

Bangor Area Comprehensive Transportation System, Inc. By-Laws

Adopted February 21, 2012

Amended April 2015

Amended November 2020

ARTICLE I – NAME, ORGANIZATION & POWERS

Section 1.1 Name. The name of the organization shall be the Bangor Area Comprehensive Transportation System, hereinafter referred to as "BACTS".

Section 1.2 Organization. BACTS is organized under the Maine Nonprofit Corporation Act (Title 13-B of the Maine Revised Statutes) in furtherance of the Executive Order signed by Governor Joseph Brennan on December 15, 1982.

Section 1.3 Annual Meeting. BACTS shall meet at least annually in July at a time and a place determined by the BACTS Board Chairperson.

Section 1.4 Powers. BACTS may engage in regional transportation planning and programming and any charitable, educational, literacy, and/or scientific activity within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Code. BACTS shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under section 501(c)(3) of the Code by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

ARTICLE II- MEMBERSHIP

Section 2.1 Membership. Membership shall be limited to those municipalities and tribes, wholly or partially within the greater Bangor Federal Urbanized Area as defined by the most recent United States Decennial Census and the Maine Department of Transportation.

Section 2.2 Appointments. Participation by an individual as a representative of a municipality, tribe, and Maine Department of Transportation shall be established by correspondence to the Executive Director of BACTS from the chief elected or administrative officer of that organization, except in cases for which no such officer exists. Participation by that individual shall continue until the Executive Director of BACTS is advised in writing of a new individual representative.

Section 2.3 Standing Proxy. A Board Member attending a board meeting shall have the proxy of any absent Board Member appointed by the same Member. If multiple Board Members appointed by a Member are present, the proxy vote(s) shall be split between the appointed Board Members present.

ARTICLE III- BOARD

Section 3.1 General Powers. The activities of BACTS shall be managed and controlled by a Board, which consists of the membership as defined in section 2.1. All the corporate powers, except such as are otherwise provided for in these Bylaws and in the laws of the State of Maine, shall be and are hereby vested in and shall be exercised by the BACTS Board.

Section 3.2 Appointment of Voting Members. Each municipality and tribe will have the right to appoint one voting representative for every three thousand (3,000) people in their urbanized area with a minimum of one member per municipality or tribe and a maximum of 4 members per municipality or tribe (See Appendix A).

Section 3.3 No Compensation. Members shall receive no compensation, salary, or other remuneration or stipend for their services.

Section 3.4 General Standards for Members. A member shall discharge the member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the member reasonably believes to be in the best interests of BACTS. In discharging the member's duties, a member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of BACTS whom the member reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel or a public accountant or other person as to matters the member reasonably believes are within the person's professional or expert competence.

A member is not acting in good faith if the member relies on information, opinions, reports or statements that the member knows or has reason to believe are unwarranted. A member is not liable for the performance of the duties of the members office if the member acted in compliance with this section and, if a conflict-of-interest transaction is involved (as defined below); the transaction was fair to BACTS or was approved as set forth below. A member is not considered a trustee with respect to BACTS or with respect to any property held or administered by BACTS, including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of the property.

Section 3.5 Specific Responsibilities of Members. Unless otherwise prohibited by the Articles of Incorporation, these Bylaws, or applicable law, any such requirements, activities, and objectives of the Board may be accomplished, carried on, and/or satisfied through committees duly constituted by the Board and accountable to it. In addition, thereto and in compliance with 13-B M.R.S.A. § 701, the Board shall ensure that no employee of BACTS is terminated for

contacting a member or members. The Board may not preclude contact between employees of BACTS and members of the BACTS Board.

ARTICLE IV – OFFICERS

Section 4.1 Enumeration. The officers of BACTS shall be the BACTS Board Chairperson, BACTS Board Vice Chairperson, BACTS Board Treasurer, and the BACTS Board Secretary or Clerk, together with such other officers with such powers and duties not inconsistent with these bylaws, as may be appointed and determined by the BACTS Board. Any two offices may be held by the same person, other than the offices of Chair and Vice-Chair. The duties of the officers of BACTS wherein they are not specifically enumerated in these bylaws shall be the duties specified by law as the usual duties of similar officers in similar nonprofit corporations.

Section 4.2 Election, Term of Office and Qualifications. All officers shall be elected biannually by the BACTS Board at the July Annual Meeting. Terms of officers will be two years. Officers must be a member of the BACTS Board.

Section 4.3 Chair. The Chair shall preside over all BACTS Board meetings. The BACTS Board Chair will also serve as the BACTS MPO Chair for the BACTS MPO Executive and BACTS MPO Policy Committee meetings. The Chair of BACTS has signatory rights for all BACTS accounts, contracts, and invoices.

Section 4.4 Vice Chair. Any vice-chair(s) shall perform such duties and have such powers as the Chair may from time to time prescribe. In the absence of the Chair, or in the event of their inability or refusal to act, the vice-chair shall perform the duties of Chair, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair.

Section 4.5 Treasurer. The Treasurer shall, subject to the direction of the BACTS Board, have general charge of the financial affairs of BACTS and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of BACTS, except as the BACTS Board may otherwise provide. The Treasurer shall, subject to the control of the BACTS Board, have responsibility for overseeing the maintenance and safekeeping of all books of accounts and financial records of BACTS.

Section 4.6 Secretary or Clerk. The Secretary or Clerk shall have charge of such books, documents, and papers as the BACTS Board may determine and shall have the custody of the corporate seal, if any. The Secretary or Clerk shall assist in the supervision of elections; shall assist with issuing formal notification of such election or appointment to office or committee.

Section 4.7 Removal. Any officer may be removed from office with or without cause by the affirmative vote of a majority of all the members of BACTS Board then in office.

Section 4.8 General Standards of Officers. An Officer of BACTS shall discharge that Officer's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Officer reasonably believes to be in the best interests of BACTS. In discharging the Officer's duties, an Officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of BACTS whom the Officer reasonably believes to be reliable and competent in the matters presented; or
- (b) Legal counsel or a public accountant or other person as to matters the Officer reasonably believes are within the person's professional or expert competence.

An Officer is not acting in good faith if the Officer relies on information, opinions, reports or statements that the Officer knows or has reason to believe are unwarranted. An Officer is not liable to BACTS or other person for any action taken or not taken if the Officer acted in compliance with this section.

ARTICLE V – BACTS BOARD MEETINGS

Section 5.1 Notice of Meetings. Notice of all BACTS Board meetings shall be given at least seven (7) calendar days before the meeting via email to each member. Notice will also be provided to the general public via the BACTS website.

Section 5.2 Meeting Procedures. The Parliamentary authority shall be the current edition of Roberts Rules of Order Newly Revised for all matters not covered in the bylaws. The BACTS Board does reserve the right to host meetings virtually on a platform which allows participation by the general public.

Section 5.3 Quorum. At all meetings of the BACTS Board meetings at least 40% of the member municipality or agency shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the members present at any meeting at which there is a quorum shall be the act of the BACTS Board, except as may be otherwise specifically provided by statute or by these Bylaws.

Section 5.4 Meetings Open to the Public. Meetings shall be open to the public in accordance with applicable law; provided however, that the Board shall have the power to go into executive session and exclude the public when authorized under applicable law.

ARTICLE VI – METROPOLITAN PLANNING ORGANIZATION (MPO)

Section 6.1 Purpose. BACTS acts as the Metropolitan Planning Organization (hereinafter referred to as MPO) pursuant to Federal statute and rules. BACTS is a collaborative organization focused on advancing the transportation interest of the greater Bangor Urbanized Area (See map Appendix B). BACTS is responsible for carrying out the federal and state mandated urbanized transportation planning responsibilities, programming Federal Highway Administration, and Federal Transit Administration funds in the greater Bangor Urbanized Area.

Section 6.2 Area Served. The BACTS area includes all of Bangor, Brewer, Penobscot Indian Island, Veazie; and portions of Bradley, Hampden, Hermon, Milford, Old Town, Orono, and Orrington. There is one fixed route transit operator in the greater Bangor Urbanized Area, the Community Connector. The Community Connector serves the municipalities of Bangor, Brewer, Hampden, Veazie, Orono, Old Town, and the University of Maine. The BACTS area shall be updated as deemed necessary with each urbanized area designation of the US Decennial Census.

ARTICLE VII- MPO MEMBERSHIP

Section 7.1 MPO Membership. Membership shall be limited to those municipalities, tribes, and the Maine Department of Transportation (MaineDOT), wholly or partially within the greater Bangor Federal Urbanized Area as defined by the most recent United States Decennial Census and the Maine Department of Transportation. In addition to voting members, there shall be two non-voting members, one from each of the following agencies: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

Section 7.2 MPO Appointments. Participation by an individual as a representative of a municipality, tribe, and Maine Department of Transportation shall be established by correspondence to the Executive Director of BACTS from the chief elected or administrative officer of that organization, except in cases for which no such officer exists. Participation by that individual shall continue until the Executive Director of BACTS is advised in writing of a new individual representative.

Section 7.3 Standing Proxy. A Board Member attending a board meeting shall have the proxy of any absent Board Member appointed by the same Member. If multiple Board Members appointed by a Member are present, the proxy vote(s) shall be split between the appointed Board Members present.

ARTICLE VIII- MPO COMMITTEES

Section 8.1 BACTS MPO Committees BACTS committees will perform all duties and functions as requires by federal law as the regions MPO.

Section 8.2.1 Executive Committee Membership. The Executive Committee membership shall consist of the most recent past Chairperson, current Chairperson, Vice

Chairperson, as well as the Treasurer and Secretary for the BACTS Board; and will be staffed by the Executive Director.

Section 8.2.2 Duties and Functions.

- a. Set overall strategic direction for BACTS.
- b. Propose amendments to the BACTS Bylaws.
- c. Approve BACTS Policies and Procedures.
- d. Perform the annual evaluation of Executive Director
- e. Review and renew the Executive Directors contract.

Section 8.2.3 Policy Committee Membership. Each municipality and tribe will have the right to appoint one voting representative for every three thousand (3,000) people in their urbanized area with a minimum of one member per municipality or tribe and a maximum of 4 members per municipality or tribe (See Appendix A). The Maine Department of Transportation shall have the right to appoint one voting representative to the Policy Committee.

Section 8.2.4 Duties and Functions.

- a. The Policy Committee will perform all duties and functions required by federal law as the region's MPO.
- b. The Policy Committee has full authority to establish sub committees and working groups.
- c. The Policy Committee will be responsible for hiring and the termination of the Executive Director.
- d. In addition the Policy Committee will:
 - i. Set the strategic direction for, and update BACTS' regional long-range plan.
 - ii. Set strategic direction for the biennial Unified Planning Work Program (UPWP).
 - iii. Endorse the programming of BACTS' annual federal allocation, including FHWA and FTA.
 - iv. Adopt the annual BACTS Transportation Improvement Program (TIP)- as federally required.
- e. Establish and amend the BACTS Bylaws. (See the Executive Committee)
- f. Approve and direct the BACTS Executive Director to sign and enter into contracts on behalf of BACTS.

Section 8.2.5 Transit Committee Membership. The BACTS Transit Committee shall consist of one representative from the urban transit provider, two representatives from each of the municipalities served by the fixed route transit provider, one representative from MaineDOT, and one representative from the University of Maine. The BACTS Transit Committee is a voting committee, which will vote on agenda items for recommendations to be considered by the BACTS Policy Committee. Members present constitutes a quorum for the BACTS Transit Committee.

Section 8.2.6 Duties and Functions.

- a. Provide input on overall strategic direction for the fixed route transit services in the greater Bangor region Urbanized area.
- b. Provide input on the Community Connector capital plan and assist with annual budget development.

- c. Provide input on all transit planning efforts and studies.

Section 8.3 Notice of Meetings. Notice of all BACTS meetings shall be given at least seven (7) calendar days before the meeting via email to each member. Notice will also be provided to the general public via the BACTS website.

Section 8.4 Meeting Procedures. The Parliamentary authority shall be the current edition of Roberts Rules of Order Newly Revised for all matters not covered in the bylaws. BACTS does reserve the right to host meetings virtually on a platform which allows participation by the general public.

Section 8.5 Quorum. At all meetings of the BACTS MPO Policy Committee at least 40% of the member municipality or agency shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the members present at any meeting at which there is a quorum shall be the act of the BACTS MPO Policy Committee, except as may be otherwise specifically provided by statute or by these Bylaws.

Section 8.6 Meetings Open to the Public. Meetings shall be open to the public in accordance with applicable law; provided however, that the Committee shall have the power to go into executive session and exclude the public when authorized under applicable law.

ARTICLE IX- EXECUTIVE DIRECTOR

Section 9.1 Executive Director. The Executive Director, if any, shall be the highest-ranking employee of BACTS and, upon any vacancy in the office, shall be appointed by the BACTS Board by a two-thirds vote of the members then in office. The Executive Director shall report directly to the BACTS Board and to the BACTS Policy Committee and shall be responsible for the general day-to-day activities of BACTS. The Executive Director, subject to the approval of the BACTS Board or the BACTS Policy Committee, shall have authority to sign for BACTS all deeds, leases, mortgages, contracts, or other documents or instruments of BACTS. The Executive Director shall also perform all other duties incident to this office prescribed by law or by special vote of the BACTS Board or BACT Policy Committee. The Executive Director shall serve at the pleasure of the Board and may be removed by a two-thirds vote of the BACTS Board or the BACTS Policy Committee then in office at a meeting duly called.

ARTICLE X: INDEMNIFICATION; INSURANCE

Section 10.1 Required Indemnification. BACTS shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, or committee member of BACTS, or is or was serving at the request of BACTS as a member officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and

reasonably incurred by them in connection with such action, suit or proceeding; provided that no indemnification shall be provided for any person with respect to any matter as to which they shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of BACTS or, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his or her action was in the best interests of BACTS, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The right to indemnification granted by this section may be enforced by a separate action against BACTS, if an order for indemnification is not entered by a court in the action, suit or proceeding wherein such person was successful on the merits or otherwise.

Section 10.2 Determination by Board. Any indemnification under Section 10.1, unless ordered by a court, shall be made by BACTS upon a determination that indemnification of the member, officer, or committee member is proper in the circumstances because they have met the applicable standard of conduct set forth above. Such determination shall be made by the BACTS Policy Committee by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested members so directs, by independent legal counsel in a written opinion. Such a determination, once made by the BACTS Policy Committee may not be revoked by the BACTS Policy Committee, and upon the making of such determination by the BACTS Policy Committee, the director, officer, or committee member may enforce the indemnification against BACTS by a separate action notwithstanding any attempted or actual subsequent action by the BACTS Policy Committee.

Section 10.3 Advance Payments. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by BACTS in advance of the final disposition of such action, suit or proceeding as authorized by the BACTS Policy Committee in the manner provided in Section 10.2 upon receipt of an undertaking by or on behalf of the member, officer, or committee member to repay such amount, unless it shall ultimately be determined that they are entitled to be indemnified by BACTS.

Section 10.4 Indemnification Not Exclusive. The indemnification provided by Section 10.1 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a member, officer, or committee member and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 10.5 Power to Purchase Insurance. BACTS has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of BACTS, or is or was serving at the request of BACTS as a member, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not BACTS would have the power to indemnify them against such liability under Section 10.1.

ARTICLE XI – CONTRACTS; CHECKS; DEPOSITS

Section 11.1 Contracts. The BACTS Board or the BACTS Policy Committee may authorize the Executive Director to enter into any contract or execute and deliver any instrument in the name of and on behalf of BACTS, and such authority may be general or confined to a specific instance.

Section 11.2 Checks. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness shall be issued in the name of BACTS and in such manner as shall from time to time be determined by the BACTS Board or the BACTS Policy Committee.

Section 11.3 Deposits. All funds of BACTS shall be deposited from time to time to the credit of BACTS in such banks, trust companies or other depositories as the BACTS Board or the BACTS Policy Committee may select or approve.

ARTICLE XII - BOOKS AND RECORDS

Section 12.1 Books and Records. BACTS shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of the BACTS Board or the BACTS Policy Committee. All books and records of BACTS may be inspected by any officer or member of BACTS, or the officer's or members agent or attorney, for any proper purpose at any reasonable time, as long as the officer or member, or the officer's or members agent or attorney, gives BACTS written notice at least 5 business days before the date on which the officer or member, or the officer's or members agent or attorney, wishes to inspect and copy any books or records. BACTS may in its discretion require the officer or member, or the officer's or members agent or attorney, to pay the reasonable cost of the copies made and may impose reasonable restrictions on the use or distribution of the records by such a person. Provided, however, that nothing in this Article 7 shall prevent or be construed as preventing BACTS, in its discretion, from permitting inspection and copying of its books and records on such lesser notice, or by other persons, as the BACTS Board or the BACTS Policy Committee may deem appropriate at any time.

ARTICLE XIII – CONFLICTS-OF-INTEREST

Section 13.1 Definition of Conflict-of-Interest Transaction. For purposes of this Article 8, a conflict-of-interest transaction is a transaction in which a Member, Officer, or Committee Member of BACTS has a direct or indirect financial interest. For purposes of this Article 13, a Member, Officer, or Committee Member has an indirect financial interest in a transaction if:

- (a) Another entity in which the Member, Officer, or Committee Member has a material interest or in which the Member, Officer, or Committee Member is a general partner is a party to the transaction; or

- (b) Another entity of which the Member, Officer, or Committee Member is a director, officer, or trustee is a party to the transaction.

Section 13.2 Approval of Conflict of Interest Transactions. A conflict-of-interest transaction may be approved before or after consummation of the transaction as follows: The BACTS Board or BACTS Policy Committee may authorize, approve or ratify the transaction if the material facts of the transaction and the member's or officer's interest are disclosed or known to the BACTS Board or BACTS Policy Committee or the authorized committee of the BACTS Policy Committee. The transaction may be approved only if it is fair and equitable to BACTS as of the date the transaction is authorized, approved, or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. For purposes of this section, a conflict-of-interest transaction is approved if it receives the affirmative vote of a majority of the Members on the BACTS Board or BACTS Policy Committee or on an authorized committee of the Board who have no direct or indirect interest in the transaction, but a transaction may not be approved by a single member. If a majority of the Members on the BACTS Board or BACTS Policy Committee who have no direct or indirect interest in the transaction vote to approve the transaction, a quorum is present for the purpose of taking action under this section.

ARTICLE XIV - NONPROFIT STATUS

Section 14.1 Prohibition Against Sharing in Corporate Earnings. No part of the net earnings of BACTS shall inure to the benefit of or be distributable to its members, officers, or other private persons, except that BACTS is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its exempt purposes.

Section 14.2 Maine Law Requirements. The funds or assets of BACTS may not be transferred or applied and a Members, Officer, or Committee Member of BACTS may not authorize the transfer or application of funds or assets of BACTS if:

- (a) The transfer constitutes a conflict-of-interest transaction within the meaning of Article 8 that is neither fair nor properly approved as set forth in Article 13;
- (b) The transfer misapplies the funds or assets in violation of a statute, including conversion transactions in violation of Title 5, sections 194-C to 194-H, as amended, of Maine Revised Statutes Annotated;
- (c) The transfer is to a Member or Officer of BACTS or to another person in a position to exercise substantial influence over the affairs of BACTS and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return; or
- (d) The transfer of funds or assets is to a controlled entity or joint venture organized as a for-profit entity, unless the Board determines under the facts and circumstances at the time of transfer or commitment to transfer that:

- (1) the organization and operations of the for-profit entity will serve, further, or support a charitable purpose of BACTS;
- (2) the transfer or the commitment to transfer is fair to BACTS;
- (3) Distributions of net income by the for-profit entity to owners and investors will be proportionate to their investment interests; and
- (4) The articles of incorporation, bylaws, or similar organizational documents require that compensation transactions between the for-profit entity and investors in the entity or directors or officers of the entity or others in a position to exercise substantial influence over the affairs of the entity be established in amounts that do not exceed the fair market value of services or property to be provided to the entity.

Provided, however, if a transfer constitutes a conversion transaction as defined in Title 5, section 194-B, subsection 2, as amended, of Maine Revised Statutes Annotated, then the provisions of Title 5, sections 194-B to 194-K may apply and nothing in this section shall be deemed inconsistent with those provisions applicable to such transactions.

Section 14.3 Loans Prohibited. No loans shall be made by BACTS to any Member, Officer, or Committee Member of BACTS. Any Director, Officer, or Committee Member who assents to or participates in the making of any such loan shall be liable to BACTS for the amount of such loan until the repayment thereof.

ARTICLE XV – AMENDMENTS OF ARTICLES AND BYLAWS

Section 15.1 Amendments of Articles and Bylaws. The BACTS Policy Committee shall have power to amend the Articles of Incorporation of BACTS, and to make, amend, and repeal the Bylaws of BACTS, by affirmative vote of not less than two-thirds of the members of the BACTS Policy Committee then in office.

ARTICLE XVI– DISSOLUTION

Section 16.1 Dissolution. The dissolution of BACTS may be authorized at a meeting of the BACTS Board upon the adoption of a resolution to dissolve by the vote of not less than two-thirds of the members then in office. Upon the dissolution of BACTS for any reason, the BACTS Board shall pay or make provisions for the payment of all debts and liabilities of BACTS. All remaining assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Assets will be distributed to the Federal Department of Transportation, Federal Highway Administration, and/or Federal Transit Administration, as appropriate. Any assets not distributed to one of the foregoing federal agencies shall be made to organizations serving similar charitable purposes as BACTS.