

Virginia Rail Policy Institute

5101 Monument Avenue • Richmond, Virginia 23230 • (804) 864-5193

December 30, 2010

The Honorable Robert McDonnell
Office of the Governor
P.O. Box 1475
Richmond, Virginia 23218

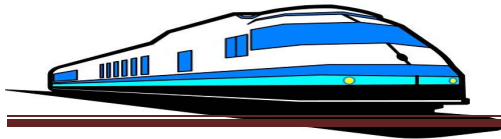
Dear Governor McDonnell

This commentary, which is provided for your information by the Virginia Rail Policy Institute, addresses the recommendation of the Governor's Commission on Government Reform that the Rail Advisory Board be abolished. It was prepared by Wiley F. Mitchell, Jr., Esq., a Fellow of the Rail Policy Institute who was chair of the Rail Advisory Board from 2007 to 2009. Mr. Mitchell is a former member of the Virginia Senate who until his retirement was Senior General Counsel of the Norfolk Southern Corporation.

Governor McDonnell's Commission on Government Reform has recommended that the Rail Advisory Board be abolished because its work is "duplicative" of the work of the Commonwealth Transportation Board. The Commission's recommendation reflects a fundamental misunderstanding of the important role the Rail Advisory Board plays in the formulation and implementation of Virginia's rail programs. Abolition of the Board by the General Assembly would be a tragic mistake that would save little or no money but would seriously impair the success of Virginia's ongoing rail programs.

Although the Rail Advisory Board is not as effective as it could be, should the General Assembly decide to broaden its responsibilities as suggested later in this paper, the Board plays a unique and indispensable role in the identification, formulation, and funding of rail projects in Virginia, and in the public dissemination of information related to such projects. The Board's nine members are selected because of their experience with railroads, their knowledge of railroad operations, and their expertise in dealing with rail issues. All of the members of the Board serve without compensation, so that the only money the Commonwealth would save by abolishing the Board is about \$2500 annually in travel expenses.* What the Commonwealth would lose, however, is the invaluable contribution currently being made by nine citizen members who share a common knowledge of and a particular interest in the rail industry, its problems and its potential.

* The Commission estimates that the Department of Rail and Public Transportation would save something less than \$10,000 in "staff time" currently being devoted to the preparation of the materials DRPT provides the Rail Advisory Board in preparation for its quarterly meetings. The Commission does not contend, however, that elimination of this responsibility would permit DRPT to reduce the size of its staff. The projected savings thus appears illusory.



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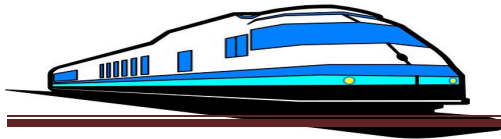
Moreover, the obligation to provide detailed information to the Board requires the Department of Rail & Public Transportation (“DRPT”) to document and explain both the nature and the cost of each of the projects DRPT is recommending and to justify its decision to approve certain projects and to reject others. This dissemination of information is essential to a full understanding by the public, as well as the Board, of exactly what is being recommended, and why. Should the Board be abolished, it is unlikely that such detailed information would be collected, compiled, and made available to the public.

The Commonwealth Transportation Board, whose work is said to duplicate that of the Rail Advisory Board, has broad responsibility for transportation projects across Virginia. Most of the members of the CTB have limited familiarity with rail, and with the problems that are singular to rail operations. As a result, in making funding decisions with respect to rail projects, the CTB has come to rely on the expertise of the members of the Rail Advisory Board, and on their ability to ask relevant questions and to insist on complete and accurate answers. Far from duplicating the work of the CTB, the analysis and recommendations of the Rail Advisory Board are a distinctive and essential component of the process by which the CTB makes decisions concerning rail projects. It would be almost unthinkable for the CTB to approve funding for a rail project that the RAB had rejected. That simple fact, without more, demonstrates the importance of retaining the Rail Advisory Board.

The meetings of the Rail Advisory Board also provide an important forum for DRPT to bring both the Board and the public up to date on significant developments concerning rail operations in Virginia, including the status of the rail projects receiving public funding. Board meetings give DRPT a periodic opportunity to explain its ongoing activities to the Board and to the public, to answer questions by the Board and the public, and to receive their collective comments and recommendations. The importance of these sharply focused, informal, essentially unstructured exchanges of information and ideas cannot be overestimated and would be difficult – and very expensive – to duplicate.

In short, the Rail Advisory Board is an important part of Virginia’s ongoing program of expanding the role of rail as a cost effective and environmentally friendly solution to many of the Commonwealth’s transportation problems. In lieu of abolishing the Board, which would likely add to the overall cost of rail projects in Virginia, the General Assembly should broaden its responsibilities and strengthen the Board’s authority.

The Rail Advisory Board and the Rail Enhancement Fund were created simultaneously in 2005, in response to the recommendations of Governor Warner’s Commission on Rail Enhancement for the 21st Century. However, as the legislation worked its way through the General Assembly, the role the Commission had envisioned for the Board was substantially diluted, with the result that the Board’s authority was seriously impaired.



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During the past year, a committee of the Virginia Rail Policy Institute, chaired by Charlie Walker of Richmond, studied the Rail Advisory Board in the context of its performance since its creation. The Committee's Report was approved by the Board of the Rail Policy Institute and then delivered to both the Secretary of Transportation and the Director of the Department of Rail & Public Transportation.**

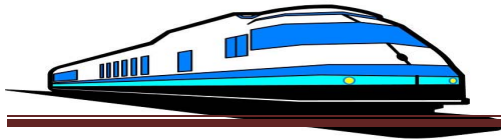
In deference to the amount of time it would take to review the entire Report, I am including below the essence of the VRPI's recommendations:

Some of the weaknesses inherent in the legislation establishing the Rail Enhancement Fund and the Rail Advisory Board were obvious during the 2010 session of the General Assembly, when it became necessary to waive several statutory constrictions in order to secure funding for a rail project which enjoyed near unanimous support from those who will be affected by its completion. Rectification of those weaknesses is one of the reasons for these recommendations, but it is not the only reason. We have had nearly five years of experience with the Rail Enhancement Fund and the Rail Advisory Board and have had the opportunity to learn from that experience. Virginia's foresight in setting aside a designated source of revenue in support of rail projects determined to be in the public interest is both unique and commendable, but if the underlying objective of elevating the status of rail transportation, and of taking full advantage of its potential in the movement of freight and passengers is to be achieved, changes in the current program are clearly needed. The Virginia Rail Policy Institute's study suggests that the following changes would significantly improve the overall effectiveness of both the process and the program, and would enhance in a major way the potential contribution of rail transportation to the resolution of the Commonwealth's transportation problems."

In summarizing the Virginia Rail Policy Institute's specific recommendations, references to the idea of renaming the Rail Advisory Board have been eliminated. VRPI's remaining recommendations, summarized below, appear worthy of General Assembly consideration and, if adopted, would clearly strengthen the Board.

1. The Rail Advisory Board should be given the statutory responsibility to identify, develop, prioritize, solicit, and approve rail projects jointly with DRPT.
2. The Rail Advisory Board should be authorized to propose rail projects it determines to be in the public interest, without regard to whether such projects have been proposed by a railroad, and to use funds from the Rail Enhancement Fund to encourage the approval of such projects by the affected railroad or railroads.

** The complete Walker Committee Report, entitled "Evaluation of the Effectiveness of the Rail Advisory Board" as well as additional information about the Rail Policy Institute and its work, is available on the VRPI website www.varpi.org.

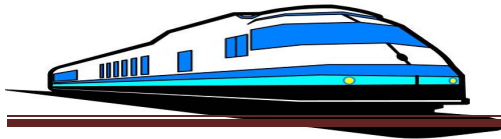


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3. With the approval of the Director of DRPT, the Rail Advisory Board should be authorized to prioritize proposed rail projects and to use differential levels of funding to encourage the approval and construction of such projects by the affected railroads.
4. The Director of DRPT, with the approval of the Rail Advisory Board and the Commonwealth Transportation Board, should be authorized to waive or reduce the 30% match requirement with respect to projects proposed for funding from the Rail Enhancement Fund, when it is determined to be in the public interest to do so.
5. The Code should be amended so as to permit the Rail Enhancement Fund, with the approval of the Rail Advisory Board and the Director of DRPT, to be used to provide the local match necessary to obtain federal funding for rail projects.
6. The Code should be amended so as to permit the CTB, on recommendation of the Rail Advisory Board and the Director of DRPT, to use funds from the Rail Enhancement Fund to support bonds issued by the CTB for the construction of rail projects.
7. The Rail Advisory Board should consider and make recommendations to the CTB with respect to requests for funding of all proposed rail projects, whether such projects are funded from the Rail Enhancement Fund or from some other source.
8. In all instances in which the CTB is required to approve funding for rail projects, the recommendations of the Rail Advisory Board should be made directly to the CTB by or through the Chair of the Rail Advisory Board.
9. At least once each calendar year, the members of the Rail Advisory Board and the Members of the Commonwealth Transportation Board should be required to meet jointly to consider transportation issues in which the two Boards have a common interest.
10. The terms of the members of the Rail Advisory Board should coincide with the terms of the Governor by whom they were appointed, subject to a provision permitting each member to serve until his or her successor is appointed.

In summary, the Rail Policy Institute concluded that although there are clearly deficiencies in the structure of the Rail Advisory Board that have handicapped its effectiveness, the deficiencies can and should be corrected.



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Abolishing the Board would save little if any money, but in the process would deprive the Commonwealth of the unique expertise of a very dedicated and talented group of individuals, all of whom have significant railroad experience, and all of whom serve without compensation.

It would also deprive the citizens of the Commonwealth of the only meaningful forum currently available to them to express their views on rail issues, both general and specific.

Sincerely,

John R Smith
Executive Director
Virginia Rail Policy Institute

Cc:

Sean T. Connaughton, Secretary, Department of Transportation

Thelma D. Drake, Director, DRPT

Kevin B. Page, Chief of Rail Transportation, DRPT