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Transportation Alternatives • Tri-State Transportation Campaign

Senate Majority Leader Andrea Stewart-Cousins
Assembly Speaker Carl Heastie

July 7, 2021

VIA EMAIL

Re: Please hold at least one public hearing to get input from stakeholders before finalizing major changes to MTA governance and the Chair/CEO positions.

Dear Majority Leader Stewart-Cousins and Speaker Heastie,

We write to express our concern that major changes to Metropolitan Transportation Authority (MTA) governance proposed by the Governor at the end of the 2021 legislative session were considered before stakeholders and experts were given the opportunity to provide their feedback. While ultimately the Senate did not vote on the proposal, the Assembly voted on the Governor's bill with a message of necessity in the middle of the night on the last day of the session. Before a final decision is reached by both houses, **we ask that you hold at least one public hearing on MTA governance and research these changes more extensively, as was done in 2009 when the MTA chair and CEO positions were last changed. Any hearings should be fully accessible, with the ability for the public to virtually listen and participate.**

Rushed changes to MTA governance further undermine public confidence in an already disrupted and politicized authority

The MTA has been suffering from a dire crisis of public confidence and instability in its management. This has been exacerbated by the confusing, rushed, and yet underwhelming Transformation Plan that was initiated by the Governor and mandated in the April 2019 state budget. Additionally, the Governor has proposed and the legislature accepted other controversial last-minute MTA changes as part of "big ugly" deals, such as the *ex officio* appointment of the director of the Division of the Budget to the MTA board, who is not required to reside in the MTA region, and making MTA board appointments concurrent with the terms of their appointing authorities. The legislature should not approve any more last-minute, backroom changes to the MTA governance structure without the ability for stakeholders to meaningfully provide feedback.

The 2008 "Ravitch Commission" was charged with making recommendations to provide sustainable funding for the MTA and improve its governance. In forming recommendations on MTA revenue and governance, the high-profile Ravitch Commission held public hearings and solicited comments from experts and MTA stakeholders in September 2008.¹ Ultimately, after

¹ Aaron, Brad. "Ravitch Commission Hearings Announced." Streetsblog NYC. September 5, 2008.

<https://nyc.streetsblog.org/2008/09/05/ravitch-commission-hearings-announced/>

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additional legislative public hearings² in February 2009 about the Ravitch report, the legislature chose to return to a unified Chair/CEO position as part of the MTA “bailout” passed in May 2009.³

Finally, when Jay Walder was appointed by Governor David Paterson as the new reunified Chair/CEO in September 2009, the Senate held yet another hearing in which members of the public could testify about his nomination and their views about the MTA.⁴

Policy concerns regarding splitting Chair/CEO position

As many of our groups wrote⁵ to you earlier this month, there are concerns that splitting the CEO and chair—who are both appointed by the Governor—would return to a failed system of MTA governance that was widely viewed as ineffective from 2006-2009.

The Ravitch report⁶, released in December 2008, said that the separation of the chair and CEO positions was “ill-advised” and “created the incongruous situation of a fixed term Chairman with quite limited authority, and an at-will Executive Director who nominally reports to a Board but is more akin to the head of a State agency.” The report recommended that “...executive powers for running the MTA should be restored to an independent full-time MTA Chairman, serving for a fixed term. It is only a Chairman who can be perceived as sufficiently independent of all elected officials that can have the necessary credibility with all MTA constituencies.”

In hearings before the Senate, Richard Ravitch said the commission “concluded that [it] was a serious mistake” to separate the Chair and CEO positions. He went on to say that the CEO “did not have the authority of being chairman....the ability to carry out the program of the MTA and to get continued Board support should not be a dependency on the appointive authorities but there should be a chairman who has the confidence and leadership of the Legislature and, of course, they are subject to confirmation by the Senate for these posts.”⁷ It is this relationship and trust with the Legislature that gives it—and other stakeholders at the federal and city levels—the confidence to fund the MTA at appropriate levels according to Ravitch.

Assemblymember Brodsky, who initially supported the split position in 2005 as part of public authority reforms, said in a letter to the Governor in 2009 that the bill’s “clear restatement of the fiduciary duty of MTA board members will enhance their independence and the long term interest of the riding public...It is noteworthy that this duty will flow now to the Chairman/CEO as a result of the merger of these two functions.” During his floor vote, he noted that board members could

² New York State Senate. Notice of Public Hearing. February 19, 2009.

https://www.nysenate.gov/sites/default/files/HearingNoticeJointCommitteesCorporationsAndTransportationMTARavitchPlan2-19_0.pdf

³ A8180/S5451 of 2009. Available at:

https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=05451Term=2009&Summary=Y&Actions=Y&Text=Y

⁴ Video of the hearing available on Youtube: <https://www.youtube.com/watch?v=2dHDnwfYDSM>

⁵ Group Memo of Opposition to A8035/S7233 available at:

<https://reinventalbany.org/2021/06/memo-of-opposition-governors-mta-proposal-to-separate-chair-ceo-with-no-senate-confirmation-of-chair/>

⁶ Commission on Metropolitan Transportation Authority Financing. Report to Governor David A. Paterson. December 2, 2008. Available at:

http://www.tstc.org/reports/Ravitch_Report.pdf

⁷ See pages 79-81 of the bill jacket for Chapter 25 of 2009. Available at NYS Archives,

<https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/22456>

be removed for cause if they fail to meet their fiduciary duty, and said, “This is a fundamental reassertion of the independence and fiduciary responsibilities of the Board of the MTA.”⁸

The Governor’s proposal for a CEO that serves at the pleasure of the governor and a part-time, unpaid chair with no executive powers is a far cry from the independent, full-time chair with executive authority that was envisioned by Ravitch. It would also remove the CEO from the fiduciary duty to the MTA and its riders that the Legislature instilled by law in 2009.

We urge the Legislature to hold at least one hearing on MTA governance before any final changes are made. The public deserves no less than the deliberative, public process used in 2009 to consider changes to the governance of the state’s largest public authority, which serves millions of riders every day.

Thank you for your consideration of this matter. Should you have any questions please contact Rachael Fauss, Senior Research Analyst, Reinvent Albany, rachael@reinventalbany.org.

Sincerely,

⁸ See pages 265 and 269 of the bill jacket for Chapter 25 of 2009.

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Senator Tim Kennedy, Chair, Transportation Committee
Assemblymember Amy Paulin, Chair, Corporations, Authorities & Commissions Committee
Assemblymember William Magnarelli, Chair, Transportation Committee