	27.4	27.4	27.4	27.4	12.8
Subtotal	-	5.1	5.1	4.9	4.9	5.7	27.4	27.4	27.4	27.4	27.4	27.4	27.4	62.7
Veirs Mill Road	5.5	8.3	8.3	5.5	5.5	18.1	106.9	106.9	106.9	106.9	106.9	106.9	106.9	75.6
Subtotal	5.5	8.3	16.7	13.9	8.4	18.1	106.9	106.9	106.9	106.9	106.9	106.9	106.9	248.6
MD355 South	2.5	2.5	9.8	14.4	14.4	14.4	10.9	26.4	156.1	156.1	156.1	156.1	156.1	276.3
Subtotal	2.5	2.5	9.8	14.4	14.4	29.3	25.8	26.4	156.1	156.1	156.1	156.1	156.1	54.5
US 29	2.0	2.0	7.8	7.8	7.8	0.2	14.0	80.7	80.7	80.7	80.7	80.7	80.7	368.3
Subtotal	2.0	2.0	7.8	7.8	7.8	5.1	14.0	80.7	80.7	80.7	80.7	80.7	80.7	422.8
MD355 North	2.5	2.5	2.5	2.5	2.5	10.2	19.5	14.8	39.5	36.4	215.1	215.1	215.1	24.4
Subtotal	2.5	2.5	2.5	2.5	2.5	10.2	19.5	59.1	54.3	36.4	215.1	215.1	215.1	175.6
<b>Total Current Dollars</b>	<b>70.1</b>	<b>87.3</b>	<b>211.9</b>	<b>213.4</b>	<b>213.4</b>	<b>238.4</b>	<b>193.5</b>	<b>300.3</b>	<b>192.5</b>	<b>215.1</b>	<b>215.1</b>	<b>215.1</b>	<b>215.1</b>	<b>2,228.7</b>



NOTES:  
Revised 7/20/2015

- This a draft RTS multiyear phasing and capital cost program summary and may requires further revisions.
- Design-Build procurement method is assumed for all corridors.
- The Final Design/Mobilization period is assumed to include final design associated with Design-Build delivery process and mobilization for construction.
- All costs, except for CCT, are based on revised 2015 CTCMP Cost Estimate, in 2015 dollars.
- The 2012 Maryland Transit Administration capital cost estimate for the CCT was escalated to 2015 to provide the basis for CCT costs in this summary.
- Escalation is not applied to this capital cost program

## 5.4 Existing Transit Services and Potential Changes

Montgomery County now operates the Ride On local bus transit service. This service is supported by a combination of an existing, county-wide, special real property transit tax, the rate for which is now set at 4¢ per \$100 of assessed real property valuation; State grants; federal grants; and Ride On fare box recovery. Task Force recommendations contemplate that this service will continue to be operated by the County. Montgomery County is also served by Metro-bus operating out of Washington, D.C.

As the RTS network becomes operational on a corridor-by-corridor basis, local bus service will inevitably change. Some Metro-bus routes will be eliminated or shortened. Some Ride On routes will also be eliminated or shortened, and other aspects of Ride On service will be reconfigured to act as a feeder service to the RTS network. For example, Ride On and Metro-bus routes currently provide bus service along US 29 to Silver Spring, a route that is covered by the RTS's US 29 corridor. This may reduce or eliminate the need for some bus operations on US 29. On the other hand, we expect that new Ride On routes will be added and run more often. Many of these routes will function as circulators to provide service into residential, business and retail areas, to connect people with the RTS and other residential, business and retail establishments in the area.

Specific service changes will be adopted in the future. This Report makes no statement regarding the scope of such changes or their budgetary impact.

Financial models used in this Report assume a 25 percent fare box recovery for RTS operations. This is comparable to Ride On fare box recovery but substantially less than the fare box recovery for Metro-bus in Montgomery County (36 percent). This report has not addressed a mechanism for “interline” sharing of fares. We observe that WMATA is testing new electronically interactive customer payment systems – and the RTS operation should participate in the WMATA-sponsored network when that has been fully tested and implemented. While there is a strong view that 25 percent may understate the RTS fare box recovery, in light of

uncertainties about interline revenue sharing, and other factors, the Task Force has retained the 25 percent fare box recovery assumption for RTS operations.

## 5.5 Financial Scenarios

### Types of Local Taxes Recommended

In its evaluation of alternative revenue sources, the Task Force found that in Maryland there are very few taxation alternatives available to counties. Those which are available either are heavily relied upon or tend not to generate sufficient revenue to meet the needs of constructing and operating the RTS. Beyond the real property tax, the Task Force has provided options to consider implementing an excise tax (an alternative available to the County without further State authorization), and a local-option sales tax (an alternative not now available to counties in Maryland, which would require additional enabling legislation to be enacted by the State). Other revenue sources are possible, but most would generate relatively small amounts.

While not recommending any action on them at this time, the Task Force also recognizes that other potential revenue sources exist, which also would require state enabling legislation. They include an employment withholding tax (a method used in jurisdictions such as Oregon, which allows government to raise relatively large sums with relatively low tax rates, but which also raises very real policy issues), and a congestion tax (which taxes vehicular access to specific parts of a community at particular times, simultaneously raising revenues and influencing driver behavior, but which also raises significant policy questions). These alternatives are real, and may be worthy of consideration at some point in time, but their adoption is unlikely and, even if possible, a long way off, and consideration of them should not delay implementation of the RTS.

Accordingly, the scenarios constructed below use different combinations of the three most viable local revenue sources identified: property, excise<sup>24</sup> and sales taxes. Scenarios are defined in pairs: one pair without any state or federal contribution, and one pair with such a contribution.

### **Potential for Federal and State Funding**

The availability of federal and state funding for the RTS is uncertain. While the federal government has been a major source of infrastructure funding in the past, and still has some grant and loan programs, these programs are inadequate to enable the County to develop Phase I in reliance on a Federal grant large enough to support a major part of the capital cost. Grant programs are typically competitive, and as they have traditionally been applied, would allow consideration only on a corridor-by-corridor basis. However, over time, the transit authority could pursue federal assistance, either for future corridors or to restructure financings already in place, so that local dollars could be recycled to invest in the future expansion of the system. Also, more targeted federal grant programs could assist in financing original purchases of rapid transit vehicles, and the replenishment of the “rolling stock”. Obtaining federal funding for major capital costs can be a long term effort by the transit authority – but reliance on federal sources should be avoided at the outset because dependence on them could delay RTS development and operation indefinitely.

State funding is a different matter. The State transportation program has historically been marred by funding problems – including the fact that the Transportation Trust Fund was depleted to transfer funds to other government programs. In 2013, however, the General Assembly adopted measures to increase revenues available for the Transportation Trust Fund, as well as new protections to prevent transfers out of it. These protections were contained in a State Constitutional Amendment, which was adopted by referendum. On the other hand,

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<sup>24</sup> The excise tax proposed in this context is assumed to be a tax on the privilege of leasing, or offering for lease, commercial space (i.e., office, retail, industrial, and multi-family residential). The proposed excise tax rate would be set at a specific number of cents per square foot of space. Owner occupied space would not be subject to the tax as proposed.

the State has seen fit to apply very little of its transportation resources allocated to capital programs to support debt. Reliance instead on “pay go” approaches tends to force the State to make choices between road, bridge and transit projects that might be avoided with a better approach. The Task Force supports an approach to state funding that would spread support for the RTS program over a long period of time, through annual payments that could support both (or either) debt service payments or operating subsidy requirements. Illustrative scenarios presented in this Report demonstrate the favorable impact that such state contributions could have on local tax burdens needed to meet the financial requirements of RTS development and operation. Moreover, the Task Force considers it equitable for the State to make material contributions to the RTS, since the State is a principal beneficiary of the investment. This is because not only does Montgomery County benefit in increased economic activity and tax revenues, but so does the State. This is set forth in greater detail in the Sage Report described more fully below.

Likewise, the federal government could structure a variety of different kinds of payments in lieu of more typical grant programs, to assist in defraying costs in Montgomery County that are unique to us because of the heavy federal presence. Indeed, each of the five (5) corridors that are a part of Phase I will carry a large number of current and future federal employees, contractors and clients. Efforts should be undertaken to pursue a regularized plan of payments by the federal government, or the agencies most directly involved, to help the proposed transit authority offset the operating subsidy required for the RTS – in part due to the federal presence. The Task Force also considers it equitable for the federal government to participate in funding this extraordinary asset.

The estimates and projects in this Report assume a state and federal payment of \$40mm per year, which is approximately the amount the County now receives from the State for Ride On. Other amounts are also possible, either higher or lower. The contribution or payment would need to be agreed to by the State (and the federal government, if applicable).

## Funding Scenarios

The scenarios that follow cover capital and operating costs for Phase I of the RTS network, which includes Stage 1 of the CCT, 355 North, 355 South, US 29, and Veirs Mill Road. The CCT is currently defined as a state project.

The Task Force asked the County's financial advisor to develop a realistic financing model, one that would achieve favorable marketability of bonds and favorable rating from independent rating agencies. Thus, the model developed included conservative capital, operating and debt service reserves; reasonable inflation assumptions for both capital and operating costs; and an approach whereby 15 percent of capital costs would be paid on a "pay as you go" basis. The model also accepted without change VHB's capital and operating cost estimates and fare box recovery projections (See Appendix 6a – PFM Financial Analysis Summary).

The Task Force then asked the financial advisor to generate a number of specific financing scenarios, utilizing a variety of different potential revenue sources, to gain an understanding of how different approaches would potentially impact taxpayers. The goal of the exercise was to develop alternative scenarios that would illustrate different approaches – and how they would impact different categories of taxpayers. **The Task Force is not making a recommendation as to which combination of taxing sources should be used. The scenarios are presented to inform decision-makers and the public, and to illustrate the impact of changing certain variables.**

The scenarios fall into four (4) broad categories (See Appendix 6b – PFM Financial Scenarios in Detail), as described in the pages that follow.

### Category 1 – County-wide Real Property Tax

The first set of scenarios uses the county-wide real property tax as the County's contribution to the RTS financing structure, and this source of funding covers both capital and operating costs not covered by FBR. Four scenarios are presented in this category.

- Scenario 1A uses the real property tax only and, in each year, reflects the actual amount required in that year to defray capital and operating costs. Under this scenario, the maximum property tax rate reaches 8.65¢ in the eleventh year and declines thereafter. The average tax rate for the 30 year period between 2017 and 2046 would be 5.73¢ (or \$252 annually for the owner of a residence of average value).
- Scenario 1B uses the same approach as scenario 1A; however, it includes a \$40 million annual intergovernmental payment (i.e., from the State and/or federal governments). The maximum real property tax rate reaches 7.10¢ in the eleventh year and declines thereafter. The average tax rate for the 30 year period would be 4.49¢ (or \$197 annually for the owner of a residence of average value).
- Scenario 1C uses the real property tax only and fixes the rate for 15 years, and resets the rate at a fixed rate for an additional 15 years. The initial fixed rate is 6.46¢ and the re-set rate is at a lower rate. The average rate for the 30 year period is 5.90¢ (or \$260 annually for the owner of a residence of average value).
- Scenario 1D is the same as Scenario 1C; however, it includes a \$40 million annual intergovernmental payment. The initial fixed tax rate is 4.88¢ for 15 years, and resets the rate at a fixed rate for an additional 15 years. The maximum real property tax rate reaches 4.88¢, and declines after the fifteenth year. The average tax rate for the 30 year period would be 4.59¢ (or \$202 annually for the owner of a residence of average value).

Use of the county-wide real property tax only would spread the burden of this major infrastructure program over the entire taxpayer base; however, in real terms the burden would fall 75 percent on homeowners and 25 percent on owners of commercial property, since that is the approximate allocation of real property assessed valuation in the County.

Table 5-4 below shows the applicable real property tax rate required to defray capital and operating costs for each year presented.

Table 5-4: County-wide Real Property Tax (\$/100)

Scenario	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>1A</b>	-	0.0137	0.0353	0.0407	0.0489	0.0545	0.0694	0.0777	0.0776	0.0860	0.0865	0.0758	0.0713	0.0691	0.0671
<b>1B</b>	-	0.0137	0.0141	0.0202	0.0290	0.0354	0.0511	0.0601	0.0608	0.0698	0.0710	0.0609	0.0570	0.0554	0.0539
<b>1C</b>	-	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646	0.0646
<b>1D</b>	-	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488	0.0488

**Category 2 – County-wide Real Property Tax and County-wide Excise Tax**

The second set of scenarios uses the two sources of revenue as the County’s contribution to the project; the county-wide real property tax and a new proposed excise tax. As noted above, the excise tax would be a tax on the privilege of leasing or offering to lease commercial space in the County. The real property tax would be dedicated to paying the capital costs of the project and the proposed excise tax would be dedicated to defraying operating costs. The primary reason to allocate the use of revenues in this way is to ensure the best possible bond ratings, financing terms and the lowest cost of capital. Four scenarios are presented in this category.

- Scenario 2A uses both types of tax (real property and excise, as described above) and, in each year reflects the actual amount required in that year to defray the costs to which they relate. Because operations do not begin for a few years, the charging of the excise tax is deferred for that length of time. Under this Scenario, the maximum real property tax reaches 6.61¢ in the eleventh year and declines thereafter. The maximum excise tax rate is 45.37¢ and is reached in the thirtieth (30<sup>th</sup>) year. The average real property tax rate for the 30 year period is 3.81¢ and the average excise tax during that period is approximately 27.5¢.
- Scenario 2B uses the same approach as Scenario 2A; however, it includes a \$40 million intergovernmental payment. The maximum real property tax rate of 5.20¢ is reached in the eleventh year and the average real property

tax rate for the 30 year period is approximately 2.9¢ and the average excise tax rate for that period is 22.27¢.

- Scenario 2C uses the same two types of taxes as in Scenarios 2A and 2B; however, it fixes both tax rates for the first 15 years at approximately 4.9¢ for the real property taxes and 20.30¢ for the excise tax. The real property tax declines to 4.14¢ in years 16-30, and the excise tax declines to 17.06¢ during the same period of time.
- Scenario 2D also applies both types of taxes at fixed rates; however, it includes the \$40 million intergovernmental payment. This reduces the fixed rate for the real property tax to 3.75¢, for the first 15 years, and reduces the excise tax to 15¢. The real property tax declines to 3.37¢ in the following 15 years, and the excise tax declines to 13.88¢ during the same period of time.

Table 5-5 below depicts the applicable tax rates required to defray capital and operating costs for each year presented.

Table 5-5: County-wide Real Property Tax (\$/100) & County-wide Excise Tax (\$/SqFt)

Scenario	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>2A Property</b>	-	0.0137	0.0353	0.0407	0.0489	0.0454	0.0621	0.0660	0.0592	0.0638	0.0661	0.0462	0.0443	0.0425	0.0408
<b>2A Excise</b>	-	-	-	-	-	0.0786	0.0654	0.1083	0.1777	0.2217	0.2117	0.3178	0.2997	0.3066	0.3136
<b>2B Property</b>	-	0.0137	0.0141	0.0202	0.0290	0.0357	0.0488	0.0519	0.0465	0.0502	0.0520	0.0363	0.0349	0.0335	0.0321
<b>2B Excise</b>	-	-	-	-	-	0.0618	0.0515	0.0851	0.1397	0.1744	0.1665	0.2499	0.2357	0.2411	0.2466
<b>2C Property</b>	-	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493	0.0493
<b>2C Excise</b>	-	-	-	-	-	0.2030	0.2030	0.2030	0.2030	0.2030	0.2030	0.2030	0.2030	0.2030	0.2030
<b>2D Property</b>	-	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375	0.0375
<b>2D Excise</b>	-	-	-	-	-	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500

### Category 3 – County-wide Real Property Tax, Excise Tax and New Local Option Sales Tax

The third set of scenarios uses the real property tax, excise tax and a new 0.5 percent sales tax. While the sales tax option would require new State enabling legislation, this additional revenue source would generate substantial revenue (including from non-County taxpayers), and would materially reduce tax rates required on both real property and excise taxpayers. This category has two scenarios.

- Scenario 3A reflects the three revenue sources with capital costs funded by real property taxes and excise taxes, and operating costs funded by the 0.5 percent sales tax. The real property tax would reach approximately 4.88¢ in the fifth year and immediately decline to approximately 3.5¢ and remain at that level. The excise tax would begin in the sixth year and remain fixed at 20.50¢.
- Scenario 3B uses the same approach as Scenario 3A; however, it includes a \$40 million annual intergovernmental payment. The real property tax rate under this scenario reaches a high of slightly less than 2.90¢ in year five, but reduces to 1.90¢ in year six and remains fixed at that level. The excise tax begins in year six at 20.50¢, and remains fixed at that level.

Table 5-6 below depicts the applicable rates for real property and excise taxes for each year presented.

Table 5-6: County-wide Real Property Tax (\$ / \$100) & County-wide Excise Tax (\$ / SqFt) Includes 0.5% Sales Tax

Scenario	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>3A Property</b>	-	0.0137	0.0353	0.0407	0.0489	0.0347	0.0347	0.0347	0.0347	0.0347	0.0347	0.0347	0.0347	0.0347	0.0347
<b>3A Excise</b>	-	-	-	-	-	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050
<b>3B Property</b>	-	0.0137	0.0141	0.0202	0.0290	0.0190	0.0190	0.0190	0.0190	0.0190	0.0190	0.0190	0.0190	0.0190	0.0190
<b>3B Excise</b>	-	-	-	-	-	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050	0.2050

The local-option sales tax identified in these scenarios would require new State enabling legislation to authorize its imposition, because currently Maryland

counties do not have the authority to impose sales taxes. This additional revenue source would, however, generate substantial revenue (including from individuals who shop in Montgomery County but do not pay property taxes in the County), and would materially reduce tax rates required for both the real property and excise taxes.

Past efforts to authorize a local option sales tax have been unsuccessful. Nevertheless, the Task Force recommends to the County Executive and Council that they consider pursuing a local-option sales tax as an important potential source of funding for the RTS network.

In 2013, the Local and Regional Transportation Funding Task Force established by the General Assembly and the then-Governor analyzed transportation revenue options and made a series of findings and recommendations. Although not recommended for specific action in 2013, the State Task Force noted the relevance of a local option sales tax and suggested future consideration by the General Assembly. Given the scale of the need addressed by the RTS network, and the limited range of available funding sources, this seems like an opportune time for this option to be seriously consider by the State and County.

A local sales tax is a commonly used source of funding for transportation in states, regions and localities across the United States, particularly at the county level. For instance, in California, over 80 percent of the State's population resides within counties that have such local tax measures in place for transportation investment. Similar examples and levels of implementation are found in states and major metropolitan areas throughout the United States. In our region, the Northern Virginia Transportation Authority has been authorized by the Commonwealth to implement a 0.7 percent sales tax, along with other revenue sources.

Jurisdictions have implemented sales tax measures because of their significant revenue yield, and the potential for flexibility when determining the scope of their applicability. Certain classes of transactions may be exempt to help offset the potentially regressive nature of a sales tax. Also, non-residents pay the tax when

making purchases in the jurisdiction, and some jurisdictions using the sales tax have determined that at least 20 percent of revenues generated from the tax come from non-residents. Thus, the impact on a per capita and per-household basis for local residents is fairly limited. The funding scenario proposed for the RTS that includes local-option sales tax revenues would significantly reduce the tax rate for the real property and excise taxes required to fund the network.

The Task Force recommends that if introduced, that State enabling legislation proposed to create a local-option sales tax provide that:

- i. The Council, by simple majority vote, could invoke the State authorization to establish a County-wide sales tax, not to exceed a rate of 0.5 percent, for the exclusive purpose of funding capital and operating costs of the RTS network.
- ii. The Council, in enacting the sales tax, may exempt certain classes of transactions from the tax.
- iii. The State shall collect the tax on behalf of the transit authority, and revenues derived therefrom shall be deemed revenues of the transit authority and not of the County.

#### Category 4 – County-wide Real Property Taxes and Corridor-based Real Property Taxes

The final set of scenarios considered included the County-wide real property tax, supplemented by a corridor-based real property tax within special districts that would have encompassed geographic areas extending a given distance from the centerline of the five transit corridors comprising Phase I of the RTS network. While these two scenarios are included in the detailed appendices to this Report, along with the scenarios presented in the body of this Report, the Task Force ultimately discarded them, because the effective tax burdens on both residential and commercial taxpayers within the corridor-based districts was simply too great.

## Summary

The first three categories of financing scenarios presented represent a progression – from scenarios reflecting the highest burden on real property taxpayers to the lowest burden on County taxpayers as a whole.

While the most favorable scenario is the one in which all three (3) County revenue sources are used (County-wide real property tax, County-wide excise tax, and local option sales tax), plus a substantial annual State and federal contribution, such a scenario is the most aspirational because it requires State enactment of the local option sales tax and a federal/state contribution. Nonetheless, if this could be adopted it would spread the burden over the broadest possible base.

Perhaps the most feasible and least burdensome approach to any single group of taxpayers is the scenario employing the County-wide real property tax, the County-wide excise tax, and the annual state and federal contribution.

Appearing below is Table 5-7 that aggregates the costs of proposed taxing scenarios to residential and commercial taxpayers, presenting it in terms of the dollar increase in taxes annually. The table indicates the combined effect of both the real property tax and the proposed excise tax on these categories of taxpayers, using the average home value in Montgomery County and assuming 2,000 square feet of leased commercial space. In addition, it reflects an average tax rate for residential taxpayers during a 30 year period.

Table 5-7: Summary of County-wide Real Property Tax (\$ / \$100) & County-wide Excise Tax (\$ / SqFt)

Scenario	Property Tax Rate Impact				Total Residential Tax		Excise Tax Rate Impact				Total Commercial Tax	
	Maximum Rate	Assuming \$440,000 Assessed Value – Property Taxes Per Year*	Average Rate (FY 2017 - 2046)	Assuming \$440,000 Assessed Value – Property Taxes Per Year*	Maximum Property Taxes Per Year	Average Property Taxes Per Year	Maximum Rate	Assuming 2,000 Sq. Ft. Business – Excise Taxes Per Year*	Average Rate (FY 2017 - 2046)	Assuming 2,000 Sq. Ft. Business – Excise Taxes Per Year*	Maximum Property & Excise Taxes Per Year*	Average Property & Excise Taxes Per Year*
<b>1A</b>	0.0865	\$381	0.0573	\$252	\$381	\$252	0.0000	\$0	0.0000	\$0	\$381	\$252
<b>1B</b>	0.0710	\$312	0.0449	\$197	\$312	\$197	0.0000	\$0	0.0000	\$0	\$312	\$197
<b>1C</b>	0.0646	\$284	0.0590	\$260	\$284	\$260	0.0000	\$0	0.0000	\$0	\$284	\$260
<b>1D</b>	0.0488	\$215	0.0459	\$202	\$215	\$202	0.0000	\$0	0.0000	\$0	\$215	\$202
<b>2A</b>	0.0661	\$291	0.0381	\$168	\$291	\$168	0.4537	\$636	0.2745	\$549	\$927	\$717
<b>2B</b>	0.0520	\$229	0.0294	\$130	\$229	\$130	0.3719	\$500	0.2227	\$445	\$729	\$575
<b>2C</b>	0.0493	\$217	0.0454	\$200	\$217	\$200	0.2030	\$406	0.1597	\$319	\$623	\$519
<b>2D</b>	0.0375	\$165	0.0356	\$157	\$165	\$157	0.1500	\$300	0.1244	\$249	\$465	\$406
<b>3A</b>	0.0489	\$215	0.0341	\$150	\$215	\$150	0.2050	\$410	0.1449	\$290	\$625	\$440
<b>3B</b>	0.0290	\$128	0.0206	\$91	\$128	\$91	0.2050	\$410	0.1449	\$290	\$538	\$381

\* For illustrative purposes

It should also be borne in mind that maximum tax rate and dollar cost levels reflected in the various charts and tables appearing above, and the recommended upper limits on taxing authority presented in this Report, are “caps” that may never be reached - or that may not be reached for as long as a decade. Indeed, a substantial contribution from state and federal sources will ensure that the maximum levels will never be reached in connection with Phase I.

It is unnecessary for policy-makers to decide now the best way to structure financing. The purpose of the exercise in which the Task Force engaged was to demonstrate the general feasibility of moving forward, and to allow state and county policymakers to fix an upper limit of taxing authority for this program.

## **5.6 Use of P<sup>3</sup> as a Public Finance Alternative**

The scenarios presented above assume that the financing of Phase I will be accomplished by using tax revenues, intergovernmental grants and operating revenues to support a combination of cash payments and public debt that will fund capital costs and provide cash to cover operating subsidy requirements. In recent years, both in the United States and around the world, governments have used public-private partnerships to fund, design, build, and/or operate and maintain a variety of major infrastructure projects. Use of a public-private partnership (“P<sup>3</sup>”) engenders a range of reactions. Some view it as a way of purchasing goods and services that can expedite the process of designing and building the project at the best price. Some see a P<sup>3</sup>, in addition to its design-build characteristics, as holding significant promise to more effectively and efficiently manage the operation and maintenance (“OM”) of the system in a way which, over time, will also ensure the highest quality preservation of the asset. Some see the combination of design-build and OM techniques in a single procurement, as the method best calculated to achieve a design that can last, be well-maintained and enjoy the best overall economics for the life cycle of the project. Finally, some believe that a P<sup>3</sup> approach can also offer favorable financing opportunities and the infusion of private capital.

On the other hand, some observers are deeply suspicious of P<sup>3</sup> techniques, arguing that they can raise the cost of financing by turning to the private capital markets instead of taking advantage of government bond rates; that the need for private industry to turn a profit inevitably means higher costs to government; and that turning over OM to a private entity can result in lower levels of service and maintenance over the long term.

In analyzing the positive and potentially negative aspects of P<sup>3</sup> methods, decision-makers must be careful not to impute favorable financial results that simply cannot be fairly anticipated.

If a project's public owner (in this case, proposed to be a quasi-independent transit agency) is capable of borrowing a large enough portion of total capital costs to create appropriate rates of leverage, and can generate sufficient revenues to meet debt service, as well as operating and other current requirements on an on-going basis, it is almost impossible to imagine that the private sector's cost of capital can be equal to or less than the public sector's. In that case, a well-conceived and implemented design-build approach can achieve cost and time savings, and an OM approach can (but will not necessarily) achieve more effective and flexible management. The cost of capital, however, will not be less – and since transit programs always require a net public subsidy, the real, long term private investment is dependent on public subsidy through “availability payments”.

Furthermore, in our jurisdiction, any effort to use an OM approach to remove labor union member employees from certain aspects of the labor force - one aspect of the flexibility private entities sometimes expect - will almost certainly cause heated controversy and end in failure.

Accordingly, it appears likely that for the current RTS opportunity, an evaluation of the merits of using P<sup>3</sup> techniques will need to focus on (1) achieving cost and time savings in the design and construction of the system; and (2) improved management in the operation and maintenance of the system. These services will primarily be driven by fee-for-services arrangements with limited risk shifting. The

responsible agency will need to conduct a careful analysis of costs and benefits to determine the scope of the private partnership's involvement.

At the same time, if a decision is made that would prevent the public sector from issuing debt as a significant part of the financing structure of the project (such as not creating a quasi-independent transit authority capable of issuing its own debt), then a broad-scope P<sup>3</sup> approach could be employed; this would require the public sector to make satisfactory arrangements for the collection of revenues to fund and secure availability payments to private concessionaires.

## **5.7 Technical Issues Relating to Authority Debt**

One of the important objectives of the County Executive's original proposal was to create an opportunity for the County to make the investment in transportation infrastructure contemplated by Phase I of the RTS without the constraints imposed by County Charter limitations, and without such an investment affecting the County's credit. If this transit program is forced to stay within those constraints, and compete with all other County programs for capital and operating funding, the implementation of the program will be significantly delayed, if not rendered impossible.

Accordingly, the Task Force sought the assistance of the County's Department of Finance and County Attorney to properly evaluate the measures they would recommend to ensure that the transit program would not be constrained by Charter limitations and would neither impair the County's credit nor incur debt that would become debt of the County for financial statement purposes. The Task Force has, in this regard as in other areas, sought to balance the interest in accountability and transparency against the interest in creating the financial capacity required to timely and efficiently implement the proposed transit program.

The Department of Finance briefed the Task Force thoroughly on the issues presented by these questions and made recommendations as to how financing powers should be arranged in order to achieve these objectives (See Appendix 7).

These recommendations were adopted by the Task Force and are reflected in Part 3.4 above. They may be summarized as follows:

Enabling legislation should authorize the proposed transit authority to impose a real property tax up to a certain absolute limit to pay for capital costs, and establish an annual tax rate, subject to veto by the Council. If there were an impasse between the transit authority's rate setting and the Council, the transit authority should be empowered to impose a tax rate only sufficient to pay the cost of debt service on outstanding debt that was already approved by the Council. The enabling legislation should further authorize the transit authority to impose the excise tax up to an absolute limit to pay for operating costs, and establish a tax rate, again subject to veto by the Council. If there were an impasse between the transit authority and Council as to rate setting for the excise tax, the transit authority could only impose a tax equal to operating expenses during the preceding fiscal year (for which the Council has approved an operating budget).

The enabling legislation should further provided that all taxes collected to meet the capital and operating costs of the RTS shall be paid into special funds of the transit authority, to be used only for the dedicated transit purposes.

The Task Force believes that the foregoing recommendations are reasonable, especially in light of the other features relating to accountability built into the Task Force's recommendations for new enabling legislation, including that the County Executive will have review authority and the Council will have review and approval power over the Authority's: capital improvement program, capital budget, and operating budget; requests to exercise the power of eminent domain; and proposed issuance of bonds. In addition, the Task Force recommends that the enabling legislation also include provisions requiring the authority to file regular annual financial and management audits and reports with the County, and develop performance measures.

## 5.8 Choices and Recommendations

### Potential Benefits

As noted in the Introduction, the Task Force was asked to consider whether implementation of the unique transit system represented by the RTS is an investment of sufficient importance to justify the extraordinary decision to remove the financial aspects of its development and operation from the constraints of the County Charter, albeit within carefully circumscribed limitations.

Even if adopted land use plans incorporating new “live/work community” concepts were not so dependent on people in the County finding alternatives to the use of single occupancy vehicles, development of the RTS network would still be of sufficient benefit to warrant such treatment. However, taking into account the benefits associated with implementation of adopted master plans, and the imperative to address the transportation needs of a County with an increasing population and a decreasing median wage, the overall benefits of the RTS are even more dramatic and support special treatment to a much greater extent. (These topics are discussed in greater detail in Parts 2 and 3 of this Report.)

The Sage Policy Group, Inc., as consultant to the County's Department of Finance and the Task Force, conducted a study of the costs and benefits of the proposed RTS<sup>25</sup> (the “Sage Report”, provided in Appendix 8 to this Report). The Sage Report concluded that development of the RTS, along with walking and bicycle use, would lead to increasing the rate of non-auto drive mode share in the County. Taking into account the fiscal impacts over the next 25 years of the forecasted economic development opportunities that are tied to increasing non-auto drive mode share in various master plan areas, the Sage Report concluded that development of Phase I of the RTS network would have substantial net positive fiscal benefits to both Montgomery County and the State of Maryland.<sup>26</sup> The report estimated the present value to the County of these net fiscal benefits to be in excess

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<sup>25</sup> Montgomery County's RTS: Leveraging Mobility for Economic Growth, Sage Policy Group, September, 2015.

<sup>26</sup> Ibid.

of \$800 million.<sup>27</sup> The Sage Report also estimated that the net present value of net fiscal benefits to the State is more than \$1 billion.<sup>28</sup>

Development of the proposed RTS is an investment in the truest sense. It is the creation of tangible assets which, if properly maintained, will last generations. It will help our community manage the use of automobiles, thereby reducing congestion and favorably impacting air quality. It will enable the County to realize the economic and fiscal benefits of the economic growth that will be unleashed by implementation of existing and future master plans. It will help create jobs and other private economic benefits. It will increase transportation and hence living options for County workers earning less than our falling median wage. Indeed, it is hard to imagine another infrastructure or other public program that could create the type and level of benefit that the full build-out of Phase I of the RTS network promises.

### **How to Spread the Burden**

The Task Force has presented scenarios that demonstrate how a funding strategy based solely on the use of real property taxes would work, how a funding strategy based on the use of real property and an excise tax would work, and how a strategy using real property, excise and sales taxes would work. The main purpose of this exercise was to: (a) provide an order of magnitude sense of the cost of building the 48-mile first phase of the network; and (b) provide an upper range of tax impacts so that an informed judgment may be made about the limits that should be placed on any new taxes that might be established for this transit investment.

In addition to considering the question “how we should pay for this investment”, there is also the question “who should pay” – or, rather, “how should the burden be shared?” That question involves both matters of timing and the type of taxpayer to be taxed. Under the financing approaches presented above and in the appendices,

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

approximately 80 to 85 percent of the capital costs of the system would be financed through the use of long term debt. As a result, in some respects the burden of paying for this project is being allocated not only amongst different categories of taxpayers, but also between current beneficiaries and future beneficiaries. This is a departure from our usual approach in projects that are primarily state funded, which heavily relies on a “pay/go” system, rather than long-term bonds, and therefore, tends to “tax” current beneficiaries even though benefits from the infrastructure installed will continue for many years into the future.

Some believe that the lion’s share of the cost should be borne by commercial interests since they will benefit the most by it. Others believe that the whole community should be taxed on the broadest possible basis since all residents, employers and workers will share in the great benefits of such a system, even if they are not directly and personally going to be riders of the system. The Task Force observes that there is more than a grain of truth in both points of view.

The Task Force also recognizes that we are operating not only in a time when the public is very reluctant to approve new taxes, but also in an environment in which business interests are calling into question whether Maryland, and Montgomery County in particular, are “business friendly”. The Task Force believes that building the system is positive for both residents and businesses in Montgomery County. The costs of the system should be borne fairly and reasonably by both. The combination of potential revenue sources identified in this report affords decision-makers an opportunity to “fine-tune” the allocation of this burden. The Task Force makes no final recommendations with respect to the precise formula to be adopted. It does recommend, however, that our community move forward with empowering the County to create a transit authority with financing powers that can be tailored to specific decisions that will be made in the context of adopting local implementing legislation – and decisions that will be made when the new agency becomes operational.

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## Recommendations and Conclusion

### 6.1 Recommendations

The Task Force recommends:

1. The enactment by the General Assembly of enabling legislation authorizing Montgomery County to establish a transit authority, subject to certain terms, provisions, conditions and limitations.
2. Among the recommended terms, provisions, conditions and limitations are the following:
  - a. That the governing board of the transit authority consist of up to 7 members, appointed for staggered 4 year terms, with several suggested criteria for appointment, as set forth in Section 4 of this Report.
  - b. That the County Council be authorized to establish special tax districts consisting either of the entire County or specifically defined areas within the County.
  - c. That the transit authority be authorized to impose special real property taxes within special tax districts, the revenues from which would be dedicated to the use of the transit authority for transit

functions assigned to it. The transit authority would impose such taxes and set tax rates annually, subject to the veto of the Council. In the event of such a veto, the transit authority would still be able to impose (and the County would collect as its agent) a special real property tax at a rate sufficient to pay debt service on bonds previously issued by the transit authority and approved by the Council. In such circumstances, the Council and transit authority would continue to work to resolve any differences.

- d. That the transit authority be authorized to impose a new excise tax, taxing the privilege of leasing property defined as “commercial property” within the County. Revenues from such an excise tax would be dedicated to the use of the transit authority for transit functions assigned to it. The transit authority would impose such taxes and set tax rates annually, subject to the veto of the Council. In the event of such a veto, the transit authority would still be able to impose (and the County would collect as its agent) an excise tax at a rate sufficient to meet operating expenses of the transit authority, but in no event higher than the excise tax rate imposed during the preceding fiscal year. In such circumstances, the Council and transit authority would continue to work to resolve any differences.
- e. That with respect to the special real property tax described in paragraph 2(c) above, the maximum rate be set at 7¢ per \$100 of assessed valuation.
- f. That with respect to the excise tax described in paragraph 2(d) above, the maximum rate be set at 30¢ per square foot of gross commercial space leased or being marketed for lease.
- g. That revenues collected, expenditures made, and debt incurred be outside the limits of the Montgomery County Charter.

- h. That all dedicated transit revenues be paid into one or more special funds, the principal and income to be used only to fund transit authority activities and in accordance with authority bond indentures and related requirements.
- i. That the transit authority be required to submit to the Council and Executive a multi-year capital improvement program, an annual capital budget and an annual operating budget, each of which shall be subject to the review and approval of the Council in accordance with a process established to deal with similar matters in connection with county Executive Branch departments.
- j. That the exercise by the transit authority of the power of eminent domain be subject to Council approval, with the Council required to ensure, as part of its decision process, that any real property taking is consistent with Title 12 of the Real Property Article of the State Code and substantially consistent with all adopted Montgomery County Master Plans, including the County-wide Transit Corridors Functional Master Plan.
- k. That the Council's implementing legislation require the transit authority to submit to the Council annual independent financial audits and periodic management audits, to be published for public review, and adopt reasonable performance metrics for the transit corridors after they are operational.
- l. That the Council subject the transit authority to County Ethics laws; to review of its personnel, functions and activities by the County's Inspector General; to the County's Open Government initiative at a level consistent with County Executive Branch departments; and to a requirement to develop and periodically report performance metrics, in a format approved by the Council, that inform elected

officials and the public concerning the efficiency and efficacy of authority operations.

- m. That the transit authority be empowered to enter into inter-jurisdictional agreements to promote both inter-county and regional transit service, and authorized to enter into agreements with municipalities where appropriate.
- n. That the County government consider whether it wishes to sponsor legislation for enactment by the General Assembly to authorize a one-half cent sales tax for Montgomery County, the principal and income of which to be used only to fund transit authority activities and in accordance with authority bond indentures and related requirements; provided, that consideration of whether to sponsor such a legislation should not delay support for and enactment of the enabling legislation (and subsequent local implementing legislation) for the creation of the transit authority with the financing powers described herein.
- o. That all county employees who are or could be members of a collective bargaining unit under County law, including but not limited to Ride On and Department of General Services employees, will remain as County employees as described more fully in Section 4.3 of this report.

## 6.2 Conclusion

The County Executive has proposed the creation of a new transit authority empowered to develop and operate a unique transit asset: an RTS network. To accomplish this, enactment of State enabling legislation is necessary – which would empower (but not require) the County Council to adopt local legislation to create the transit authority and actually confer powers upon it, subject to a broad range of terms, conditions and limitations. The Task Force supports this objective, and has

sought to address criticism of and strengthen the original proposal in the manner described herein.

No alternative will combine the needed organizational strengths and financial resources, while protecting the County's credit, other than the proposed quasi-independent transit authority described in this Report.

Development of the RTS network efficiently and as expeditiously as possible is in the public interest, and will address critical transportation, economic, environmental and social needs.

The Task Force urges that its recommendations be adopted, that enabling legislation consistent herewith be introduced in and adopted by the General Assembly, and the County government invoke that legislation and adopt local implementing legislation to create and empower the transit authority consistent herewith.