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BILL

IN THE [_____]

Chairman [_____], at the request of the [_____], introduced the following bill, which was referred to the Committee on _____.

BE IT ENACTED BY THE [_____], that this act may be cited as the “Metrorail Safety Commission Interstate Compact Establishment Act of 2016”.

PREAMBLE

WHEREAS, the Washington Metropolitan Area Transit Authority, a partnership between the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, provides transportation services to millions of people per year and safety of its system is paramount;

WHEREAS, an effective and safe Washington Metropolitan Area Transit Authority system is essential to the commerce and prosperity of the tri-state region;

WHEREAS, the Tri-State Oversight Committee previously provided safety oversight of the Washington Metropolitan Area Transit Authority;

WHEREAS, 49 U.S.C. 5329 requires the creation of a more robust state safety oversight authority for safety authority over the Washington Metropolitan Area Transit Authority system;

WHEREAS, the District of Columbia, the Commonwealth of Virginia, and the State of Maryland wish to create a Metrorail Safety Commission to act as the state safety oversight authority for the Washington Metropolitan Area Transit Authority system; and

1 WHEREAS, this act is created for the benefit of the people of the District of Columbia,
2 the Commonwealth of Virginia, and the State of Maryland and for the increase of their safety,
3 commerce, and prosperity.

4
5 **ARTICLE I**

6 **DEFINITIONS**

7 1. As used in this title, the following words and terms shall have the meanings set forth
8 below, unless the context clearly requires a different meaning. Capitalized terms used herein, but
9 not otherwise defined in this title, shall have the definition set forth in regulations issued under 49
10 USC 5329, as such may be revised from time to time.

11 (a) “Alternate Member” means an alternate member of the Board.

12 (b) “Board” means the board of directors of the Commission;

13 (c) “Commission” means the Washington Metrorail Safety Commission;

14 (d) “Member” means a member of the Board;

15 (e) “MSC Compact” means the Metrorail Safety Commission Interstate
16 Compact created by this act.

17 (f) “Public Transportation Agency Safety Plan” means the comprehensive
18 agency safety plan for a rail transit agency required by 49 U.S.C. 5329(d);

19 (g) “Public Transportation Safety Certification Training Program” means the
20 federal certification training program for federal and state employees, or other designated personnel,
21 who conduct safety audits and examinations of public transportation systems, and employees of
22 public transportation agencies directly responsible for safety oversight as established and amended
23 from time and time by applicable federal laws and regulations;

1 (h) “Safety Sensitive Position” means any position held by a WMATA
2 employee or contractor designated in the WMATA Public Transportation Agency Safety Plan as
3 directly affecting the safety of the passengers or employees of the WMATA Rail System;

4 (i) “Signatory” means the State of Maryland, the Commonwealth of Virginia,
5 and the District of Columbia;

6 (j) “State” or “state” includes the District of Columbia, the State of Maryland,
7 and the Commonwealth of Virginia;

8 (k) “Washington Metropolitan Area Transit Authority” or “WMATA” is the
9 entity created by the WMATA Compact, which entity is responsible for providing certain rail fixed
10 guideway public transportation system services;

11 (l) “WMATA Compact” means the Washington Metropolitan Area Transit
12 Authority Compact (Public Law 89–774; 80 Stat. 1324); and

13 (m) “WMATA Rail System” means the rail fixed guideway public transportation
14 system and all other real and personal property owned, leased, operated, or otherwise used by
15 WMATA and shall include Metrorail capital projects under design or construction by owners other
16 than WMATA including, without limitation, the Dulles Corridor Metrorail Project managed by the
17 Metropolitan Washington Airports Authority.

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ARTICLE II

20

PURPOSE AND FUNCTIONS

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2. The signatories to the WMATA Compact hereby adopt the MSC Compact pursuant to 49 U.S.C. 5329. The Commission created hereunder shall have safety regulatory and enforcement authority over the WMATA Rail System and shall act as the state safety oversight

1 authority for WMATA. WMATA shall be subject to the Commission's rules, regulations,
2 actions, and orders.

3 3. The purpose of this MSC Compact is to create a state safety oversight authority for
4 the WMATA Rail System, pursuant to the mandate of federal law, as a common agency of each
5 Signatory party, empowered in the manner hereinafter set forth to review, approve, oversee, and
6 enforce the safety of the WMATA Rail System, including, without limitation, to: (i) have safety
7 oversight responsibility over the WMATA Rail System; (ii) develop and adopt a written state safety
8 oversight program standard; (iii) review and approve the WMATA Public Transportation Agency
9 Safety Plan; (iv) investigate Hazards, Incidents and Accidents on the WMATA Rail System; (v)
10 review and approve Corrective Action Plans; (vi) and meet other requirements of federal and State
11 law relating to safety oversight of the WMATA Rail System.

12
13 **ARTICLE III**

14 **ESTABLISHMENT AND ORGANIZATION**

15 **Washington Metrorail Safety Commission**

16 4. There is hereby created a Washington Metrorail Safety Commission, also referred
17 to here as the Commission, which shall be a public body corporate and politic, and which shall
18 have the powers and duties set forth in this MSC Compact and such additional powers and duties
19 as may be conferred upon it pursuant to law.

20 5. The Commission shall be financially and legally independent from WMATA.

21

22

Board Membership

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1 6. The Commission shall be governed by a Board of six Members appointed as
2 follows:

- 3 (a) two Members shall be appointed by the Governor of Virginia;
4 (b) two Members shall be appointed by the Governor of Maryland; and
5 (c) two Members shall be appointed by the Mayor of the District of Columbia.

6 7. The Governor of Virginia, Governor of Maryland, and Mayor of District of
7 Columbia shall each also appoint an Alternate Member.

8 8. The Alternate Member shall participate and take action as a Member only in the
9 absence of one or both Members from the same jurisdiction as the Alternate Member's
10 appointing jurisdiction.

11 9. Members and Alternate Members shall have backgrounds in transportation,
12 transit, safety, finance, or engineering.

13 10. No Member or Alternate Member shall simultaneously hold other elective or
14 appointive public office.

15 11. Each Member and Alternate Member shall serve a four-year term; except that,
16 each Signatory shall make its initial appointments as follows:

- 17 (a) one Member shall be appointed for a four-year term;
18 (b) one Member shall be appointed for a two-year term; and
19 (c) the Alternate Member shall be appointed for a three-year term.

20 12. Any person appointed to fill a vacancy shall serve for the unexpired term.

21 13. Members and Alternate Members shall be entitled to reimbursement for
22 reasonable and necessary expenses and shall be compensated for each day spent on the business

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1 of the Commission at a per diem rate of \$200 per day, or as may be adjusted by appropriations
2 approved by all of the Signatories.

3 14. A Member or an Alternate Member may be removed or suspended from office
4 only for cause in accordance with the laws of such Member's or Alternate Member's appointing
5 jurisdiction.

6
7 **Quorum and Actions of the Board**

8 15. Four Members shall constitute a quorum, and the affirmative vote of four
9 Members is required for action of the Board. For clarity, quorum and voting requirements under
10 this paragraph may be met with one or more Alternate Members pursuant to paragraph 8.

11 16. Commission action shall become effective upon enactment unless otherwise
12 provided for by the Commission.

13
14 **Oath of Office**

15 17. Before entering upon the duties of his office each Member and Alternate Member
16 shall take and subscribe to the following oath (or affirmation) of office or any such other oath or
17 affirmation as the constitution or laws of the Signatory he or she represents shall provide:

18 "I, _____, hereby solemnly swear (or affirm) that I will support and defend the
19 Constitution and the laws of the United States as a Member (or Alternate Member) of the
20 Board of Washington Metrorail Safety Commission and will faithfully discharge the
21 duties of the office upon which I am about to enter."

22
23 **Organization and Procedure**

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1 18. The Board shall provide for its own organization and procedure. Meetings of the
2 Board shall be held as frequently as the Board determines. The Board shall keep minutes of its
3 meetings and establish rules and regulations governing its transactions and internal affairs,
4 including, without limitation, policies regarding records retention that are not in conflict with
5 applicable federal law.

6 19. The Commission shall keep commercially reasonable records of its financial
7 transactions.

8 20. The Commission shall establish an office for the conduct of its affairs at a
9 location to be determined by the Commission.

10 21. The Commission shall not be subject to the freedom of information and open
11 meetings laws of any Signatory but shall adopt its own policies using the provisions of 5 USC
12 552(a)-(c) as a basis. Meetings of the Commission shall be public unless closed pursuant to
13 Commission policy. The Commission may withhold from public view the contents of any
14 investigation report prepared, reviewed, or adopted pursuant to the authority conferred by this
15 act, provided, however, that the Commission's policy shall ensure that the Mayor of the District
16 of Columbia and the Governors of Maryland and Virginia have prompt and full access to any and
17 all records held by the Commission, provided that the confidentiality of such records is
18 maintained.

19 22. The Commission shall adopt a policy on conflict of interest, which shall be
20 consistent with the regulations issued under 49 USC 5329, as such may be revised from time to
21 time.

22 23. The Commission shall not be subject to the administrative procedure or
23 procurement laws of any Signatory, but shall adopt its own policies.

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Officers and Employees

24. The Board shall elect a Chairman and a Vice Chairman from among its Members for a two year term and shall elect, or appoint from Commission staff, a Secretary and Treasurer, and prescribe their powers and duties.

25. The Board shall appoint and fix the compensation and benefits of a chief executive officer who shall be the chief administrative officer of the Commission and who shall have a background in transportation safety and one or more industry recognized transportation safety certifications.

26. Consistent with 49 USC 5329, as may be amended from time to time, the Commission may employ, under the direction of the chief executive officer, such other technical, legal, clerical, and other employees on a regular, part-time, or as-needed basis as in its judgment may be necessary or desirable for the discharge of its duties.

27. The Commission shall not be bound by any statute or regulation of any Signatory in the employment or discharge of any officer or employee of the Commission.

28. The Board may fix and provide policies for the qualification, appointment, removal, term, tenure, compensation, pension, and retirement rights of its employees and may establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any Signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable.

ARTICLE IV
POWERS

Safety Oversight Powers

29. In carrying out its purposes, the Commission shall, consistent with 49 U.S.C. 5329, as amended, and any federal regulations promulgated thereunder:

- (a) adopt and distribute a written State Safety Oversight Program;
- (b) review, approve, oversee, and enforce the adoption and implementation of the WMATA Public Transportation Agency Safety Plan;
- (c) issue one or more Corrective Action Plans, as it deems appropriate, to WMATA with respect to the safety of the WMATA Rail System;
- (d) implement and enforce relevant federal and State laws and regulations relating to safety of the WMATA Rail System; and
- (e) audit every three years the compliance of WMATA with the Public Transportation Agency Safety Plan or conduct such an audit on an ongoing basis over a three-year time frame.

30. In performing its duties, the Commission may:

- (a) conduct, or cause to be conducted, inspections, investigations, examinations, and testing of the property, equipment, facilities, rolling stock, and operations of the WMATA Rail System, including, without limitation, electronic information and databases;
- (b) enter upon the WMATA Rail System and, upon reasonable notice and a finding by the Chief Executive Officer that a need exists, upon any lands, waters, and premises adjacent to the WMATA Rail System for the purpose of making inspections, investigations, examinations and testing as the Commission may deem necessary to carry out the purposes of this MSC Compact, and such entry shall not be deemed a trespass. The Commission shall make

1 reasonable reimbursement for any actual damage resulting to any such adjacent lands, waters,
2 and premises as a result of such activities;

3 (c) compel WMATA to correct any Hazard by such means as the Commission
4 deems appropriate, including, but not limited to:

- 5 (1) issuing subpoenas;
- 6 (2) taking legal action in a court of competent jurisdiction;
- 7 (3) issuing citations or fines;
- 8 (4) directing WMATA to prioritize spending on safety-critical items;

9 and

10 (5) suspending rail service, with appropriate notice, on all or part of
11 the WMATA Rail System; and

12 (d) direct WMATA to suspend or disqualify from performing in a Safety
13 Sensitive Position an individual who has violated safety rules, regulations, policies, or laws in a
14 manner that the Commission determines make that individual unfit for the performance in such a
15 position; and

16 (e) take such other actions as the Commission may deem appropriate.

17 23. The Commission shall coordinate its enforcement activities with appropriate federal and
18 State governmental authorities.

19

20

General Powers

21 31. In addition to the powers and duties set forth above, the Commission may:

22 (a) sue and be sued;

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1 (b) adopt, amend, and repeal rules and regulations respecting the exercise of
2 the power conferred by this MSC Compact;

3 (c) create and abolish offices, employments, and positions (other than those
4 specifically provided for in this Compact) as it deems necessary or desirable for the purposes of
5 the Commission;

6 (d) determine a staffing level for the Commission that is commensurate with
7 the size and complexity of the WMATA Rail System, and require that employees and other
8 designated personnel of the Commission who are responsible for safety oversight be qualified to
9 perform such functions through appropriate training, including, without limitation, successful
10 completion of the Public Transportation Safety Certification Training Program;

11 (e) contract for or employ consulting attorneys, inspectors, engineers, and
12 such other experts as may be deemed necessary or desirable and within the limitations prescribed
13 in this MSC Compact, prescribe their powers and duties, and fix their compensation;

14 (f) enter into and perform contracts, leases, and agreements as may be
15 necessary or desirable in the performance of its duties and in the execution of the powers granted
16 under this MSC Compact;

17 (g) apply for, receive, and accept such payments, appropriations, grants, gifts,
18 loans, advances, and other funds, properties, and services as may be transferred or made
19 available to it by the United States government or any other public or private entity or individual;

20 (h) adopt an official seal and alter the same at its pleasure;

21 (i) adopt and amend by-laws governing the regulation of its affairs;

22 (j) appoint one or more advisory committees; and

1 (k) do all acts and things necessary or desirable to the performance of its
2 duties and the execution of its powers under this MSC Compact.

3 24. The Commission shall promulgate rules to carry out the purposes of this
4 Compact.

5
6 **ARTICLE V**

7 **GENERAL PROVISIONS**

8 **Annual Safety Report**

9 32. The Commission shall make and publish annually a status report on the safety of
10 the WMATA Rail System. A copy of each such report shall be provided to the Administrator of
11 the Federal Transit Administration, the Governor of Virginia, the Governor of Maryland, the
12 Mayor of the District of Columbia, and each member of the board of directors of WMATA.

13 33. The Commission may prepare, publish, and distribute such other safety reports as
14 it may deem necessary or desirable.

15
16 **Annual Report of Operations**

17 34. The Commission shall make and publish an annual report on its programs,
18 operations, and finances, which shall be distributed in the same manner provided by paragraph
19 32 of this MSC Compact for the annual safety report.

20 35. The Commission may also prepare, publish, and distribute such other public
21 reports and informational materials as it may deem necessary or desirable.

22

23

Annual Independent Audit

1 36. An independent annual audit shall be made of the financial accounts of the
2 Commission. The audit shall be made by qualified certified public accountants selected by the
3 Board, who shall have no personal interest, direct or indirect, in the financial affairs of the
4 Commission or any of its officers or employees. The report of audit shall be prepared in
5 accordance with generally accepted auditing principles and shall be distributed in the same
6 manner provided by paragraph 32 of this MSC Compact for the annual safety report. Members,
7 employees, and contracted agents of the Commission shall provide access to information
8 necessary or desirable for the conduct of the annual audit.

9
10 **Financing**

11 37. Commission operations shall be funded, independently of WMATA, by the
12 Signatory jurisdictions and, when available, by federal funds.

13 38. The Signatory jurisdictions shall agree on adequate long-term funding levels for
14 the Commission and make equal contributions of such funding, subject to appropriation, to cover
15 the portion of Commission operations not funded by federal funds.

16
17 **Tax Exemption**

18 39. The exercise of the powers granted by this MSC Compact shall in all respects be
19 for the benefit of the people of the District of Columbia, Commonwealth of Virginia, and State
20 of Maryland and for the increase of their safety, commerce, and prosperity, and as the activities
21 associated with this MSC Compact shall constitute the performance of essential governmental
22 functions, the Commission shall not be required to pay any taxes or assessments upon the
23 services or any property acquired or used by the Commission under the provisions of this MSC

1 Compact or upon the income therefrom and shall at all times be free from taxation within the
2 District of Columbia, Commonwealth of Virginia, and State of Maryland.

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Reconsideration of Commission Orders

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

7 41. Consistent with paragraph 16, the filing of a petition for reconsideration shall not
8 act as a stay upon the execution of a Commission order, or any part of it, unless the Commission
9 orders otherwise.

10

11

Judicial Matters

12 42. The United States District Courts shall have exclusive and original jurisdiction of
13 all actions brought by or against the Commission and to enforce subpoenas under this MSC
14 Compact.

15 43. The commencement of a judicial proceeding shall not operate as a stay of a
16 Commission order unless specifically ordered by the court.

17

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Liability and Indemnification

19 44. The Commission and its Members, Alternate Members, officers, agents,
20 employees, or representatives shall not be liable for suit or action or for any judgment or decree
21 for damages, loss, or injury resulting from action taken within the scope of their employment or
22 duties under this MSC Compact, nor required in any case arising or any appeal taken under this
23 MSC Compact to give a supersedeas bond or security for damages. Nothing in this paragraph

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1 shall be construed to protect such person from suit or liability for damage, loss, injury, or
2 liability caused by the intentional or willful and wanton misconduct of such person.

3 45. The Commission shall be liable for its contracts and for its torts and those of its
4 Members, Alternate Members, officers, agents, employees, and representatives committed in the
5 conduct of any proprietary function, in accordance with the law of the applicable Signatory
6 (including, without limitation, rules on conflict of laws) but shall not be liable for any torts
7 occurring in the performance of a governmental function. The exclusive remedy for such breach
8 of contract or tort for which the Commission shall be liable, as herein provided, shall be by suit
9 against the Commission. Nothing contained in this MSC Compact shall be construed as a waiver
10 by the District of Columbia, Maryland, or Virginia of any immunity from suit.

11 12 **Commitment of Parties**

13 46. Each of the Signatories pledges to each other faithful cooperation in providing
14 safety oversight for the WMATA Rail System, and, to affect such purposes, agrees to consider in
15 good faith and request any necessary legislation to achieve the objectives of this MSC Compact.

16 17 **Amendments and Supplements**

18 47. Amendments and supplements to this MSC Compact shall be adopted by
19 legislative action of each of the Signatories and the consent of Congress. When one Signatory
20 adopts an amendment or supplement to an existing section of this MSC Compact, that
21 amendment or supplement shall not be immediately effective, and the previously enacted
22 provision or provisions shall remain in effect in each jurisdiction until the amendment or
23 supplement is approved by the other Signatories and is consented to by Congress.

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Withdrawal and Termination

48. Any Signatory may withdraw from this MSC Compact.

49. Withdrawal from this MSC Compact shall be by the enactment of a statute repealing the statute that enacted this MSC Compact into law, but the repeal shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing State to the executive of each other member jurisdiction. In the event of a withdrawal of one of the Signatories from the WMATA Compact, this MSC Compact shall be terminated.

50. Prior to termination of this MSC Compact, the Commission shall provide each Signatory:

- (a) a mechanism for concluding the operations of the Commission;
- (b) a proposal to maintain state safety oversight of the WMATA Rail System;

and

- (c) a plan to return surplus funds that may exist upon the termination of this MSC Compact after the payment of, and the reservation of funds for payment of, all of its debts and obligations.

Construction and Severability

51. This MSC Compact shall be liberally construed to effectuate the purposes for which it is created.

52. If any part or provision of this MSC Compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such

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1 judgment shall be confined in its operation to the part, provision, or application directly involved
2 in the controversy in which such judgment shall have been rendered and shall not affect or
3 impair the validity of the remainder of this MSC Compact or the application thereof to other
4 persons or circumstances, and the Signatories hereby declare that they would have entered into
5 this MSC Compact or the remainder thereof had the invalidity of such provision or application
6 thereof been apparent.

7

8

Adoption; Effective Date

9 53. This MSC Compact shall be adopted by the Signatories in the manner provided
10 by law therefor and shall be signed and sealed in four duplicate original copies. One such copy
11 shall be filed with the Secretary of State of the State of Maryland, the Secretary of the
12 Commonwealth of Virginia, and the Secretary of the District of Columbia in accordance with the
13 laws of each jurisdiction. One copy shall be filed and retained in the archives of the Commission
14 upon its organization. This MSC Compact shall become effective upon the enactment of
15 concurring legislation by the District of Columbia, Maryland, and Virginia, and consent thereto
16 by the Congress of the United States and when all other acts or actions have been taken,
17 including, without limitation, the signing and execution of this MSC Compact by the Governors
18 of Maryland and Virginia and the Mayor of the District of Columbia.

19

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Conflict of Laws

21 54. Any conflict between any authority granted herein, or the exercise of such
22 authority, and the provisions of the WMATA Compact shall be resolved in favor of the exercise
23 of such authority by the Commission.

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- 1 55. All other general or special laws inconsistent with this MSC Compact are hereby
- 2 declared to be inapplicable to the Commission or its activities.

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