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October 19, 2020

Blue Ribbon Committee
On Metropolitan Council Structure

RE: *Metropolitan Council, Minnesota*
Our File No. 5070-0031

Dear Panel Members:

I am writing in regard to the composition of the Metropolitan Council of the Twin Cities, Minnesota ("Met Council").

This letter will briefly set out the main points of concern regarding the interpretation of the applicable federal statute.

I. The 2012 Revision to 23 U.S.C. § 134 Unambiguously Requires the Metropolitan Council to Comply with Statutory Membership Requirements

Prior to the 2012 amendments to the applicable federal law, the statutory requirement that mandated the inclusion of elected officials on the MPO applied only to organizations that were newly designated as an MPO or who had gone through a redesignation:

> **(b) Designation of metropolitan planning organizations.—**
> **(2) Structure.**—Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area, *when designated or redesignated* under this subsection, shall consist of—
> (A) local elected officials;
> (B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization as of June 1, 1991); and
> (C) appropriate state officials

23 U.S.C. § 134(d)(2) (2011) (emphasis added).

Much time was spent over the years debating whether or not changes to Minnesota law and the Met Council should have required redesignation, and significant resistance to any change that might have triggered the redesignation process. That entire argument became moot

when, in 2012, Congress eliminated the reference to redesignation as the catalyst for MPOs being required to come into compliance with the membership requirements.

The 2012 amendment eliminated the phrase "when designated or redesignated" and replaced it:

> **(b) Designation of metropolitan planning organizations.—**
> **(2) Structure.**—*Not later than 2 years after the date of enactment of MAP-21*, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—
> (A) local elected officials;
> (B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization as of June 1, 1991); and
> (C) appropriate state officials

23 U.S.C. § 134(d)(2) (2012) (effective October 26, 2014) (emphasis added).

Congress also amended the redesignation provisions of § 134(d)(5) by adding a provision stating: "A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) *without undertaking redesignation*." 23 U.S.C. § 134(d)(5)(B). This relieved the MPO of the obligations of the redesignation process when amending its Board to include elected officials, showing Congress's intent to speed up the process with the minimal amount of complication. Any arguments surrounding whether or not the Met Council did or did not meet the requirements to be redesignated were mooted by the 2012 legislation. Any concerns or arguments regarding the redesignation process were also mooted, as no such process is required.

II. The "Limitation on Statutory Construction" Provision of 23 U.S.C. § 134 Does Not Grandfather the Membership of a Non-Compliant MPO

The other argument put forth as to why the Met Council does not have to include elected officials on the MPO Board is that it is "grandfathered" under 23 U.S.C. § 136 (3) because the Met Council existed prior to December 18, 1991. While it is true that the Met Council was in existence prior to that date, nothing in the statutory provision cited above relieves the Met Council or other entities from complying with the statute. It is not a general "grandfathering" provision. It states only:

> Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities:

> (A) to develop the plans and TIPs *for adoption by* a metropolitan planning organization; and
> (B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

23 U.S.C. § 134(d)(3) (emphasis added). Nothing in this language exempts MPOs from complying with the membership requirements of Section 134(d)(2). Nothing in this language converts a "public agency with multimodal transportation responsibilities" into an MPO. In fact, the section expressly recognizes that an MPO is separate from these public agencies, as the public agency *presents* TIPs *to* an MPO. On its face, the language is only allowing these other public agencies the authority to develop plans *to give to* the MPO for consideration. The language of § 134(d)(3) is simply stating that § 134 is not prohibiting a state agency or other entity that may have had authority, prior to December 1991, to engage in planning activities pursuant to state law, such as developing capital plans or TIPs, to continue to do so.

It is wholly unreasonable, on its face, to read into the section cited above a "grandfathering" right of an MPO to maintain the Board membership structure it had in place prior to December 18, 1991.

Bringing the Met Council into compliance with the membership requirements of an MPO, as required by federal law and the unequivocal intent of Congress, by including elected officials in the MPO is not only the right thing to do, but legally mandated. 23 U.S.C. § 134(d)(2).

Thank you for the opportunity to present our interpretation of the statute to you for consideration.

Sincerely,

Ann R. Goering

cc: Ms. Lezlie Vermillion, Scott County

RRM: 384633