OPEN MTA

50 Actions New York Can Take to Renew Public Trust in the Metropolitan Transportation Authority

APRIL | 2019

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Introduction and Summary of Findings

Great transit systems build their reputations on reliability and predictability. Service is frequent and regular, projects are finished on-time and on-budget, and decisions are made based on publicly-known facts discussed in public settings by informed professionals. These professionals are accountable to elected officials according to known plans and schedules. Good public transit is as public an endeavor as government ever undertakes.

This is not the case with today's Metropolitan Transportation Authority (MTA). As we write, New York State has passed its state budget and a new MTA CEO/Chairman is being confirmed at a hastily arranged Senate hearing on a Sunday night in Albany. The hearing was announced a few minutes before it started.

Today's MTA is plagued by severe service, fiscal and governance problems. It costs roughly four times more to build a mile of new subway in NYC than anywhere else in the world. Bus ridership is plummeting and the MTA continues to have more delays than any metro system in the industrialized world. After heroic efforts by professional managers, subway on-time performance has risen from a 40 year low to 67.1%[1], yet is still far worse than San Francisco's 86%, or Hong Kong, Taipei, Singapore and Los Angeles on-time performance rates above 99%.[2] While on-time transit is taken for granted in many cities, New Yorkers often begin their commutes wondering if their train will arrive at all.

Summary of Findings

The Governor controls the MTA. This report's most important finding is that Governor Cuomo controls the activities, planning, budgeting and priorities of the MTA and its operating agencies. The Governor exercises control though his appointment of the MTA CEO/Chairman, whom he hires and fires and who leads both the staff and Board of the MTA.

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[1] MTA. March 2019 Governance Committee Meeting Materials. http://web.mta.info/mta/news/books/pdf/190325_1530_Governance.pdf

[2] Rosenthal, Brian, Fitzsimmons, Emma, and LaForgia, Michael. "How Politics and Bad Decisions Starved New York's Subways." The New York Times. November 18, 2017. https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html

The Governor's control has important implications for anyone seeking to make the MTA more publicly accountable, transparent and effective, and it raises many questions. Given the Governor's control:

- What is the role of the MTA Board, including its meetings and contract review?
- Why do advocates, journalists and the public spend so much time focusing on the MTA Board, when the the Governor via the CEO/Chairman controls the MTA?
- Given the importance of the position, who should be appointed CEO/Chairman?
- Does the MTA Capital Plan really mean anything given that most spending occurs outside of plan years and the current and next plan are far from being fully funded?
- Why would the Governor cede power or control over transit funds to the MTA Board, the State Legislature or the City of New York?
- Given the Governor's power, are there things the State Legislature and MTA Board can do to increase transparency and public accountability and ensure the interests of all stakeholders are considered before important decisions are made?

The MTA has suffered from a failure of political leadership and governance at almost every level. Accountability for the MTA needs to focus on the Governor, State Legislature and MTA Board in that order. Governor Cuomo and his predecessors have effectively used the Board to distract the public from his power over the MTA, control of the state budget and influence over the Board. The Board is not in charge of the MTA. The L train debacle, as is described in detail in this report, provides a textbook example of the Governor sidestepping a Board decision that had undergone years of review. In several cases, such as that of New York Crossings, the Governor's decisions have resulted in hundreds of millions of MTA funds directed to superficial decorations rather than direly needed repairs. Volunteer board members spend enormous amounts of time reviewing state contracts and everyday service issues rather than making strategic decisions or oversight.

The MTA is terrible at telling the public what it is actually doing well, what is has done poorly, and what it intends to do to improve. The MTA Board process is basically a waste of the Board's and public's time. The MTA professional staff controls the agenda information and steers the Board discussion. Huge fiscal and project management issues are ignored while volunteer, and often poorly informed Board members, deep dive into esoteric service problems. Despite having a fiduciary duty to the MTA, the Board behaves like a public ombudsman rather than the governing body of a $17 billion entity. The MTA staff provides voluminous amounts of information

online, but this information is often formatted in a way that makes it laborious for the public, Legislature and even MTA Board to use. The MTA is generally unresponsive to Freedom of Information Law (FOIL) requests and is hostile to information requests from watchdog groups and journalists.

The State Legislature and numerous government oversight bodies have failed MTA riders and abdicated their responsibilities. Eleven separate government bodies are empowered to check the MTA's actions through audits and hearings, but most have not fulfilled their obligations. While the City Council has held fifteen oversight hearings on the subways in the past four years, the Senate has held two oversight hearings concerning the MTA and its subways (two others were held on Metro North and Long Island Railroad in 2019), and the Assembly has held zero oversight hearings from 2015 to date on the subways. The Authorities Budget Office, which helps ensure that public authorities are serving taxpayers, has been hobbled by a meager budget. The Capital Program Review Board, which monitors MTA capital progress, has not met publicly, in violation of the Open Meetings Law. The power structures of New York state government make it so that political considerations, rather than public considerations, decide what role oversight bodies play.

Radical restructuring and "blowing up" of the MTA's regional governance compact is not politically realistic given the Governor's power over MTA and Albany politics, and would be totally ahistoric. We first undertook this report in early 2018 when public confidence in the MTA was cratering because of massive subway service disruptions, as well as spasmodic and misleading political meddling by the Governor in the MTA. Given its numerous problems, it is tempting to call for "blowing up the MTA" or dissolving the MTA's regional governance compact and transferring the subways from the Governor's control to the Mayor's. We did not set out to discuss a complete overhaul of the MTA's governance structure in this report. Our recommendations are incremental, pragmatic and achievable in the current political environment. As we write, the MTA has been tasked by the Governor and State Legislature to come up with a reorganization plan by June 30, 2019. We hope some of our recommendations are included by the MTA in this reorganization and considered by the State Legislature, and remind fans of the "blow it up" approach that the Governor controls the MTA. Only the State Legislature, working with the Governor, can change that. Approaches that ignore this political and legal reality are not particularly useful.

50 Realistic Things That Can Be Done Now to Increase the MTA's Credibility, Accountability and Transparency

There is little disagreement that the MTA has serious problems. Its agencies and subsidiaries are fragmented and underfunded, resulting in a system that has consistently failed to deliver acceptable service for New Yorkers. Fixing the MTA's governance structures will require serious study by New York's public officials, transit professionals and other stakeholders. Elected leaders and MTA officials should instead focus on changes that can have immediate impacts on improving transparency, accountability and public confidence, and can be made regardless of who is appointed to control the authority.

The MTA Board and Financial Decision-Making

MTA Board

1. The MTA Board's oversight role should be reconsidered to be only for larger projects, planning and contracts. Contract oversight could instead be provided by the State Comptroller.
2. Policy should not be approved by the Board via contracts, but rather be discussed separately and voted on as major decisions.
3. The MTA Board and CEO/Chairman appointment process should have clear deadlines for action by the Governor and State Senate, with thorough vetting in public confirmation hearings.

MTA Financial and Procurement Decisions

4. The MTA budget calendar should be moved to better align with the state budget.
5. MTA Emergency Declaration/Executive Order 168 should not be extended.

External Oversight

State Legislature

6. The Senate and Assembly should create a subcommittee dedicated to the MTA.
7. The relevant committees of the State Legislature should hold regular oversight hearings regarding both the MTA's budget and the operations of its agencies.
8. The State Legislature should require the Capital Program Review Board to meet publicly, given its appointment of 2 of the 4 voting members.

9. The State Senate should meaningfully conduct its confirmation process for the MTA CEO/Chairman and Board member positions, with thorough vetting and sufficient and advanced public notice.
10. The financial disclosure forms of MTA appointees should considered by the Legislature and made available to the public as part of confirmation hearings.

State Comptroller

11. The State Comptroller should be empowered with enhanced oversight of MTA contracts, possibly replacing review by the MTA Board.
12. The State Comptroller's Office should better use its existing audit and contract oversight powers to specifically focus attention on systemic and big ticket items.
13. The State Comptroller should conduct a regular audit of the MTA's Freedom of Information Law (FOIL) compliance.

Authorities Budget Office

14. The ABO should receive a budget increase to enable greater oversight of state authorities, including the MTA.
15. The ABO should conduct a Governance and Operational Report on the MTA.
16. The ABO should revise its requirements for annual procurement reports to require contract numbers, change order information, and subcontractor information.
17. The ABO should be given the power to remove board members of authorities.

MTA Inspector General

18. The MTA IG should publish all recent reports, investigations, prosecutions and audits on its Reading Room.
19. The MTA IG should conduct follow-up audits to evaluate whether the MTA has made changes suggested in their prior audits, such as their audit of the MTA's All-Agency Contractor Evaluation (ACE) Program.

Joint Commission on Public Ethics

JCOPE should revise its *outside activity* approval process under Title 19, Part 932 regarding heads of public authorities and agencies to require:

20. Approval for outside activity by public vote of relevant authority board members;
21. Approval for outside activity by JCOPE, regardless of unpaid or per diem status for agency heads; and
22. JCOPE to publish Outside Activities approvals it has provided.

Capital Program Review Board (CPRB)

23. The CPRB should comply with the Open Meetings Law by conducting deliberations in public, such as votes to approve capital plans and amendments.
24. A website should be created for the CPRB to publish its mission, activities, members, calendar of meetings, minutes and materials, and contact info.

Transparency

Open Data

The MTA must embrace open government standards for its performance, capital plans, budget documents, and Board materials. This should include:

25. Full compliance with Executive Order 95, requiring the publishing of all public MTA data on the New York State Open Data portal. Legislation should be considered in this area if compliance cannot be achieved administratively.
26. Release of all underlying datasets that are used to create MTA performance metrics, with full release of methodologies and API access.
27. Creating a contracts database that provides full and complete information about projects and vendors.
28. Providing all data from current MTA Board and Budget materials well in advance of meetings in machine-readable, CSV spreadsheet form.
29. Creating an MTA "Open Budget" website for the MTA's budget information, similar to the state Open Budget NY site.

Budget and Capital Plan Transparency

30. Capital Planning Oversight Committee Materials should be improved through the following steps:
    a. Release all CPOC data in machine-readable, CSV spreadsheet form.
    b. Data should always include original project schedules and budgets.
    c. All current projects should be listed in the "Traffic Light" report, including those in the CPOC's Risk-Based Monitoring Program.
31. Budget Documents should be made open and more complete:
    a. Release all budget data in machine-readable, CSV spreadsheet form.
    b. Include additional data fields on capital project commitment listings in the adopted budget (see detailed recommendations).
    c. Budget documents should also provide detailed breakdowns of past yearly expenditures and revenues, going back at least 10 years for both the capital and expense budget, comparing them with the projections.

32. MTA Capital Dashboard should be updated and improved:
    a. Data for quarterly updates should be published in a timely manner.
    b. All click-through data should be made available for bulk download.
    c. The Dashboard should include more data fields such as contract numbers and vendors (see detailed recommendations).
    d. The Dashboard should note projects rolled over from previous plans.
    e. All broken links and missing information should be fixed.
    f. The MTA should hold a user-group feedback session to identify additional improvement areas, and expand the "FAQs" Section.

Open FOIL

33. The MTA should adopt an Open FOIL platform using best practices from other jurisdictions such as LA Metro, the Port Authority of NY/NJ, and within New York State such as NYC Open Records. FOIL requests should be used to prioritize proactive release of information via a "Reading Room."
34. The MTA should also create an in-house MTA Police incident reports portal, allowing the public to privately request incident reports online. (Incident reports currently make up two-thirds of all MTA FOIL requests). The MTA should work with the DMV to develop their own portal, like the state's crash reports portal.

Better Understanding Itself and Its Riders

35. The MTA should conduct and release publicly in open data format an updated demographic analysis of its riders that looks at age, median individual and family income, race, ethnicity, gender, profession, disability, geographic locations, travel times, and other metrics.
36. The MTA should release more detailed methodology and tabular data about its fare evasion statistics, such as data broken out by borough, subway line, etc.
37. The MTA should release publicly, in an open data format, all data from its customer service portal and all staff analyses of the portal, polls and surveys.
38. The MTA should publicly release, in an open data format, its submission to the FTA of its Transit Asset Management (TAM) plan and the update to its 20-Year Needs Assessment.
39. MTA staff should conduct and release an in-depth "lessons learned" report about installation of Communications Based Train Control (CBTC) on the 7 Line.

Open Meetings Law

40. The Capital Plan Review Board should meet publicly and provide all information about its operations on a public website.

41. All future commissions, advisory workgroups and other public bodies formed by law to provide recommendations regarding the MTA should fully abide by the Open Meetings Law.

Ethics and Conflicts of Interest

42. The MTA Board should affirm by Board vote that the CEO/Chairman is the head of agency – whether or not receiving a salary – and is therefore subject to all Public Authorities Laws (Public Officers Law sections 73, 73-a and 74) and MTA internal ethics policies requirements covering compensated heads of agencies.
    a. State law and JCOPE rules should be amended in this regard.
43. The MTA should ban outside income for the MTA CEO/Chairman, whether compensated or not. This should also apply to appointed, non-civil service staff.
44. The qualifications of Board members in state law should be amended to disqualify those who have business before the state or local governments within the MTA region.
45. The MTA Board Ethics Code should be amended to require notification to the full MTA Board any member's potential conflicts of interest, including those of the CEO/Chairman.
    a. This should be codified in state law for boards of directors of all public authorities.
46. The MTA should post on its website the financial disclosure forms of the CEO/Chairman, MTA Board Members, and senior management of the MTA including Agency Presidents. These should also be considered and made public as part of Senate confirmation hearings.
47. The MTA should post on its website the list of contractors and any others determined to be "prohibited sources" as defined in the MTA Codes of Ethics.
48. The MTA's All-Agency Code of Ethics should be amended to eliminate double standards between Board and/or management and employees.
49. The MTA should consider revisions to the MTA' All-Agency Code of Ethics as relates to the "revolving door" or post-employment restrictions for MTA staff.
50. The MTA should affirm by Board vote that campaign contributions to the Governor from MTA Board members are banned, and the MTA should amend its Board Code of Ethics to ban campaign contributions to the Governor from Board members' businesses and family.

Detailed recommendations and further discussion of recent proposals is provided in the recommendations section of this report.

About Reinvent Albany

Reinvent Albany advocates for transparent and accountable New York State government and increased transparency in New York City. We advocate for more accountable and better governed state authorities, including the Metropolitan Transportation Authority (MTA). We fought for and won enactment of the statewide "Transit Lockbox" legislation. We also work to strengthen the Freedom of Information Law and put government information online, especially spending, contracting and budget information and we are vocal advocates for open data laws and practices. We also work for transparent business subsidies and economic development spending rooted in facts and careful analysis.

We seek to create a state government that is responsible, responsive and above board and thus we fight for public integrity measures and against laws and practices that increase the risk of corruption and favor the few and well connected over the public interest. We strongly support the work of New Yorkers who work to increase public integrity and public trust. We share many of their goals, especially fighting corruption, and we support their work to make elections fair, easy and clean.

Reinvent Albany is the New York State chapter representative of the National Freedom of Information Coalition.

Acknowledgements

This report was written by Rachael Fauss, Senior Research Analyst, with John Kaehny, Executive Director and Tom Speaker, Research Analyst. Support for this work was provided by TransitCenter. We thank David Bragdon, Tabitha Decker, Jon Orcutt and Colin Wright for their guidance and insight in the development and finalization of this report.

We thank the numerous individuals and organizations who we spoke with in the development of this report, including but not limited to: John Raskin and Danny Pearlstein from Riders Alliance; Gene Russianoff and Jaqi Cohen from the NYPIRG Straphangers Campaign; Jamison Dague from the Citizens Budget Commission; Nick Sifuentes and Liam Blank from the Tri-State Transportation Campaign; Ben Kabak, author of Second Avenue Sagas; Aaron Gordon, author of Signal Problems; Richard Barone (formerly) and Kate Slevin from the Regional Plan Association; Lisa Daglian and Ellyn Shannon from the Permanent Citizens Advisory Committee to the MTA (PCAC); Beth Osborne from Transportation for America; Sarah Kaufman from the Rudin Center for Transportation at NYU; Professor Michael Dardia from NYU; Felice Farber and Chris Boylan from the General Contractors Association; Justin Pascone from the New York Building Congress; David Saltonstall and Adam Forman from the NYC Comptroller's Office, Charlotte Davis from the NYS Comptroller's Office; the offices of Senator Leroy Comrie, Senator Michael Gianaris, Senator Jessica Ramos, former Senator Martin Golden, Assemblymember Amy Paulin, Assemblymember Jeff Dinowitz and former Assemblymember Jim Brennan; Bob Freeman of the Committee on Open Government; Jeff Pearlman of the Authorities Budget Office; current and former Members of the MTA Board including Veronica Vanterpool, NYC DOT Commissioner Polly Trottenberg, Norman Brown, James Vitiello, Neal Zuckerman and David Jones; Michael Boxer from the MTA Inspector General's office; and the staff of NYC Council Speaker Corey Johnson.

Governance of the MTA

History of MTA as Consolidated Agency: Out of Many, Some.

The Metropolitan Transportation Authority as we know it today – a sprawling public authority that runs the subways, buses, commuter rails, bridges and tunnels – has mutated far from its organizational beginnings. The core of the MTA, the New York City Transit (NYCT) Authority, was created in 1952 in large part because city elected officials did not want to pay the political cost for increasing fares. The 1967 merger into the MTA as we know it today was largely for financial reasons, freeing NYCT from the city's constitutional debt limit and providing integrated revenue sources for the subways and commuter railroads from the proceeds of Triborough Bridge and Tunnel Authority tolls. The merger also kept toll and fare increases out of the hands of elected officials.

Origins of Government Control - Private Enterprise to Board of Transportation

New York City's subways were built and and operated by private companies, which in 1904 constructed the first official subway in Manhattan. These companies – the Interborough Rapid Transit (IRT) and Brooklyn Manhattan Transit (BMT) – operated the subways, though their construction of lines was subsidized with city capital funds. The City of New York also built its own subway, the Independent Line (IND), which was managed by the New York City Board of Transportation, created in 1924. At this time, however, due to decreasing interest in subways in favor of the automobile and pressure to keep fares low, the city failed to get private operators for the IND while private lines also went bankrupt. The city was thus forced to create new long-term borrowing mechanisms for financing, as borrowing against future revenues would have created political pressure to increase fares.[3]

In 1940, the city of New York also took over the IRT and BMT lines under the Board of Transportation, assuming their debt. The continued rise of the automobile and lack of

[3] Cohen, James K. "Structural versus Functional Determinants of New York's Fiscal Policies Towards Metropolitan Transportation, 1904-1990." Social Science History, Vol. 15, No. 2 (Summer, 1991), pp. 177-198. Cambridge University Press. Accessed via JSTOR: https://www.jstor.org/stable/1171413

revenue resulted in a halt to further major subway expansions of the subways, as ridership decreased 24% from 1947 to 1953.[4]

Creation of New York City Transit and Metropolitan Commuter Transportation Authorities - 1950 to early 1960s

In 1952, the New York City Transit Authority (NYCT) was created to replace the Board of Transportation. Its board, appointed jointly by the Governor and mayor, each with two appointments, and those four members appointing a fifth[5], was given the power to raise fares, helping to bring financial stability to the system. NYCT, however, was not granted the full borrowing abilities of other public authorities, and was subject to New York City's 10% cap on borrowing under the New York State Constitution. With limited resources, it focused on rehabilitating the system and purchasing new subway cars rather than expanding lines.[6]

The state's commuter railroads were having similar financial troubles, but were not taken over until 1965 when the state created the Metropolitan Commuter Transportation Authority (MCTA) and took over the Long Island Railroad (LIRR) from Pennsylvania Railroad.[7]

Greater State Control with Consolidated MTA

The imbalance between funding for automobile transport versus mass transit did not become a real concern of state government until the late 1960s, when traffic congestion threatened the city's economic prosperity. Federal funds for roads dwarfed those for mass transit, and subway ridership continued to decline to 1.29 billion revenue passengers in 1967, down from 2.05 billion in 1947.[8] By this time, the MCTA, NYCT and the Triborough Bridge and Tunnel Authority (TBTA) all operated in similar spheres in the region. Governor Rockefeller, seeking to fix major congestion problems in the region and support the mass transit system, secured voter passage of a major bond initiative

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[4] Ibid.
[5] NYC Council Speaker Corey Johnson. "Let's Go: A Case for Municipal Control and a Comprehensive Vision for the Five Boroughs." March 2019. https://council.nyc.gov/wp-content/uploads/2019/03/LetsGo_Transit_Report.pdf
[6] Ibid.
[7] Zimmerman, Joseph. "Public Transportation." Proceedings of the Academy of Political Science, Vol. 31, No. 3, Governing New York State: The Rockefeller Years (May, 1974), pp. 214-224. The Academy of Political Science. Accessed via JSTOR: https://www.jstor.org/stable/1173221
[8] Cohen.

and created both the New York State Department of Transportation and the Metropolitan Transportation Authority (MTA) to consolidate MCTA, NYCT and TBTA. This ultimately gave more control to the Governor versus the mayor, with the Governor initially appointing six of the nine members of the MTA Board (suburban county representation was added later, expanding the board).[9] This new, consolidated transit agency known as the MTA was also given the ability to create subsidiaries such as the Staten Island Rapid Transit Operating Authority (this authority has since been limited by the Public Authorities Reform Act of 2009, which requires legislative approval and/or notification).[10]

At the time, New York State was not legally able to fully merge the authorities due to outstanding debts and U.S. Constitutional limits on impairment of state contracts. Instead, a mechanism was copied from the private sector: the interlocking directorate. This gave the separate authorities their own management while also creating a joint MTA Board with overlapping membership to oversee them.[11]

Financial Crisis of 1970s Leads to Consolidation of State Control in 1980s

In the late 1960s, new revenue sources afforded from the merger with TBTA resulted in increased borrowing capacity for the MTA and thus plans for more construction. However, this did not last. Major plans for expansion, including completion of the Second Avenue Subway, were scrapped as the city entered the fiscal crisis of the 1970s. Ridership continued to drop as funds for the MTA were diverted to other city capital needs, and service deteriorated.

In the early 1980s, the system hit a crisis point, and in 1981 the state provided relief for the MTA, providing $5 billion in bonds and creating the 5-year capital planning process under the leadership of MTA Chairman Dick Ravitch. State control was solidified through the creation of the Capital Program Review Board, with appointees from the Governor and state legislature, with the mayor approving capital investments related to NYCT, taking this responsibility over from the Board of Estimate.[12]

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[9] NYC Council Speaker Corey Johnson. “Let’s Go: A Case for Municipal Control and a Comprehensive Vision for the Five Boroughs.”
[10] Zimmerman. See also Provisions of the Public Authorities Reform Act, Authorities Budget Office. https://www.abo.ny.gov/abo/ProvisionsPARA2009.pdf
[11] Ibid.
[12] Cohen. The Board of Estimate from 1898 to 1989 was composed of the mayor, comptroller, council president and borough presidents, and was responsible for land use, city contracts and budgeting. For more information see Marton, Janos. “26 Years Since the Board of Estimate’s Demise.” Gotham Gazette. March 2015.

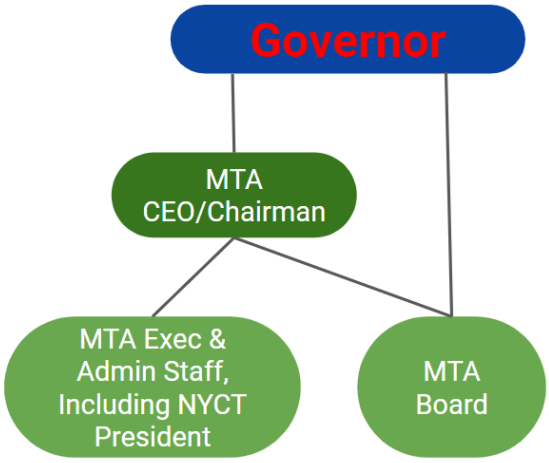
Metro North was not formed until 1983, when the New Haven, Hudson, and Harlem lines operated by Conrail were taken over by the MTA. Since that point, the Metropolitan Transportation Authority has remained largely the same.[13] The CEO/Chairman position has seen changes, however, with the position briefly separated in 2006 and then unified again legislatively in 2009 via a bail-out package for the MTA.[14]

[13] MTA. Metro-North Railroad. History of Accomplishments. http://web.mta.info/mnr/html/mnrHistory1.html Also note that Conrail was a federally created private company that took over many bankrupt freight and commuter lines in the Northeast - it was not until federal legislation was passed in 1981 that they were able to offload these lines, which at the time were not profitable. https://www.railwayage.com/freight/class-i/conrail-at-40-the-experiment-still-works/

[14] Neuman, William. "MTA Chief Resigns in Management Shake-up." May 7, 2009. The New York Times City Room Blog. https://cityroom.blogs.nytimes.com/2009/05/07/sander-resigns-as-mta-chief/ See also "Senate Passes Metropolitan Transportation Authority Finance and Accountability Package." https://www.nysenate.gov/newsroom/press-releases/martin-malav%C3%A9-dilan/senate-passes-metropolitan-transportation-authority and
Engquist, Erik. "Why subway delays surged." May 11, 2018. Crain's New York Business. https://www.crainsnewyork.com/article/20180511/POLITICS/180519980/why-subway-delays-surged

MTA Structure Today

Figure 1



As of this writing, the Governor of New York State has near total control over the MTA. The Governor hires and fires the person who is the combined CEO/Chairman of the Board. In turn, the CEO has the authority to hire and fire all MTA agency staff, including the presidents of the MTA agencies, like New York City Transit. The MTA Board has no role in personnel matters such as hiring and firing. The Board cannot fire the MTA CEO/ Chair, and the Board does not elect its own chair or hire staff. The Governor also directly appoints representatives who have 6 of the Board's 14 votes, and can delay for months or years the appointment of Board members nominated by other elected officials. Together, these powers have ensured gubernatorial control, while the remaining appointees to the MTA Board have provided insufficient independence given their limited oversight of MTA staff.

Appointment of the MTA Board and CEO/Chairman

The MTA as we know it today is created by state law under Public Authorities Law §1263, but is also governed by requirements for all state and local authorities under Public Authorities Law §2824. These laws relate to its appointment structure, as well as requirements for committees to be formed to oversee and approve MTA operations, budgets, capital programs and procurement.

Gubernatorial control of the authority is provided via the Governor's appointment of the Chairman/Chief Executive Officer (CEO), who is a voting member of the Board and as CEO is responsible for the discharge of the executive and administrative functions and powers of the authority. The CEO/Chairman may also cast a second vote in the event of a tie, giving even more power to this position.[15] In this role, the CEO/Chairman has the authority to hire senior staff and "other such officials and employees as shall in his or her judgment be needed to discharge the executive and administrative functions and powers of the authority."[16] However, an assertive Governor can effectively hire and fire MTA staff.

The appointment of Andy Byford, the President of New York City Transit, demonstrates the influence of the Governor over the hiring decisions for MTA staff. It was widely reported that Governor Cuomo met with Andy Byford during his hiring process, asking him point blank if he was up to the task.[17] Byford himself has specifically stated, "The Governor interviewed me and hired me. I meet with the Governor often; I speak with him regularly."[18]

Beyond the CEO/Chairman, the other 16 voting members (who collectively have 13 votes) of the Board of directors are all appointed by the Governor, but some are nominated by other elected officials as follows:

- 5 members by the Governor (at least 3 from New York City)
- 4 members upon recommendation of the Mayor of the City of New York
- 3 members, 1 each upon recommendation of the County Executives from Nassau, Suffolk and Westchester
- 4 members, upon recommendation of the County Executives from Dutchess, Orange, Putnam and Rockland (1 collective vote)

The law also includes residency requirements for appointees within the metropolitan commuter district, as well as requirements for expertise in transportation, engineering, labor relations, and other areas relevant to the mission of the authority.

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[15] Public Authorities Law Section 1263(3)
[16] Public Authorities Law Section 1263(4)(a)
[17] Ransom, Jan. "New York's Next Subway Chief Will Mull Closing Lines for Repairs." New York Times. December 15, 2017. https://www.nytimes.com/2017/12/15/nyregion/new-york-subway-chief-closing-lines.html?module=inline
[18] Fitzsimmons, Emma. "Nearly 6 Months on the Job, the Subway Chief Finally Meets the Mayor." The New York Times. July 10, 2018. https://www.nytimes.com/2018/07/10/nyregion/de-blasio-byford-first-meeting-subway.html

As of June 2018, the last time the voting Board had no vacancies, three Board members were women, three were nonwhite, and only five were under sixty years old. Though roughly 89% of MTA riders are residents of the five boroughs, the majority of the Board's voting members live outside New York City. For more information, see Appendix 1.

The MTA Board also includes non-voting members, such as appointees from the New York City Transit (NYCT) Advisory Council, Metro-North Commuter Council, Long Island Railroad Commuter Council, and members from the labor organizations representing employees of Long Island Rail Road (LIRR) and Metro North Railroad (MNR). Non-voting members may attend all MTA Board meetings, and are guaranteed representation on MTA committees such as finance, capital program oversight, bridges and tunnels, and the committees for NYCT, LIRR and MNR. Members from labor organizations are excluded from being present for decisions made regarding union contracts, which are done in executive session. The statute establishing the non-voting members is set to expire in June 2020, meaning that absent legislative action to continue these positions, these constituencies will lose representation on the MTA Board.

Vacant Seats Result in Lack of Representation

MTA Board members not chosen directly by the Governor must still await the Governor's recommendation and State Senate confirmation. As a result, many Board appointments are delayed.

The Nassau County seat for the MTA had remained open for eight months following John Molloy's resignation in mid-2018,[19] until the appointment of David Mack in February 2019. Dutchess County member James Vitiello resigned in October 2018, citing personal reasons. Dutchess County Executive Marc Molinaro stated at the time that while he did not yet have an appointee to succeed Vitiello, he didn't believe that "the Governor will move quickly on my recommendation," as he was challenging Governor Cuomo in the November General Election as a candidate for Governor.[20] That seat remains vacant. Mayor de Blasio's current appointees also were not confirmed

[19] Roy, Yancey. "Mack, McDonald, Florey possible Nassau appointees to MTA." Newsday. June 18, 2018. https://www.newsday.com/long-island/politics/spin-cycle/curran-mack-mcdonald-mta-1.19282930

[20] Rubinstein, Dana. "Molinaro representative resigns from MTA; board loses an outspoken voice." Politico New York. October 22, 2018.. https://www.politico.com/states/new-york/albany/story/2018/10/22/molinaro-representative-resigns-from-mta-board-citing-health-concerns-658397

quickly, as three of his four seats remained vacant as they were awaiting confirmation by the then Republican State Senate in 2015.[21]

When fully appointed, the voting structure gives the Governor the largest voting bloc with 6 total votes. Beyond the Governor's appointees, New York City has 4 votes, and the suburban counties together have 4 votes, but their respective locations make it such that they often have competing interests. Suburban members are largely concerned with the commuter railroads, while Mayoral appointees are more focused on the subways and buses.

Holdover Appointments Reduce Board Independence from the Governor

Beyond the timely filling of vacancies, there was a problem of appointees to the MTA not being officially re-appointed when their terms are up, leaving them serving as "holdover" appointments. (Note that the budget legislation passed in 2019 has created limits for members serving in holding status, and has aligned board members terms to be coterminous with their appointing authorities.) In 2013, 13 of the 23 members of the MTA Board were "holdovers," (including 7 voting members), raising concerns that the members could be immediately removed if they voted against the interest of their appointing authority. In 2013, the Director of the Authorities Budget Office, who keeps records on holdover appointments, stated: "If you are on an expired term and you can be replaced tomorrow, I think the natural inclination is to say, 'I am less concerned with what's going on, because I'm not going to be here much longer.' It's always better to have directors serving current terms than those serving expired terms." [22] As of March 2019, 8 of the 23 members were "holdovers", including 3 voting members, prior to the passage of the budget which eliminated the ability for members to serve in holdover status.

"If you are on an expired term and you can be replaced tomorrow, I think the natural inclination is to say, 'I am less concerned with what's going on, because I'm not going to be here much longer.' It's always better to have directors serving current terms than those serving expired terms." - David Kidera, Former Head of the Authorities Budget Office

[21] State of Politics. "Senate Holds Up de Blasio, Cuomo MTA Appointees." State of Politics. June 26, 2015. https://www.nystateofpolitics.com/2015/06/senate-holds-up-de-blasio-mta-appointees/
[22] Rubinstein, Dana. "Cuomo creates 'holdover' MTA." Politico New York. December 12, 2013. https://www.politico.com/states/new-york/city-hall/story/2013/12/cuomo-creates-holdover-mta-000000

Powers and Responsibilities of the MTA Board

Under New York State's Public Authorities Law Section (PAL) 1263, the MTA is legally the MTA Board: "The authority shall consist of a chairman, sixteen other voting members, and two non-voting and four alternate non-voting members … The authority shall have power to act by a majority vote of the members." Members vote on approvals for the following major items:

- **Fare and toll increases** - the MTA Board is specifically obligated under PAL Section 1266 to take a majority vote regarding any fare and toll increases, which must follow a public hearing.
- **Contracts** - the MTA Board must vote to approve certain contracts per PAL Section 1265-a, as will be described later in this report.
- **Budget and capital plans** - the MTA Board votes to approve its annual budget, as well as its capital plans and any amendments per PAL Section 1269-b (note that a vote is not specifically written into law as it is for contracts or fare and toll increases, though in practice the Board votes on these items to approve them).

As a state authority, the MTA is subject to a number of recent revisions to the Public Authorities Law aimed at reining in the state's public authorities by creating greater financial transparency, ensuring greater transparency of debt, and creating a fiduciary responsibility for board members. Two major pieces of legislation—the Public Authorities Accountability Act (2005), and Public Authority Reform Act (2009)[23] —together create legal requirements for the MTA and its board as a state public authority, including:

- That board members have a fiduciary duty to their authority, with mandated board trainings and a requirement to sign an oath acknowledging his or her fiduciary duty to apply independent judgement in the best interest of the authority
- Mandated creation of certain board committees, including audit, governance, and finance
- Limits on board members serving who have relatives in management or have been prior employees, vendors or lobbyists of the authority

[23] Public Authorities Accountability Act text at: https://www.abo.ny.gov/abo/Chapter766of2005.pdf ; Public Authorities Reform Act text at: https://www.abo.ny.gov/abo/Chapter506of2009.pdf

- Expansion of reporting by authorities including: names of board members and their committee membership; board performance evaluations (to the Authorities Budget Office, these are not public under the Freedom of Information Law); biographies and compensation of managers, as well as number of employees; additional reporting on debt; assessment of effectiveness of internal controls
- Limits on disposition of real property for less than real market value
- Public posting on authority website mission statements and performance measurement reports, activities, financial reports and budgets
- Annual independent audits
- Limits on the creation of subsidiary corporations

Public authorities, through their boards and employees, are also subject to other state laws, such as the Public Officers Law, which governs ethical conduct and conflicts of interest related to officers and employees, and the State Lobbying Law, which limits vendor contact with contract officers. Ethics will be discussed later in this report.

Beyond state requirements, the MTA creates its own operating framework via organizing documents. Public Authorities Law Section 1263 also says that the MTA Board ("the authority") can create by-laws that "shall take effect in the same manner as any other action of the authority." According to the MTA's by-laws[24], there is a hierarchy that determines the application of the various laws and documents that govern the MTA. They are stated as the following:

- Statutes;
- Articles of Incorporation;
- By-Laws;
- Committee Charters; and
- Governance Guidelines.

The MTA's by-laws are internal rules for how the authority conducts business, and generally relate to procedural matters regarding voting. There are by-laws for the MTA and its separate agencies, such as New York City Transit, Long Island Rail Road and Metro North Railroad, for example. Very little is stated in the by-laws about the powers and responsibilities of the MTA Board. They do provide, however, that the MTA's committees "shall have and may exercise the powers conferred upon it by the Board Chair," which further solidifies the power of the CEO/Chairman.[25]

[24] MTA By-Laws. http://web.mta.info/mta/compliance/pdf/By_Laws.pdf
[25] MTA By-Laws, Section 9(a).

The Chairman appoints Board members to committees, which conduct oversight of MTA staff and filter certain decisions up to the full Board, such as votes on contracts for individual MTA agencies. This includes separate committees for MTA agencies such as New York City Transit, Long Island Railroad and Metro North, and Bridges and Tunnels. Some committees require membership based on geography or expertise, and have duties mandated by law (Sections 1263 and 2800 of the Public Authorities Law).[26] Committees also have individual committee charters[27] that provide them specific powers, some of which devolve from state law requirements. These include:

- Capital Program Oversight Committee - Monitors capital plan progress, including availability of funds, contract awards, progress of projects, expenditures, and determining which projects are not on schedule.
- Audit Committee - Recommends appointment of certified independent accounting firm, and provides direct oversight of their performance.
- Governance Committee - Recommends updates to governance policies, including ethics and conflicts of interest, performs self-evaluations, and recommends by-laws, rules and procedures for conduct for vote by the full MTA Board.
- Finance Committee - Reviews the MTA's budget and financial obligations to the capital plan and any debt payments; oversees MTA Headquarters and any of its proposed procurements; and provides guidance regarding real estate, leasing and and licensing policies.

Another document, the governance guidelines[28], the lowest on the hierarchy list under the by-laws, provide more detail regarding the powers and duties of the Board, stating that the Board is "responsible for the general oversight of the Authority's senior management in furtherance of the effective and ethical management of the entire MTA." In practice, however, members have no hiring or firing ability for staff. Under the governance guidelines, the Board:

- Reviews, approves and monitors fundamental financial and business strategies and "major actions"
- Provides counsel related to evaluation and compensation of senior management
- Reviews, approves and monitors financial and management controls; ensures integrity of financial statements
- Assesses major risks facing the MTA and options for mitigation

[26] The Capital Program Oversight Committee is unique to the MTA, but the Audit and Governance Committees are required of all state and local public authorities.
[27] MTA Committee Charters, as adopted March 2018. http://web.mta.info/mta/compliance/pdf/Charters.pdf
[28] MTA Governance Guidelines. http://web.mta.info/mta/compliance/pdf/Governance_Guidelines.pdf

- Ensures compliance with state requirements regarding ethics codes and whistleblower policy
- Conducts self-assessments/evaluations of Board and committees

The Board as the Public Face of the MTA

The MTA Board meets monthly but for August, with committees typically meeting Mondays prior to the full Board meeting on Wednesday. Members of the public are allowed to comment for a two-minute period each prior to meetings of the Board and its committees, but must sign up in person prior to meetings.[29]

Materials for Board meetings are prepared by staff, and distributed to Board members prior to meetings. They are posted online for the public, typically the Friday before meetings, but this is not consistent. Certain materials, such as accompanying presentations, may not be posted until after the meeting, and materials are sometimes referenced as being a part of Board "exhibit books" which are not always made public.

The MTA Board has continually struggled with the amount of information they need to review in order to fulfill their fiduciary duty and perform their mandated oversight role. As volunteer members, they do not have independent staff. The information provided to them and the public is both overwhelming and incomplete at the same time, particularly regarding the budget and its capital plans. For example, information provided to the Board about capital projects includes a variety of metrics to show if they are progressing on-time and on-budget, yet this reflects snapshots in time, not the performance over the lifetime of the project. Project cost information also often only includes "current" rather than "original" figures, meaning that the information is re-baselined. This means that too often the MTA is moving the goalposts by hiding the original costs to show less significant changes than have actually occurred. See more information about the budget and capital plan transparency later in this report.

The Board is the public face of the MTA, despite having limited influence over many management decisions and being reliant on information from MTA staff whom they cannot hire or fire. They also frequently receive the brunt of public criticism. For example, the MTA Board was pushed to have an emergency meeting to discuss Governor Cuomo's proposed changes to the L Train and though they were not the initiators of the new plan, they received a series of negative comments from the public,

[29] See the meeting schedule at http://web.mta.info/mta/news/calendar.htm and board materials at http://web.mta.info/mta/boardmaterials.html

as the MTA Board meetings are one of few avenues for the public to provide comment on policy decisions of the MTA Board and staff.

Procurement: Contracts Are Staff-Driven, Board-Rubber Stamped

In seeking to fulfill its fiduciary duty, the MTA Board by Public Authorities Law Section 1209 and 1265-A must authorize via a two-thirds vote the use of non-competitive processes for contracts $1 million or more, and approve by majority vote contracts over $1 million where the lowest bidder is not selected. Under its procurement guidelines, it must approve by majority vote change orders to contracts over $750,000 or more than 15% of contract value of contracts over $250,000.[30] Yet the MTA Board is only one step in the procurement process, which is largely handled by MTA staff. Below is a summary of the MTA's procurement process.

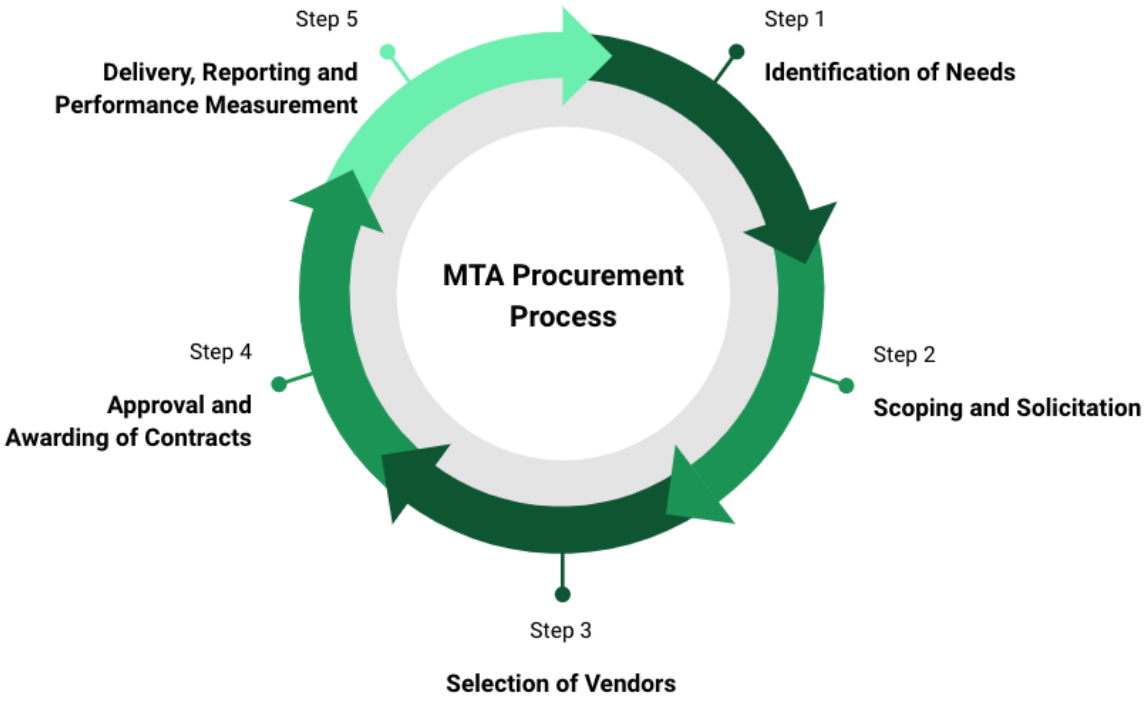
MTA Procurement Process

The Metropolitan Transportation Authority (MTA), like other government bodies and public authorities, has both capital and expense needs which are planned for in its budget process. The budgets pay for MTA staff as well as outside contractors.

The MTA has eight separate agencies which provide transit services and manage projects—New York City Transit, Bridges and Tunnels, the Long Island Railroad, Metro-North Commuter Railroad Company, Staten Island Rapid Transit Operating Authority, MTA Bus Company, and MTA Capital Construction Company—each of which separately manages its own procurement. This is supported by MTA Headquarters through its Business Service Center and a centralized MyMTA vendor portal. MTA Headquarters itself may seek outside contractors for management or legal support. The procurement process used by the MTA is summarized in the chart on the following page, which encompasses five major steps.

[30] MTA Procurement Guidelines. http://web.mta.info/mta/compliance/pdf/Procurement_Guidelines.pdf

Figure 2



Step 1 - Identification of Needs

The MTA identifies ***capital*** needs for all its agencies through its 5-year capital planning process, which include large-scale infrastructure projects, station maintenance, and rolling stock such as subway cars. This planning process involves the MTA staff determining the needs of its agencies. The MTA staff conducted a 20-year needs assessment of its capital needs in 2013 prior to adoption of the 2015-2019 plan, and is expected to release an updated assessment in 2019.[31] Staff then submits a draft capital plan for approval by vote of the MTA Board. This then is submitted to the Capital Program Review Board ("CPRB" - see discussion later in this report regarding this body) for final approval.

The MTA also engages in a yearly budgeting process for both capital and expense needs, which involves a Board vote to approve the financial plans of each of the eight MTA agencies. Agencies' yearly capital budgets reflect the priorities established in the MTA's capital plans, with commitments updated each year, and the ***expense*** budget reflects needs submitted by the agencies, including for services that are contracted out.

[31] MTA. 20 Year Needs Assessment, 2015-2034. October 2013 http://web.mta.info/mta/capital/pdf/TYN2015-2034.pdf

Step 2 - Scoping and Solicitation

MTA staff ***scope*** out the anticipated costs and associated tasks for expense and capital projects that require outside contractors into one of three means of soliciting ***vendors*** for projects[32]:

- **Request for Proposals (RFPs)** - The MTA publicly advertises RFPs, and then an MTA selection committee evaluates submissions. These are negotiated privately with candidates before contracts are awarded. RFPs are typically for professional services (consulting, architectural or engineering services) and major equipment purchases such as rolling stock.
- **Invitations for Bids (IFB)** - The MTA publicly advertises IFBs, and contracts are awarded to the qualified vendor submitting the lowest bid. Bids are opened in a public meeting. IFBs are usually for goods or trade services (such as computer hardware or construction).
- **Informal Solicitations** - For goods or services under $10,000, there is not a public advertising process, and vendors are contacted directly from internal MTA bidders lists.

MTA solicitations must follow New York State procurement laws[33], federal guidelines (for projects that involve federal funds) and MTA internal procurement guidelines. These guidelines[34] include:

- Requirements for competitive bidding as the preferred method of awarding contracts, including selection of the lowest responsible bidder ("responsible" refers to the vendor's ability to perform the work, and involves a review of past performance);
- Specifications related to materials, such as requiring goods be made in America (see the federal "Buy America" program[35]); and
- Required MTA Board approval by vote of certain solicitations in public meetings, such as requests by MTA staff to use RFPs instead of competitive, sealed bidding (IFBs).

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[32] MTA. "Doing Business With the MTA: A Guide for Contractors and Suppliers". http://web.mta.info/mta/procurement/doingbusiness.htm

[33] New York State Public Authorities Law, Sections 1265-a - MTA Contracts; 2604 - Steel Products; 2878-a Recycled Products; 2879 - Procurement contracts

[34] MTA. All Agency General Contract Procurement Guidelines - Adopted 3/21/2018, http://web.mta.info/mta/compliance/pdf/Procurement_Guidelines.pdf ; MTA. All Agency Service Contract Procurement Guidelines - Adopted 3/21/2018, http://web.mta.info/mta/compliance/pdf/Procurement_of_Services.pdf;

[35] U.S. Department of Transportation. Federal Transit Administration. Buy America Program. https://www.transit.dot.gov/buyamerica

The MTA has increasingly sought to use a contracting mechanism known as "design-build" in which a single vendor is used for both design and construction of projects, rather than separate contracts for architectural/engineering plans and construction. Changes to state procurement rules could allow for greater use of this mechanism.

Exceptions to state and MTA procurement guidelines may occur, such as for emergencies where competitive bidding requirements can be waived. The MTA Procurement Guidelines provide that in ***emergencies***, staff may proceed without Board approval, but must notify the Board "as soon as practical" for ratification (this is after the contract is issued rather than prior; this validation is required due to the Board's fiduciary responsibility to the MTA). Beyond the internal guidelines, state action may suspend requirements as well. For example, the Governor issued an emergency Executive Order 168 in 2017[36] for the MTA, suspending a number of requirements by declaring a "Disaster Emergency." The MTA Board ratifies emergency procurements after they are made, but does not approve them before contracts are issued. The MTA's Procurement Guidelines also allow awarding of a **"single source" contract** where there is only a single responsible vendor, where a notice is provided via the MTA website that there will not be competitive bidding. This requires MTA Board approval via a vote.

These guidelines also require **public notifications of solicitations** via the MTA website, newspapers and the NYS Contract Reporter.[37] The MTA publicizes solicitations on its website through items such as the "Eye on the Future"[38] for capital projects, and a "Current Procurement Opportunities" website[39] that links to the procurement websites for the separate MTA agencies. It should be noted that each agency presents the information differently, though there appears to be a singular portal, MyMTA.info for vendors. While these notifications are online, the RFPs themselves are not.

[36] Governor Andrew Cuomo. Executive Order 168 https://www.Governor.ny.gov/sites/Governor.ny.gov/files/atoms/files/Executive_Order_Disaster_Emergency.pdf See also Reinvent Albany analysis of Executive Order 168 https://reinventalbany.org/2017/07/Governor-cuomos-mta-disaster-declaration-suspends-anti-corruption-and-environmental-safeguards/

[37] New York State Contract Reporter https://www.nyscr.ny.gov/

[38] MTA. "Eye on the Future." http://web.mta.info/mta/capital/eotf.htm

[39] MTA. Current Procurement Opportunities with MTA Agencies. http://web.mta.info/mta/procurement/current.htm

Step 3 - Selection of Vendors

In seeking vendors for projects, MTA staff must follow state requirements[40] for discussing and negotiating ***contracts*** with vendors through RFP, IFB or other processes. For example, state law generally requires the MTA to accept the lowest responsible bidder. It also requires the MTA to designate a single staff contact for vendors to prevent bid rigging.[41] MTA employees must also follow guidelines in the MTA All-Agency Code of Ethics[42] regarding acceptance of gifts from those who do business with the MTA, known under the Code as "prohibited sources."

Vendors are also required to follow the MTA's Vendor Code of Ethics[43], which reiterates state law requirements such as limiting contact with MTA staff during the procurement process, gift bans, and "revolving door" i.e. post employment restrictions for MTA staff with vendors. It also notes that vendors must certify a "statement of non-collusion."

Additionally, certain projects may be required to use vendors such as Minority and Women-Owned Businesses (MWBEs)[44], veteran-owned or small businesses.[45]

Step 4 - Approval and Awarding of Contracts

The MTA categorizes contracts as the following:

- **Service** contracts typically involve retaining a consultant specializing in accounting, architecture, engineering, human resources, legal, real estate, etc.
- **Purchase** contracts typically involve goods, materials, or equipment.
- **Public work** contracts involve infrastructure projects.
- **Miscellaneous** contracts can involve service issues such as custodial or maintenance work where there is not substantial improvement conducted, or leases of equipment where there is not an option to purchase, or contracts that don't fit in to the previous categories.

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[40] New York State Public Authorities Law; 1265-a - MTA Contracts; 1265-b - Small Business Mentoring; 2878 - Statement of Non-collusion

[41] State Finance Law 139-j - Procurement Lobbying; See Reports from Agencies https://projectsunlight.ny.gov/ReviewPageForPublicSearch.aspx

[42] MTA. All Agency Code of Ethics, December 2015. http://web.mta.info/mta/compliance/pdf/codeofethics.pdf

[43] MTA Vendor Code of Ethics. http://web.mta.info/mta/compliance/pdf/Vendor_Code_of_Ethics.pdf

[44] Executive Law Article 15-A - MWBE (See explainer here) https://esd.ny.gov/mwbe/programmandate.html

[45] MTA. " Opportunities for Minority-, Women-Owned, and Disadvantaged- Businesses, and Service-Disabled Veteran-Owned Businesses" http://web.mta.info/mta/procurement/d-m-wbe.htm; and MTA. "The MTA's Small Business Federal Program (SBFP)." http://web.mta.info/sbdp/federal.htm

Within these four types of contracts, the MTA has a list of 269 different procurement categories,[46] which includes everything from accounting services to animal feed to heavy construction services to transportation engineering.

Once a vendor is selected contracts are approved under the requirements of the MTA Procurement rules, which trigger approval by the full MTA Board when certain thresholds are met. Generally, contracts over $1 million are approved by vote of the MTA Board, unless they are provided to the lowest responsive bidder via a sealed process. This threshold was increased from $100,000 or $400,000 in the state budget enacted in 2019. The Board approves non-competitive contracts via votes on at its full Board meetings after discussion and vote by relevant committees. These include single-source contracts, solicitations where no or only a single responsive bid is received, and contracts for experiments, evaluations or tests. These resolutions require a two-thirds vote, except for emergency resolutions, which require a majority. Contracts themselves are not online; the only window into contracts currently is via board materials, which have staff reports about contracts.

Under State Public Authorities Law, the New York State Comptroller reviews the contracts of all state public authorities, including the MTA, of $1 million or more which are non-competitive or contain state funds. This subset of contracts is not enforceable unless approved by the Comptroller.[47] The state budget enacted in 2019 has tightened the timeframe for Comptroller approval to 30 days under Section 2879 of the Public Authorities Law.

Amendments to contracts

Once contracts are let and work begins, contracts can be changed by MTA staff through amendments - these are called **Additional Work Orders (AWOs)** or **Change Orders** by the MTA. These changes can be made by MTA staff or vendors in certain instances, but may trigger MTA Board approval. The MTA Board must vote to approve amendments if the following conditions are met:

- The value of the change is between $250,000 and $749,000, and exceeds 15% of the adjusted contract value; or
- The change is greater than $750,000.

[46] MTA. Procurement Categories - Dated 11/21/2016
http://web.mta.info/mta/procurement/goodsservices.htm

[47] New York State Public Authorities Law, Section 1265-a - MTA Contracts, Section 2879-a - Comptroller Approval of Contracts

The MTA Board can also authorize MTA staff to make expedited change orders under their procurement guidelines. The expedited process allows for staff to administer changes without Board approval. For example, subway car contracts since 1997 have include an authorization for expedited change orders as approved by the MTA Board, for the R142 cars up to and including the R211 cars in October 2018. [48]

The State Comptroller also has the authority to review certain amendments, including:

- to non-competitive contracts over $1 million;
- to contracts over $1 million involving state fund; and
- if the contract was initially awarded competitively but the amendment goes beyond the scope of the initial solicitation.[49]

Step 5 - Delivery, Reporting and Performance Measurement

Once work begins by vendors on contracts, the delivery of the projects by vendors is monitored by the MTA staff, who then report on progress to the Board via its separate committees. The MTA staff does not provide specific contract information for all of its projects on its website. Contracts and any associated amendments that trigger MTA Board approval are referenced in MTA Board Meeting materials, and often contain staff summaries that provide a window into some of the MTA's procurement process and decision-making. The MTA's Capital Dashboard[50] provides information about the status of capital projects, but these are not linked to specific contracts and vendors.

As required by Public Authorities Law Section 2879, the MTA submits a yearly procurement report to the Authorities Budget Office. This report is posted on the MTA website in a large PDF file,[51] instead of in CSV spreadsheet form (the ABO, however, produces this report in spreadsheet form via the NYS Open Data Portal, but this takes some time to be made available due to reporting lag time[52]). This report does not include contract numbers or project numbers from the MTA's capital plans, however, so it is difficult to understand the context of these procurements. It also does not include

[48] See discussion of the R211 expedited authorization in the October 2018 MTA Board Meeting materials, page 73: http://web.mta.info/mta/news/books/pdf/181024_0900_Board.pdf
[49] NYS Comptroller, Contract Submission Manual, October 2015 https://www.osc.state.ny.us/pubauth/Documents/process/contr_submanual.pdf
[50] MTA. Capital Program Dashboard. http://web.mta.info/capitaldashboard/CPDHome.html
[51] MTA 2017 Procurement Report. http://web.mta.info/mta/compliance/pdf/2017_annual/Procurement_Report_2017.pdf
[52] NYS Authorities Budget Office, Public Authority Data, Procurement Report https://www.abo.ny.gov/publicauthoritydata/PublicAuthorityDataProcurementReport.html

information about amendments to contracts. For example, while vendors are listed, it is not clear if a particular contract is being let to fulfill a commitment from the most recent capital plan, a prior plan, or is related to the operating budget of the MTA.
Board committees for each MTA agency, as well as the Capital Program Oversight Committee (CPOC) and Audit Committee,[53] receive staff reports on projects for timeliness, performance measurement, and adherence to legal requirements. These reports vary by Board Committee. For the CPOC, for example, every capital project is reported on in summary tables that speak to their current cost and timeliness, while in-depth quarterly reports are given on mega-projects and high-priority initiatives, such as signal modernization at NYCT. These reports may or may not trigger Board discussions or questions, which can in turn require the staff to report additional information back to the Board. The Board can also recommend action by staff after contracts are let, but there is no obligation for staff to follow Board recommendations once contracts are already underway, as they do not come with a binding vote.

Independent Engineering Consultants (IECs) are hired by the MTA to comply with the Public Authorities Law 1263(4)(b), which requires the CPOC to consult with a "nationally recognized independent transit engineering firm" in fulfilling its oversight role. The MTA has engaged a firm, McKissack & McKissack, as its IEC, which is funded through a line item in its 2015-2019 Capital Plan. They do not review every project, but rather have developed a "risk-based" monitoring system "which encompasses projects that meet one more of the following criteria: high value, unique/complex, public facing, technology maturity, and community and operational impact." It provides reports after MTA staff presentations, noting where they concur or disagree with staff findings. It should be noted that McKissack & McKissack also provides management consulting services to the MTA for other projects, such as Atlantic Yards LIRR Yard Relocation.[54]

MTA staff also conduct All-Agency Contractor Evaluations (ACE), reporting on contractors' and consultants' performance after contract closings. The MTA Inspector General in 2009 audited the ACE program, finding that the MTA failed to review subcontractors, and that contractors were rarely given "unsatisfactory" reviews due to institutional pressure to not preclude important contractors from bidding on future

[53] MTA Board Committee Charters. http://web.mta.info/mta/compliance/pdf/Charters.pdf
[54] See also McKissack & McKissack, https://mckissack.com/our-work/?category=transportation

work.[55] Only the findings of ACE reports are made public, however, not the reports themselves.

Board Consideration of MTA Contracting Process

Besides the Board's role in approving certain contracts and amendments, it has also created two task forces that are working with MTA staff to reduce costs related to inefficient procurement:[56]

- The **Cost Containment Task Force** is identifying best practices such as moving to performance-based compensation for contractors in which there are bonuses for success and penalties for poor performance; making contract and design specifications less prescriptive; streamlining the change-order process; and empowering project leadership to enforce performance standards.

- The **Procurement Task Force** is working to modernize the MTA's procurement process, increase efficiency and encourage more diverse industry participation and competition. This includes using steps such as streamlining legal and insurance reviews, and reducing the time it takes to prepare and process bids. A dashboard will track and help report on the potential cost savings achieved from Task Force initiatives.

These task forces have each released public presentations on their activities[57], and while they have noted some changes that the MTA staff has been making internally, no policy changes have been formally adopted by the Board, and no legislative proposals have been publicly announced. It is therefore difficult to assess the impact of the task forces and know if they have helped the MTA save money.

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[55] MTA Inspector General. "Program Design Deficiencies in the MTA All-Agency Contractor Evaluation (ACE) Program." December 2009. http://www.mtaig.state.ny.us/assets/pdf/09-15.pdf and "Assessing the Effectiveness of the MTA All-Agency Contractor Evaluation (ACE) Program." December 2009. http://www.mtaig.state.ny.us/assets/pdf/09-08.pdf

[56] MTA Press Release. "MTA Unveils Proposed 2019 Budget and Four-Year Financial Plan." http://www.mta.info/press-release/mta-headquarters/mta-unveils-proposed-2019-budget-and-four-year-financial-plan

[57] Cost Containment Task Force Update, January 2019
http://web.mta.info/mta/news/books/docs/Cost%20Containment%20Group%20Board%20Presentation%20Jan%2024%202019.pptx
Procurement Task Force Update, June 2018
http://web.mta.info/mta/news/books/docs/Procurement-Task-Force061918.pdf
Cost Containment Task Force Update, June 2018
http://web.mta.info/mta/news/books/docs/Cost-Containment062018.pptx

Despite these task forces, the Board has not considered changes to their own role in procurement, which is surprising given that procurement discussions consume a great deal of the MTA Board's time. Without their own staff, Board members are dependent on what information MTA staff provides. The Board books for their meetings show pages and pages of procurements with long narrative descriptions, yet despite this supposed transparency, the information provided is only what staff have deemed able – or been allowed – to publish, as the Board books are public, not internal documents. The Board spends an inordinate amount of time discussing the minutiae of individual projects. These discussions often involve technical or engineering issues that the Board is not equipped to understand. On the other hand, the Board at times hastily votes to approve contract after a long day of meetings. Discussion on procurements seem to be dependent on the energy and interest of Board members, rather than a deliberate strategy of oversight.

Lack of Meaningful Board Oversight and Failure of Fiduciary Duty

As currently structured, the MTA Board is expected to vote on a number of issues where they have little influence, calling into question whether the MTA Board itself can be held accountable for decisions when they have little control. They can approve contracts, amendments to contracts, and vote on annual budgets and capital plans, but they rely on the staff whom they do not control to provide complete information before they make decisions. In some cases, this already limited power has been abrogated by the Governor, such as through an Emergency Executive Order that declared a state of emergency for the MTA and suspended Board votes and regulatory safeguards. They also rely on staff to report back on implementation in order to conduct their oversight.

This lack of influence and accountability can be seen in a number of areas including: an unaccountable change order process where the MTA Board in 2018 voted on $619.5 million in change orders, and planning decisions that have prioritized system expansion, like $11 billion for East Side Access over projects to maintain the system such as signal modernization. The MTA Board has been set up to fail, providing a layer of required decision-making that can be easily blamed for poor service delivery.

Billions of MTA Contract Amendments Contributing to Cost-Overruns

The contract amendment process at the MTA provides a direct example of cost overruns, and also demonstrates the MTA Board's lack of influence, as they are required to approve change orders while relying on information from staff about why changes are needed. The use of amendments on competitive contracts also raises serious questions about the MTA procurement process, as contract extensions can result in an effectively uncompetitive process when other vendors are not explored. The Board has reviewed contract amendments through its task forces on procurement, but they have not considered how they contribute to cost-overruns or how "competitive" contracts are rendered uncompetitive through amendments.

For the purposes of this analysis, we refer to contract changes as "amendments." This includes change orders and Additional Work Orders ("AWOs") from MTA Board materials. Reinvent Albany examined all amendments presented to the MTA Board in 2018 – those requiring a vote, and those provided for information purposes only – to examine trends and potential risks.[58]

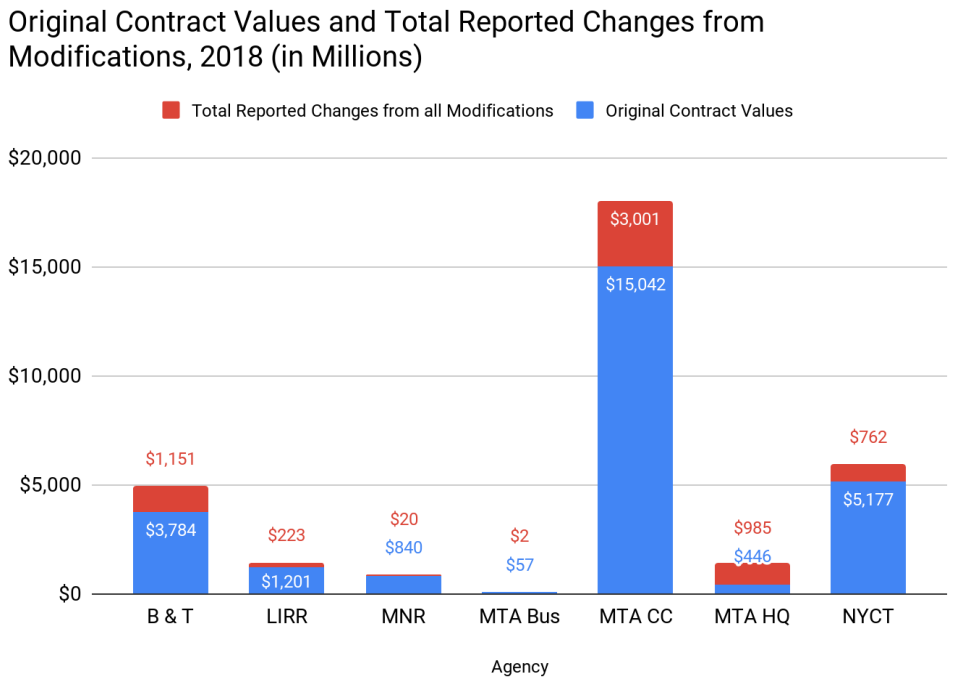
[58] This analysis is limited due to Reinvent Albany's Freedom of Information Law (FOIL) request to the MTA for detailed contract data being denied. We instead used publicly available records of the MTA's contract amendments

In 2018, the MTA Board voted on 73 amendments worth $619.5 million (some lumped together). The Board reviewed lists of an additional 171 contract amendments made by MTA staff in 2018 that did not require a vote, totalling $111.5 million. The total value of these amendments was $731 million.

For many contracts, the 2018 amendments were not the first time contracts were changed. Several contracts involving the Second Avenue Subway, for example, saw over 300 past changes. Past changes to contracts totalled $5.4 billion (this only includes those reviewed by the MTA Board in 2018). When new and past changes are added together, this represents just over $6 billion out of $26.5 billion worth of original contracts, a 23% increase from the original amount.

When looking by agency, the largest values of amendments were for capital projects at MTA Capital Construction, with $3 billion in amendments to contracts originally valued at $15 billion – a 20% increase. This is perhaps not surprising given well-known projects that have gone over budget, such as the Second Avenue Subway and East Side Access.

Figure 3



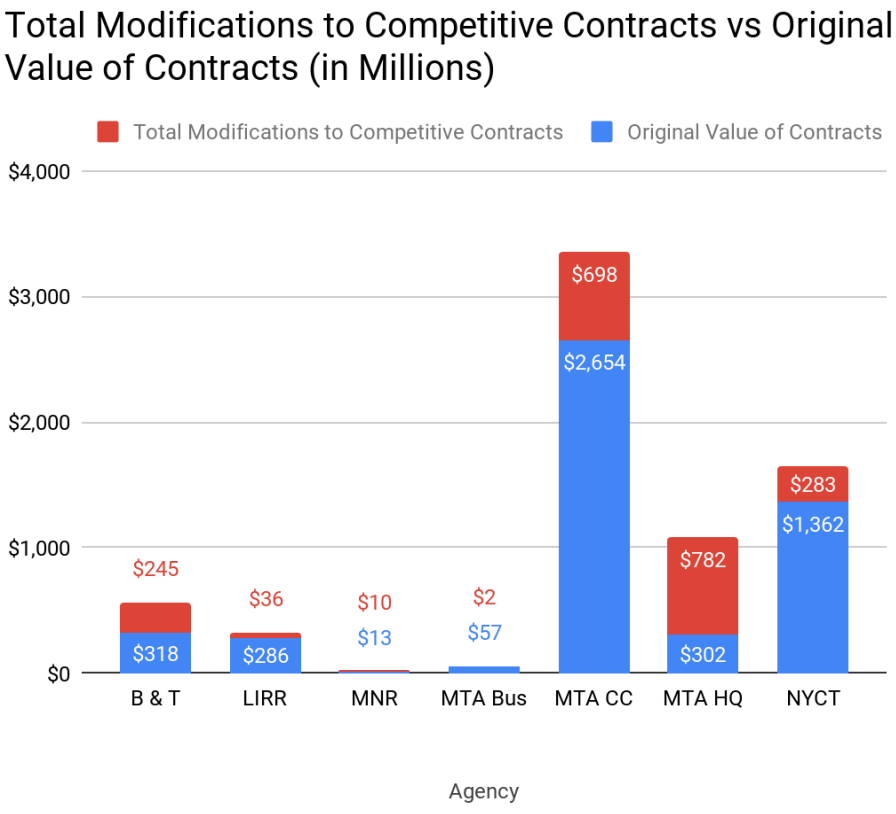
from their board books. This does not include the full scope of changes to contracts in 2018 that occur absent board approval. This analysis also required Reinvent Albany to manually enter records into a spreadsheet, as Board materials are only available in PDF. MTA Board Materials available at: http://web.mta.info/mta/news/books/

When looking at agencies based on how much amendments increased the *relative cost* of contracts, however, MTA Headquarters saw the largest inflation at a whopping 220%: $985 million in increases for contracts originally valued at $446 million. Bridges & Tunnels followed at increases of 30%, with $1.1 billion in amendments for contracts originally valued at $3.7 billion.

Amended Contracts Still Classified Competitive, Even When Not

The use of amendments on competitive contracts can result in an effectively uncompetitive process when other vendors are not explored to do the new work. When looking at contracts classified as "competitive" – 61 of the 73 approvals voted on by the MTA Board in 2018 – MTA Capital Construction had the largest value of contract amendments of nearly $700 million for contracts originally totaling $2.6 billion. MTA HQ had the highest percentage of changes in terms of contract values, with $782 million of amendments to contracts originally totalling $302 million, an increase of 259%.

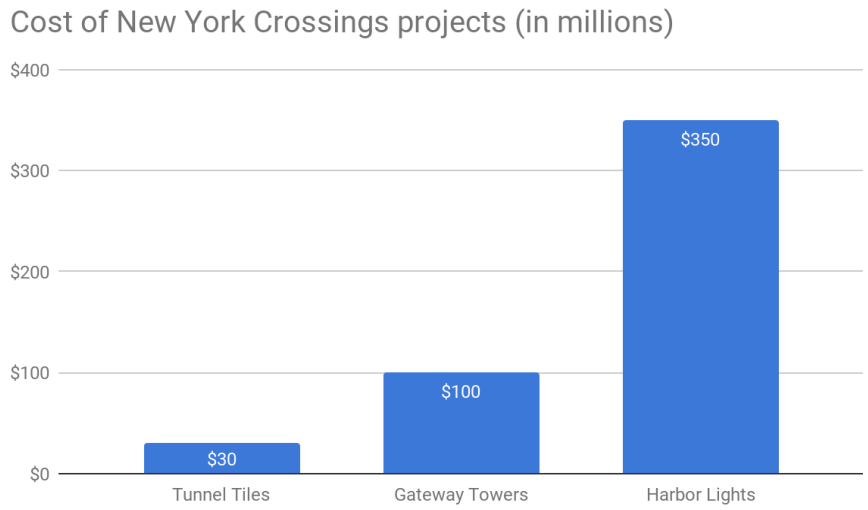
Figure 4



It also appears that amendments to MTA Headquarters contracts often involve extensions: for 13 of the 20 contracts (65%) that involved MTA Board approval or notification in 2018, the staff narrative of changes stated that the contract was being extended. The narrative in some cases note that the contract is being extended while competitive bidding is sought to replace the contract, though not in all cases.

New York Crossings - Hundreds of Millions for Governor's Vanity Project Hidden in Plain Sight from the MTA Board

Figure 5



New York Crossings was announced by Governor Cuomo on October 5, 2016[59] and is the umbrella name for a wide range of capital expenditures on MTA Bridges and Tunnels. The centerpiece of this initiative is Open Road Tolling – a technology and infrastructure upgrade to replace tolling booths with new electronic technology, allowing cars to drive through at faster speeds. New York Crossings also included improvements to tunnels such as seismic and flood mitigation measures, decorative Art Deco towers at tunnel entrances ("Towers"), and new tunnel tiling. For bridges, decorative LED "Harbor Lights" would be installed, as well as the Towers used at the tunnel entrances. Based on MTA documents, Reinvent Albany estimated that the total combined cost of the components of NY Crossings will exceed over a billion dollars in public funds.[60]

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[59] Governor Andrew Cuomo. Press Release. "Governor Cuomo Announces Transformational Plan to Reimagine New York's Bridges and Tunnels for 21st Century" October 5, 2016. https://www.Governor.ny.gov/news/Governor-cuomo-announces-transformational-plan-reimagine-new-york-s-bridges-and-tunnels-21st

[60] Reinvent Albany. Compliant to the Authorities Budget, September 7, 2018. https://reinventalbany.org/2017/09/did-the-mta-board-fully-review-ny-crossings-contracts-including-42m-decorative-towers-before-approving-them/

According to press accounts, public records, and public statements by MTA Board members, Governor Cuomo proposed the New York Crossings initiative with little or no review or comment by the MTA Board. Based on our review of the minutes of MTA full Board and committee meetings since the Governor's October 2016 announcement, we see no evidence that the MTA Board reviewed or approved: (1) an overall budget for the New York Crossings initiative; (2) an overall expenditure caps; or (3) an overall budget or caps for component elements, such as the projects involving towers, lights or tunnel improvements. Additionally, we see no evidence that the MTA Board or staff clearly defined the component elements and assigned them any form of unique identifier.

Despite not having individually identified the components of NY Crossings or approved budgets for them, the MTA Board has nonetheless approved hundreds of millions of dollars worth of contracts and contract modifications for New York Crossings, calling in to question the ability of the MTA Board to properly oversee projects when information is not proactively compiled for them by staff.

Harbor Lights

Governor Cuomo's Harbor Lights (see picture at right[61]) are a textbook example of a political vanity project – with costs estimated at more than $350 million.[62] When Cuomo presented Harbor Lights in late 2017, he claimed the colorful LED light shows on the MTA's bridges and would provide a huge boost to the NYC tourism. However, the Governor never provided any analysis or evidence supporting his claim. (Note that New York City tourism was at record highs in 2017 and 2018 without Harbor Lights.[63])

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[61] See this promotional video from the Governor's office. Photo captured from video. https://www.youtube.com/watch?v=0HNzHyE68ek&feature=youtu.be

[62] Rubinstein, Dana. "As subways suffer, Cuomo plans choreographed bridge lights." Politico New York. July 7, 2017. https://www.politico.com/states/new-york/albany/story/2017/07/19/as-subways-suffer-cuomo-plans-choreographed-bridge-lights-113405

[63] McGeehan, Patrick. "N.Y. Draws a Record 65 Million Tourists (in Spite of Trump's Trade War, Many Were Chinese)." The New York Times. January 16, 2019. https://www.nytimes.com/2019/01/16/nyregion/nyc-tourism-record.html

The MTA Board was tasked by the Governor with implementing and funding Harbor Lights without ever voting to approve the project, though the MTA Board was not provided a full project budget.[64] The Governor's plan was criticized in the press, and many editorials commented on the absurdity of paying for colored lights while subway service was melting down. After public pressure, the Cuomo administration announced Harbor Lights is being financed solely by the Empire State Development Corporation, another public authority, though the project's status remains unclear.[65] Additionally, according to Politico[66], the Governor's office says the New York Power Authority (NYPA) will pay for the project — not the MTA. Yet, according to board minutes from March and January of 2017, the NYPA board was told that the MTA would *repay* NYPA for the costs of the project.[67] In other words, the NYPA board assented to paying for Harbor Lights based on the false promise of repayment. (We say "assented" as it is not clear that NYPA's board actually voted for the expenditure, though they were briefed on it.)

[64] Reinvent Albany Analysis, "A Governor, a Piggy Bank and a Toy Store: Who is Paying $350m for MTA Bridge and Tunnel Decorations in the Middle of a Subway Meltdown" July 19, 2017 https://reinventalbany.org/2017/07/a-king-a-piggy-bank-and-a-toy-store-who-is-paying-350m-for-mta-bridge-decorations-in-the-middle-of-a-subway-meltdown/

[65] Rubinstein, Dana. " What happened to Cuomo's Bridge Lights Program - Don't ask the Governor." April 5, 2018. https://www.politico.com/states/new-york/albany/story/2018/04/05/what-happened-to-cuomos-bridge-lights-program-dont-ask-the-Governor-350752

[66] Rubinstein, Dana. "As subways suffer, Cuomo plans choreographed bridge lights."

[67] New York Power Authority. January 2017 Board Meeting Minutes, Page 81 https://www.nypa.gov/-/media/nypa/documents/document-library/meeting-minutes/01-31-17-trustees minutes.pdf

Gateway Towers

Another component of the New York Crossing Initiative is the installation of decorative "Gateway Towers" at the entrances to all MTA bridges and tunnels (see picture at right). The MTA Board approved eight separate amendments worth $42.8 million to larger tunnel and bridge rehabilitation contracts at three Board meetings in April, May and June[68] 2017 to build and install decorative towers at the entrances to all MTA bridges and tunnels. According to the minutes of the MTA Bridge and Tunnel Committee's April 2017 meeting, the "Towers will be installed at all nine B&T facilities in order to create a unifying theme for the various bridges and tunnels."

The decorative Towers were not flagged by the staff or Board for special attention and review, and they do not help fulfill the MTA's mission or key performance indicators. Yet, the $42.8 million spent on the Towers was approved without any presentation from the MTA staff to the Board, without any discussion by the Board and without a budget line item, spending limit or a competitive bidding process.

By September 2017, the MTA had acknowledged that the Towers would cost $100 million.[69] Materials for the MTA Board began to have more details following press inquiries and a complaint to the Authorities Budget Office by Reinvent Albany asking the ABO to determine if the MTA Board was able to fulfill its fiduciary duty in approving projects in this manner.[70]

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[68] MTA Bridges and Tunnels Committee Meeting Materials:
June 2017, http://web.mta.info/mta/news/books/archive/170619_1130_B&T.pdf
May 22, 2017, http://web.mta.info/mta/news/books/archive/170522_1200_B&T.pdf
April 24, 2017, http://web.mta.info/mta/news/books/archive/170424_1130_B&T.pdf

[69] Rubinstein, Dana. "MTA: Bridge and tunnel towers to cost $100M" Politico New York. September 25, 2017.
https://www.politico.com/states/new-york/city-hall/story/2017/09/25/mta-bridge-and-tunnel-towers-to-cost-100m-114695

[70] Reinvent Albany. Did The MTA Board Fully Review NY Crossings Contracts — Including $100M Decorative "Gateway" Towers — Before Approving Them? September 14, 2017.

When asked about the Towers, MTA Board members noted that they did not feel like they had sufficient details. MTA Board member Polly Trottenberg, a Mayoral appointee who also serves as Commissioner of the NYC Department of Transportation, stated the following:

> "How much did those Towers cost? I'm still confused about it, maybe I shouldn't be, but I feel like I am, having re-pored through all the materials. I still didn't feel like I could totally piece it together. And I will say at the time that we voted on those items, I certainly did not understand them to be these standalone enormous Towers with what appears to be a price tag in the tens of millions."[71]

The Towers are not among the largest New York Crossings expenditures, but they are a documented example of the MTA Board approving piecemeal expenditures worth tens of millions of dollars that are buried in larger contracts, without explanation, without competitive bidding, and without any approved project budget. The Towers contracts also suggest that the MTA Board is not following the MTA's own procurement rules, which require an explanation of why it is in the public interest to amend an existing contract rather than undertaking a competitive bidding process.

$30 Million Extra Costs for NYS State Themed Colored Tiles in MTA Tunnels

According to an investigative report by the New York Post, Governor Cuomo ordered the MTA to retile MTA tunnels in colors consistent with New York State's branding guidelines as part of New York Crossings (see rendering[72] at right). The MTA had ordered new white tiles to reline the Brooklyn-Battery and Queens Midtown tunnels after

https://reinventalbany.org/2017/09/did-the-mta-board-fully-review-ny-crossings-contracts-including-42m-decorative-towers-before-approving-them/

[71] Ibid.

[72] Governor Cuomo, Flickr "Bridges and Tunnels" Album. https://www.flickr.com/photos/Governorandrewcuomo/sets/72157674800990195/with/30131505025/

Hurricane Sandy, but the Governor reversed that decision.[73] These items were buried in board materials approved in November 2016 related to amendments to the tunnel projects, which involved implementation of Open Road Tolling. In a 92-page booklet, the information appeared on page 91.[74]

The Governor has continued to personally direct MTA staff regarding the appearance of tunnels, as noted in a March 2019 investigation by the Wall Street Journal. The Wall Street Journal examined emails from the Governor's staff regarding the cleanliness of the tiles, noting that the Governor's discontent sent MTA officials "scrambling to devise a plan to more thoroughly wash the tubes," and has left MTA staff demoralized.[75]

Governor Declares MTA in State of Disaster

As of February 2019, the MTA has been declared as in a state of disaster emergency for 20 months. Governor Cuomo first issued an emergency Executive Order, EO 168, in July 2017 in response to deteriorating subway service, including the A train derailment at West 128th Street on June 27, 2017, as well as a number of other incidents related to signals, lack of air conditioning, and track circuit failures. The order, which has been extended 20 times, also cited derailments of Amtrak and NJ Transit at Penn Station.[76]

There is no doubt that poor budgeting and management decisions created a subway service crisis. However, Reinvent Albany and other watchdogs expressed concern that the Executive Order was of dubious legality. In a July 2017 statement[77], Reinvent Albany listed specific concerns about the emergency order, including that it unnecessarily suspends important safeguards. The order is also unnecessary given that the MTA's procurement guidelines already allow emergency procurements.

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[73] Furfaro, Danielle, Wiess, Lois and Hicks, Nolan. "Cuomo had the MTA waste $30M on tunnel vanity project." The New York Post. July 22, 2018.
https://nypost.com/2018/07/22/cuomo-had-the-mta-waste-30m-on-tunnel-vanity-project/

[74] MTA Bridges and Tunnels Committee. November 2016 Meeting Materials, Page 91.
http://web.mta.info/mta/news/books/archive/161026_1130_B&T.pdf

[75] Berger, Paul. "'We Need a Plan ASAP'—Cuomo Sends MTA Scrambling to Clean Tunnels." The Wall Street Journal. March 18, 2019.
https://www.wsj.com/articles/we-need-a-plan-asapcuomo-sends-mta-scrambling-to-clean-tunnels-11552881660

[76] Executive Order 168.20 represents the 20th month of renewal of the Executive Order declaring a state of emergency for the MTA. See the Governor's website:
https://www.Governor.ny.gov/news/no-16820-continuing-declaration-disaster-emergency-five-boroughs-new-york-city-and-counties

[77] Reinvent Albany analysis available here:
https://reinventalbany.org/2017/07/Governor-cuomos-mta-disaster-declaration-suspends-anti-corruption-and-environmental-safeguards/

Some MTA Board members expressed concern as EO 168 began to take effect in October of 2017, particularly after comments from then-Chairman Joe Lhota that it "eliminates the board from its fiduciary responsibilities" in regards to contracts made under the order.[78] A year later in July 2018, concerns remained about the order's limiting of MTA Board review, with member Andrew Saul, an appointee of Westchester County, stating:

> "What you're doing is you're undermining, I think, the most important goal here — and that is to watch the public's money. We're under all this pressure. We've got all this debt. And here we go, giving out major contracts without a bidding process, and I can't see how anybody here could justify this."[79]

The emergency order concerned MTA Board members to the point that they sought outside legal counsel, something that Board members had not done before. Indeed, former MTA head Dick Ravitch said that it simply had never been necessary to seek outside counsel, as "The Governor never told me what to do." The former Chair of the MTA Audit Committee and appointee of Dutchess County, Jamie Vitiello, worked with a private firm to draft a lawsuit that ultimately was not filed. It found the MTA's use of a disaster emergency was a "vastly overbroad" interpretation of the executive order. The draft lawsuit went on further to state that the order "robbed the Board of their statutory duty to oversee procurement activity." At the September 2017 MTA Board meeting, Vitiello was concerned that MTA management had begun to use the emergency order without the MTA Board authorizing its use.[80]

The Executive Order continues to have implications for the MTA. In January 2019 regarding the Governor's L Train tunnel plan, MTA Board member Susan Metzger, an appointee of the Orange County Executive, indicated that the that Board's position may not matter one way or the other as the Governor's Emergency Order gives him the ability to go ahead with his plan without the Board's approval. (See further discussion of this issue later in this report).[81]

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[78] Rubinstein, Dana. "Distrustful of MTA leadership, board members seek outside counsel." Politico New York. December 21, 2017. https://www.politico.com/states/new-york/albany/story/2017/10/31/mtas-use-of-emergency-order-raises-eyebrows-115380

[79] Barone, Vin. "MTA abusing 'state of emergency' to push through projects, says board of directors" July 26, 2018. AMNY. https://www.amny.com/transit/mta-board-construction-funds-1.20098817

[80] MTA Board. October 2017 Board Materials. Page 27. http://web.mta.info/mta/news/books/archive/171025_1000_Board.pdf

[81] Furfaro, Danielle and Jaeger, Max. "Cuomo has the power to force through L train plan: MTA." The New York Post. January 16, 2019. https://nypost.com/2019/01/16/cuomo-has-the-power-to-force-through-l-train-plan-mta/

Planning with the Wrong Priorities and Limited Information

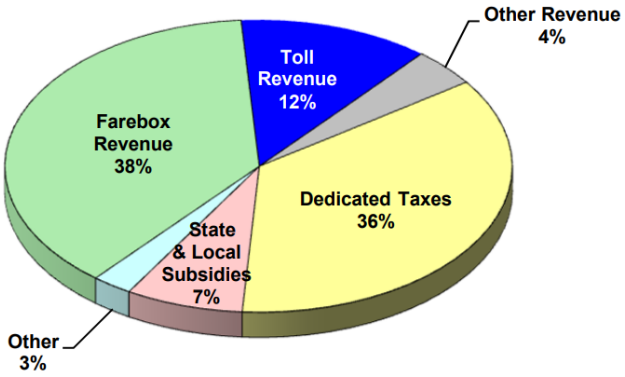
In any political system, there is a constant tension of trying to meet the varying priorities of multiple stakeholders. But for an agency that has a singular mission – "cost-efficient provision of safe, on-time, reliable, and clean transportation services"[82] - this should be a less complicated problem. However, it is clear that the tension between expansion projects and state of good repair has resulted in the wrong priorities being adopted in the MTA's budgets and capital plans. These budgets are also dependent on the provision of funding by the state through its budget, and must be adopted before funding levels are known.

Funding Dependence on Albany

While fares comprise a significant portion of revenue, the MTA also relies on funding from the federal, state and local governments as well as tolls from its bridges and tunnels. These funds take the form of direct operating (the day-to-day work of employees) and capital assistance (funding long-term infrastructure needs), as well as dedicated taxes that are authorized by the state legislature and Governor.

Operating Budget Lacks Needed Revenue

Figure 6[83]
MTA 2019 Operating Budget Revenue Sources



[82] MTA Mission Statement. http://web.mta.info/mta/compliance/pdf/MTA_Mission_Statement.pdf
[83] MTA Final 2019 Adopted Budget. December 2019.
http://web.mta.info/news/pdf/MTA-2019-Final-Proposed-Budget-Nov-Financial-Plan-2019-2022-Vol1.pdf

For the MTA's 2019 $17 billion operating budget, the bulk of revenues come from the following sources: $6.3 billion or 38% from fares, nearly $6 billion or 36% from dedicated taxes, $2 billion or 12% from tolls, and $1.2 billion from state/local subsidies.

The MTA Board in December 2018 had to vote on a difficult operating budget that assumes a 4% biennial fare and toll increase beginning on March 1, 2019 - ultimately the fare hike vote was delayed, and the increases took place beginning April 21, 2019.[84] From a budgeting perspective, the fare hike was necessary because of the relentless increase in MTA operating expenses driven by debt payment and growth in employee benefit costs, especially healthcare, and the lack of enough state support or revenues.[85]

The state legislature and Governor via the 2018 state budget created an MTA Sustainability Advisory Workgroup that proposed congestion pricing as a funding mechanism[86], but the state is under no obligation to act on its recommendation. Congestion pricing as proposed in the Governor's January Executive Budget would not pay for current operating expenses, and would only be able to be used for the MTA's forthcoming 2020-2024 Capital Plan. Only $15 billion would be able to be bonded for this purpose, while it is estimated that the 2020-2024 Capital Plan could cost as much as $60 billion - thus congestion pricing may only cover a quarter of 2020-2024 capital expenses.[87]

The MTA Board has historically not taken positions on funding issues other than fare and toll hikes, though there was discussion in March 2018 among the Board[88] about taking a vote on congestion pricing, a vote never was scheduled. During that discussion, some Board members stated that they felt it was beyond their scope as Board members, such as Vice Chairman (now acting CEO/Chairman) Freddy Ferrer, a Governor appointee, while others, such as Scott Rechler, a Governor appointee and Chairman of the Regional Planning Association, supported a vote in favor of congestion pricing.

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[84] Plitt, Amy and Spivack, Caroline. "MTA raises unlimited MetroCard fares, eliminates bonus." February 27, 2019. Curbed. https://ny.curbed.com/2019/2/25/18239588/mta-fare-hikes-subway-price-increase
[85]MTA 2019 Budget and 2019-2022 Financial Plan Adoption Materials. December 10, 2018. http://web.mta.info/mta/news/books/docs/MTA-2019-Budget-2019-2022-Financial-Plan-Adoption.pdf
[86] MTA Sustainability Advisory Workgroup Report. December 18 2018. https://reinventalbany.org/wp-content/uploads/2018/12/MTA-Sustainability-Report-Dec-18.2018.pdf
[87] For more information see: https://nyc.streetsblog.org/2019/01/16/komanoff-good-tidings-for-congestion-pricing-from-Governor-cuomo/comment-page-1/ and MTA Sustainability Advisory Workgroup Report. December 18 2018.
[88] Rubinstein, Dana. "MTA to schedule a congestion pricing vote, outcome TBD" Politico New York. March 6, 2018. https://www.politico.com/states/new-york/albany/story/2018/03/06/mta-to-schedule-a-congestion-pricing-vote-outcome-tbd-297548

The timing of the MTA's budget has prompted some Board members to raise questions about their fiduciary duty, and to propose moving the MTA's budget schedule altogether. Board member Andrew Saul said that "What you have here is a situation that's not fiduciarily responsible. What we have here is an operation that can't last." Saul ultimately voted in favor of the budget at the December meeting. Veronica Vanterpool, a mayoral appointee, proposed that the MTA move its fiscal year to better align with the state budget, such as by having the MTA's fiscal year begin in July, rather than January, calling the MTA's budget process "irrational." Vanterpool abstained from voting on the budget, as did Carl Weisbrod, another mayoral appointee.[89] She has since proposed a resolution to change the MTA by-laws to move the fiscal year, which is being considered by the Board as of the writing of this report.

In Midst of Maintenance Crisis, Subway and Bus Maintenance Staff Cut

The MTA has instituted hiring freezes in the past in response to budget shortfalls, for example in 2009 during a prior funding crisis.[90] Once again, the MTA has instituted hiring freezes in a number of areas through its 2019 adopted budget.[91] (Management experts consider hiring freezes to be the most damaging, and irrational, form of cost cutting because crucial positions are left empty while lower-value jobs are filled.)

The planned 2019 reductions mean 1,337 fewer full-time employees than originally planned for – mostly through a hiring freeze, with vacant positions remaining unfilled, planned positions being eliminated, and reductions through attrition. It should be noted that the MTA reports overall staffing numbers are increasing by 391 positions from 2018 to 2019, which is only by .5% of the the total planned 2019 MTA workforce of more than 75,000. How specific staff reductions are being made while an overall increase is reported is not specified in the MTA budget documents, but may reflect changes in the long-term hiring plans of the MTA.

Bridges and Tunnels experienced the largest percent decrease in staffing, with all 92 reductions due to the Open Road Tolling initiative, which began in 2016. This initiative is not reducing service to the MTA's customers, as it is an efficiency and technology initiative that replaces attended toll booths.

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[89] Nessen, Stephen. "MTA Passes $17 Billion Budget for 2019 As Agency Approaches 'A Precipice'" Gothamist. December 13, 2018. http://gothamist.com/2018/12/13/mta_budget_subway_fares.php
[90] WNYC News. "MTA Issue Hiring Freeze." April 23, 2009. https://www.wnyc.org/story/74661-mta-issues-hiring-freeze/
[91] Data from MTA 2019 Budget and 2019-2022 Financial Plan Adoption Materials, December 12, 2018 http://web.mta.info/mta/news/books/docs/MTA-2019-Budget-2019-2022-Financial-Plan-Adoption.pdf

A listing of reductions by agency is provided below.

Agency	2019 Reductions	2018 Full Staffing	2019 Full Staffing	2019 Reducations as Percentage of 2019 Staff
Bridges and Tunnels	92	1,497	1,499	-6.1%
Capital Construction Company	-	181	181	0.0%
Long Island Rail Road	146	7,690	7,852	-1.9%
Metro-North Railroad	63	7,134	7,135	-0.9%
MTA HQ	66	3,073	3,096	-2.1%
New York City Transit	861	50,757	51,046	-1.7%
MTA Bus	108	3,981	3,915	-2.8%
Staten Island Railway	1	356	336	-0.3%
Total	**1,337**	**74,669**	**75,060**	**-1.78%**

Other large staff reductions of note involve the following projects.

Agency	Category	Reduction effort (* denotes critical service)	Staff Position Reduction	2019 Budget Impact in millions[92]
New York City Transit	Maintenance/ Operations	Terminal Car Cleaning Reduction*	91	$8.358
New York City Transit	Service/Service Support	Stations Efficiencies	68	$3.974
New York City Transit	Administration	Administrative Staffing Reductions	65	$9.221
MTA HQ	Administration	MTA IT -Vacancies	61	$7.640
New York City Transit	Administration	Labor Efficiencies	60	$14.720
New York City Transit	Maintenance/ Operations	Transition to Mid-Life Overhaul from Cycle Maintenance*	59	$12.039
New York City Transit	Maintenance/ Operations	Track Inspection Savings	53	$5.721
Long Island Rail Road	Maintenance/ Operations	LIRR Forward Reductions*	51	$1.034
Long Island Rail Road	Maintenance/ Operations	Improve Efficiency of right of way maintenance	44	$3.214
MTA Bus	Service/Service Support	Express Service Adjustment*	41	$10.001

[92] Note that this may include costs beyond staffing. This is not broken out in MTA documents.

Some of these staff and budget changes will reduce the quality of maintenance and therefore service, as not all reductions guarantee that the same core function will continue to be provided. One exception is potentially the track inspection savings program, which will use cameras instead of staff. Other reductions are certain to be more harmful – for example, rather than being cleaned at both ends of subway lines, cars will only be cleaned at one, resulting in dirtier trains. Reduced express bus service will also diminish the quality of some commutes.

A cut to the MTA IT staff is also significant, with 61 vacant positions still unfilled. Recently, there have been attempts to develop more IT products in-house, with fewer staff, rather than by hiring outside consultants. The MTA has been working toward developing a new website and app, both of which are currently in beta form and modeled after Transport for London. It is unclear if they will be successfully deployed without the staff to address user feedback and customize them more for the needs of MTA customers. Besides the public-facing IT products of the MTA, there are a number of initiatives that require MTA IT talent, including the Enterprise Asset Management software, maintenance and improvement of its existing dashboards, and potential new open data efforts.

"We've been understaffed by about 200 signal maintainers for a very long time ... They cut the testing interval from 30 to 15 days on a lot of equipment – effectively doubling the workload. There's a lot of pressure on supervisors and workers to do something that isn't really possible."
- MTA Signals Worker

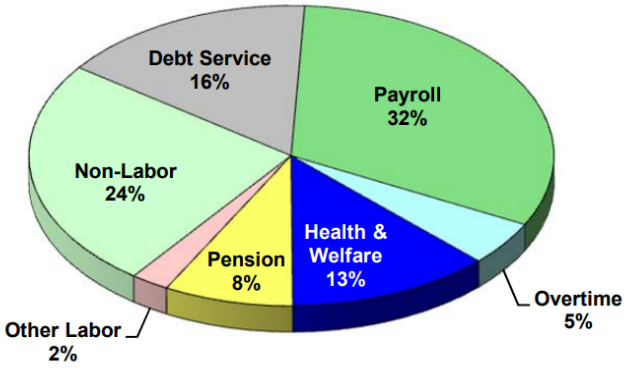
The MTA already has a reputation for being resistant to new ideas, and without hiring new, younger and more diverse staff, breaking this stereotype will be more difficult. Morale is also a big concern, as hiring freezes stress current staff. A signals worker was recently interviewed about the tension between trying to deliver on new management initiatives while dealing with understaffing. Speaking to a new preventive maintenance program, the worker said "We've been understaffed by about 200 signal maintainers for a very long time ... They cut the testing interval from 30 to 15 days on a lot of equipment – effectively doubling the workload. There's a lot of pressure on supervisors and workers to do something that isn't really possible."[93]

[93] NYC Democratic Socialists. "The MTA as a Worker." December 228, 2018. https://www.socialists.nyc/red-letter/2018/12/28/the-mta-as-a-worker

Undermining all efforts to improve operating conditions at the MTA is the increasing debt load that it carries, with liabilities eating away at the operating budget. For the MTA's 2019 budget (as approved in December 2018), debt service constitutes $2.692 billion out of $16.983 billion – that's nearly 16% of the total (see chart on next page).[94] According to a recent report from the New York State Comptroller, debt is expected to reach $3.3 billion by 2022.[95] Section 1269 of the Public Authorities Law states that the MTA has a debt limit of $55.479 billion, which was increased in the 2016 state budget as the 2015-2019 capital plan was funded.[96]

Figure 7
MTA 2019 Operating Budget[97]

By Expense Category



The MTA's debt woes are the result of a variety of factors, as noted in a December 2017 New York Times Investigation.[98] The MTA today borrows more to finance its capital plans than in the past – it has borrowed about half of its capital funds in the last six years, while in the 1980s it borrowed about 30% (though state officials have noted that interest rates are lower today). In 2000, former Governor Pataki was approached by Bear Stearns with a debt refinancing proposal that he accepted: $12 billion in debt was refinanced for immediate cash savings, but an additional $5 billion in interest payments over 30 years.[99]

[94] MTA. MTA 2019 Budget and 2019-2022 Financial Plan Materials. December 12, 2018. http://web.mta.info/mta/news/books/docs/MTA-2019-Budget-2019-2022-Financial-Plan-Adoption.pdf
[95] Office of the NYS Comptroller. 2019 MTA Financial Outlook. October 2018. https://www.osc.state.ny.us/osdc/rpt8-2019-mta-financial-outlook.pdf
[96] See here for Section 1269. https://www.nysenate.gov/legislation/laws/PBA/1269
[97] MTA Final 2019 Adopted Budget. December 2019. http://web.mta.info/news/pdf/MTA-2019-Final-Proposed-Budget-Nov-Financial-Plan-2019-2022-Vol1.pdf
[98] Rosenthal, Brian. "The Most Expensive Mile of Subway Track on Earth." New York Times. December 27, 2018. https://www.nytimes.com/2017/12/28/nyregion/new-york-subway-construction-costs.html
[99] Perez-Pena, Richard and Kennedy, Randy. "Private Promoter for Transit Debt." May 1, 2000. New York Times. https://www.nytimes.com/2000/05/01/nyregion/private-promoter-for-transit-debt.html

The MTA's difficult financial picture makes future borrowing more difficult, as the MTA rating has been downgraded by S&P twice in the past year and remains on "Negative Outlook."[100] In issuing its rating, S&P stated "The negative outlook reflects our view of the MTA's [debt service demands] and the sizable funding challenges it faces, particularly with regard to the need to secure additional sustainable funding for operations and capital." They noted that the MTA and New York political leaders could use congestion pricing or other revenue streams to ease these challenges, which could allow for a more positive rating.[101]

Capital Budget: State Owes MTA More Than $8 Billion

The MTA relies on support from Albany and New York City for capital funds. Funding for the MTA's capital plans come from a variety of sources – dedicated taxes, federal funds, state and local assistance, city capital funds, pay-as-you-go (PAYGO) capital and bonds. Bonds represent borrowing paid for by future revenues – revenue from tolls of MTA bridges and tunnels, for example – as well as expected revenue from dedicated taxes, including the Payroll Mobility Tax authorized by the state legislature in 2009.

For the MTA's 2015-2019 capital program, the most recent amendment from April 2018 shows MTA and Triborough Bridge and Tunnel Authority bonds topping the sources of anticipated funding for capital projects at $10.353 billion, state capital funds at $8.6 billion, federal funds at $7.3 billion, New York City funds at $2.666 billion, and "Other MTA Sources" at $4.310 billion (including asset sales and leases as well as PAYGO).[102]

The 2015-2019 program is now in its final year. As of the most recent data available (March 31, 2019), nearly two-thirds (66%) of funds have not yet been received by the MTA. This is nearly $22 billion of the more than $33 billion in planned spending.[103] In total, for the last two capital plans spanning 2010-2019, $27 billion in funds have not yet

[100] MTA Sustainability Advisory Workgroup Report. December 2018. Page 11. https://pfnyc.org/wp-content/uploads/2018/12/2018-12-Metropolitan-Transportation-Sustainability-Advisory-Workgroup-Report.pdf
[101] SP Global. RatingsDirect. August 9, 2018. http://web.mta.info/mta/investor/pdf/2018/SPDowngradeTRB080918.pdf
[102] MTA 2015-2019 Capital Plan, April 2018 Amendment. Page 12. http://web.mta.info/capital/pdf/April_2018_Amendment_Approved_Optimized.pdf "Other MTA Sources" includes asset sales/leases,
[103] MTA Capital Program Oversight Committee. Board Materials March 2019. See Page 100, "Capital Funding Detail" at http://web.mta.info/mta/news/books/pdf/190415_1400_cpoc.pdf

been received by the MTA, out of a total of nearly $65 billion in planned spending (see charts below).[104]

Figure 8

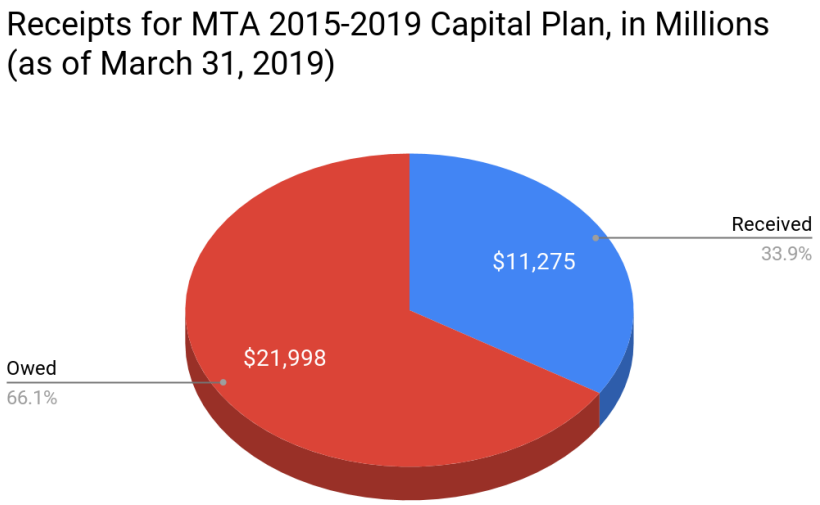
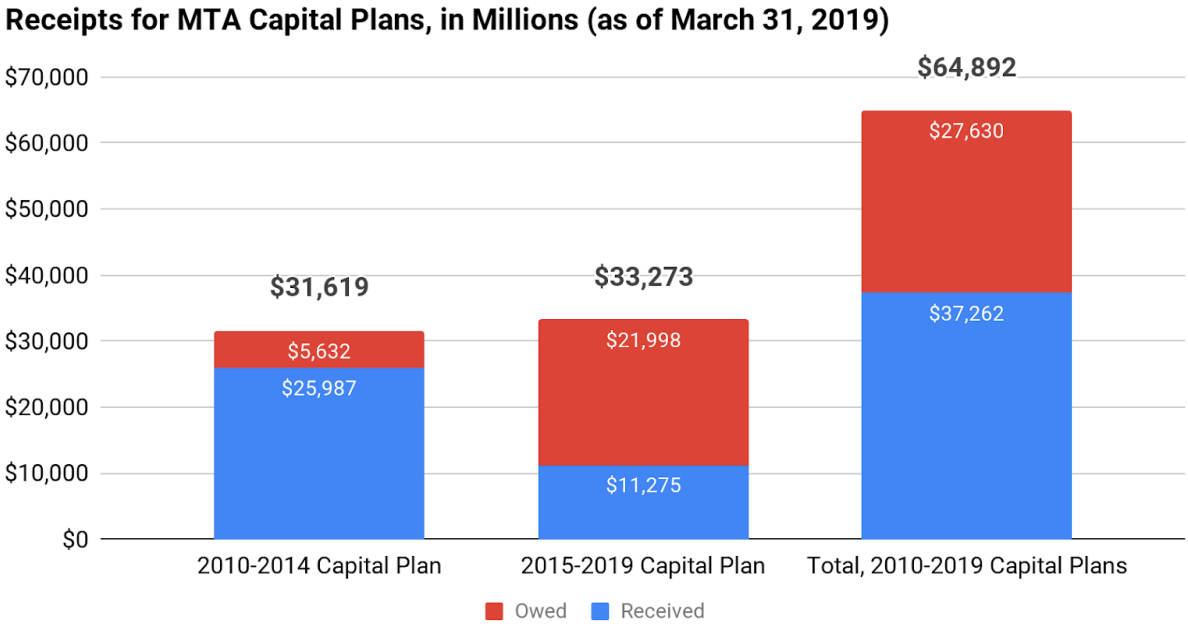


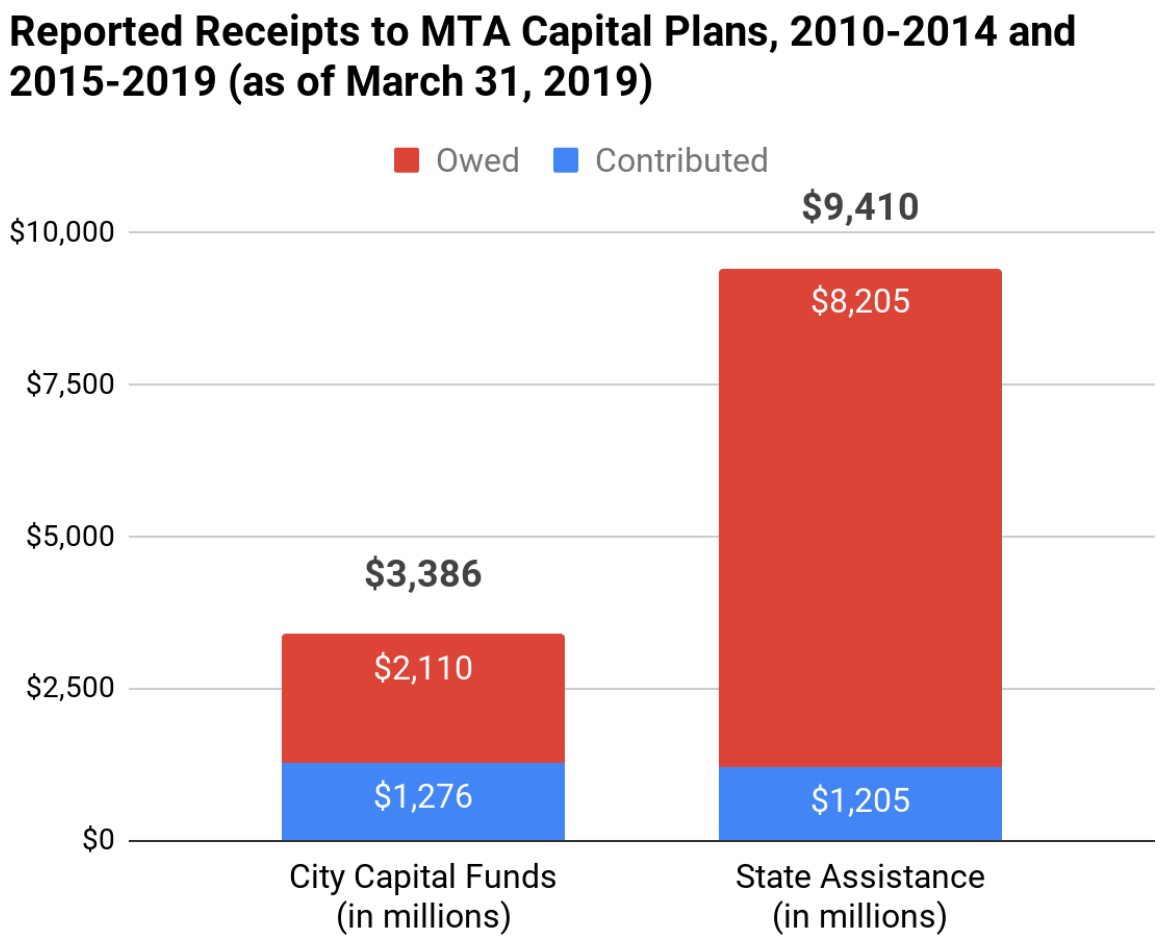
Figure 9



[104] Ibid.

And while the state has promised more funds than the city for both of the last capital plans, actual receipts – cash that the MTA can spend – for the 2010-2014 and 2015-2019 plans is only $1.205 billion of a promised $9.4 billion or about 13% of what was promised. Receipts from city capital funds are more, at $1.276 billion or 28%.[105]

Figure 10



As of March 31, 2019 – the first quarter of the last year of of the 2015-2019 capital plan – the MTA has only received $805 million in "State Assistance" of the $8.6 billion promised for the 2015-2019 plan.

[105] MTA Capital Program Oversight Committee. Board Materials December 2018. See Page 72, "Capital Funding Detail" at http://web.mta.info/mta/news/books/pdf/181210_1330_CPOC.pdf

State assistance includes $8.6 billion in funds for the 2015-2019 plan, with $8.3 approved in the 2016 state budget by the state legislature and Governor Cuomo, and an additional $328 million in capital funds provided via the Subway Action Plan in 2018. The 2016 state budget legislation provided that the $7.3 billion be made available only "after MTA capital resources planned for the capital program, not including additional city and state funds, have been exhausted, or when MTA capital resources planned for the capital program are not available," with funds provided by fiscal year 2025-2026, or by the completion of the capital program.[106] This means that the funding will be provided only *after* the MTA has borrowed more money, and likely far past the last stated year of the capital program in 2019.

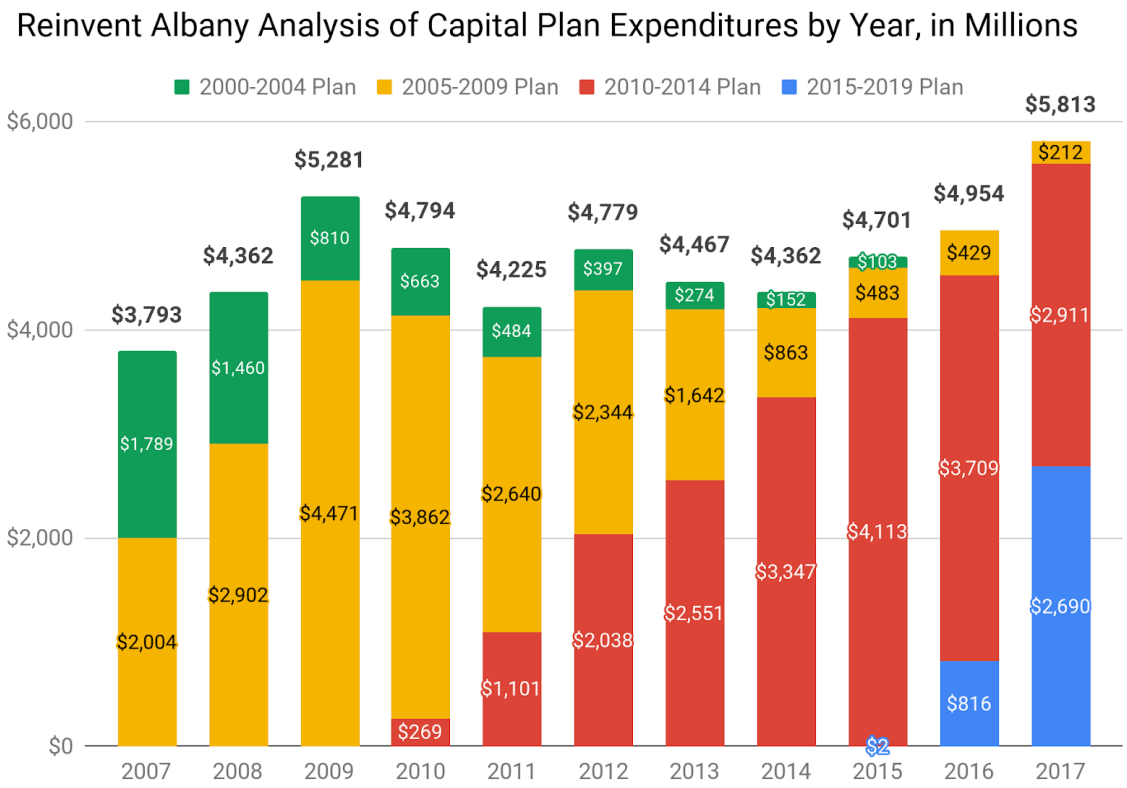
Delivery of the state funds for the 2015-2019 budget was even less certain under Governor's Executive Budget proposal for Fiscal Year 2020. The proposed capital appropriations bill included language that states that the $7.3 billion cannot be spent unless the legislature enacts other components of the Governor's budget proposal, including congestion pricing, MTA organizational reform, and speed cameras.[107] Ultimately, this requirement was removed by the legislature in their one-house bills.

Have Capital Plans Lost their Meaning? 15-Year Rather than 5-Year Capital Plans

The MTA does not currently report how much it spends each year for its individual capital plans. Rather, it provides *the total spending on each plan over its entire lifetime* at the end of each year. With a little math, however, Reinvent Albany was able to determine the total amount spent annually on each of the MTA's capital plans – see the chart on the following page.[108] (Reports on expenditures are delayed due to being produced by an independent auditor – data for 2018 to date only includes the first two quarters, and is not included in this analysis).

[106] Article VII 2016 Budget Legislation, S6406-C/A 9006-C PART NN - available at: https://www.nysenate.gov/legislation/bills/2015/a9006/amendment/c
[107] Division of the Budget. Capital Projects Budget. FY 2020. Page 422 https://www.budget.ny.gov/pubs/archive/fy20/exec/approps/capitalprojectsbudget.pdf
[108] Reinvent Albany Analysis of MTA Year-End Consolidated Financial Statements, 2007 - 2017. Available at: http://web.mta.info/mta/budget/

Figure 11



The chart above shows that MTA capital plans take far more than 5 years to be completed. As of 2015, the MTA was closing out spending on its 2000-2004 capital plan - 15 years after the start of the 2000-2004 plan. In total, expenditures on all capital plans have been about $4 or $5 billion a year, with the highest spending level of $5.8 billion in 2017. Thus so-called "5-year plans" end up far closer to 15.

The MTA's delivery on its capital plans has so frequently gone beyond the 5-year period that the MTA Sustainability Advisory Workgroup – a group appointed by the legislature, Governor and mayor to provide financial and policy recommendations to the legislature regarding the MTA – has proposed allowing the MTA to migrate to a 10-year capital planning process.[109] While the Workgroup proposed that it could still require legislative review and CPRB approval mid-way through a capital program, or it could be treated more as a rolling program, this could result in less accountability than the current process.

[109] MTA Sustainability Advisory Workgroup Report. December 18 2018. https://reinventalbany.org/wp-content/uploads/2018/12/MTA-Sustainability-Report-Dec-18.2018.pdf

Capital Planning and the Failure to Prioritize Maintenance

The current MTA capital planning process was created in the 1980s out of a prior fiscal crisis, which created a 5-year planning process and came with a large state government bail-out. The 5-year period was created to ensure a steady, long-term, stream of funding for MTA capital investment. Under law, capital plans must set out the priorities for state of good repair (a transportation planning term used to describe the goal to keep transit systems providing safe, efficient and reliable service[110]), as well as plans for system expansion. Plans are approved by the MTA Board and then submitted to the Capital Plan Review Board (CPRB). The CPRB includes representatives of the Governor, Senate, Assembly and Mayor and approves capital plans and amendments.[111]

Unfortunately, despite the intentions of the capital planning process to ensure steady investment in state of good repair projects, investment decisions seem to be driven more by politics than data. System expansion has eaten away at needed state of good repair investment, as can be seen with the lack of spending on signal modernization and subway cars, while planned expansion project costs balloon, such as for the Second Avenue Subway and East Side Access.

Should Riders Trade Better Service for System Expansion?

The MTA's network expansion projects are managed by MTA Capital Construction, a subsidiary of the MTA. In the 2015-2019 MTA Capital Plan, they amounted to $7.652 billion out of a total capital plan budget of $33.270 billion.[112] The 2010-2014 Capital Plan included $6.3 billion for expansion projects out of a total budget of $32 billion.[113] Major expansions include East Side Access, the Second Avenue Subway (Phase 1 and Phase 2) and "Regional Investments" including the the Harold Interlocking, Penn Station Access and the LIRR Expansion (also known as Third Track).

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[110] For more regarding the definition of "state of good repair" see the American Public Transportation Association, https://www.apta.com/resources/standards/state-of-good-repair/Pages/default.aspx

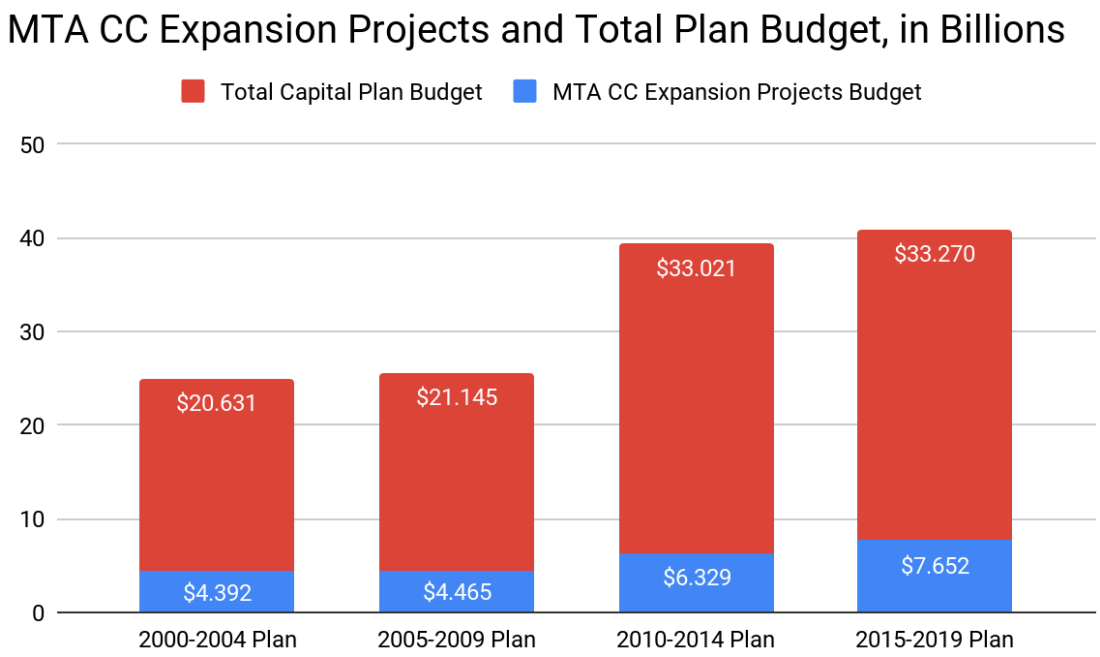
[111] Permanent Citizens Advisory Committee to the MTA (PCAC). The Road Back: A Historic Review of the MTA Capital Program. May 2012. http://www.pcac.org/wp-content/uploads/2016/09/The-Road-Back-and-2014-Addendum.pdf

[112] MTA 2015-2019 Capital Plan, April 2018 Amendment. http://web.mta.info/capital/pdf/April_2018_Amendment_Approved_Optimized.pdf

[113] MTA 2010-2014 Capital Plan. July 2017 Amendment. http://web.mta.info/capital/pdf/2010-2014-Program_APPROVED_reduced.pdf

MTA Capital Construction projects have amounted to about one-fifth of the capital program's budget over the last 4 cycles, as shown below.[114] As overall capital plan budgets have grown, expansion projects too have increased in cost.

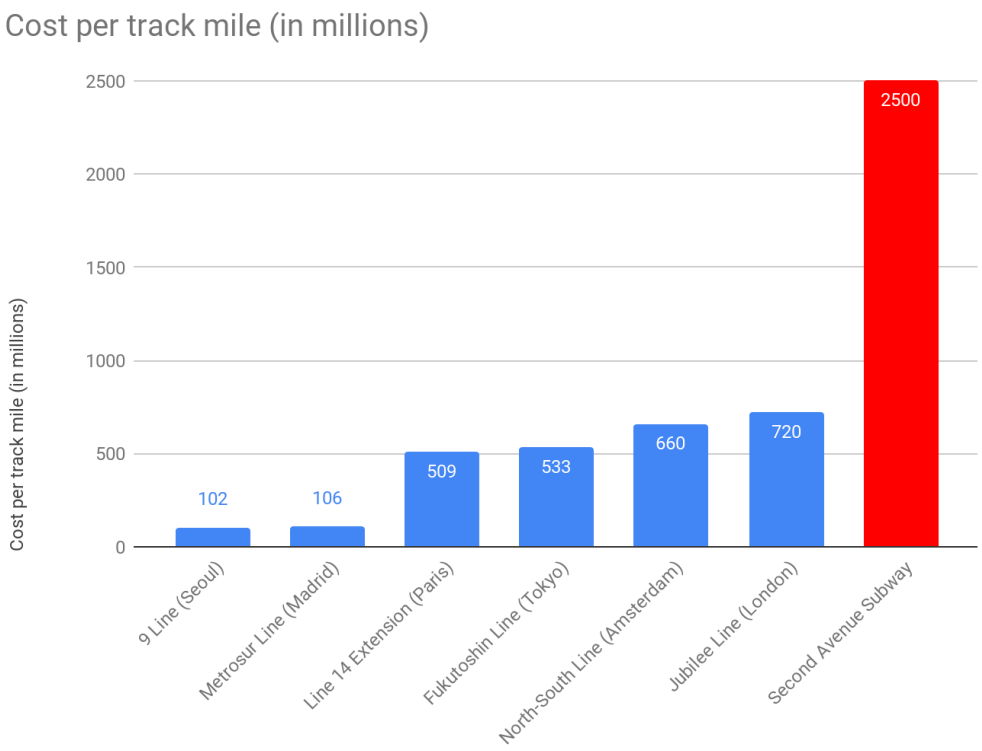
Figure 12



High profile expansion projects like the Second Avenue Subway and East Side Access are famously over budget and behind schedule, and a huge drag on MTA finances. Expansion projects do have the potential to improve service – the Second Avenue Subway, for example, was intended to lessen the ridership load on the 4/5/6 Lexington Line, the busiest corridor in North America with the building of a new, nearby subway line.[115] However, the cost of these projects may outweigh the benefits they take funding away from state of good repair projects and burden riders with debt. The sheer cost of these projects alone, even without cost overruns and delays, raise important questions about prioritization at the MTA.

[114] Reinvent Albany analysis of MTA Capital Plans, 2000-2019.
[115] Gordon, Aaron. "Maybe We Didn't Need the Second Avenue Subway After All." The Village Voice. July 18, 2018. https://www.villagevoice.com/2018/07/18/maybe-we-didnt-need-the-second-avenue-subway-after-all/

Figure 13[116]



The Second Avenue Subway Phase 1 expansion is the most costly subway extension in the world, coming in at a cost of $807 million per track mile for construction costs alone, and a total budget of $5.57 billion, according to the Regional Plan Association (RPA).[117] The RPA study did not state total cost overruns, likely due to limited historical data, but did note that the project was finished in 8-9 years, rather than the originally planned for 4-5. Service began 3 years late. In total, only 52% of the budget was used for construction tasks. A New York Times investigation found that, in total, the project cost $2.5 billion per mile.[118] Both analyses point to similar issues with project mismanagement – the use of old technologies, thousands of change orders with overly large overhead rates, excessive customization, and a lack of incentive for labor and

[116] Levy, Alon. "Comparative Subway Construction Costs, Revised." June 2013. Pedestrian Observations. https://pedestrianobservations.com/2013/06/03/comparative-subway-construction-costs-revised/ Harris, Connor. " Why building trains in New York costs more than any other city." August 25, 2018. New York Post. https://nypost.com/2018/08/25/why-nyc-is-priciest-city-in-the-world-for-infrastructure-projects/ Rosenthal, Brian. "The Most Expensive Mile of Subway Track on Earth." New York Times. December 27, 2018. https://www.nytimes.com/2017/12/28/nyregion/new-york-subway-construction-costs.html

[117] Regional Plan Association. "Building Rail Transit Projects Better for Less." February 2018. http://library.rpa.org/pdf/RPA-Building-Rail-Transit-Projects-Better-for-Less.pdf

[118] Rosenthal, Brian. "The Most Expensive Mile of Subway Track on Earth."

contractors to bring down the inflated costs from which both benefit. Joe Lhota, former CEO/Chairman of the MTA, responding to the New York Times recognized that leaving negotiations to unions and contractors is a problem, as the parties don't have an incentive to bring each others' costs down: "You're right; in many ways, there's this level of connection between the two."[119]

East Side Access

The East Side Access (ESA) project – bringing Long Island Rail Road service to the east side of Manhattan at Penn Station – has had similar cost bloating, coming in at $3.5 billion per new mile according to the December 2017 New York Times analysis.[120] According to the analysis, early estimates pegged the project at $6.3 billion, to be completed in 2009. As of April 2018, total costs had reached a stunning $11 billion, with an anticipated date of service beginning in 2022, with final completion in 2023.[121] The project is MTA Chief Development Officer Janno Lieber, who took over the project in 2017 and has acknowledged that some of the cost overruns can be attributed to the MTA setting unrealistic budgets and timelines, splitting the project into 50 separate contracts, making discretionary changes, and overpaying for contracts that were not competitively bid. Yet in presentations to the MTA Board, Amtrak has been cited as a major concern, with graphics made regarding Amtrak's "Failure to Deliver".[122] Lieber claims Amtrak has cost the MTA $340 million in overruns, but even if true, this is a fraction of the ESA's cost overruns.[123] Amtrak shares access to the Harold Interlocking, the most complex component of the project, and Lieber has blamed it for lack of access to the site.[124]

Who is Responsible?

The MTA staff's emphasis on Amtrak as a point of failure has belied the fact that the MTA CEO/Chairman, who is appointed by the Governor and responsible for the MTA staff, failed to control costs for ESA. These cost overruns have large implications for other MTA projects, as ESA is at least $4.7 billion over budget – nearly the cost of all of

[119] Ibid.
[120] Ibid.
[121] Castillo, Alfonso. "East Side Access price goes up again, now stands at $11.2B." Newsday. April 15, 2018. https://www.newsday.com/long-island/east-side-access-tour-1.18020231 and Regional Plan Association. "Building Rail Transit Projects Better for Less."
[122] MTA Capital Program Oversight Committee materials, April 2018: http://web.mta.info/mta/news/books/pdf/180423_1330_CPOC.pdf
[123] Castillo, Alfonso. "East Side Access price goes up again, now stands at $11.2B."
[124] Capital Program Oversight Committee materials, April 2018

the new subway cars ($1.5 billion) buses ($1.2 billion), and signals ($2.3 billion) for NYCT in the 2015-2019 capital plan combined.[125]

Members of the MTA Board cannot properly oversee massive projects like ESA due to their reliance on information from MTA staff. In December 2017 when approving a new contract for another large, $1.8 billion expansion project – the third rail for Long Island Rail Road – MTA Board Member Andrew Saul, an appointee of Westchester County, noted the link between massive capital projects and the state of subway and rail service with the diversion of billions of dollars to large capital projects. "Here we are going ahead now," he said, "with what is going to be a 2 1/2-plus billion dollar project for the third rail, and we really don't have accountability for the East Side Access project … It started as a four billion dollar project. It's now over $11 billion, and I think as fiduciaries on this board, we have had very little oversight of where this project [came] from, and where it's going."[126]

With the Second Avenue Subway, Governor Cuomo eventually claimed ownership of the project in 2016, five years after he first assumed office and after the project was already experiencing overruns and delays: "…What I said is I'm going to step up and take responsibility. If this does not open January 1? It's me. It's me. I would have failed. And I accept that responsibility."[127] With the unveiling of the new 96th Street station on the line, the Governor's office declared that "the Second Avenue Subway expansion is part of the Governor's sweeping statewide initiative to redevelop and rebuild New York's aging infrastructure from the ground up."[128] In this case, the project was finished on-time for its *updated* schedule, yet its overall cost raises questions about the tradeoffs the MTA has made about system expansion versus maintenance and state of good repair.

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[125] MTA 2015-2019 Capital Plan. April 2018 Amendment.
http://web.mta.info/capital/pdf/April_2018_Amendment_Approved_Optimized.pdf
[126] MTA Board Meeting. December 2017. Youtube.
https://www.youtube.com/watch?v=Bt3CQxESztk&feature=youtu.be&t=12554 See also MTA Board materials for the meeting, Page 213.
http://web.mta.info/mta/news/books/archive/171211_1000_Board.pdf
[127] Fink, Zach. "Cuomo's attempt to put subway responsibility on city a bit of an about-face." Ny1. July 24, 2017.
https://www.ny1.com/nyc/all-boroughs/transit/2017/07/24/state-and-city-fight-over-subway-responsibility
[128] Governor Andrew Cuomo. Press Release. "Governor Cuomo Debuts New Subway Station at 96th Street and Invites New Yorkers to Open House Ahead of On-Time Opening of the Second Avenue Subway." December 22, 2016.
https://www.Governor.ny.gov/news/Governor-cuomo-debuts-new-subway-station-96th-street-and-invites-new-yorkers-open-house-ahead

The MTA's capital plans are intended to ensure that the MTA's systems are maintained at a state of good repair, informed by the MTA's internal assessments of its needs. In reality, however, the plans have failed to ensure that the subway, bus and rail systems are sufficiently maintained.

In 2013, the MTA conducted a 20-year needs assessment to inform the development of the most recent capital plan (2015-2019).[129] This plan represents individual MTA agencies' assessments of the funding needed from 2015-2034 per "investment categories" (such as subway cars, buses, signals, etc). It also provides an assessment of what percentage of each category is "in good repair" and which are "backlogged" in terms of overdue investments.

The Citizens Budget Commission (CBC) has measured the MTA's capital plan commitments against the MTA's stated needs from the 2013 needs assessment.[130] In reviewing the 2015-2019 plan (as of its June 2017 amendment), CBC noted that New York City Transit needed $20 billion in 2017 dollars to keep the system in a state of good repair, yet only $12.4 billion was committed for this purpose as of the May 2017 amendment. Their analysis also noted that the plan added funding for expansion and "enhancement" projects, rather than state of good repair items such as signals.

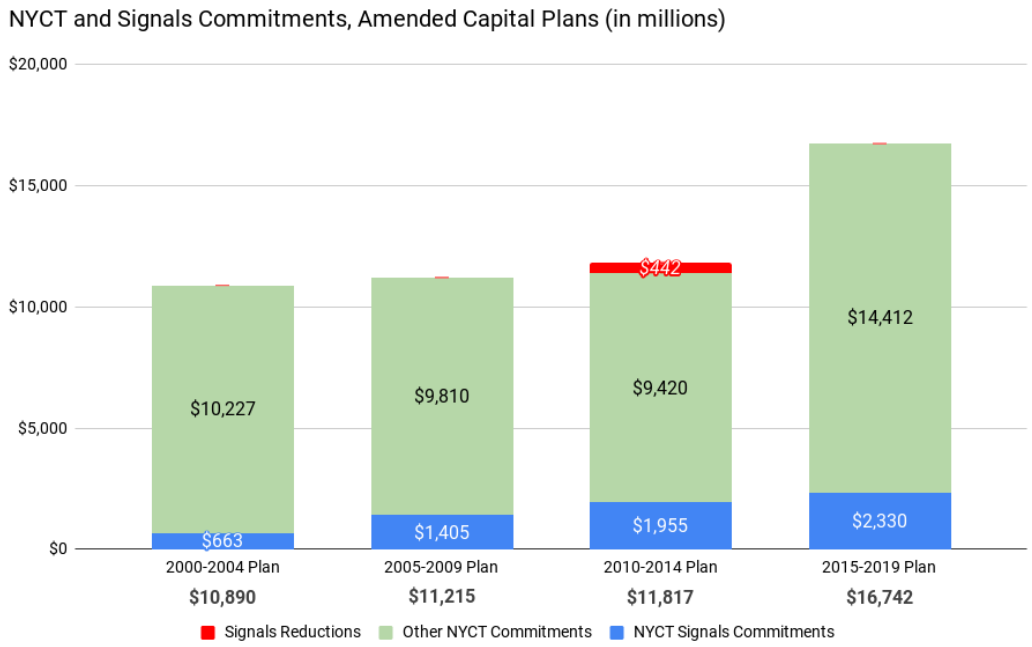
[129] MTA. Twenty-Year Capital Needs Assessment, 2015-2034. October 2013. http://web.mta.info/mta/capital/pdf/TYN2015-2034.pdf

[130] Citizens Budget Commission. "MTA's New Capital Plan Not on Track with Need for Better Service." June 15, 2017. https://cbcny.org/research/mtas-new-capital-plan-not-track-need-better-service

Reinvent Albany has tracked planned spending on NYCT signal modernization as part of the MTA's past four capital plans.[131] As of July 2017, $442 million in total had been cut from the original planned spending on signal modernization approved in June 2010 for the 2010-2014 Capital Plan. These cuts occurred over three different amendments to the plan, resulting in a net loss of $442 million.

In July 2017, the 2015-2019 plan was also amended to include $120 million in cuts to signal modernization at NYCT. These cuts were restored, however, in a April 2018 amendment that included new Subway Action Plan funds. Even with this restoration and increase, the MTA's 20-year needs assessment concluded that $3 billion (in 2012) dollars was needed for signals for the 2015-2019 plan. Only $2.3 billion is being committed as of the April 2018 amendment - $720 million less than called for, not even adjusting for inflation. See the chart below for totals by year.

Figure 14

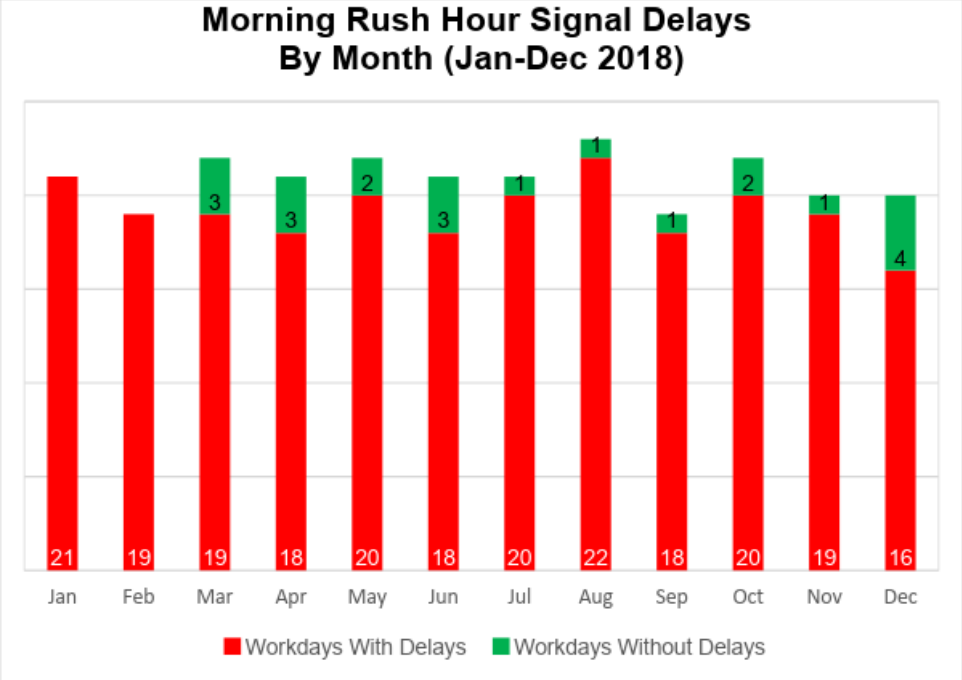


[131] The 2000-2004 Capital Plan was accessed via the NYS Library; Data for 2005-2009 Capital Plan from information obtained on MTA website: July 2004 Preliminary Plan, http://web.mta.info/mta/budget/pdf/capitalprogram0509.pdf, and January 2006 amended plan http://web.mta.info/mta/budget/pdf/cap_amendment.pdf. For 2010-2014 and 2015-2019 plans, please see the MTA's Capital Program Website for adopted plans and amendments: http://web.mta.info/capital/. The 2010-2014 plan was last amended in July 2017, and the 2015-2019 plan was last amended in April 2018.

High-profile projects that were added through the July 2017 amendments included Open Road Tolling, through which the Gateway Towers were funded (a net increase of $84 million for 2015-2019), more funding for the Second Avenue Subway Phase 2 ($700 million), and a LIRR expansion project for a third track ($1.950 billion).

It wasn't until service deteriorated to new lows in 2017 that the MTA and Governor's office began to develop and fund the Subway Action Plan, resulting in the April 2018 amendment. This was characterized as an "emerging new need" in the amendment document, though the need for signal modernization and state of good repair work had been known since at least the 20-Year Needs Assessment conducted in 2013.

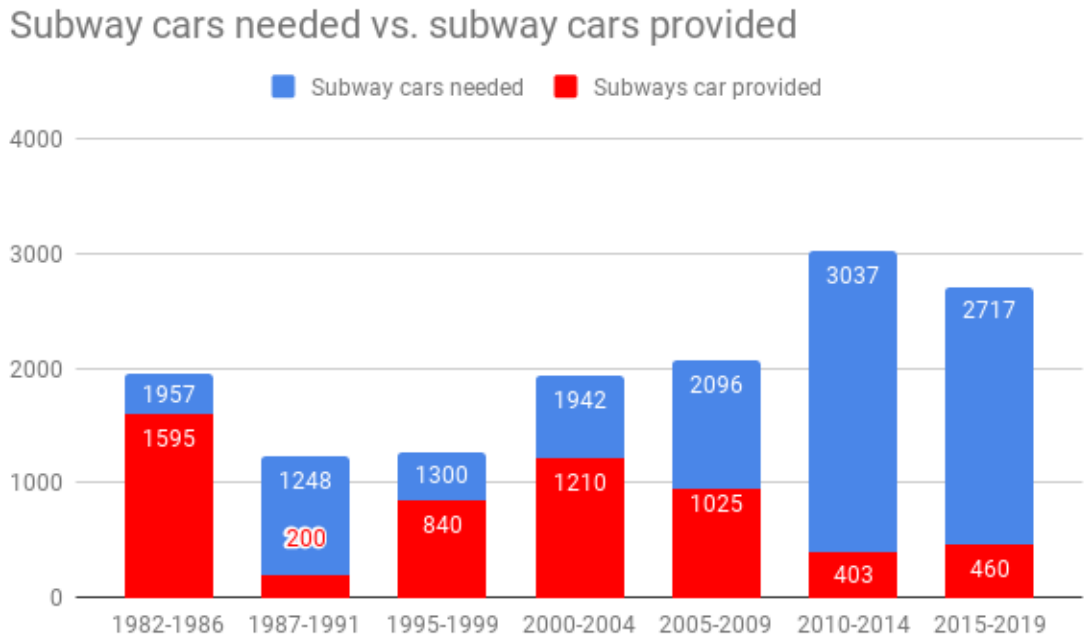
Figure 15 (source: Riders Alliance)[132]



Even with the Subway Action Plan, subway riders continued to reel from lack of investment in modernization as failures due to signal problems continued in 2018. According to data released by the Riders Alliance, 92% of rush hour commutes in 2018 suffered delays due to broken or malfunctioning signal technology. In total, of 251 morning rush hours, 230 were marred by signal problems.[133]

[132] Riders Alliance. "As Bad as We Thought: Signal Problems Scrambled 92% of Morning Rush Hours During 2018." January 2019. http://www.ridersny.org/signalproblems/
[133] Ibid.

Figure 16[134]



Similar to signal modernization, subway car replacements have not kept pace with the actual needs of the MTA. According to a July 2018 analysis by the Citizens Budget Commission, the MTA slowed its orders for new subway cars after 2009, ordering far less that the stated need for both the 2010-2014 and 2015-2019 plans. In total, though more than 3,000 cars were needed for 2010-2014, only 403 new subway cars were planned for. For 2015-2019 (as of July 2018), 2,716 were needed and only 460 new cars planned for.[135] Coupled with the decrease in maintenance for older subway cars, this resulted in severely reduced performance in 2016 and 2017.

Another challenge that the MTA is facing regarding subway car replacement is a lack of vendors. The cars of one past vendor, Bombardier, saw repeated performance issues and delays in delivery. In January 2019, a number of Bombardier's new R179s were pulled from service due to mechanical problems, and the contract with Bombardier was not yet fulfilled – nearly 200 cars had yet to be delivered.[136]

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[134] Chart by Reinvent Albany from data in Citizens Budget Commission report, "Getting Back on Track; Replacing and Repairing Subway Cars Will Be Expensive and Take More Than a Decade." July 18, 2018. https://cbcny.org/research/getting-back-track

[135] Ibid.

[136] Rivoli, Dan. "NYC Transit's new subway cars suffering on the tracks, dozens pulled from rails" New York Daily News." January 9, 2019. https://www.nydailynews.com/new-york/ny-metro-r179-mta-train-car-20190108-story.html

In January 2018, the MTA Board approved a $1.444 billion contract for 535 new R211 cars with Kawasaki: 440 new closed end subway cars, 20 open gangway cars and 75 cars for Staten Island Railroad. "Options" in the contract (a provision that allows the MTA to order more cars under the established framework in the future) allow for subsequent orders to be filled if funding is provided in future capital plans. Bombardier, applying jointly with CRRC MA, a Massachusetts company under the joint venture called "211 partners," was the only other bidder on the project and was not selected due to past performance issues.[137]

As of January 2019, the MTA has reported that an initial train (10 cars) will be delivered by July 2020, with 430 cars provided October 2022 to August 2023. The 20 open gangway cars will be provided in May 2021. Cars for Staten Island Railway will come last, with an initial train (5 cars) in December 2012, and 70 cars will follow from September 2022 to June 2023.[138] As of the January report, no issues were publicly identified by MTA staff as compromising the delivery of the cars. It should be noted, however, that delivery of the cars will come after the 5-year time span of the 2015-2019 capital plan - four years later in 2023.

The contract approval with Kawasaki was also lauded as providing jobs in New York State[139], as Kawasaki has a plant in Yonkers. Kawasaki has received past support from New York State, with a $500,000 state capital grant from Empire State Development given to retain 375 full-time employees in 2011 and Kawasaki investing $25 million in its Yonkers facility.[140]

As noted in the CBC report, however, the original MTA needs assessment and original 2015-2019 capital plan proposed that far more cars be delivered given the MTA's aging fleet. The 2015-2019 Capital Program as first approved in May 2016 called for nearly $3

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[137] MTA. January 2018 Board Materials. Page 90.
http://web.mta.info/mta/news/books/pdf/180124_1000_Board.pdf
[138] MTA. Capital Plan Oversight Committee. January 2019. Page 12.
http://web.mta.info/mta/news/books/pdf/190122_1400_CPOC.pdf
[139] Jobs to Move America. "Governor Cuomo and the New York Metropolitan Transportation Authority Announce Major Victory for Local Communities and U.S. Workers" January 26, 2018.
https://jobstomoveamerica.org/Governor-cuomo-new-york-metropolitan-transportation-authority-announce-major-victory-local-communities-u-s-workers/
[140] Governor Cuomo. Press Release. "Governor Cuomo Announces Kawasaki Rail Car, Inc. Will Invest $25 Million in Yonkers." April 28, 2011.
https://www.Governor.ny.gov/news/Governor-cuomo-announces-kawasaki-rail-car-inc-will-invest-25-million-yonkers

billion to fund 940 new R-211 cars, with an additional 10 open gangway prototypes.[141] The July 2017 amendment to the plan reduced this to $1.7 billion for a total of 460 cars (prototypes included), the amount provided for in the contract with Kawasaki.[142] This reduced plan has resulted in both fewer subway cars being ordered, and therefore fewer NYS jobs in support of their manufacture, a stated goal of the procurement.

Overlapping Plans Obscure Original Capital Plan Goals and Shortcomings

Capital plans are amended to address changing financial conditions and emergency needs (such as in response to Hurricane Sandy), but are also changed when leadership at the MTA or others in state government (such as the Governor) prioritize or re-prioritize different projects. For the most recent 2015-2019 capital plan, two major initiatives altered the original plan, resulting in amendments: the Enhanced Station Initiative and the Subway Action Plan. Additionally, a new plan – the Fast Forward Plan for New York City Transit – has unclear implications for the 2015-2019 period. No amendments have been yet proposed, though the MTA has stated that components of the plan are being implemented.

Enhanced Station Initiative

According to an analysis by the Citizens Budget Commission (CBC),[143] the Enhanced Station Initiative (ESI) was added to the 2015-2019 plan via the July 2017 amendment.[144] The ESI is an effort to address station repairs, and was the result of a directive from Governor Cuomo.[145] The July 2017 amendment added $857 million to the original $64 million ESI project, bringing the total to $921 million. This was offset by reductions of $92 million in other related station projects. In total, there are 38 separate projects for individual stations in the 2015-2019 capital budget related to the ESI.[146]

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[141] MTA. 2015-2019 Capital Program as approved May 2016. Page 60. http://web.mta.info/capital/pdf/ArchivalReports/2015-2019_Capital_Program/WEBApproved2015-2019Program-May2016.pdf

[142] MTA. 2015-2019 Capital Program, as amended July 2017. Page 117. http://web.mta.info/capital/pdf/ArchivalReports/2015-2019_Capital_Program/WEBApproved2015-2019Program-July2017.pdf

[143] Citizens Budget Commission. "Is the Enhanced Station Initiative a Good Idea?" July 20, 2017. https://cbcny.org/research/enhanced-station-initiative-good-idea

[144] Note that the 2015-2019 was first adopted late, in May of 2016, and included a $64 million reserve for the Enhanced Station Initiative.

[145] MTA New York City Transit, "Enhanced Station Initiative: CCM Pre-Proposal Conference." October 25, 2016. Available at: http://web.mta.info/nyct/procure/contracts/143675sol-3.pdf

[146] See the MTA Capital Dashboard for specific Enhanced Station Initiative Projects. http://web.mta.info/capitaldashboard/CPDHome.html

Capital plan prioritization reflects tradeoffs – certain areas must be ultimately chosen over others. CBC noted this in their analysis stating, “Station enhancements will certainly be welcomed by the users of those stations, but allocating almost $1 billion in additional capital funds for enhancements precludes their use for other needed investments.” Others, including members of the MTA Board, have criticized the ESI as being unnecessary given its focus on cosmetic changes rather than larger fixes, and also questioned the selection of particular stations over others. Veronica Vanterpool, an appointee of Mayor de Blasio voted against the awarding of a contract to fulfill the project, stating , "My position has never been that a lot of these enhancements, even the lighting, even the art, is not needed. My position is not now."[147]

Subway Action Plan: A Plan Within A Plan

Former CEO/Chairman Joe Lhota announced the Subway Action Plan (SAP)[148] in July 2017 directly after Governor Cuomo’s issuance of an order that declared a state of emergency for the MTA, suspending procurement rules and other regulations. This plan, which was developed by staff, necessitated another amendment by MTA Board vote to the 2015-2019 Capital Plan in April 2018. The April 2018 amendment[149] included three new projects – continuous welded rail ($53 million), signal improvement projects ($287 million), and purchase of non-revenue service vehicles to support the rail and signal projects ($8 million). These projects total $348 million, with $174 million each provided by the state and city to support these projects. While these projects may be needed investments, these needs were previously identified in 2013, yet not funded until after the service meltdowns had occurred. Further, the Subway Action Plan provides a new plan by which the MTA can measure progress and more easily control the narrative, obscuring the lack of signal investments from prior MTA Capital Plans.

[147] Manskar, Noah. Patch. “$213M Fix For Subway Stations Passed Against City's Wishes.” February 23, 2018.
https://patch.com/new-york/new-york-city/penn-station-subway-upgrades-get-ok-after-more-debate
[148] See Subway Action Plan materials at
http://www.mtamovingforward.com/files/NYC_Subway_Action_Plan.pdf
[149] MTA April 2018 Capital Plan Amendment. Available at:
http://web.mta.info/capital/pdf/April_2018_Amendment_Approved_Optimized.pdf

New York City Transit's President Andy Byford in May 2018 announced the agency's comprehensive Fast Forward Plan [150] to fix the subways, buses, and improve customer service and performance. At the announcement of the plan, former CEO/Chairman Lhota stated that the budget impacts relate to the 2020-2024 plan, and cautioned that they were not yet finalized (Fast Forward will cost about $40 billion over 10 years according to press reports). While Lhota's remarks also noted that the MTA has a poor track record of estimating costs, providing no information at the time of plan has fueled speculation regarding the MTA's needs and whether they have been continually understated. MTA Board member Veronica Vanterpool at the time of the plan release cautioned against "sticker shock" and noted that "The number that consistently is put forth as a capital program number is not an accurate number, it is the politically expedient number … We need an honest accounting of what it is going to cost to fix our system. It's not going to be a number that sounds good."[151] [152]

"The number that consistently is put forth as a capital program number is not an accurate number, it is the politically expedient number … We need an honest accounting of what it is going to cost to fix our system. It's not going to be a number that sounds good." - MTA Board Member Veronica Vanterpool

The press release for the plan does not specify how the plan relates to the MTA's current Capital Programs.[153] The Fast Forward Plan itself has only one mention of capital plan impacts, noting that it would increase elevator upgrades from 19 in the current capital

[150] New York City Transit. Fast Forward Plan. May 2018
http://www.mta.info/sites/default/files/new_york_city_transit_fast_forward_plan.pdf
[151] Video from MTA May 2018 Board Meeting, available on YouTube:
https://youtu.be/LYisjAjvOhs?t=2318
[152] Gordon, Aaron. "The MTA's Plan To Fix The Subway Will Cost A Fortune. Doing Nothing Will Cost Even More." June 5, 2018. Gothamist.
http://gothamist.com/2018/06/05/subway_fast_foward_cost.php
[153] Press Release from New York City Transit. "NYC Transit Releases Comprehensive Plan to Modernize All Services for the 21st Century" May 23, 2018. Available at:
http://www.mta.info/press-release/nyc-transit/nyc-transit-releases-comprehensive-plan-modernize-all-services-21st

program to 50 in the next capital program.[154] Since the announcement of the plan, it seems that some components are being completed now, though an amendment to the 2015-2019 plan has not occurred. For example, press releases related to community meetings about the Fast Forward Plan state that "NYC Transit has moved forward on accessibility improvements at three subway stations," and implemented bus network improvements in Staten Island, among other items.[155]

One Plan That Used to Rule Them All

Taken together, the Enhanced Station Initiative, Subway Action Plan, and Fast Forward Plan represent policy documents that have large capital impacts. While it could be argued that the merging of these separate plans into the MTA's capital plans represents continued evolution of thinking and re-prioritization of needs, they can also be seen as political documents that seek to divert attention from the failures of prior capital plans. Regardless of their motivations, it is clear that greater transparency of changes to capital plans is needed to emphasize the tradeoffs that occur as items are reprioritized and changed. (See our policy proposals in the recommendations section regarding capital plan transparency.)

[154] See page 41 of the Fast Forward Plan for the elevator commitments.
[155] MTA. New York City Transit. Press Release, "MTA NYC Transit to Bring 'Community Conversations' to Queens, Manhattan to Highlight Fast Forward Plan for Subways, Buses & Paratransit." October 2, 2018. http://www.mta.info/press-release/nyc-transit/mta-nyc-transit-bring-%E2%80%98community-conversations%E2%80%99-queens-manhattan-highlight

Conflicts of Interest and Outside Income Sap Public Confidence in MTA Leadership

Ethics oversight at the MTA has failed to pass the test of public confidence. The MTA Board and All-Agency Codes of Ethics have not been updated since 2014 and 2015, respectively, and have allowed blatant conflicts of interest that are detrimental to both the MTA and the public interest. They also do not meet the best practices provided by the Authorities Budget Office, which oversees all state public authorities and provides guidance on ethics and conflict of interest policies.

Chief among these conflicts was the appointment of former MTA CEO/Chairman Joe Lhota, despite him holding a salaried position of $1.7 million with NYU Langone at the time of his appointment. While he pledged to work full time for the agency, it was also later revealed through filings he had that he held a directorship with Madison Square Garden, company likely defined by MTA criteria as "prohibited source." In this role, he served as a Director of the Boards of two MSG companies: Madison Square Garden Company, and MSG Networks, resulting in total pay of about $300,000 annually.[156]

Provided in this report is a summary of prior report[157] by Reinvent Albany from July 2018, which examines the following six issues:

1. Ethics Policy Loophole: CEO/Chairman as Head of Agency
2. Insufficient Disclosure of Conflicts of Interest
3. Outside Income Allowed Despite Blatant Conflicts
4. Prohibited Sources: Directorships and Gifts
5. Revolving Door/Post-Employment Restrictions
6. Political Contributions by Board Members

This analysis was provided to the MTA Board of Directors, with recommendations supported by a number of other organizations. Unfortunately, the MTA Board, through both its Audit Committee (which oversees implementation of the ethics policies), and Governance Committee (which sets the ethics policies), has not taken action to address these issues or adopt any changes to its policies as of the writing of this report. Recommendations from the 2018 report are included in full in this report.

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[156] Rosenthal, Brian. "From the E.R. to the Garden, M.T.A. Chief Holds Unusually Powerful Perch." New York Times. May 22, 2018. https://www.nytimes.com/2018/05/22/nyregion/lhota-mta-nyc.html

[157] Reinvent Albany Analysis of Ethics and Conflicts of Interest Oversight at the MTA, and Joint Letter to MTA Audit Committee, July 2018. https://reinventalbany.org/2018/07/watchdog-groups-mta-board-should-strengthen-conflict-of-interest-rules-ban-outside-income-for-the-ceo-chair/

1. Ethics Policy Loophole: CEO/Chairman Is Clearly Head of Agency

Under Public Authorities Law Section 1263, the CEO/Chairman of the MTA is the head of agency and directly responsible for "executive and administrative functions." The MTA's website echoes these responsibilities in an "Org Chart"[158] available online, which notes that the CEO/Chairman is responsible for the actions of executive management who have been appointed by the CEO/Chairman, including the President, Acting Manager, and Chief Development Officer, among others. This responsibility cannot be delegated away, even if tasks are.

The CEO/Chairman of the MTA is a "public officer" under the Public Officers Law, as the law does not envision heads of agencies as being unpaid. The exceptions to the term "officer" refers to unpaid members of boards and commissions who are not paid a salary – for instance, MTA Board members who are not also the CEO.

Despite these legal requirements, former CEO/Chairman Joe Lhota was allowed to be treated as a "per diem" or unpaid board member, rather than an employee, and thus allowed to earn outside income.[159] For more discussion of how this issue unfolded, see "A Comprised Appointment of the CEO/Chairman" later in this report.

2. Insufficient Disclosure of Potential Conflicts of Interest

Under the current MTA ethics policies, members of the MTA Board are in the unfortunate position of not being made aware of potential conflicts of interest among their colleagues on the Board. MTA Board members, for example, were made aware of CEO/Chairman Lhota's directorships with Madison Square Garden via press accounts of U.S. Securities and Exchange Commission (SEC) filings. Lhota's directorships continued despite Madison Square Garden's enmeshment with MTA activities ranging from the New Penn Station to the Belmont Development project involving the LIRR.[160] A summary of the best practices developed by the Authorities Budget Office in terms of disclosure is provided on the following pages, which contrasts greatly with the current practices of the MTA Board and Joint Commission on Public Ethics.

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[158] MTA Organizational Chart. http://web.mta.info/mta/compliance/pdf/OrgChart.pdf

[159] Rubinstein, Dana. "State ethics board opened the door to Lhota's many jobs." Politico New York. June 28, 2018. https://www.politico.com/states/new-york/city-hall/story/2018/06/27/state-ethics-board-opened-the-door-to-lhotas-many-jobs-492867

[160] Rubinstein, Dana. "Lhota gets job at MSG, raising conflict concerns." February 12, 2018. Politico New York. https://www.politico.com/states/new-york/albany/story/2018/02/12/lhota-gets-job-at-msg-raising-conflict-concerns-248593

Authorities Budget Office (ABO) Best Practices Not Followed

In its recommended practices for public authorities throughout the state on conflicts of interest, the Authorities Budget Office states the following as a general guideline:

> Board members and employees of state and local public authorities owe a duty of loyalty and care to the authority and have a fiduciary responsibility to always serve the interests of the public authority above their own personal interests when conducting public business. As such, board members and employees have the responsibility to disclose any conflict of interest, including any situation that may be perceived as a conflict of interest, to the authority board and the public.[161]

ABO's model Conflicts of Interest policy[162] provides the following procedures:

> **Duty to Disclose:** All material facts related to the conflicts of interest (including the nature of the interest and information about the conflicting transaction) shall be disclosed in good faith and in writing to the Governance Committee and/or the Ethics Officer. Such written disclosure shall be made part of the official record of the proceedings of the authority.
>
> **Records of Conflicts of Interest:** The minutes of the authority's meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.

Unfortunately, the MTA has not adopted these standards in its codes of ethics, or in the charters of its committees.

MTA Board Code of Ethics Only Requires Limited Disclosure

The MTA's Board Ethics Code[163] provides that the CEO/Chairman or Chairman of the Audit Committee is notified of directorships and other potential conflicts of interest among Board members, but does not require notification to the full Board of Directors.

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[161] NYS Authorities Budget Office, Recommended Practice on Conflict of Interest Policy, p. 1.
[162] NYS Authorities Budget Office, Recommended Practice on Conflict of Interest Policy, p. 4-5
[163] MTA Board Member Code of Ethics. November 19, 2014. http://web.mta.info/mta/compliance/pdf/Board_Code_of_Ethics_Nov_19_2014.pdf

Joint Commission on Public Ethics (JCOPE) "Confidential" Approval

The Joint Commission on Public Ethics (JCOPE) reviews and approves certain categories of outside income for heads of agencies and agency staff such as directorships and income over $5,000 under Title 19 NYCCR Part 932. They do not currently review outside income of unpaid, per diem board members.

Under Executive Law Section 84, the body of law which details the Commission's responsibilities, JCOPE is limited in what it can release regarding opinions it issues, as names are redacted due to confidentiality. JCOPE has generally been criticized for its secrecy, as it is not required to release the results of its votes on whether to proceed with an investigation into a former top aide to Governor Cuomo, Joe Percoco.[164]

3. Outside Income

The current test of whether outside income becomes a conflict of interest under the state Public Officers Law is whether that outside income is "in substantial conflict with the proper discharge of his or her duties in the public interest." The Public Officers Law is enforced by the Joint Commission on Public Ethics (JCOPE). The NYS Code of Ethics as established in the Public Officers Law provides a general rule in Section 74(2), which is then applied under specific prohibitions in Section 74(3). Section 73 provides more specific prohibitions related to business and personal interests of state officers and employees. These prohibitions are echoed in the MTA Code of Ethics.

As former CEO/Chairman Joe Lhota was deemed to be "per diem" and not an employee, the prohibitions under Section 73 were not applied to him, despite the legal responsibilities of the position as a public officer performing "executive and administrative" functions.

The exceptions set in state law, however, provide a confusing overlay of standards insufficient for ensuring New Yorkers' confidence that public officers – particularly those running our agencies – are acting only in the interests of taxpayers. The MTA is permitted to adopt more stringent prohibitions on outside income, per JCOPE Regulations, Title 19 NYCCR Part 932.10, yet has failed to do so.

[164] Bragg, Chris. "JCOPE vote on Percoco may remain mystery." Times Union. January 9, 2019. https://www.timesunion.com/news/article/JCOPE-vote-on-Percoco-may-remain-mystery-13521192.php

4. Prohibited Sources - Directorships and Gifts

Another area of concern is the potential influence of those who do business with the MTA – including the Board, management, and employees of the MTA. The MTA All-Agency Code of Ethics[165] prohibits gifts from those who do business with the MTA, which are known as "prohibited sources." The MTA does not currently publish the list of those who do business with the MTA (prohibited sources) online, making it difficult for the public to know if there are potential conflicts of interests.

Reinvent Albany is also concerned that under the ethics codes, management and employees are treated differently in terms of what is permissible as far as gifts from prohibited sources and acceptance of directorships.

Directorships with Prohibited Sources

The MTA Board Code of Ethics and All-Agency Code of Ethics set different standards for Board members and staff regarding acceptance of directorships with potential prohibited sources, as well as attendance at events sponsored by such groups.

For Board Members, they may speak to their peers to "clear" potential conflicts related to accepting directorships – the CEO/Chairman or Chair of the Audit Committee – who are not required to direct ethics staff to conduct an internal review. Staff must receive prior approval from the internal ethics staff, and possibly JCOPE. The language for Board members appears to lean on the side of recusal, while staff would be more likely to have bars on accepting directorships.

Gifts from Prohibited Sources

Under the MTA All-Agency Ethics Code, there is a specific exception carved out for Executive Staff, including the CEO/Chairman, the President of an MTA Agency, or their designee(s), which allows them to attend "prohibited source" events (i.e. events put on by vendors) if doing "is related and appropriate to that attendee's official duties or when the purpose of attendance is the performance of a ceremonial or other function that is appropriate to that attendee's official duties," and the event is pre-approved, the

[165] MTA All-Agency Code of Ethics. December 2015. http://web.mta.info/mta/compliance/pdf/codeofethics.pdf

only requirements under the code.[166] This does not explicitly disqualify events with formal meals, cruises, golf, etc.

Rank-and-file employees, however, must meet a more stringent set of criteria to attend. They must prove that the event would satisfy *all* of the conditions required in the code of ethics, such as whether the event is "widely attended," events are open to all attendees, and specifically prohibits attendance at events if they involve formal meals, cruises, and golf - something executive staff are permitted to participate in.

5. Revolving Door/Post-Employment Restrictions

Reinvent Albany is concerned with reports regarding MTA officials and staff who leave the MTA and subsequently become employed by with contractors who do business with the authority. A *New York Times* analysis of the 25 M.T.A. agency presidents who have left over the past two decades found that at least 18 of them became consultants or went to work for authority contractors, including many who have worked on expansion projects.[167]

The MTA Inspector General has investigated one case related to post-employment in which a Vice President/Chief Mechanical Officer handled a large contract for 300 subway cars with Bombardier and sought employment with them.[168] The investigation noted that "Bombardier was seen as attempting to lure away a high level employee from NYC Transit while simultaneously trying to sell them subway cars," and an employee of the company "explained further that this type of sensitivity to the timing of career moves is necessary and common in an 'intimate,' 'incestuous' transportation market." The MTA IG referred the case to JCOPE, which settled the case with no civil penalties.[169]

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[166] MTA. All-Agency Code of Ethics, Section 3.04 Senior Management Attendance at Prohibited-Source-Sponsored Events

[167] Rosenthal, Brian. "The Most Expensive Mile of Subway Track on Earth." December 27, 2018. The New York Times. https://www.nytimes.com/2017/12/28/nyregion/new-york-subway-construction-costs.html

[168] MTA Inspector General. "Report on the Integrity of the R179 Procurement." March 2012. http://mtaig.state.ny.us/assets/pdf/12-03.pdf

[169] JCOPE Substantial Basis Investigation Report, Mario Guerra. April 2013. https://www.jcope.ny.gov/system/files/documents/2017/12/mario-guerrasubstantial-basis-investigation-report-and-settlement-agreement.pdf

The MTA IG subsequently issued a report with recommendations for revisions to the MTA Vendor Code of Ethics. However, no recommendations were made to revise the MTA All-Agency Code of Ethics that governs employees.[170]

6. Political Contributions by Board Members

The MTA Ethics Code notes in Part 4.06 that Board members are prohibited from making political contributions to the Governor, pursuant to an executive order initially put in place by Governor Eliot Spitzer, and continued by Governors Paterson and Cuomo. The code further states that "No Board Member *may request or demand that any other person* make or offer to make any monetary contribution to the campaign of the Governor." It is not specified whether this relates to contributions by Board members' spouses or businesses. The intent of the executive order was to ensure that employees and Board members were acting in the public interest and are "able to pursue the interests of the public in an environment that is free from political party influence or interference."[171]

A *New York Times* analysis of contributions made by board members of public authorities and other government commissions shed light on contributions that were being made in spite of the executive order.[172] The MTA has the ability to clarify the order and affirm its continued application, yet has not done so.

Looking Forward

The MTA's Board Code of Ethics and All-Agency Code of Ethics should be amended to follow best practices and address widespread public concerns about conflicts of interest. The standards set in state law under the Public Officers Law and Public Authorities Law should be considered a floor, not a ceiling. Policy solutions in this area are provided in the recommendations section of this report.

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[170] Letter from the MTA Inspector General to the MTA Chief Compliance Officer Regarding Strengthening the MTA Vendor Code of Ethics. March 2012. http://mtaig.state.ny.us/assets/pdf/12-04.pdf

[171] Executive Order 7 from Governor Paterson was continued by Governor Cuomo. See NYS Library archived website: http://worldcat.org/arcviewer/4/AO%23/2010/12/28/H1293463408438/viewer/file2395.html

[172] Goldmacher, Shane, Rosenthal, Brian, and Amendariz, Agustin, "In Spite of Executive Order, Cuomo Takes Campaign Money From State Appointees." February 28, 2018. The New York Times. https://www.nytimes.com/2018/02/24/nyregion/cuomo-fund-raising-ethics-appointees.html

Operating and Management Failures

Beginning in 2016 and through 2017, MTA/NYCT subways experienced a number of high profile failures that created a multitude of delays and disruptions in service. This service "meltdown" is the direct result of long-term and short-term mismanagement by the MTA. Let's look two causes of service disruptions: subway car maintenance and signal timers.

Deferred Maintenance of Subway Cars - A Predictable Failure

A recent study of the MTA's handling of subway car purchases and maintenance by the Citizens Budget Commission notes that even with the purchase of new subway cars, "keeping subway cars in good condition … requires regular inspections and preventive maintenance as well as scheduled replacement based on expected useful life."[173] The report goes on to say that funding shortfalls from the 2008 recession resulted in a number of budget reductions. In 2008, the MTA changed its maintenance schedule for its subway cars while also limiting its purchase of new cars. The MTA extended rehabilitation cycles from 6- and 12-year periods to 7- and 14- year periods, resulting in approximately 150 fewer cars being rehabilitated annually (in total there are 6,435 subway cars[174]). NYCT also extended inspection cycles for all but its two oldest car models from 11,000 miles or 71 days to 12,000 miles or 78 days.[175]

Though financial conditions improved, the maintenance schedules were not changed until things deteriorated significantly. The former Chairman of the MTA during that period, Jay Walder, noted in a New York Times investigative report that these cuts should have been revisited when the economy bounced back, saying, "The difficult choices you make during a crisis aren't necessarily the same choices you make when times are good."[176]

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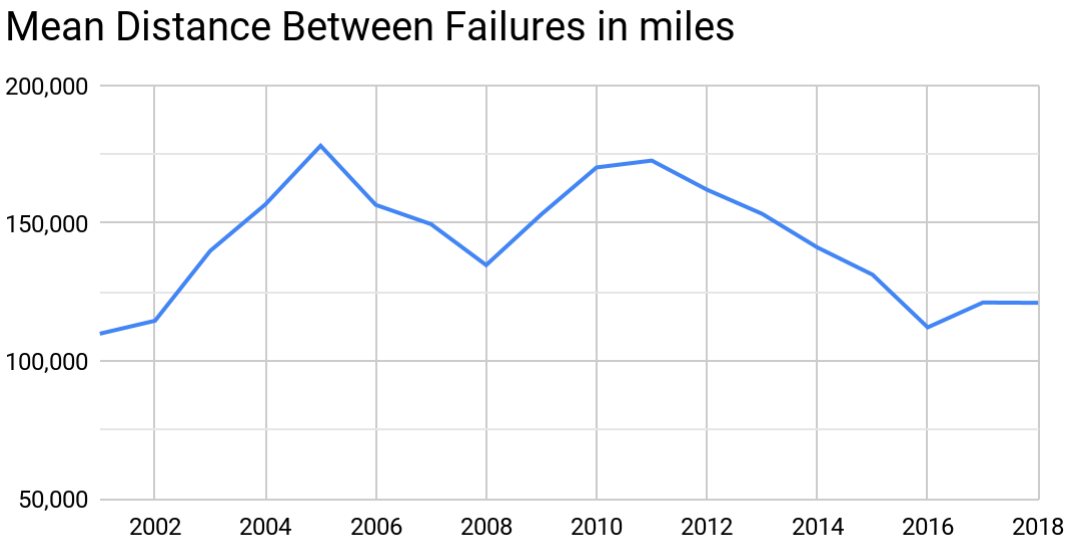
[173] Citizens Budget Commission. "Getting Back on Track; Replacing and Repairing Subway Cars Will Be Expensive and Take More Than a Decade."
[174] MTA New York City Transit at a Glance. http://web.mta.info/mta/network.htm
[175] Ibid.
[176] Fitzsimmons, Emma and LaForgia, Michael. " How Cuts in Basic Subway Upkeep Can Make Your Commute Miserable." New York Times. December 20, 2017. https://www.nytimes.com/2017/12/20/nyregion/system-failure-new-york-subway-maintenance-misery.html

It is perhaps not surprising that following these choices, service began to decline. The mean distance between failures of its subway cars is a key performance metric used by the MTA in reporting on its success in fulfilling its mission. After peaking in 2011, this metric showed a large decrease in performance. As noted by the Citizens Budget Commission, from 1994 to 2009 NYCT implemented a new system of scheduled inspections and maintenance to keep cars in good repair, keeping pace with the replacement of cars in the capital plan, resulting in record levels of reliability. In 2011, the mean distance between failures reached 172,700 miles. By 2016, this had fallen to 112,208 miles. Gains in 2017 and 2018 were minimal (see chart below).

Figure 17[177]



While the MTA has since worked to reverse these declines with the Subway Action Plan and other initiatives[178], these changes came too late for riders who suffered through long delays in 2016 and 2017.

[177] MTA 2011 Annual Report. http://web.mta.info/mta/compliance/pdf/2011_annual/2011Narrative.pdf MTA 2016 Annual Report. http://web.mta.info/mta/compliance/pdf/2016_annual/MTA_Annual_Report_Narrative.pdf see also March 2019 Governance Meeting Materials, http://web.mta.info/mta/news/books/pdf/190325_1530_Governance.pdf

[178] Citizens Budget Commission. "Getting Back on Track."

Poor Management of Signal Timers and Train Speeds

> "Faced with staff shortages, MTA put off inspections of one of the most critical components of the subway system. Transit acknowledges that malfunctioning switches and signals are one of the main causes of train delays and badly in need of repair, but it gave short shrift to preventative checks that could save riders aggravation and inconvenience."
> - NYS Comptroller Audit

MTA operations staff knew for years that malfunctioning signal timers, devices that restrict train speeds, are major cause of delays and reduced service. Yet, it took new leadership responding to the recent near collapse in subway service to finally ensure that the safety devices were operating correctly. NYCT and the MTA should look closely at why it took so long to properly manage signal timers, and why they were allowed to degrade service for so many years while operators and their supervisors were aware of these problems.

Following two major incidents related to the speed of subway cars – a 1991 derailment from an intoxicated driver, and a 1995 signal failure with a fatigued driver that caused a collision – NYCT instituted a 25 mile per hour (mph) speed limit on bridges and an acceleration limit of 1 mph per second.[179] It appears, however, that NYCT did not always recalibrate the signals correctly, and signals could be tripped even when drivers were going the new, correct speed limit. As a result, NYCT drivers didn't trust the signals and drove even slower than needed to avoid tripping signals.[180]

In a recent article for Gothamist, a union representative for train operators said, "You take your cues from the work culture from the training and they tell you to operate at five to seven miles per hour under the posted speed." This is in part due to the penalties for tripping the signals:a 5-day unpaid suspension for the first time, 10-15 days for a second offense and possible dismissal for a third offense. Additionally, most trains do not have a black box event recorder, so it is the operators' word against the MTA's.

[179] Levy, Alon. " The real reason New York City can't make the trains run on time." Vox. July 11, 2017. https://www.vox.com/policy-and-politics/2017/7/11/15949284/new-york-subway-crisis
[180] Ibid. See also Pearce, Adam. "How 2 M.T.A. Decisions Pushed the Subway Into Crisis." New York Times. May 9, 2018. https://www.nytimes.com/interactive/2018/05/09/nyregion/subway-crisis-mta-decisions-signals-rules.html

Operators often lose their case, and infractions can stay on a worker's record for as long as 20 years.[181]

At the same time that train operators knew of these problems, the MTA failed to inspect more than 2,000 signal timers from 2015-2017, according to an audit by the State Comptroller's office. The Comptroller's audit stated, "Faced with staff shortages, MTA put off inspections of one of the most critical components of the subway system. Transit acknowledges that malfunctioning switches and signals are one of the main causes of train delays and badly in need of repair, but it gave short shrift to preventative checks that could save riders aggravation and inconvenience."[182]

A review of subway signals and signal timers is finally taking place under NYCT president Andy Byford's leadership under its SPEED Unit. To date, NYCT has found 320 faulty signals out of 2,000 total signals which are malfunctioning and forcing train operators to pass at slower speeds, with 261 remaining to be fixed. While these are being addressed, drivers are being allowed to operate at faster speeds in 20 separate locations throughout the system, with the goal of improving speeds at 68 stretches in total.[183]

In a review by the Signal Problems blog of the Subway Action Plan and current NYCT management changes, Andy Byford concurred that maintenance is as much a management issue as well as a funding issue: "While [the Subway Action Plan] is good as far as it goes in terms of fixing infrastructure, I took the strong view that we also needed to…fix operational and cultural practices that, frankly, should have been addressed years ago … It's not rocket science, it's how you run a subway."[184]

While train operators knew that the signal timers were faulty, MTA leadership failed to correct what was an obvious problem for those who knew the trains best - one that has compounded the lack of proper prioritization in capital investments, which result in additional mechanical problems that cannot be fixed even with proper maintenance.

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[181] Nessen, Stephen. "The MTA Is Trying To Speed Up Your Ride By Searching For Faulty Signals." November 15, 2018. Gothamist.
http://gothamist.com/2018/11/15/mta_signal_timers_speeding.php#photo-1
[182] See the State Comptroller Audit at https://osc.state.ny.us/audits/allaudits/093019/17s6.htm, as well as Musumeci, Natalie, "Audit shows the MTA has let its signal system rot." New York Post. October 117, 2018. https://nypost.com/2018/10/17/audit-shows-the-mta-is-letting-its-signal-system-rot/
[183] Furfaro, Danielle. "MTA increases or eliminates speed limits on numerous subway lines." New York Post. January 21, 2019.
https://nypost.com/2019/01/21/mta-increases-or-eliminates-speed-limits-on-numerous-subway-lines/
[184] Gordon, Aaron. "The Subway Action Plan is not making the subway better. Here's what is." Signal Problems. February 10, 2019.
https://signalproblems.substack.com/p/paid-subscriber-sample-the-subway

Case Study: #7 Line CBTC Late and Over Budget

Communications Based Train Control (CBTC) is the cornerstone of NYC Transit President Andy Byford's efforts to modernize the system and end crippling subway delays. Yet the MTA has not explained how they will install CBTC in ten years instead of the previously planned 40 given its past performance with modernizing signals. According to a November 2018 analysis[185] by Reinvent Albany that has been updated for the purposes of this report, the Flushing Line/#7 Line's CBTC upgrade is more than 5 years late and at least $158 million over budget. This project could offer key lessons to the MTA and its vendors on how to deliver on future CBTC projects.

The project is now going on 16 years in the making, with design work planned to begin in 2003, under the 2000-2004 Capital Plan. Phase 1 – the work being finished now – was slated to start in 2007, with the MTA planning to commit substantial funds at that time. Yet the actual contract was not awarded to the vendor, Thales, until 2010, 3 years later. The work with Thales had a planned completion date of November 2016, but was not in service until November 2018, 2 years later, and as of the writing of this report, was expected to be completed in January 2019.[186] This ultimately puts the project more than 5 years behind the schedule originally planned by the MTA.

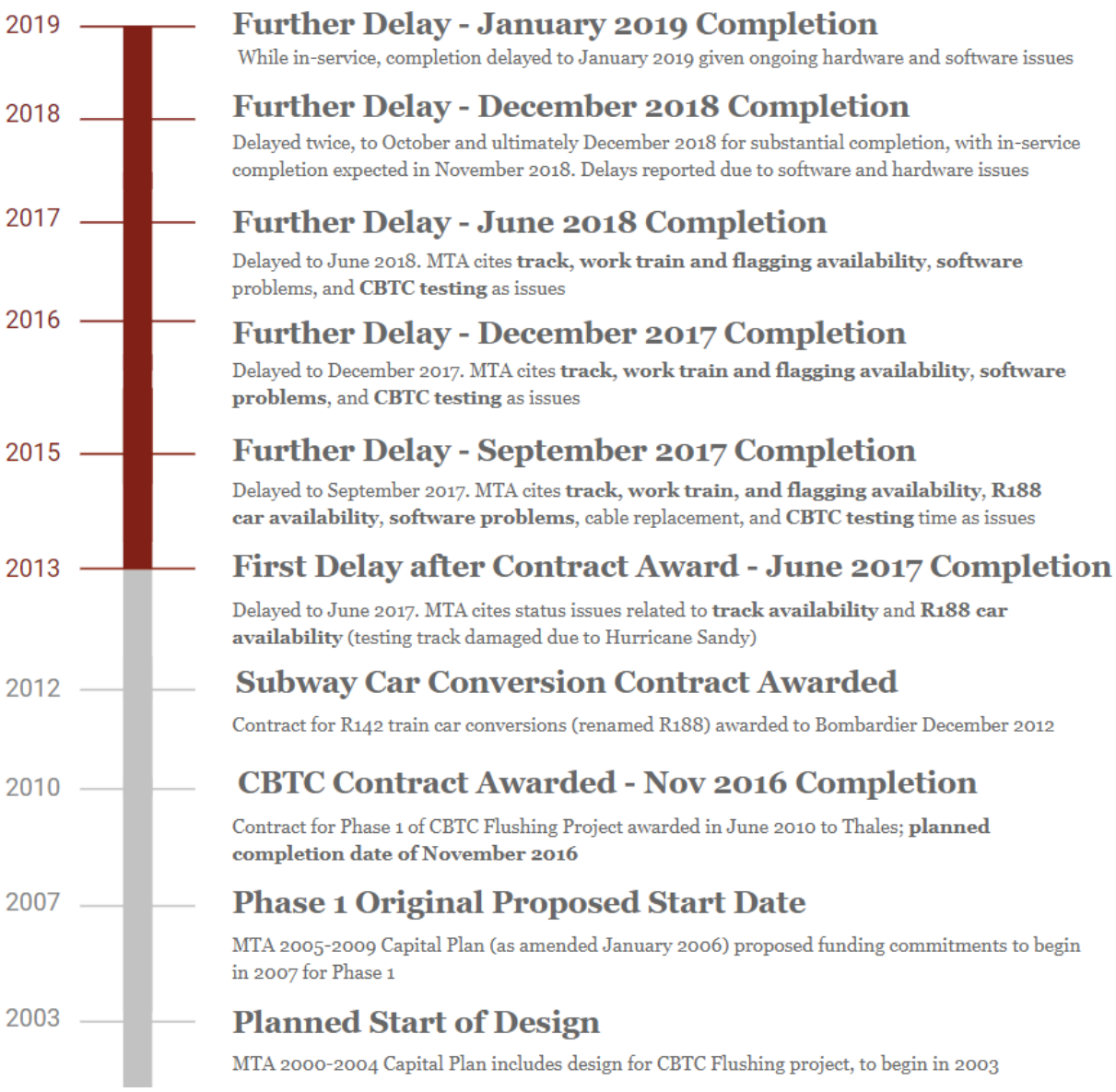
On the next page is a timeline of the CBTC project on the 7 Line, as analyzed by Reinvent Albany from the MTA's capital plans and information provided to the Capital Plan Oversight Committee of the MTA Board.[187]

[185] Reinvent Albany. "MTA's 15 Year Effort to Modernize Signals on #7 Line Raises Major Questions." November 13, 2018.
https://reinventalbany.org/2018/11/flushing-7-train-cbtc-signals-late-and-over-budget-what-lessons-will-the-mta-learn-for-systemwide-modernization/

[186] MTA. Capital Program Oversight Committee. January 2019 Materials. See Page 70.
http://web.mta.info/mta/news/books/pdf/190122_1400_CPOC.pdf

[187] See original analysis for links to sources.
https://reinventalbany.org/2018/11/flushing-7-train-cbtc-signals-late-and-over-budget-what-lessons-will-the-mta-learn-for-systemwide-modernization/

Figure 18
Timeline of Flushing CBTC Delays



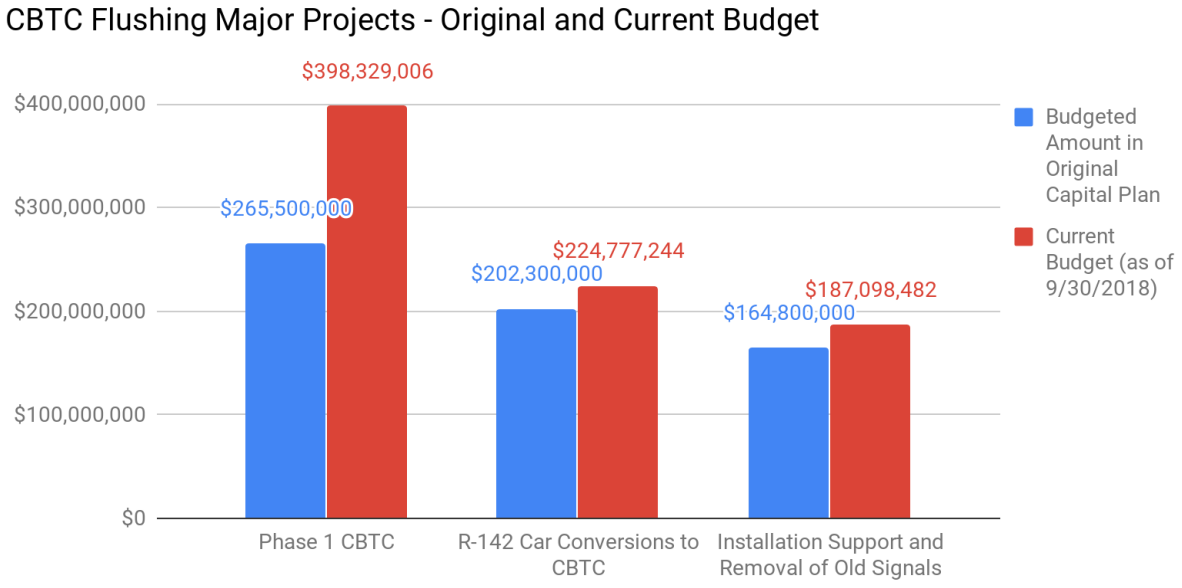
In reviewing CPOC's board materials since 2011,[188] Reinvent Albany found a pattern of problems that contributed to delays. Before this analysis, the MTA Board had never received a report from the MTA staff about the problems encountered over the lifetime of the project. Instead, they have received periodic reports that reflect a snapshot in time, often with re-baselined information that hides original costs and timelines.

[188] MTA. CPOC Archives. http://web.mta.info/mta/news/books/cpoc_materials.htm

Since 2011, MTA staff has reported to CPOC that software issues could cause delays in their staff reports 11 times, including as recently as January 2019. MTA staff also repeatedly raised concerns about construction delays caused by their inability to suspend service and close tracks. "Track availability" – the ability of the MTA to close subway lines for work to be conducted, also called "General Order (G.O.) availability" – was raised as a concern 9 times. CBTC testing was cited as an issue 5 times, and R188 car availability a concern 3 times (though it should be noted that Hurricane Sandy damaged test tracks that would have enabled this project to advance sooner).

According to data from the MTA's Capital Dashboard, the largest components of the CBTC Flushing project have all had price increases from the original proposed capital plan budget. The CPOC's November 2018 report cites $588 million as the total cost, which appears to be just for the Phase 1 construction and in-house support from MTA staff for installation and removal work. These projects were originally slated to cost $430 million, meaning that these components alone are approximately $158 million over budget. Another major component of the work includes conversion of the R-142 railcars to allow them to run on CBTC (now called R188 cars), which also saw a cost increase, albeit smaller one of about $22 million, up to nearly $225 million from $202 million. See below a chart of MTA Capital Dashboard data[189] (current as of 9/30/2018) and original capital plan information.

Figure 19



[189] Available at: http://web.mta.info/capitaldashboard/CPDHome.html

While the MTA has acknowledged that there isn't sufficient choice of vendors for CBTC, the results are unknown regarding the MTA's efforts to make the vendors' systems "interoperable" (allowing different vendor's software and equipment to be compatible) on a different CBTC project, Queens Boulevard (E/F/M/R). The project has two vendors, Siemens and Thales, sharing the contract[190], a "leader-follower" model for contracting that attempts to have a lead company work with another to share knowledge. In speaking with industry experts, Reinvent Albany heard skepticism regarding "leader-follower", as companies are accustomed to competing for contracts and keeping their knowledge proprietary.

Additionally, New York City Transit's President Andy Byford's *Fast Forward Plan* includes CBTC upgrades to 11 lines total, including continuing work on the 7, Queens Blvd (E/F/M/R), Culver (F) and 8th Avenue lines (A/C/E), over a 10-year period. After the first five years, an estimated 3 million subway riders would use CBTC-equipped train lines, going up to 5 million riders over a 10-year period. The *Fast Forward Plan* also proposes having all subway cars be CBTC-equipped, with all new cars purchased able to run CBTC, and old cars upgraded with new CBTC equipment.[191]

Given the scope of *Fast Forward*, it is crucial that the MTA learn from its past signal modernization efforts so that they can better perform in the future. MTA staff are in the best position to explain what lessons can be learned from the #7 Train CBTC project, and should provide a report to the public, legislators, journalists and outside experts of their analysis of what worked and didn't. While MTA Board meetings encompass a wide variety of issues, board materials are provided in summary form that would not lend itself to an in-depth analysis. MTA staff and vendors probably know what went right and wrong on the #7 CBTC project, but the public does not. As part of restoring public confidence and gaining public support, the MTA needs to be transparent about late and over-budget projects and explain how it is learning lessons that allow it to continuously improve.

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[190] Fore more information see MTA. "$205.8M in Contracts Approved to Install Communications-Based Train Control System." July 20, 2015. http://www.mta.info/news-cbtc-new-york-city-transit-subway-l-7/2015/07/20/2058m-contracts-approved-install

[191] MTA. Fast Forward Plan. Website https://fastforward.mta.info/ and May 2018 report https://fastforward.mta.info/s/Fast-Forward-Plan_05-24-2018_315PM.pdf

A Fragmented Freedom of Information Law (FOIL) Process

An area of MTA operations that speaks both to internal management and external transparency is the way in which they respond to requests from the public for information: under New York State law, this is the Freedom of Information Law (FOIL) process.[192]

The idea behind FOIL is that the public can ask for and get information on what government decisions are based on – information that we, the public, paid for with our taxes (and, in some cases like with the MTA, fares and tolls). Ideally, much of this information would already be online in an open format that is easy to search, download and use. But in 2019, the MTA is still a long way from putting important information online and in accessible formats. For journalists, researchers, and watchdogs that seek to hold the MTA accountable, that means FOIL is the only way to get certain records.

The failure to modernize the release of information is not just a problem for the public – it is also endemic of a fragmented process and represents an operational failure. Reinvent Albany in October 2018 released *FOIL that Works: Increasing MTA transparency and accountability by putting FOIL online*,[193] a comprehensive report which dug into the MTA's FOIL process and found a dysfunctional and fragmented mess. In conducting this analysis, Reinvent Albany reviewed the MTA's FOIL website, requested the MTA's logs of FOIL requests received in 2017, and examined other studies of the MTA's FOIL process. A summary of major findings from this original analysis is provided beginning on the next page.

The report also contained recommendations supported by fourteen city, state and national organizations[194], which are included in the recommendations section of this report.

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[192] For more information about the Freedom of Information Law see information from the NYS Committee on Open Government, https://www.dos.ny.gov/coog/freedomfaq.html

[193] Reinvent Albany. "FOIL that Works: Increasing MTA transparency and accountability by putting FOIL online." October 2018. https://reinventalbany.org/2018/10/comprehensive-report-foil-that-works-recommends-overhaul-at-mta-with-openfoil-and-online-incident-reports-recommendations-supported-by-13-groups/

[194] "Fourteen City, State and National Groups Urge MTA to Fix Dysfunctional FOIL Process — Put FOIL Online, In One Place." October 23, 2018. https://reinventalbany.org/2018/10/fourteen-city-state-and-national-groups-urge-mta-to-fix-dysfunctional-foil-process/

No MTA Agencies Provided Records Within the 20 Business Days Required by Law

On March 12, 2018, Reinvent Albany sent FOIL requests to eight MTA agencies:

1. MTA Headquarters
2. MTA Bridges and Tunnels
3. MTA Bus Company
4. MTA Capital Construction
5. MTA Police
6. NYC Transit
7. Long Island Rail Road
8. Metro-North Railroad

Reinvent Albany requested FOIL logs listing all Freedom of Information Law requests received by the agencies, including information about requestors, subjects of requests, and dates of receipt and closing, and final determinations. Despite the simple nature of the request, no MTA agency provided Reinvent Albany with the records within the 20 business days required under FOIL (Public Officers Law, Article 6, Section 89(3)).

MTA Bus never acknowledged receipt of the request. NYCT sent a hard copy letter to acknowledge the FOIL request, while all other agencies sent email responses.

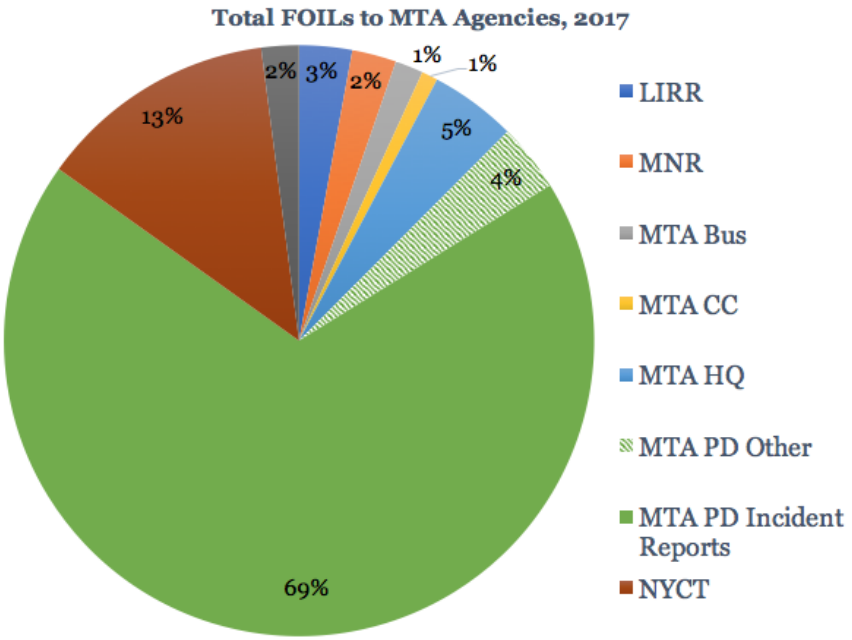
To get our request fulfilled, Reinvent Albany had to submit an administrative appeal to all eight MTA agencies we FOILed. Ultimately, the MTA agencies took between 52 and 64 business days to send the FOIL logs, well beyond the 20 business days required under FOIL for responses for simple records requests.

Most agencies (6/8) initially sent records in PDF, though the request was for CSV spreadsheet files (FOIL states that records must be sent in the form requested – FOIL logs are all tabular data that the MTA agencies keep in a spreadsheet format).

Two-thirds of MTA FOIL Requests are for Police Incident Reports

The MTA received at least 8,900 requests in 2017, with the majority coming to the MTA police department, mostly for incident reports (at least 6,112 in total). This high volume of incident requests points to the need for the MTA to provide a separate, online portal for the public to privately access incident reports (see recommendations for more details).

Figure 20



MTA Agency	Total 2017 FOIL Requests
Long Island Rail Road	258
Metro North Railroad	216
MTA Bus	137
MTA Bridges and Tunnels	183
MTA Capital Construction	79
MTA Headquarters	421
MTA New York City Transit	1,164
MTA Police Department	6,442
Grand Total	**8,900**

Records of MTA Agency FOIL Tracking Inconsistent, Incomplete

The FOIL Logs provided by MTA agencies had varying amounts of information and different formats, further demonstrating the MTA's fragmented approach to FOIL.

- Records provided by Metro North only included FOIL requests labeled "done," suggesting they did not provide the requested list of all FOIL requests, including those that were still pending.
- New York City Transit sent *less* information about FOIL requests than it had sent in response to a 2013 Reinvent Albany request. That year, NYCT sent FOIL logs that included the topic of the FOIL request (which is required under FOIL case law.) In 2018, NYCT did not send the topics of the requests.
- MTA Capital Construction was the only agency to provide details regarding the organizations/companies initiating the 79 FOIL requests they received. The majority of their requests, 38% (30), came from the press, with one-third, or 33% (26), coming from law firms that represented contractors or individuals pursuing personal injury cases. An additional 14% (11) came directly from contractors.

MTA Closes FOIL Cases, but Doesn't Necessarily Provide Records

Reinvent Albany was able to determine the status of requests and the time it took to "close" them for 6 of the 8 MTA agencies. Metro North Railroad and the MTA Police Department did not provide sufficient data for this analysis, despite the latter receiving over two-thirds of all requests. (Note that closures may include requests that were denied, or partially fulfilled, and do not mean that requested records were provided.)

- More than half (61%) of requests that were "closed" by the agencies were done so within 20 days, the timeframe required under law for simple FOIL requests. (Note this does not include cases that remained open.)
- In 2017, it took MTA agencies an average of 32 business days to close a request.
- Long Island Railroad and MTA Capital Construction had the longest average time to close requests at 42 days each, followed by New York City Transit and NYC Bridges and Tunnels at 39 days each.
- MTA Bus and MTA Headquarters closed cases on average within 11 and 10 days, respectively.
- In 157 cases (8% of the total), however, requests took more than 100 business days to be closed.
- New York City Transit had the highest percentage of open requests (19%), followed by MTA Capital Construction (11%), and MTA Headquarters (9%).

- There were still 277 FOIL requests to MTA agencies from 2017 that had not been fulfilled as of the date that logs were sent (between May 30th and June 15th, 2018). On average, FOILers had been waiting 212 business days.
- As of June 15, 2018, New York City Transit had 216 unfulfilled FOIL requests from 2017. On average, FOILers had been waiting 215 business days.

Outside of requesting the MTA's FOIL logs, Reinvent Albany has requested other information via FOIL from the MTA and found a troubling lack of responsiveness. Simple requests have often taken more than 20 days, and requests involving contracts remain unfulfilled as of the time of this report. One request for the MTA's capital plans from 2000-2004 and the original, non-amended version of the 2005-2009 plan, which are not currently available online, was stated to take 90 days (PDFs of the 2010-2014 and 2015-2019 plans are available via the MTA's website). Another request regarding contract data took 76 days to fulfill, and only included partial data. Another request to NYCT for an organizational chart was never acknowledged, despite a follow-up request.

Best Practices for Open FOIL and Incident Reports

The MTA lags badly behind other governments, both local and federal, in its handling of Freedom of Information Law requests. Online portals for requesting information, tracking requests, and online posting of released records provide important models for the MTA to follow. These include New York City's Open Records Portal,[195] the federal FOIAOnline portal,[196] the LA Metropolitan Transportation Authority's Public Records Request Portal,[197] Port Authority of New York and New Jersey's Public Records Portal,[198] and data released by Montgomery County Maryland via its Open Data portal.[199]

When it comes to freedom of information requests, the Port Authority of New York and New Jersey is light years ahead of the MTA. Like the MTA, it is a large public authority that operates rail and bus transit, collects tolls and has complex sub-entities. Since 2012, the Port Authority's Public Records Access website[200] has shown the public who is

[195] New York City. Open Records Portal. https://a860-openrecords.nyc.gov/
[196] FOIA Online, https://foiaonline.regulations.gov/foia/action/public/home
[197] LA Metro Public Records Request Portal, https://records.metro.net/requests
[198] Port Authority of New York and New Jersey, "Public Records Fulfilled Requests." http://corpinfo.panynj.gov/pages/public-records-fulfilled-requests/
[199] Data Montgomery, "Maryland Public Information Act (MPIA) Request Responses," Montgomery County Government. https://data.montgomerycountymd.gov/Government/Maryland-Public-Information-Act-MPIA-Request-Respo/99ya-kjjr
[200] https://corpinfo.panynj.gov/pages/public-records-fulfilled-requests/

making FOI requests, what they are asking and what records they are given by the Port and its subsidiaries. The former Executive Director of the Port Authority, Pat Foye (who is now the MTA's CEO/Chairman), noted the benefits of its improved records access policy: "The new FOI Code streamlines, modernizes, and clarifies an out-of-date system that was clearly not meeting the public's needs. By holding ourselves to a higher standard of transparency and by voluntarily posting online thousands of documents now, we make the agency a stronger and more accountable institution."[201]

"The new FOI Code streamlines, modernizes, and clarifies an out-of-date system that was clearly not meeting the public's needs. By holding ourselves to a higher standard of transparency and by voluntarily posting online thousands of documents now, we make the agency a stronger and more accountable institution." - Pat Foye, Former Executive Director of the Port Authority of New York and New Jersey, and current MTA CEO/Chairman

Additionally, the Port Authority is among many agencies, including the NYS DMV, NYPD, and Pennsylvania State Police, that use a separate police incidents portal for the public to privately access records, helping lessen the number of FOIL requests coming in for these reports. (Two-thirds of all MTA-related FOIL requests are for incident reports, as noted previously.)

The MTA is also not included in Governor Cuomo's "Open FOIL NY" upgrade[202], which created a central portal for submitting FOIL requests to New York State agencies – 59 other agencies and public authorities such as the Economic Development Corporation. This platform includes an OpenFOIL "Reading Room" of commonly requested records.

One of the easiest ways for the MTA to show that it is serious about improving transparency is to bring its Freedom of Information Law (FOIL) process into the 21st century. This means putting it fully online with an OpenFOIL website, modeled on the successful platforms already used by the Port Authority of New York and New Jersey, and as developed by the Obama administration for federal agencies. It also means offloading police incident reports into a separate, private portal for those seeking only those records. Policy proposals in these areas are provided in the recommendations section of this report.

[201] Port Authority of New York and New Jersey. "Port Authority Makes Major Enhancements to How Agency Will Release Public Records to Provide Greater Transparency and Accountability." March 29, 2012 http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1553

[202] See https://www.ny.gov/programs/open-foil-ny

Fake Openness: Public Drowning in Fragments of Online Information

The MTA has massive amounts of data on its website, yet the public is drowning in these fragments of information because much of what is provided is frustratingly incomplete and not provided in open, machine readable formats. Data about projects and contracts is sprinkled throughout various PDF documents rather than provided in its original, tabular form, making it difficult for the public and stakeholders to connect the dots, track spending, and check progress.

The MTA knows that it has a credibility problem and has historically struggled with telling the truth, especially when it is painful. Former CEO/Chairman Lhota stated at the release of the *Fast Forward* Plan in May 2018 that "since I've been here it's been all about trying to convince folks about our credibility."[203] NYCT President Andy Byford has made transparency a commitment of the *Fast Forward Plan*: "This is about giving New Yorkers a modern efficient dynamic and accountable transit organization that delivers on its promises and puts customers first … one that is built around customer centric continuous improvement model one that emphasizes transparency and accountability and one that delivers going forward delivers on its promises."

"This is about giving New Yorkers a modern efficient dynamic and accountable transit organization that delivers on its promises and puts customers first … one that is built around customer centric continuous improvement model one that emphasizes transparency and accountability and one that delivers going forward delivers on its promises." - NYCT President Andy Byford, announcing Fast Forward

It remains to be seen if new leadership will be successful in changing these cultural problems and addressing the issues covered by this report, including: the integrity of its performance metrics; the lack of a commitment to open data, particularly for budget and capital plan documents; its failure to better understand its riders; and its need to better understand itself through modern, transparent asset management. These issues are discussed in the following pages, with full policy proposals in the recommendations section.

[203] MTA Board Meeting, May 2018. Youtube. https://youtu.be/LYisjAjvOhs?t=2307

Recent MTA Transparency Efforts - Service and Performance Information

Progress on Developer Data and Real Time Service Information

Under the leadership of former Chairman Jay Walder (2009 - 2011) and with the support of the NYC tech community, the MTA began to place an important emphasis on open data, hiring developers to push out MTA trip and service data. It hired in-house open data experts to support outside developers in this work. This has resulted in a proliferation of third-party apps[204] to help riders navigate the system and make smart choices about their commutes, improving the commutes of many riders.

The effort to provide trip and service information to developers has been complemented by the installation of bus and subway countdown clocks, which have helped to bring more real-time data to riders on site. The accuracy of these countdown clocks, however, relies on the sophistication of technology on each subway line. That means information on the L line, which has fully installed CBTC, is far more accurate than other lettered lines where the time only reflects what station the train most recently departed. The MTA has stated, however, that they are continually rolling out upgrades every 6 months or so.[205]

These efforts have unfortunately lost some steam, as the MTA's IT staff has been hit with a hiring freeze as noted previously, and is potentially losing out on new, more diverse talent that could drive the initiative forward to its full potential and extend the open data efforts beyond real-time service information, such as for the MTA's budget.

[204] See here for the MTA's list: http://web.mta.info/apps/#
[205] Pastor, Jillian and Henderson, Natalie. "Think the MTA Countdown Clocks Are Off? It Might Be the Line You Ride" NBC News 4. May 2018. https://www.nbcnewyork.com/news/local/Think-the-MTAs-Countdown-Clocks-Are-Off-Depends-What-Line-You-Use-482199091.html

Measuring Performance

As part of the MTA's requirements under Public Authorities Law, the MTA must set performance goals (key performance indicators or KPIs – which are also a familiar term in the private sector) in fulfillment of its mission,[206] and provides regular reports on performance metrics to the MTA Board, as well as in annual reports.[207]

The budget that was just passed in Albany in April 2019 includes a number of requirements for the use specific performance metrics, largely borrowed from Transport for London, which are defined in law, including:

- Additional platform time
- Additional train time
- Customer journey time and excess journey time
- Elevator and escalator availability
- Major incidents metrics
- Staff hours lost to accidents
- Terminal on time-performance

On-time performance is defined as arriving within 2 minutes of scheduled time. Note that 2 minutes for the subway is very different than for Metro North and Long Island Rail Road, which are required to use the same standard though the frequency and length in terms of mileage of service are very different.

The new law also requires the MTA to publish weekly performance reports for NYCT, LIRR and MNR, as well as release of an annual report with international benchmarking on costs per mile for operating and maintenance, as well as staff and contractor hours for passenger journeys, and staff hours lost to accidents. Lastly, the law requires release of an annual implementation report for the Legislature and Governor by December 31st every year, which will be posted on the MTA website.

[206] MTA Mission Statement, http://web.mta.info/mta/compliance/pdf/MTA_Mission_Statement.pdf
[207] These annual reports are provided as part of the MTA's compliance website - See the 2005 report here, http://web.mta.info/mta/investor/pdf/2005_annual_report.pdf and subsequent reports here: http://web.mta.info/mta/compliance/disclosures.html

Current performance metrics are also now available on the its performance dashboards for the NYCT subways, buses, elevators and escalators; Access a Ride; LIRR; Metro North; and Bridges and Tunnels.[208] These dashboards allow data to be downloaded in bulk via an excel spreadsheet file, though are not available via application programming interface (API), which would allow third-party software developers to automatically publish data in real-time as updates are made.

Overtime, the MTA's performance metrics have changed as the result of both public pressure for accuracy, as well as MTA leadership decisions. Reinvent Albany reviewed the use of subway performance indicators from 2001 to 2017 in annual performance reports (the 2018 report has not yet been released), as well as the MTA's reported performance in some of these areas. The following major metrics have used in the annual reports as well as the subway performance dashboard:[209]

- **Annual Ridership** - the number of passengers that pay a fare, either directly or via reimbursements. Free transfers are counted as additional passengers.
- **Mean Distance Between Failures** - Average number of miles a subway car travels in service before a mechanical failure makes the train arrive at its final destination later than 5 minutes (see discussion of this issue regarding operating failures earlier in this report).
- **Wait Assessment** - The percent of actual intervals between trains that are no more than the scheduled interval plus 2 minutes during peak hours (6 AM - 9 PM) and plus 4 minutes during off-peak hours (9 AM - 4 PM) and 7 PM - midnight). The data is based on a sample methodology with a 12-month rolling average (taking the average of each of the last 12 months).[210]
- **On-Time Performance** - since 2009, this has represented the percent of trains making all the scheduled station stops arriving at the destination terminal on-time, early or no more than five minutes late.
- **Major Incidents (2015 onward)** - these are incidents that delay 50 or more trains. They currently fall in to six categories (summarized):
  1. Track - Track fires, broken rails, switch trouble, and other track conditions.
  2. Signals - Signal and track circuit failures, both for conventional signals and for new technology Communications-Based Train Control (CBTC) signals.

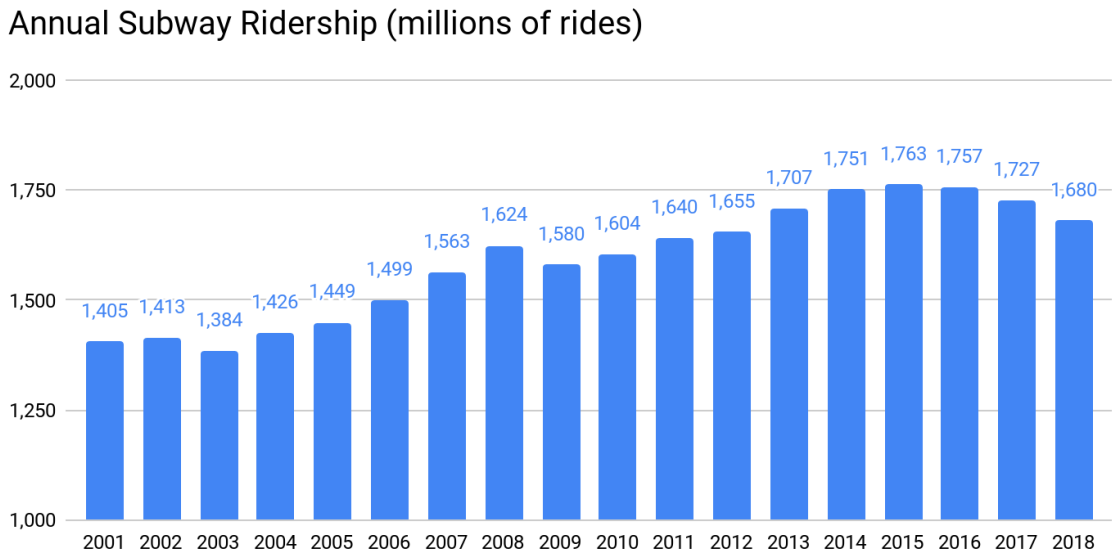
[208] MTA Performance Dashboards http://web.mta.info/persdashboard/performance14.html
[209] The annual reports do not provide the methodology for these metrics, however, they are available via the "Developer Resources" section of the website here: http://web.mta.info/developers/performance.html and the FAQ section of the subway performance dashboard: http://dashboard.mta.info/Help
[210] Note that the current methodology on the Subway performance dashboard notes that the standard is no greater than 25% more than the scheduled headway. http://dashboard.mta.info/

3. Persons on Trackbed/Police/Medical - Police and/or medical activity due to sick customers, vandalism, assault, persons struck by trains, etc.
4. Stations & Structures - Obstructions and other structural problems, such as damage to tunnels or debris; electrical problems that aren't on trains.
5. Car Equipment - Broken doors, seats, windows, lights, brakes, and other problems such as power or air conditioning failures.
6. Other - Inclement weather, water conditions, external power supply failures, drawbridge openings, nearby fires, civil demonstrations, and/or parades.

- **Weekday Service Delivered (2015 onward)** - this measures the ability to deliver the scheduled service, which is measured along the busiest part of the line and reflects service across the entire line. This is reported as the percentage of scheduled trains provided during peak hours (also referred to as throughput).

The Subway Action Plan includes two new performance measure: "additional platform time" and "additional train time." The MTA's 2017 annual performance report notes that the indicators are "subject to periodic adjustment." While it is important to ensure that the indicators are incisive and provide meaningful information, it obscures transparency when the motivations for changes are not fully explained.

Figure 21[211]



Since 2001, ridership on the subways steadily increased until 2015 to 1.763 billion rides. It then began to decrease to 1.727 billion in 2017. Preliminary numbers for 2018 indicate that ridership continued to decline to 1.68 billion.[212] This is a greater decrease than projected according to a July 2018 analysis by the MTA. This July 2018 analysis also speculated as to the reasons for decreased ridership, such as a rise in vehicle registration, the emergence of ride-hailing services such as Uber and Lyft, growing e-commerce with fewer local retail jobs, and increased telecommuting, among other factors. The report noted that 7 large construction projects resulted in 11% of weekday ridership declines. It also spoke to the effect of fare evasion, though noted that for the subways, it was "Not a major contributor to the overall share in declining subway ridership."[213] The staff report did not discuss the effect of deteriorating service on ridership, even though Board members had asked for this analysis.[214]

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[211] Reinvent Albany analysis from MTA annual reports and March 2019 Governance Meeting Materials.
http://web.mta.info/mta/compliance/disclosures.html
http://web.mta.info/mta/news/books/pdf/190325_1530_Governance.pdf
[212] MTA. New York City Transit Committee Materials. February 2019. Page 109
http://web.mta.info/mta/news/books/pdf/190225_1030_transit-bus.pdf
[213] MTA New York City Transit. Ridership Trends. July 2018
http://web.mta.info/mta/news/books/docs/Ridership_Trends_FINAL_Jul2018.pdf
[214] Berger, Paul. "MTA Blames Uber for Decline in New York City Subway, Bus Ridership." Wall Street Journal. July 23, 2018.
https://www.wsj.com/articles/mta-blames-uber-for-decline-in-new-york-city-subway-bus-ridership-1532386865

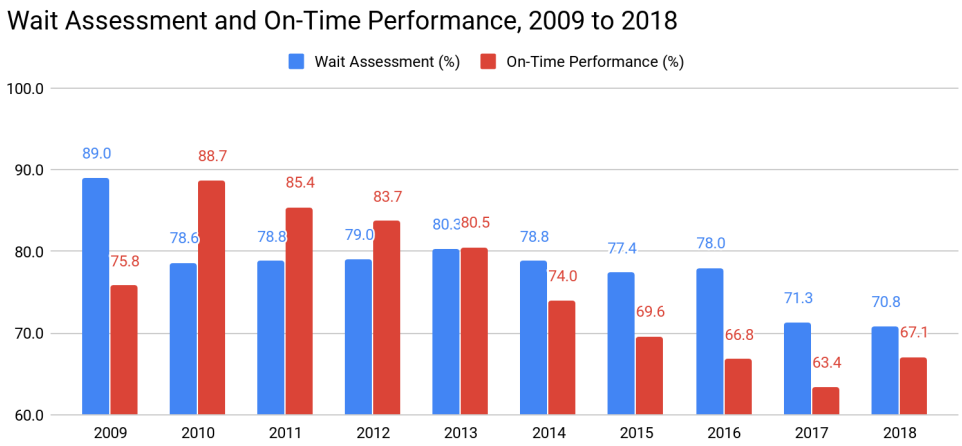
While the July 2018 report shed partial light on the issue of decreasing ridership, the discussion at the MTA Board level revealed that members of the Board had a perhaps disproportionate concern about fare evasion versus other causes of the decrease, as they discussed this issue at length. It also dominated press and Board attention again at a December 2018 MTA Board meeting where the MTA released a follow-up report.[215]

"Wait Assessment" as a Flawed Metric

Two other metrics used by the MTA – the "wait assessment" (how often the intervals between trains are 25% more than the scheduled headway) and on-time performance – showed steep declines as well through 2017. There have been recent gains regarding on-time performance in 2018 and early 2019, but it is unclear whether it has resulted from scheduling changes which reduced the number of trains or upgrades from the Subway Action Plan.[216] Performance is considered on-time if within 5 minutes of its scheduled time of arrival. MTA riders generally do not plan on particular train times, however, and it was recently revealed that the MTA definition of "good service" provided on its website also relies on this five-minute window. Planned headways vary depending on the time of day, so a train can still be considered "on-time" with "good service" posted on the MTA website even with 13-minute waits between trains at peak times.[217]

[215] MTA NYCT. Fare Evasion at New York City Transit. December 2018. http://web.mta.info/mta/news/books/docs/special-finance-committee/Fare-evasion-board-doc_181130.pdf
[216] Fitzsimmons, Emma. "Why the 'Cursed' Lettered Lines in New York's Subway Are Worse Than the Numbered Ones." March 20, 2019. The New York Times. https://www.nytimes.com/2019/03/20/nyregion/subway-lines-schedule-on-time.html
[217] Offfenhartz, Jake. "MTA Admits That 'Good Service' Depends On Your Definition Of 'Good'." Gothamist. December 27, 2018. http://gothamist.com/2018/12/27/service_so_good_its_bad.php

Figure 22[218]



The wait assessment has been widely criticized for being inaccurate. While line-by-line figures are currently provided on the subway performance dashboard, this metric is averaged over the full system in annual performance reports. In two audits, the New York State Comptroller called for this metric to be weighted properly across the system, as separate lines do not have an equal numbers of stations.[219]

The New York City Comptroller issued a recent report that shows that MTA executive staff knew the wait assessment metric was inaccurate, yet continued to use it in public settings (emphasis added): "MTA executives were cautioned that changes in Wait Assessment scores subsequently highlighted to MTA Board members were meaningless and likely the result of sample error. When technological advancements … finally made clear that Wait Assessment scores had actually gotten worse … *the MTA quietly restated its previous inaccurate Wait Assessment results without disclosing that its earlier declarations of progress had been wrong*. Five months later, the agency began to emphasize new metrics for reporting subway performance."[220]

There is a cultural problem at the MTA in which staff deliberately reports information known to be inaccurate when it suits the narrative staff wants to project. This practice must stop, as it appeared time and time again, as shown in the following sections.

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[218] Reinvent Albany analysis from MTA annual reports and March 2019 Governance Meeting Materials. http://web.mta.info/mta/compliance/disclosures.html http://web.mta.info/mta/news/books/pdf/190325_1530_Governance.pdf

[219] Office of the NYS Comptroller. Subway Wait Assessment Report 2017-F-7. October 2017. https://osc.state.ny.us/audits/allaudits/093018/17f7.pdf

[220] Office of the NYC Comptroller. "The Crisis Below: An Investigation of the Reliability and Transparency of the MTA's Subway Performance Reporting." February 8, 2019. https://comptroller.nyc.gov/reports/the-crisis-below-an-investigation-of-the-reliability-and-transparency-of-the-mtas-subway-performance-reporting/#_ftn2

The Blame Game

Performance data does not always speak for itself, and the MTA has engaged in deliberate misleading of the public regarding this data. A New York Times investigation from 2017 interviewed three former high-ranking subway officials who said that before final delay reports are issued, M.T.A. departments argue about who should be blamed, with reports reflecting more on a department's arguing ability than on its actual performance.[221] This culture must change if the MTA would like to fulfill the promises made by the *Fast Forward* plan to become an accountable institution that puts riders first and emphasises transparency.

Blame Game Part I: Riders

The public is rightfully skeptical about the data the MTA releases about its performance, there are numerous public accounts of staff manipulating data to obscure poor performance. Even more damagingly, the riders themselves have been wrongly blamed for service delays.

In 2017, at the recent low for service delivery, an MTA report showed that more than 111,000 delays were classified as due to "overcrowding" in the first four months of 2017 alone, representing 37 percent of all delays, even though month by month totals did not show a correlation with increased ridership. The same year, a New York Times investigation noted that "New York politicians and transit leaders have seized on the figures to suggest that most of the subway's problems come down to its popularity." [222] Further, as noted in the ridership totals, another New York Times investigation noted that while increases occurred on an annual basis, weekday ridership was relatively flat. Overcrowding became a catch-all category for delays without a clear cause, with the MTA neglecting to mention that some delays are caused by equipment failures or track work that disrupts regular service, in turn resulting in crowding on platforms.[223]

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[221] Rosenthal, Brian; Fitzsimmons, Emma; and LaForgia, Michael. "How Politics and Bad Decisions Starved New York's Subways." November 18, 2017. New York Times. https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html

[222] Rosenthal, Brian; Fitzsimmons, Emma; and LaForgia, Michael. "How Politics and Bad Decisions Starved New York's Subways." November 18, 2017. New York Times. https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html

[223] Pearce, Adam. "How 2 M.T.A. Decisions Pushed the Subway Into Crisis." May 9, 2018. New York Times. https://www.nytimes.com/interactive/2018/05/09/nyregion/subway-crisis-mta-decisions-signals-rules.html

NYCT President Andy Byford has since stated that overcrowding as a metric is "not particularly meaningful" and vowed to provide the public with more detailed information.[224] The New York City Comptroller's Office has stated that eliminating the metric is not enough, as "systemic deficiencies remain embedded in the MTA's performance reporting and continue to obscure the true causes of delays."[225] The Comptroller report on performance data went further to state that the MTA must release detailed methodologies of its performance metrics, such as what underlying data is included and what omitted, and that underlying datasets used to create the public performance data should also be released to the public.

Beyond delays, fare evasion as a cause of declining ridership has seem to be the current placeholder for blaming subway riders, who have faced decreasing service, for the MTA's troubles. A report released in December 2018 on fare evasion was criticized for its opaque methodology and limited datas, particularly as advocates and Board members have sought statistics on fare evasion as it relates to police enforcement for years.[226]

The total impact of fare evasion was cited as causing a loss of $215 million in 2018 – with the recent increase in fare evasion on the subways resulting in $53.1 million in additional losses, and for the buses a decrease of $57 million in revenue (fare evasion for buses was higher at 17.2% of riders, versus 3.2% of subway riders).[227] While the report notes other transit systems see evasion on average at 2.1%, discussion around the $215 million loss by the MTA Board did not consider whether the total amount is recuperable, and ignored that it is a drop in the bucket of the MTA's $17 billion operating budget.

Blame Game Part II: Outside Actors - Con Edison

Outside actors have also been used as scapegoats for the MTA for performance problems, as a New York Daily News investigation showed in January 2018 regarding power failures and service delays. After an investigation into subway power failures due

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[224] Nir, Sarah Maslin and Rosenthal, Brian "'Overcrowding' Is Not at the Root of Delays, Subway Chief Says." New York Times. February 20, 2018. https://www.nytimes.com/2018/02/20/nyregion/subway-delays-overcrowding.html

[225] Office of the NYC Comptroller. "The Crisis Below: An Investigation of the Reliability and Transparency of the MTA's Subway Performance Reporting." February 8, 2019.

[226] Jones, David. "Fight Fare Evasion with Affordability, not Policing." The Community Service Society. December 13, 2018. http://www.cssny.org/news/entry/fight-fare-evasion-with-affordability-not-policing

[227] MTA NYCT. Fare Evasion at New York City Transit. December 2018. http://web.mta.info/mta/news/books/docs/special-finance-committee/Fare-evasion-board-doc_181130.pdf

to Con Edison – an electric utility – the Governor Cuomo's office and leadership at New York City Transit revised MTA delay data to make power failures appear to be a more prominent cause of subway delays. The Daily News obtained emails from July 2017 wherein NYCT chief of staff Naomi Renek wrote to staff asking for a higher delay number on subway incidents related to power problems. By "expanding" the definition of such incidents, staff were able to work the number up to 32,000 incidents, all of which were blamed on Con Edison by the Governor the following August.

But internal emails later revealed that the MTA staffer asked to expand the definition believed that ConEd had actually only been at fault for 3,422 power-related delays – slightly more than a tenth of the stated number.[228] The emails' release came too late for Con Edison, however – the company will ultimately pay $202 million in repairs, as ordered by the Public Service Commission, which regulates utilities in the state.

Ensuring Credible Performance Metrics

Making sure that performance metrics of the MTA are credible should involve more than simple tweaks to individual metrics, and must be done as part of an overall commitment to open data, as discussed later in this report. The New York City Comptroller's Office recent report[229] on performance data includes a number of recommendations to given the public greater confidence in the MTA's numbers, including:

1. Structure public reporting of performance information to maximize transparency, reliability, and accountability and, as part of this effort, report all delays on its subway performance Dashboard.
2. Publish detailed definitions of all delay categories, specifically indicating what each one includes and, as necessary, omits.

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[228] Rivoli, Dan. "MTA brass pushed link between subway delays and power problems, causing Cuomo to blame Con Edison." New York Daily News. January 21, 2018. https://www.nydailynews.com/new-york/mta-brass-pushed-link-subway-delays-power-problems-article-1.3769202
See also August 2017 Press Release, "Governor Cuomo Announces State Orders Con Edison to Take Immediate Action to Guarantee Power Reliability Across the Subway System" https://www.Governor.ny.gov/news/Governor-cuomo-announces-state-orders-con-edison-take-immediate-action-guarantee-power

[229] Office of the NYC Comptroller. "The Crisis Below: An Investigation of the Reliability and Transparency of the MTA's Subway Performance Reporting." February 8, 2019.

3. Ensure that all procedures relevant to performance reporting are formally codified in official policies and procedures, including establishing written definitions and instructions for all key terms, data categories, and work protocols.
4. Train all relevant personnel on procedures relevant to performance reporting.
5. In the context of public reports of Major Incidents, provide the public with information about all categories of service disruptions that cause 50 or more delays tracked as incidents within Subway Incident Reporting System, including specifically Planned Work.
6. Transparently disclose in each Monthly Operations Report and on the MTA's subway performance Dashboard the methodologies used to calculate performance metrics, including all exceptions and revisions to those methodologies and methodological weaknesses.
7. Make available monthly on the MTA's website or through an Open Data portal all data in the SIRS database and any other databases relied on for public reporting.

The MTA should consider these recommendations, we well as the policy proposals in our recommendations section on transparency.

Budget and Capital Plan Transparency

Transparency at the MTA is a tale of two agencies. The MTA has done great things with rider service data, like real-time train arrivals and Bustime. But its fiscal transparency has lagged. It remains difficult for even informed members of the public to fully understand what the MTA spends its money on and who benefits from MTA spending. Despite the Public Authorities Reform Act (PARA), large amounts of MTA spending and activity is opaque and potentially at risk for corruption, insider dealing or pay-to-play.

Budget Information Locked Behind PDFs

Currently, the MTA publishes its budget information in PDF file format form, which is not readable by spreadsheet software. This means members of the public need to "scrape" or convert the pdf document into a spreadsheet form or hand-type endless columns of numbers. This makes it very hard for the public to check the MTA's math and gain real insights from MTA budget reports. Data in PDF format is not open government, it is fake transparency in the age of open data.

The MTA's annual budget documents include important information, ranging from revenue sources, operating budgets for each of the MTA's individual agencies, position

counts in agency departments, commitments to individual capital projects and forecasts for future. Yet the MTA does not succinctly report whether actual revenues and expenditures have matched up with their projections.[230]

Back in 2012 and again in 2014, Reinvent Albany and members of the NYC Transparency Working Group asked the MTA in writing[231] to make all financial data provided in board books available in CSV spreadsheet form. This would further compliance with Executive Order 95,[232] which created the NYS Open Data Portal and requires state authority data to be proactively released on the portal. Reinvent Albany also made recommendations to the MTA Transportation Reinvention Commission, asking it to adopt transparency as a core organizational value.[233]

Despite meetings with senior MTA leadership to discuss making the budget machine readable and the MTA's current open data initiatives, nothing further has happened. When probed at an oversight hearing by the State Senate regarding publishing its budget in open data format, staff stated that it had no plans to do so. This is not acceptable given that the MTA is subject to Executive Order 95. It is also perplexing given that Governor Cuomo's NY Open Budget website[234] presents all tables in the state budget in an machine readable and downloadable CSV format, in some areas going back all the way to 1994. The code of this platform is available in an open source format, and could easily be adapted by the MTA for its own information.

Public and MTA Board Can't Track Capital Project Delivery

The way that the MTA currently presents information about its capital plans does not allow the public and stakeholders to track whether projects are completed on-time and on-budget. This presents a large accountability problem, as late and over-budget projects have real impacts for the public as riders and taxpayers. What information is provided is not intended for general public consumption, but rather for the MTA Board

[230] See the MTA's most recent budget document, the 2019 Adopted Budget and 2019-2022 Financial Plan Adoption Materials, as approved December 2018. http://web.mta.info/mta/news/books/docs/MTA-2019-Budget-2019-2022-Financial-Plan-Adoption.pdf
[231] Summary of communications available at: https://reinventalbany.org/2014/07/reinvent-mta-transparency/
[232] Governor Cuomo. Executive Order 95. https://www.Governor.ny.gov/news/no-95-using-technology-promote-transparency-improve-government-performance-and-enhance-citizen
[233] Reinvent Albany. Make Transparency a Core Value of the MTA: Recommendations for MTA Reinvention Commission" July 17, 2014. https://reinventalbany.org/wp-content/uploads/2014/07/07172014_ReinventionMTA_Hearing_Transparency_testimony.pdf
[234] NY Open Budget. https://openbudget.ny.gov/

or staff. Even so, MTA Board members – volunteers without their own staff – have continually struggled with the amount of information they need to review in order to fulfill their fiduciary duty and perform their mandated oversight role, as the information they receive about progress is both overwhelming and incomplete at the same time. The MTA needs to drastically improve its transparency of capital plans, so that the public and MTA Board can connect the dots and hold them accountable.

These concerns are not new. In 2009, Citizens Budget Commission (CBC) conducted a thorough review of the MTA's implementation of its capital plans called *Working in the Dark*[235] which revealed that the MTA is vague about the exact status of its many projects. Due to the report and the work of CBC and others such as the Permanent Citizens Advisory Committee to the MTA (PCAC), the MTA has since created the Capital Dashboard, which tracks implementation of projects and publishes some data in downloadable format. The dashboard is a good step, but needs improvements to be truly useful as an accountability tool, and the MTA should re-engage with stakeholders about how to improve it.

It is not a coincidence that it is so difficult to track whether the MTA is living up to its promises on its capital plans; all of these projects are decided upon in a highly politicized environment. Political actors do not have an inherent interest in making decisions transparently, and the consequence is that details are often buried. The MTA's current reporting on implementation of its capital plans creates an accountability gap in which the MTA Board and public cannot properly hold the MTA accountable for delivery on capital projects. Reinvent Albany has identified the following major concerns regarding the MTA's reporting of capital program information:

- Reporting is scattered through myriad reports, almost entirely in PDF documents, providing the semblance of transparency without meaningfully allowing the public to connect the dots and see trends or changes over time. Information is reported inconsistently and often without data such as contract numbers and "needs codes" to identify the type of project (state of good repair versus expansion, for example).
- The goalposts for projects are moved as schedules and costs are often re-baselined, preventing the public from seeing the true scope of schedule and cost changes to budgets and contracts. This can be seen in the Capital Program Oversight Committee (CPOC) materials and the Capital Dashboard, where the current budget is provided on the first page you see rather than the original budget.

[235] Available at: https://cbcny.org/sites/default/files/MTA_Capital_Report.pdf

- Capital plans are amended and changed due to changing fiscal conditions as well as directives from the Governor, such as the recent Subway Action Plan. Projects may be added, merged or deferred to future plans, and this process is not easy to follow through the MTA's reporting of changes.
- It is unclear if the MTA is learning from both its successes and failures. Some projects come in on time or ahead of schedule, or have cost savings from favorable bids, but this information is hard to find. By not showing the complete picture for all projects, both the good and the bad are buried.

Monthly, quarterly, and even annual reports obscure changes to projects overtime, as they are often re-baselined based on current projections rather than original budget information, effectively showing less significant changes. These reports also don't provide a complete view of a project's success. Staff at times does attempt to summarize major changes, providing good detail in some cases and not enough in others. But the Board also relies on staff to reveal gaps in performance – something staff may not have the incentive to do.

Open Data Compliance

The MTA is not using best practices for open government such as fully open data standards. Indeed, many of its reports have been done the same way for more than a decade, despite changing expectations from the public about transparency and the widespread adoption of open data.

The MTA is subject to Executive Order 95, which requires it to post its public, tabular data on the state's open data portal, data.ny.gov.[236] Yet, there are only 75 datasets on the website, a relatively small amount for the largest government service provider in the state. The New York State Department of Health, in contrast, has 538 datasets on the portal, and has emphasized the liberation of health data, winning the praise of open government advocates and national foundations.[237] The MTA's datasets include various subway line maps, subway exit and entrance information, turnstile usage, traffic reports for the MTA's bridges, the list of contract solicitations from the MTA "Eye on the

[236] For the MTA's datasets, see: https://data.ny.gov/browse?Dataset-Information_Agency=Metropolitan+Transportation+Authority&utf8=%E2%9C%93

[237] Reinvent Albany. "Surge in Health Data Innovation: $2M Data Challenge and Leading Role for NYS." September 2013 https://reinventalbany.org/2013/09/knight-news-challenge-for-health-innovation-begins/

Future" newsletter (for years 2018 and 2019), Capital Dashboard information, Customer Feedback Data, and certain Ridership data, among other datasets. Yet this information is only a tiny subset of the wealth of data collected and maintained by the MTA.

While raw data from the MTA Capital Dashboard is included in the state's portal, it does not appear to be updated as frequently as the dashboard on the MTA website. It also appears that updates to datasets override prior data, and older reports are not archived. This means users do not see how the status of a project has changed over time, obscuring delays and cost overruns.

The MTA Has Limited Data On Riders and their Concerns

The MTA has surprisingly limited information about its customers and their concerns, according to what has been publicly released. Data on rider demographics can help the MTA better understand a number of matters, such as who is most affected by police bias, or to what extent MTA staff and Board reflect the passengers that they serve. Yet the MTA appears to have not conducted a public study of who rides the subway since 2008. In 2008, the MTA conducted a travel survey, which sought to "integrate household and demographic data" with travel data, allowing the MTA to make better planning decisions.[238] This survey provided some important information about the demographics of MTA riders, including median income race and age, yet is now a decade old.[239] Nothing on LIRR riders has come out publicly since 2014, while data for the MNR is virtually nonexistent.[240]

The MTA also conducts customer satisfaction surveys for its separate agencies, and has a general customer satisfaction survey on its website.[241] These attempt to understand riders' opinions, but as these are developed by MTA staff, they are not an independent assessment of rider concerns.

Bridges and Tunnels reviewed its 2017 survey at a April 2018 committee meeting of the MTA Board.[242] The report on the survey results broke down satisfaction by individual facility, included a discussion of the methodology, and in some areas provided data from years 2013 to present. The staff reported that they are seeking to reduce the number of "very unsatisfied customers," around the cashless tolling transition, but the report did not present next steps about how to improve customer satisfaction in any other area. The utility of the survey must therefore be questioned if there are not clear findings or next steps for improvement.

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[238] MTA Surveys: Facts and Findings. NYMTC Brown Bag. March 12, 2014. https://www.nymtc.org/portals/0/pdf/presentations/MTA%20Survey%20NYMTCBrownBag_03122014.pdf

[239] MTA. 2008 New York Customer Travel Survey. August 2009. http://web.mta.info/mta/planning/data/NYC-Travel-Survey/NYCTravelSurvey.pdf

[240] See MTA "Planning" website, http://web.mta.info/mta/planning/, and MTA 2008 Customer Travel Survey, http://web.mta.info/mta/planning/docs/MTA%20Travel%20Survey_061709.ppt

[241] MTA. Online Customer Satisfaction Survey, http://www.mta.info/welcome-mtas-online-customer-survey-initiative

[242] MTA. Bridges and Tunnels Committee. April 2018 Meeting Materials. http://web.mta.info/mta/news/books/archive/180423_1130_B&T.pdf

For New York City Transit, subway riders are asked to weigh in about station conditions in three areas for its "Passenger Environment Survey" (PES): physical appearance, equipment and information. This information is reported in its performance dashboard.[243] New York City Transit has in the past conducted "Rider Report Cards" for individual train lines to solicit rider feedback, but that practice has not been continued.[244]

The Fast Forward plan contains a customer satisfaction component, the "Customers Count" Customer Satisfaction Report[245] which includes reporting customer satisfaction scores on bus, subway and paratransit[246] (federally mandated service for disabled riders, called Access-a-Ride, which includes door-to-door service) by the end of 2018, as well as creating a new website and app. The website and app are currently in beta form, however, and the website directs you to the old customer feedback portal. The NYCT Committee received in January 2019[247] the second quarterly report on the "Customers Count" satisfaction report. Similar to the Bridges and Tunnels report, no clear next steps were provided regarding how the MTA staff can make improvements.

The MTA also has a customer feedback portal on its website[248], and receives comments and complaints through phone hotlines. The portal allows users to select particular agencies for their comments, dividing the information into five sections: "commendation," "complaint," "request," "suggestion," and "other." This portal is also used for FOIL requests. Data from this system is reported on the NY Open Data portal from 2014 to July of 2018.[249] It is unclear, however, if the MTA Board has recently received a presentation about what can be gleaned from this data.

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[243] See the performance dashboard at: http://dashboard.mta.info/
[244] NYCT. Press Release. "7 Rider Report Card Grades Are In. August 30, 2007." http://www.mta.info/press-release/nyc-transit/7-rider-report-card-grades-are
[245] MTA NYCT. Fast Forward Plan. Customer Service and Communication. https://fastforward.mta.info/customer-service-communication
[246] For more information see MTA Guide to Paratransit, http://web.mta.info/nyct/paratran/guide1.htm
[247] MTA. NYCT Committee materials, January 2019. See page 213. http://web.mta.info/mta/news/books/pdf/190122_1030_transit-bus.pdf
[248] MTA Customer Service Portal, https://mta-nyc.custhelp.com/app/ask
[249]

The MTA Must Better Understand Itself - Asset Management

As the largest service provider in New York State, the MTA should know what assets (valuable equipment which provides transit services) they own what condition they are in. Without an accurate inventory of assets, it is impossible to calculate how much maintenance is needed or expense required to achieve a state of good repair. In spite of these needs, it appears that the MTA has largely developed its asset management program in response to federal requirements, rather than upon its own initiative.

The MTA is required to abide by federal guidelines, as it receives federal funds for a number of its projects. These guidelines largely come from the Federal Transportation Administration (FTA), an agency within the U.S. Department of Transportation that administers funding.[250] One major federal requirement is for asset management - a system used to develop an inventory of the MTA's "assets," which includes everything from subway cars to repair equipment, their value, and needed repairs.

In 2016, the FTA issued regulation CFR Part 625, which created new requirements in the Transit Asset Management (TAM) plan process for recipients of federal funding for public transportation systems.[251] The TAM is defined as a "business model that uses the condition of assets to guide the optimal prioritization of funding at transit properties in order to keep our transit networks in a State of Good Repair (SGR)."

As the manager of the largest transit system in the country, the MTA is a "Tier I" provider, and responsible for implementing the full scope of requirements, including:

1. Inventory of Capital Assets
2. Condition Assessment
3. Decision Support Tools
4. Investment Prioritization
5. TAM and State of Good Repair (SGR) Policy
6. Implementation Strategy
7. List of Key Annual Activities
8. Identification of Resources
9. Evaluation Plan

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[250] Federal Transportation Administration. About FTA. https://www.transit.dot.gov/about-fta
[251] FTA Presentation on Transit Asset Management, July/August 2016. https://www.transit.dot.gov/sites/fta.dot.gov/files/TAM%20Final%20Rule%20Presentation%20NewMaster_111816.pdf

The MTA has discussed asset management strategies at the Board level under past and current leadership. According to the publicly available board materials, the MTA has deliberated on this issue as far back as at least 2013.[252] A presentation from that time notes New York City Transit's goals to move toward "whole life asset management" with a $5.6 million federal grant awarded to MTA to procure new IT systems to support new software.

In response to the new federal requirements, the MTA announced a $43 million effort to overhaul how asset management was handled, creating its current system, known as Enterprise Asset Management (EAM).[253] The goals of the new system were reported as the following:

- Upgrade and integrate systems to capture full asset life-cycle costs, including costs for acquisition, operating and maintenance, renewal and rehabilitation, and disposal;
- Standardize asset management policies, plans and processes across agencies;
- Systematize the documentation of asset condition, criticality and risk assessment, and develop proactive maintenance and outage practices;
- Improve work order management, reduce incidents, failures and defects;
- Streamline material management and facilitate better integration of capital and maintenance activities; and
- Develop organizational proficiencies, culture principles, and skill–sets necessary to sustain asset management as business as usual

The MTA's amended 2015-2019 capital plan[254] notes the EAM and the challenges the MTA faces regarding its assets: "…upkeep of a $1 trillion asset base in a 24/7 system is costly and complex. That's why today we're implementing the principles of 'Enterprise Asset Management,' or EAM, across the entire MTA—a whole-life approach to asset management, guided by new federal legislation and international standards. EAM introduces a more systematic approach to asset upkeep that will keep our assets running longer, with less downtime and at lower costs."

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[252] New York City Transit. Implementing Transit Asset Management. April 22, 2013. http://web.mta.info/mta/news/books/docs/130422AssetMgmt.pdf

[253] MTA. November Financial Plan. 2016-2019. http://web.mta.info/news/pdf/Presentation%20-%20MTA%202016%20Final%20Proposed%20Budget%20November%20Financial%20Plan%202016-2019.pdf

[254] MTA. 2015-2019 Capital Plan. As amended May 23, 2016. http://web.mta.info/capital/pdf/ArchivalReports/2015-2019_Capital_Program/WEBApproved2015-2019Program-May2016.pdf

In total, the MTA allocated $63 million for EAM systemwide as part of its 2015-2019 capital program support costs: $41 million for NYCT, $4 million for Bridges and Tunnels, $8 million for LIRR, and $13 million for MNR.

The MTA Board approved in March 2016[255] a contract for software to support the EAM system, awarding a nearly $27 million contract to Sygma Technology/INFOR for a 10-year period. The MTA used a Request for Proposals (RFP) process, publicly advertising the contract and sending the proposal to 84 firms; 6 proposals were received, with 2 firms selected by the MTA to make oral presentations. The MTA's Selection Committee determined that Sygma Technology/INFOR was "the most qualified and best suited to provide this software and maintenance."

INFOR publicized this award on its website[256], noting that the EAM system will standardize asset management, and provide managers with analytical tools to handle maintenance, strategic planning and reliability initiatives. They also note steps the MTA is taking to use the software:

> "To facilitate the standardization of such an asset-rich organization, the MTA has created a Program Management Office (PMO) to help manage Enterprise Information, Asset Management and Strategic Innovation. The primary mission of the PMO is to develop a blue print for a long-term asset management strategy that can be implemented agency-wide to lower costs, improve inventory and deliver efficiency. By partnering with Infor EAM, the MTA anticipates improved reliability, greater transparency and an extended asset lifecycle through predictive maintenance. The implementation is also projected to improve safety and customer satisfaction for riders by creating a more resilient infrastructure that operates based on repeatable, industry best practices."

In speaking with stakeholders on this issue, they noted to Reinvent Albany that the shortcomings of the federal TAM requirements relate to the lack of enforcement ability by the FTA. Plans will need to be assessed based on the definitions used by agencies for terms such as "good condition" for example, as they may not be standardized nationwide. New York City also has unique challenges; because its asset base is so old, it

[255] MTA Board. March 2016 Board Book. See Page 40 for Infor contract. http://web.mta.info/mta/news/books/archive/160323_1000_Board.pdf

[256] Infor. "New York MTA Selects Infor EAM to Modernize Asset Management." April 27, 2016. https://www.infor.com/news/new-york-mta-selects-infor-eam-to-modernize-asset-management

will be important to determine if assessments have been re-engineered in light of continual repairs over the years, and therefore it will be important to question the veracity of lifespan assessments. Despite these concerns, the MTA is likely to have one of the best submissions in the country due to it having the most staff and sophistication given its large size.

As noted previously, the MTA last conducted a 20-year needs assessment in 2013[257] for 2015-2034. This assessment informed its 2015-2019 capital plan and focused on two areas: rebuilding and expanding the system. The rebuilding component is as close to a public articulation of a state of good repair needs system wide as has been released by the MTA outside of its regular capital planning process.

The 2015-2034 needs assessment was criticized by the Citizens Budget Commission (CBC)[258] as being a planning document rather than a comprehensive report on the current condition of MTA assets, as it failed to live up to inventories that had been conducted under past leadership. The inventories by Dick Ravitch, Chairman of the MTA in the 1980s, were credited as providing the foundation for the MTA to request additional state funding to repair a broken system. CBC called on the MTA to develop a better asset inventory, and notes a potential model for the MTA to follow – Section 1110-a of the New York City Charter, which creates an annual Asset Information Management System Report, also known as AIMS. AIMS includes a full inventory of NYC agencies' capital assets, detailing for each component the date of construction or reconstruction, original cost, and a professional assessment of its remaining useful life and replacement cost.

The MTA is currently negotiating its first TAM plan submission, which was filed with the Federal Transit Administration (FTA) prior to the October 1, 2018 deadline. Additionally, the MTA is expected to release a separate 20-year needs assessment in advance of discussions around the next capital plan for 2020-2024. It remains to be seen what the MTA's asset plans will contain, and whether it will fulfill its stated goals.

There should also be concerns about the future of the EAM program, as the approved 2019 budget for the MTA contains reductions in staffing and scope. The total impact of

[257] MTA. Twenty-Year Needs Assessment, 2015-2034. October 2013. http://web.mta.info/mta/capital/pdf/TYN2015-2034.pdf
[258] Citizens Budget Commission. "The MTA's Closely Guarded Secret." December 2017. https://cbcny.org/advocacy/mtas-closely-guarded-secret

the budget reduction program for EAM program in 2019 by agencies is: NYCT (36 staff), LIRR (3 staff), SIR (1 staffer), Bridges and Tunnels (no staff counts provided).[259]

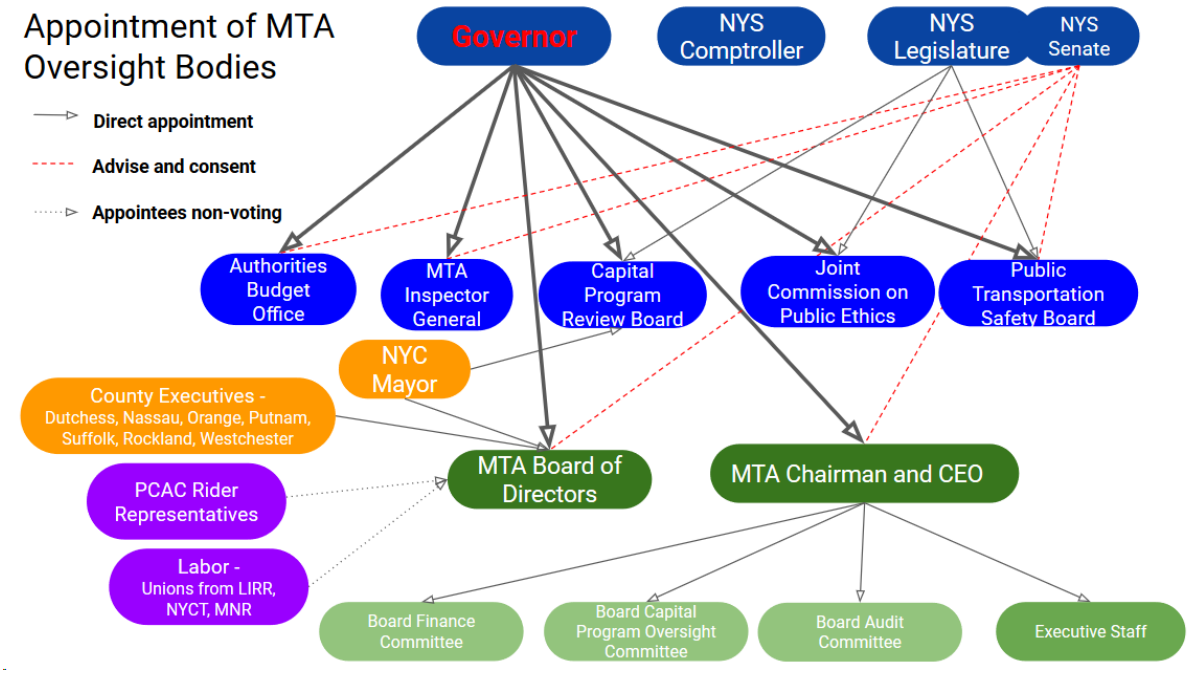
Without publicly releasing the MTA's 20-year needs assessment or TAM submission to the FTA, the public is not able to assess whether the EAM program is successful. These plans should be publicly released in open data format. See our policy proposals on this area in the recommendations section of this report.

[259] LIRR Budget Reduction Program, December 2018
http://web.mta.info/mta/news/books/docs/special-finance-committee/LIRR-BRPs.pdf

Disjointed, Duplicative, Dysfunctional External Oversight

A large array of government bodies and stakeholder monitor the whole MTA or parts of it. According to state and city law, those overseeing the MTA have large responsibilities and varied powers of oversight. But in practice, effective oversight has been mired by politics, as the vast majority of bodies with the responsibility to provide oversight of the MTA are appointed by the Governor, who also appoints the MTA's CEO/Chairman and appoints a plurality of the MTA Board. The notable exceptions are the state legislature and comptroller, which are independently elected bodies with their own respective legislative, budget, oversight and appointment confirmation roles. Below is a chart of MTA oversight bodies and their appointing authorities.

Figure 23



The oversight structure as it currently stands has meant that the agencies responsible for overseeing the MTA have in some cases failed to provide independent oversight due to political considerations. In other cases, the agencies have failed to provide more meaningful oversight due to funding constraints, such as the Authorities Budget Office. A discussion of these oversight bodies' current activities is provided below. Appendix 2 contains detailed descriptions of the legal responsibilities of these oversight entities to supplement this analysis.

How the Governor Controls the MTA

New York's Governor, a statewide elected executive official with a 4-year term, has by far the single largest controlling and oversight roles over the MTA of any public official. This is exercised through appointment of the CEO/Chairman, who in turn hires executive staff, appoints Board members to committees, and has broad discretion over executive and administrative functions of the agency. The Governor also directly appoints a plurality of the MTA Board of Directors, totaling 6 of 14 votes (including the CEO/Chairman). The Governor's appointment of the CEO/Chairman and Board are subject to the advice and consent of the State Senate, but since 2011, these appointments have been confirmed without meaningful public hearings (Jay Walder's 2009 nomination for the MTA Chairman position was the last to be given a full, thorough public hearing - Joe Lhota was confirmed in 2017 via a 20 minute Skype interview at 9:30pm at night).[260] These appointment powers together make the Governor the single most controlling entity of the MTA, and as such responsible for it like no other official.

The Governor directly appoints members to a number of bodies that provide oversight of the MTA (these bodies and their specific responsibilities will be discussed later in this section and in Appendix 2):

- Authorities Budget Office - appoints the Director, with advice and consent of the State Senate to a four-year term, with removal only after notice and under specific conditions.
- MTA Inspector General (IG) - appoints the Inspector General, with advice and consent of the State Senate to a five-year term, serving at the pleasure of the Governor.
- Capital Program Review Board (CPRB) - appoints 2 of the 4 voting members who serve at the pleasure of the Governor, and selects the chair from among the members.
- Joint Commission on Public Ethics (JCOPE) - appoints 6 of the 14 members, the most of any one elected official, who serve for 5 year terms. The chair is selected by and serves as chair at the pleasure of the Governor.
- Public Transportation Safety Board - 2 of the 6 members are directly appointed by the Governor, with advice and consent of the State Senate for 6-year terms. The State Commissioner of Transportation also serves on this board, and the MTA IG serves in an ex officio capacity.

[260] See footage from NYSenateuncut, https://www.youtube.com/watch?v=Rtq175f2-t4

Beyond the appointment powers of the Governor, the Governor has powers over the state budget and legislation, and can issue executive orders that relate to the agency and its operations. Members of the public can weigh in on these issues via the legislative process, testifying at budget hearings and providing comment to their representatives in the legislature. While direct comment can be provided to the Governor's office, effective lobbying of the Governor's office is often amplified by influence in other areas, such as campaign contributions and lobbying.

Today, we are seeing unprecedented influence from the Governor's office over the MTA. This influence has been described by Governor Cuomo as "stepping up" where the agency – which he appoints – has failed. Yet Governor Cuomo has stated repeatedly that he does not control the agency, though at times he does acknowledge responsibility for projects that chooses to take ownership of.[261] This vacillation has been noted by reporters covering transit, with much ink spilled – particularly during the 2018 state elections – about the deflection of blame to the city and Mayor Bill de Blasio, and the general problems with obfuscation of accountability at the MTA.

A Comprised Appointment of the CEO/Chairman

The Governor's largest source of influence over the MTA is the appointment of the CEO/Chairman. The Governor's last appointee, Joseph Lhota, had considerable outside income and served as CEO/Chairman in a part-time capacity, unlike any other recent MTA chief official.[262] At the time of his appointment in June 2017, it was known that he would continue his role in executive management at NYU Langone Health, a large medical organization with a number of hospitals and healthcare facilities.[263] According to Lhota's financial disclosure filings to the state, he served as the Senior Vice President, Dean and Chief of Staff, earning at least $2.35 million in 2017, and at least $1.65 million in 2016 for this role.[264]

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[261] Goodman, David. "Angry About Subway Delays? De Blasio Says Blame Cuomo, and Vice Versa." May 19, 2017. https://www.nytimes.com/2017/05/19/nyregion/de-blasio-cuomo-subway-delays.html

[262] Rosenthal, Brian. "From the E.R. to the Garden, M.T.A. Chief Holds Unusually Powerful Perch." The New York Times. May 22, 2018. https://www.nytimes.com/2018/05/22/nyregion/lhota-mta-nyc.html

[263] Geiger, Daniel. "Lhota appointment at MTA draws praise—and questions." Crain's New York Business. June 22, 2017. https://www.crainsnewyork.com/article/20170622/TRANSPORTATION/170629950/joseph-lhota-appointment-at-mta-draws-praise-and-questions

[264] Financial disclosure forms obtained by Reinvent Albany from Freedom of Information request from Joint Commission on Public Ethics. https://jcope.ny.gov/records_request
Note that theses forms provide ranges of income - the amounts provided are at the low end of the range.

It later became known in February 2018 that Lhota was also serving as a Director of Madison Square Garden in 2017 - an organization which is highly enmeshed with MTA activities ranging from the New Penn Station, to the Belmont Racetrack Development project involving the LIRR - which was not previously disclosed to the public or the MTA Board of Directors.[265]

JCOPE Chairman Seth Agata sent a letter to Lhota stating that his position at NYU presented a possible conflict of interest. Lhota wrote in response that there was no conflict, as all executive and administrative decisions in his office were handled by his staff, not directly by him.[266] In a response to Lhota and providing permission to continue these dual positions, Agata stated that Lhota would not be subject to ethics laws "assuming the facts [in your letter] are true." [267] To comply with ethics standards, Lhota was henceforth treated as a per diem of the MTA Board, rather than an employee.[268] This is despite the legal obligations of the position, which Reinvent Albany and others believe cannot be abrogated.[269] Indeed, the MTA's official documents all defined Lhota as the CEO/Chairman.[270] Considering that in 2006 and 2009 the position was changed directly by legislative action to first decouple the Chairman and CEO positions, and then remerge then, it fails to stand the test of reason that the position can now be separated absent a change to the law.

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[265] Rubinstein, Dana. "Lhota gets job at MSG, raising conflict concerns." Politico New York. February 2, 2018.
https://www.politico.com/states/new-york/albany/story/2018/02/12/lhota-gets-job-at-msg-raising-conflict-concerns-248593

[266] https://nypost.com/2018/06/28/mta-chairman-under-fire-over-high-paying-side-jobs/

[267]https://int.nyt.com/data/documenthelper/61-email-mta-chairman-outside-jobs/a0a76cb5509c1297e0e4/optimized/full.pdf#page=1

[268] Rubinstein, Dana. "State ethics board opened the door to Lhota's many jobs." Politico New York. June 28, 2018.
https://www.politico.com/states/new-york/city-hall/story/2018/06/27/state-ethics-board-opened-the-door-to-lhotas-many-jobs-492867

[269] Reinvent Albany. Testimony to the MTA Governance Committee. March 19, 2018.
https://reinventalbany.org/2018/03/testimony-to-mta-governance-committee-regarding-mta-code-of-ethics-conflict-of-interest/

[270] MTA Organizational Chart, as of December 2018.
http://web.mta.info/mta/compliance/pdf/OrgChart.pdf See also Rubinstein, Dana, "State ethics board opened the door to Lhota's many jobs."

Executive Orders Suspend Regulatory Safeguards

As discussed previously in this report, the Governor's powers to issue executive orders have had various impacts on the MTA. This has allowed him the ability to suspend train service for inclement weather such as hurricanes and snowstorms, but also to issue a disaster order suspending regular procurement and environmental review. A disaster was declared under Executive Order 168 (EO 168), which was first issued in June 2017 and has been extended each month since then as of January 2019. It declared the MTA as being in a state of emergency, suspending New York regulatory requirements for making repairs including a number of sections of Public Authorities Law, Finance Law, and the Environmental Conservation Law as they apply to "contracts, leases, licenses, permits or any other written agreements." Those laws collectively do the following:[271]

- Establish competitive bidding policies and procedures for purchasing products and services, construction, and construction services;
- Require the awarding of contracts to the lowest responsible bidder;
- Require publication of procurement opportunities in newspapers, the New York State Contract Reporter, and other venues;
- Require sealed bids as part of the competitive bidding process;
- Establish an MTA small business mentoring program designed to provide opportunities for small businesses to be mentored on competing for and doing business with the MTA;
- Prohibit collusion by vendors in bidding for contracts, requiring vendors to certify under penalty of perjury they did not collude in, for example, establishing bid prices or take other actions to reduce competition;
- Establish procurement guidelines for marketing and awarding contracts and subcontracts to Minority and Women Business Enterprises (MWBEs);
- Engage in marketing and establishing opportunities for New York State businesses and employees to receive subcontracting work when foreign companies are awarded contracts;
- Allow for comptroller review of contracts exceeding $1 million or more in value when contracts are not competitively bid or paid for with state funds;
- Require authorities adopt a prompt payment policy identifying procedures for paying vendors for contracted work;

[271] See Reinvent Albany's full July 2017 analysis of the Distster Declaration at https://reinventalbany.org/2017/07/Governor-cuomos-mta-disaster-declaration-suspends-anti-corruption-and-environmental-safeguards/

- Establish a restricted period after a solicitation has been made during which offerers or their lobbyists may only engage in limited contact with state agencies;
- Require potential vendors to disclose instances in which they were found to be non-responsible vendors during the last four years; and
- Establish the State Environmental Quality Review Act (SEQRA) which requires agencies to do an environmental impact statement when taking action with significant impact on the environment, and balance environmental impacts with economic and social factors.

With the suspension of regulatory requirements, the MTA staff has been able to make a number of procurement decisions without the prior approval of the MTA Board. In some cases, there have been questions of whether those decisions were germane to the order itself. While some items involved signal upgrades to improve declining service, other items did not appear to be directly related to emergency repairs, such as a $2 million contract with PricewaterhouseCoopers to administer an MTA Genius Transit Challenge – a competition previously pushed by Governor Cuomo in May of 2017 to provide "innovative" ideas for how to improve signal, subway car and WiFi/cellular communication technology.[272] More than half of the ideas submitted were not technologies in active use, and the winning projects all required further vetting, testing and consideration, such as the use of ultra-wide band (UWB) technology.[273] While these ideas may yield future benefits, they do not relate to urgent, emergency needs.

The Governor's Influence Over Individual Projects

The Governors support and involvement on MTA projects has been inconsistent, and seems to be entirely based on his interests. Coupled with his equivocation about the amount of control he exerts on the MTA (to be clear, he does control the agency through the CEO position), this inconsistency has led to varied results. Beyond the Second Avenue Subway project, as discussed previously in this report and the Gateway Crossing initiative, the Governor has recently taken ownership of the now-averted shutdown of the L train.

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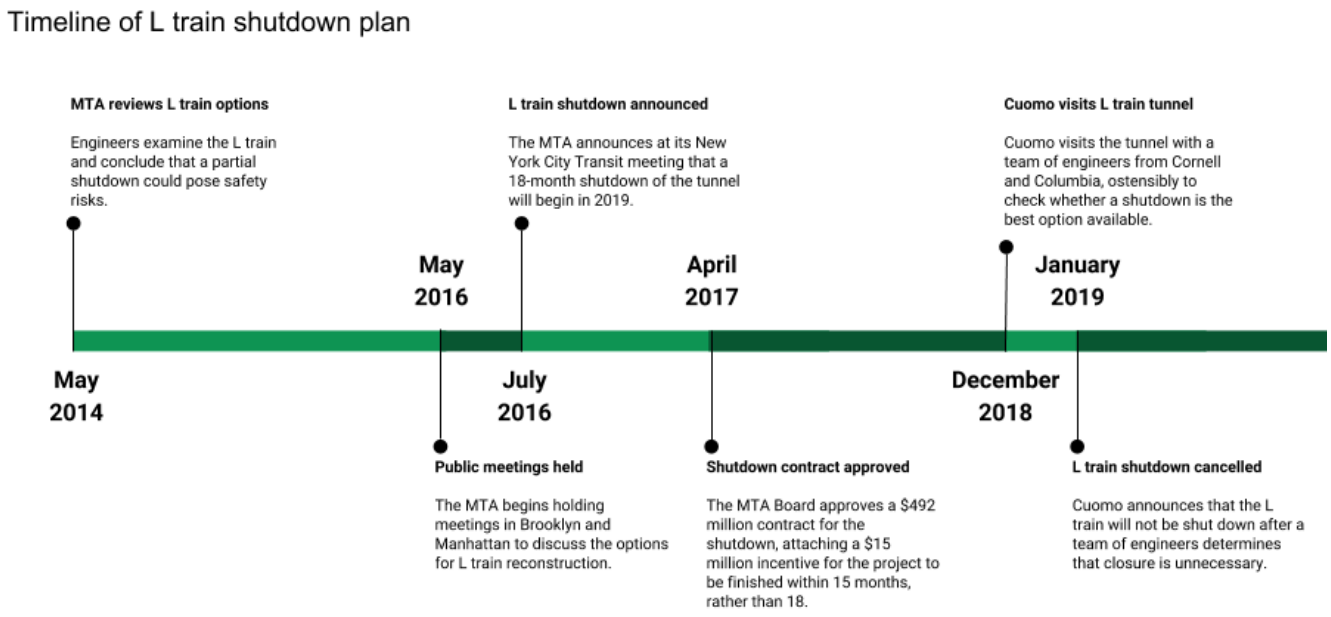
[272] Rubinstein, Dana. "MTA's use of emergency order causes a 'robust discussion'" Politico New York. December 31, 2017. https://www.politico.com/states/new-york/albany/story/2017/10/31/mtas-use-of-emergency-order-raises-eyebrows-115380 See also "Governor Cuomo Announces Aggressive Plan to Combat Long-Term Crisis at Penn Station," May 23, 2017 https://www.Governor.ny.gov/news/Governor-cuomo-announces-aggressive-plan-combat-long-term-crisis-penn-station

[273] Descant, Skip. "MTA Names Genius Challenge Winners." Government Technology. March 16, 2018. http://www.govtech.com/transportation/MTA-Names-Genius-Challenge-Winners-.html

Figure 24



If there were any shreds of doubt remaining regarding who controls the MTA, they should be finally put to rest with the recent action by the Governor in January 2019 to unilaterally upend the MTA's long-held, thoroughly vetted plans to close the L Train Tunnel. After years of work by NYCT to develop and publicly consider a plan, as shown in the timeline above, the Governor disregarded this plan at the eleventh hour, with no consultation from NYCT president Byford, no public review and little supporting detail. This decision was made without the approval of the MTA Board, who are responsible for reviewing "major actions." The timeline of events is further described below.

NYCT Plans for L-Train Repairs: 2014 - 2018

As recently as the end of 2018, the MTA was preparing to close the Canarsie tunnel in April 2019 for 15 months of repairs. The tunnel connects the L train from Brooklyn to Manhattan but has been in need of extensive repairs since suffering damage from Hurricane Sandy in 2012. After an extended scoping, public engagement, contracting and environmental review process, the MTA was prepared to close the tunnel beginning in April 2019 for 15th months.[274]

[274] MTA. "L Train Tunnel Repair Timeline Trimmed to 15 Months" March 20, 2017. http://www.mta.info/news-nyct-transit-subway-l-train-canarsie-tunnel/2017/03/20/l-train-tunnel-repair-timeline-trimmed

Plans for repairs changed seemingly overnight, as Governor Cuomo announced on January 3, 2019 that the shutdown was "averted" due to a new plan that had been crafted by academic engineering experts over the holidays. Though the MTA "accepted" the findings of Cuomo's engineers, the change has served to diminish the Authority's credibility and professional independence.[275] The reversal also has serious implications – both positive and negative – for riders continue to be affected by the planned work.

The work for the tunnel repairs was first provided in revisions to the MTA's 2010-2014 Capital Plan as a result of Hurricane Sandy, as approved by both the MTA Board and Capital Program Review Board. In total, the 2010-2014 Capital Plan has been amended four times, with adjustments being made to add projects including the Canarsie Tunnel repairs.[276]

After reviewing options with engineers in as early as 2014,[277] the MTA presented its options to the public to either close both tracks of the tunnel for an 18-month period, or to close one track at a time for a longer, 3- year period, with the first public meeting held on the MTA's possible plans in May 2016.[278] Meetings were subsequently held with all 11 affected Community Boards, and 3 additional large-scale public meetings. The MTA ultimately announced at its July 2016 Board New York City Transit Committee Meeting that it would be doing a full closure of the tunnel. The MTA noted at the time that the full tunnel closure would was preferable to a partial shutdown, as unplanned closures would be likely if service would be continued in one tunnel during construction, and was preferred by riders. A video shown to the MTA Board that was used as part of the engagement process also noted that full closure would provide additional safety due to hazards from silica dust produced from the demolition work.[279]

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[275] Governor Andrew Cuomo. Press Release. "Following Presentation, MTA Accepts Recommendations of Expert Panel That L Train Tunnel Can Be Repaired While Service Continues to Operate." January 3, 2019. https://www.Governor.ny.gov/news/video-audio-photos-rush-transcript-Governor-cuomo-convenes-expert-panel-present-recommendations

[276] Plans and amendments available at http://web.mta.info/capital/; list of projects can be accessed on Capital Dashboard, http://web.mta.info/capitaldashboard/CPDHome.html

[277] Fitzsimmons, Emma. "Cuomo Swooped in as L-Train Savior, but MTA Rejected Similar Approach Over Safety Concerns." New York Times. January 15, 2019. https://www.nytimes.com/2019/01/15/nyregion/l-train-mta-subway.html

[278] MTA. MTA Announces Second Public Meeting on Reconstruction of L Canarsie Tunnel. April 19, 2016. http://www.mta.info/news-l-train-canarsie-tunnel-public-meeting/2016/04/19/meeting-marks-beginning-robust-community

[279] See video of July 2016 New York City Transit Committee, https://youtu.be/PCwYo3BXCGM?t=530 and MTA Press Release, "Decision to Completely Close the Tunnel Follows Months of Community Meetings, Stakeholder and Public Input on Reconstruction Options," July 25, 2016. http://www.mta.info/news-l-line-canarsie-tunnel-reconstruction-sandy-subway-new-york-city-transit/2016/07/25/decision

The MTA continued public engagement as it worked with the New York City and State Departments of Transportation to deliver alternate service plans and environmental impacts.[280] The MTA Board in April of 2017 approved a contract for up to $492 million for the project, including $15 million as a financial incentive for the contractor for the project to be completed in 15 months rather than 18. This approval included a provision to allow the staff to make expedited change orders without prior Board approval.[281]

Governor Exerts Control over Project: December 2018 - present

On December 14, 2018, Governor Cuomo visited the Canarsie Tunnel with a team of engineers from Cornell and Columbia Universities and made these comments:

> "I want to make sure as Governor of the State of New York that I can look New Yorkers in the eye and say we have gone through the project … I want to see it for myself, and I want to have the best minds we can find … if there's a better way of doing it, they tell us there's a better way of doing it. If there's not a better way of doing it, they say that's the best that it can be done."[282]

The teams from Cornell and Columbia presented their findings on January 3, 2019 with Governor Cuomo, announcing an alternative plan that would not require a full tunnel closure, instead allowing one track to remain open at nights and weekends. This work would take a minimum of 15 to 20 months, and consist of "racking" power cables along the inside of tunnel walls and repairing damaged sections of benchwalls with a fiber reinforced polymer "wrap" instead of fully replacing them, as was previously planned. This would last 40-50 years according to the team, and 15-20 years according to outside experts, including former MTA head of Capital Construction, Michael Horodniceanu.[283] Acting MTA CEO/Chairman Ferrer stated that the cost would be "within the envelope" of the current contract and not require rebidding.[284]

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[280] See environmental assessment materials here, http://web.mta.info/mta/news/notices/toc.htm and NYC Department of Transportation materials here: http://www.nyc.gov/html/dot/html/about/ltrainclosure.shtml#overview

[281] MTA Board of Directors. April 3, 2017 Meeting Materials, page 8. http://web.mta.info/mta/news/books/archive/170403_0930_Board_%20Special.pdf

[282] Governor Cuomo. Press Release. "Governor Cuomo Tours Canarsie Tunnel Ahead of L Train Shutdown" December 14, 2018. https://www.Governor.ny.gov/news/b-roll-photos-Governor-cuomo-tours-canarsie-tunnel-ahead-l-train-shutdown

[283] Fitzsimmons, Emma and Hu, Winnie. "Is the Fix for the L-Train Apocalypse Too Good to Be True?" The New York Times. January 7, 2019. https://www.nytimes.com/2019/01/07/nyregion/l-train-shutdown.html

[284] Governor Andrew Cuomo.Press Release. "Following Presentation, MTA Accepts Recommendations of Expert Panel That L Train Tunnel Can Be Repaired While Service Continues to Operate." January 3, 2019.

Following the L train announcement, the Governor and MTA walked back some of the statements made at the presentation, asking the MTA Board to hold an emergency meeting to "..in its discretion ... commence a revised plan if that is their conclusion," and that more work needed to be done to assess the time frame.[285] Ultimately, after Board members were told that there would not be an emergency meeting, as it could be discussed at their regular Board meeting. This proved not to be true, and a special meeting was then announced for January 15, 2019, the day before it was scheduled to occur.[286]

At the January 15th special meeting, members of the Board expressed their frustrations and asked questions about their role, or lack thereof. New York City Department of Transportation Commissioner Polly Trottenberg, an appointee of Mayor de Blasio, noted that the MTA's website announced, "L Train shutdown averted" before the MTA Board had even weighed in. "Is the decision made?" Trottenberg asked. "Do we have any actual role here?"[287] She then said, " ... If the sign says 'shutdown averted,' it should have a footnote that says 'subject to board approval'?"[288]

Commissioner Andrew Saul, an appointee of the Westchester County Executive, also questioned the change of plans given the possible waste of resources: "It must be unbelievable the time and money expended here and now we are making an abrupt change." Other members of the Board pushed to be able to hire the independent consultant who would evaluate the Governor's plan, rather than having MTA management select the consultant.[289]

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https://www.Governor.ny.gov/news/video-audio-photos-rush-transcript-Governor-cuomo-convenes-expert-panel-present-recommendations

[285] Governor Cuomo. Statement from Governor Andrew M. Cuomo on the MTA. January 5, 2018. https://www.Governor.ny.gov/news/statement-Governor-andrew-m-cuomo-mta See also

[286] Offenhartz, Jake. "Cuomo, Who Controls The MTA, Asks To Control The MTA While Unilaterally Setting Agenda For MTA." Gothamist. January 14, 2019. http://gothamist.com/2019/01/14/mta_emergency_meeting_cuomo.php

[287] Fitzsimmons, Emma. "Cuomo Swooped in as L-Train Savior, but MTA rejected Similar Approach Over Safety Concerns." New York Times. January 15, 2019. https://www.nytimes.com/2019/01/15/nyregion/l-train-mta-subway.html

[288] Robbins, Christopher, Offenhartz, Jake and Demause, Neil. "L Train Un-Shutdown: What the Hell is Going On?" Gothamist. January 16, 2019. http://gothamist.com/2019/01/16/l_train_shutdown_questions.php

[289] See Youtube video of January 15, 2018 MTA Special Board Meeting https://www.youtube.com/watch?v=sWtviP3AQOQ

Governor's Consultants Admit MTA's Original Plan Offered "Better Long-term Outcomes"

It was also revealed during the Board's special meeting that the consultants felt that the former plan had better long-term outcomes. This came in response to a question by member Neal Zuckerman, an appointee of Putnam County, regarding the cons of the Governor's approach. A consultant working with the academic team on the project from WSP Global (formerly Parsons Brinkerhoff, which worked on the MTA's full-closure approach) noted the following:

> "It certainly would have been advantageous for long-term service life to completely tear out the duct banks and completely replace them. There are certainly service life advantages to doing that. By not completely replacing the duct bank and only removing certain portions of it, reinforcing certain portions of it, and leaving certain portions of it in place, that is not as advantageous as a complete replacement. That is true."[290]

Given this statement, the Governor's reversal of plan cannot be seen as anything other than a short-term solution that has risks which may trump the immediate rewards.

Questions and Risks Remain For Governor's Plan

The public and MTA Board raised many operational and planning questions remain about the new proposal. These include:

- What is the lifespan of the new proposal versus the original MTA plan?
    - Transit experts have since weighed in on this issue, with a former head of New York City Transit stating that the new plan could be a band-aid, resulting in more repair work or maintenance needed in 10 to 20 years.[291] Another former MTA official, who was head of MTA capital construction, said the repairs might only last 15 or 20 years, while the original plan could have lasted for more than 80.[292] The lifespan of the work is also dependent on the MTA's ability to maintain the tunnel.

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[290] Gordon, Aaron. "Dumb?! No! Diabolical?! Very!" Signal Problems. January 18, 2019. https://signalproblems.substack.com/p/dumb-no-diabolical-very

[291] Bianco, Carmen. Opinion. "Cuomo's Risky L Train Fix." New York Times. January 8, 2019. https://www.nytimes.com/2019/01/08/opinion/l-train-subway-cuomo.html

[292] Fitzsimmons, Emma, and Hu, Winnie. "Is the Fix for the L-Train Apocalypse Too Good to Be True?" New York Times. January 7, 2019. https://www.nytimes.com/2019/01/07/nyregion/l-train-shutdown.html

- What is the cost differential for the new plan? While it is supposed to be "within the envelope," the public has seen no financial details regarding the various components of the new work.
- Are there remaining safety concerns regarding silica dust, given the MTA's prior rejection of a plan to mount cables on the walls instead of installing them in the benchwall?[293]
- Will the new plan provide challenges regarding restoring service after weekend closures?[294]
- What work will be conducted on weekends versus weekdays? Does this limit working "wrench time" due to set-up and take-down?
- What will be the federal approval process for the plan, given that it involves federal funds?
- What was the cost of the work already done by MTA staff, including public engagement work, development of alternative service plans, and compliance work regarding environmental impacts? What portion of this work remains relevant with the change of plans?
- Will this change in plan deter future bidders on MTA projects?
- How will the new plan affect the planned force account (allocation) of workers?

Concerns About Political Interference with MTA Professional Staff

Beyond the unresolved operational and planning issues, the move by Governor Cuomo to develop and push through a new plan also raises serious issues related to governance and independence of the MTA and its transit professionals. For example, New York City Transit President Andy Byford, who is charged with implementing the new plan, was not consulted as it was developed, though stated that he supported it if it would improve outcomes for riders and ensure the safety of workers. Byford later said that he would not be "steamrolled" into supporting the plan and would do due diligence to make sure it provides a better outcome.[295] He was ultimately taken off as project lead, with MTA Capital Construction Head Janno Lieber and Managing Director Ronnie Hakim announced as managing the construction work and Byford to address service issues.[296]

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[293] Offenhartz, Jake. "Will Toxic Silica Dust Derail Cuomo's Last Minute L Train Fix?" Gothamist. January 8, 2019. http://gothamist.com/2019/01/08/silica_dust_l_train_mta.php See also Fitzsimmons, Emma. "Leaks, Cancer-Causing Dust: L-Train Plan Similar to Cuomo's Was Rejected Over Safety." New York Times. January 15, 2019. https://www.nytimes.com/2019/01/15/nyregion/l-train-mta-subway.html

[294] Ibid.

[295] Gordon, Aaron. "Andy Byford Says He Won't Be 'Steamrolled' Into An Unsafe L Train Plan." Gothamist. January 9, 2010. http://gothamist.com/2019/01/09/andy_byford_mta_l_train.php

[296] Spivak, Caroline. "5 key takeaways from the MTA's emergency L train shutdown meeting." Curbed. January 16, 2019.

Ultimately, the MTA Board was taken off the project as well, with the MTA staff stating two days after the emergency Board meeting that it will be adopting the plan, and that it will bypass the Board due to "extraordinary procurement authority."[297] This extraordinary authority will likely be justified by the Governor's Executive Emergency Order 168 or the MTA Board's authorization of expedited change orders for the project. This, however, is counter to the MTA's by-laws which provide the MTA Board the ability to vote on major actions. The decision to completely or partially close the L Train's Canarsie Tunnel is about as major a decision as the MTA ever faces.

The closure of the L train for the Canarie Tunnel overhaul also has implications for future MTA construction work. Closures will be required for the signal modernization, and the Fast Forward plan notes that "the more we close the subway, the faster we can work."[298] Advocates had hoped the alternate service plan for the L could have served as a model for future line closures to install CBTC.

Governor Pins Hopes on Ultra-Wideband Technology Used by No Transit Systems

The L Tunnel reversal has implications beyond just the tunnel repair work. The Governor has created a narrative of the MTA relying too heavily on old ways of thinking, and has highlighted Communications-Based Train Control (CBTC) in this vein. CBTC is the global standard for signal systems, and is the core of NYC Transit President Andy Byford's *Fast Forward* capital plan for the subways. Governor Cuomo has advocated for the unproven Ultra-Wide Band (UWB) technology, a radio communications system that is currently being tested in self-driving cars, and is not currently deployed by any transit systems, though is being considered for Boston's Green Line.[299] It should be noted, however, that UWB could be used as a component of a second-generation CBTC system. At the release event for the new tunnel plan Cuomo described UWB as "new thinking," noting that "there is a transportation industrial complex" that is holding the MTA hostage to old technology…".[300] Later, the Governor's office walked back his comment:

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https://ny.curbed.com/2019/1/16/18183852/5-key-takeaways-about-the-new-l-shutdown-train-repairs-mta

[297] Offenhartz, Jame and Robbins, Christopher. "Cuomo's MTA Is 'Neutering' Oversight to Ram Through L Train Plan, Board Members Say." Gothamist. January 18, 2019. http://gothamist.com/2019/01/18/cuomo_mta_l_train_board.php

[298] MTA NYCT. Fast Forward Plan https://fastforward.mta.info/transform-the-subway

[299] Fitzsimmons, Emma. "M.T.A. Pins Its Hopes on Unproven Technology to Fix Subway." The New York Times. April 9, 2018. https://www.nytimes.com/2018/04/23/nyregion/mta-subway-ultra-wideband-radio.html

[300] Campanile, Carl. "Cuomo wants to revamp subways with 'Tesla-like' Technology." New York Post. January 4, 2019. https://nypost.com/2019/01/04/cuomo-wants-to-revamp-subways-with-tesla-like-technology/

> "CBTC is currently the best accepted industry standard. As I have discussed in the past, I also think the MTA should be open to exploring new technologies … There is a system that utilizes ultra-wideband (UWB), which is also currently being explored by different transportation networks … The MTA is installing the CBTC system until an alternative – such as UWB – is determined to be viable. I believe that is the most appropriate approach at this time."[301]

All this has happened despite Governor Cuomo's declaring after the January 3rd presentation, "No, I am not in charge of the MTA. Yes, I did ask this group, I convened this group, I got them access, I facilitated their research, they came up with their conclusion, they presented it to the MTA, and the MTA said it's a better way to do it."[302] It seems that Governor Cuomo is seeking to own the plan, but not its implementation by the MTA - something echoed by comments to not commit to an end date for the work.[303]

State Legislature Punts Responsibility for MTA

The New York State legislature is empowered to do hearings about any subject matter, including mass transportation and has two committees responsible for MTA oversight: (1) Transportation and (2) Corporations, Authorities and Commissions. The State Legislature has in the past been disinterested in the MTA and done little to champion riders or hold the MTA or Governor responsible for systemic service problems, wasteful spending and misguided priorities. While we are hopeful that this will change – and the State Senate has finally held its first hearings on the MTA in 5 years – there needs to be sustained and thoughtful legislative oversight of the MTA.

The State Assembly, which is controlled by representatives from the New York City metro area, conducted *no* oversight hearings specifically on the subway system from 2015 to 2018, despite the subways being declared in a state of emergency by the Governor. In May 11, 2017, an Assembly hearing looked at the impact of Amtrak emergency construction at Penn Station on LIRR commuters, but held no concurrent hearings about the subways. No hearings have been held in 2019 as of the writing of this

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[301] Governor Andrew Cuomo. Statement from Governor Andrew M. Cuomo on the MTA. January 4, 2019. https://www.Governor.ny.gov/news/statement-Governor-andrew-m-cuomo-mta

[302] Robbins, Christopher and Offenhartz, Jake. "L'Pocalypse Nah: Cuomo Says Full L Train Shutdown Unnecessary." Gothamist. January 3, 2018. http://gothamist.com/2019/01/03/l_train_shutdown_wait_what.php#photo-1

[303] Furfaro, Danielle. "Cuomo's L Train plan could still get derailed by MTA Board." New York Post. January 15, 2019. https://nypost.com/2019/01/15/cuomos-l-train-plan-could-still-get-derailed-by-mta-board/

report, though Assemblymember Amy Paulin, Chair of the Assembly Corporations and Authorities Committee, has committed[304] to holding a hearing in 2019.

The Republican-led State Senate held *one* hearing in 2015 on the finances of the MTA, which included the subway system as a component of the whole system but did not focus specifically on problems faced by New York City Transit. To date, the Democratic-led State Senate has held one hearing in 2019 specifically focused on the MTA and subways in 2019, as well as two separate hearings on Metro North and Long Island Railroad.

State Legislative Hearings on the Subways - Assembly and Senate

Year	Assembly Oversight	Joint Budget	Senate Oversight	Annual Total
2010	2	1	1	4
2011	1	1	1	3
2012		1		1
2013	1	1	1	3
2014	2	1		3
2015		**1**	**1**	**2**
2016		**1**		**1**
2017		**1**		**1**
2018		**1**		**1**
Total 2010-2018	**6**	**9**	**4**	**19**
Since 2015	0	4	1	5

Though a 2009 MTA bailout enabled the legislature to conduct independent audits of the authority every two years, to date no audits have been conducted. The bailout also allowed the legislature to receive a report from the Office of Legislative and Community Input. This report has not been produced since 2011.[305] For more details on the legislature's role in oversight of the MTA, see Appendix 2.

[304] Meyer, David. "Meet Amy Paulin - the Assembly Member Tasked with MTA Oversight." Streetsblog. December 13, 2018. https://nyc.streetsblog.org/2018/12/13/meet-amy-paulin-the-assembly-member-tasked-with-mta-oversight/

[305] See past reports at http://web.mta.info/mta/legislative.html

New York City Council Culture of Oversight

The New York City Council, in contrast to the State Legislature, held eight oversight hearings from 2015-2018 on topics ranging from improving subway and bus service, with two hearings on mitigating the impacts of the L train shutdown, and a December hearing on New York City Transit's Fast Forward plan. This shows a vastly different culture of oversight. See Appendix 2 for more details.

City Council Hearings

Year	Budget	Oversight	Annual Total
2010	2	5	7
2011	2	4	6
2012	2	2	4
2013	2	3	5
2015	2	3	5
2016	2	1	3
2017	2	2	4
2018	1	2	3
Total 2010-2018	**15**	**22**	**37**
Since 2015	7	8	15

New York City Council Speaker Corey Johnson has spoken at length about the MTA, and released a comprehensive, well-researched report in March 2019 proposing municipal control of the subways and buses.[306] The report also covered issues such as debt obligation, bonding authority, tunnels and bridges, and "making New York City a livable safe city."[307] Governor Cuomo responded to the report, stating that the MTA is currently a state agency, and if the city wants control, it would lose $10 billion in state funds.[308]

[306] NYC Council Speaker Corey Johnson. "Let's Go: A Case for Municipal Control and a Comprehensive Vision for the Five Boroughs." March 2019.
https://council.nyc.gov/wp-content/uploads/2019/03/LetsGo_Transit_Report.pdf
[307] Kuntzman, Gersh, "TAKE THAT, ANDREW! Council Speaker to Seek City Control of NYC Transit." Streetsblog NYC. January 8, 2019.
https://nyc.streetsblog.org/2019/01/08/take-that-andrew-council-speaker-to-seek-city-control-of-nyc-transit/
[308] Campanile, Carl. "Cuomo: If NYC takes over subways, city will lose $10B state provides." March 6, 2019. The New York Post.
https://nypost.com/2019/03/06/cuomo-if-nyc-takes-over-subways-city-will-lose-10b-state-provides/

State and City Comptrollers - Audit and Policy Oversight Potential

New York State Comptroller

The Office of the State Comptroller ensures that the MTA uses taxpayer money effectively and efficiently to promote the common good.[309] As part of this, the office OSC publishes a number of reports and products about the MTA, taking a far more active role than other government bodies. For more details on its powers, see Appendix 2.

One of the OSC's divisions, the Office of the Deputy Comptroller for New York City, publishes a regular "Financial Outlook" report for the MTA.[310] In reacting to the report's most recent release from October 2018, former MTA CEO/Chairman Joe Lhota said that it "concisely portrays the MTA's current fiscal condition as bleak."[311] Beyond this analysis, this division has not done a substantial policy report on the NYC subways since 2014, when it looked at Subway Station Conditions. It did, however, look at LIRR on-time performance twice, in both 2017 and 2018.[312]

The OSC publishes a number of reports and products about the MTA, from three separate divisions within the office:

- **Office of the Deputy Comptroller for New York City** - Publishes an annual "Financial Outlook" report for the MTA, which was last released in October 2018, and assesses the financial needs and challenges of the MTA.[313] In reacting to this comprehensive report, former MTA CEO/Chairman Joe Lhota said that it "concisely portrays the MTA's current fiscal condition as bleak."[314] Beyond this analysis, this division has not done a substantial policy report on the NYC subways since 2014 when it looked at Subway Station Conditions. It did, however, look at LIRR on-time performance twice, in both 2018 and 2017.[315]

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[309] Office of the New York State Comptroller (OSC). About the Comptroller's Office. https://www.osc.state.ny.us/about/response.htm
[310] OSC. "Financial Outlook for the Metropolitan Transportation Authority." October 2018. https://osc.state.ny.us/osdc/rpt8-2019-mta-financial-outlook.pdf
[311] Remarks of the MTA Chairman at October 2018 MTA Board Meeting, http://web.mta.info/mta/news/books/docs/Chairman's%20Remarks.pdf
[312] For a full list of reports from the Office of the Deputy Comptroller for the City of New York see here: https://osc.state.ny.us/osdc/index.htm
[313] OSC. "Financial Outlook for the Metropolitan Transportation Authority." October 2018. https://osc.state.ny.us/osdc/rpt8-2019-mta-financial-outlook.pdf
[314] Remarks of the MTA Chairman at October 2018 MTA Board Meeting, http://web.mta.info/mta/news/books/docs/Chairman's%20Remarks.pdf
[315] For a full list of reports from the Office of the Deputy Comptroller for the City of New York see here: https://osc.state.ny.us/osdc/index.htm

- **Audit Department -** In total, this department has conducted 57 audits since 2012 as of the writing of this report on the MTA:[316]
    - NYCT - 17
    - MTA Headquarters - 10
    - LIRR - 9
    - Metro North Railroad - 5
    - Staten Island Railroad - 4
    - Access-a-Ride and MTA Bus - 3 each
    - Bridges and Tunnels - 2
    - An additional 4 audits involved multiple agencies.

  While some audits focus on large-scale service issues (such as a 2017 audit on subway on-time performance[317] and a 2014 LIRR audit of capital project implementation as it relates to service disruptions[318]), there are a number of audits with small fiscal impacts, for example a 2015 audit of MTA headquarters found that $9,326 could be saved with better travel expense reporting.[319]
- **Contracts Department** - Publishes OpenBook New York, which provides a listing of the subset of MTA contracts and amendments reviewed by the OSC.[320]
- **Office of Budget and Policy Analysis** - Publishes "Public Authorities by the Numbers" reports, which include details about the capital plans of the MTA, debt, total expenditures and employees, and has included analysis of questionable state budget practices regarding authorities, such as the transferring of dedicated MTA funds to the State General Fund.[321]

While the OSC has limited authority to review MTA contracts, its audit powers are more wide-reaching and could be more effectively used to put external, independent, pressure on the MTA to improve performance and operations.

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[316] Audit list here: https://www.osc.state.ny.us/audits/auditAgencyList.htm#tocLinkM and cross checked with annual audit reports, http://osc.state.ny.us/audits/annualreport16_17.pdf https://www.osc.state.ny.us/audits/fylist11_16.pdf

[317] OSC Audit, "Train On-Time Performance" September 2017. http://osc.state.ny.us/audits/allaudits/093017/17f8.htm

[318] OSC Audit, "LIRR Service Diversions for Maintenance and Capital Projects." March 2014 http://osc.state.ny.us/audits/allaudits/093014/10s63.htm

[319] OSC Audit, "Headquarters and Capital Construction Travel and Entertainment Expenses" February 2015. http://osc.state.ny.us/audits/allaudits/093015/13s47.htm

[320] OpenBook New York. http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm

[321] OSC. "Public Authorities by the Numbers." January 2017. https://www.osc.state.ny.us/pubauth/reports/pub-auth-num-2017.pdf

New York City Comptroller

Though the New York City Comptroller under law has more limited oversight power over the MTA (See Appendix 2 for details), the office has recently released a number of insightful policy reports. Among these are "Left in the Dark: How the MTA Is Failing to Keep Up With New York City's Changing Economy"[322] and "The Other Transit Crisis: How to Improve the NYC Bus System."[323] A recent audit of performance metrics showed how the MTA has misrepresented its performance and delay data for years.[324]

Together, these reports have focused on areas of the MTA's service delivery that have not been examined by other government stakeholders. For example, "Left in the Dark" examined the impact of MTA service delivery on workers such as home health aides, security guards, and other service jobs holders who do not work traditional 9 to 5 jobs.

Capital Program Review Board

The MTA Capital Program Review Board (CPRB) is charged with approving 5-year capital plans and its amendments, and monitoring their implementation. As noted previously in this report, the CPRB was created in the 1980s as a component of the bail-out of the MTA by state government, with the goal of providing oversight of the capital plans. For more details regarding its responsibilities, see Appendix 2.

The CPRB's voting appointees - one by the Governor, one by the majorities of each house of the legislature, and one by the Mayor - have used their approval authority in the past to seek changes to the capital program by holding up its approval. Most recently, the Republican Senate appointee to the CPRB held up approval, seeking improvements to the plan for Long Island Railroad.[325] New York City Mayor Bill de Blasio has also stated that he would consider using the veto of the capital program,

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[322] NYC Comptroller. https://comptroller.nyc.gov/reports/left-in-the-dark-how-the-mta-is-failing-to-keep-up-with-new-york-citys-changing-economy/

[323] NYC Comptroller. https://comptroller.nyc.gov/reports/the-other-transit-crisis-how-to-improve-the-nyc-bus-system/

[324] NYC Comptroller. "The Crisis Below: An Investigation of the Reliability and Transparency of the MTA's Subway Performance Reporting." February 9, 2019. https://comptroller.nyc.gov/reports/the-crisis-below-an-investigation-of-the-reliability-and-transparency-of-the-mtas-subway-performance-reporting/

[325] Dowd, Joe. "MTA pulls third track plan over Republican veto threat." Long Island Business News. July 1, 2017. https://libn.com/2017/07/01/mta-pulls-third-track-plan-over-republican-veto-threat/

citing lack of accountability for the funding that city has provided in the past.[326]

The CPRB currently operates behind closed doors and has no website (though it briefly had one in 2009-2010 via the NYS Senate website, including video of a hearing and a public comment form[327]), and only does business for approval of the 5-year capital plan and associated amendments. It does not currently meet publicly, but rather via phone, and does approvals via signatures on a letter that accompanies the MTA's submitted documents.[328] While the CPRB last convened on May 31, 2018 to approve an amendment to the 2015-2019 plan, it did not meet publicly, likely in violation of the New York State Open Meetings Law.[329]

Authorities Budget Office (ABO)

The Authorities Budget Office (ABO) was created as an independent office pursuant to Chapter 506 of the Laws of 2009 (the Public Authorities Reform Act or "PARA"). The mission of Authorities Budget Office is to make public authorities more accountable and transparent, and to act in the public interest consistent with their intended purpose. While the ABO is funded through fees levied on public authorities, it has not reached necessary funding and staffing levels. It currently has 11 staff, though it was intended to have a staff of 30 including a counsel, policy analysts, communications and administrative positions. In 2018, a number of groups, including Reinvent Albany, requested that the ABO be funded at $3.105 million, rather than the $1.936 million as proposed in the Executive Budget.[330] This request was not met.

The ABO oversees all state and local public authorities, and as part of this role has provided important information about the MTA. The ABO has also conducted a number

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[326] Hicks, Nolan. "De Blasio threatens to use veto power to force subway overhaul." New York Post. September 28, 2018.
https://nypost.com/2018/09/28/de-blasio-threatens-to-use-veto-power-to-force-subway-overhaul/
[327] NYS Senate Capital Program Review Board Website accessed via Wayback Machine,
https://web.archive.org/web/20091209004636/https://www.nysenate.gov/committee/mta-capital-program-review-board-cprb
[328] Interview with staff representative of CPRB.
[329] For more information, see the Committee on Open Government,
https://www.dos.ny.gov/coog/openmeetinglawfaq.html
[330] Reinvent Albany. Letter to Division of the Budget, Senate and Assembly on ABO Funding. February 2018.
https://reinventalbany.org/2018/02/watchdog-and-fiscal-groups-call-for-funding-increase-for-oversight-of-business-subsidies/

of "Governance and Operational Reports"[331] about state and local authorities, including the Niagara Frontier Transit Authority, though has not conducted a review of this type for the MTA. This review was the result of a complaint filed by a board member who alleged that he was being denied access to information, though other reports on this list have been upon the initiative of the ABO.[332]

While the ABO can investigate authorities either on their own initiative or upon public complaints, and then refer their findings to relevant law enforcement agencies, there have been no public enforcement actions regarding the MTA.[333] One such potential enforcement action could have been related to a complaint filed by Reinvent Albany asking the ABO to investigate former MTA CEO/Chairman Lhota's outside business dealings and whether the MTA's ethics and conflicts of interest policies followed the models released by the ABO.[334]

MTA Inspector General

The MTA's Inspector General (IG) is responsible for maintaining integrity at the MTA, as the office receives complaints regarding possible waste and fraud, and can upon its own initiative to commence investigations.

Reports since 2007 are available on the MTA IG's website via a "Reading Room"[335] which includes audits, investigations, prosecutions and annual reports. Audits are of individual agencies, as well as MTA-wide policies. Annual reports provide a summary of all activity in a given year, and explains the operations of the office. It is unclear from the MTA IG's website what recent activities have been conducted, however, as there are no annual reports or audits have been posted since 2016, and no investigations have been posted since 2014. The website does include a prosecutions from 2018, however, involving an MTA manager taking bribes in which the MTA IG forwarded findings of an

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[331] ABO, Governance and Operational Reports. https://www.abo.ny.gov/reports/abogovernancereports.html

[332] ABO. Review of Public Complaint. Niagara Frontier Transit Authority. February 17, 2017. https://www.abo.ny.gov/reports/compliancereviews/NFTA%20Review%20of%20Public%20Complaint%20Final%20Report.pdf

[333] ABO. Enforcement Actions. https://www.abo.ny.gov/enforcement/enforcement.html

[334] Reinvent Albany. Letter to ABO requesting investigation of MTA conflict of interest issues. February 22, 2018. https://reinventalbany.org/2018/02/request-to-authorities-budget-office-investigate-conflict-of-interest-issues-due-to-mta-chairman-joe-lhota-becoming-a-director-of-the-madison-square-garden-company-and-msg-network-inc/

[335] MTA Inspector General website, http://mtaig.state.ny.us/reports.html

investigation to the U.S. Attorney for prosecution.[336]

While the MTA IG has in the past delved into important operational issues such as the process of using change orders at the MTA and has referred a number of investigations for prosecution to the State Joint Commission on Public Ethics,[337] it is unclear what their recent activity has entailed, as few reports are publicly available.

Joint Commission on Public Ethics (JCOPE)

The Joint Commission on Public Ethics (JCOPE) was created to oversees compliance with the State's ethics and lobbying laws, including by the MTA staff and Board. JCOPE has been severely criticized by editorial boards and watchdog groups for opaque and politicized enforcement and general ineffectiveness.

State law requires MTA staff and Board to provide JCOPE with financial disclosure reports and approve any outside income for policy makers and the CEO[338]. JCOPE also conducts enforcement actions as the result of its own investigations and those commenced upon referral from agencies such as the MTA IG.

Enforcement actions by JCOPE involving MTA staff have been limited – in total, only 13 actions are listed on its website, with 12 cases settled and one having a civil assessment.[339] The largest civil penalty issued was for $5,000. While in some cases the actions resulted in termination, in some cases employees in some cases - including bid rigging - were only placed on probation and were required to undergo additional ethics trainings.[340] Three cases were related to failure to file financial disclosure reports, as required under the Public Officers Law. While many cases involved those in positions of authority, the staff were typically middle rather than executive management.

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[336] MTA IG. "Full Statement of MTA Inspector General Barry L. Kluger re the Sentence of Former MTA Manager for Soliciting and Accepting Bribes." 2018. http://mtaig.state.ny.us/assets/pdf/2018-02-23%20BLK%20Lakhandwala%20full%20statement.pdf

[337] See Joint Commission on Public Ethics Enforcement Actions, https://jcope.ny.gov/enforcement-actions

[338] See Title 19 NYCRR Part 932 for specific procedures. https://jcope.ny.gov/sites/g/files/oee746/files/documents/2017/10/19-nycrr-part-932-outside-activity-regulations-and-approval-procedures.pdf

[339] See JCOPE Enforcement Actions. https://jcope.ny.gov/enforcement-actions

[340] JCOPE. Substantial Basis Report and Settlement, Case 15-168. https://jcope.ny.gov/system/files/documents/2017/12/william-c-lindnersubstantial-basis-investigation-report-and-settlement-agreement.pdf

JCOPE was heavily criticized for its handling of an outside activity waiver for former CEO/Chairman Joe Lhota, as it reversed its prior determination that he was a state employee and thus subject to all aspects of the state's ethics laws. This reversal came in the form of an email, which accepted Lhota's assertion that he was not a state employee, as he had delegated his duties to other MTA staff.[341] This email - not an official advisory opinion – was the basis for Lhota's continuing to hold outside income, despite a strong consensus among experts outside the state executive branch that it was a conflict of interest.

Given concerns around this approval process, Reinvent Albany and other groups requested in February 2018 that JCOPE revise its outside activity approval process in response to the handling of former MTA CEO/Chairman Joe Lhota's outside income. To date, no action has been taken upon this request.

Advisory Bodies

Public Transportation Safety Board

The Public Transportation Safety Board (PTSB) was created by state law in 1984 to be responsible for the safety oversight of all public transportation systems operating in New York State that receive State Transit Operating Assistance (STOA). The mission of the PTSB is to reduce the number, rate and severity of public transportation accidents. While the PTSB does not provide information on its website about its recent activities - these are housed on the NYS DOT website - it made news regarding a 2010 proposal for an early warning system with video feed of tracks made available to train drivers so that they can see if tracks are clear.[342] As best we can tell, generally PTSB plays no role in MTA operations or funding.

[341] Fitzsimmons, Emma. "After Ethics Warning, M.T.A. Chairman Gets O.K. for Outside Jobs in an Email." New York Times. June 28, 2018. https://www.nytimes.com/2018/06/28/nyregion/joseph-lhota-mta-ethics-jobs.html

[342] Donohue, Pete. "Public Transportation Safety Board looks at early warning system to reduce subway track deaths." New York Daily News. September 21, 2010. https://www.nydailynews.com/new-york/public-transportation-safety-board-early-warning-system-reduce-subway-track-deaths-article-1.442047

Permanent Citizens Advisory Committee

The Permanent Citizens Advisory Committee to the MTA (PCAC) is the representative body of the commuter councils of NYCT, LIRR, and Metro North.[343] These councils are directed under law to "study and investigate all aspects of the day to day operations of such authority … [and] monitor their performance and recommend changes to improve the efficiency of the operation thereof."[344]

PCAC research reports have served as an accountability tool for the MTA and mechanism to put forward service and policy proposals. For example, it issued a report on the "Freedom Ticket" proposal to allow for reduced rate LIRR ridership within New York City, with a free transfer to the MTA subways and buses.[345] This proposal was ultimately adopted by the MTA as a pilot program, with the "Atlantic Ticket" debuting in June 2018.[346] It conducted annual assessments of the MTA from 2007-2010, reviewing the performance, leadership, communication, and accessibility of the MTA and its agencies. For example, the PCAC in its 2010 report noted its work to get Board Books online in 2009.[347]

Independent Budget Office

The New York City Independent Budget Office's (IBO) mission is to "is to provide nonpartisan information about the city budget and tax revenues. This can range from reviewing how much a particular agency spends to more in-depth considerations of program costs, historical trends, tax burdens, debt, or capital finances."[348] They issue regular reports, including fiscal briefs on issues of interest to the city, and background papers on specific programs. They also will, upon request, examine issues of interest to city elected officials.

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[343] Public Authorities Law Section 1266-i.
[344] Public Authorities Law Section 1204-e.
[345] PCAC. "Freedom Ticket: A Southeast Queens Proof of Concept." https://www.pcac.org/wp-content/uploads/2015/12/Freedom-Ticket-Atlantic-Branch-Analysis-PDF.pdf
[346] LIRR. MTA and Elected Officials Celebrate LIRR's Atlantic Ticket. June 15, 2018. http://www.mta.info/press-release/lirr/mta-and-elected-officials-celebrate-lirr%E2%80%99s-atlantic-ticket
[347] PCAC. Annual Assessments. http://www.pcac.org/annual-assessments/
[348] Independent Budget Office of the City of New York. What We Do. https://www.ibo.nyc.ny.us/aboutWhatwedo.html

The IBO has published a number of reports about the MTA, with titles such as "Morning Malaise: How Much Extra Time Is Spent Waiting for the Subway on Your Line?"[349] While such reports are advisory, they have added to the public dialogue about mass transit issues, and have served as independent, expert reviewers of MTA data. The IBO does not act on general public complaints, but rather is directed to respond to questions from city elected officials about budget and policy matters affecting the city.

[349] NYC Independent Budget Office. "Morning Malaise: How Much Extra Time Is Spent Waiting for the Subway on Your Line?" October 2017. https://ibo.nyc.ny.us/cgi-park2/2017/10/morning-malaise-how-much-extra-time-is-spent-waiting-for-the-subway-on-your-line/

Making the MTA More Accountable

The Governor Controls the MTA but pretends he doesn't: Now what? The most important finding of this report is that Governor Cuomo controls the activities, planning, budgeting and priorities of the MTA and its operating agencies. Despite the Governor's often misleading rhetoric, his actions show he is firmly in control of the MTA: he publicly reversed the MTA's professional staff and disregarded the staff, Board and a lengthy public engagement process while ordering the L train to continue running during repairs on the Canarsie Tunnel. He ordered the MTA to spend over $100M on decorative stainless steel "Gateway Towers" at bridge and tunnel entrances and colored tiles on tunnel walls that match state colors. He also ordered MTA Select Bus Service vehicles re-painted in state livery. In emails obtained by the Daily News, the Governor's Office repeatedly told MTA staff to disingenuously blame Con Edison for hundreds of subway service failures.

The Governor Controls MTA Staff and Board Via CEO/Chair. The Governor controls the MTA via his appointment of the CEO/Chairman. As CEO, this official hires/fires and supervises all MTA staff, including NYCT President Andy Byford. Unlike corporate and non-profit boards, the CEO/Chairman is not voted on by the Board and cannot be removed by the Board. This is worth restating—the MTA Board cannot hire/fire, promote, demote or otherwise direct staff—only the CEO/Chairman, who reports to the Governor, can. Because the CEO controls the MTA staff, including for all its agencies and subsidiaries, the CEO can also heavily influence the issues and information presented by the staff to the board, including the operating budget and capital plan.

As board Chairman, the CEO/Chairman assigns the members and chairs of Board committees—which vote on some policy and contract matters. The CEO/Chairman can reassign Committee Chairs and shuffle board members around committees. The CEO/Chairman also creates the board agenda and determines what issues the Board discusses and votes on. This means the CEO/Chairman controls both ends of the staff-board process and can often keep inconvenient or embarrassing issues from being discussed by the Board—and thus revealed to the public. As far as we can tell, the Governor and CEO/Chairman can keep any Board initiative they disagree with from a vote.

In the American system of governance, executive power is checked by a legislative branch. Corporate boards hire and fire their CEO and board chair. The MTA Board cannot do this and its legally mandated powers are centered around approving large contracts and approving fare/toll hikes. State law does not make clear what policy actions the board must approve, and as currently construed, the CEO/Chairman has the power to order major policy changes, like the change of the L train plan, without Board approval.

We believe that as long as the very powerful CEO/Chairman reports to the Governor and not the Board, the role of the Board will be marginal and it will serve as a public fig leaf for decisions made by the Governor's office.

Now What? In our analysis, Governor Cuomo is the biggest single problem with the governance of the MTA. When people say decisions at the MTA are "politicized", they really mean that the Governor has interfered with the MTA's professional staff or a public consensus process within the Board.

Importantly, Governor Cuomo not only controls the MTA, he has by far the most powerful office in New York State government. The Governor proposes the state budget, which the State Legislature cannot change wholesale, but can approve or disapprove in part. The State Legislature can pass new laws changing how the MTA is governed, but the Governor can veto them.

Paths to Improving the MTA's Governance and Accountability

There are three basic policy making paths for changing how the MTA makes decisions and is accountable to the public, and all of them depend on the acquiescence or active support of the Governor.

1. The Governor or his CEO/Chairman can issue an order to staff. (Governor controls.)
2. The board can vote to change by-laws. (Governor controls via Chairman committee appointments, agenda setting and plurality of board votes.)
3. Legislature passes new law. (Governor can stop via veto power.)

Possible Major Governance Changes

The recommendations in this report are focused on accountability improvements we believe can realistically happen given current political constraints. Despite the opposition of the Governor, Reinvent Albany has won significant legislation including passing the *Transit Lockbox* bill (2018) and *FOIL Attorney's Fees* (2017) both of which

the Governor signed after previously vetoing twice, and the *FOIL Agency Appeals* law (2016) which the Governor vetoed once before signing. It took very large public coalitions working over years to pass this legislation. Importantly, it also took convincing the Governor that these laws only marginally affected his core power.

We reiterate: any major changes to the MTA will requires the support or acquiescence of the Governor. Accordingly, we believe it is highly unrealistic under Governor Cuomo to expect changes to the MTA that significantly reduce the Governor's control or influence. Just the same, here are the major options that we have heard presented for restructuring the MTA.

1. *Governor runs MTA like executive agency, abolishes MTA Board.*
   Our take: Non-starter. No significant support in Legislature, opposition of NYC and counties.
2. *Governor gets outright majority of board appointees.*
   Our take: In future budget negotiations, could happen. Unclear upsides. Could reduce transparency by making it more difficult for non-gubernatorial board members to be heard.
3. *NYC control of New York City Transit, MTA continues as commuter rail and regional planning entity.*
   Our take: Non-starter for the Governor, who has stated that the city would lose all state funds for NYCT under this scenario. Transfers historic amount of power. from Governor, State Legislature to NYC. Proposed by NYC Council Speaker Johnson.
4. *Board Hires and Fires CEO/Chairman: actual Board control of MTA.*
   Our take: Non-starter. Transfers Governor's control to MTA Board, which he appoints a plurality of. Pros and cons should be carefully assessed.
5. *Split CEO and Chair into two jobs: CEO selected by Governor, Chair by Board*
   Our take: Not under consideration. Unclear practical value.
6. *Board hires/fires CEO: selects Chair, Governor appoints majority of board, Split CEO/Chair*
   Our take: Not under consideration. Might be palatable for future Governor.

Fixing Known Problems with the MTA Board

Reforming the MTA's governance structures, including the MTA Board, will require serious study and contemplation by New York's public officials, transit professionals and other stakeholders, and should not be rushed. Beyond political appointment issues at the MTA, there are well-understood problems at the Board level that should be addressed. These changes can be made regardless of who appoints whom to control the authority.

1. One option to improve the board approval process would be to shift their oversight role to the MTA's biggest projects. Currently, smaller, routine contracts inundate board members with minutiae that are time-consuming and abstruse. Relieved of this responsibility, the board would be able to concentrate on the larger-scale projects that have the greatest impact on the MTA's overall success. This new freedom would allow the Board to better set broad capital and budget priorities for the agency. The contract approval role may be better suited for the office of the State Comptroller, who has real expertise in the matter. Oversight could remain of contracts over a larger threshold or upon request of the MTA Board. This proposal should be developed further in consultation with the MTA Board and State Comptroller's office to ensure that sufficient oversight remains. *Note: the State Budget for FY 2019-2020 has increased the thresholds for Board approval of certain non-competitive contracts. This proposal needs to be further evaluated to see what additional changes should be made.*
2. Policy should not be approved by the Board via contracts, but rather be discussed separately as major decisions. It is clear that the policy decision regarding how to best rehabilitate the L train tunnel has been connected with the contract for its work, while this should have been voted on as a separate matter.
3. The MTA Board and CEO/Chairman appointment process should have clear deadlines for action by the Governor and State Senate on appointments, and include requirements for public hearings on appointees. The current process of having Board members appointed by the Governor upon the recommendation of the Mayor and County Executives, and then confirmed by the State Senate provides far too many opportunities for delay and inaction. Another option would be for non-Governor appointments to go directly to the State Senate for public consideration, and include deadlines for action.

MTA Financial and Procurement Decisions

A number of recent proposals have been floated regarding changes to the MTA's capital budget process and calendar for approval of its operating budget. There are also concerns about the abuse of emergency procurement powers by the MTA.

Regarding changes to the capital plan process, the Governor's Budget Director, Robert Mujica, has proposed removing the "veto power" of appointees to the Capital Program Review Board,[350] which has not met publicly in a decade, yet is supposed to provide additional oversight from the State Legislature and New York City Mayor. The MTA Sustainability Advisory Workgroup report proposed a separate capital construction authority to manage the MTA's capital projects, and moving to a 10-year, rolling capital budget process. Creating a separate public authority for construction projects is not advisable, and is too reminiscent of the endless proliferation of unaccountable local economic development authorities. Moving to a 10-year capital process also lets the MTA off the hook for failing to deliver past projects on-time, lessening accountability.

One more practical idea is to move the MTA's budget calendar to better align with the state's. This proposal has been cited by MTA Board members as well as the MTA Sustainability Advisory Workgroup as a possible remedy to the current process, which involves ill-timed approving the MTA budget before funding decisions in Albany are made. Indeed, localities around the state such as New York City have later fiscal year start dates (July 1 - June 30), allowing them to pass budgets with state funding in mind.

Additionally, Executive Order 168 has posed serious questions regarding the role and fiduciary responsibility of the MTA Board, and has been used to approve items bearing little relationship to a "state of emergency," such as the MTA Genius Challenge.

4. The MTA budget calendar should be changed to better align with the state budget. This should be implemented following study by independent experts in consultation with the MTA to determine how a shift can best be conducted.
5. Executive Order 168 should no longer be extended, as it has been in place for 20 months as of the date of this report and is likely an unconstitutional use of the Governor's emergency powers. The MTA's Procurement Guidelines already provide for the use of emergency procurements. The State Legislature should consider whether changes need to be made to further clarify the appropriate use of emergency procurements by the MTA.

[350] Governor Andrew Cuomo. "Statement from Director of the Budget Robert Mujica on the MTA." January 13, 2019. https://www.Governor.ny.gov/news/statement-director-budget-robert-mujica-mta

Improving External Oversight

A number of oversight bodies have been put in place over the years to provide a check on the MTA, yet as a whole, they have not adequately provided oversight. Given that the Governor controls the MTA and appoints many of the bodies that oversee it, the State Legislature and State Comptroller are the only elected representatives with real, independent oversight powers. Yet neither the State Legislature nor the Comptroller's oversight roles have been exercised as strongly as they should during the ongoing funding and service crisis. The State Senate has also failed to hold meaningful confirmation hearings for recent MTA appointees, such as via the March 31, 2019 confirmation of the new CEO/Chairman Pat Foye as part of the budget negotiations on a Sunday afternoon with no advance public notice.

Other oversight bodies can be further empowered to provide a check on the MTA. At the very least, these entities should more fully use their existing oversight powers.

State Legislature

6. The Senate and Assembly should create a subcommittee solely focused on the MTA.
7. The relevant committees of the State Legislature – Transportation and Corporations, Authorities and Commissions – should hold regular oversight hearings regarding both the MTA's budget and the operations of its agencies. There is no shortage of topics to consider: operational challenges of the subway, state of good repair needs, signal modernization, accessibility needs, the Fast Forward plan, and the MTA's asset management systems, for example.
8. The Legislature should require the Capital Program Review Board to meet publicly. As the majorities in each house together appoint two of the CPRB's four voting members, the legislature is well positioned to ensure that it operates in the open, as the Senate Democratic majority did in 2010.
9. The State Senate must meaningfully and thoroughly conduct its confirmation process for the MTA CEO/Chairman and Board member positions. The public deserves to have sufficient advance notice, and should hear what makes these candidates qualified to serve the needs of the MTA as a whole, not just their appointing authorities.
10. The financial disclosure forms of MTA appointees should considered by the legislature and made available to the public as part of confirmation hearings.

State Comptroller

11. The State Comptroller should also be empowered with enhanced oversight of MTA contracts, possibly replacing review by the MTA Board.
12. The State Comptroller should conduct greater oversight of general MTA operations, contracts, and capital program spending, using its existing audit and contract oversight powers to specifically focus attention on systemic and big ticket items.
13. The State Comptroller should conduct a regular audit of the MTA's Freedom of Information Law (FOIL) compliance.

Authorities Budget Office

14. The ABO should receive a budget increase to enable greater oversight of state authorities, including the MTA. This should allow it to have a staff of at least 30, including a counsel, policy analysts, and other administrative staff, as was envisioned, but never realized, with its creation in 2009.
15. The ABO should conduct a Governance and Operational Report on the MTA and its agencies, acting upon any pending complaints or upon its own initiative, as it has for other transportation agencies and public authorities in the state.
16. The ABO should revise its requirements for procurement reports to stipulate that authorities such as the MTA include additional information such as contract numbers, change order/amendment history, and subcontractors.
17. The ABO should be given the power to remove board members from authorities.

MTA Inspector General

18. The MTA IG should publish all recent reports, investigations, prosecutions and audits on its Reading Room to ensure that the public can fully understand its current activities. This should include its 2017 Annual Report and 2018 Annual Report, if available.
19. The MTA IG should conduct follow-up audits to evaluate whether the MTA has made changes suggested in their prior audits, such as their audit of the MTA's All-Agency Contractor Evaluation (ACE) Program.

Joint Commission on Public Ethics

JCOPE should revise its *outside activity* approval process under Title 19, Part 932 to require:

20. Approval for outside activity by public vote of relevant authority board members;
21. Approval for outside activity by JCOPE, regardless of the unpaid or per diem status for agency heads; and
22. JCOPE to publish Outside Activities approvals it has provided even if they are Informal Opinions. (We note that JCOPE is allowed under statute to do so.)

Capital Program Review Board

23. The CPRB should comply with the Open Meetings Law to ensure that all of its deliberations are conducted in public meetings, in particular its votes to approve capital plans and their amendments.
24. A website should be created for the CPRB where it publishes its mission, activities, members, calendar of meetings, meeting minutes and materials, and contact information.

Improving Transparency

Transparency should be adopted as a core value at the MTA and applied to all aspects of its operations. It is clear that the MTA has trouble providing complete information to both the MTA Board and the riders, especially when the truth makes for bad optics. By disclosing so much information in PDF form, the MTA is only providing a facsimile of transparency, rather than transparency that could lead to genuine improvements. The MTA needs to more clearly understand its own needs, and should update and publicly release more information about its own assets and rider demographics.

Open Data

The MTA must embrace open government standards such as fully open data for its contracts, performance, capital plans, budget documents, and Board materials. This should include:

25. Fully complying with Executive Order 95, requiring the publishing of all public MTA data on the New York State Open Data portal.
    a. The legislature should consider legislation to codify Executive Order 95's requirements for the MTA.
26. Releasing all underlying datasets that are used to create MTA performance metrics, with full release of methodologies for metrics and delay categories and API access to all performance and delay data
27. Creating a contracts database that provides full and complete information about projects. All data should be available for bulk download and with API access. Data provided in the database should include:
    a. Contract numbers and vendors, including subcontractors
    b. Contract terms
    c. Original planned costs (from capital plans and expense budget)
    d. Original contract value
    e. Current contract value
    f. Complete information on contract amendments, including number and size of amendments
    g. Bidding process used (RFP, IFB, single source, etc), including number of bids
    h. Competitive/non-competitive procurement
    i. Options for future contract orders
    j. MWBE/DBE information
    k. Funding levels from federal, state and city
    l. Capital project IDs and needs codes (this would allow users to determine if projects are intended for for state of good repair, normal replacement, etc).
28. Providing all data for MTA Board and Budget materials well in advance of meetings in open formats. All summary tables and project-specific details should be provided in machine-readable, CSV spreadsheet form.

29. Creating an MTA "Open Budget" website for the MTA's budget information, similar to the state Open Budget NY site. All data should be available for bulk download and with API access.

Improving Budget and Capital Plan Transparency

The successful implementation of the MTA's budget and capital plans is crucial to public confidence in the MTA, particularly in a climate of worsening service and continued funding challenges. New York City Transit has ambitious plans to upgrade its system, including major improvements to its signals systems through the Fast Forward Plan, but without proper transparency, the public cannot hold the necessary officials accountable.

The MTA must provide a complete picture of the performance of individual projects, always attaching original project schedules and costs rather than re-baselined information that hides the original costs with "current" information, essentially moving the goalposts. Ideally such reports would include yearly trends and performance reviews for the various categories and elements of each key area. Recommendations in this area are provided below for specific documents and projects.

<u>Budget and Capital Plan Transparency</u>

30. Capital Planning Oversight Committee (CPOC) Materials should be improved through the following steps:
    a. Release all CPOC data in machine-readable, CSV spreadsheet form.
    b. Data on projects should always include original project schedules and budgets – when projects are re-baselined each year with a new yearly goal, it is difficult to track the changes to projects over time.
    c. All current projects should be listed in the "Traffic Light" report, including those in the CPOC's Risk-Based Monitoring Program, to allow for consistency and comparability between all projects.
31. Budget Documents should be made open and more complete:
    a. Release all budget data in open formats. All summary tables and project-specific details should be provided in machine-readable, CSV spreadsheet form.
    b. Include additional data fields on capital project commitment listings in the adopted budget:
        i. Contract numbers and vendors, including subcontractors
        ii. Contract terms
        iii. Original planned costs (from capital plans and expense budget)

iv. Original contract value
v. Current contract value
vi. Bidding process used (RFP, IFB, etc), including number of bids
vii. Competitive/non-competitive procurement
viii. Options for future contract orders
ix. MWBE/DBE information
x. Funding levels from federal, state and city
xi. The capital plan year for projects, noting any rolled over from previous plan
xii. Project IDs and needs codes – this would allow users to determine if projects are intended for for state of good repair, normal replacement, etc.

c. Budget Documents should also provide breakdowns of past total yearly expenditures and revenues, going back at least 10 years, for both the capital and expense budget, broken down by agency and major project areas, comparing them with the projected numbers from prior budgets.

32. MTA Capital Dashboard should be updated and improved:
    a. Data for quarterly updates should be published in a timely manner – these have been consistently provided months late.
    b. Make all data currently only in click-through form available for bulk download, ideally together with the data available on the front page.
    c. For the "Project Details" Front Page and Click-Through Data:
        i. Include more data fields such as original budget numbers on the front page.
        ii. Provide missing data, or note where data is still under development for projects.
        iii. Provide additional data for each project, also to be made available in bulk download, as recommended for the contracts database and budget documents above.
    d. List the capital plan year for projects, noting any rolled over from previous plans, not just the Project ID.
    e. For the "Milestone Report"
        i. Correct broken links for project listings
        ii. Allow for sorting by on-time and late projects
    f. Fix the broken "Feedback" link so that the MTA can receive feedback on the Dashboard.
    g. Hold a user-group feedback session to identify additional improvement areas, and expand the "FAQs" Section, using feedback from user-groups.

Open FOIL

33. The MTA should adopt an Open FOIL platform using best practices from other jurisdictions such as LA Metro and the Port Authority of NY/NJ and within New York State such as NYC Open Records. This will vastly increase the efficiency of the MTA's FOIL process and produce significant cost savings and better service for the public. Making all responses publicly available in a searchable and machine-readable format will reduce the staff time required to process in duplicative requests. With an automated dashboard system, managers will also have a complete picture of their FOIL compliance at all times. The OpenFOIL portal should have the following features:
    a. A central portal for the public to submit information requests to all MTA subsidiaries/affiliates and view all public requests, expanding upon the open source software from the NYC Open Records portal to include:
        i. The names and organizations of those who submit requests
        ii. Public tracking of the status of all requests
        iii. Notifications to requestors and FOIL staff
        iv. Posting of communications by FOIL staff regarding the status of requests, and release or denial of information
        v. Automatic posting of records released in machine-readable formats
        vi. Searchability of requests, communications, and released records creating ease of use for individuals looking for records
    b. Links to a new, online portal for MTA Police Incident reports
    c. Requests sent to the wrong MTA agency automatically forwarded to the correct agency.
    d. A public directory of MTA FOIL Officers, including email and phone.
    e. Access via API to all FOIL portal data.
    f. MTA FOIL Performance Metrics, per FOIAOnline:
        i. Requests Received, Processed, and Pending
        ii. Median Number of Days for Processed Perfected Requests
        iii. Requests Fully Granted
        iv. Requests Partially Granted/Partially Denied
        v. Requests Fully Denied
        vi. Number of Denials Based on Exemptions
        vii. Number of Denials Based on Reasons Other than Exemptions
    g. Annual report to MTA Board on MTA FOIL operations, performance and plans for improvement.

h. The MTA should use FOIL requests to prioritize proactive release of MTA information and create a fully searchable "Reading Room" of frequently requested files, which should be made available in open data formats.
i. Relevant Data Sets should be posted to the NYS Open Data Portal including:
    i. Current and historic FOIL requests from the portal
    ii. MTA FOIL Performance Metrics
    iii. Any tabular data released via FOIL responses

34. The MTA should create an in-house MTA Police incident reports portal, using the models from the NYS DMV and Pennsylvania State Police, allowing the public to privately request incident reports online. This should be publicized on the MTA Open FOIL portal. This portal could save the MTA significant time processing other FOIL requests, given that two-thirds of current FOIL requests involve incident reports.

Better Understanding Itself and Its Riders

35. The MTA should conduct an updated demographic analysis of its riders that looks at age, median individual and family income, race, ethnicity, gender, profession, disability, geographic locations, travel times, and other important metrics to help the MTA better understand its riders and the challenges that they face.
36. The MTA should release more detailed methodology and tabular data about its fare evasion statistics, including information broken out more granularly by geographic location such as borough, line, subway station, etc.
37. The MTA should release publicly, in an open data format, all data from its customer service portal as well as all staff analysis of the portal, polls and surveys.
38. The MTA should publicly release, in an open data format, its submission to the FTA of its Transit Asset Management (TAM) plan and the update to its 20-Year Needs Assessment.
39. MTA staff should conduct and publicly release an in-depth "lessons learned" report about successes and failures during the installation of Communications Based Train Control (CBTC) on the 7 Line. MTA staff are in the best position to explain what lessons can be learned from the project, and should provide a report to the public, outside of the context of the MTA's regular board and committee meetings. As part of restoring public confidence and gaining public support, the MTA needs to be transparent about late and over-budget projects and explain

how it is learning lessons that allow it to continuously improve. Questions that the MTA should ask about this project as part of its analysis should include:

a. Regarding software, which was the biggest issue cited by MTA staff as a concern regarding implementation of the project, does the MTA staff need greater training and support? Given the desire for interoperability (ability for the software to be adapted between different devices and vendors) and greater choice of CBTC vendors?
b. Are lessons being learned with the Siemens/Thales partnership on Queens Boulevard that would have been helpful for the 7 line? In general, has this leader/follower model been effective? Should CBTC software be owned by the MTA or made open source rather than proprietary to the vendor?
c. How should the MTA handle track closures/General Order G.O. availability for future CBTC projects? Track availability, as well as work train and flagging availability, was cited as a major concern for the Flushing line.
d. Were contractors able to effectively work with all necessary teams at the MTA, such as signals staff, line managers, track crews and others responsible for various aspects of the 7 line? Was there an effective signal point of contact? What can help create a better systems approach to signal modernization?
e. Were there staff redundancies that could have been eliminated from the work conducted in-house by NYCT in support of the project?
f. Have there been an inordinately large number of change orders for this project? (At least 63 have been requested, per Reinvent Albany's review of public, MTA Board documents.) If so, what is this indicative of? Was the initial scoping of the project not done sufficiently?
g. What were the drivers of cost increases? Beyond the expansion of the 7 line, what contributed to cost increases – insufficient scoping? Unfavorable bidding? Project delays? Lack of competition?

Open Meetings Law

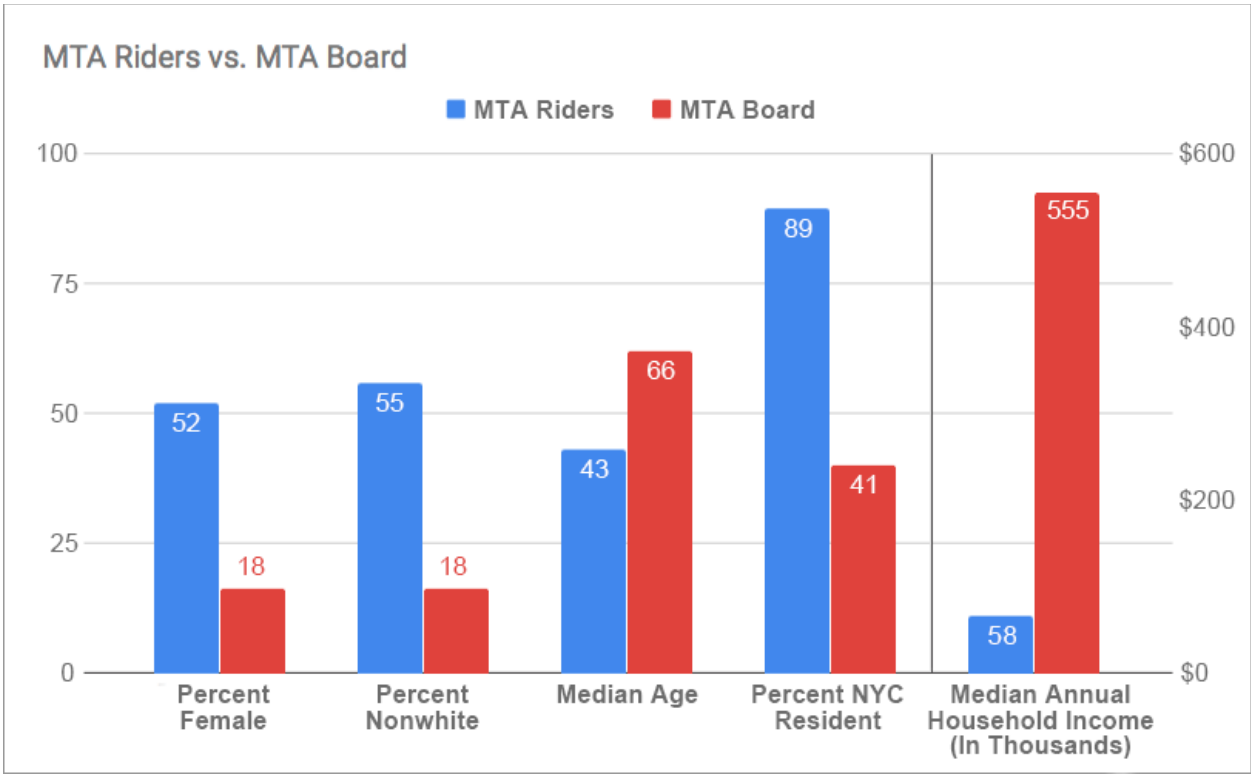
40. The Capital Plan Review Board should meet publicly and provide all information about its operations on a public website, including all agendas, documents, calendars, video and minutes of public meetings, and other materials.Where applicable, these should be in machine-readable, tabular format.
41. All future commissions, advisory workgroups and other public bodies formed by law to provide recommendations regarding the MTA should fully abide by the Open Meetings Law.

Ethics and Conflicts of Interest

42. The MTA Board should affirm by board vote that the Chairman and CEO is the head of agency – whether or not receiving a salary – and is therefore subject to all Public Authorities Laws (Public Officers Law sections 73, 73-a and 74) and MTA internal ethics policies requirements covering compensated heads of agencies.
    a. State law and related rules of the Joint Commission on Public Ethics should be amended to affirm that heads of agencies and public authorities – whether receiving a salary or not – are subject to all requirements of Public Officers Law sections 73, 73-a and 74.
43. The MTA should ban outside income for the MTA Chairman and CEO, whether compensated or not. At a minimum, this should also apply to appointed, non-civil service staff.
44. The qualifications of board members in state law should be amended to disqualify those who have business before the state or with local governments within the MTA region.
45. The MTA Board Ethics Code should be amended to require notification to the full MTA Board any board member's potential conflicts of interest, including of the CEO/Chairman.
    b. Notification of boards of directors of all public authorities should be codified in state law, per Authorities Budget Office guidelines.
46. The MTA should post on its website the financial disclosure forms of the CEO/Chairman, MTA Board Members, and senior management of the MTA including Agency Presidents after they are submitted to the state Joint Committee on Public Ethics and the NYC Conflicts of Interest Board.
47. The MTA should post on its website the list of contractors and any others determined to be "prohibited sources" as defined in the MTA Codes of Ethics.
48. The MTA's All-Agency Code of Ethics should be amended to eliminate double standards between board and/or management and employees regarding attendance at prohibited-source sponsored events.
49. The MTA should conduct a review, consulting with national experts, to consider revisions to the MTA' All-Agency Code of Ethics as relates to the "revolving door" or post-employment restrictions for MTA staff.
50. The MTA should affirm by board vote that campaign contributions to the Governor from MTA Board members are banned, as stipulated by the MTA Board Code of Ethics, and the MTA should amend its Board Code of Ethics to ban campaign contributions to the Governor from board members' businesses and family.

APPENDIX 1 - Demographics of the MTA Board (2018)

Figure 25



Reinvent Albany conducted an analysis of Board members' financial disclosures and demographics in 2018. Building upon research by Transit Center and other advocacy groups, we found that the MTA Board failed to reflect the riders it served across every demographic—age, residence, income, ethnicity, and gender. Our analysis of the board as of its composition in June 2018[351] showed the following:

- 89% of MTA riders live in NYC compared to 41% of MTA Board members
- At least 55% of MTA riders are non-white compared to 18% of Board
- 52% of MTA riders are women, 18% of Board members are
- Median age of MTA riders is 43, median age of MTA Board is 66
- Median household income of MTA riders $58,000, median income for Board $555,000

[351] Reinvent Albany used publicly available information about board members, as well as financial disclosure forms obtained from the Joint Commission on Public Ethics from the most recent filing period in 2018.

Below is a list of board members as of June 2018, with information on their household income and demographics:

Board Members' Race, Gender, Residence and Age

Name	Race	Gender	Residence	Age	Recommended By
Andrew Saul	W	M	Bedford, NY (Westchester County)	72	Westchester County Executive
Carl Weisbrod	W	M	Roosevelt Island (New York County)	73	Mayor
Carl Wortendyke	W	M	Upper Nyack, NY (Rockland County)	71	Rockland County Executive
Charles Moerdler	W	M	Bronx (Bronx County)	83	Governor
David Jones	B	M	Manhattan (New York County)	70	Mayor
Fernando Ferrer	H	M	Riverdale (Bronx County)	68	Governor
James E. Vitiello	W	M	Staatsburg, NY (Dutchess County)[352]	47	Dutchess County Executive
John Molloy	W	M	Wantagh, NY (Nassau County)	72	Nassau County Executive
Joseph Lhota	W	M	Brooklyn Heights (Kings County)	64	Governor
Lawrence Schwartz	W	M	Westchester (Westchester County)	61	Governor
Mitchell Pally	W	M	Stony Brook (Suffolk County)	66	Suffolk County Executive
Neal Zuckerman	W	M	Garrison, NY (Putnam County)[353]	48	Putnam County Executive
Peter Ward	W	M	Staten Island (Richmond County)	60	Governor
Polly Trottenberg	W	F	Brooklyn (Kings County)	54	Mayor
Scott Rechler	W	M	Old Brookville (Nassau County)	51	Governor
Susan G. Metzger	W	F	Warwick, NY (Orange County)	74	Orange County Executive
Veronica Vanterpool	H	F	Scarsdale, NY (Westchester County)	43	Mayor

[352] Has a second residence in Manhattan.

[353] Some sources say Philipstown.

Board Members' investments, wealth, and household income in 2017[354]

Member	Investments	Real Estate, Retirement Plans, or Other Family Wealth	Total Household Income	Total Household Wealth[355]
Andrew Saul	$26,421,000	$9,525,000	$6,708,003	$42,654,003
Carl Weisbrod[356]	$2,990,000	$1,905,000	$240,000	$5,135,000
Carl Wortendyke[357]	$5,000	$100,000	$1,350,000	$1,455,000
David Jones	$500,000	$3,150,000	$555,000	$4,205,000
Fernando Ferrer[358]	$500,000	$1,750,000	$560,000	$2,810,000
James E. Vitiello[359]	$0	$0	$950,000	$950,000
John Molloy[360]	$3,600,000	$0	$0	$3,600,000
Joseph Lhota[361]	$6,850,000	$10,750,000	$2,430,000	$20,030,000
Lawrence Schwartz	$1,411,000	$1,050,000	$0	$2,461,000
Mitchell Pally[362]	$825,000	$741,000	$161,001	$1,727,001
Neal Zuckerman	$966,000	$2,045,000	$2,743,000	$5,754,000
Peter Ward	$5,000	$9,570,000	$405,000	$9,980,000
Polly Trottenberg	$260,000	$440,000	$404,000	$1,104,000
Scott Rechler[363]	$79,001,000	$1,000,000	$17,666,001	$97,667,001
Susan G. Metzger	$175,000	$500,000	$555,000	$1,230,000
Veronica Vanterpool	$210,000	$41,000	$81,000	$332,000
Total 2017	**$123,719,000**	**$42,567,000**	**$34,808,005**	**$201,094,005**
Average 2017	*$7,732,438*	*$2,660,438*	*$2,175,500*	*$12,568,375*
Median	*$662,500*	*$1,500,000*	*$555,000*	*$3,205,000*

[354] Charles Moerdler is not included in the 2017 data, as his filings were provided to the NYC Conflict of Interests Board and were not forward to JCOPE at the time of our analysis.
[355] Note that these are the lowest possible numbers given the ranges provided on disclosure forms and do not include the value of members' entire estates.
[356] Weisbrod is no longer on the MTA Board. The value of some investments is listed as "unknown."
[357] Wortendyke is no longer on the MTA Board.
[358] Ferrer was the only board member in both 2016 and 2017 to list some of his income as having come from consulting.
[359] Vitiello is no longer on the MTA Board.
[360] Molloy is no longer on the MTA Board.
[361] Lhota left the MTA Board on November 9th, 2018.
[362] Pally may have mistakenly double-listed one of his retirement plans as an investment.
[363] Rechler is no longer on the MTA Board. He entered a value of "JJJ" under Table II on his investment holdings, even though no such value exists. Assuming a typo, we included the numerical value for JJ.

APPENDIX 2 - MTA Oversight Roles and Responsibilities of Government Bodies

New York State Legislature

Members of the New York State Legislature are elected every 2 years. In total there are 63 State Senators and 150 State Assemblymembers making up the 213-member body,[364] which can oversee the MTA through the following mechanisms:

- As part of the NYS budget process, hold joint hearings on state funding for the MTA, as well as create revenue mechanisms such as dedicated taxes.
- Committees of the Senate and Assembly can conduct oversight of MTA operations. This includes the Transportation and Corporations, Authorities and Commissions Committees, which exist in both houses.
- Can pass legislation specifying MTA operations and reporting requirements.
- NYS Senate provides advice and consent role for appointment of MTA Chairman and Board of Directors, MTA Inspector General, Authorities Budget Office.
- Appoints members to agencies overseeing the MTA: the Capital Program Review Board (1 each by Speaker of Assembly and Temporary President of the Senate; minority leaders each get 1 non-voting member), and Joint Commission on Public Ethics.
- Receives reports from Authorities Budget Office, MTA Inspector General, Public Transportation Safety Board.

New legislative oversight was a part of the 2009 bailout package for the MTA, but has not been used.[365] This included:

- An 2009 independent audit of the MTA by the legislature, with the option to conduct audits every 2 years after. No audits have been conducted.
- The receipt of a report from Office of Legislative and Community Input. This report has not been produced since 2011.[366]

Members of the public who wish to weigh in with their legislators about the MTA can contact individual member offices, who can also be visited for lobby appointments. Members of the public can also testify at hearings of the legislature, though some

[364] For those currently in office See NYS Senate website, https://www.nysenate.gov/senators-committees and NYS Assembly website, https://assembly.state.ny.us/mem/

[365] See Public Authorities Law Section 1276-D (Independent Audit), 1279-C (Office of Legislative and Community Input)

[366] See past reports at http://web.mta.info/mta/legislative.html

hearings may only have speakers who were invited to testify. Legislators can also be contacted for local MTA matters, who would handle the matter similar to other constituent complaints.

New York City Council

The New York City Council's 51 members are elected to 4-year terms. While the MTA is created by state law, there are some areas where the New York City Council, particularly as it relates to New York City Transit and the agency's interactions with the NYC Department of Transportation related to street access for buses.[367] The City Council has also recently created city programs that interface with the MTA, such as the Fair Fares initiative, whichuses city resources to finance half-priced subway fares for low-income New Yorkers.[368]

City Councilmembers can be contacted for local MTA matters, who would handle the matter similar to other constituent complaints, or on larger policy or budget matters involving the MTA.[369]

New York State Comptroller

The New York State Comptroller is the statewide chief fiscal officer, elected to four year terms, who according to their stated mission, ensures that State and local governments use taxpayer money effectively and efficiently to promote the common good.[370] The Office of the State Comptroller (OSC) can oversee the MTA through the following mechanisms:

- Has oversight over public authority contracts of $1 million or more if they are either awarded non-competitively or paid from state funds, including amendments to these contracts. Amendments to competitively bid contracts are subject to review is the modification was not provided for in the initial solicitation.[371]

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[367] New York City Council. Committee on Transportation. https://council.nyc.gov/committees/transportation

[368] Office of the Mayor. Press Release. "Mayor de Blasio and Speaker Johnson Launch Fair Fares Program for Low-Income New Yorkers." January 4 2019. https://www1.nyc.gov/office-of-the-mayor/news/008-19/mayor-de-blasio-speaker-johnson-launch-fair-fares-program-low-income-new-yorkers#/0

[369] Find your Councilmember and district here: https://council.nyc.gov/districts/

[370] Office of the New York State Comptroller (OSC). About the Comptroller's Office. https://www.osc.state.ny.us/about/response.htm

[371] Public Authorities Law §2879-a

- Reports to state legislature on state financial condition, including that of public authorities[372]
- Issues regulations for financial reporting from authorities to Comptroller's Office, and publishes listings of authorities and individual financial reports[373]
- Reports on debt of public authorities
- Audits operations of state agencies and authorities

The Office of the State Comptroller also administers the Public Authorities Reporting Information System (PARIS), an online electronic data entry and collection system jointly designed, developed, and operated with the Authorities Budget Office (ABO). Public authorities use PARIS to comply with the various reporting requirements of Public Authorities Law, General Municipal Law and OSC Regulations.[374]

While the OSC has limited authority to audit MTA contracts, its audit powers are more wide-reaching and could be more effectively used to put external, independent, pressure on the MTA to improve performance and operations. Additionally, more policy reports could be conducted by the Office of the Deputy Comptroller for New York City about the subway system, given the office's past larger focus on the LIRR. Complaints can be filed with the Office of the State Comptroller regarding fraud and corruption to its investigations division at https://osc.state.ny.us/investigations/. Other inquiries can be directed at the other divisions via https://www.osc.state.ny.us/contact.htm.

New York City Comptroller

The New York City Comptroller's oversight powers, though more limited than the State Comptroller's, involve two areas[375]:

- The "financial condition" of the New York City Transit Authority - allows examination of accounts, books and records
- Bridges and Tunnels - allows examination of accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing

[372] State Finance Law §8, Subsections (9)(b) and (14)
[373] See October 2015 Contract Submission Manual https://www.osc.state.ny.us/pubauth/Documents/process/contr_submanual.pdf and NY Codes and Regulations - Chapter V Public Authorities, Department of Audit, Parts 201-206, https://www.osc.state.ny.us/pubauth/Documents/regulations/index.htm
[374] See Office of the State Comptroller, PARIS FAQs, https://www.abo.ny.gov/frequentquestions/faq.html#paris
[375] NYC Comptroller. "Powers and Duties Under New York State Law." https://comptroller.nyc.gov/wp-content/uploads/2016/05/ComptrollerStateLaw_duties.pdf

According to the listing of audits on the City Comptroller's website, there have been 29 audits of the MTA and New York City transit since 2002.[376] These have involved audits regarding efforts to inspect and repair elevators[377], and three recent audits on Wi-Fi service on MTA Buses in Brooklyn, Manhattan, and Queens.[378]

The City Comptroller has issued a number of recent, influential policy reports on the MTA. These have included:

- Left in the Dark: How the MTA Is Failing to Keep Up With New York City's Changing Economy[379] - March 2018
- The Other Transit Crisis: How to Improve the NYC Bus System - November 2017[380]
- The Economic Cost of Subway Delays - October 1, 2017[381]
- The Human Cost of Subway Delays: A Survey of New York City Riders - July 2017[382]

Similar to the State Comptroller, complaints can be filed with the office, or general inquiries can be directed to https://comptroller.nyc.gov/about/contact-our-office/. The office also has a form to "suggest an audit" which can be submitted for specific issues: https://comptroller.nyc.gov/services/for-the-public/suggest-an-audit/.

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[376] For full list see New York City Comptroller's Reports search portal, https://comptroller.nyc.gov/reports/?fwp_type=audit&fwp_agency=metropolitan-transportation-authority%2Ctransit-authority&fwp_paged=2

[377] New York City Comptroller. "Audit Report on the New York City Transit's Efforts to Inspect and Repair Elevators and Escalators" May 1, 2017. https://comptroller.nyc.gov/reports/audit-report-on-the-new-york-city-transits-efforts-to-inspect-and-repair-elevators-and-escalators/

[378] These three June 2018 audits were conducted and released at the same time, but cover the separate geographical areas mentioned. See these Audits from the NYC Comptroller's Office. https://comptroller.nyc.gov/reports/final-letter-audit-report-on-the-telecommunication-services-on-the-metropolitan-transit-authority-brooklyn-buses-phase-i/ https://comptroller.nyc.gov/reports/final-letter-audit-report-on-the-telecommunication-services-on-the-metropolitan-transit-authority-manhattan-buses-phase-i/ https://comptroller.nyc.gov/reports/final-letter-audit-report-on-the-telecommunication-services-on-the-metropolitan-transportation-authority-queens-buses-phase-i/

[379] NYC Comptroller. "Left in the Dark: How the MTA Is Failing to Keep Up With New York City's Changing Economy" https://comptroller.nyc.gov/reports/left-in-the-dark-how-the-mta-is-failing-to-keep-up-with-new-york-citys-changing-economy/

[380] NYC Comptroller. "The Other Transit Crisis: How to Improve the NYC Bus System." November 2017. https://comptroller.nyc.gov/reports/the-other-transit-crisis-how-to-improve-the-nyc-bus-system/

[381] NYC Comptroller. "The Economic Cost of Subway Delays." October 1, 2017. https://comptroller.nyc.gov/reports/the-economic-cost-of-subway-delays/

[382] NYC Comptroller. "The Human Cost of Subway Delays: A Survey of New York City Riders." July 2017. https://comptroller.nyc.gov/reports/the-human-cost-of-subway-delays-a-survey-of-new-york-city-riders/

Capital Program Review Board

The Capital Program Review Board is tasked with approving MTA capital plans and amendments, as well as monitoring implementation. Its six members (four voting and two non-voting) are appointed by the following elected officials:

Voting members

- Governor (1)
- Pres. of NYS Senate (1)
- Speaker of NYS Assembly (1)
- NYC Mayor (1)

Non-voting members

- Minority Leader of NYS Senate (1)
- Minority Leader of NYS Assembly (1)

Approval is required by all voting members (note however, that the Mayoral appointee only approves items related to New York City Transit). Beyond the main responsibility of approving the MTA's capital plans, the CPRB also is responsible for:

- Monitoring progress of capital projects
- Monitoring expenditures incurred for projects
- Identifying items not progressing on schedule and the responsibility for them
- Recommending actions to accelerate implementation

Authorities Budget Office

The powers and duties of the Authorities Budget Office (ABO) include:[383]

- Overseeing the operations and finances of public authorities to assure they are acting in the public interest and consistent with their intended public purpose
- Collecting, analyzing and disseminating organizational, operational, performance and financial information on public authorities for the purpose of making this information available to the public.
- Evaluating the compliance of public authorities with their mission statements and the laws of New York State and advising and guiding public authorities concerning their compliance, including ethics laws and conflicts of interest.
- Making recommendations to the Governor and the Legislature on debt, compensation, procurement practices, property transactions, structure and

[383] Authorities Budget Office. Mission Statement. https://www.abo.ny.gov/abo/about_mission.html

mission, and other issues related to improving the performance and transparency of public authorities.
- Promulgating regulations to carry out the purposes for which the ABO was created.
- Enforcing compliance with statutory requirements, including publicly warning and censuring authorities for non-compliance and recommending the dismissal of officers and directors.
- Investigating upon its own initiative or acting on complaints concerning the failure of a public authority to comply with State law.
- Issuing reports of its activities, findings, analysis and recommendations.

The director of the authorities budget office is appointed by the Governor, upon the advice and consent of the Senate, for a term of four years. The director can only be removed upon notice and opportunity to be heard, and for a set of criteria including neglect of duty and malfeasance.[384]

- Director of Authorities - includes the MTA mission statement, and reports on budget, procurement and audits from 2013 to present. The 2019 budget is already available on this listing.[385]
- Website Review - The ABO in 2015 reviewed the MTA's website for compliance with PARA, finding that certain information such as minutes and schedules of meetings were not posted. This information has since been corrected.[386]
- Public Authority datasets - includes information such as procurement reports, real property transactions, salary, schedule of debt, and summary financial information.[387] While this information is provided in an open data format, the procurement report is missing certain crucial information, such as contract numbers and information regarding change orders and subcontractors.

Complaints can be filed with the office via a complaint form, and the ABO provide guidance about how to file complaints on its website: https://www.abo.ny.gov/Complaint/Complaint.html

[384] Title 2, Public Authorities Law.
[385] ABO. Directory of Public Authorities. https://www.abo.ny.gov/paw/paw_weblistingST.html
[386] ABO. "Review of Metropolitan Transportation Authority Website." 2015. https://www.abo.ny.gov/reports/websitereviews/MTAWebsiteReview_11.23.2015.pdf
[387] ABO. Public Authority Data reports. https://www.abo.ny.gov/publicauthoritydata/PublicAuthorityData.html

MTA Inspector General

In 1983, state law created the Office of Inspector General within the MTA, with reporting obligations to the Governor and the Legislature, independent of MTA management and the MTA Board.[388]

The New York State Inspector General does not have jurisdiction over the MTA, as the authority has its own IG. The IG is appointed by Governor, with advice and consent of NYS Senate for a 5-year term. The MTA IG's responsibilities[389] include:

- Receiving and investigate complaints, from any source or on his/her own initiative, concerning alleged abuses, fraud, and deficiencies in maintenance and operations of the MTA and its subsidiaries, including the Triborough bridges and tunnel authority (TBTA).
- Initiate reviews of the MTA, its subsidiaries and the TBTA to identify areas to improve performance
- Recommend remedial actions to overcome or correct deficiencies
- Make available to law enforcement information and evidence related to criminal acts
- Subpoena witnesses, administer oaths and affirmations, take testimony and compel production of information relative to investigations
- Monitor implementation of its recommendations

Complaints can be filed with the MTA IG by both the public and agency whistleblowers. They have an online complaint form at http://mtaig.state.ny.us/ComplaintForm.aspx and a hotline, 1-800-MTA-IG4U, and an email: complaints@mtaig.org.

Joint Commission on Public Ethics

The Joint Commission on Public Ethics (JCOPE) is the state's chief ethics and lobbying and enforcement agency. Public Officers Law Sections 73, 73-a and 74 fall under its jurisdiction. These restrict outside business deadlines of public officials, require financial disclosures from public officers and contain the state's codes of ethics, respectively.[390]

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[388] MTA IG, FAQs. http://mtaig.state.ny.us/gFaqs.html

[389] Public Authorities Law §1279; See also MTA Inspector General website, http://mtaig.state.ny.us/index.html

[390] See JCOPE website, https://jcope.ny.gov/ethics-laws-and-regulations-0

The agency is composed of 14 members[391]:

- 3 members appointed by the temporary president of the senate,
- 3 members appointed by the speaker of the assembly,
- 1 member appointed by the minority leader of the senate,
- 1 member shall appointed by the minority leader of the assembly; and
- 6 members shall be appointed by the Governor and the lieutenant Governor.
- The chair is selected by and serves as chair at the pleasure of the Governor.

JCOPE has complicated voting rules that allow for investigations to be vetoed by appointees where their staff or party is being considered for investigation. These provisions have been criticized as undermining the independence and effectiveness of JCOPE.[392]

Complaints can be filed with JCOPE regarding issues related to ethics, conflicts of interest and lobbying. Its website provides guidelines about how to file complaints, and a complaint form: https://jcope.ny.gov/steps-file-complaint

Public Transportation Safety Board

As noted, the Public Transportation Safety Board (PTSB) oversees the safety of all public transportation systems operating in New York State that receive State Transit Operating Assistance (STOA). Its oversight and advisory powers include:[393]
Establishing accident reporting, investigation and analysis procedures;

- Conducting comprehensive accident investigations;
- Taking a proactive role in public safety by reviewing, approving and monitoring system safety program plans submitted by each public transportation system;
- Conducting system safety program field audits;
- Analyzing critical safety issues and concerns; and
- Recommending the establishment of new safety legislation, rules and regulations, and transportation system procedures based on accident investigations, special studies and audits. These recommendations are advisory.

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[391] Executive Law Section 94, https://jcope.ny.gov/sites/g/files/oee746/files/documents/2017/09/executive-law-94.pdf

[392] Khurshid, Samar. "'It's just not designed to do its job': Will New York reform its state ethics agency?" Gotham Gazette. December 13, 2018. http://www.gothamgazette.com/state/8141-it-s-just-not-designed-to-do-its-job-will-new-york-reform-its-state-ethics-agency

[393] NYS Department of Transportation. Overview of Public Transportation Safety Board https://www.dot.ny.gov/divisions/operating/osss/ptsb

Its members include[394]:

- State Commission of Transportation (separately appointed by Governor)
- 2 recommended by the temporary president of the Senate
- 2 recommended speaker of the assembly.
- 2 appointed directly by the Governor.

Members have certain appointment criteria, including experience with the operation, design or management of public transportation facilities and systems. Three of the members, other than, and three must be from the MTA region, and 3 from other parts of the state. All appointees to the board other than the commissioner are made with the advice and consent of the State Senate. The MTA IG is an ex officio member of the board but has no vote on matters outside of the operations of the MTA. The Chairman is selected by the Governor, but may not be the MTA IG.[395]

MTA Board materials indicate that they have worked with the PTSB to review safety standards, including on right-of-way worker protection issues.[396] It has also previously responded to reports from the PTSB on gap mitigation measures.[397]

The PTSB accepts reports from the public about unsafe public transportation conditions involving buses, subways, commuter railroads, and light rail systems. Its website directs reports to its office by phone and mail:
https://www.dot.ny.gov/divisions/operating/osss/ptsb

[394] NYS Transportation law. Section 216.
[395] Ibid.
[396] MTA. Safety Committee. April 2014. Page 33.
http://web.mta.info/mta/news/books/archive/140428_0245_Safety.pdf
[397] MTA. Press Release. "MTA Issues Response to PTSB Report on Platform Gap. July 3, 2007.
http://www.mta.info/press-release/mta-headquarters/mta-issues-response-ptsb-report-platform-gap

Permanent Citizens Advisory Committee to the MTA (PCAC)

The Permanent Citizens Advisory Committee to the MTA (PCAC) is the representative body of the commuter councils of NYCT, LIRR, and Metro North.[398] Each agency has its own separate council – the NYCT Commuter Council, for example, is a 15-person body, with appointees from the mayor (5) president of the city council (5) and borough presidents (5 total). These councils are directed under law to "study and investigate all aspects of the day to day operations of such authority … [and] monitor their performance and recommend changes to improve the efficiency of the operation thereof."[399]

The PCAC has a small staff of six, including an Executive Director. According to an opinion from the New York State Attorney General, the PCAC is dependent on MTA funding, as it cannot raise private funds or seek legislative appropriations. The staff is funded through the MTA's budget as members of the administrative staff at MTA Headquarters.[400]

The PCAC holds public meetings at which members of the public may attend and the councils report on their progress on their recommendations. Past meetings have included presentations from MTA staff.[401] The PCAC's mission is to represent riders, and as such is available to answer inquiries: https://www.pcac.org/contact-us/

Independent Budget Office

The New York City Independent Budget Office (IBO) promulgates information about the city's budget and tax revenues.

The IBO is headed by a director who is appointed by an advisory board for a four year term. The advisory board is made up of the NYC comptroller, public advocate, one borough president chosen by all the borough presidents, and a council member chosen by the council. The IBO also has an independent budget line, meaning that it has guaranteed funding that is not subject to negotiation by the mayor and city council.[402]

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[398] Public Authorities Law Section 1266-i.
[399] Public Authorities Law Section 1204-e.
[400] NYS Attorney General. Formal Opinion No. 2014-F2, regarding ability of PCAC to solicit donations from the public or apply for state funding. https://ag.ny.gov/sites/default/files/opinion/2014-f2_pw_0.pdf
[401] See meeting minutes and calendar: https://www.pcac.org/pcac/about/meeting-minutes/
[402] New York City Charter. Section 259.

Reports published by the IBO in 2017 include:

- As City and State Trade Blame Over Transit Funding, The Governor's Proposals Would Direct City Resources to MTA - March 8, 2018[403]
- Morning Malaise: How Much Extra Time Is Spent Waiting for the Subway on Your Line? - October 25, 2017[404]
- "We Are Being Held Momentarily:" How Much Time & Money Are NYC Subway Riders Losing to Delays? - October 12, 2017[405]
- Testimony on the MTA Plan for the New York City Subway - August 8, 2017[406]
- Subway Signal Repair & Replacement Projects: Current Status - June 13, 2017[407]

The IBO staff can be contacted via their website, https://www.ibo.nyc.ny.us/aboutStaffDirectory.html, and they also have an email list for notifications of their reports. https://www.ibo.nyc.ny.us/connected.html

[403] NYC Independent Budget Office. "As City and State Trade Blame Over Transit Funding, The Governor's Proposals Would Direct City Resources to MTA." March 2018. http://ibo.nyc.ny.us/iboreports/as-city-and-state-trade-blame-over-transit-funding-the-governosr-proposals-would-direct-city-resources-to-MTA-march-2018.pdf

[404] NYC Independent Budget Office. "Morning Malaise: How Much Extra Time Is Spent Waiting For The Subway On Your Line?" October 25, 2017. https://ibo.nyc.ny.us/cgi-park2/2017/10/morning-malaise-how-much-extra-time-is-spent-waiting-for-the-subway-on-your-line/

[405] NYC Independent Budget Office. http://www.ibo.nyc.ny.us/iboreports/we-are-being-held-momentarily-how-much-time-and-money-are-new-york-city-subway-riders-losing-to-delays-october-2017.html

[406] NYC Independent Budget Office. "Testimony to the New York City Council Committee on Transportation Regarding the State of the New York City Subway System." August 8, 2017 http://www.ibo.nyc.ny.us/iboreports/mta-testimony-08-08-17.pdf

[407] NYC Independent Budget Office. Letter to Manhattan Borough President Gale Brewer on Service Disruptions. June 11, 2017. http://www.ibo.nyc.ny.us/iboreports/mta-service-delays-disruptions-letter-2017.pdf

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