
Governance Options That Would Require Legislative Action

APPENDIX A

SENATE CONFIRMATION OF MAC COMMISSIONERS

Pro

- MAC policies can have significant impact on the state’s travelers and businesses. Confirmation would give legislators and MAC appointees an opportunity to discuss priorities for the metropolitan airport system.
- Confirmation by a statewide body of elected officials might strengthen MAC’s public accountability. Presently, MAC commissioners are each appointed by one elected official (13 by the Governor, 1 by the Minneapolis mayor, and 1 by the St. Paul mayor).
- Existing law authorizes the Senate to confirm commissioners of state agencies and the chair of one metropolitan agency (the Metropolitan Council). The Senate also confirms all members of a variety of state-created boards and commissions—ranging from highly visible governing bodies (for instance, the Minnesota Pollution Control Agency and the Minnesota State Colleges and Universities system) to less visible bodies (for example, the Minnesota Board of Invention and the Emergency Medical Services Regulatory Board). Arguably, MAC has statewide impact that is greater than that of some other boards whose members are confirmed by the Senate.

Con

- Partisan or single-issue politics could play a role in legislative confirmation decisions.
- Potential candidates for appointment may withdraw from consideration because of concerns about participating in a public confirmation process.
- It is unclear whether legislative confirmation would result in the selection of better MAC commissioners.

LEGISLATIVE APPROVAL OF MAC’S BUDGETS

Pro

- Approval of MAC’s budget by elected officials could strengthen accountability. Presently, MAC’s governing body of appointed (not elected) commissioners has sole responsibility for the agency’s annual operating budget.
- Legislative approval would provide an additional opportunity for public debate about whether MAC’s budgets are fiscally responsible and sufficiently responsive to the needs of airlines and other airport users.
- MAC is a creation of the state Legislature and should receive ongoing legislative oversight—even if it does not spend state funds for airport operations.

LEGISLATIVE APPROVAL OF MAC'S BUDGETS - ContinuedCon

- MAC does not pay for its operations with state funds. Minnesota state budget officials recall no instances in which agencies without state funding have been required to obtain legislative approval of their capital or operating budgets. There have been some instances in which legislators have reviewed the budgets of agencies that do not receive state funding (for example, the state High School League and the Iron Range Resources and Rehabilitation Board).
- State law already authorizes annual external review of MAC's large capital projects by the Metropolitan Council.¹
- Where appropriate, the Legislature can influence MAC budget decisions through state law, rather than through budget approvals. For instance, in the mid-1990s, the Legislature decided not to build a new airport and directed MAC to implement capital improvements at the existing airport.
- Legislative decisions on individual capital projects could be influenced by partisan or parochial concerns. This is one reason why the Legislature has historically given the Minnesota Department of Transportation considerable latitude to rank individual highway construction projects on the list of statewide priorities.²
- As an independent airport authority, MAC has considerable flexibility to adjust its budget on short notice—for instance, in response to acts of terrorism or changes in the airline industry. Airline and airport officials question whether a requirement for budget approval by a part-time Legislature could limit this flexibility or delay some projects.
- Except for transit operating subsidies that the Metropolitan Council receives, none of the Twin Cities metropolitan agencies have their budgets approved by the Legislature. (The Metropolitan Council's budgets are subject to review by the Legislative Commission on Metropolitan Government.)
- There are no fiscal analysts within the Minnesota Legislature presently assigned to review MAC's budget on a regular basis.
- With only a few exceptions, the budgets of major U.S. airports are not subject to legislative review.
- Federal restrictions on the use of airport revenues would limit the scope of the Legislature's budgeting authority.

¹ Specifically, state law requires the Metropolitan Council to review projects at Minneapolis-St. Paul International Airport exceeding \$5 million and other MAC capital projects exceeding \$2 million. According to the law, "No such project that has a significant effect on the orderly and economic development of the metropolitan area may be commenced without the approval" of the council. See *Minn. Stat. (2002)*, §473.621, subd. 6.

² In 2000, however, the Legislature created the Major Transportation Projects Commission to review and comment on proposed, large-scale construction projects in which the department is involved.

LEGISLATIVE REVIEW OF MAC'S PLANS, POLICIES, AND PROGRAMSPro

- State law requires the Legislature to play a role in MAC's oversight. According to the law, "the [airports] commission shall be held accountable to the legislature in its activities, plans, policies, and programs. It shall report each session to appropriate committees of the legislature as to its activities, plans, policies, and programs."³
- There are standing committees of the House and Senate that would be suitable forums for discussion of MAC's performance and budget (e.g., House committees on local government and metropolitan affairs, transportation, and government operations; Senate committees on state and local government operations and transportation). The Legislative Commission on Metropolitan Government also might be a logical choice to oversee MAC's performance, but the scope of this commission's work would have to be amended in law to include more than oversight of the Metropolitan Council.⁴

Con

- In the years since the end of the dual track airport planning process, legislative committees have shown limited interest in MAC's budget and overall performance.

DESIGNATION OF MAC AS A STATE AGENCY (OR REQUIRING MAC TO BE SUBJECT TO SOME STATE AGENCY PROCEDURAL REQUIREMENTS)Pro

- Making MAC a state agency would formally recognize that its actions have statewide significance, not just metropolitan significance.
- MAC would be subject to the same provisions that govern state agencies—in some cases, providing an additional level of scrutiny for MAC. For instance, the Commissioner of Administration would oversee MAC's purchasing and contracting processes, and MAC's rule development would likely be subject to the state's Administrative Procedures Act.

Con

- There would be numerous challenges in changing MAC from a semi-autonomous metropolitan agency into a state agency. For instance, MAC employees would be represented by different bargaining units than they are today, and they would be covered by state civil service laws. If MAC employees became state employees, their pensions would be in the Minnesota State Retirement System; presently, MAC pensions are in the Public Employees Retirement Association. In addition, the Legislature would have to consider whether to retain a commission to oversee the actions of the agency. Overall, changing MAC to a state agency would significantly disrupt an agency that has received generally good marks for its day-to-day airport management.

³ *Minn. Stat. (2002)*, §473.621, subd. 1a.

⁴ *Minn. Stat. (2002)*, §3.8841.

DESIGNATION OF MAC AS A STATE AGENCY (OR REQUIRING MAC TO BE SUBJECT TO SOME STATE AGENCY PROCEDURAL REQUIREMENTS) - Continued

Con

- MAC would lose some of the flexibility it now has to manage the airport. Certain decisions would be subject to other agencies' review or procedures. This could slow the decision-making process or make the process less responsive to the needs of the airline industry.
- Presently, MAC bears considerable responsibility for whatever management problems it has—because its administrators have autonomy to manage airport affairs. If MAC's management decisions would be subject to review by state agencies (such as the departments of Employee Relations or Administration), it might be harder to pinpoint responsibility for airport management problems.
- The 1983 Legislative Commission on Metropolitan Governance concluded: “[Administrative Procedure Act (APA) rule-making] proceedings are not generally appropriate to the types of functions performed by metropolitan agencies.”⁵ It recommended application of APA only on a case-by-case basis, following careful consideration of the consequences. In addition, it is likely that rule-making under the APA process would take longer than the ordinance development process now administered by MAC.
- It is not necessary to make MAC a state agency to accomplish the goal of improved legislative oversight.

REQUIRE THE GOVERNOR'S APPOINTEES TO MAC TO SERVE “AT THE PLEASURE OF THE GOVERNOR”

Pro

- This change would give a new Governor more immediate control over the composition and direction of the commission. The incoming Governor could make all of his or her MAC appointments at one time, rather than staggering them over the course of a four-year term. This could make MAC more directly accountable to the Governor.
- The MAC chair and all members of the Metropolitan Council serve at the pleasure of the Governor, so there is some precedent for this practice among metropolitan agency appointees.
- There should be consistent provisions in law regarding the terms of Governor-appointed MAC commissioners. Presently, some of the commissioners have four-year terms, specified in law; others have no provisions and, thus, presumably serve at the pleasure of the Governor.

Con

- Such a change has the potential to result in the replacement of the entire commission at one time. This kind of turnover could result in a commission with limited understanding of previous commission actions. In addition, the Governor might have practical difficulties simultaneously filling 15 MAC positions with qualified people.

⁵ *Report of the Legislative Commission on Metropolitan Governance* (St. Paul, March 1983), 11.

REQUIRE THE GOVERNOR'S APPOINTEES TO MAC TO SERVE "AT THE PLEASURE OF THE GOVERNOR" - Continued

Con

- The state law that governs appointments to many boards and commissions (but not MAC) requires staggered timing of the appointments.⁶
- Authorizing removal of MAC commissioners "at the pleasure of the Governor" could reduce the commission's independence or subject its activities to political influences.

(NOTE: The terms of 8 of the 13 MAC commissioners appointed by the Governor are not specified in law. In practice, however, recent governors have appointed MAC commissioners on a staggered basis, with the understanding that all will serve four-year terms. Of the 13 gubernatorial appointees who served on MAC during 2002, the terms of 5 will end in 2003, 1 in 2004, 5 in 2005, and 2 in 2006.)

REDUCE THE SIZE OF THE COMMISSION

Pro

- Accountability is more diffuse in large governing boards than in smaller ones.
- At 15 members, the MAC commission is one of the larger commissions among airport authorities at major U.S. airports, and it is larger than the boards of some Minnesota agencies that deal with complicated issues. For instance, the Minnesota Pollution Control Agency has a nine-member board, and the Minnesota Public Utilities Commission has a five-member body. MAC's size is the third-largest of the five Twin Cities metropolitan commissions.⁷

Con

- Reducing the size of the commission might eliminate some of the geographic representation that has been built, by law, into its structure—for example, with commissioners representing outstate Minnesota, Metropolitan Council districts, and the cities of Minneapolis and St. Paul. It might also reduce representation on MAC by some of the many MAC constituencies (airlines, consumers, businesses, labor, general aviation, etc.).
- The MAC commission has several important committees (notably, the management and operations, planning and environment, and finance committees). A large commission enables MAC to divide the workload of these committees among more members.

⁶ *Minn. Stat. (2002)*, §15.055, subd. 2.

⁷ The size of other governing bodies is: Metropolitan Council, 17; Metropolitan Mosquito Control District, 17; Metropolitan Parks and Open Space Commission, 9; Metropolitan Sports Facilities Commission, 7.

APPOINTMENT OF THE MAC EXECUTIVE DIRECTOR BY THE GOVERNOR—PERHAPS IN COMBINATION WITH ELIMINATION OF THE COMMISSIONPro

- Presently, the MAC executive director serves at the pleasure of the MAC commission. If the Governor appointed MAC's administrative head, this person would be accountable to an elected official, rather than to a non-elected body. This approach is used at the Baltimore-Washington International Airport, where the Governor appoints both the director and the airport's governing body.⁸ An example of such an arrangement in Minnesota is the Minnesota Pollution Control Agency, for which the Governor appoints both the commissioner and members of the governing board.⁹
- If the MAC commission was eliminated and the Governor appointed the MAC executive director, MAC would be accountable to the Governor through a single person (the executive director) rather than through 13 gubernatorial appointees.
- Most major state agencies in Minnesota do not have a governing board or commission. Even without the forum for public participation that a commission provides, these agencies deal with a variety of complex and often controversial public issues.

Con

- The MAC commission's authority to appoint the executive director is one of the commission's central responsibilities. Removing this authority would weaken the commission.
- MAC's independence could be weakened if the Governor appointed the executive director. For instance, staff priorities under a Governor-appointed executive director might be more partisan in nature.
- MAC's commission has provided a forum for public discussion of airport-related issues. Interested citizens can contact MAC commissioners with concerns, and commissioners are appointed to represent geographic areas. In addition, public meetings of the commission and its subcommittees offer interested persons an opportunity for input. All of the Twin Cities metropolitan agencies established by state law have a governing body, in addition to having a director.

⁸ Unlike the Minneapolis-St. Paul International Airport, a state (Maryland) owns Baltimore-Washington International Airport.

⁹ The MPCA commissioner serves as chair of the MPCA board.

INCREASE THE METROPOLITAN COUNCIL'S OVERSIGHT OF MAC—FOR EXAMPLE, BY INCREASING THE METROPOLITAN COUNCIL AUTHORITY TO APPROVE MAC BUDGET ITEMS, OR THROUGH DESIGNATION OF A METROPOLITAN COUNCIL MEMBER AS A MEMBER OF THE MAC COMMISSION

Pro

- Such changes would be potentially useful if there were concerns that MAC was not sufficiently responsive to the Metropolitan Council's plans and policies.
- State law now authorizes the Metropolitan Council to review MAC's large capital projects.¹⁰ But the council only has authority to approve certain categories of projects specified in law. For example, the law presently does not explicitly designate sound mitigation projects as a category of projects that require council authorization—although the council threatened not to approve MAC's capital budget in 2002 because of concerns about MAC's sound insulation policy. MAC's capital budget is not subject to legislative approval, but requiring Metropolitan Council approval of additional categories of MAC capital projects would provide an external check on MAC's budget authority.
- Some Metropolitan Council officials told us that they thought that having a Metropolitan Council member on MAC would be constructive. (There is some precedent for such an arrangement: a Metropolitan Council member now serves as a voting member of the council's Transportation Advisory Board.)

Con

- Legislators and others expressed general concerns about MAC's accountability and oversight, but many seemed more interested in improved *state-level* oversight than in improved oversight by the Metropolitan Council.
- Some Metropolitan Council officials told us that the council has little capacity to conduct detailed reviews of MAC's operating budget. They think that this role can be performed better by the MAC commission, whose duties relate exclusively to airport issues.
- Metropolitan Council members serve part-time, and it would be demanding for a member to serve on both the Metropolitan Council and MAC.
- The MAC commission is already large (15 members) and represents varied constituencies (eight Metropolitan Council districts, four outstate cities with airports, and the cities of Minneapolis and St. Paul). Designating a Metropolitan Council member to serve on MAC would further complicate MAC's accountability and could result in a still-larger commission.

(Note: Presently, the Metropolitan Council designates one of its members to serve as a liaison to MAC. This person attends MAC meetings but does not vote on commission actions.)

¹⁰ *Minn. Stat. (2002)*, §473.621, subd. 6 and 7.

REQUIRE IMPROVED PUBLIC NOTICE OF MAC COMMISSION VACANCIES AND TERM EXPIRATIONS; ESTABLISH A NOMINATIONS COMMITTEE TO IDENTIFY POTENTIAL MAC COMMISSIONER CANDIDATES

Pro

- The strength of a governing body depends considerably on the quality of its appointees. State law requires the Metropolitan Council and Metropolitan Parks and Open Space Commission to publish notices of vacancies and term expirations in general circulation newspapers in the metropolitan area and in the Metropolitan Council's districts.¹¹ In addition, these two agencies are also required by law to have committees to identify potential candidates for appointment.¹² There are no such requirements for MAC.

Con

- It is unclear whether the absence of these statutory requirements for MAC has had any impact on the quality of the persons appointed to MAC.

STATUTORY SPECIFICATION OF MINIMUM REQUIREMENTS FOR MAC APPOINTEES

Pro

- According to state law, Metropolitan Council members should be "knowledgeable about urban and metropolitan affairs."¹³ In addition, they should reflect the "various demographic, political, and other interests in the metropolitan area and the districts."¹⁴ State law does not define any minimum requirements for MAC commissioners.

Con

- Requirements of minimum qualifications would not guarantee that appointees will be any better qualified than they would be without such a provision.

PRESCRIBE THE AMOUNT OF ADVANCE NOTICE THAT MAC MUST PROVIDE FOR MEETINGS AND BUDGET DECISIONS

Pro

- Regarding meetings: Sometimes MAC has not provided the public with timely notification of its meeting agendas, including materials that will be discussed at the meetings. Although it might be difficult to send these items sooner through regular mail service, it would be possible to post them on the MAC website at the time of (or prior to) the mailing.

¹¹ *Minn. Stat.* (2002), §473.123, subd. 3 (b); *Minn. Stat.* (2002), §473.303, subd. 2 (b).

¹² *Minn. Stat.* (2002), §473.123, subd. 3 (c); *Minn. Stat.* (2002), §473.303, subd. 2 (c).

¹³ *Minn. Stat.* (2002), §473.123, subd. 2 (g).

¹⁴ *Minn. Stat.*(2002), §473.123, subd. 2 (f).

PRESCRIBE THE AMOUNT OF ADVANCE NOTICE THAT MAC MUST PROVIDE FOR MEETINGS AND BUDGET DECISIONS - ContinuedPro

- Regarding budgets: Before 2002, the amount of time that MAC commissioners and the public had to review staff's recommended budget was short. This prompted concerns from some airlines, legislators, MAC commissioners, and others. MAC staff told us that it would be feasible to have a 90-day budget review period following submission of the budget—which is slightly longer than the review period in 2002.

Con

- Regarding meetings: It would be unusual for the Legislature to specify in law exactly how and when an organization should provide advance notice of its meetings. It may be preferable for MAC to adopt internal policies regarding meeting notices.
- Regarding budgets: As an alternative to a statutory requirement for a 90-day budget review period, MAC could adopt internal policies that require such a period.

ELIMINATE PROVISIONS FOR MAYORAL APPOINTEES TO MACPro

- Because the Minneapolis and St. Paul mayors are each authorized to appoint a MAC member, Minneapolis and St. Paul have more representation per capita on MAC than other parts of the region. (By law, the other eight MAC members from the metropolitan area are appointed from Metropolitan Council districts—with each district containing approximately equal population. The seven-county area covered by the Metropolitan Council includes the cities of Minneapolis and St. Paul.)

Con

- Many cities are affected by the operations of MAC airports, but Minneapolis and St. Paul are the two largest. Minneapolis residents have experienced much of the international airport's noise impacts. St. Paul is home to the reliever airport that has the most corporate jet traffic. MAC airports have substantial economic impact on both cities.