

**Federal, State and Intergovernmental Relations (FSIR) Meeting**

**March 19, 2021**

**1:00 PM**

**WebEx Event**

**Access information provided to Internal Staff**

**Public Participation Dialing Instructions**

**Dial Access Number: 1-408-418-9388**

**Enter Participant Code: 146 909 5949**

**Council Member Angela Lawson, Chair**  
**Council Member Curtis Gardner, Vice Chair**  
**Council Member Nicole Johnston, Member**

Serve as leaders and partner with other governments and jurisdictions

1. Consent Items (None)
2. Approval of Minutes Lawson
3. 911 Fee Diversion Buneta
4. Federal Legislative Update Hettinger
5. Definitions of Bill Positions Palmisano
6. State Legislative Update O'Keefe/Palmisano
7. Water Kitzmann
8. Miscellaneous Matters for Consideration

**Next meeting – April 2, 2021**

**Federal, State and Intergovernmental Relations (FSIR) Meeting**  
**Video Conference Call Meeting**  
March 5, 2021

Members Present: Council Member Angela Lawson, Chair; Council Member Curtis Gardner, Vice Chair, Council Member Nichole Johnston, Member

Others Present: Luke Palmisano, Rachel Allen, Peggi O’Keefe, Lauri Hettinger, Natasha Campbell, Roberto Venegas, Totsy Rees, Cammie Grant, CM Alison Coombs, Tina Buneta, Jeffrey Moore, Jessica Prosser, Nancy Freed, Jason Batchelor, Shawn Day, Angela Garcia

1. **APPROVAL OF MINUTES:** February 19, 2021 minutes were approved as written.
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2. **CONSENT ITEMS:** None.
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3. **WELCOME AND INTRODUCTIONS:**

Summary of Issue and Discussion: Chair CM Angela Lawson welcomed the committee to the video conference call and introductions were made.

Outcome: Information only.

Follow-up Action: None.

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4. **911 Fee Diversion**

Summary of Issue and Discussion: Tina Buneta, Director of Public Safety Communications gave an overview of recently passed legislation concerning the 911 communication system.

Each year people in urgent need of assistance place over 200 million emergency calls to 911 call centers in the United States. Funding for the 911 system is provided in part by dedicated 911 fees established by each state and territory that appear as charges on customer bills for wireless, wireline, and other communications services. Despite the critical importance of 911 service, the Commission’s annual reports to Congress on 911 fees show that some states divert a portion of the fees collected for 911 to other purposes.

On December 27, 2020, new federal legislation (the Don’t Break Up the T-Band Act of 2020) was signed into law that requires the Commission to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, section 902 of the new legislation directs the Commission to issue final rules within 180 days defining what uses of 911 fees by states and taxing jurisdictions constitute 911 fee diversion. The Notice of Proposed Rulemaking seeks comment on proposed rules to implement these provisions.

What the Notice of Proposed Rulemaking Would Do:

- Propose rules that would define the types of expenditures of 911 fees by states and taxing jurisdictions that are acceptable under the criteria established in section 902

and the types of expenditures that constitute 911 fee diversion.

- Propose rules that would allow states and taxing jurisdictions to petition the Commission for a determination that expenditures of 911 fees not previously designated as acceptable by the Commission should be treated as acceptable under section 902.
- Propose a rule providing that any state or taxing jurisdiction identified as a 911 fee diverter in the Commission's annual 911 fee report to Congress would be ineligible to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) or any advisory committee established by the Commission.
- Propose a rule providing that if a state or taxing jurisdiction receives a federal 911 grant, as a condition of the grant it must provide information that the Commission requires in order to prepare the annual 911 fee report to Congress.

T. Buneta said they are working on a final draft letter and will bring the final version back to FSIR for approval before sending it out to the FCC.

Outcome: Committee agreed to wait for final draft of the letter and review it before sending.

Follow-up Action: Staff will prepare final draft of letter and present to FSIR at future meeting.

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## 5. Federal Legislative Update

Summary of Issue and Discussion: Lauri Hettinger, federal lobbyist, gave an update on current federal legislation. The Senate voted to start debate on President Joe Biden's \$1.9 trillion coronavirus relief bill on Thursday and after considering amendments today, the Senate is expected to vote on final passage this evening or early tomorrow morning. Among the changes include:

- Removal of the increase to the federal minimum wage
- An increase in emergency rental assistance from \$1.2 billion to \$2.5 billion
- Economic Impact Payments: Phases out the Economic Impact Payments at \$75,000 to \$80,000 for individuals, \$112,500–\$120,000 for head of household, and \$150,000–\$160,000 for joint filers
- Funding for COVID-19 Vaccine Activities at the Centers for Disease Control and Prevention
- Funding for COVID-19 Testing, Contact Tracing, and Mitigation Activities
- Provides \$400 million for support to homeless services providers in communities across the nation for overnight shelter, meals, assistance to food banks and pantries, one month's rental or mortgage assistance to prevent evictions, and one month's utility payments to prevent service cut-offs.
- \$350 billion in state and local funding is still included though the bill diverts \$10 billion into a new Critical Infrastructure Projects program to help States, territories, and Tribal governments carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to COVID-19.

CM Lawson asked about the Criminal Justice Reform bill that passed the House, and if there were any updates on the bill and if there were any possibility that the bill would pass the Senate? L. Hettinger said what she is hearing is that this bill will not be heard this year since it would need a

majority of 60 votes to pass and right now the Senate is split 50-50. CM Gardner asked if there will be as many strings attached to the money for local governments this time around. L. Hettinger said that it is more flexible. It does have to be used in response to COVID and its negative economic impact. It can be used for example for housing, small businesses, non-profits, as well as tourism, travel and hospitality. It can also be used for counter the reduction in revenue, which includes property and income tax due to COVID.

L. Hettinger gave an update on the current transportation and infrastructure legislation, which is called the FAST Act. It authorizes policy, programs and funding for all sorts of infrastructure and transportation issues. L. Hettinger is working with staff to make sure the city's priorities are brought to our federal representatives addressed in this bill. Congress is working on the appropriations bill.

Outcome: Information only.

Follow-up Action: Information only.

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## 6. STATE LEGISLATIVE UPDATE

Summary of Issue and Discussion: Peggi O'Keefe, state lobbyist, gave an update on the state legislation. L. Palmisano discussed 3 bills that staff has asked for the FSIR committee to take a position on.

Creation of Financial Empowerment Office: SB21-148

The bill creates the financial empowerment office to grow the financial resilience and well-being of Coloradans through specified community-derived goals and strategies. The office will develop tools and resources that advance, increase, and improve Colorado residents' financial management and promote financial stability. City staff recommend an active support position. The Committee agreed unanimously to support this bill.

Public Utilities Commission Gas Utility Safety Inspection Authority: SB21-108

This bill seeks to consolidate, strengthen, and streamline the safety regulations that apply to natural gas pipeline utilities. The bill will update and clarify the duty of the Public Utilities Commission (PUC) to collaborate with the United States Department of Transportation (DOT) on pipeline safety issues adopting rules at the state level as needed to comply with federal requirements. City staff recommend an active support position. Jeffrey Moore, Oil & Gas Division Manager, gave an update on this bill. The one issue with this bill is that it does not include language referencing local jurisdiction. J. Moore said his team met with Sen. Story who is sponsoring this bill and asked for an amendment to the bill that would allow the opportunity for local jurisdiction to partner with PUC for the purpose of pipeline safety. Sen. Story was open to that and has crafted an amendment already and will introduce that once the bill gets into committee. Staff is very supportive of this bill. CM Lawson said that it seems that staff is supportive of the bill but there are still amendments in the works. So why would this committee actively support something if we are waiting on the status of the amendments? J. Moore said he advised to actively support because there is an amendment that is expected to pass the legislature and he would support this bill even if the amendment does not pass. CM Johnston said she understands that J. Moore would support the bill no matter what happens with the amendment, but in terms of how FSIR and staff provides direction to our lobbyist it needs to be clearer. She suggested to change the position to "pursue changes through bill sponsor". CM Lawson said she too would rather change the position to "pursue changes through bill sponsor" as well. CM Gardner agreed that since our preference is to

include an amendment it would be better to go with “pursue changes through bill sponsor” than to say we would be ok either way. L. Palmisano said J. Moore will be back to give an update on progress of this bill. The Committee agreed unanimously to change the position to pursue changes through bill sponsor on this bill.

#### Limitations on Regulated Marijuana Delivery: HB21-1159

Under current law, a retail marijuana store licensee may have a marijuana delivery permit associated with its store license. The bill adds additional regulations and requirements to the delivery permit including requirements around store hours, product availability, and online platforms.

There have been many stakeholder meetings concerning this bill and amendments are expected to be introduced at the first hearing. Due to this city staff recommend a position of Pursue Changes Through Bill Sponsor. CM Gardner said he supports this bill in general. It came to the Amendment 64 Policy Committee, of which he is the Chair. CM Johnston and CM Combs are on that committee as well. At that committee meeting they decided to wait to see what the State decides to do instead of moving forward on their own because Aurora is one of the only municipalities that is live on delivery right now. He agrees to take the position of pursue changes with bill sponsor so the city can actively lobby this bill. CM Johnston agreed with CM Gardner to take the position of pursue changes through bill sponsor. CM Coombs said she is in communication with stakeholders such as the Color of Cannabis regarding the amendments that they are seeking. CM Lawson asked that CM Coombs communicate with the committee what she learns from those communications with stakeholders.

#### Nonsubstantive Emails and Open Meetings Law: HB21-1025

This bill concerns a clarification under the Colorado open meetings law of the requirements governing communication by electronic mail that does not relate to the substance of public business. FSIR Position: Actively Support. The bill passed out of the House Committee of the Whole on third reading Tuesday, March 2 and will head to the Senate for consideration.

#### Replace the Term Illegal Alien: HB21-1075

This bill concerns replacing the term "illegal alien" with "worker without authorization" as it relates to public contracts for services. The city's state priorities as approved by City Council call for support of this bill. FSIR Position: Active Support. The bill passed out of the House Committee of the Whole on third reading Wednesday, March 3 and will head to the Senate for consideration.

#### Expanding Peace Officers Mental Health Grant Program: HB21-1030

The bill expands the peace officer's mental health support grant program to include funding for on-scene response services to enhance law enforcement's handling of calls for services related to persons with mental health disorders and social service needs, including calls that do not require the presence of a peace officer. This grant program may assist APD's current co-responder program as well as the new CAHOOTS mental health program located in Housing and Community Services. L. Palmisano said this bill was discussed at Tuesday's House Public and Behavioral Health and Human Services committee meeting. There were some questions raised. There was also

significant opposition to the bill in committee. The bill was laid over with no action taken. The bill came back up in committee today and 5 amendments were passed. The 1<sup>st</sup> amendment updates language from “mental health” to “behavioral health,” as that term encompasses both mental health and substance use disorders. And adds “and the immediate family members” per requests from stakeholders, as often these counseling services include those individuals as part of the officer’s support system. The 2<sup>nd</sup> amendment has some technical clean-up from DOLA. The 3<sup>rd</sup> amendment specifically calls out that the primary applicant can be a behavioral health entity, public health agency, or community-based social service provider, so long as those applicants are in partnership with law enforcement or public safety, as this is necessary in order to have access to the 911 dispatch system and to ensure a coordinated response to calls from the community that may involve a safety concern or commission of a crime. Also adds that the counseling services for officers can include their immediate family members, as best practices dictate a family systems-based approach for treating the trauma in law enforcement officers. The 4<sup>th</sup> amendment removes language that protected the existing funding for direct mental wellness services to peace officers while seeking additional funding for these new uses. Finally, amendment 5 defines “co-responder community response” and “community-based alternative response” using language directly from OBH materials and STAR materials, respectively. Ties “county or district public health agency” and “behavioral health entity” to their statutory definitions and continues to clarify original language re: who is eligible to apply for these grants. CM Hiltz raised the concern that this program is still primarily run through law enforcement. L. Palmisano said staff will continue to monitor this bill as there will most likely be further debate and amendments. As well as opportunities for the city to weigh in. For clarification, this bill was discussed with full Council and in effect Council overruled this Committee’s position. L. Palmisano said through the Council Rules, FSIR is empowered to take positions on bills and discussions should be taking place in the committee. It would be helpful for the city’s lobbying strategy to not take a position and then reverse that position. CM Johnson asked for clarification on what position was decided on at the Council meeting. L. Palmisano said there was a motion to dial back from the support position that this committee had taken to move the position to “pursue changes through bill sponsor”. The Mayor asked if anyone objected to this and the only objection came from CM Gruber. Technically it was a 9 to 1 vote to change the position. CM Johnston said that she is uncomfortable pursuing amendments without knowing what those amendments would be. There are a lot of good things with this bill as is. She would like to take the position of monitor bill at this point. L. Palmisano said he often requests for a position to pursue changes through bill sponsor because it allows staff and lobbyist to engage with shaping the bill even if the city is neither in support of nor opposed to the bill. Right now, staff is in a difficult position because FSIR supported the bill and there were some Council Members who had issues with the bill and others who opposed it. There is no clear direction what Council wants staff to do. CM Gardner said he is unclear on what the different positions are that FSIR or Council can take on a bill. On Monday it was suggested council take a position of “pursue changes through bill’s sponsor”. He said he is not comfortable with that because it is not clear what those changes might be. CM Gardner said that based on what he has heard and read about the bill he would request a neutral position. CM Lawson said for her, a neutral position is hard to define. Right now, there seems to be many amendments being proposed, why we would take a neutral position without seeing what the amendments are. CM Lawson agreed with the point that Council Members who are testifying on a bill on their own time consider discussing their positions at this committee. She also asked P. O’Keefe to provide thoughts on what a neutral position means. P. O’Keefe said that every organization has different terminology on how they approach things. The important thing is to be consistent with our definitions. CM Lawson suggested that the committee take a position of monitor bill status instead of neutral as it

seems to be standard practice in legislation. CM Johnston said yes, a monitor bill status reflects more of the committee's position. Since there are amendments and we do not know what those amendments will be. CM Gardner agreed that monitoring bill status is the best position at this point. He also asked that the definitions of all the different positions be spelled out so everyone is on the same page. L. Palmisano said he will put together a memo with the positions and definitions and get that out to all of council. CM Coombs said she supports the bill with the amendments, but the one unresolved concern is the requirement to partner with law enforcement or public safety agencies. Would Falck or Aurora Public Safety Communications count as a public safety agency for these purposes? And in communities that don't have separate public safety Communications, what mechanisms would be available to enable alternative community responses without working with police? Her fundamental concern is enabling funding for organizations that are not working with police but are still responding to public safety issues. Jason Batchelor, Deputy City Manager, said that is a question for the bill sponsor. But from the city's perspective Falck and Aurora Public Safety Communications would have to be considered partners because that is how we would want to take calls and use the appropriate response. CM Coombs said her concern is that the responses to 911 calls coming from other community-based agencies that are providing support and responses that help divert from police even if they are not coordinating with police, have value and are worth funding. That is the reason for not wanting to require a formal partnership with law enforcement. Will those types of agencies be allowed to receive grants? T. Rees said she will get clarification from the FOP and bill sponsors that those types of agencies will be eligible for funding.

#### Jail Population Management Tools: SB21-062

This bill concerns measures to reduce jail populations. The bill would prohibit arrest for many municipal ordinance violations, misdemeanors and even some felonies. The bill mandates personal reconnaissance (PR) bonds on municipal cases unless the court believes the defendant will flee or threatens safety of others and no other conditions of the PR bond will mitigate the risk of flight or harm.

The bill could negatively affect the Municipal Court and cause a significant docket back log due to the failure to appear provision. It directly impacts how the court can enforce its own orders by mandating PR bonds. The bill could also decrease the detainee population and lower the risk of recidivism. Requiring PR bonds could help reduce COVID-19 outbreaks of those in custody. Council Position: Pursue Changes Through Bill Sponsor. The bill has been assigned to the Senate Judiciary committee and was scheduled for a hearing on Thursday, March 4, 2021. L. Palmisano said 3 amendments were passed unanimously. There is still a lot of debate going on in regard to this bill. Shawn Day, Presiding Judge, said the hearing on this bill went from 1:30 pm and ended in a vote at 9:00 pm. There was some significant language that changed in the bill. CM Gardner asked if the concerns Judge Day expressed in the previous FSIR meeting were addressed in the amendments and what is his position on the bill now. Judge Day said a lot of stakeholders went from oppose to neutral after the amendments passed, while other groups still opposed it. He said in his mind the bill is better than it was in its first draft. It still has some issues that will impact our court, but it is a bill now he could support. CM Gardner said he is struggling with this bill because, though he would like to reduce the jail population, he does not see this as the correct approach. There are bigger structural issues, and this may not be the best way to go about it. He is somewhere between monitoring the bill or opposing it. Leaning more towards oppose. CM Johnston said she is somewhere between monitor bill and support bill. She said she has an issue

with jailing people pretrial and how that has an impact on their job's status. CM Johnson asked if Judge Day had more feedback on the role of victim's advocates and the types of crimes addressed in this bill. Judge Day said he was not privy to the stakeholder meetings but they did change some language because of their concerns and more crimes were listed in the bill that address the victims of crimes issues. CM Lawson said she would recommend the position of monitoring. She sees some good points in the bill and some bad points. She asked if Judge Day still has concerns or amendments he would suggest. Judge Day said the bill is going to appropriation and there will be a hearing there. If it makes it to the Senate for a vote and then passes to the House there will be further opportunity for comment and proposals. Although there may be some things that could be changed it is hard to say if this will happen as so much work has gone into this bill already. CM Lawson said all the committee members have different positions on this bill, CM Johnston is monitor or support, CM Gardner is monitor or oppose and CM Lawson is monitor. L. Palmisano based on the discussion staff would be happy to take a monitor position on this bill. That way staff can still engage on the bill if need be. CM Lawson agreed and recommended a position of monitor bill. CM Johnston and CM Gardner agreed.

Outcome: Information only.

Follow-up Action: Information only.

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## 7. WATER

**Summary of Issue and Discussion:** There were no items from Aurora Water.

Outcome: None.

Follow-up Action: None.

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## 8. MISCELLANEOUS MATTERS FOR CONSIDERATION

None.

### CONFIRM NEXT MEETING

CM Lawson said the Committee will be meeting every 2 weeks during the legislative session. The next meeting is scheduled for March 19, 2021, 1:00 PM WebEx video conference meeting.

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Approved:

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Angela Lawson  
Committee Chair

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Date



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
911 Fee Diversion	)	PS Docket No. 20-291
	)	
New and Emerging Technologies 911 Improvement Act of 2008	)	PS Docket No. 09-14

**NOTICE OF PROPOSED RULEMAKING  
COMMENTS OF**

**CITY OF AURORA EMERGENCY TELEPHONE SERVICE AUTHORITY**

The City of Aurora Emergency Telephone Service Authority (the City) hereby submits its comments to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking (“NPRM”) concerning the Proposed Rule on 911 Fee Diversion.

The City applauds the FCC and Congress for addressing this important topic. The provision of 911 services is a critical function and expectation of the community being served. The intent behind the legislation and this NPRM, and the problem they seek to solve, is laudable. However, upon reading the proposed provisions within the NPRM, it is clear there is lack of understanding pertaining to the services and functions encompassed by the term “911 Service.”

**I. ACCEPTABLE USE OF 911 FUNDS**

As noted by the filing of the Colorado Public Utilities Commission (CoPUC<sup>1</sup>), in their current form the proposed rules are ambiguous and contradictory in nature. The City believes this is directly related to the broad-ranging operations and services encompassed by the term 911 Service. To address this ambiguity, the FCC may take one of two approaches.

First, the FCC may be overly prescriptive in the definition of functions, services and technology that represent acceptable use of 911 fees. This approach may provide initial clarity but will quickly become burdensome on the FCC and jurisdictions collecting the

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<sup>1</sup> Comments filed by the Colorado Public Utilities Commission located on the ECFS at:  
<https://ecfsapi.fcc.gov/file/103102813415193/Colorado%20Comments%20-%20FCC%2021-25-Final.pdf>

911 Funds. Technological advances rapidly outpace the capacity of legislators and regulators to evaluate and modify language governing the use of funds to support said technology. Likewise, changes in state or local legislation and / or regulation would need to be evaluated and potentially incorporated in the FCC's definition. Thus, a prescriptive approach will need to be aggressively evaluated on at least an annual basis to ensure effective use of funding.

Alternatively, the City believes the FCC would be better served to adopt an approach that is flexible and more broadly encompassing. To develop this approach, the FCC should consider the intent behind 911 funding, and the practical application of that funding in the modern world.

**a. Continuum of Service**

“911 Service” is not limited to the receipt of the 911 call at the Public Safety Answering Point (PSAP). Instead, it represents a continuum of service to the citizen and community, which includes the receipt, processing, dispatch, and relay of pertinent information to the First Responder(s) of the call. As proposed, the term “911 Service” would be narrowly defined to constitute the receipt of the call at the PSAP (telecommunication services) and processing of the call (Computer Aided Dispatch (CAD) systems). However, it provides no value or service to the citizen if the call is received and processed but cannot be appropriately dispatched for service. The parent of a child that is choking, the family hiding in terror as their house is burglarized, or the family trapped inside a structure due to a raging fire, expect their call to 911 not only to be received, but immediately dispatched to the appropriate First Responder(s) to address their life-threatening need. They are not concerned whether their 911 funds were used to receive their call **and** dispatch their call. Instead, they expect that life-saving call to bring urgent help, quickly and effectively. This includes the relay of timely data directly to the First Responder(s) through the Public Safety Radio Communication system (Radio system), the Mobile Data Computers (MDCs), or a combination thereof. To apply the narrow definition proposed would immediately impact the ability of PSAPs to provide timely service in the most critical event of the caller's life.

This concept is reinforced by the language used within the NPRM. Specifically, section II. 7. states: “The new section 615a-1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function ‘(i) supports public safety answering point functions or operations,’ or ‘(ii) has a direct impact on the ability of a public safety answering point to—(I) receive or respond to 9-1-1 calls; or (II) dispatch

emergency responders.”<sup>2</sup> The dispatch of emergency responders **requires** the use of a Radio System, MDCs, telephones, and/or future technical capabilities; PSAPs must have a means to dispatch First Responders to the call. Therefore, by the very terms of this definition, the FCC’s own interpretation of acceptable use clearly contemplates these core capabilities.

More broadly, the continuum of service is built upon several pillars: technology, staffing / training, and administration.

### **i. Technology**

The advancement of technology has and continues to directly support this continuum of service. Integrations exist today between the 911 Call Processing System, the CAD system, the Radio system, and the MDCs. These tight integrations allow First Responders to receive updates quickly and provide details necessary to inform their response. The promise of Next Generation 911 (NG911) further builds upon this level of service and integration. With NG911, additional data will be received by the PSAP operator such as pictures, recorded videos, real-time videos, and supporting data such as floor plans, evacuation plans, or medical telemetry voluntarily shared by the caller. It is unrealistic to believe the PSAP operator can effectively describe the volume of data, or the details contained therein, with any degree of accuracy relying on traditional voice communication. Instead, it is expected the PSAP operator will correlate the most relevant information and relay that directly to the First Responder electronically, allowing the responder to evaluate the information in real-time and adjust their response accordingly. To do otherwise negates the intent, promise and value behind NG911. It is insufficient to *receive* enhanced data at the PSAP without the ability to *relay* that information timely and accurately.

Over time, additional technology platforms have evolved that extend the reach and capability of the PSAP. This includes Emergency Notification Systems <sup>3</sup>(ENS), which notify citizens of urgent threats. Rather than waiting for a flood or tornado to impact a community resulting in substantial loss of life, these systems allow the PSAP to warn the community of the impending threat so they can evacuate before it is too late. The ENS allows a PSAP to proactively contact the community, rather than simply reacting to calls after the fact. Some platforms such as Smart911<sup>4</sup> allow the citizen to self-disclose relevant information to the PSAP, such as existing medical conditions, number of persons in a household, emergency contact

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<sup>2</sup> Notice of Proposed Rulemaking FCC-21-25A1, page 4, section II. 7., as published in the ECFS at: <https://ecfsapi.fcc.gov/file/021706413819/FCC-21-25A1.pdf>

<sup>3</sup> The City currently uses the ENS platform provided by OnSolve CodeRed located at: <https://www.onsolve.com/platform-products/critical-communications/codered-public-alerting/>

<sup>4</sup> More information can be found at: <https://smart911.com/>

information, etc. Other platforms such as RapidSOS<sup>5</sup> use existing smartphone technology to pinpoint the location of a wireless caller much more quickly and accurately than possible using the legacy capabilities of Enhanced 911. Many other technologies support and supplement the ability of PSAPs to provide better service to the citizen, with new technologies emerging at a rapid pace. Removing the ability to fund these technological advancements through 911 fees only serves to reduce the service provided to the citizen, and essentially locks the 911 service model into the same capabilities available in 1990.

## **ii. Staffing / Training**

Technological advancements hold the promise to provide better outcomes for the citizen and First Responder alike. However, technology does not replace the need for a human being to evaluate and act based upon information received. 911 funds have traditionally been used to staff the various positions required within the PSAP to provide effective service to the community. Further, those funds are likewise used to train newly hired personnel, for the upkeep of existing skills, to adopt changes in policy, and effectively use advancements in technology. As technology evolves and increases in complexity and scope, so also must the investment in professional development of 911 professionals. The capabilities of NG911 outlined above may expose 911 professionals to sights and sounds they are unaccustomed to experiencing in their roles, resulting in increased psychological stresses. Training is imperative to prepare the 911 professional for those unfortunate circumstances. Residents and visitors of our community who dial 911 expect their call to be processed correctly the first time, every time. This requires funding that supports the hiring, retention, and training of staff.

## **iii. Administration**

Like any service or business, 911 involves numerous programs that sustain existing operations, identify gaps in service, and plan for ever-changing requirements. 911 fees should directly support these initiatives, which include management, budgeting and forecasting, Quality Assurance initiatives, and industry-specific training offered through national organizations such as the National Emergency Number Association, the Association of Public Safety Communication Officials, and other relevant trade groups. Additionally, as 911 professionals are exposed “firsthand” to the realities of a 911 call through audio and video sources, mental health services should be available to assist those professionals when dealing with the outcome of those calls. These programs help guarantee the level of service provided at the PSAP meet the expectations of the community.

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<sup>5</sup> More information can be found at: <https://rapidsos.com/>

For these reasons, the City urges the FCC to adopt the stance that “911 Service” includes “All technology, staff, training, and administration necessary to effectively provide emergency response to the citizen”. By adopting this approach, the FCC will have more flexibility to determine if funds are being used appropriately or diverted for other uses, now and as future needs evolve. The City recognizes that Congress imposed a tight deadline for the FCC’s rulemaking. Starting with a broader definition will allow the FCC time to evaluate the existing uses of 911 funds by jurisdictions nationwide, developing a more holistic view. The proposed petition process could then be used to further restrict **or** expand the use of fees as circumstances change. Each PSAP serves different geographies comprised of different demographics, which results in very different needs. For example, a PSAP serving a largely agricultural area has vastly different needs from a PSAP serving a large city such as New York or Los Angeles. It is therefore incumbent upon the FCC and the Strike Force to consider the totality of service provided across the nation, derive common acceptable uses nationwide, and acceptable uses specific to a region or demographic.

## **b. State Law**

In 2020 new legislation was passed in Colorado<sup>6</sup> clearly outlining the acceptable uses of 911 Fees. The legislation was developed through a partnership with the 911 Advisory Taskforce to the Public Utilities Commission (911 Task Force<sup>7</sup>), which includes representation of 911 Authorities, PSAPs, Basic Emergency Service Providers (BESPs), and industry representatives for wired, wireless, and Internet Protocol service within the state. The 911 Task Force worked with several other organizations, including the Colorado Municipal League<sup>8</sup>, the Colorado Communications and Utility Alliance<sup>9</sup>, Colorado Counties Inc.<sup>10</sup>, Communications Workers of America<sup>11</sup>, and others. These organizations helped refine the terms of the legislation and formed a broad coalition in support of its passage. The FCC must acknowledge and consider the will expressed by public and private interests in developing the legislation.

The legislation clearly defines how 911 Fees are collected within the state, how those fees are accounted for and tracked, and what the acceptable use of those fees are. The support for core capabilities such as Radio Systems, ENS, and others were defined as allowable expenses. The exhaustive list of uses can be found within the legislation, and as detailed in the response from Douglas County, El Paso / Teller County, and Eagle County Emergency Telephone Service Authority response to this NPRM<sup>12</sup>. The City agrees with the comments

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<sup>6</sup> Full text of the legislation can be found at: [https://leg.colorado.gov/sites/default/files/2020a\\_1293\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_1293_signed.pdf)

<sup>7</sup> More information can be found at: <https://sites.google.com/state.co.us/9-1-1-advisory-task-force/home>

<sup>8</sup> More information can be found at: <https://www.cml.org/>

<sup>9</sup> More information can be found at: <https://www.coloradocua.org/>

<sup>10</sup> More information can be found at: <http://ccionline.org/>

<sup>11</sup> More information can be found at: <https://cwa-union.org/>

<sup>12</sup> \*Citation needed when response is published

within the Douglas, El Paso / Teller, Eagle response which emphasizes that Colorado has already taken exhaustive steps to define the collection, administration, and acceptable use of 911 fees within the state.

## **II. Petitions for Clarification**

The City agrees with the CoPUC that further definition is required around the proposed process. The City requests that the FCC utilize the petition process to add **or** modify **or** restrict the use of funds as circumstances and needs evolve. As written, the process contemplates a point-in-time definition of acceptable use, with a potentially lengthy process to modify over time. Due to the critical nature of 911 service, a lengthy process can have a direct impact on the ability of a jurisdiction to serve their community. Therefore, the process needs to be codified in a clear format of required documentation with a clearly defined timeline to arrive at a decision.

It should be noted this process inherently adds burden to both the FCC and the requesting jurisdiction. As stated in the NPRM, “We tentatively conclude that these proposed changes to part 9 would further Congress’s stated objectives in section 902 in a cost effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions.”<sup>13</sup> If the original definition of acceptable use is too prescriptive, it will place an ongoing and costly burden on the FCC and petitioner alike. This reinforces the City’s position that the definition of acceptable use should be more broadly defined from the outset.

## **III. Responsibility for Diversion of Fees**

As noted by the CoPUC, the imposition and collection of 911 fees is the responsibility of 58 distinct local 911 Authorities throughout the State of Colorado. Additionally, with the passage of the updated law in Colorado referenced above, the State imposes a statewide surcharge for prescribed uses. The terms of the NPRM imply that if one or more jurisdictions within the state are classified as 911 Fee Diverters, sanctions will be imposed against the State. The City urges the FCC to clarify these terms, such that the authority or jurisdiction imposing the fee is accountable for the ultimate use of that fee. If any single 911 Authority in the state is deemed in violation then that single 911 Authority should be sanctioned, the remaining 57 911 Authorities should **not** be sanctioned, and neither should the State of Colorado as a whole.

## **IV. Violations, Notifications, Remediation, Appeals**

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<sup>13</sup> Notice of Proposed Rulemaking FCC-21-25A1, page 5, section III. 10., as published in the ECFS at: <https://ecfsapi.fcc.gov/file/021706413819/FCC-21-25A1.pdf>

The City further agrees with CoPUC that much greater refinement is required pertaining to the process of Violations, Notifications and Appeals. If a jurisdiction is found to be in violation of the acceptable use, how are they notified of said violation? Will this occur during the annual report to Congress, or at the time the Strike Force makes the determination? At what point will sanctions be imposed upon the jurisdiction?

What opportunity will the jurisdiction have to appeal the violation if they believe the use is acceptable? What opportunity will the jurisdiction have to remediate the violation before sanctions are imposed? As noted above, the 911 Authorities in Colorado already operate within the acceptable uses outlined in state law. If one of those uses is deemed unacceptable by the FCC, then time is required for Colorado law to be amended reflecting that change. The violating jurisdiction(s) likewise need time to adjust their budget and operational plans to bring their use of the fee into compliance. At a minimum, these factors need to consider state legislative cycles, and local / state budget cycles to adjust accordingly. Additionally, the Strike Force should notify the jurisdiction deemed in violation, and that jurisdiction should have the opportunity to report back to the Strike Force with their plans to remediate the issue or appeal before it is reported in the annual report. Further, the FCC should consider whether sanctions should be imposed if the jurisdiction is acting in good faith to remediate the issue. Finally, the FCC should establish a process for removing the sanction once the issue has been resolved.

## **V. Conclusion**

The City thanks the FCC for this opportunity to provide input regarding the provision and sustainability of the critical services of 911. Diverting fees away from 911 Services dilutes the public faith in government to execute their obligations and duties, thus a process such as this should provide clear guidelines and transparency that further assures the public. However, due consideration must be taken to account for strong laws and processes that already serve this purpose. Further, great consideration must be paid to the continuum of service that comprises the 911 service ecosystem. Drawing an arbitrary line of acceptable use would diminish the service provided to the community and relegate the PSAPs to a functional role similar to that available 20 years ago. The City urges the FCC to consider the full range of issues with the understanding that the best outcome from this NPRM is to provide the best outcome for the community in their greatest time of need, which is when they call 911 for help.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of	)	
911 Fee Diversion	)	PS Docket No. 20-291
New and Emerging Technologies 911 Improvement Act of 2008	)	PS Docket No. 09-14

**COMMENTS OF THE COLORADO PUBLIC UTILITIES COMMISSION**

On February 17, 2021, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) intended to fulfill a mandate made by Congress in the Consolidated Appropriations Act of 2021. As stated in the NPRM, section 902 of the Act requires the FCC to take action to establish, by rule, acceptable uses of 911 surcharge fees by state and local jurisdictions, as well as take other actions to discourage or prevent state and local jurisdictions from using funds raised through 911 surcharges for purposes other than those considered “acceptable” under the FCC’s rules.

The Colorado Public Utilities Commission (CoPUC) respectfully submits these comments to assist the FCC in developing the best set of rules that it can in the limited 180-day time frame provided by Congress. CoPUC is responsible for approval of any local emergency telephone charge (911 surcharge) rate in the state over a certain threshold, set annually by CoPUC.<sup>1</sup> Beginning this year, CoPUC also administers a state 911 surcharge, which is assessed separately from local emergency telephone charge. The amount of that surcharge is also set by the Commission, currently set at ten cents per line per month. Colorado also has a wireless prepaid 911 surcharge, set annually by CoPUC, which is remitted by retailers selling wireless prepaid telecommunications services and administered by the Colorado Department of Revenue.

In Colorado, all funds from these separately administered 911 surcharges must be spent in adherence with state statute.<sup>2</sup> The extent to which the allowable uses listed in Colorado statute comport with the “acceptable” uses adopted by the FCC may make the difference between whether or not Colorado is labeled a diverter of 911 fees for following its own statute, and perhaps even subject to FCC-imposed penalties. Colorado has never been identified as a diverter of 911 fees, yet the creation of a list of acceptable uses by which states will be judged in their use of 911 fees creates the possibility that Colorado’s lawful 911 expenditures may result in it being considered a diverter of 911 fees.

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<sup>1</sup> For the calendar year 2021, this threshold is set at \$1.72 per line per month.

<sup>2</sup> Colo. Rev. Stat. § 29-11-104 (2020).



CoPUC supports the efforts of Congress and the FCC to ensure that 911 surcharge funds are used in support of 911, and offers these comments to facilitate those efforts.

In brief, CoPUC urges the Commission to consider the following regarding this NPRM:

- Given that different Public Safety Answering Points (PSAPs) provide different services to their client agencies, the FCC must provide clearer guidance on what it means by “PSAP operations”;
- The final rules should be clear that the costs of administering 911 programs, both at the state and local level, are an acceptable expense;
- The rules should also make clear whether emergency notification systems and expenses for 911-related membership organizations are acceptable expenses;
- The rules need to be clearer regarding what radio equipment or infrastructure is allowed and what is not, as the examples provided in the proposed rules are contradictory;
- The goal of the rules should be to encourage compliance, and as such the rules should clearly prescribe how a state or local jurisdiction might be determined to be in violation of the rules, and provide an opportunity for state or local jurisdictions to make corrections prior to being subject to penalties;
- In order to encourage compliance, the rules should provide a timeframe within which petitions for declaratory rulings will be addressed; and
- The rules should make clear that entire states will not be declared in violation of the FCC’s rules for spending decisions made by individual local jurisdictions within those states.

## **DEFINITION OF ACCEPTABLE USES OF 911 FUNDS**

If a conflict exists between Colorado’s allowable uses of 911 fees and the FCC’s, Colorado’s legislators may choose to alter Colorado’s statute to comply with the FCC’s definition of “acceptable uses of 911 funds”. To do that, however, those legislators need to have a clear understanding of what the FCC considers to be acceptable uses of 911 surcharge funds. The proposed definition in the NPRM does not provide this clarity, and CoPUC urges the FCC to draw a clearer line and resolve some of the ambiguities present in the proposed rules.

In proposed rule § 9.23, the FCC provides a definition of “acceptable purposes and functions for the obligation and expenditure of 911 fees or charges” as being limited to:

- (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
- (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.

The definition itself contains phrases that can be interpreted in various ways. For instance, what constitutes “911 services” may mean different things to different people, particularly as technological advances in emergency communications technology blur the lines between what may be considered “911 service” and what may be just part of the emergency communications

ecosystem, writ large. More clarity regarding what constitutes “Operational expenses of PSAPs” is needed, since a wide range of different service models exist.

The proposed rules then provide two lists of examples: one being examples of expenses that would be considered acceptable, and one being examples of expenses that would not be. Rather than clarifying the issue, these lists demonstrate the ambiguity in the definition that needs to be resolved so that states and local governments are able to make informed decisions regarding how and whether it can or should comply with the definition being set forth.

For instance, “PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services” is listed as an acceptable use. No other mention of administrative expenses is provided. A strict interpretation of this rule might lead a state to believe that paying for the administrative expenses incurred at the state or local level for collection and monitoring of 911 surcharge remittances is not an acceptable use. Colorado statute, for instance, allows CoPUC to retain up to four percent of the state 911 surcharge to pay for actual administrative expenses. Is the use of 911 funds to cover these administrative expenses acceptable, or are they considered unacceptable because they aren’t “PSAP administration”? CoPUC strongly recommends that administrative expenses for overseeing 911 programs, both at the state and local level, be considered an acceptable use. Failure to allow for administrative expenses in support of operating 911 programs at the state and local level may result in the loss of programs that provide crucial support PSAPs.

Similarly, Colorado statute allows telecommunications providers to retain one percent of what has been collected from 911 surcharges and two percent from the local emergency telephone charges to offset the providers’ administrative expenses related to the collection and remittance of the surcharges. Is that administrative retention an acceptable use of the 911 surcharge, or is such retention considered unacceptable because they do not relate to the administrative expenses of the PSAP?

The examples of unacceptable uses of 911 surcharge fees are likewise ambiguous. The third (and final) example of an unacceptable use is “Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.” This example contradicts itself, because every radio transmitter/receiver, repeater, and even the individual portable and mobile radios and mobile data terminals used by the first responders impact the ability of the PSAP to dispatch 911 emergency responders. Those radio networks as well as the individual radios used by police, fire, and EMS personnel are the medium by which PSAPs dispatch emergency responders. The inclusion of this example of unacceptable uses of 911 fees implies that there is a line drawn somewhere beyond which radios or radio equipment are not considered an acceptable use of 911 funds, but it is not clear at all where that line is drawn. Presumably, radio equipment inside the PSAP is allowed, but everything from the PSAP to the portable radio on a patrol officer’s utility belt is part of the infrastructure required to dispatch emergency responders, so this example provides no real guidance to state and local

jurisdictions regarding what type of radio equipment is an acceptable expense and what type is not. Since varying opinions may exist even among Colorado's PSAPs regarding where the line should be drawn between acceptable and unacceptable radio expenses, CoPUC refrains from making a recommendation on this matter other than to urge the FCC to make the line clear, since failing to do so makes compliance with the rule extremely difficult.

Other uses of 911 funds currently allowed in Colorado's statute aren't mentioned in either the list of "acceptable" examples or the list of "unacceptable" examples. For instance, Colorado statute allows 911 surcharge funds to be expended on emergency notification systems. Without clarification, the proposed rules provide no guidance on this matter. Another example is that Colorado statute allows the use of surcharge funds to pay for membership fees to state and national organizations that provide training and support for 911 services, such as the National Emergency Number Association and the Association of Public Safety Communications Officials. The proposed rules provide no guidance on whether or not this would be considered an acceptable use, and more clarity is required. Again, other commenters may provide reasons for categorizing such expenses as acceptable or unacceptable, but CoPUC urges the FCC to categorize them clearly to facilitate compliance.

## **PETITIONS FOR CLARIFICATION**

Proposed rule § 9.24 provides states and taxing jurisdictions the ability to petition the FCC for a determination regarding whether a particular expense is an acceptable use of 911 surcharge funds or not. However, the proposed rule provides no time frame in which the state or taxing jurisdiction may expect a response. Depending on what is established as the penalty for not complying with the FCC's definition of acceptable uses, states and local 911 jurisdictions will, understandably, require a prompt response. CoPUC suggests that the FCC state in this rule that the FCC will respond to all petitions within 60 days of receipt.

## **TRANSFERABILITY OF CULPABILITY**

Colorado has both state and local 911 surcharges, but other than a small percentage retained to cover administrative costs, all expenditures are made at the level of 58 local 911 governing bodies. This raises the question of whether Colorado, as a state, would be deemed to be a diverter of 911 surcharge funds if a single one of its local jurisdictions chooses to expend 911 surcharge funds in a manner that the FCC has determined to be an unacceptable use. If one or two jurisdictions use 911 surcharge funds to pay for radio equipment that the FCC has determined is outside the bounds of acceptable use, for example, is the entire state then subject to the penalties suggested in the proposed rules, or as yet to be determined in response to the final report by the 911 Fee Diversion Strike Force?

CoPUC suggests that the FCC make it clear in the final version of these rules that an entire state will not be penalized or identified as being a 911 fee diverter based on the decisions made by one or more sub-state 911 jurisdictions. If states are held culpable for expenditures made by local jurisdictions from 911 surcharge funds, then the need to allow state-level administrative

expenses from 911 surcharge funds becomes much more urgent, since states may need to institute auditing of local expenditures to ensure compliance.

## **PATHWAY TO COMPLIANCE**

If the FCC adopts final rules that clearly delineate between acceptable and unacceptable uses of 911 surcharge funds, state legislatures may choose to change the allowable uses of 911 surcharge funds in state statutes to comply with the FCC's rules. Doing so, however, will take time. CoPUC recommends that a "phase-in" period of no less than one year be adopted to allow states legislatures to address conflicts between state statute and the FCC's rules regarding what constitutes an acceptable use of 911 surcharge funds.

States should also understand on what basis they are being judged to have violated the FCC's rules. In the past, this determination has been made by the FCC based on information gathered through annual 911 fee reports, collected in compliance with the NET 911 Improvement Act of 2008. Paragraph 32 of the NPRM implies that this will still be the primary method by which the FCC determines that a state is diverting 911 funds but doesn't state so explicitly. CoPUC recommends that the methods by which the FCC will determine whether a state or local taxing jurisdiction is diverting 911 fees be explicitly stated in the rules.

CoPUC also recommends that the FCC provide states or local taxing jurisdictions a pathway for becoming compliant with FCC rules for acceptable uses of 911 surcharge funds in the eventuality that they are determined by the FCC to be diverting 911 surcharge funds. Notifying states or local jurisdictions that they may be in violation of the rules and giving those states or jurisdictions an opportunity to change their behavior (or their statute) to comply would be much more effective, and much less disruptive, than simply declaring a state or jurisdiction to be in violation. CoPUC recommends the inclusion of a probationary period for states deemed to be out of compliance, during which the state may act, legislative or otherwise, to bring itself into compliance.

This probationary period would serve an additional purpose of providing a time during which a state may appeal the decision by the FCC that the state is noncompliant. No appeals process is mentioned in the proposed rules. CoPUC urges the FCC to consider the inclusion of an appeals process, by which a state may request reconsideration of its designation as a 911 fee diverter.

Finally, there is no process outlined in the proposed rules by which a state may remove the designation of "911 fee diverter" once it has been applied. CoPUC suggests that the FCC include a process by which a state may request to have the designation of "911 fee diverter" removed after changes are made by the state to come into compliance with the FCC's rules.

## **CONCLUSION**

CoPUC thanks the FCC for the opportunity to comment on these issues. While Colorado has never been designated as a diverter of 911 surcharge funds, the ability of state and local

jurisdictions to comply with the rules proposed in this NPRM requires clearly defined rules that provide unambiguous guidelines. CoPUC recognizes that Congress has provided the FCC with a short time frame to finalize these rules, but we urge the FCC to ensure that in the rush to meet Congressional deadlines the FCC does not create rules that leave states struggling to interpret these new requirements. We also strongly encourage the FCC to think more about the process by which states or local jurisdiction may come into compliance with FCC rules regarding the use of 911 surcharge funds, since the goal of any rules should be to encourage and ensure compliance.

Respectfully submitted,

/s/ Eric Blank

Chairman

Colorado Public Utilities Commission  
1560 Broadway Ste 250  
Denver, CO 80202

/s/ John C. Gavan

Commissioner

Colorado Public Utilities Commission  
1560 Broadway Ste 250  
Denver, CO 80202

/s/ Megan M. Gilman

Commissioner

Colorado Public Utilities Commission  
1560 Broadway Ste 250  
Denver, CO 80202

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
911 Fee Diversion	)	PS Docket No. 20-291
	)	
New and Emerging Technologies 911	)	PS Docket No. 09-14
Improvement Act of 2008	)	

**NOTICE OF PROPOSED RULEMAKING  
COMMENTS OF**

**DOUGLAS COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY  
EL PASO TELLER COUNTY EMERGENCY TELEPHONE SERVICE  
AUTHORITY  
EAGLE COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY**

The above Colorado emergency telephone service entities hereby submit their comments to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking (“NPRM”) concerning the Proposed Rule on 911 Fee Diversion:

1. We fully support the comments to this NPRM separately submitted by the Colorado Public Utilities Commission (“CoPUC”).
2. We believe the FCC’s goal is to provide a framework to build and maintain a robust and reliable 911 System. This is our goal as well.
3. Colorado law prohibits 911 fee diversion at the state and local level in our State. We encourage the FCC to include a safe harbor for 911 entities that utilize funds from 911 fees in compliance with state laws substantially equivalent to ours. This law, in fact, was strengthened in 2020. Section 29-11-104, Colorado Revised Statutes, specifies:
  - (a) 911 fees must be deposited into separate funds at the state and local level, and that moneys in those separate funds cannot be used for purposes other than 911. 911 fees remaining in the separate funds at the end of any fiscal year remain in those funds to be used in the following fiscal year for 911 purposes. At the state level, 911 fees are largely passed through to local 911 provider entities, except for a very small percentage to cover administrative costs of CoPUC in collecting statewide fees and

paying for statewide 911 infrastructure grants. Local 911 fees and statewide 911 fees passed through to local 911 entities can only be used for the following:

(i) Costs associated with the lease or purchase, installation, engineering, programming, maintenance, monitoring, security, planning, and oversight of equipment, facilities, hardware, software, and databases used to receive and dispatch 911 calls;

(ii) Charges of basic emergency service providers (BESPs) for the provision of basic emergency service;

(iii) Costs related to the provision of the emergency notification service and emergency telephone service, including costs associated with total implementation of both services by emergency service providers, including costs for programming, emergency medical services provided by telephone, radio equipment within the PSAP, and training for PSAP personnel;

(iv) Costs associated with the operation of emergency telephone service and emergency notification service, including recordkeeping, administrative, and facilities costs, whether the facilities are leased or owned;

(v) Membership fees for state or national industry organizations supporting 911; and

(vi) Other costs directly related to the continued operation of the emergency telephone service and the emergency notification service.

(b) If money is available after the costs and charges enumerated above are fully paid in a given year, the money may be expended for:

(i) Public safety radio equipment outside the PSAP; or

(ii) Personnel expenses necessarily incurred for a PSAP or the governing body in the provision of emergency telephone service.

4. The proposed rules should be specific to fee diversion and not define uses of the fees that contradict state and local defined 911 uses. The Enhance 911 Act of 2004 and the New and Emerging Technologies 911 Improvement Act of 2008 put processes in place to limit the diverting of 911 fees. These provisions should be kept as part of this rule making.

5. The majority of Colorado 911 Centers are funded through a combination of local government general funds and 911 fees. 911 fees, on their own, would be insufficient to fund the total cost of 911 centers in Colorado. However, 911 fees are an essential portion of 911 Center funding. Because 911 funding allocation in Colorado has

historically been a local government responsibility, local government has and should continue to retain discretion, within rational parameters, to use the 911 funds.

6. The FCC rules should defer to existing State legislation if that legislation does not allow for sweeping 911 fees into the general fund of the State or local governments without restrictions on use.

7. For the FCC to designate specific uses of 911 fees without the understanding and oversight of local jurisdictions presumes a “one size” fits all mentality that is not reality and could be devastating to local government ability to provide a robust and reliable 911 and Public Safety network and system. The goal should be to limit fee diversion, not to limit the ability of local government to fund reliable Public Safety networks.

8. As technology changes and expands, limiting 911 fee uses could restrict the ability to provide additional resources and redundancies, such as partnering with broadband, radio networks and First Net. Making these decisions must be in a local government’s purview. Local governments know their needs, terrain, population, area mass and other details that the FCC does not have insight into. Colorado has specific weather, terrain, and area mass conditions that are completely different from other states. For example, there are counties in Colorado that have a larger area, but less population than most U.S. counties. This creates a greater need for funds to communicate with first responders.

9. Proposed rule §9.23 provides a definition of “acceptable purposes and functions for the obligation and expenditure of 911 fees or charges”:

(a) As pointed out by CoPUC, some of the phrases in the definition are subject to multiple interpretation, depending on the development of technology and other factors.

(b) The examples of allowable expenses do not speak to whether expenses associated with collecting and monitoring 911 fee remittances, specifically authorized by Colorado law, are permitted or not. We strongly encourage the FCC to include these types of expenses as allowable under the new rules.

(c) The final example of unacceptable uses of 911 fees in the proposed rule – public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders – is self-contradictory in actual practice in the field for emergency responders. These types of radio network are the means by which emergency responders are dispatched to calls by PSAPs. Colorado law permits the expenditure of 911 fees on radio equipment for this very reason. We strongly encourage the FCC not to prohibit these types of expenditures.



10. Regarding the interagency “strike force” being created as directed in §902(d) of the Don’t Break Up the T-Band Act of 2020 as part of the Consolidated Appropriations Act, 2021:

(a) The “strike force,” should be limited to determining the extent of fee diversion and how to eliminate the fee diversion that is occurring. For example:

(i) Do these states and territories have needs that are not being met while the 911 systems in those areas are robust and reliable?

(ii) Do diverting jurisdictions collect too much in 911 fees?

(iii) Is there neglect of the 911 system, and the diversions are taking away needed funding?

(b) A small minority of jurisdictions divert 911 fees, and that should be addressed. Have the “strike force” work on stopping the fee diversion. The “strike force” should not be used to make decisions on behalf of local government. The “strike force” could look at what the states have in place and deem them acceptable, giving the “strike force” more resources to concentrate on the problem and not trying to fix something that is not broken in most states, territories, and local jurisdictions. In Colorado, there are processes in place that, for the most part, prevent the state and local governments from diverting 911 fees.

11. We strongly encourage the FCC to include in proposed rule §9.24 some time limit in which the FCC will respond to petitions for clarification.

12. Because Colorado is a strong local control state, meaning most 911 operations are carried out by local governments and not the State of Colorado, we strongly encourage the FCC to clarify that the rules will not deem the entire State of Colorado and all local 911 entities fee diverters if only a small number of individual 911 entities are found by the FCC to be diverting 911 fees.

13. We also strongly endorse the concept of adding a pathway to compliance into the new rules. This would include the concept of a phase-in period of no less than one year for the new rules to allow states and local governments to come into compliance voluntarily.

## CONCLUSION

We thank the FCC for the opportunity to comment on these rules. We believe Colorado has never been designated as a diverter of 911 fees because our State has strong laws that prevent the misuse of these funds. We believe that the FCC’s proposed rules can be clarified to clearly define guidelines for state and local use of these funds. We ask that the FCC consider our comments and suggestions.

Respectfully submitted,

## MEMORANDUM

**TO:** FSIR COMMITTEE

**FROM:** LUKE PALMISANO, INTERGOVERNMENTAL RELATIONS MANAGER

**SUBJECT:** STATE LEGISLATIVE UPDATE

**DATE:** MARCH 19, 2021

### Action Items

#### **Create The Colorado Office Of New Americans: HB 1150**

The bill creates the Colorado Office of New Americans (ONA). The ONA serves as the point of contact for immigrant-serving state agencies, private sector organizations, and the public about immigrant issues in Colorado, and has as one of its central purposes the successful integration and inclusion of immigrants and refugees in our state's communities. As its main priority, the ONA is required to implement a statewide strategy to facilitate economic stability and promote successful economic, social, linguistic, and cultural integration by investing in the success of immigrants in Colorado. **City staff recommend an active support position.**

The [bill](#).

Sponsors: Rep Jodeh

Status: The bill has been assigned to the House State, Civic, Military, & Veterans Affairs committee and has a hearing date of April 8.

#### **Regional Transportation District Operation: HB21-1186**

The bill amends provisions related to the operation of the Regional Transportation District including removing a cap on the amount of all vehicular service the district can allow to be provided by third parties; expanding the types of entities the district can contract with to include nonprofit organizations and local government; repealing the farebox recovery ratios, repealing a limitation on developments that would reduce parking at a facility or result in a competitive disadvantage to private businesses near the facility; and repealing limitations on the district's authority to charge fees and manage parking at district parking facilities. **City staff recommend an active support position.**

The [bill](#).

Sponsors: Rep Gray, Rep Sullivan, Sen Winter, Sen Bridges

Status: The bill has been assigned to the House Transportation & Local Government committee and has hearing date of March 30.

### **Immigration Legal Defense Fund: HB21-1194**

The bill creates the Immigration Legal Defense Fund in the Department of Human Services. DHS will award grants from the fund to qualifying nonprofit organizations that provide legal advice, counseling, and representation for, and on behalf of, indigent clients who are subject to an immigration proceeding. **City staff recommend a monitor position.**

The [bill](#).

Sponsors: Rep Tipper, Rep Ricks, Sen Moreno

Status: The bill has been assigned to the House Judiciary committee. No hearing date has been set.

### **Military Family Open Enrollment In Public Schools: HB21 1217**

The bill requires a school district, district charter school, and institute charter school to accept the school liaison address for the military installation for purposes of demonstrating residency for inbound active duty military members participating in open enrollment; and to grant guaranteed automatic matriculation to the child of an inbound active duty military member while the child remains in the school, and priority preference for younger siblings of the child for enrollment in subsequent school years. **City staff recommend an active support position.**

The [bill](#).

Sponsors: Rep Bockenfeld, Rep Bacon, Sen Fields, Sen Lundeen

Status: The bill has been assigned to the House Education committee and has a hearing date of April 8.

## **Information Items**

### **Local Government Authority Promote Affordable Housing Units: HB21-1117**

The bill concerns the ability of local governments to promote the development of new affordable housing units pursuant to their existing authority to regulate land use within their territorial boundaries.

The city's state priorities as approved by City Council call for support of this bill.

**FSIR Position: Active Support**

The [bill](#).

Sponsors: Rep Lontine, Rep Gonzales-Gutierrez, Sen Rodriguez, Sen Gonzales

Status: The bill has passed out of the House Transportation and Local Government committee and referred unamended to the House Committee of the Whole.

**Protections For Entities During COVID-19: SB21-080**

This bill concerns protections for entities that comply with public health guidelines related to COVID-19.

**FSIR Position: no position**

The [bill](#).

Sponsors: Rep Bird, Rep Bradfield, Sen Woodward

Status: The bill has had a hearing in the Senate Business, Labor and Technology committee on March 8 and was postponed indefinitely.



# RTD Accountability Committee

Draft

Preliminary Report

January 2021



## Membership

### Co-Chairs

Elise Jones (co-chair) - Local Government served by RTD

Crystal Murillo (co-chair) - Local Government served by RTD

### Members

Dan Blankenship – Multimodal Expertise

Rutt Bridges – Financial Planning Expertise

Chris Frampton – Economic Development Expertise

Jackie Millet – Local Government served by RTD

Julie Duran Mullica – Local Government served by RTD

Kathy Nesbitt – Human Resources Expertise

Krystin Trustman – Expertise on Issues Facing Transit Riders with Disabilities

Rebecca White – Urban Planning Expertise

Deyanira Zavala – Transportation Equity Expertise

### Ex-officio Members

Lynn Guissinger (ex officio) – RTD Board Director

Troy Whitmore (ex officio) – RTD Board Director

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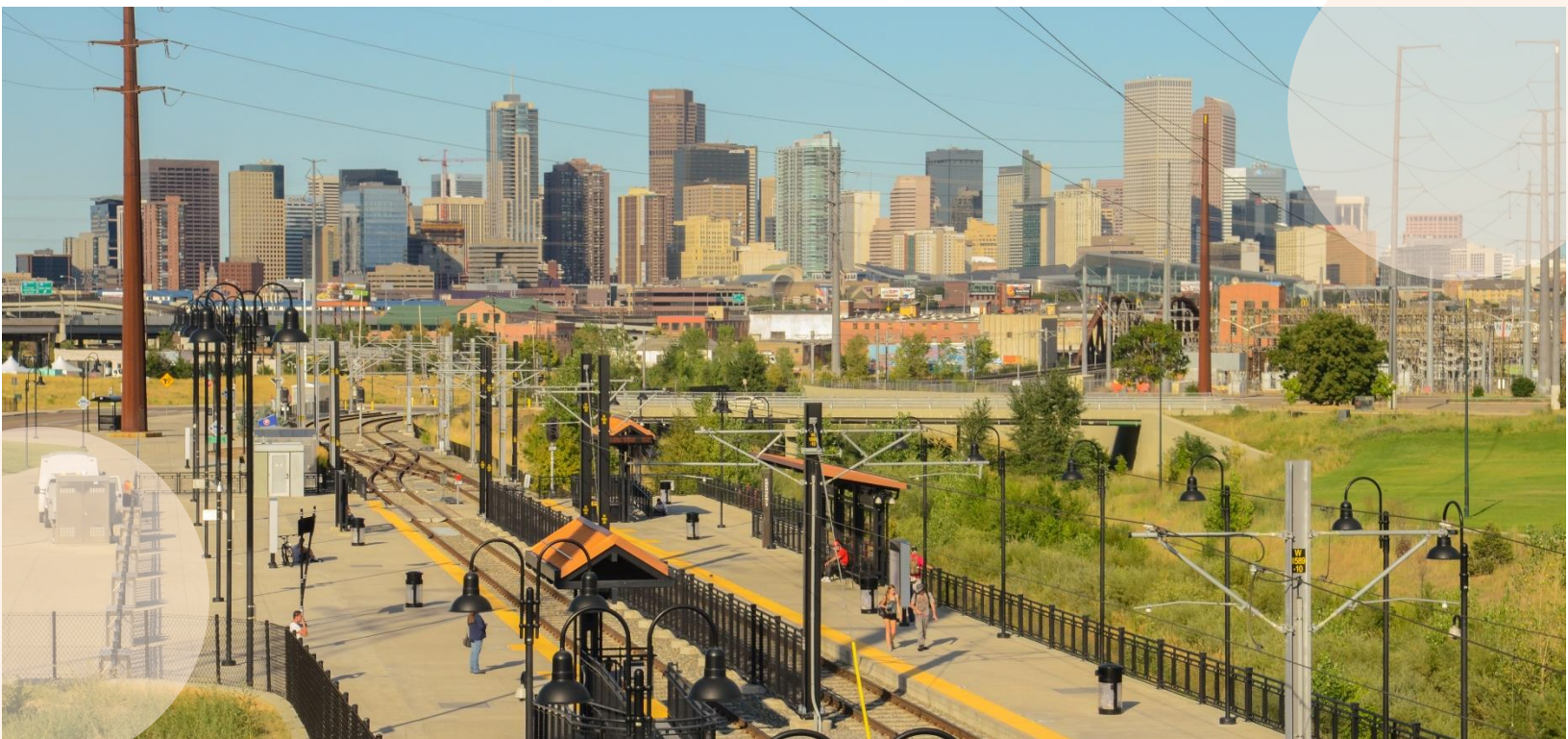


## Executive Summary

The Regional Transportation District (RTD) is a vital part of the Denver region's multimodal transportation system, connecting people to jobs, schools, shopping, medical care and recreation. It helps reduce transportation-related climate emissions and provides an equitable mobility alternative for people who cannot afford, are not able, or choose not to drive. It also represents independence for so many and is an important stimulant for the region's economic development. The region's transit system must also increasingly address major trends, such as a rapidly growing population and employment base, new technology, an evolving economy, and changing residential and workplace preferences.

Understanding the important role RTD plays in the success of the Denver region, in the summer of 2020, the RTD Board in collaboration with Governor Polis and the transportation committee chairs of the Colorado General Assembly created the RTD Accountability Committee. The purpose of the Committee is to provide feedback and develop a set of recommendations for improvement to the operations and statutes related to RTD. The Committee is independent of RTD and hosted by the Denver Regional Council of Governments (DRCOG).

As referenced in the RTD Accountability Committee Scope of Work ([Appendix 1](#)), the membership has elected to provide this optional preliminary report to the collaborating partners. The report highlights areas of discussion by the Committee to date, future investigations, and some initial legislative recommendations for consideration by the Colorado General Assembly.



## Duties

As identified in the Committee's scope of work, the RTD Accountability Committee shall perform a comprehensive review of the district, taking into account the perspectives of staff, Board, and the public. Specifically, the work of the Committee should include a review of at least the following:

- A review of recent financials from the district, including any recent audits and a thorough review of the agency's use of CARES Act stimulus funds.
- The structure of RTD governance and executive leadership.
- A review of the district's short-term and long-term prioritization of resources to maximize the agency's limited dollars for the benefit of taxpayers.
- How it can better serve all riders including those with disabilities, how it can better serve transit-dependent populations, a review of the district's plans for how to expand ridership, how the district is addressing coverage gaps, how the district is prioritizing route planning, and how the district is serving its entire service area.
- A determination of the long-range financial stability of the agency, and how the agency can achieve stability and growth while still meeting its core mission.

## Initial Activities

From its earliest meetings, Committee members discussed the importance of establishing an organizational structure that would allow for an effective evaluation of RTD functions. First, the Committee formalized its meeting rules through the adoption of RTD Accountability Committee Guidelines ([Appendix 2](#)) and the election of Boulder County commissioner Elise Jones and Aurora council member Crystal Murillo as the Committee's co-chairs.

The Committee also agreed that social, financial, and environmental equity shall be at the forefront as they consider and finalize recommendations. As a result, the Equity Assessment Mission Statement ([Appendix 3](#)) was adopted, which ensures that an equity lens will be applied to the Committee's recommendations to make certain that benefits are shared across the RTD service area and that no one group bears a larger burden of environmental or financial impact, especially communities of concern (including, but not limited to minority, low-income, individuals with disabilities, older adult, and veteran populations).

## Subcommittee Formation

Understanding the complexity and time-sensitive nature of the Committee's work, three subcommittees were formed so that a "deeper dive" on specific issues could be undertaken: Governance, Finance, and Operations. Additionally, the Committee created the following focus areas for the subcommittees, aligned with its scope of work, for initial inquiry and development of recommendations.

### Initial Subcommittee Focus Areas\*

Governance Subcommittee	Finance Subcommittee	Operations Subcommittee
Explore and develop an alternative governance structure and deployment of transit services that follow a regional/subregional model in partnership with local governments.	Review and make recommended changes to RTD to achieve a more sustainable financial model, including review of investment policies, debt, regional/subregional funding allocation, and statutes that limit opportunities for revenue generation, cost savings and increased ridership.	Assess and make recommendations on how RTD fares and pass programs can be improved to increase equity, ridership, affordability, and ease of access.
Explore how to enable partnerships with other transit agencies and nonprofits to provide for better service outside and inside RTD boundaries.	Review FasTracks spending and make recommendations on how to achieve an equitable resolution of the unfinished FasTracks corridors.	Make recommendations on how RTD can enhance service delivery to transit-reliant, vulnerable populations through different models of service delivery and reflecting changing travel trends post COVID-19.
Assess whether the size and structure of RTD’s service area is appropriate relative to its ability to provide transit service.	Make recommendations on how to improve financial transparency to restore public trust and demonstrate RTD accountability to voters and policy-makers, such as the development of a public online dashboard to show how RTD money is generated and spent.	Focus on proactive, community-based transit service planning and operations. Strengthen and formalize coordination between RTD and cities/counties with development review/approval of project and design of transit service for key developments.
Assess whether the RTD Board would be more effective with a different size or structure.	Examine partnership opportunities to enhance mobility services and allow RTD to focus on delivering the types of services it can do most effectively and efficiently.	Undertake an overall organizational assessment (HR, work culture, management and governance of district, organizational and Board structure).
		Emphasize social/environmental justice and equity analyses to influence transit services provided.

- Focus Areas are not mutually exclusive and may be discussed by one or more subcommittees



# Subcommittees

## Governance Subcommittee

The Governance Subcommittee was formed to review the structure of RTD governance and executive leadership. The subcommittee has identified three areas of improvement it wishes to address:

1. The need for local communities and residents to have an elevated voice in transit service decision-making
2. Equity (social and geographic) considerations in RTD service delivery
3. Importance of restoring trust and confidence in RTD

Julie Duran Mullica (chair)

Jackie Millet (primary)  
 Kathy Nesbitt (primary)  
 Dan Blankenship (secondary)  
 Elise Jones (secondary)  
 Crystal Murillo (secondary)  
 Deyanira Zavala (secondary)



# GOVERNANCE

## Summary of Subcommittee Activities

### September

In order to effectively pursue opportunities for improvement to RTD's governance model, the subcommittee was briefed on the legal structure and governance model of RTD. Then the subcommittee embarked on a peer review of other public transportation governance models. Thirteen models have been evaluated to date and are summarized as [Appendix 4](#).

### October

The subcommittee began to focus its attention on models that would increase local community participation in decision-making. Many subcommittee members were familiar with DRCOG's new regional/subregional Transportation Improvement Program (TIP) process that resulted in improvements to collaborative outcomes, including increased problem-solving capacity, enhanced relationships among the region's agencies, and significantly more trust in the funding allocation process. The subcommittee was fully briefed on DRCOG's model in hope that there were elements that could be utilized in its work. The subcommittee was also briefed on a similar governance concept at LA Metro where five local service councils throughout its service area are used to better coordinate bus service changes and improve public involvement opportunities for its residents. Additional information about LA Metro's local service councils can be found at the following link: [Local Service Councils](#).



## November

The subcommittee began to develop its own governance concept, building on the theme of enhancing local community involvement in RTD's decision-making process. A draft model concept was presented for discussion purposes only at the November 9 RTD Accountability Committee meeting. The concept, illustrated below, provided two options for local community involvement: the formation of a Local Advisory Council or the formation of Subregional Transit Councils. Conversations at both the full RTD Accountability Committee meeting and subsequent discussions at the Governance Subcommittee indicated a clear affinity for further exploration of the Subregional Transit Council concept.

### **Draft RTD Governance Structure Concept** For Discussion Purposes Only

#### **RTD Board of Directors**

- Sets RTD policy, adopts RTD budget, sets overall district service goals and objectives.
- Allocates resources to "regional" transit services: light rail, commuter rail, regional bus, ADA services, other district-wide services.
- Reviews/approves subregional transit council **or** local advisory council's "local" transit service plans and resource allocations.

#### *Discussion Topics:*

- Define "regional" transit services
- Determine amount of resources needed for regional transit services
- Determine process for RTD Board adjustments to local service plan recommendations (e.g., would it require a super-majority vote of the Board?)

#### **Local Involvement Options:**

##### **Option #1: Local Advisory Council**

- Similar to [Utah Transit Authority's model](#)
  - The standing Local Advisory Council provides a voice for local governments.
  - Reviews and approves service plans, capital development plans and projects, and TODs before final RTD Board approval.
  - Represents and advocates the concerns of citizens to the RTD Board.

##### **Option #2: Subregional Transit Councils**

- Similar to LA Metro's [Local Service Council model](#)
  - Membership: each local jurisdiction within RTD service area.
  - Develops local transit service plans within RTD service goals and objectives.
  - Allocates resources to local transit service.
  - Can supplement services with local resources, if desired.



## December

The subcommittee continued its vetting of the regional/subregional governance concept. The subcommittee convened a group of technical staff from communities within the RTD service area to get their thoughts/feedback on the governance concepts being investigated. A summary of the roundtable discussion was provided at the December 21 subcommittee meeting.

The subcommittee was also briefed on an initiative known as community-based service planning that has been implemented around the country to address social equity issues. The subcommittee applauded the opportunity it presented to better understand and mitigate transportation deficiencies, especially in low-income communities through extensive involvement with residents and community-based organizations. Subcommittee members felt it could ultimately be a policy directive of the RTD Board and carried out by the subregional service councils.

## Initial Findings and Areas for Further Investigation

The Governance Subcommittee has expressed optimism for the Subregional Service Council governance concept, but fully recognizes more research and investigation is needed. In this exploratory phase, the model appears to address many of the identified problems expressed by the subcommittee. For example, the model increases local involvement in the RTD decision-making process and has the potential to greatly reduce geographic equity concerns because funding and service level decisions would be made at the subregional level, thereby ensuring a minimum level of service. The subcommittee also believes the model has the opportunity to restore trust and confidence in RTD because local governments and users of the system will play a larger role in the decision-making process. The following table describes initial research and potential future investigations and issues.



Focus areas	Initial research	Potential future investigations and issues
Alternative governance structure	Expressed interest in Subregional Service Council model and a willingness to move further in the exploratory phase.	<ul style="list-style-type: none"> <li>• Geography of service councils.                             <ul style="list-style-type: none"> <li>○ County, RTD Board districts, other?</li> </ul> </li> <li>• Define “regional” and “local” transit service.</li> <li>• Determine amount of resources for “local” transit service.</li> <li>• Determine allocation of resources for Subregional Service Councils.                             <ul style="list-style-type: none"> <li>○ Share of taxable sales?</li> <li>○ Share of population?</li> <li>○ Share of employment?</li> <li>○ Share of vulnerable population?</li> <li>○ Combination of above?</li> <li>○ Other?</li> </ul> </li> </ul>
Partnerships with other transit agencies	TBD	<ul style="list-style-type: none"> <li>• Initiate conversations with VIA Mobility, CDOT and other service providers about partnership opportunities and synergies.</li> </ul>
Size of RTD service area	TBD	<ul style="list-style-type: none"> <li>• Is RTD’s service area too large?</li> <li>• Are constituents receiving adequate service?</li> <li>• What would be the optimal service size?</li> <li>• What are the transit service options if communities are removed from the RTD district?</li> </ul>
RTD Board Structure	The subcommittee has initiated conversations about the Board structure.	<ul style="list-style-type: none"> <li>• What problem is the subcommittee attempting to solve?</li> <li>• Optimal number of Board members.</li> <li>• Elected vs. appointed.</li> <li>• At-large or district level representation.                             <ul style="list-style-type: none"> <li>○ Hybrid approach?</li> </ul> </li> </ul>



## Finance Subcommittee

The Finance Subcommittee was formed to focus on issues related to the funding and financial stability of RTD. Topics that this subcommittee has addressed or will take up include RTD's pre- and post-COVID-19 budgets, debt and pension obligations, financial transparency, fare and pass programs and farebox recovery, use of CARES Act funding, and RTD's potential role in COVID-19 recovery.

Rutt Bridges (chair)

Dan Blankenship (primary)  
Rebecca White (primary)  
Chris Frampton (primary)  
Elise Jones (secondary)  
Crystal Murillo (secondary)  
Krystin Trustman (secondary)

## Summary of Subcommittee Activities

### September

The subcommittee engaged in a conversation to refine its objectives and review and discuss RTD financial documents and information to ground their future work. This included a review of RTD's 2019 and 2020 budgets, 2019 Annual Financial Report, and previous state audits.

### October

During October, the subcommittee discussed Colorado's COVID-19 crisis and associated risks and opportunities for RTD, particularly RTD's potential role in vaccine distribution and other recovery efforts. The subcommittee also began a discussion of comparisons to peer transit agencies and a review of state statutes that affect RTD's finances.

### November

In November, the subcommittee received a presentation on CDOT's financial dashboard as a potential model for increasing RTD's financial transparency. The subcommittee also began its review and discussion of FasTracks unfinished corridors, refined potential finance-related legislative concepts, and reviewed RTD's updated near-term, mid-term, and long-term revenue forecasts.

### December

During December, the subcommittee reviewed and discussed RTD's 2021 budget, use of CARES Act funds, and began a discussion of administrative overhead issues. As noted below, the subcommittee has reviewed and discussed an analysis of RTD's use of CARES Act funding ([Appendix 5](#)), which was used to retain employees and pay for purchased transportation services.

## Initial Findings and Areas for Further Investigation

The Finance Subcommittee has been focused on research and investigation to inform future recommendations to the Accountability Committee. The subcommittee also played a significant role in reviewing and developing the Accountability Committee's legislative proposals. The proposals represent an opportunity to provide RTD flexibilities that may help it attract and increase ridership and contribute to developing a more sustainable financial future. The following table describes initial research and potential future investigations and issues.

Focus areas	Initial research	Potential future investigations and issues
Financial Stability	<p>Ridership was trending down, and operating expenses were outpacing revenue growth prior to the coronavirus pandemic. Debt obligations are a significant cost driver and limit RTD's ability to expand service or complete unfinished corridors. The pandemic exacerbated this situation, with ridership down 60% and fare revenue down 50% from pre-COVID-19 levels. As a result, RTD reduced service by 40% and implemented other cost-cutting measures during 2020 to manage expenses. Federal relief funding (\$232 million) through the CARES Act enabled RTD to retain employees during 2020. RTD added \$80 million to reserves. RTD's adopted 2021 budget represents staff reductions of approximately 400 positions. RTD's finances will not stabilize until the pandemic has subsided and customers have returned to the system.</p>	<ul style="list-style-type: none"> <li>Continued monitoring of revenue forecasts.</li> <li>Debt load, debt service payments, contracted services, and RTD's mid-range financial plan.</li> <li>Administrative overhead and other cost drivers.</li> <li>Use of additional federal COVID-19 relief funding.</li> <li>Fare structure, pass programs, and other issues to increase ridership and revenues.</li> <li>RTD's underutilized assets that could potentially play a role in addressing the pandemic, in particular for mass vaccination clinics as vaccines become more readily available.</li> </ul>
FasTracks	<p>RTD has completed 75% of the FasTracks program. Four corridors are unfinished (Central Rail Extension, North Metro Completion, Northwest Rail, Southwest Extension) with a total capital cost estimate of almost \$2.8 billion (2018) and inadequate resources to complete them before 2050. A thirty-year delay is not a practical alternative.</p>	<ul style="list-style-type: none"> <li>Opportunity to leverage Front Range Passenger Rail to provide equivalent service in some corridors.</li> <li>The role of emerging alternative technologies.</li> <li>Other options to complete unfinished corridors.</li> </ul>
Financial Transparency	<p>A project and financial dashboard used by CDOT is a potential model for RTD, though a simpler solution may be needed.</p> <p>There are significant costs and challenges to integrating RTD's financial system information.</p>	<ul style="list-style-type: none"> <li>RTD financial system integration and the need for a publicly accessible dashboard.</li> <li>If public access to RTD financial data is the goal, can a less maintenance-intensive solution be found?</li> </ul>
Partnership Opportunities	<p>RTD should have additional flexibility and clear authority to contract with nonprofits and local governments for service delivery to ensure cost-effective and efficient transit services.</p>	<ul style="list-style-type: none"> <li>Effective models for contracted services.</li> <li>Mass transit's challenge for first- and last-mile station access.</li> </ul>




## Operations Subcommittee

The Operations Subcommittee was formed to focus on issues related to operations and maintenance of the RTD transit system and develop draft recommendations for consideration by the full committee. Topics this subcommittee has addressed or will take up include pass and fare programs, service planning, and the provision of complementary paratransit required by the Americans with Disabilities Act (ADA) of 1990.

Deyanira Zavala (chair)

Elise Jones (primary)  
Crystal Murillo (primary)  
Krystin Trustman (primary)  
Chris Frampton (secondary)  
Jackie Millet (secondary)  
Rebecca White (secondary)



Passengers board RTD rail at Union Station in downtown Denver. Among the RTD Accountability Committee's considerations are the fare and pass programs available to passengers.

Photo by: urbanlight/BIGSTOCK

## Summary of Subcommittee Activities

### September

Refining the subcommittee's focus areas received most of its attention in September. The subcommittee also received an overview of RTD's service planning. This was followed by a discussion on the role of equity and service planning.

### October

The subcommittee continued examining the equity in service planning topic in October with more in depth discussions on content from *Best Practices in Service Planning* (Center for Urban Transportation Research at the University of South Florida, 2009) and an article from Jarrett Walker entitled: [The Transit Ridership Recipe](#).

By the end of the month, the subcommittee turned its attention to pass and fare programs, receiving a number of presentations on the subject. First, RTD staff provided a briefing on its [LiVE program](#) that provides a discount for low-income riders and then later in the month the subcommittee heard two briefings on Kansas City's decision to go fare-free and on Portland, Oregon's decision to implement an [equitable fare program](#).

### November

Fare structure and pass program discussion and education continued in November with a briefing on the administration and management requirements of RTD to deliver its fare and pass program. Additionally, the subcommittee heard a presentation on pass programs at the following peer agencies: Houston Metro, Dallas Area Rapid Transit (DART), Metro Atlanta Rapid Transit (MARTA), King County Metro (Seattle), and Massachusetts Bay Transit Authority (MBTA-Boston).

### December

After some additional presentations in December, the subcommittee was poised to begin developing a strategy for future recommendations. The conversation centered around the development of goals to improve operational performance and potential strategies for implementation. The following table reflects the goals and strategies discussed to date.

**Goals**

**Possible Strategies**

*Create fare and pass structures that are easy to understand*

- Align all discount fares (seniors, youth, persons with disabilities, and low-income)
- Create a simple fare and pass structure for customers and operators
- Minimize cost burden to equity populations
- Deliver communications through easy-to-access channels and easy-to-use tools

*Ensure regional and subregional coordination  
(Purpose: Operationalize the governance work;  
Connects to Governance Subcommittee work)*

- Implement strategy for RTD to support suburban communities with equitable Transit Oriented Development (eTOD)
- Align the percent of affordable housing and frequent service routes
- Explore strategic partnership to optimize bus priority lanes

*Improve and promote operational efficiency  
(Purpose: Operationalize the governance work;  
Connects to Governance Subcommittee work)*

- Ensure equitable distribution of service via equity population access within 15-20 minutes
- Community-based transit planning

*ADA Accessibility and Service Delivery*

- Explore strategies to make fares more affordable for paratransit clients
- Find ways to improve client experience: reduce trip durations, make booking easier and more flexible, investigate other needs for clients and possible strategies to address them

**Initial Findings and Areas for Further Investigation**

The Operations Subcommittee has been focused on developing its first set of recommendations based on the goals and strategies shown above. These goals are a working compilation, and it is expected goals will be added or revised throughout the process. The following table summarizes the initial research conducted by the subcommittee and potential future investigations and issues.

Focus areas	Initial research	Potential future investigations and issues
<p><b>Fare and pass programs</b></p>	<p>DRCOG staff provided a high-level synopsis of RTD’s pass and fare programs. This was followed by a presentation by RTD staff on the administration of their pass and fare program. RTD staff also briefed the subcommittee on the LiVE program that provides a discount for low-income riders. Staff from TransitCenter briefed the committee and answered questions on their report entitled <i>Overview of a Fare Framework: How transit agencies can set fare policy based on strategic goals</i>. The RTD Chief of Police briefed the subcommittee on fare evasion enforcement policy to follow up on the TransitCenter presentation. One of TransitCenter’s discussion points was that many pass and fare programs coincide with a review of fare evasion enforcement policy. Adjustments to this policy have helped other transit systems increase involvement in low-income fare programs and educate riders on how to purchase the correct fare among other benefits.</p> <p>Also, a CDOT Fellow assisting with the RTD Accountability Committee provided an overview on pass programs at the following peer agencies: Houston Metro, Dallas Area Rapid Transit (DART), Metro Atlanta Rapid Transit (MARTA), King County Metro (Seattle), and Massachusetts Bay Transit Authority (MBTA-Boston).</p>	<ul style="list-style-type: none"> <li>• Identify models to simplify pass and fare programs.</li> <li>• Formulate policies for fare enforcement that can be integrated into pass and fare programs.</li> <li>• Review RTD’s costs of fare collection (expenses for security/fare enforcement, purchase and maintenance for fareboxes/TVMs, increased operating costs from increased dwell times, staff/administrative costs, etc.)</li> </ul>
<p><b>Service delivery for transit-reliant populations</b></p>	<p>A brief presentation on transit service planning with an emphasis on equity. This presentation included background from <i>Best Practices in Service Planning</i> (Center for Urban Transportation Research at the University of South Florida) and an article from Jarrett Walker entitled: <i>The Transit Ridership Recipe</i>.</p>	<ul style="list-style-type: none"> <li>• Determine integration points between service delivery and planning with governance model (possible synergy with Governance Subcommittee).</li> <li>• Identify bus priority lane strategies.</li> <li>• Review Reimagine RTD optimization recommendations.</li> <li>• Explore opportunities to increase ridership.</li> </ul>



<p><b>Community-based transit service planning</b></p>	<p>A presentation was provided to the Governance Subcommittee.</p>	<ul style="list-style-type: none"> <li>• Review Reimagine RTD optimization recommendations.</li> <li>• Explore opportunities to increase ridership.</li> <li>• Determine integration points between service delivery and planning with a focus on facilitating local stakeholder input (possible synergy with Governance Subcommittee).</li> </ul>
<p><b>Overall organizational assessment</b></p>	<p>TBD</p>	<ul style="list-style-type: none"> <li>• Learn more about conditions that influenced operator shortage prior to Covid-19 pandemic.</li> <li>• Learn more about current situation with operators and maintenance staff during pandemic.</li> <li>• Review best practices for operator and maintenance staff management and retention at peer transit agencies.</li> </ul>
<p><b>Social/environmental justice to influence transit service</b></p>	<p>TBD</p>	<ul style="list-style-type: none"> <li>• Learn more about RTD equity practices.</li> <li>• Review best practices at peer transit agencies related to Title VI, Environmental Justice, ADA, and other equity regulations.</li> <li>• Equity in fare evasion (review costs associated with parking violations vs. fare evasion)</li> </ul>





## Initial Legislative Recommendations

Key among the RTD Accountability Committee's assignments is the examination of how RTD can better serve its riders, expand ridership and achieve financial stability and growth while still meeting its core mission. The emergence of the COVID-19 pandemic has resulted in a 60% reduction in ridership and a major decline in current and projected sales and use tax revenue, further exacerbating RTD's financial situation.

As the RTD Accountability Committee explores potential recommendations for improvement, it has determined that some of the suggestions it may want to propose for RTD would be blocked by the language of Colorado statutes (Title 32, Article 9) first put in place when RTD was founded over 50 years ago and amended periodically thereafter.

In particular, the RTD Accountability Committee has identified several statutory restrictions that, if modified or deleted, have the potential to provide RTD with greater flexibility and opportunity to improve its finances and/or ridership. The Committee acknowledges up front, however, that such changes aren't silver bullets and their effects — while positive — are likely to be modest. Nonetheless, if the Denver metro area is to have the world-class transit system it deserves, we will collectively need to pursue a range of improvements that maximize flexibility and innovation at RTD. An equity assessment of the recommendations can be found as [Appendix 6](#).



### 1. CRS 32-9-119.7 Farebox recovery ratios – plans

This provision requires that 30% of RTD’s operating costs be funded by revenues collected (all non-sales-tax revenue generated through the operation and maintenance of the mass transit system, except ADA services). Although this provision doesn’t appear to provide a current limitation on RTD, it would in the future, if RTD wanted the opportunity to significantly decrease fares as a way to restore ridership lost during the COVID-19 pandemic, expand ridership beyond pre-pandemic levels, or improve the equity of mobility services.

One of the specific charges to the RTD Accountability Committee was “A review of the district’s plans for how to expand ridership.” RTD’s systemwide ridership had already been declining in recent years when the COVID-19 crisis resulted in a dramatic reduction in ridership on existing routes and the complete elimination of some other service as well. Recovery and expansion of ridership will necessitate flexibility to consider some out-of-the-box measures to regain lost riders and attract new riders. Additionally, equity considerations for transit-reliant populations, especially low-income households, is a major focus for the RTD Accountability Committee; ensuring transit affordability through an analysis of fare levels will also be a critical component of our work.

There are many potential examples of how maximum fare flexibility could be beneficial. RTD could offer a free one-month transit pass to people in the district who are immunized against COVID-19 as a way to simultaneously defeat the virus and rebuild pandemic-affected ridership. Other transit agencies around the country, and several local governments in the RTD service area, are experimenting with low-fare or fare-free transit to attract new riders or bring former customers back. RTD needs the flexibility to explore options around fares and incentive programs to recover from the damage done by COVID-19 and to expand ridership beyond pre-COVID-19 levels. A \$6 billion rail system that carries a quarter of the passengers it carried in 2019 is a poor return on taxpayers’ investment. This must be rectified.

The goal of mass transit should be to provide the most rides for the most people at the lowest total cost. Farebox recovery ratios fail to tell the whole story. A better and simpler measure of return on investment is the system’s operating cost divided by total ridership. RTD needs to focus on delivering the greatest value for our infrastructure investment. The more people carried on mass transit, the less our region will suffer from congestion and the less polluted its air will be.

Proposed edits:

### 1. CRS 32-9-119.7 ~~Farebox recovery ratios – plans~~ Cost efficiency of transit services provided – Maximizing ridership

*(1) The general assembly hereby finds and declares that surface transportation in the Denver metropolitan area is a major problem confronting not only the citizens of the metropolitan area but also the citizens of the entire state of Colorado. The general assembly further finds that, although mass transportation is one component of an effective surface transportation system, the allocation of resources to mass transportation must be made in light of all surface transportation needs. The general assembly further finds that the district should be organized*

efficiently, economically, and on a demand-responsive basis and that the district should consider least-cost alternatives in discharging its responsibilities. ~~The general assembly further finds that the farebox recovery ratio of the district must be improved so that resources once allocated for mass transportation can be made available for other surface transportation needs.~~

(2) For the purposes of this section, “operating costs” means all expenditures, including depreciation, except for those incurred in long-term planning and development of mass transportation and rapid transit infrastructures and those costs incurred as a result of providing transportation service mandated by the federal “Americans with Disabilities Act of 1990”, 42 U.S.C. sec. 12101 through 12213., ~~and “revenues collected” means all non-sales tax revenue generated through the operation and maintenance of the mass transit system, except for those revenues generated as a result of providing transportation service mandated by the federal “Americans with Disabilities Act of 1990”.~~

(3) The district shall provide in its financial reporting operating cost, ridership, and operating costs divided by ridership as measures of the cost efficiency of services provided. ~~take whatever measures it deems necessary to ensure that the following percentages of its operating costs are funded by revenues collected, as follows:~~

~~(a) For the fiscal year 1990, twenty-seven and one-half percent;~~

~~(b) For the fiscal year 1991, twenty-eight and one-half percent;~~

~~(c) For the fiscal year 1992, twenty-nine and one-half percent;~~

~~(d) For the fiscal year 1993 and each fiscal year thereafter, thirty percent.~~

(4) ~~The district shall prepare annual budgets based on the percentages required by subsection (3) of this section. The district shall submit copies of its annual budget to the transportation legislation review committee created in section 43-2-145, C.R.S~~

~~(5) No later than August 1, 1989, the district shall submit to the highway legislation review committee optional plans which shall address the following objectives:~~

~~(a) To make the mass transportation operations of the district more demand-responsive;~~

~~(b) To demonstrate that the district has considered least-cost options for performing its service;~~

~~(c) To make recommendations regarding farebox recovery ratios; and~~

~~(d) To demonstrate improved commuter and to-and-from-work service.~~

## **2. CRS 32-9-119.8 Provision of retail and commercial goods and services at district transfer facilities – residential and other uses at district transfer facilities permitted – definitions**

RTD may negotiate and enter into agreements with other entities to provide retail and commercial goods and services to the public or provide housing at its transit stations and park-n-rides, but cannot provide retail and commercial goods and services itself, except for transit-related transactions. There are restrictions on such uses, however: the use may not reduce transit services, reduce the availability of adequate parking for the public, or, for uses involving the provision of retail or commercial goods or services, result in a competitive disadvantage to



a private business near the facility providing similar goods or services. In addition, retail and commercial goods and services or residential uses at RTD facilities must be designed to offer convenience to transit customers and be conducted in a manner that encourages multimodal access from all users.

RTD-owned land and facilities are valuable transit-oriented development assets and can play a beneficial role in generating additional revenues and increasing use of the transit system. Eliminating restrictions related to parking and business competition could further enhance equitable transit-oriented development (TOD) on RTD properties and allow RTD to derive more revenue from the use of its properties.

Specifically, 32-9-119.8(4) contains overly broad language that invites litigation from surrounding businesses “reasonably near a transfer facility.” Furthermore, 32-9-119.8(5) may prevent RTD’s ability to encourage development of affordable, transit-focused residences due to restrictions on allowable parking ratios. For example, according to a study by Seth Goodman and others, the median two-bedroom U.S. city code requirement of 1.5 parking spaces consumes more than half the area of a typical two-bedroom apartment and adds \$375 per month in rent. This unnecessary parking requirement puts the development of transit-focused residences at a significant financial disadvantage and makes no sense for residents who rely on transit for mobility rather than personal vehicles.

Proposed edits:

*(4) The use of a transfer facility for the provision of retail or commercial goods or services or for the provision of residential uses or other uses shall not be permitted if the use would reduce transit services, ~~would reduce the availability of adequate parking for the public, or, for uses involving the provision of retail or commercial goods or services, would result in a competitive disadvantage to a private business reasonably near a transfer facility engaging in the sale of similar goods or services.~~ The provision of retail and commercial goods and services or the provision of residential uses or other uses at transfer facilities shall be designed to offer convenience to transit customers and shall be conducted in a manner that encourages multimodal access from all users.*

*(5) Any development of any portion of a transfer facility made available by the district for the provision of retail or commercial goods or services or for the provision of residential uses or other uses shall be subject to all applicable local zoning ordinances, except for parking requirements, which will be established by RTD. RTD may also at its option charge fees for parking at district parking facilities.*

**3. CRS 32-9-119.9 Limited authority to charge fees for parking – reserved parking spaces – penalties – definitions**

RTD has spent millions of dollars providing structured park-n-ride parking garages and surface parking lots throughout its system but is restricted from requiring in-district residents to pay to park, unless they park for more

than 24 hours. This section limits the flexibility of RTD to manage the parking facilities that RTD has built and is seen as unnecessarily restrictive at a time when RTD faces a financial crisis. Removing this restriction would provide RTD with the ability to generate some revenues from parking if it so desired – although it would be important to not depress ridership by charging too much – and/or to use parking revenues to decrease fares, which could yield equity benefits and enhance ridership. Having more flexibility with regards to parking would also allow RTD to use parking spots and subsidies to incentivize desired outcomes, e.g., giving electric vehicle drivers, carpoolers, and vulnerable populations cheaper parking or parking spots closer to the platform.

Proposed edit: The Committee recommends working with RTD and Legislative Legal Services staff to refine section 32-9-119.9 to remove limitations on RTD's ability to manage their parking facilities to achieve the objectives identified above.

Note: RTD's option to charge fees for parking is now established in 32-9-119.8(5), but otherwise, management of RTD parking facilities is left to RTD.

#### **4. CRS 32-9-119.5 Competition to provide vehicular service within the regional transportation district**

RTD is allowed to implement a system by which up to 58% of the district's vehicular service is provided by qualified private businesses. Statute sets out the processes and parameters for these privately provided services.

Ideally, RTD would use qualified service providers for transit service when that is the most cost-effective option, assuming quality of service and safety are ensured. Expanding this provision to include nonprofit and local government service providers could be beneficial by increasing the pool of alternative cost-effective providers.

Proposed edits:

*(1) The general assembly hereby finds, determines, and declares that: Public transportation services are provided to assist the transit-dependent and the poor, to relieve congestion, and to minimize automotive pollution; public transportation service should be provided at the lowest possible cost consistent with desired service and safety; private transportation providers have been effectively used under competitive contracts to provide public transportation services at lower costs and with lower annual cost increases; obtaining cost-competitive public transportation services requires the establishment of a mechanism for competitive contracting; facilities and vehicles purchased for public transportation service are public assets which are held in the public trust; contracting for services has historically provided opportunities for minority, women, and disadvantaged business enterprises; and it is the intent of the general assembly that disadvantaged business enterprises, as defined in part 23 of title 49 of the code of*

*federal regulations, as amended, shall have the maximum opportunity to participate in the performance of contracts.*

*(2) (a) The district may implement a system under which ~~up to fifty-eight percent~~ some of the district's vehicular service is provided by qualified private businesses, nonprofit organizations, or local governments, pursuant to competitively negotiated contracts.*

*(XI) No provision specifying wages, benefits, work rules, work conditions, or union organization of the employees of the provider beyond compliance with applicable regulation and law, including compliance with the "Federal Transit Act", 49 U.S.C. sec. 5333(b).*

*(3) (a) (I) Subject to the requirements of the "Federal Transit Act", as amended, the district may request proposals from private providers to provide ~~up to fifty-eight percent of all some~~ of the vehicular service of the district as measured by vehicle hours or vehicle hour equivalents. The district's decision as to which vehicular services are subject to requests for proposals must represent the district's total vehicular service operations; except that each individual request for proposals may designate one type of vehicular service. Service provided by private businesses, nonprofit organizations, or local governments, pursuant to this section shall be accomplished through attrition of the district's full-time employees. Layoffs shall not occur solely as a result of the implementation of this section. If the director of the division of labor standards and statistics in the department of labor and employment orders an arbitration pursuant to section 8-3-113 (3), C.R.S., the arbitrator shall not have the power to establish a level of vehicular service to be provided by private businesses, nonprofit organizations, or local governments, in accordance with this section.*

## Appendices

Appendix 1 - RTD Accountability Committee Proposal (Scope of Work)

Appendix 2 - RTD Accountability Committee Guidelines

Appendix 3 - RTD Accountability Committee Equity Assessment Mission Statement

Appendix 4 – Peer Review Governance Matrix

Appendix 5 - CARES Act Spending Review Summary

Appendix 6 - Equity Assessment for Proposed Legislative Changes

## Appendix 1 - RTD Accountability Committee Proposal (Scope of Work)

The Regional Transportation District (RTD) board, in collaboration with the Governor of Colorado and the Transportation chairs of the General Assembly, will create the RTD Accountability Committee (the “Committee”). The Committee will be fully independent from RTD.

The Committee’s mission is to provide feedback and a set of recommendations for improvement to the operations of and statutes related to RTD, to the board and staff of the RTD, the Governor, the General Assembly, and the public. The Committee will be appointed by July 15, 2020 and will hold its first meeting by July 31, 2020 and will continue for one year. If the Committee decides additional work is needed, the Committee may continue its work for a second year or may recommend other action to continue this work.

Pending additional arrangements, the Committee will be hosted by an independent agency. The Committee will be staffed with resources provided by RTD. Using resources, the Committee may contract with services of a third-party consultant with expertise in transit authority operations.

RTD, the Governor’s office, and the leadership of the General Assembly will jointly announce and commit to the process through a joint press release and/or press conference.

The Committee may issue a preliminary report by December 31 of 2020 and shall issue a report with recommendations no later than July 1, 2021. It shall submit the report to the Governor, the chairs of the transportation committees in the Senate and House of Representatives and the RTD Board of Directors. The Committee will hold one or more public hearings on the report and will consider public comment and adopt these recommendations as appropriate.

The District shall make each report issued by the Committee available to the public on its website. The RTD Board shall, within 45 days of issuance of the report, either adopt the recommendations or issue a report stating its reasons for not adopting specific recommendations.

The Committee will consist of eleven members. Appointing authorities may receive suggested names and input for the committee from RTD, DRCOG, Metro Mayors, community organizations and members of the public; however, it is essential that the committee is perceived as independent, and free to do its work without interference. The Governor will appoint five members of the Committee and the transportation chairs of the House and Senate will appoint six members of the Committee. The Committee composition should reflect the diverse political views and partisan makeup of RTD’s service area. The RTD board chair will appoint two ex officio members from the RTD board.



The table below shows the recommended expertise for the board, although the goal is to appoint qualified, respected community members; actual members' expertise may vary.

## Accountability Committee Makeup (11 members)

Members
Four Local Government Representatives within District
At least one member with economic development expertise
At least one member with expertise on issues facing transit riders with disabilities
At least one member with human resources expertise, preferably for transit agencies
At least one member with transit services expertise or multi-modal expertise
At least one member with transportation equity expertise
At least one member with financial planning and management expertise
At least one member with urban planning expertise

The Governor will make the following appointments:

- 1 member with financial planning expertise
- 1 member with transportation equity expertise
- 1 member with urban planning expertise
- 1 member with economic development expertise
- 1 member who represents a local government served by RTD

The chairs of the House and Senate transportation committees will make the following appointments:

- 1 member with expertise on issues facing transit riders with disabilities
- 1 member with human resources expertise, preferably for transit agencies
- 1 member with transit services or multi-modal expertise
- 3 members who represent a local government served by RTD

## Committee Scope and Organization:

The parties will enter into an interagency agreement or letter agreement that allocates up to \$200,000 for staffing and resources such as consulting for the committee. The committee will endeavor to use existing resources when possible. If \$200,000 is determined by the committee to be inadequate to fulfill the work, the committee and RTD will work in good faith to find other potential funding sources.

The Committee shall elect a Chair and Vice-Chair at their first meeting and shall meet as often as necessary to complete its tasks.

The Committee shall perform a comprehensive review of the District, taking into account the perspectives of the staff, board, employees and the public. The District will provide the Committee access to board members, employees, consultants and documents.

The work of the committee should include a review of at least the following:

- A review of recent financials from the district, including any recent audits and a thorough review of the agency's use of CARES Act stimulus funds;
- The structure of RTD governance and executive leadership
- A review of the district's short-term and long-term prioritization of resources to maximize the district's limited dollars for the benefit of taxpayers;
- How RTD can better serve all riders including those with disabilities, how it can better serve transit-dependent populations, a review of the district's plans for how to expand ridership, how the district is addressing coverage gaps, how the district is prioritizing route planning, and how the district is serving its entire service area;
- A determination of the long-range financial stability of the agency, and how the agency can achieve stability and growth while still meeting its core mission.

In issuing its report and recommendations, the Committee may consider but is not limited to including the following topics:

1. District's partnerships with local governments;
2. Use of CARES Act and other pandemic-related funds to support RTD's mission;
3. ADA compliance and accessibility of District services and facilities, including paratransit;
4. Equity in services provided to the District, analyzed in terms of geography, social equity, fare structures, and needs of transit-dependent populations;
5. Organizational assessment (financial health, human resources, work culture, management and governance of the District);
6. Services provided by the District, plans and criteria for expansions or reductions in service;

7. Review of current state audit, including with respect to staff management, retention, and hiring;
8. District's efforts to address the state's climate change goals;
9. District's role in fostering economic development.

## Appendix 2 – Regional Transportation District (RTD) Accountability Committee Guidelines

**Type:** Ad Hoc Committee

**Authority:** Jointly created by the Governor of Colorado, the transportation chairs of the General Assembly and the Regional Transportation District (RTD) board. The Committee is fully independent from RTD.

### Membership

The Committee consists of eleven (11) members.

The Governor appoints the following members:

- 1 member with financial planning expertise
- 1 member with transportation equity expertise
- 1 member with urban planning expertise
- 1 member with economic development expertise
- 1 member who represents a local government served by RTD

The chairs of the House and Senate transportation committees jointly make the following appointments:

- 1 member with expertise on issues facing transit riders with disabilities
- 1 member with human resources expertise, preferably for transit agencies
- 1 member with transit services or multi-modal expertise
- 3 members who represent a local government served by RTD

Two (2) ex officio members of the RTD board appointed by the RTD board chair.

### Officers

At its first meeting upon appointment of its members, the RTD Accountability Committee shall elect co-chairs.

### Responsibilities

The Committee shall perform a comprehensive review of RTD, taking into account the perspectives of the staff, board, employees, and the public. RTD will provide the Committee access to board members, employees, consultants, and documents.

The following duties and responsibilities are vested in the RTD Accountability Committee:

- A review of recent financials from the district, including any recent audits and a thorough review of the agency's use of CARES Act stimulus funds.
- The structure of RTD governance and executive leadership.
- A review of the district's short-term and long-term prioritization of resources to maximize the district's limited dollars for the benefit of taxpayers.
- How RTD can better serve all riders including those with disabilities, how it can better serve transit-dependent populations, a review of the district's plans for how to expand ridership, how the district is addressing coverage gaps, how the district is prioritizing route planning, and how the district is serving its entire service area.
- A determination of the long-range financial stability of the agency, and how the agency can achieve stability and growth while still meeting its core mission.

The Committee may issue a preliminary report by December 31 of 2020 and shall issue a report with recommendations no later than July 1, 2021. It shall submit the report to the Governor, the chairs of the transportation committees in the Senate and House of Representatives and the RTD Board of Directors. If there are any dissenting opinion(s) to any of the recommendations, the Committee shall publish a minority report that contains those opinion(s).

The Committee will hold one or more public hearings on the report and will consider public comment and adopt these recommendations, as appropriate. Up to 20 minutes shall be allocated for public comment at each meeting of the full committee and each speaker will be limited to 2 minutes. The RTD Accountability Committee requests that the public comment be limited to an item on the Committee's current agenda. Public comment may also be submitted in writing to DRCOG. Comments received will be shared promptly with RTD Accountability Committee members.

In issuing its report and recommendations, the Committee may consider, but is not limited to including the following topics:

- District's partnerships with local governments.
- Use of CARES Act and other pandemic-related funds to support RTD's mission.
- ADA compliance and accessibility of District services and facilities, including paratransit.
- Equity in services provided to the District, analyzed in terms of geography, social equity, fare structures, and needs of transit-dependent populations.
- Organizational assessment (financial health, human resources, work culture, management, and governance of the District).

- Services provided by the District, plans and criteria for expansions or reductions in service.
- Review of current state audit, including with respect to staff management, retention, and hiring.
- District's efforts to address the state's climate change goals and strategies and tactics to contribute to improving the Denver region's air quality.
- District's role in fostering economic development.

### **Quorum**

A quorum for the transaction of RTD Accountability Committee business shall be two-thirds of its members.

### **Voting**

A majority of those present and voting shall decide any question brought before the committee, except those questions eligible for electronic voting.

#### *Electronic Voting*

Due to the time-sensitive nature of the Committee's work, electronic voting will be allowed, but limited to those items specifically determined by the Committee. Examples may include approval of policy questions and/or the Committee's final report.

The committee shall establish the electronic voting method and process for each action item the committee deems appropriate for electronic voting.

### **Meetings**

The committee may meet as needed. Committee co-chair will consult with DRCOG on staffing and meeting room/virtual meeting platform availability. Committee members shall always have the option to participate remotely. It will be the responsibility of DRCOG staff to maintain membership lists of the committees.

Meeting notices will be distributed through DRCOG.



## Appendix 3 - RTD Accountability Committee Equity Assessment

### Mission Statement

Social, economic, financial, and environmental equity is a paramount consideration for the RTD Accountability Committee. The Committee will consider the needs of communities of concern, including but not limited to minority, low-income, individuals with disabilities, older adult, and veteran populations. Effort will be made through the Committee's work to ensure benefits are shared across the RTD service area and that no one group bears a larger burden of environmental or financial impacts.

Actions that include spatial and other forms of analysis, community engagement, and consulting experts will be used at appropriate times to inform the work and final recommendations of the Committee.

### Operationalizing Equity in the Deliberation of the Committee and Subcommittees

Each subcommittee will engage community organizations with expertise in equity such as the Center for Community Wealth Building, the Denver Institute of Equity and Reconciliation, and Mile High Connects during their initial deliberations as part of the research phase. During the formation and consideration of issues and policy options, an equality lens will be applied. This lens should include the following questions:

- 1) How could this recommendation benefit or burden communities of concern? Is there likely to be an increase or decrease in equity?
  - a) How are we defining benefit and burden?
  - b) How do we measure this impact?
- 2) Could this recommendation impact specific communities or geography more than others? If so, which communities and how?
  - a) What are the demographics of the most impacted areas?
  - b) Are neighborhoods equally required to help achieve the policy recommendation? If not, does this raise issues of equity and justice?
- 3) Could there be unintended consequences? If so, can they be mitigated?
- 4) Does this policy/strategy address historic, systemic, environmental, or institutional barriers that have impacted this community?

DRCOG staff and/or the on-call consulting team will assist subcommittees and the Committee to conduct appropriate equity assessments of draft recommendations. Draft recommendations, along with the assessments, will be made available for public review and input. Each subcommittee will consider the assessment and any input obtained through public engagement before making final subcommittee recommendations to the full committee.

The full committee will consider subcommittee recommendations and finalize draft recommendations to bring to a public hearing. Input received from the public hearing will be considered before the committee makes final recommendations. As needed, dissenting opinions will also be included with the final recommendations.

## Appendix 4 – Peer Review Governance Matrix

Region*	Model	Boundary	Board	Funding	Community-Based Opportunities
Dallas/Fort Worth (DART)	<ul style="list-style-type: none"> <li>Bus</li> <li>Light rail</li> </ul> <p>Commuter Rail operated by third party</p>	<ul style="list-style-type: none"> <li>Boundary is formed by cities who join the system – city by city basis</li> <li>Not necessarily a contiguous boundary</li> </ul>	<ul style="list-style-type: none"> <li>15 appointed Board (members determined by population)</li> </ul> <p>No single member can appoint more than 65% of board</p> <p>Combination of cities can aggregate population to be entitled to member</p> <p>May be elected officials</p>	One-cent local sales tax from all member cities	<p>Since members are appointed from communities within the service area, local perspectives are prevalent in the Board discussions</p> <p>Municipalities making more than one appointment must select persons who accurately reflect the racial and ethnic composition of the municipality</p>
Phoenix (Valley Metro)	<p>Unified public brand with two boards – one for bus and one for rail</p> <p>Valley Metro coordinates bus service but cities operate</p> <p>Only those cities with rail service fund and operate</p>	Established by cities and counties with transit operations	<p>Two Appointed Boards:</p> <p>(1) RPTA (all modes except LR) 16 members – 15 cities and Maricopa County</p> <p>(2) METRO (LR/high capacity transit) – 5 cities</p>	<p>Varies from city to city for bus</p> <p>Cities contribute to RTA for coordination services but separately fund their own local service</p> <p>Rail cities pay based on the amount of rail in their city (sales tax)</p>	<p>Since bus service operations occur at the local level, local perspectives are prevalent in RPTA discussions.</p> <p>Local appointments also ensure a local voice on METRO Board.</p>
Portland (TriMet)	<ul style="list-style-type: none"> <li>Bus</li> <li>Light rail</li> <li>Commuter Rail</li> </ul> <p>Third party operates Portland streetcar</p>	Seven districts within the Portland area	<p>7-member board appointed by governor to represent geography.</p> <p>Streetcar is governed by</p>	District-wide payroll tax (0.7737% of the wages paid by an employer and the net earnings from self-	TriMet has an internal 5-member <b>accountability committee</b> appointed by and report recommendations to the general manager.

			Portland Dept. of Transportation.  City and TriMet govern according to Master Agreement	employment for services performed within the TriMet District boundary)	Purpose of the accountability committee is to increase public access to TriMet information
San Diego (SANDAG/MTS)	SANDAG does not operate transit. Serves as a public forum for regional decision-making and allocation of funding.  Operations provided by two transit operators: (1) San Diego Metro Transit System; (2) North County Transit District	SANDAG region: 18 cities and San Diego county	MTS Board: 15 members selected from mayors, council members and other elected officials  Each member gets one appointment except for the city of San Diego which gets two  Also, advisory members	one-cent local sales tax  \$1.1 billion in transportation funding from federal, state and local sources	Since members are appointed from communities within the service area, local perspectives are prevalent in the Board discussions  Extra layer of community-based input is provided by SANDAG, the MPO for the area.
Salt Lake City (UTA)	RTA operates all modes: bus, light rail, CR, and streetcar	Members join with voter approval by city or county which establishes the boundary	3-member Board of Trustees appointed by the governor. Governor appoints from nominations submitted from counties in the service area.	Varies between 1-cent and 1 ¼ - cent	9-member <b>Local Advisory Council</b> provides an advisory voice for local governments. Reviews and approves service plans, capital development plans and projects, and TODs before final Board approval. Represent and advocate the concerns of citizens to the Board and thereby assume the responsibilities of the previously required Citizens' Advisory Board.

<p>Detroit (RTA)</p>	<p>RTA does not operate transit. It performs a coordinating role to plan for public transportation in the four-county southeast region</p>	<p>Four-county boundary including city of Detroit established by enabling legislation</p>	<p>10 members – 9 voting                  2 members appointed from each (4) county                  1 appointed by mayor of largest city within largest county                  1 appointed by governor, who serves as chair without a vote</p>	<p>\$400,000 state appropriation and federal sources used for admin.                  RTA has the authority to levy property tax or vehicle registration fee if approved by voters (none presently in place)</p>	<p>Local collaboration evident through the Board make-up</p>
<p>Los Angeles (LA Metro)</p>	<ul style="list-style-type: none"> <li>• Bus</li> <li>• Light rail</li> <li>• Commuter Rail</li> <li>• Bus Rapid Transit</li> </ul> <p>Also provides funding and planning for freeway projects</p> <p>Funds many local transit agencies</p>	<p>LA County and 88 local governments</p>	<p>14 member – 13 voting</p> <ul style="list-style-type: none"> <li>• The 5 LA County supervisors</li> <li>• LA mayor</li> <li>• 3 LA mayor appointees</li> <li>• 4 city council members other than LA</li> <li>• Non-voting appointee by governor</li> </ul>	<p>Four separate county sales tax measures (each ½ cent)</p> <p>Funding shared with other agencies according to requirements of the applicable ordinance</p>	<p><b>Local Service Councils</b> actively involved in decision-making of local service operations.</p>

## Appendix 5 - CARES Act Spending Review Summary





# **CARES ACT SPENDING REVIEW**

**RTD Accountability Committee**

December 29, 2020

## EXECUTIVE SUMMARY

At the request of the Denver Regional Transportation District (RTD), the Governor of the State of Colorado, and the Transportation Chairs of the General Assembly, and in collaboration with Denver Regional Council of Governments, the independent RTD Accountability Committee is pleased to submit this report summarizing the findings of RTD's use of funds associated with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as prepared by the RTD Accountability Committee consultant, North Highland.

The CARES Act was passed by Congress and signed into law by President Trump on March 27<sup>th</sup>, 2020. This relief package, valued at more than \$2 trillion, provided economic assistance for several facets of the American economy. It included \$25 billion in direct relief for transit agencies to help them prevent, prepare for, and respond to the COVID-19 pandemic. RTD received an award of approximately \$232 million.

Investigation that informed this report included examination of documents and interviewing key RTD staff. North Highland provided a briefing at the December 14 Committee meeting. North Highland observed the following as it pertains to RTD's use of CARES Act funding:

- These monies appear to have been spent in alignment with FTA intentions
- RTD appears to have balanced provision of transportation options with responsibility for its workforce and regional economic stability in its funding decisions
- RTD appears to have worked to implement cost cutting measures to reduce the funds required for continued operations as buoyed by CARES funding

As the Federal government considers additional funding to provide aid to residents, businesses, and governments impacted by the COVID-19 pandemic, opportunities exist to assist RTD in stabilizing itself and moving toward a 'new normal.' In the meantime, RTD is considering the following to sustain operations in the near term:

- Maintaining operations for the region and those served by RTD
- Continuing to analyze service needs
- Prioritizing adaptable route systems
- Ensuring that cuts are logical and sustainable
- Considering lower cost uses of employees

## CARES ACT SPENDING FINDINGS

At the request of the RTD Accountability Committee, North Highland performed a very high-level review of the Regional Transportation District's (RTD) use of Coronavirus Aid, Relief, and Economic Security (CARES) Act stimulus funds. The purpose of this review was to evaluate the distribution of funding according to staffing and service.

Information reviewed suggests that RTD's spend of CARES funding appears to be in alignment with the funding intentions of the Federal Transit Administration (FTA). Additionally, RTD implemented other cost saving initiatives to support continuing operations within the region. Finally, when making funding decisions, RTD balanced the need to deliver transportation services with the responsibility RTD holds to its workforce and region.

### Approach

To complete this evaluation, North Highland used the approach outlined in [Figure 1](#).

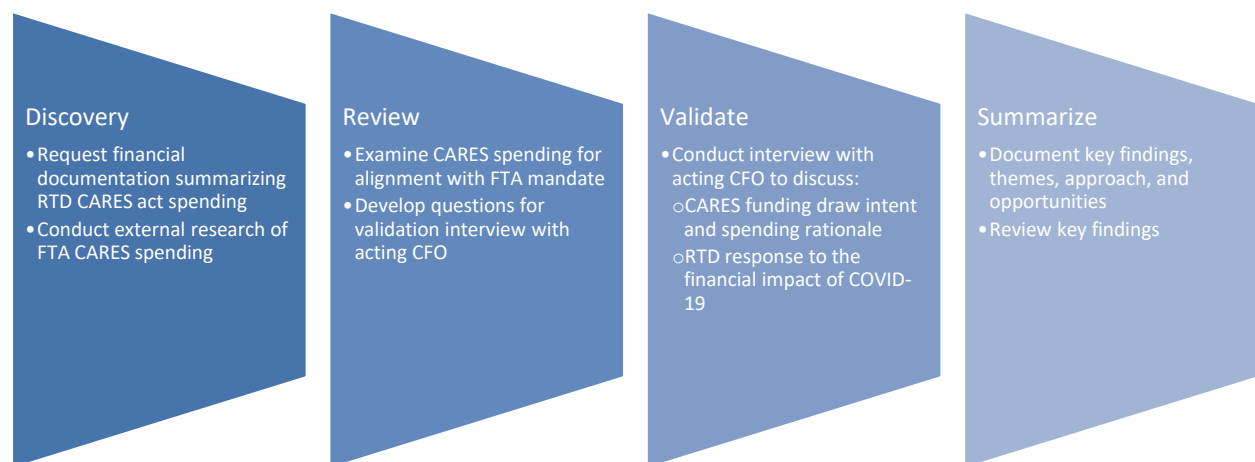


Figure 1: CARES Act Spending Approach

In its *Discovery* and *Review* phases, North Highland obtained and examined the following documents:

- [“Copy of Cares Draw Summary thru 93020.xlsx”](#): Use of CARES Act funding, providing detailed statements and explanation of each draw.
- [“Copy of CARES Draw Summary.pdf”](#): One-page summary detailing each draw against CARES Act funding.

During the *Validate* phase, North Highland spoke with RTD Acting Chief Financial Officer and Controller Doug MacLeod on December 8, 2020. The purpose of the discussion was to further understand RTD's spending associated the \$232 million in emergency grants the Federal Transit Administration (FTA) authorized through the CARES Act. In addition to Mr. MacLeod, Ron Papsdorf (DRCOG), Matthew Helfant (DRCOG), Anna Danegger (North Highland), Tanya Eydelman (North Highland), and Derek Pender (North Highland) attended the meeting. This conversation expanded upon the understanding gleaned through review of RTD financials documenting the spend of CARES Act funding.

Based on the above approach, this document addresses the *Summarize* phase as it details the key findings and opportunities moving forward as RTD continues to grapple with challenges associated with COVID-19.

## Findings

In reviewing CARES funding, we found:

- Funding appears to have been spent in alignment with FTA intentions
- RTD appears to have balanced provision of transportation options with responsibility for its workforce and regional economic stability in its funding decisions
- RTD appears to have worked to implement cost cutting measures to reduce the funds required for continued operations as buoyed by CARES funding

### *CARES Act Funding Allocated in Alignment with FTA Intention*

RTD utilized CARES funding in alignment with the earmarked intention for spending – to support operating costs and employee salaries in the interest of avoiding layoffs. Funds were reimbursed by the Federal government for the following two expense types:

- *Represented and Non-Represented Wages and Benefits*: Employee wages for both unionized and non-union employees; this accounts to roughly 64% of CARES funding drawn to date
- *Purchased Transportation – Bus OR CRT* (“Commuter Rail Transit”): Externally contracted routes with Denver transportation partners; this accounts to roughly 36% of CARES funding drawn to date.

In total, \$208 million of the \$232 million in funding has been drawn. The additional \$24 million is earmarked for use by the end of 2020. While there is some chance that CARES Act funding will remain available into 2021, existing guidelines state that unused funds will revert to the Federal government on December 30, 2020. It is RTD's intent to use all funding available prior to this deadline. Accounting of this spending is detailed in [Figure 2](#).

<b>Regional Transportation District CARES Grant Draws Through September 30, 2020 As of October 19, 2020</b>			
	<u>Actual Draw</u>	<u>Paid Date</u>	<u>Comments</u>
LOC 63.20	\$ 9,410,160.00	Feb-April 2020	Purchased transportation - Bus
LOC 65.20	39,010,411.00	Feb-April 2020	Represented wages and benefits - Payrolls 4 - 9
LOC 66.20	21,304,873.00	Feb-April 2020	Non-Represented wages and benefits - Payrolls 4 - 9
LOC 73.20	13,408,726.00	May 2020	Represented and Non-Represented wages and benefits excluding those
LOC 74.20	4,605,149.00	May 2020	Purchased transportation - Bus
LOC 80.20	4,430,454.00	June 2020	Purchased transportation - Bus
LOC 83.20	13,542,429.00	June 2020	Represented and Non-Represented wages and benefits excluding those
LOC 90.20	4,440,880.00	July 2020	Purchased transportation - Bus
LOC 93.20	14,260,541.00	July 2020	Represented and Non-Represented wages and benefits excluding those
LOC 99.20	11,887,753.00	April - May 2020	Purchased Transportation - CRT
LOC 100.20	12,315,084.00	June - July 2020	Purchased Transportation - CRT
LOC 102.20	4,543,717.00	Aug-2020	Purchased transportation - Bus
LOC 105.20	12,390,380.00	Aug-2020	Purchased Transportation - CRT
LOC 106.20	13,310,109.00	Aug-2020	Represented and Non-Represented wages and benefits excluding those
LOC 02.21	4,461,096.00	Sept-20	Purchased transportation - Bus
LOC 03.21	6,389,367.00	Sept-20	Purchased Transportation - CRT
LOC 07.21	18,376,290.00	Sept-20	Represented and Non-Represented wages and benefits excluding those
<b>Total Drawn</b>	<b>\$ 208,087,419.00</b>		<b>89.6%</b>
<b>Total CARES Award</b>	<b>232,253,946.00</b>		
<b>Remaining to Draw</b>	<b>\$ 24,166,527.00</b>		<b>10.4%</b>

Figure 2: CARES Draw Summary

### *A Responsibility to Employees, the Region, and Unions*

RTD officials expressed a responsibility to the region and its employees and stated that it was important for the organization to have a measured response to the pandemic and not respond too quickly with drastic layoffs. Acting as a partner to the region, the organization realized this kind of response could have had impacts on the economy that were not necessary, particularly in the context of early COVID-19 uncertainty. Furthermore, a reduction-in-force would likely have affected roles that are already in demand (e.g., mandatory overtime for certain positions already underway due to retention challenges) or high acquisition costs (e.g., CDL training costs for operators). Finally, compliance with represented employee collective bargaining agreement (CBA) restricted the options available to RTD to reduce staff.

### *Other Measures of Cost Savings Enacted*

RTD has enacted additional activities to reduce costs, such as a suspension of non-FTA required training initiatives (certification training continued as required and were advanced as appropriate), salary cuts, furloughs for non-represented employees, reduction of discretionary spending, a hiring freeze, service cuts, and a hold on capital construction initiatives (e.g., resurfacing parking lots, etc.). RTD also worked cooperatively with the union to redeploy frontline employees from regular job responsibilities that were not required due to service cuts to new

responsibilities required as a result of the pandemic. For example, treasury employees were diverted to cleaning and sanitation work in lieu of cash counting responsibilities.

## Looking Forward

As the Federal government considers additional funding to potentially provide aid to citizens and some businesses impacted by the COVID-19 pandemic, opportunities exist for RTD to maintain stability. A Federally approved and widely distributed vaccine and fairer weather of next summer may positively affect both RTD demand and provide some return to normalcy. In the meantime, RTD is considering the following to sustain operations in the near term:

- *Seek to Maintain Operations for the Region and those Served by RTD:* Public transit often finds itself in a position of debating equity vs. equality when determining service needs for certain regions, populations, and routes. Vulnerable populations and essential workers need transit services more than ever during these times. Pursuing options to maintain operations continues RTD's service to the community and its employees.
- *Continue to Analyze Service Needs:* Route usage will continue to fluctuate as public and private institutions respond to the pandemic. Maintaining unused routes both adversely affects revenue and impacts margins due to increased costs from more stringent sanitation procedures and lost revenue. Continuing to analyze service needs will allow RTD to right-size the service as the region returns to a new normal.
- *Prioritize Adaptable Route Systems:* Fixed route systems, such as LRT or CRT, provide limited flexibility and lower responsiveness to service changes. While some of these maintain relatively healthy ridership (such as the A Line), others do not. Further, social distancing mandates increase the need for additional vehicles and "loop extras" (stand-by on-call buses) to provide float coverage. Buses can respond to these challenges more readily than rail.
- *Ensure that Cuts are Logical and Sustainable:* RTD is a major employer in the Denver region; layoffs could have a notable effect on the economy. Furthermore, there could be significant costs to rehiring trained staff if they were cut and needed to be rehired.
- *Consider Lower Cost Uses of Employees:* RTD has discussed the possibility of reducing the use of higher-cost security firms in exchange for reskilling difficult-to-replace Operators and Mechanics as "conductors." Moves like these mirror those under consideration at similarly-sized transit systems. Not only do they reduce costs, but they retain roles with a high cost of replacement, better positioning RTD to fill these positions when they are once again needed.

RTD recently announced a reduction in force totaling roughly 400 positions. These positions are a combination of Operations and Administrative functions. These layoffs, however, come with the expense of severance packages and unemployment insurance. Also, RTD recognizes the difficulty and costs associated with filling certain operational roles such as Bus Operators and Mechanics. It is RTD's hope that, through a call-back provision in the union contract, these employees will be able to return to work as the region's economy stabilizes.



## Appendix 6 - Equity Assessment for Proposed Legislative Changes

### RTD Accountability Committee Equity Assessment for Proposed Legislative Changes December 2020

The proposed legislative changes address four distinct issues: fare box recovery ratios; provision of retail and commercial goods and services at RTD facilities; parking fees at RTD lots; and transit services contracted to non-profits and local governments. This equity assessment addresses each provision separately based on the *Operationalizing Equity in the Deliberation of the Committee and Subcommittees* guidelines adopted by the RTD Accountability Committee.

#### 2. CRS 32-9-119.7 Farebox recovery ratios – plans

- a) How could this recommendation benefit or burden communities of concern? Is there likely to be an increase or decrease in equity?

*This recommendation may benefit communities of concern by making fares more affordable for them since removing the required fare recovery ratio could provide RTD more flexibility in how much it charges riders. This recommendation may burden communities of concern since it could reduce fare revenue that would otherwise go toward operating and maintaining the transit system. This could result in reduced services and breakdowns. There is more likely to be an increase in equity than decrease because the lower fares would make transit services more affordable for communities of concern. The potential negative impact is less likely because farebox revenues do not cover most of the costs to operate and maintain the system.*

How are we defining benefit and burden?

*A benefit is something that can help improve the mobility of communities of concern. A burden is something that can curtail it.*

- a. How do we measure this impact?

*This impact can be measured by assessing travel time to key destinations for communities of concern as well as frequency of service for those communities.*

- b) Could this recommendation impact specific communities or geography more than others? If so, which communities and how?

*This recommendation could benefit many communities, but it would likely benefit individuals with low income the most because of the potential to make riding transit more affordable. While there are concentrations of low-income individuals in certain places, there are individuals with low-income living across the entire RTD district.*

- a. What are the demographics of the most impacted areas?

*While people of any demographic could have low-income, certain groups may be more vulnerable: veterans, older adults, individuals with disabilities, minorities, zero car households, and other communities of concern.*

- b. Are neighborhoods equally required to help achieve the policy recommendation? If not, does this raise issues of equity and justice?

*This recommendation is for an action district wide. It is not anticipated that any disproportionate impacts or requirements will fall upon any neighborhoods.*

- c) Could there be unintended consequences? If so, can they be mitigated?  
*As previously mentioned, there is a possibility that lower fare revenue may reduce RTD's ability to fully fund operations and maintenance for the transit system. This could disproportionately impact communities of concern since they rely more heavily on transit for their mobility and access to opportunity than the general public. This unlikely impact can be mitigated in several ways including charging higher fares from individuals not within communities of concern to make up for a deficit, finding new revenue sources, or an increase in volume due to higher ridership individuals not within communities of concern lower fares that may bring in off-setting revenue.*

- d) Does this policy/strategy address historic, systemic, environmental, or institutional barriers that have impacted this community?

*This recommendation can address barriers to providing affordable fares for low-income riders by removing the farebox recovery requirement. This will provide RTD flexibility to reduce fares, especially for low-income riders.*

**4. CRS 32-9-119.8 Provision of retail and commercial goods and services at district transfer facilities – residential and other uses at district transfer facilities permitted – definitions**

- a) How could this recommendation benefit or burden communities of concern? Is there likely to be an increase or decrease in equity?

*RTD-owned land and facilities are valuable transit-oriented development opportunities and can play a beneficial role in generating additional revenues and increasing use of the transit system. Eliminating restrictions related to parking and business competition could further enhance equitable Transit-Oriented Development (TOD) on RTD properties and allow RTD to derive more revenue from the use of its properties. Another potential benefit could be an opportunity for RTD to work with disadvantaged small business owners giving them access to retail properties on RTD sites. A potential burden for communities of concern could be that TOD properties may not be affordable for them.*

- a. How are we defining benefit and burden?

*A benefit is something that can help improve the mobility of communities of concern by giving them greater access to their community by living on a TOD property or having access to retail opportunities for disadvantaged small businesses. A burden is something that can disadvantage communities of concern through TOD development that is not affordable for them to own or rent.*

- b. How do we measure this impact?

*The impact can be measured by the affordability of TOD properties for communities of concern.*

- b) Could this recommendation impact specific communities or geography more than others? If so, which communities and how?

*This recommendation impacts areas at and near RTD properties more than other places in the RTD district as the policy is focused on those areas.*

- a. What are the demographics of the most impacted areas?

*The demographics of the most impacted areas vary based on the locations of the RTD facilities.*

- b. Are neighborhoods equally required to help achieve the policy recommendation? If not, does this raise issues of equity and justice?

*The neighborhoods abutting the RTD sites will equally be required to help achieve the policy recommendation.*

- c) Could there be unintended consequences? If so, can they be mitigated?

*As previously stated, there is a possibility that TOD sites on RTD properties may be unaffordable for communities of concern to rent or own. A mitigation strategy could be for RTD to require that all TOD developments on RTD property be affordable.*

- d) Does this policy/strategy address historic, systemic, environmental, or institutional barriers that have impacted this community?

*This recommendation addresses access to frequent transit and there is the opportunity to focus on improving that access for communities of concern.*

## 5. 32-9-119.9 Limited authority to charge fees for parking – reserved parking spaces – penalties – definitions

- a) How could this recommendation benefit or burden communities of concern? Is there likely to be an increase or decrease in equity?

*Having more flexibility with regards to parking would also allow RTD to use parking spots and subsidies to incentivize desired outcomes, e.g., giving electric vehicle drivers, carpoolers, and vulnerable populations less expensive parking or parking spots closer to the platform. A potential benefit to communities of concern could be that increases in parking fee revenue could help subsidize more affordable fares for communities of concern, especially individuals with low-income. A potential burden for communities of concern could be an increase in parking fees may not be affordable for low-income riders who live too far from transit to make anything but parking and riding feasible. Also, persons with disabilities may have no other feasible way to connect with transit than parking and riding as well and they too may be impacted by higher parking fees. Since RTD would control parking fees and regulations, they could mitigate these negative impacts by offering reduced or free parking and/or parking closer to the platform to low-income customers and those with disabilities.*

- a. How are we defining benefit and burden?

*A benefit is something that can help improve the mobility of communities of concern. A burden is something that can curtail it.*

- b. How do we measure this impact?

*The impact can be potentially measured by how much increased parking fees reduce fares for communities of concern. Studying how many vulnerable people are impacted by higher parking fees may also help measure a potential impact.*

- b) Could this recommendation impact specific communities or geography more than others? If so, which communities and how?

*This could impact communities of concern but not necessarily any specific geography except perhaps members of that community that due to where they live have no other viable option than parking and riding to use transit.*

- a. What are the demographics of the most impacted areas?

*Low-income and disabled riders could be the most impacted either with a benefit, a burden or maybe both.*

- b. Are neighborhoods equally required to help achieve the policy recommendation? If not, does this raise issues of equity and justice?

*As previously stated, there may be more impact to communities of concern that due to where they live have no other viable option than parking and riding to ride transit.*

- c) Could there be unintended consequences? If so, can they be mitigated?

*A mitigation strategy to reduce unaffordability for communities of concern that due to where they live have no other viable option than parking and riding to use transit could be to offer a reduced fees or free parking for members of that community.*

- d) Does this policy/strategy address historic, systemic, environmental, or institutional barriers that have impacted this community?  
*Allowing RTD more flexibility in choosing parking fee policies can give them the opportunity to generate additional revenue. This recommendation can potentially address barriers by using parking revenues to decrease fares, which could yield equity benefits and enhance ridership.*
- 6. CRS 32-9-119.5 Competition to provide vehicular service within the regional transportation district**
- a) How could this recommendation benefit or burden communities of concern? Is there likely to be an increase or decrease in equity?  
*The proposed change would make the statute clearer on who RTD may contract with to provide transit service. Adding non-profit and local government service providers to the statute could be beneficial by stating in the affirmative that non-profit and local government service providers are a potentially cost-effective option that RTD may choose.*
- a. How are we defining benefit and burden?  
*A benefit is providing more mobility options for communities of concern and additional funding to non-profits and local governments. A burden could be loss of contracts for for-profit service providers.*
- b. How do we measure this impact?  
*We can measure cost savings for RTD and additional funding for non-profits and local governments.*
- b) Could this recommendation impact specific communities or geography more than others? If so, which communities and how?  
*This recommendation can benefit communities of concern by potentially generating savings for RTD that could be invested in operating and maintaining the transit system which could help communities of concern since they are the most likely to rely on transit. It can also benefit communities of concern by generating more revenue for non-profits and local governments since those entities would have the option to invest that funding in programs that help those populations.*
- a. What are the demographics of the most impacted areas?  
*This policy recommendation, if enacted, would impact communities throughout the RTD district although there can be some localized impact to communities served by any non-profits and local governments through the services provided by those entities and through the additional revenue. Communities of concern could benefit if those additional funds are invested in programs targeted at helping them.*
- b. Are neighborhoods equally required to help achieve the policy recommendation? If not, does this raise issues of equity and justice?  
*As stated above, the impact could be district wide with the possibility of some additional impact in certain communities based on who provides the contracted service and where it is provided.*
- c) Could there be unintended consequences? If so, can they be mitigated?  
*An unintended consequence could be a loss of jobs at for profit service providers if their contracts are not renewed in favor of contracting with non-profits and local governments. This can be mitigated by the non-profit or local government offering jobs to workers who lost their jobs as a result of their employer not having their contract renewed.*
- d) Does this policy/strategy address historic, systemic, environmental, or institutional barriers that have impacted this community?  
*The proposed legislative change can address barriers by making it clearer that RTD may contract with non-profit and local government service providers. This could potentially save money for RTD which*

*could be reinvested in operations and maintenance of the transit system, providing benefit for the community, especially communities of concern who rely on public transportation for their mobility. This could also provide additional revenue for non-profits and local governments and an opportunity to invest that revenue in programs that help communities of concern.*



A photograph of a modern high-speed train at a station platform. The train is silver and blue, with a person in an orange jacket standing near the open door, holding a blue suitcase. The scene is overlaid with several semi-transparent orange circles of varying sizes. The text "Preliminary Report" is centered within one of these circles.

**Preliminary  
Report**



**ATTACH C**

To: Members of the RTD Accountability Committee

From: Douglas W. Rex, Executive Director  
(303) 480-6701 or [drex@drcog.org](mailto:drex@drcog.org)

Meeting Date	Agenda Category	Agenda Item #
January 11, 2021	Informational Briefing	7

**SUBJECT**

CARES Act Spending Review

**PROPOSED ACTION/RECOMMENDATIONS**

N/A

**ACTION BY OTHERS**

N/A

**SUMMARY**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by President Trump on March 27th, 2020. This over \$2 trillion economic relief package provides direct economic assistance for several facets of the American economy.

The package included \$25 billion in direct relief for transit agencies to help them prevent, prepare for, and respond to the COVID-19 pandemic. RTD received an award of approximately \$232 million. One of the items this Committee was tasked with is a review of recent financials from the district, including any recent audits and a thorough review of the agency's use of CARES Act stimulus funds.

At the December 14<sup>th</sup> meeting, RTD Accountability Committee consultant, North Highland, provided an overview of RTD's CARES Act expenditures and presented findings. North Highland staff also discussed their findings with the Finance Subcommittee. An updated draft of the CARES Act Spending review which includes findings is provided for review and consideration by the full committee.

**PREVIOUS DISCUSSIONS/ACTIONS**

N/A

**PROPOSED MOTION**

N/A

**ATTACHMENT**

CARES Act Spending Review

**ADDITIONAL INFORMATION**

If you need additional information, please contact Douglas W. Rex, Executive Director, at [drex@drcog.org](mailto:drex@drcog.org) or (303) 480-6701; or Matthew Helfant, Senior Transportation Planner, at 303-480-6731 or [mhelfant@drcog.org](mailto:mhelfant@drcog.org).



# CARES ACT SPENDING REVIEW

**RTD Accountability Committee**

December 29, 2020

# RTD Accountability Committee Research Summary

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## EXECUTIVE SUMMARY

At the request of the Denver Regional Transportation District (RTD), the Governor of the State of Colorado, and the Transportation Chairs of the General Assembly, and in collaboration with Denver Regional Council of Governments, the independent RTD Accountability Committee is pleased to submit this report summarizing the findings of RTD's use of funds associated with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as prepared by the RTD Accountability Committee consultant, North Highland.

The CARES Act was passed by Congress and signed into law by President Trump on March 27<sup>th</sup>, 2020. This relief package, valued at more than \$2 trillion, provided economic assistance for several facets of the American economy. It included \$25 billion in direct relief for transit agencies to help them prevent, prepare for, and respond to the COVID-19 pandemic. RTD received an award of approximately \$232 million.

Investigation that informed this report included examination of documents and interviewing key RTD staff. North Highland provided a briefing at the December 14 Committee meeting. North Highland observed the following as it pertains to RTD's use of CARES Act funding:

- These monies appear to have been spent in alignment with FTA intentions
- RTD appears to have balanced provision of transportation options with responsibility for its workforce and regional economic stability in its funding decisions
- RTD appears to have worked to implement cost cutting measures to reduce the funds required for continued operations as buoyed by CARES funding

As the Federal government considers additional funding to provide aid to residents, businesses, and governments impacted by the COVID-19 pandemic, opportunities exist to assist RTD in stabilizing itself and moving toward a 'new normal.' In the meantime, RTD is considering the following to sustain operations in the near term:

- Maintaining operations for the region and those served by RTD
- Continuing to analyze service needs
- Prioritizing adaptable route systems
- Ensuring that cuts are logical and sustainable
- Considering lower cost uses of employees

## RTD Accountability Committee Research Summary

### CARES ACT SPENDING FINDINGS

At the request of the RTD Accountability Committee, North Highland performed a very high-level review of the Regional Transportation District's (RTD) use of Coronavirus Aid, Relief, and Economic Security (CARES) Act stimulus funds. The purpose of this review was to evaluate the distribution of funding according to staffing and service.

Information reviewed suggests that RTD's spend of CARES funding appears to be in alignment with the funding intentions of the Federal Transit Administration (FTA). Additionally, RTD implemented other cost saving initiatives to support continuing operations within the region. Finally, when making funding decisions, RTD balanced the need to deliver transportation services with the responsibility RTD holds to its workforce and region.

### Approach

To complete this evaluation, North Highland used the approach outlined in [Figure 1](#).

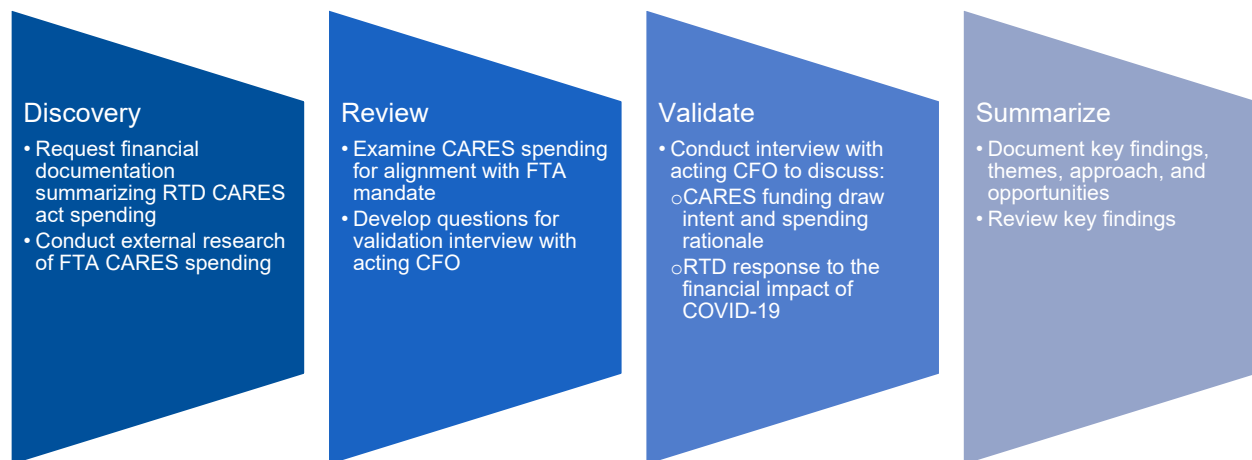


Figure 1: CARES Act Spending Approach

In its *Discovery* and *Review* phases, North Highland obtained and examined the following documents:

- [“Copy of Cares Draw Summary thru 93020.xlsx”](#): Use of CARES Act funding, providing detailed statements and explanation of each draw.
- [“Copy of CARES Draw Summary.pdf”](#): One-page summary detailing each draw against CARES Act funding.

During the *Validate* phase, North Highland spoke with RTD Acting Chief Financial Officer and Controller Doug MacLeod on December 8, 2020. The purpose of the discussion was to further understand RTD's spending associated the \$232 million in emergency grants the Federal Transit

## RTD Accountability Committee Research Summary

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Administration (FTA) authorized through the CARES Act. In addition to Mr. MacLeod, Ron Papsdorf (DRCOG), Matthew Helfant (DRCOG), Anna Danegger (North Highland), Tanya Eydelman (North Highland), and Derek Pender (North Highland) attended the meeting. This conversation expanded upon the understanding gleaned through review of RTD financials documenting the spend of CARES Act funding.

Based on the above approach, this document addresses the *Summarize* phase as it details the key findings and opportunities moving forward as RTD continues to grapple with challenges associated with COVID-19.

### Findings

In reviewing CARES funding, we found:

- Funding appears to have been spent in alignment with FTA intentions
- RTD appears to have balanced provision of transportation options with responsibility for its workforce and regional economic stability in its funding decisions
- RTD appears to have worked to implement cost cutting measures to reduce the funds required for continued operations as buoyed by CARES funding

#### *CARES Act Funding Allocated in Alignment with FTA Intention*

RTD utilized CARES funding in alignment with the earmarked intention for spending – to support operating costs and employee salaries in the interest of avoiding layoffs. Funds were reimbursed by the Federal government for the following two expense types:

- *Represented and Non-Represented Wages and Benefits*: Employee wages for both unionized and non-union employees; this accounts to roughly 64% of CARES funding drawn to date
- *Purchased Transportation – Bus OR CRT* (“Commuter Rail Transit”): Externally contracted routes with Denver transportation partners; this accounts to roughly 36% of CARES funding drawn to date.

In total, \$208 million of the \$232 million in funding has been drawn. The additional \$24 million is earmarked for use by the end of 2020. While there is some chance that CARES Act funding will remain available into 2021, existing guidelines state that unused funds will revert to the Federal government on December 30, 2020. It is RTD’s intent to use all funding available prior to this deadline. Accounting of this spending is detailed in [Figure 2](#).



## RTD Accountability Committee Research Summary

Regional Transportation District CARES Grant Draws Through September 30, 2020 As of October 19, 2020			
	Actual Draw	Paid Date	Comments
LOC 63.20	\$ 9,410,160.00	Feb-April 2020	Purchased transportation - Bus
LOC 65.20	39,010,411.00	Feb-April 2020	Represented wages and benefits - Payrolls 4 - 9
LOC 66.20	21,304,873.00	Feb-April 2020	Non-Represented wages and benefits - Payrolls 4 - 9
LOC 73.20	13,408,726.00	May 2020	Represented and Non-Represented wages and benefits excluding those
LOC 74.20	4,605,149.00	May 2020	Purchased transportation - Bus
LOC 80.20	4,430,454.00	June 2020	Purchased transportation - Bus
LOC 83.20	13,542,429.00	June 2020	Represented and Non-Represented wages and benefits excluding those
LOC 90.20	4,440,880.00	July 2020	Purchased transportation - Bus
LOC 93.20	14,260,541.00	July 2020	Represented and Non-Represented wages and benefits excluding those
LOC 99.20	11,887,753.00	April - May 2020	Purchased Transportation - CRT
LOC 100.20	12,315,084.00	June - July 2020	Purchased Transportation - CRT
LOC 102.20	4,543,717.00	Aug-2020	Purchased transportation - Bus
LOC 105.20	12,390,380.00	Aug-2020	Purchased Transportation - CRT
LOC 106.20	13,310,109.00	Aug-2020	Represented and Non-Represented wages and benefits excluding those
LOC 02.21	4,461,096.00	Sept-20	Purchased transportation - Bus
LOC 03.21	6,389,367.00	Sept-20	Purchased Transportation - CRT
LOC 07.21	18,376,290.00	Sept-20	Represented and Non-Represented wages and benefits excluding those
<b>Total Drawn</b>	<b>\$ 208,087,419.00</b>		89.6%
<b>Total CARES Award</b>	<b>232,253,946.00</b>		
<b>Remaining to Draw</b>	<b>\$ 24,166,527.00</b>		10.4%

*Figure 2: CARES Draw Summary*

### *A Responsibility to Employees, the Region, and Unions*

RTD officials expressed a responsibility to the region and its employees and stated that it was important for the organization to have a measured response to the pandemic and not respond too quickly with drastic layoffs. Acting as a partner to the region, the organization realized this kind of response could have had impacts on the economy that were not necessary, particularly in the context of early COVID-19 uncertainty. Furthermore, a reduction-in-force would likely have affected roles that are already in demand (e.g., mandatory overtime for certain positions already underway due to retention challenges) or high acquisition costs (e.g., CDL training costs for operators). Finally, compliance with represented employee collective bargaining agreement (CBA) restricted the options available to RTD to reduce staff.

### *Other Measures of Cost Savings Enacted*

RTD has enacted additional activities to reduce costs, such as a suspension of non-FTA required training initiatives (certification training continued as required and were advanced as appropriate), salary cuts, furloughs for non-represented employees, reduction of discretionary spending, a hiring freeze, service cuts, and a hold on capital construction initiatives (e.g., resurfacing parking lots, etc.). RTD also worked cooperatively with the union to redeploy frontline employees from regular job responsibilities that were not required due to service cuts to new responsibilities required as a result of the pandemic. For example, treasury employees were diverted to cleaning and sanitation work in lieu of cash counting responsibilities.

## RTD Accountability Committee Research Summary

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### Looking Forward

As the Federal government considers additional funding to potentially provide aid to citizens and some businesses impacted by the COVID-19 pandemic, opportunities exist for RTD to maintain stability. A Federally approved and widely distributed vaccine and fairer weather of next summer may positively affect both RTD demand and provide some return to normalcy. In the meantime, RTD is considering the following to sustain operations in the near term:

- ***Seek to Maintain Operations for the Region and those Served by RTD:*** Public transit often finds itself in a position of debating equity vs. equality when determining service needs for certain regions, populations, and routes. Vulnerable populations and essential workers need transit services more than ever during these times. Pursuing options to maintain operations continues RTD's service to the community and its employees.
- ***Continue to Analyze Service Needs:*** Route usage will continue to fluctuate as public and private institutions respond to the pandemic. Maintaining unused routes both adversely affects revenue and impacts margins due to increased costs from more stringent sanitation procedures and lost revenue. Continuing to analyze service needs will allow RTD to right-size the service as the region returns to a new normal.
- ***Prioritize Adaptable Route Systems:*** Fixed route systems, such as LRT or CRT, provide limited flexibility and lower responsiveness to service changes. While some of these maintain relatively healthy ridership (such as the A Line), others do not. Further, social distancing mandates increase the need for additional vehicles and "loop extras" (stand-by on-call buses) to provide float coverage. Buses can respond to these challenges more readily than rail.
- ***Ensure that Cuts are Logical and Sustainable:*** RTD is a major employer in the Denver region; layoffs could have a notable effect on the economy. Furthermore, there could be significant costs to rehiring trained staff if they were cut and needed to be rehired.
- ***Consider Lower Cost Uses of Employees:*** RTD has discussed the possibility of reducing the use of higher-cost security firms in exchange for reskilling difficult-to-replace Operators and Mechanics as "conductors." Moves like these mirror those under consideration at similarly-sized transit systems. Not only do they reduce costs, but they retain roles with a high cost of replacement, better positioning RTD to fill these positions when they are once again needed.

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## MEMORANDUM

**TO:** FEDERAL, STATE, AND INTERGOVERNMENTAL RELATIONS COMMITTEE

**FROM:** LUKE PALMISANO, INTERGOVERNMENTAL RELATIONS MANAGER

**SUBJECT:** DEFINITIONS AND USE OF FSIR ACTIVE POSITIONS

**DATE:** MARCH 19, 2021

### Active FSIR Position Options

**Active Support:** The FSIR Committee supports the proposed bill as written. The bill directly relates to city priorities or is considered crucial to city operations. The committee feels it is of the utmost importance to be on record supporting the bill. Staff will actively advocate for passage of the bill.

**Active Oppose:** The FSIR Committee opposes the proposed bill as written. The bill directly conflicts with city priorities, forces an unfunded mandate on the city, interferes with local control, or conflicts with crucial city operations. The committee feels it is of the utmost importance to be on record opposing the bill. Staff will actively advocate for defeat of the bill.

**Amend/Pursue Changes Through Bill Sponsor:** The committee deems the bill to directly relate to city priorities or be considered crucial to city operations. However, the committee would like to see the bill amended before taking an active support or oppose position. Staff will actively work with committee and council members, CML, stakeholders, and legislative sponsors to amend the bill prior to passage.

**Monitor:** The committee deems the bill to be important but not crucial. The bill relates to city priorities or may directly affect city operations. Staff will actively track progress on the bill and report back to committee. The committee reserves the right to take an active support or oppose position on the bill at a later point in time.