

REGIONAL TRANSIT AUTHORITY ACT

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Senate Bill 909 (S-7)

Sponsor: Sen. Tom Casperson

(Enacted as Public Acts 387-391 of 2012)

Senate Committee: Transportation

House Committee: Transportation

Complete to 12-4-12

A SUMMARY OF SENATE BILL 909 (S-7), AND COMPANION BILLS, AS PASSED BY THE SENATE 11-27-2012

Senate Bill 909 (S-7) would create a new act, the Regional Transit Authority Act. The new act would establish a new Regional Transit Authority within "a public transit region." Initially the Regional Transit Authority created by the bill would be composed of the counties of Wayne, Oakland, Macomb, and Washtenaw; however, other adjacent counties could join the authority under a process provided in the legislation.

The new authority would be governed by a ten-member board, with two representatives from each of the participating counties, one representative from the city of Detroit, and one non-voting member appointed by the governor.

Senate Bill 909, as introduced, shared the same bill request number (4416'11) and so was identical to House Bill 5309, as introduced. Both bills as introduced stated that the authority was to be created by the bills "*for the purpose of planning, acquiring, owning, operating, or causing to be operated a public transit system and carrying out the rights, duties, and obligations provided for in this act.*" The Senate-passed bill does not include this direct statement of purpose. However, the Senate-passed bill does include a new section, Section 1a, indicating, "*The intent of the legislation is to create a new regional transit system by establishing a regional transit authority.*"

DETAILED SUMMARY:

The following is a section-by-section description of Senate Bill 909 (S-7). **Section 1** provides the name of the new act—the Regional Transit Authority Act. **Section 1a** indicates, "*The intent of the legislation is to create a new regional transit system by establishing a regional transit authority.*" **Section 2** contains definitions of terms. [Our analysis will describe select defined terms as those terms first occur in the other sections of the bill. Defined terms are shown in italics when first referenced in this analysis. A list of other definitions is found later in a special section of the summary.]

Creation of Regional Transit Authority

Section 3 of the bill would create the new *regional transit authority* ("authority"). Specifically, the bill indicates that for an area of the state that is a *qualified region* on the

effective date of the act, an *authority* is created on the effective date of the act for a *public transit region* that includes the *qualified region*.

The bill defines *public transit region* as an area of the state consisting of a *qualified region*, and includes a county added to a *public transit region* under provisions of Section 4 of the bill.

The bill defines *qualified region* as a geographic area of the state that includes a *qualified county* (the county in the state with the largest population according to the most recent decennial census), and the three most populous counties contiguous to the *qualified county*.

The county in the state with the largest population is Wayne County, and the three most populous counties contiguous to Wayne County are Oakland, Macomb, and Washtenaw counties. In effect, the bill creates, on the effective date of the act, a regional transit authority for the area composed of Wayne, Oakland, Macomb, and Washtenaw counties.

Other adjacent counties could join the authority under a process provided in Section 4 of the bill.

The bill indicates that the authority created under the act is a municipal public body corporate, and a metropolitan authority authorized under Article VII, Section 27 of the 1963 Michigan Constitution. The bill indicates that the authority is not an agency or authority of the state of Michigan.

Unlike the bill as introduced, the Senate-passed version of the bill does not name the new agency; it does require that the new authority's name include the phrase "*regional transit authority*."

Admission of Additional Counties to the Authority

Section 4 of the act provides for the participation of other counties adjacent to a county that is already included in the defined public transit region. An adjacent county not included in the original public transit region and not a participant in the authority as originally created could petition to be included, and would be included if the authority board approved its inclusion.

However, if the authority was levying an assessment under Section 10(2) or a motor vehicle registration tax under Section 10(3), or both, a petitioning county would be a nonvoting, provisional member until it also approved the assessment, vehicle registration tax, or both, at the first primary or general election to be held at least 71 days after the appointment of the county's representative to the authority board.

Board of Directors

Section 5 of the bill indicates that the authority is to be directed and governed by a board of directors. The bill provides for the appointment of the board of directors and establishes the powers and duties of the board. The initial board would consist of ten total members, of whom nine would be voting members:

- One member to be appointed by the governor ("governor's representative") who would serve without vote.
- Two individuals appointed by the county executive of a county within the public transit region with the second largest population (currently Oakland County).
- Two individuals appointed by the county executive of a county within the public transit region with the third largest population (currently Macomb County).
- Two individuals appointed by the county executive of a county within the public transit region with the fourth largest population (currently Washtenaw County).
- Two individuals appointed by the county executive of a *qualified county* as defined in the bill. (This refers to Wayne County.) One of the two individuals appointed under this subdivision would need to be a resident of a city with the largest population within the *qualified county*. (This refers to the City of Detroit.)
- One individual appointed by the mayor of the city with the largest population within the *qualified county*. (This refers to the City of Detroit.)

After the initial appointment of board members under this section, if the addition of a petitioning county were approved by the board provisions of Section 4, the county executive of the newly admitted county would be authorized to appoint two individuals to the authority board.

[The bill defines "*county executive*" to mean an elected county executive or, in a county without an elected county executive, the chair of the county board of commissioners.]

Members of the board would serve for three-year terms; however, in order to stagger the terms, the bill would make some of the initial appointments for less than three years. Of the members first appointed to represent the four counties, one member from each county would serve an initial term of just one-year; the member representing a city with the largest population within the *qualified county* (Detroit) would serve an initial term of just two years.

The bill prohibits a board member from being an employee of the appointing county or city, or an employee of a *public transportation provider* operating in the public transit region. The bill also prohibits a board member from being a currently serving elected public official of the state or political subdivision of the state.

Each board member would have to be a resident and registered elector in the city or county from which he or she was appointed. The bill directs that each board member have "substantial business, financial, or professional experience relevant to the operation of a corporation or *public transportation system*."

Upon appointment to the board, the bill directs a board member to take the oath of office consistent with the constitutional oath of office required under Section 1 of Article XI of the State Constitution of 1963.

Board members would serve without compensation, but the bill does provide for the reimbursement of actual necessary expenses consistent with relevant statutes and rules of

the Civil Service Commission, and the Michigan Department of Technology, Management, and Budget, subject to available funding.

Subsections 5(9) and 5(10) of the bill provide additional qualifications for board members. Under terms of Subsection 9, an individual "not of good moral character" or who who had been convicted of a felony could not be appointed or serve on the board.

Subsection 5(10) states that "a member of a board shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position." The subsection addresses conflicts of interest and requires the board to adopt policies and procedures that require members to comply with the subsection's conflict of interest requirements and certain state statutes dealing with lobbyists, incompatible offices, conflict of interest of public officials, contracts of public servants, and standards of conduct of public officers. Section 5(11) of the bill states that contracts entered into by an authority, and bonds, notes, or other obligations issued by an authority, would not be void or voidable except as provided in two statutes dealing with conflict of interest of public officials and contracts for public servants, specifically, 1968 PA 318, and 1968 PA 317.

Under Section 5(13), the governor could remove a board member from office for a violation of Subsection 5(9) or 5(10).

Section 5(12) would effectively restate the requirements of Section 4(2) with respect to appointees from new counties seeking participation in the authority.

Powers and Duties of the Authority Board of Directors

Section 6 of the bill provides for the powers and duties of the authority's board of directors. The specific provisions are laid out in 21 subsections:

Board Meetings

Section 6(1) of the bill would require an initial board meeting within 30 days of the boards' appointment, at a date and time determined by the governor's representative. The governor's representative would serve without vote, and would serve as chairperson of the board. The board members would elect officers as the board considered necessary. The bill requires annual election of all officers.

Section 6(2) of the bill directs that meetings are subject to the Open Meetings Act and requires that the board adopt bylaws consistent with the Open Meetings Act. After the initial organizational meeting, the board would be required to establish a schedule of regular meetings, not less than once each quarter. A special meeting could be called by the chairperson, or as provided in adopted bylaws.

Section 6(3) of the bill requires that all actions be made by majority vote of the voting members, but directs that the authority's bylaws require a supermajority for certain actions. Specifically, the bill would require the board to provide in its bylaws that the

following actions require a vote of seven-ninths of voting members, and that there be at least one affirmative vote from each participating county and from the representative of the largest city in the qualified county (Detroit):

- Placing of a question of the levy of an assessment on the ballot by the authority.
- Determination of the rate of, or amount of, any assessment to be requested by the authority at an election.
- Placing of a question of approving a motor vehicle registration tax on the ballot by the authority.
- Determination of the rate of, or amount of, any motor vehicle registration tax to be requested by the authority at an election.

The bill would also require the board to provide in its bylaws for unanimous approval of voting members for the following actions:

- A determination to acquire, construct, operate, or maintain any form of rail passenger service within the public transit region.
- A determination to acquire a *public transportation provider*.
- A determination to place on a ballot the question of "acquiring, accepting responsibility for, or obligating the authority to assume liability for or to pay any legacy costs, including any costs associated with litigation, claims, assessments, worker's compensation awards, or charges, swap losses, pensions, health care, or other postemployment benefits, of a *public transportation provider* that may be purchased, merged with, assumed, or otherwise acquired by the authority."

The bill would establish additional requirements with regard to the authority's determination to acquire a *public transportation provider* that did business in the public transit region. The bill would require an affirmative vote of the electors of each member county as provided in Section 7(2). In the absence of that vote, the authority could also acquire a *public transportation provider* doing business in the public transit region if all liabilities of the *public transportation provider* had been paid or were required to be paid by a person other than the authority; and the board unanimously agreed to comply with all federal grant requirements with respect to the *public transportation provider* being acquired.

Section 6(4) of the bill requires that the board keep a written or printed record of each meeting. All written or printed records and other documents would be made available to the public in compliance with the Freedom of Information Act.

Accounting, Auditing, Budgeting

Section 6(5) of the bill requires that the board provide for a uniform system of accounts for the authority. The bill would also require the board to obtain an annual audit by an independent certified public accountant in accordance with the Uniform Budgeting and Accounting Act, and in accordance with Generally Accepted Government Auditing Standards. The audit would have to satisfy federal grant compliance requirements. The

bill directs that the audit be filed with the state Treasurer and the Michigan Department of Transportation.

Section 6(6) of the bill requires that within 90 days of the first meeting of the board, the board adopt and maintain a budget for the fiscal year in accordance with the Uniform Budgeting and Accounting Act.

[The bill defines "fiscal year" to mean the time period between October 1 of a calendar year and September 30 of the following calendar year. This would make the authority's fiscal year identical to the state fiscal year. However, the two largest public transportation providers in the region, the Detroit Department of Transportation, and the Southeast Michigan Authority for Regional Transit have fiscal years ending June 30th.]

Procurement

Section 6(7) of the bill requires the board establish, within 90 days of the first meeting of the board, procurement policies and procedures "using competitive procurement methods to secure the best value for the authority." The bill directs that in establishing policies and procedures, the board provide for the acquisition of professional services, including architectural, consulting, engineering, surveying, accounting, bond counsel, and legal services "in accordance with a competitive, qualifications-based selection process and procedure for the type of professional service required by the authority."

Report to the Legislature

Section 6(8) requires that, beginning the year after the creation of the authority, the board submit a report, due March 31 of each year, to the House and Senate Appropriations Subcommittees on Transportation, and the House and Senate Committees on Transportation, that includes all of the following information from the preceding calendar year:

- Financial status of the authority
- Financial status of public transportation providers within the public transit region.
- Operating costs of the authority.
- Status of any rolling rapid transit system.
- Average daily and annual ridership of a rolling rapid transit system.
- The "dashboard" developed by the authority under Section 6(9)(d).
- Number and severity of any accidents that occur that involve a rolling rapid transit system.

Website "Dashboard"

Section 6(9) requires the board, within 120 days after the first board meeting, to establish a website for the authority. The bill requires the authority to post on the website its "budget, policies and procedures, and updates on authority activities and transactions and the progress of any project, including, but not limited to, a proposed rolling rapid transit system, as they become available." The bill also requires the authority to post to the website:

- An asset management plan for all revenue vehicles and facilities, major facility components, and major pieces of equipment as defined by the Michigan Department of Transportation. The bill requires the authority to update the asset management plan annually.
- The method used by the authority to determine the percentage of operating costs to be funded with local funds and the percentage to be funded with fares. The bill requires the authority to update this information every 3 years.
- A plan and commitment to conduct a survey of user satisfaction and a survey of general public satisfaction with the services and performance of the authority once every 3 years. The bill requires the authority to provide results for the most recent completed surveys to the Michigan Department of Transportation.
- A "dashboard" of the authority's performance that includes the items listed above as well as annual performance indicators for the authority established by the board. The bill directs that the "dashboard" be readily available to the public, and that the authority update the "dashboard" annually.

Additional Procurement Provisions

Section 6(10) of the bill would prohibit the board from entering into a cost-plus construction contract unless all of the following applied: the contract was for less than \$50,000, was for emergency repair or construction caused by unforeseen circumstances, was necessary to protect life or property, and complied with federal and state law.

Section 6(11) of the bill would require that the board adopt a procurement policy within 90 days of the first meeting of the board, "consistent with the requirements of this act and federal and state laws relating to procurement." The bill would require that preference be given to firms based in a public transit region and each county within a public transit region, consistent with applicable law. However, Section 6(12) of the bill would prohibit the procurement policy from creating a quota or set-aside for any city or county in the public transit region. Section 6(13) would require the authority to issue an annual report to the board and each member jurisdiction detailing the contracts entered into in the previous fiscal year.

Section 6(14) would require the board, within 90 days of the first meeting of the board, to adopt policies to govern the control, supervision, management, and oversight of each contract to which the authority is a party; to adopt procedures to monitor the performance of each contract to assure execution of the contract within the budget and time period provided in the contract; and to adopt policies to ensure the authority does not enter into a procurement or employment contract with someone who had been convicted of certain criminal offenses or held liable in a civil proceeding related to business integrity. The bill would prohibit the chief executive officer or designated employee from executing any contract prior to board approval.

Sections 6(15) and 6(16) provide other detailed requirements for procurement policies and procurement reporting.

Personnel

Section 6(17) of the bill permits the board to employ personnel as it considered necessary, including but not limited to a chief executive officer (CEO) and other senior executive and administrative staff. The bill specifically requires that the board hire a CEO and any necessary support staff. Individual board members would be prohibited from hiring or having assigned personal staff.

Section 6(18) of the bill would require the board to establish policies to ensure that the board and the authority did not fail to comply with federal and state law governing employment and hiring of contractors.

Citizens' Advisory Committee

Section 6(19) of the bill would require the board to create a citizens' advisory committee that consisted of public transit region residents. The bill directs that 40 percent of the committee be made up of users of public transportation; 20 percent would be made up of individuals from organizations representing senior citizens and persons with disabilities; and 40 percent of the committee would be made up of individuals representing business, labor, community, and faith-based organizations.

Of the committee members representing users of public transportation, the bill requires that 25 percent be senior citizens or persons with disabilities. The bill also requires that two members be from each member county and two from the largest city in the *qualified county* (Detroit).

Section 6(20) is permissive in that it identifies a number of activities the citizens' advisory committee may engage in, but does not establish any "shall" mandates for the committee. Specifically, a citizens' advisory committee created under the act could meet at least once quarterly. The committee could make reports to the board, including recommendations at each board meeting. The committee could also do all of the following:

- Review and comment on comprehensive regional public transit service plan and annual updates.
- Advise the board regarding the coordination of functions between different owners and operators of public transportation facilities within the region.
- Review and comment on the specialized services coordination plan as prescribed in Section 10e of 1951 PA 51.
- Upon request of the board, provide recommendations on other matters that concern public transportation within the region.

Public Transportation Provider Advisory Council

Section 6(21) of the bill would require that the board create a *public transportation provider* advisory council consisting of two members appointed by each *public transportation provider* within the public transit region. Section 6(21) is permissive in that it identifies a number of activities the council may engage in but does not establish any "shall" mandates for the council. The subsection does limit the council's authority.

The council would be authorized to make reports to the board, including recommendations, at each board meeting. However, the council would only be authorized to make recommendations concerning coordination of service, funding, plans, specialized services, and other matters as requested by the board.

Other Board Powers

Section 7 Subsection (1) of the bill specifies in detail the kinds of things an authority could do to implement the purposes, objectives, and provisions of the act and the purposes, objectives, and powers vested in the authority or the board, including: adopt a corporate seal; adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business; sue and be sued; borrow money and issue bonds and notes; make and enter into contracts; engage in collective bargaining; solicit and receive gifts, grants, labor, loans, contributions of money, property, and other things of value, and other aid or payment from any federal, state, local, or inter-governmental agency; participate in any other way in any other way in a federal, state, local, or intergovernmental program; apply and receive loans, grants, guarantees, or other financial assistance in aid of a public transportation system; procure insurance or become a self-funded insurer; invest money of the authority; contract for goods and services; employ legal and technical experts, consultants, or other officers, agents, employees, or personnel; contract for services; establish and maintain an office; acquire property or rights in property; promulgate rules and adopt regulations for the orderly, safe, efficient, and sanitary operation and use of a public transportation system owned by the authority; use the state's rights-of-way throughout the public transit region for public transportation; and create separate operating entities. The subsection also authorizes the authority to "acquire a public transportation provider under Section 6(3)(b)(ii)."

Section 7 Subsection (2) of the bill indicates that notwithstanding any provisions within the act, the authority could not acquire, accept responsibility for, or obligate itself to assume liability for, or pay any legacy costs of a "*public transportation provider*" that the authority might purchase, merge with, assume, or otherwise acquire in any manner, including costs associated with any "authority or agency's" litigation, claims, assessments, worker's compensation awards or changes, swap losses, pensions, health care, or other post-employment benefits of a *public transportation provider* without first securing an affirmative vote of a majority of the electors of each member county in the public transit region.

Public Transit Plans

Section 7 Subsection (3) of the bill requires the authority to adopt a public transit plan for its public transit region, and specifically directs the authority to adopt as its initial plan

the most recent public transit plan of any public transportation provider within the public transit region that is a designated recipient of federal transit funds. It is our understanding that the most recent regional transit plan prepared by a designated recipient within the public transit region is the plan approved on December 8, 2008 by the Regional Transit Coordinating Council. The authority would be required to amend the plan as necessary and to update the plan annually.

The authority could establish and operate new or additional routes and public transportation facilities using various forms of public transportation modalities. The authority would be permitted to employ operating personnel, negotiate collective bargaining agreements with operating personnel, and own operating assets of a public transportation service within the public transit region.

The authority would be required to coordinate the operating and capital transit plans of "transportation agencies and authorities" within the public transit region.

Authority to Operate a Rolling Rapid Transit System

Section 7 Subsection (4) of the bill, authorizes the authority to "plan, design, develop, construct, and operate a *rolling rapid transit system* on at least four corridors within the public transit region. The authority, with the approval of the Federal Transit Administration and in compliance with applicable federal and state regulations, would need to determine exact routes and station locations. The authority could also design routes to augment, complement, enhance, replace, or improve other forms of public transportation operating within or on the corridors.

Section 7(5) of the bill identifies the following corridors which could be included in the initial plans for a rolling rapid transit system:

**A Woodward corridor line to operate on or near Woodward Avenue between a location near the downtown Detroit station and a location in downtown Birmingham in Oakland County. The term "downtown Detroit station" would be defined to mean a location in or near the Campus Martius area of downtown Detroit.

**A Gratiot corridor line to operate on or near Gratiot Avenue between the downtown Detroit station and a location in downtown Mt. Clemens in Macomb County.

**A northern cross-county line to operate between the city of Troy and the city of Mt. Clemens, using a route to be determined by the authority. The determined route would need to have stations along Big Beaver road in the city of Troy and highway M-59 in portions of Oakland and Macomb counties.

**A western cross-county line to operate between the downtown Detroit station and the Ann Arbor Blake Transit Center for a distance of approximately 47 miles. This corridor would need to include, at a minimum, stations in the city of Ypsilanti, at Detroit Wayne county metropolitan airport, and in the city of Dearborn. The authority would need to determine the exact route.

Section 7(6) of the bill indicates that authority expenses incurred in the planning and operation of a rolling rapid transit system would not be eligible for operating assistance under Section 10e of 1951 PA 51, (MCL 247.660e).

Ability to Charge Fares

Under Section 7(7) the authority would be authorized to charge fares and enter into contracts for the services provided by the public transportation system as necessary to provide funds to meet the obligations of the authority.

Authorization for Other Sources of Assistance

Section 7(8) authorizes a county, other political subdivisions, or public or private agencies to assist, cooperate with, and contribute services, money, or property in aid of the authority.

Authority as Designated Recipient

Section 8 of the bill specifies that beginning on the first day of the first fiscal year that begins after the effective date of the act, the authority would become the "designated recipient" for its public transit region for the purpose of applying for federal operating and capital assistance grants.

As a designated recipient, the authority would have the authority and responsibility to apply for and receive federal transit funds on behalf of the authority and public transportation providers within the public transit region. The authority would also be empowered to review applications submitted by public transportation providers for federal planning, operating, and capital assistance. The bill provides application review criteria. The authority would be empowered to approve, disapprove, and request modifications to grant applications within 60 days of the time applications are submitted to the authority by public transportation providers.

The bill would prohibit, beginning on the first day of the fiscal year that begins after the effective date of the act, any public transportation provider in the public transit region, from directly submitting to a federal agency applications for operating or capital assistance.

The bill would allow the authority, beginning on the first day of the fiscal year that begins after the effective date of the act, to execute a supplemental agreement conferring on a public transportation provider in the public transit region the right to receive and dispense federal grant funds for applications that had been approved by the board.

The bill would, beginning on the first day of the fiscal year that begins after the effective date of the act, establish the authority as the sole authority to submit applications to the Michigan Department of Transportation for state operating and capital assistance grants under Section 10e of 1951 PA 51. The bill would also require all public transportation providers in the public transit region to submit grant applications directly to the authority. The authority would then evaluate all requests and submit to the department a single consolidated application.

The bill would establish deadlines for public transportation provider grant funding requests. The bill would also direct how the authority distributed grant awards to public transportation providers. (See **Senate Bill 445, which would make related changes to 1951 PA 51.**)

The bill would establish reporting requirements of public transportation providers in the public transit region. Specifically, the bill would require each public transportation provider in the public transit region to submit an annual report to the authority that described successful and unsuccessful efforts of the public transportation provider to coordinate routes, schedules, fares, and points of transfer; provide information or services to riders that help facility transfers; and eliminate or reduce service overlap and duplication.

The bill would require the authority to coordinate service overlap, rates, routing, scheduling, and any other function the authority considers necessary to implement or execute the comprehensive regional transit service plan between the "authorities, agencies, and owners or operators of public transportation facilities within the public transit region."

The authority could issue coordination directives regarding public transit services to include routes, schedules, and fares. The bill directs the authority to provide notice of coordination directives issued to owners and operations of public transportation facilities in the public transit region. The authority could withhold up to five percent of state capital and operating assistance from public transportation providers that failed to comply with a coordination directive. The bill indicates that "A coordination directive preempts a city, village, or township provision or procedure to the extent that it is in conflict with the coordination directive."

Property Acquisition, Tax Exemption

Under **Section 9** of the bill, an authority could acquire property for a public transportation system in many ways, including by using "any appropriate statute for the purpose of condemnation." The authority could only use condemnation to acquire property located within the public transit region.

The bill indicates that property of an authority created under the new act would be public property devoted to an essential public and governmental purpose, and that income of the authority is for a public and governmental purpose. The bill also indicates that property of the authority and its income, activities, and operations are exempt from all taxes and special assessments of the state or a political subdivision of the state, including ad valorem property taxes. However, authority property and related income leased to private persons would not be exempt from taxation.

Source of Revenues

Section 10 of the bill would authorize an authority to raise revenues to fund all of its activities, operations, and investments. The bill specifies in detail the sources of revenue available to the authority, including among other things: fees, fares, rents, or other

charges for use of the public transportation system; federal, state, or local grants, loans, appropriations, payments or contributions; proceeds from disposition of property acquired by the authority; repayments of loans made by the authority; contributions from public or private sources; the proceeds of assessments levied by the authority; proceeds of a motor vehicle registration tax collected on behalf of the authority; and investment earnings.

The bill would authorize the authority to levy an assessment within the public transit region only as approved by the board and the electors of the public transit region. The bill indicates that the assessment would be collected and enforced in the same manner as under the General Property Tax Act (1893 PA 206). The bill indicates that when submitting the question of authorizing an assessment to be levied, the ballot must state the following:

- the assessment rate to be authorized.
- the duration of the assessment
- a clear statement of the purpose of the assessment
- a clear statement indicating whether the proposed assessment is a renewal of a previously authorized assessment or a new assessment

The bill would also authorize the authority to collect a motor vehicle registration tax dedicated to the purpose of public transit if authorized under the Michigan Vehicle Code. **(See Senate Bill 911)**

The bill would require the authority to ensure that not less than 85 percent of the money raised in each member jurisdiction by either an assessment or a motor vehicle registration tax, or both, be expended on public transportation service provided in that member jurisdiction.

Asset Management

Section 10(5) requires the authority, starting in the fiscal year that begins at least 12 months after the effective date of the act, to submit to the Michigan Department of Transportation an asset management plan for all revenue vehicles and facilities, major facility components, and major pieces of equipment as defined by the department. The bill would require the authority to update its asset management plan annually.

Rolling Rapid Transit – Report on Revenues

The bill directs that after the first 12 months of operation of a rolling rapid transit system, and annually thereafter, the authority would need to provide a report to the legislative body of each member jurisdiction showing the cost of service and revenue generated in each member jurisdiction.

Bonding

Under **Section 11** of the bill, an authority could issue self-liquidating revenue bonds for the purpose of acquiring, improving, enlarging, or extending a public transportation system. The bill indicates that the bonds could be issued under the Revenue Bond Act of 1933, or "any other act providing for the issuance of self-liquidating revenue bonds."

The bill indicates that the bonds would not be a general obligation of the authority, but would be payable solely from the revenue of the public transportation system. However, if the authority issued self-liquidating revenue bonds with a pledge of the full faith and credit of the authority, those revenue bonds would be subject to the Revised Municipal Finance Act.

The bill describes in detail other kinds of bonds and notes or indebtedness an authority could issue, and the conditions for doing so.

Financial Obligation of an Authority

Section 12 of the bill specifies that the revenues raised by an authority could be pledged, in whole or in part, for the repayment of bonded indebtedness. It also specifies that a financial obligation of an authority would not be a financial obligation of, and could not be transferred to, the State of Michigan, or any city or county within a public transit region.

Operating License with Local Road Agency

Section 13 of the bill specifies that an authority could acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a public transportation system on the streets and highways of the state with the approval of a local road agency, or the Michigan Department of Transportation, as applicable, on terms and conditions mutually agreed to.

Approval would be embodied in an operating license agreement between the authority and each road agency (local road agency or the department) with operational jurisdiction over the streets and highways on which the authority operated. The local road agency, or the department, as applicable, could not unreasonably withhold its consent to an agreement and must determine whether to consent to an operating license agreement in an expeditious manner. The operating license could include provisions concerning dedicated lanes and a system to change traffic signals to expedite public transportation services. Any provision for use of dedicated lanes would provide that usage would be made available to emergency service vehicles.

When operating on the streets and highways of a local road agency or the department, the authority would be subject to rules, regulations, or ordinances required to preserve operations of the streets and highways and to ensure compliance with rules and regulations of the funding source used to construct and maintain the streets and highways. The authority could not construct a public transportation system on streets and highways of a local road agency or the department until there was an operating license agreement executed by the authority and the road agency or the department, as applicable.

The bill would authorize the authority to acquire, own, construct, furnish, equip, complete, operate, improve and maintain a public transportation system on public or private rights-of-way and obtain necessary easements.

The bill indicates that if a local road agency or the department entered into an operating license agreement, it could not revoke the consent or deprive the authority of the rights and privileges conferred without affording the authority procedural due process.

(See Senate Bill 967, which would make related changes in 1951 PA 51.)

Exemption from Motor Carrier Act

Section 14 indicates that the authority is exempt from the Motor Carrier Act, 1933 PA 254, and the Motor Bus Transportation Act 1982 PA 432.

Authority of Local Zoning

Under **Section 15** of the bill, local zoning or land use ordinances would not apply to a public transportation system or rolling rapid transit system that is planned, acquired, owned, or operated by an authority under the act. **(See Senate Bill 912, which would make related changes to the Michigan Zoning Enabling Act.)**

Election Law

Section 16 indicates that the elections or a vote of the people authorized under the act are to be conducted in accordance with Michigan Election Law, 1954 PA 116.

Statement Regarding Transportation Costs Under the Constitution

Section 17 of the bill states that the costs of planning, administering, constructing, reconstructing, financing and maintaining state, county, city and village roads, streets, and bridges designed primarily for the use of motor vehicles using tires, including the costs of reasonable appurtenances to those roads, streets and bridges, are transportation purposes within the meaning of Section 9 of Article IX of the State Constitution of 1963 when costs are used to facilitate a public transportation system that moves individuals or goods with vehicles using tires.

Appropriation

Section 18 of the bill would appropriate to each authority created under the act \$250,000 from the state-restricted Comprehensive Transportation Fund, created in Section 10b of 1951 PA 51, "to begin implementing the requirements of this act." The bill indicates that any portion of the appropriation not expended in the 2012-2013 state fiscal year would not lapse to the state General Fund but would carry forward as a work project in accordance with Section 451a of the Management and Budget Act (MCL 18.1451a).

Enacting Section 1: Repealer

The bill would repeal Sections 4a and 4b of the Metropolitan Transportation Authority Act of 1967, 1967 PA 204, MCL 124.404a and 124.202b. These sections created and govern the operation of the Regional Transit Coordinating Council (RTCC).

COMPANION BILLS:

Although Senate Bill 909 is not tie-barred to any other bills, several other bills are directly related to the proposed Regional Transit Authority Act and are necessary to

implement provisions of the proposed act. Each of the following bills other than senate Bill 912 is tie-barred to House Bill 909.

Senate Bill 445 (S-1, As Passed by the Senate)

This bill would amend several sections of 1951 PA 51 dealing with the distribution of money from the Comprehensive Transportation Fund, specifically:

Section 10b to include a reference to the Regional Transit Authority Act regarding administration and distributing money from the Comprehensive Transportation Fund.

Section 10c to include new definitions of *public transit region* and *regional transit authority* that reference the Regional Transit Authority Act.

Section 10d to authorize a distribution from the Comprehensive Transportation Fund to a *regional transit authority* for public transportation purposes.

Section 10e currently directs the priority of appropriations from the Comprehensive Transportation Fund. The bill would add a new section to direct that for each *eligible authority* and *eligible governmental agency* within a public transit region, the *regional transit authority* would apply for, receive, and disburse funds as provided under Section 8 of the Regional Transit Authority Act. Currently, the agencies within the public transit region meeting the definition of *eligible authority* and *eligible governmental agency* in Section 10c of 1951 PA 51 are the Detroit Department of Transportation (DDOT), the Detroit Transportation Corporation (DTC), the Suburban Mobility Authority for Regional Transportation (SMART), and the Ann Arbor Transportation Authority (AATA).
(See discussion of related Section 8 of Senate Bill 909, above.)

Section 10l currently provides for an earmark of \$2.0 million from the distribution of local bus operating assistance made to "each multicounty authority" created under 1967 PA 204, plus an additional \$2.0 million earmarked in Section 10e(4)(c)(iv), for use as a credit to cities, villages, and townships within the authority. This current earmark is referred to as the *municipal credit* program. For purposes of the current distribution, the "multicounty authority" means SMART. In effect, the municipal credit program currently distributes \$4.0 million to every city, village, and township in Wayne, Oakland, and Macomb counties, based on population, for public transportation services. Current law also authorizes the [multicounty] authority to establish procedures and standards for the credit distribution, and gives the [multicounty] authority the "final decision" as to what constitutes a proper expenditure, a public transportation purpose, or a public transportation service.

Senate Bill 445 would delete references to "multicounty authority" and 1967 PA 204, and would instead reference an "eligible authority organized or continued under the Regional Transit Authority Act." It is not clear if this amendment would replace SMART with the Regional Transit Authority as the authority responsible for distribution of municipal credits. In addition, it is not clear if cities, villages, and townships within Washtenaw

County would also be eligible for a distribution of municipal credits under this amended section.

Section 10n to include a reference to a *regional transit authority* with regard to the issuance of notes issued from Comprehensive Transportation Fund.

Senate Bill 911 (S-2, As Passed by the Senate)

The bill would amend the Michigan Vehicle Code by adding new Section 801j that would allow a Regional Transit Authority to charge an additional "vehicle registration fee" of not more than \$1.20 for each \$1,000 of the vehicle's list price as used in calculating the "fee" under Section 801(1)(p) – the section that establishes the ad valorem registration tax for passenger cars and light trucks 1984 model year or newer.

The bill would require the approval of the voters in the public transit region.

The bill would also amend Section 801 to authorize the Secretary of State to collect the registration fee authorized under Section 801j for credit to the Regional Transit Authority.

Senate Bill 912 (As Passed the Senate)

The bill would amend the Michigan Zoning Enabling Act to indicate that the act is subject to the Regional Transit Authority Act. Senate Bill 912 is tie-barred to Senate Bill 911.

Senate Bill 967 (S-1, As Passed the Senate, November 27, 2012)

The bill would amend Section 1 of 1951 PA 51 to authorize the Michigan Department of Transportation or a local road agency to enter into an operating license agreement with a regional transit authority. (See discussion of Section 13 of Senate Bill 909, above).

FISCAL IMPACT:

Impact on State Government

Section 18 of Senate Bill 909 (S-7) would appropriate to each authority created under the act \$250,000 from the state-restricted Comprehensive Transportation Fund "to begin implementing the requirements of this act." Effectively, there is only a single authority created under the proposed act, and thus only a single \$250,000 appropriation.

The bill indicates that any portion of the appropriation not expended in the 2012-2013 state fiscal year would not lapse to the state General Fund but would carry forward as a work project in accordance with Section 451a of the Management and Budget Act (MCL 18.1451a). As a practical matter, activities related to the initial organization of the authority might be carried out over more than one state fiscal year, particularly if the bill creating the new authority was not enacted until sometime in the middle of the state fiscal year. This provision would allow spending authority to carry forward without re-appropriation. This is a common appropriation provision with regard to multi-year projects.

Aside from this single \$250,000 appropriation, the bill would have no direct fiscal impact on state government. If the Regional Transit Authority created under the bill obtained federal transit grants for projects within the public transit region, state appropriations could provide some or all of the required non-federal matching funds. However, this would be no different from current law. Section 10b of 1951 PA 51 currently requires the state to provide not less than 66-2/3% of the required local match for transit capital projects. Section 10e of 1951 PA 51 requires an annual appropriation of not less than \$8.0 million per year to match federal aid grants for local bus capital projects. There is currently an appropriation line item in the state transportation budget for transit capital matching funds.

The authority created under the proposed act could also be a recipient of state operating assistance authorized under Section 10e of 1951 PA 51. There is currently an appropriation line item in the state transportation budget for local bus operating assistance. The bill would not require an additional appropriation for the line item; if the new authority qualified for local bus operating assistance, the authority would simply become one of a number of transit agencies eligible to receive grants from appropriated funds.

For the authority to become eligible for grants under bus capital and bus operating assistance programs, 1951 PA 51 would have to be amended. **(Senate Bill 445 would make related amendments to 1951 PA 51.)**

Impact on Local Agencies

The fiscal implications of Senate Bill 909 (S-7) with regard to local agencies would depend on how the proposed new Regional Transit Authority would impact and interact with existing transit authorities and providers, such as the Regional Transit Coordinating Council (RTCC), the Suburban Mobility Authority for Regional Transportation (SMART), the Detroit Transportation Corporation (DTC), and the Detroit Department of Transportation (DDOT). For additional background information on public transit in Southeast Michigan, see this House Fiscal Agency publication:

<http://www.house.mi.gov/hfa/transportation.asp>

Section 10 of the bill would authorize the authority to levy an assessment within the public transit region only as approved by the board and the electors of the public transit region. The bill would also authorize the authority to collect a "motor vehicle registration tax" dedicated to the purpose of public transit if authorized under the Michigan Vehicle Code. The Michigan Vehicle Code would have to be amended to provide for "motor vehicle registration tax" dedicated to local public transportation programs. **(See Senate Bill 911)**

Definitions

The following are descriptions of key definitions, found in Section 2 of the bill, not otherwise described in the body of this analysis.

Public transportation – The bill defines *public transportation* as the movement of individuals and goods by publicly owned bus, *rapid transit vehicle*, or other conveyance that provides general or special service to the public. The bill excludes from the definition school buses, charter or sightseeing services, or dedicated school transportation.

The bill states that the definition of *public transportation* includes the movement of individuals and goods by *privately owned* bus, *railroad car*, rapid transit vehicle, or other conveyance that *under contract with the authority*, provides general or special service to the public, excluding school buses, charter or sightseeing services, or dedicated school transportation. The bill indicates that *public transportation* is a transportation purpose within the meaning of Article IX, Section 9 of the 1963 Michigan Constitution.

Public transportation system – The bill defines *public transportation system* as "a system for providing public transportation in the form of light rail, *rolling rapid transit*, or other modes of public transportation and *public transportation facilities* to individuals."

Rolling rapid transit system – The bill defines the term *rolling rapid transit system* to mean bus services that could combine the technology of intelligent transportation systems, traffic signal priority, cleaner and quieter vehicles, rapid and convenient fare collection, and integration with land use policy. *Rolling rapid transit* could also include exclusive rights-of-way, rapid boarding and alighting, and integration with other modes of transportation.

Public Transportation Facility – The bill defines *public transportation facility* as meaning all plants, equipment, work instrumentalities, and real and personal property and rights, used or useful for public transportation.

Public Transportation Provider – The bill defines *public transportation provider* as a public or private entity that provides public transportation services, and includes a contractor providing services to a public transportation provider.

The bill indicates that *public transportation provider* includes "an authority" formed under any of the following public acts: 1963 PA 55 (the Mass Transportation Authorities Act), The Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 8, the Public Transportation Authorities Act (1986 PA 186), and the Revenue Bond Act (1933 PA 94).

This list generally represents the list of "eligible governmental agencies" in Section 10c of 1951 PA 51, that is, the list of public transit agencies recognized in state law as eligible for state grant assistance.

However, the *public transportation provider* definition in Senate Bill 909 (S-7) does not include "a county, city, or village," entities which are included in the "eligible governmental agencies" definition. In addition, list used in the *public transportation provider* definition does not include an authority organized under the Metropolitan Transportation Authorities Act of 1967 (1967 PA 204) – an "eligible authority" in Section 10c of 1951 PA 51.

Currently, the two largest transportation providers in southeast Michigan are the Detroit Department of Transportation (DDOT), a department of Detroit city government, and the Suburban Mobility Authority for Regional Transit (SMART), organized under 1967 PA 204. As a result, the two largest providers of public transportation services in southeast Michigan would not be included in the list of public transportation providers as defined in Senate Bill 909 (S-7).

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.