



THE SECRETARY OF TRANSPORTATION

WASHINGTON, DC 20590

February 29, 2016

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to urge your action to address a significant safety issue that requires prompt resolution. On February 8, 2016, I wrote to Mayor Bowser to urge the District of Columbia to establish a federally compliant State Safety Oversight Agency (SSOA) to oversee the rail operations of the Washington Metropolitan Area Transit Authority (WMATA). I have enclosed a copy of that correspondence.

The Tri-State Oversight Committee, created by a Memorandum of Understanding among the District of Columbia, the State of Maryland, and the Commonwealth of Virginia has been an utter failure. Consequently, I ordered the Federal Transit Administration (FTA) to assume a temporary lead role for safety oversight of WMATA on October 9, 2015. As I explained at the time, we fully expected the three jurisdictions to work quickly to put together a multi-state compact to create a new SSOA and pass that compact in each jurisdiction's legislative bodies.

To my knowledge, no new legislation has been introduced in your council or in the other two jurisdictions to put a compact in place.

This lack of tangible action compelled the FTA, on February 8, 2016, to issue a final determination under 49 U.S.C. §5329(e) that the current Tri-State Oversight Committee "is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death or personal injury." As a result of this finding, the District of Columbia, Maryland, and Virginia must obtain FTA certification that a new SSO program is consistent with Federal requirements within a year, and we see no reason why a new program should take even that long to establish. Failure to take timely action will result in the withholding of up to five percent of the District's Urbanized Area transit formula funding under 49 U.S.C. §5329(e)(8)(C). Based on this year's FY2016 Federal appropriation, the withholding of Urbanized Area formula funds throughout the District of Columbia, Maryland, and Virginia would amount to approximately \$15 million dollars from your collective Federal public transportation funds.

I am sure you know and appreciate that the need to make WMATA a safe and reliable system for its riders and workers is both urgent and imperative. A safety oversight agency is essential to ensure that safety problems, such as those that caused the tragedy at the L'Enfant Plaza Metro

Station, are dealt with swiftly, and that proactive safety improvements are aggressively pursued to prevent such incidents in the first place. Resolving this matter in 2016 will require extraordinary effort by all parties, and we have pledged any and all resources we have to provide the three jurisdictions with technical assistance that can help you conclude this matter.

These safety matters have gone unresolved for far too long, and none of us—especially WMATA passengers and workers—can wait any longer. Thank you in advance for ensuring that your legislative body will act quickly to resolve this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony R. Foxx". The signature is fluid and cursive, with a large initial "A" and "F".

Anthony R. Foxx

Enclosure

cc: The Honorable Muriel Bowser
Mayor
District of Columbia



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

February 8, 2016

The Honorable Larry Hogan
Governor of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable Terry McAuliffe
Governor of Virginia
State Capitol
Third Floor
Richmond, VA 23219

The Honorable Muriel Bowser
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Governor Hogan, Governor McAuliffe, and Mayor Bowser:

I am writing you in regard to the recent announcement by the Metropolitan Washington Council of Governments (MWCOCG), on behalf of your jurisdictions, that you do not expect to pursue final legislative action in 2016 to establish a federally compliant State Safety Oversight Agency (SSOA) to oversee the rail operations of the Washington Metropolitan Area Transit Authority (WMATA).

This news was unexpected and disappointing. The shortcomings of the current Tri-State Oversight Committee, created by a Memorandum of Understanding among your three jurisdictions, are well documented and have led me to order the Federal Transit Administration (FTA) to assume lead safety oversight of WMATA. However, during our meeting last July, I emphasized the importance of the three jurisdictions working urgently to stand up an SSOA that meets the rigorous safety standards under current Federal law. We specifically urged any necessary legislative actions in 2016 and offered technical assistance to your jurisdictions. The jurisdictions had ample time to begin and complete this work.

The FTA's assumption of safety oversight of WMATA is and has always been intended as a temporary measure, meant to allow your jurisdictions to quickly develop a compact for a federally compliant SSOA. The FTA—and indeed our Department—are devoting enormous energy and resources to stand in place of your jurisdictions' responsibilities temporarily.

The Honorable Larry Hogan, Terry McAuliffe, and Muriel Bowser

Our expectation that the jurisdictions will address this matter this year has not changed. We expect that your jurisdictions will move quickly to create a federally compliant SSOA that FTA can approve. Of key importance will be provisions that ensure meaningful and effective enforcement by the SSOA of applicable safety laws, rules, regulations, and directives.

In the meantime, the Fixing America's Surface Transportation (FAST) Act, recently signed into law by President Obama, provides me with a mechanism to incentivize action on serious safety problems. Consistent with that new statutory authority:

- FTA has issued a final determination that the Tri-State Oversight Committee "is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death or personal injury" (copy enclosed).
- The State of Maryland, the Commonwealth of Virginia, and the District of Columbia will have one year to obtain FTA certification that a new State Safety Oversight (SSO) program is consistent with Federal requirements. Failure to do so may result in the withholding of "up to 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under Section 5307" until FTA certifies the new SSO program.

I urge you to maintain your commitment to establish a compliant State Safety Oversight Agency as soon as possible. To that end, I request that you apprise me of the specific actions that you will take in 2016 to make that happen. The riders and workers of WMATA deserve nothing less. If I can provide further information or assistance, please feel free to contact me.

Sincerely,



Anthony R. Foxx

Enclosure

cc: Thomas V. (Mike) Miller, Jr., President, Maryland Senate
J.B. Jennings, Minority Leader, Maryland Senate
Mike Busch, Speaker, Maryland House of Delegates
Nicholaus Kipke, Minority Leader, Maryland House of Delegates
Thomas Norment, Jr., Majority Leader, Virginia State Senate
Dick Saslaw, Minority Leader, Virginia State Senate
William Howell, Speaker, Virginia House of Delegates
David Toscano, Minority Leader, Virginia House of Delegates
Phil Mendelson, Chairman, Council of the District of Columbia