



Testimony of Reinvent Albany

NYS Senate Hearing on the Effectiveness of NYS Transit Systems

Recommendation: MTA Openness and Accountability Must Addressed Before Governance Changes

February 19, 2019

Good morning, my name is Rachael Fauss and I am the Senior Research Analyst for Reinvent Albany. We advocate for more transparent and accountable state government, including for state authorities like the MTA. Our analyses of MTA governance issues are frequently cited by the news media.

We thank the State Senate for holding its first oversight hearing on the MTA in 5 years, agree wholeheartedly with Senator Comrie's remarks that "Proper legislative oversight should be the cornerstone of any solution for fixing our transit infrastructure, enhancing service, and improving the long-term sustainability of the MTA," and are glad that you have begun this process in earnest. This hearing should be the first of many in which the Senate engages with the many stakeholders and independent experts who understand the MTA's challenges and have thoughtful proposals to address them.

Reinvent Albany is here today to ask you to do five things:

1. Pass congestion pricing;
2. Make good on the state's outstanding pledge of \$7.3B for the 2015-2019 capital plan;
3. Push the MTA to adopt new, sensible ethics, transparency and accountability measures;
4. Ensure that those conducting oversight of the MTA do better, and have the resources to better oversee the MTA; and
5. Consider changes to the governance of the MTA independently of the budget, when they maybe fully and thoroughly discussed by MTA stakeholders and the public. This means not voting on the proposed MTA super-board/expert panel as part of the budget.

This hearing could not be more timely, as the MTA is facing enormous financial challenges. The MTA simply needs resources and it cannot borrow anymore - 16% of its operating budget now goes to debt service payments.¹ We also recognize that the legislature and public need a more accountable and transparent institution that can more credibly demonstrate its needs and show how it is accomplishing its mission.

¹ 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>

We join with those advocating for congestion pricing □ it is absolutely imperative for the Legislature to pass it. However, the inconvenient fiscal truth here is that congestion pricing will only pay for about a third of the MTA's current capital needs (the Executive Budget specifies it would be for the 2020-2024 capital plan), or if dedicated to operating support, it would only stave off a fare hike for a few years with nothing left over for the next capital plan.

As we stated in our written testimony² to you on the Executive Budget, the MTA has not been given the \$7.3 billion that it was promised for its current 2015-2019 plan. This money was only to be made available after the MTA maxes its borrowing capacity, and under the Executive Budget proposal, this funding is being held hostage, conditional upon passage congestion pricing.

It is completely disingenuous for the Governor to say that the state is fully supporting the MTA's current capital needs. We are in the last year of the 2015-2019 capital plan, and the state has given only \$593 million to the MTA in cash that it can *actually* spend on its current capital plan - money for essential state of good repair needs like track and signal improvements.³ The legislature needs to follow the money and ensure that the state delivers on its promise. There is a real risk that these funds will be "rolled over" into the next plan, delaying projects through no fault of the MTA.

Beyond our review of MTA's financial challenges, Reinvent Albany has completed a year-long in-depth analysis of the MTA's governance, operational, accountability and transparency challenges, and are releasing this report in the coming days, which we will provide to you in full. I will summarize the key findings and recommendations from this report, which we believe will help forge the path forward on MTA reform.

Key Findings on MTA Accountability

1. **The Governor controls the MTA.** Period. Through the appointment of the CEO/Chairman, the Governor controls the MTA and its staff. The Governor hired New York City President Andy Byford, and can fire the MTA leadership. The Governor reversed years-long planning by the MTA to close the L Train Tunnel oversight, overruling the professional planners at the MTA.
2. **The MTA Board has no influence over the day to day operations of the MTA.** While on paper they are responsible for approving some of the MTA's contracts, fare and toll increases, and operational and capital budgets, they must take votes while wholly relying on information that is provided to them by staff whom

² See Reinvent Albany's testimony at <https://reinventalbany.org/2019/01/watchdog-testimony-for-mta-state-budget-hearing-will-albany-hon-or-7-3b-pledge-and-wake-up-to-mta-budget-meltdown/>

³ See MTA Capital Program Oversight Committee Materials, January 2019. Page 74
http://web.mta.info/mta/news/books/pdf/190122_1400_CPOC.pdf

they do not hire and fire. They don't have the resources as volunteer members to properly evaluate what staff gives them or conduct their mandated oversight role. This limited role has been diminished further by the Governor through Executive Order 168, which declared a state of emergency for the MTA, has unacceptably continued for 20 months and has illegally taken away the MTA Board's fiduciary responsibility to oversee spending.

3. **It is the politicization of the MTA through gubernatorial control that has caused the vast majority of its problems.** This has ranged from prioritizing costly system expansion over state of good repair improvements like signal modernization, to the deliberate misleading of the public regarding performance metrics and the reasons for delays. It has resulted in a culture of obfuscation rather than openness, in which FOIL requests are denied and crucial budget data is not released in formats that allow the public to connect the dots on spending. It has also allowed blatant conflicts of interest, such as the appointment of a Chairman/CEO who received outside income from an entity that does business with the MTA.
4. **External oversight of the MTA has failed.** While this hearing today is a step forward for legislative oversight, those charged with overseeing the MTA either cannot, or have chosen not to properly do their jobs. Most oversight bodies are appointed fully or partly by the Governor, who controls the MTA: the Authorities Budget Office, JCOPE, and the MTA Inspector General.

Recognizing that these problems are significant, there is still a path forward. While there are a number of possible scenarios for governance changes, these need to be considered more fully and thoughtfully, with real debate and discussion. It is for this reason that we oppose the language included by the Governor in the 30-day amendments to create a six-person "mass transit expert panel". This panel would have major responsibilities to approve capital plans, operating budgets, and a reorganization plan, adding a layer of approval on top of the MTA Board and Capital Program Review Board. Yet despite these major responsibilities, the proposed language is superficial as it does not specify who would actually appoint this panel. This is not the time to make major changes to redistribute power over the MTA's governance structure, as there are too many stakeholders at risk.

There are a number of issues within reach, however, that affect everyday accountability such as ethics, open data, and a better Freedom of Information Law (FOIL) process that allows the public to better hold the MTA accountable. Our report has a multitude of recommendations in these areas, which we will share with you and your staffs, but here are a few highlights:

1. **The MTA must fully embrace open government standards for its capital plans, budget documents, and Board materials.** This includes full compliance with Executive Order 95, which requires state agency and authority data to be released on the New York State Open Data platform. Data from MTA Board and budget materials should all be provided in open formats such as CSV/spreadsheet files, as should info from the Capital Planning Oversight Committee Materials, budget documents, and the MTA Capital dashboard. The MTA should adopt an Open FOIL platform to expedite responses to FOIL requests and publicly release fulfilled requests. Should the MTA not make these improvements, the legislature should pass laws to make these changes.
2. **Those overseeing the MTA need to do better.** More legislative hearings must be held, the State Comptroller should do more audits, specifically on the subways, and entities like the Authorities Budget Office - which was created by the Legislature via public authority reform legislation - needs to be fully funded so it can do its job, and should be given more resources in the budget this year.
3. **The MTA Board Codes of Ethics should be overhauled to ensure that the Chairman/CEO and Board members are independent of outside influence.** The MTA Board or legislature should affirm by board vote that the Chairman and CEO is the head of the agency, subject to all ethics policies requirements and banned from outside income. Board members with business before state or local governments within the MTA region should be barred from nomination. Any board member's potential conflicts of interests should be disclosed to other board members, and political contributions to the governor from board members should be prohibited.

Beyond these recommendations directly affecting the MTA's operations, the Senate also has an important role in the nominations process for MTA Board members and the Chairman/CEO. We and a number of groups will be following up with you about how you can better use your confirmation process to vet these appointees. The appointment process should also be formalized to require Governor and Senate action on nominees and not leave MTA positions vacant or in "holdover" status.

The Senate also has appointees to the Capital Plan Review Board (CPRB). The CPRB must start meeting in public, fully complying with the Open Meetings Law. The CPRB also has important oversight responsibilities that have not been fully exercised, which could aid the legislature in ensuring delivery on the MTA's capital plans.

I thank you for your time, and look forward to working with you to improve the MTA.