



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383

Fax: (517) 373-1986

Senate Bill 909 (Substitute S-3 as reported)
Senate Bill 911 (Substitute S-2 as reported)
Senate Bill 912 (as reported without amendment)
Senate Bill 967 (Substitute S-1 as reported)
Sponsor: Senator Tom Casperson (S.B. 909)
Senator Bert Johnson (S.B. 911 & 912)
Senator Virgil Smith (S.B. 967)
Committee: Transportation

Date Completed: 5-7-12

RATIONALE

Public transit in Detroit, in the form of horse-drawn trolleys, began in 1863. Over the next several decades, as the population of the city and surrounding area grew, the service network was expanded into the suburbs and new modes of transportation were adopted. According to the Suburban Mobility Authority for Regional Transportation (SMART), public transit in the area peaked in the 1940s with an annual ridership of 490.0 million. Beginning in the 1950s and continuing over the next several decades, Detroit's population declined while the population of the surrounding tri-county region continued to grow. This time period saw the waning of mass transit services in the area, particularly within Detroit, and a regression in terms of a regional approach to public transportation.

Over the last several decades, various local, county, and regional entities have operated transit services in southeastern Michigan. More than 20 plans for comprehensive regional transit systems have been proposed over the years, but as a result of funding issues, and a lack of support among policy-makers and the public, none has come to fruition. Today, public transit in southeastern Michigan consists of two distinct systems, one operated within Detroit by the Detroit Department of Transportation (DDOT), and the other in the suburbs run by SMART. Coordination between the two systems is lacking, and a number of

communities have opted out of SMART participation, leading to fragmented, inefficient service.

Many people continue to believe that a cohesive regional public transit network is critical to economic development and prosperity in southeastern Michigan, and that legislation should be enacted to create a regional transit authority and, subject to voter approval, provide funding for it through an additional vehicle registration tax and/or special assessment.

CONTENT

Senate Bill 909 (S-3) would create the "Southeast Michigan Regional Transit Authority Act" to establish the Southeast Michigan Regional Transit Authority for the coordination of public transit within a region consisting of Macomb, Oakland, Washtenaw, and Wayne Counties. The bill would do the following:

- Allow a county that was not included in the public transit region to petition the Authority to become part of the region and the Authority.**
- Provide for the establishment of a board to direct and govern the Authority, and require a supermajority or unanimous vote for certain actions.**

- Prohibit the Authority from assuming liability for or paying any legacy costs of an existing public transit authority or agency without voter approval.
- Require the Authority to adopt a public transit plan for the public transit region, and update it annually.
- Allow the Authority to implement a rolling rapid transit system within the public transit region.
- Allow the Authority to charge fares and enter into contracts as necessary to provide funds to meet its obligations.
- Allow the Authority to levy a special assessment and/or collect a motor vehicle registration fee, if approved by voters, and otherwise raise revenue.
- Allow the Authority to issue self-liquidating revenue bonds.
- Provide that the Authority would be the public transit region's designated recipient for the purposes of applying for grants, and allow the Authority to designate a city or county as a subrecipient.
- Require the Authority, before becoming the designated recipient for State and Federal funds, to enter into a memorandum of understanding with a public transit provider that was a direct recipient of Federal funds on the bill's effective date.
- Require each public transit provider in the region to submit to the Authority an annual report regarding the coordination of service.
- Require the Authority to submit an asset management plan to the Michigan Department of Transportation (MDOT), and update the plan annually.
- Allow the Authority to issue coordination directives regarding public transit services, and to withhold a portion of State assistance from a public transit facility owner or operator that failed to comply with a directive.
- Allow the Authority to acquire property for a public transit system by various mechanisms, including condemnation.
- Require the Authority to use competitive solicitation for all

- authorized purchases, subject to certain exceptions.
- Require the board to create a citizens' advisory committee, which could make recommendations to the board.
- Require the board to create a public transit provider advisory council, which could make recommendations to the board regarding specific issues.
- Exempt Authority property from taxation.
- Allow the Authority to enter into an operating license agreement with a local road agency.
- Provide that local zoning and land use ordinances would not apply to an Authority transit system.
- Appropriate \$250,000 from the Comprehensive Transportation Fund to the Authority to begin implementing the proposed Act.

The bill also would repeal sections of the Metropolitan Transportation Authorities Act establishing the Regional Transportation Coordinating Council.

Senate Bill 911 (S-2) would amend the Michigan Vehicle Code to authorize the proposed Authority to charge a fee in addition to the regular vehicle registration fee for comprehensive transportation purposes, if approved by electors in the public transit region.

Senate Bill 912 would amend the Michigan Zoning Enabling Act to provide that a zoning ordinance would be subject to the proposed Southeast Michigan Regional Transit Authority Act.

Senate Bill 967 (S-1) would amend Public Act 51 of 1951, the Michigan Transportation Fund (MTF) law, to authorize MDOT or a local road agency to enter into an agreement with a regional transit authority to operate a public transit system, and designate lanes as dedicated public transit lanes.

Senate Bills 911 (S-2), 912, and 967 (S-1) are tie-barred to Senate Bill 909. Senate Bills 909 (S-3), 911 (S-2), and 967 (S-1) are described below in further detail.

Senate Bill 909 (S-3)

Establishment of Authority

The Southeast Michigan Regional Transit Authority would be created for a public transit region, effective upon the appointment of all members of its governing board. The appointments would have to be made within 90 days after the bill took effect 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 the proposed Act.

"Public transit" would mean 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, excluding school buses or charter or sightseeing service or transportation that is used exclusively for school purposes. The term would include the movement of individuals and goods by privately owned bus, railroad car, rapid transit vehicle, or other conveyance that, under a contract with the Authority, provided general or special service to the public. Public transit would be a transportation purpose within the meaning of Article IX, Section 9 of the State Constitution (described below, under **BACKGROUND**).

"Public transit region" would mean an area consisting of the county in Michigan with the largest population and the three counties contiguous to that county having the largest populations. The term could include a county added to the Authority as described below.

"Public transit system" would mean a system for providing public transit in the form of light rail, rolling rapid transit, or other modes of public transit and public transit facilities to individuals. "Public transit facility" would mean all plants, equipment, work instrumentalities, and real and personal property and rights used or useful for public transit.

County Petition

A county that was not included in the public transit region and was not a participant in the Authority could petition the Authority to become part of the region and the Authority, subject to approval by resolution of the

petitioning county's governing body. A petitioning county would have to be added to the region and the Authority if the county were adjacent to a county that was, at the time of the petition, included in the public transit region, and the board approved the addition.

If the Authority were levying a special assessment and/or a motor vehicle registration fee (described below), a petitioning county that satisfied the conditions of the proposed Act would be a provisional member of the Authority without voting power or transportation service from the Authority until the special assessment and/or registration fee was approved by a majority of the electors of the county at the first primary or general election to occur at least 71 days after appointment of a board member representing that county.

Authority Board

Membership. The Authority would have to be directed and governed by a board consisting of all of the following:

- One representative of the Governor appointed by the Governor.
- Two individuals appointed by the county executive of a county within the public transit region having a population of at least 1.2 million and not more than 1.5 million (Oakland County).
- Two individuals appointed by the county executive of a county within the public transit region having a population of at least 800,000 and not more than 850,000 (Macomb County).
- Two individuals appointed by the chair of the board of county commissioners of a county within the public transit region having a population of at least 330,000 and not more than 380,000 (Washtenaw County).
- One individual appointed by the mayor of a city within the public transit region with a population of at least 600,000 (Detroit).
- Two individuals appointed by the county executive of a county within the public transit region having a population of at least 1.8 million and not more than 2.0 million (Wayne County), including one individual who was a Detroit resident.

If a county were added to a public transit region through a petition, the board members representing the transit district

consisting of that county would have to be appointed within 30 days after the conditions for addition were satisfied and, if the Authority were levying a special assessment or a motor vehicle registration fee, at least 71 days before an election in that county to approve the assessment or registration fee. If a special assessment and/or registration fee were not approved, the appointment of the board member would be void.

Board members would serve for fixed terms of three years. Of those first appointed, however, one of the members appointed in each of the counties would serve for one year, and the member appointed by the city mayor would serve for two years. A board vacancy occurring other than by expiration of a term would have to be filled in the same manner as the original appointment for the balance of the unexpired term.

A board member could not be an employee of the county or city appointing him or her or an employee of a public transit provider operating in the public transit region. ("Public transit provider" would mean a public or private entity that provides public transit services. The term would include a contractor providing services to a public transit provider.) In addition, a board member could not be a currently serving elected officer of the State or a political subdivision of the State.

A board member would have to be a resident of and registered elector in the county or city from which he or she was appointed, and would have to have substantial business, financial, or professional experience relevant to the operation of a corporation or public transit system.

A board member would serve without compensation, but could be reimbursed for actual and necessary expenses incurred while attending board meetings or performing other authorized official Authority business.

An individual who was not of good moral character or who had been convicted of, pleaded guilty or no contest to, or forfeited bail concerning a felony under the laws of Michigan, any other state, or the United States could not be appointed to or remain as a member of the board.

A board member would have to discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of the State, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. A member could not make or participate in making a decision, or in any way attempt to use his or her position as a board member to influence a decision, on a matter before the Authority in which he or she was directly or indirectly interested. A member could not be interested directly or indirectly in any contract with the Authority or MDOT that would cause a substantial conflict of interest. A member would have to comply, and the board would have to adopt policies and procedures that required members to comply, with these requirements and all of the following:

- Public Act 472 of 1978 (the lobbyist registration law) as if the board member were subject to that Act and his or her receipt of a gift or compensation would be in violation of it if given by a lobbyist, lobbyist agent, or a representative of a lobbyist.
- Public Act 566 of 1978 (which governs incompatible public offices).
- Public Act 318 of 1968 (which governs conflicts of interest for legislators and State officers) as if he or she were a State officer.
- Public Act 317 of 1968 (which governs conflicts of interest for public servants) as if he or she were a public servant.
- Public Act 196 of 1973 (which governs standards of conduct for public officers and employees) as if he or she were a public officer.

Meetings. Within 30 days after the appointment of the initial board members, the board would have to hold its first meeting at a date and time determined by the Governor's representative. That person would serve ex officio, without a vote, and would have to serve as chairperson of the board. Annually, the board members would have to elect officers as necessary.

The board would be subject to the Open Meetings Act. After organization, the board would have to adopt a schedule of regular meetings and meet at least quarterly. A special meeting could be called by the chairperson or as provided in the board's bylaws.

As a rule, board action would be by simple majority vote of all serving members. The board would have to provide in its bylaws, however, that the following actions required the approval of a supermajority, not to exceed four-fifths of serving members:

- The Authority's placement of a question of the levy of a special assessment or approval of a motor vehicle registration fee on the ballot.
- The determination of the rate of, or amount of, any special assessment or motor vehicle registration fee to be requested by the Authority at an election.

The board also would have to provide in its bylaws that the following actions required the unanimous approval of all members:

- A determination to acquire, construct, operate, or maintain any form of rail passenger service within the public transit region.
- A determination to acquire an existing public transit authority or agency.
- A determination to place on a ballot the question of acquiring, accepting responsibility for, or obligating itself to assume liability for or to pay any legacy costs of an existing public transit authority or agency that could be acquired by the Authority.

The board would have to keep a written or printed record of each meeting. The records and other Authority documents would be subject to the Freedom of Information Act.

Accounting & Audits. The board would have to provide for a uniform system of accounts for the Authority to conform to and for the auditing of the Authority's accounts. The board would have to obtain an annual audit of the Authority by an independent certified public accountant and report on the audit and auditing procedures under the Uniform Budgeting and Accounting Act. The audit would have to be in accordance with generally accepted government auditing standards, and would have to satisfy Federal regulations regarding Federal grant compliance audit requirements.

Operation, Contracting, & Procurement

Within 90 days after its first meeting, the board would have to adopt and maintain a budget for the fiscal year in accordance with

the Uniform Budget and Accounting Act. Additionally, the board would have to establish policies and procedures for the purchase of, contracting for, and provision of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items needed by the Authority to efficiently and effectively meet its needs using competitive procurement methods to secure the best value for the Authority. The board would have to make all discretionary decisions concerning the solicitation, award, amendment, cancelation, and appeal of Authority contracts.

In establishing the policies and procedures, the board would have to provide for the acquisition of professional services, including architectural, consulting, engineering, surveying, accounting, and legal services, as well as services related to the issuance of bonds, in accordance with a competitive, qualifications-based selection process and procedure for the type of professional service required by the Authority.

The board could not enter into a cost plus construction contract unless all of the following applied:

- The contract cost was less than \$50,000.
- The contract was for emergency repair or construction caused by unforeseen circumstances.
- The repair or construction was necessary to protect life or property.
- The contract complied with State and Federal law.

("Cost plus construction contract" would mean a contract under which the contractor is paid a negotiated amount, regardless of the expenses the contractor incurs.)

Within 90 days after the first meeting, the board would have to adopt a procurement policy consistent with the requirements of the proposed Act and Federal and State laws relating to procurement. Preference would have to be given to firms based in the public transit region and each county within the region, consistent with applicable law.

None of these provisions could be construed as creating a quota or set-aside for any city or county in the public transit region, and no quota or set-aside could be created.

Within 90 days after the first meeting, the board also would have to adopt a policy to

govern the control, supervision, management, and oversight of each contract to which the Authority was a party. In addition, the board would have to adopt procedures to monitor the performance of each contract to assure its execution within the prescribed budget and time periods. The monitoring would have to include oversight as to whether the contract was being performed in compliance with the terms of the contract, the proposed Act, and Federal and State law. The chief executive officer (CEO) or other authorized employee of the Authority could not sign or execute a contract until it was approved by the board.

Also, within 90 days after the first meeting, the board would have to establish policies to ensure that the Authority did not enter into a procurement or employment contract with a person who had been convicted of a criminal offense related to the application for or performance of a contract or subcontract with a governmental entity in any state.

The Authority would have to establish policies to ensure that it did not enter into a procurement or employment contract with a person who had been convicted of a criminal offense, or held liable in a civil proceeding, in Michigan or any other state, that negatively reflected on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, violation of State or Federal antitrust statutes, or similar laws.

(For the purposes of these provisions, "person" would include affiliates, subsidiaries, officers, directors, and managerial employees of a business entity, or an individual or entity who, directly or indirectly, holds a pecuniary interest in a business entity of at least 20%.)

The Authority would have to prepare an annual report to the board and each county within the public transit region detailing all contracts entered into by the Authority during the preceding fiscal year.

The Authority would not have to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement. The Authority could enter into a competitive purchasing agreement with the Federal government, the State of Michigan, or other

public entities for the purchase of necessary goods or services. The Authority could enter into lease purchases or installment purchases for periods not exceeding the useful life of the items purchased unless otherwise prohibited by law. In all Authority purchases, if consistent with applicable Federal and State law, preference would have to be given first to products manufactured or services offered by firms based in the public transit region, including the cities and counties in the region, and second to firms based in Michigan.

The Authority would have to solicit actively lists of potential bidders for contracts from each city and each county in the public transit region. Except as otherwise provided, the Authority would have to use competitive solicitation for all authorized purchases unless one or more of the following applied:

- An emergency directly and immediately affecting service or public health, safety, or welfare required the immediate procurement of supplies, materials, equipment, or services to mitigate an imminent threat to public health, safety, or welfare, as determined by the Authority or its CEO.
- Procurement of goods or services was for emergency repair or construction caused by unforeseen circumstances when the repair or construction was necessary to protect life or property.
- Procurement of goods or services was in response to a declared state of emergency, energy emergency, or disaster.
- Procurement of goods or services was under a cooperative purchasing agreement with the Federal government, the State, or another public entity for the purchase of necessary goods and services at fair and reasonable prices using a competitive procurement method for Authority operations.
- The value of procurement was less than \$25,000.

With regard to goods or services with a value of less than \$25,000, the board would have to establish policies or procedures to ensure that they were purchased at fair and reasonable prices, including a provision that for purchases and sales of \$25,000 or less but over \$5,000, written price quotations from at least three qualified and responsible vendors would have to be obtained or a

memorandum would have to be kept on file showing that fewer than three vendors existed in the market area within which it was practicable to obtain quotations.

Notwithstanding any other requirement of the proposed Act, if the Authority applied for and received State or Federal funds that required it to comply with procurement or contracting requirements that were in conflict with the Act, the State or Federal requirements would take precedence.

Personnel

The board could employ personnel it considered necessary to assist it in performing the Authority's powers, duties, and jurisdictions, including employment of a CEO and other senior executive and administrative staff. The board would have to hire a CEO and any necessary support staff for the CEO within 60 days after the first meeting. Individual board members could not hire or be assigned personal staff.

The board would have to establish policies to ensure that the board and the Authority did not do either of the following:

- Discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, or a contract with the Authority in a manner that was not in compliance with State or Federal law.
- Limit, segregate, or classify an employee, contractor, or applicant for employment or a contract in a way that deprived or tended to deprive the person of an employment opportunity or otherwise adversely affected the person's status in a manner that was not in compliance with State or Federal law.

Advisory Committee

The board would have to create a citizens' advisory committee that consisted of public transit region residents. Public transportation users would have to make up 40% of the committee, as follows:

- At least 25% who were senior citizens or people with disabilities.
- Two from Detroit.
- Two each from Wayne, Oakland, Macomb, and Washtenaw Counties.
- Two from each additional member county.

Individuals from organizations representing senior citizens and people with disabilities would have to make up 20% of the committee. Individuals representing businesses, labor, community, and faith-based organizations would have to make up 40%.

The committee could meet at least once every quarter and could make reports to the board, including recommendations, at each board meeting. In addition, the committee could do all of the following:

- Review and comment on the comprehensive regional transit service plan and all annual updates.
- Advise the board regarding the coordination of functions between different owners and operators of public transit facilities within the region.
- Review and comment on the specialized services coordination plan required by the Michigan Transportation Fund law.
- Upon the board's request, provide recommendations on other matters concerning public transit in the region.

(Under the MTF law, "specialized services" means public transportation designed primarily for people with disabilities or those who are at least 65 years old.)

Advisory Council

The board would have to create a public transit advisory council consisting of two members appointed by each public transit provider in the public transit region. The council could make reports to the board, including recommendations, at each board meeting. The council could make recommendations to the board only on issues of service coordination, funding, plans, specialized services, and other matters as requested by the board.

Authority Powers

Except as otherwise provided, the Authority could do all things necessary and convenient to implement the purposes, objectives, and provisions of the proposed Act and the purposes, objectives, and powers vested in the Authority or the board by the Act or other law, including all of the following:

- Adopt, amend, and repeal bylaws.
- Borrow money and issue bonds and notes.

- Engage in collective negotiation or collective bargaining.
- Procure insurance or become a self-funded insurer against loss in connection with Authority property, assets, or activities.
- Indemnify and procure insurance indemnifying board members from personal loss or accountability with regard to bonds, other obligations, or activities of the Authority.
- Invest Authority money, at the board's discretion, consistent with an investment policy adopted by the board.
- Promulgate rules and adopt regulations for the orderly, safe, efficient, and sanitary operation and use of a public transit system owned by the Authority.
- Subject to the Act, use the State's rights-of-way throughout the public transit region for public transit.
- Create separate operating entities.
- Acquire and dispose of property or rights and interests in property.
- Hold, clear, remediate, improve, maintain, sell, exchange, lease, or grant easements and licenses on property or rights or interests in Authority property.
- Charge fares and enter into contracts for the services provided by the public transit system as necessary to provide funds to meet the Authority's obligations.

In addition, the Authority could apply for and receive loans, grants, guarantees, or other financial assistance in aid of a public transit system from any State, Federal, local, or intergovernmental agency or from any other public or private source, including financial assistance for purposes of developing, planning, constructing, improving, or operating a public transit system.

Notwithstanding any other provision of the Act, the Authority could not acquire, accept responsibility for, or obligate itself to assume liability for, or pay any legacy costs of an existing public transit authority or agency that the Authority acquired without first securing an affirmative vote of a majority of the electors of each member county in the public transit region.

Public Transit Plan

The Authority would have to adopt a public transit plan for its public transit region. As its initial plan, the Authority would have to

adopt the regional transit plan approved on December 8, 2008, by the Regional Transit Coordinating Council (RTCC) and the transit master plan adopted by the Ann Arbor Transportation Authority on March 17, 2011. The Authority could amend the single regional master transit plan as necessary, and would have to update it annually. (The RTCC and Ann Arbor Transportation Authority plans are described below, under **BACKGROUND.**)

The Authority could establish and operate new or additional routes and public transit facilities using various forms of transit modalities. The Authority could employ operating personnel, negotiate collective bargaining agreements with operating personnel, or own operating assets of a public transit service within the public transit region. The Authority would have to coordinate the operating and capital transit plans of transit agencies and authorities within the region.

Rolling Rapid Transit System

Subject to available resources, the Authority could plan, design, develop, construct, and operate a rolling rapid transit system on at least four corridors within the public transit region. With the approval of the Federal Transit Administration and in compliance with all applicable Federal and State regulations, the Authority would have to determine exact routes and station locations. The Authority could design routes to augment, complement, enhance, replace, or improve other forms of public transit operating within or on the corridors. Initial plans for a rolling rapid transit system could include all of the following:

- A Woodward corridor line to operate along, on, or near Woodward Avenue between a location in or near the downtown Detroit station and a location in downtown Pontiac.
- A Gratiot corridor line to operate along, on, or near Gratiot Avenue between the downtown Detroit station and a location in downtown Mt. Clemens.
- A northern cross-county line to operate between Pontiac and Mt. Clemens, including stations along Big Beaver Road in Troy and 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,

including stations in Ypsilanti, Detroit Wayne County Metropolitan Airport, and Dearborn.

("Rolling rapid transit" would mean bus services that may 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. The term could include exclusive rights-of-way, rapid boarding and alighting, and integration with other modes of transportation. "Downtown Detroit station" would mean a location in or near the Campus Martius area of downtown Detroit.)

Authority expenses incurred in the planning and operation of a rolling rapid transit system would not be eligible for a grant under the statewide operating grants program of the MTF law (which provides grants to cover a portion of the operating costs of an eligible authority or governmental agency that provides public transportation services in urbanized areas).

Grants

Between 90 and 180 days after the proposed Act took effect, the Authority would become the designated recipient for the public transit region for purposes of applying for Federal and State operating and capital assistance grants under the Federal Transit Act and the regulations promulgated under it. The Authority could designate a city operating a transit authority or agency, or an authority representing a county or counties, as a subrecipient of Federal and State transportation funds. To the extent required by the Federal Transit Act and regulations, the Authority could execute a supplemental agreement conferring on such a city or county authority the right to receive and dispense grant funds and containing other provisions required by Federal law and regulations.

The Authority would have to submit its application for funds to the responsible Federal and State agencies in a timely manner. The application would have to designate the distribution of all capital and operating funds that were to be paid directly to the city or county authority. If the Authority were a recipient, as soon as possible but not more than 10 days after receiving the funds, the Authority would

have to remit to a city or county authority its designated distribution.

Notwithstanding anything in the Authority's articles of incorporation to the contrary, the designated distribution of Federal and State formula funds, regardless of what entity was the subrecipient or direct recipient, would have to be determined using the Federal and State statutes and regulations applicable at the time of distribution as if the designated subrecipients or direct recipients were allowed to, and did, apply for Federal and State formula funds independently of each other and the Authority.

Before becoming the designated recipient for State and Federal funds, the Authority would have to enter into a memorandum of understanding (MOU) with any public transit provider that was a direct receipt of Federal funds on the bill's effective date. At a minimum, the MOU would have to describe the process and relative roles of the Authority and any transit agency that was a direct recipient of Federal funds in the development, approval, and modification of long-term and short-term plans, projects, applications, and grants for Federal funds.

Coordination

Each public transit provider in the public transit region, including subrecipients designated by the Authority, would have to submit to the Authority an annual report that described and evaluated the provider's efforts to coordinate service with other providers in the region. The report would have to include a description of the provider's successful and unsuccessful efforts to do all of the following:

- Coordinate routes, schedules, fares, and points of transfer.
- Provide information or services to riders that helped facilitate transfers from one public transit provider to another.
- Eliminate or reduce service overlap and duplication.

The Authority would have to coordinate service overlap, rates, routing, scheduling, and any other function that it considered necessary to implement or execute the comprehensive regional transit service plan between the authorities, agencies, and owners or operators of public transit facilities within the public transit region.

The Authority could issue coordination directives regarding public transit services, including routes, schedules, and fares. The Authority would have to give notice of coordination directives to owners and operators of public transit facilities in the public transit region. The Authority could withhold up to 5% of State capital and operating assistance from an owner or operator that failed to comply with a directive. A directive would preempt a conflicting city, village, or township provision or procedure.

Authority Property

The Authority could acquire property for a public transit system by purchase, construction, lease, gift, or devise, either within or without the area served by the system, and could hold, manage, control, sell, exchange, or lease property. The Authority could use any appropriate statute for the purpose of condemnation. The Authority could use condemnation proceedings only to acquire property located within the public transit region.

Except as otherwise provided, the Authority's property, as well as its income, activities, and operations, would be exempt from all taxes and special assessments of the State or a political subdivision of the State. Authority property and income, activities, and operations that were leased to private people would not be exempt from any tax or special assessment. Authority property would be exempt from ad valorem property taxes collected under the General Property Tax Act or other State law authorizing taxation of real or personal property.

The property of the Authority would be public property devoted to an essential public and governmental purpose, and the Authority's income would be for a public and governmental purpose.

Authority Revenue

The Authority could raise revenue to fund all of its activities, operations, and investments consistent with its purposes. The revenue sources available to the Authority would include all of the following:

- Fees, fares, rents, or other charges for use of a public transit system.

- Federal, State, or local government grants, loans, appropriations, payments, or contributions.
- Proceeds from the sale, exchange, mortgage, lease, or other disposition of property acquired by the Authority.
- Grants, loans, appropriations, payments, proceeds from repayments of loans made by the Authority, or contributions from public or private sources.
- The proceeds of a special assessment levied or a motor vehicle registration fee collected under the proposed Act.
- Investment earnings.

The Authority could levy a special assessment within the public transit region only as approved by the board and the electors of the region voting on the assessment at an election held on a regular date as provided in the Michigan Election Law. When submitting a proposal on the question, the ballot would have to state all of the following:

- The special assessment rate to be authorized.
- The duration of the special assessment.
- A clear statement of the assessment's purpose.
- A clear statement indicating whether the proposed assessment was a renewal of a previously authorized assessment, or the authorization of a new one.

The Authority also could collect a motor vehicle registration fee dedicated to the purpose of public transit, if authorized under the Michigan Vehicle Code.

The Authority would have to ensure that at least 85% of the money raised in each member jurisdiction through these mechanisms was spent on public transit service provided in that jurisdiction.

Starting in the fiscal year beginning at least 12 months after the bill's effective date, the Authority would have to submit to MDOT an asset management plan for all revenue vehicles and facilities, major facility components, and major pieces of equipment. The Authority would have to update the plan annually.

After the first 12 months of operation of a rolling rapid transit system, and annually after that, the Authority would have to give to the legislative body of each member jurisdiction a report showing the cost of

service and revenue generated in each jurisdiction.

Authority Bonds & Notes

For the purposes of acquiring, improving, enlarging, or extending a public transit system, the Authority could issue self-liquidating revenue bonds under the Revenue Bond Act or any other act providing for the issuance of such bonds. The bonds would not be a general obligation of the Authority, but would be payable solely from the revenue of the public transit system. If the Authority issued bonds with a pledge of its full faith and credit, the bonds would be subject to the Revised Municipal Finance Act. The Authority could borrow money and issue municipal securities in accordance with, and exercise all of the powers conferred upon municipalities by, that Act.

All bonds, notes, or other evidence of indebtedness issued by an Authority, as well as the interest, would be exempt from all taxation in Michigan, except for transfer and franchise taxes.

The issuance of bonds, notes, or other evidence of indebtedness by the Authority would require approval of the board.

An agreement entered into under these provisions would be payable from the Authority's general funds or, subject to any existing contracts, from any available money or revenue sources, including revenue specified by the agreement, securing the bonds, notes, or other evidence of indebtedness in connection with which the agreement was entered into.

The revenue raised by the Authority could be pledged for the repayment of bonded indebtedness and other expenditures issued or incurred by the Authority. A financial obligation of the Authority would be a financial obligation of the Authority only, not an obligation of the State or any city or county within a public transit region, and could not be transferred to the State or any city or county.

Operating License Agreement

The Authority could acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a public transit system on the streets and highways of the State with the approval of a local road agency, on terms

and conditions mutually agreed to by the Authority and that agency. Approval would have to be embodied in an operating license agreement with the Authority and each local road agency with operational jurisdiction over the applicable streets and highways. A local road agency could not unreasonably withhold its consent to an operating license agreement and would have to determine whether to consent in an expeditious manner. The license could include provisions concerning the use of dedicated lanes and a system to change traffic signals in order to expedite public transit services. Any provision for use of a dedicated lane would have to require that its use be made available to emergency service vehicles.

When operating on the streets and highways of a road agency, the Authority would be subject to rules, regulations, or ordinances required to preserve operations of the streets and highways and to ensure compliance with the rules and regulations of the funding source used to construct and maintain them.

The Authority could not construct a public transit system on a local road agency's streets and highways until there was an operating license agreement executed by the two parties.

The Authority could acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a public transit system on public or private rights-of-way, and obtain easements when necessary for it to acquire and use private property for doing so.

If a local road agency 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 of law.

Zoning & Land Use

Local zoning or land use ordinances or regulations would not apply to a public transit system or a rolling rapid transit system that was planned, acquired, owned, or operated by the Authority under the proposed Act.

Elections

An election or vote authorized by the proposed Act would have to be conducted in accordance with the Michigan Election Law.

Costs

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 them, would be a transportation purpose within the meaning of Article IX, Section 9 of the State Constitution when the costs were to facilitate a public transit system that moved individuals or goods with vehicles using tires.

Appropriations

The bill would appropriate to the Authority \$250,000 from the Comprehensive Transportation Fund to begin implementing the requirements of the proposed Act. Any portion that was not spent in the 2012-13 State fiscal year would not lapse to the General Fund but would be carried forward in a work project account that was in compliance with Section 451a of the Management and Budget Act for the following fiscal year.

(Under Section 451a of the Management and Budget Act, a work project appropriation is available until completion of the work or 48 months after the last day of the fiscal year in which the appropriation was originally made, whichever comes first; then the remaining balance lapses to the State fund from which it was appropriated. A work project must be for a specific purpose, contain a specific plan to accomplish its objective, and have an estimated completion cost and completion date.)

Repealed Sections

The bill would repeal Sections 4a and 4b of the Metropolitan Transportation Authorities Act.

Section 404a provides for the establishment of the Regional Transit Coordinating Council as a corporation for the purpose of establishing and directing public transportation policy within a metropolitan area. The RTCC consists of the CEOs of Detroit, Wayne County, Macomb County, Monroe County, Oakland County, and Washtenaw County. The RTCC is considered an authority for the purpose of receiving

transportation operating and capital assistance grants.

The RTCC is authorized to adopt public transportation plans for its metropolitan area, and is required to coordinate service overlap, rates, routing, scheduling, and like functions between operators of public transportation. The RTCC does not have the power to employ operating personnel, negotiate collective bargaining agreements with operating personnel, or own operating assets of a public transportation service within the metropolitan area.

The RTCC is a "designated recipient" for purposes of applying for Federal and State transportation operating and capital assistance grants, and may designate the City of Detroit and the authority representing the counties each as a subrecipient of Federal and State transportation funds.

Section 404a also provides for the creation of an advisory committee consisting of riders who are senior citizens and/or people with disabilities and who live within the Southeastern Michigan Transportation Authority (now called the Suburban Mobility Authority for Regional Transportation), and requires the committee to report its concerns to the RTCC on a regularly scheduled basis.

Section 404b prescribes requirements for the RTCC's articles of incorporation and required the RTCC, in conjunction with MDOT, to develop a long-range plan to bring the authorities coordinated by the RTCC into conformity with the State fiscal year.

Senate Bill 911 (S-2)

Under the bill, in addition to the required vehicle registration fee, the proposed Southeast Michigan Regional Transit Authority could charge an additional fee on vehicle registrations issued to residents of the public transit region of up to \$1.20 for each \$1,000 or fraction of \$1,000 of the vehicle's list price used in calculating the regular registration fee. The Authority could charge the additional fee only upon the approval of a majority of the electors in the public transit region voting on the fee at an election held on a regular election date.

In addition to any other requirements imposed by law, the ballot question

proposing authorization of the regional fee would have to specify how the proceeds of the fee would be spent.

The Authority could use the additional regional fee only for comprehensive transportation purposes as defined by Article IX, Section 9 of the State Constitution.

A regional fee proposal could not be placed on the ballot unless it were adopted by a resolution of the Authority's board of directors and certified by the board at least 70 days before the election to the clerk of each county within the public transit region for inclusion on the ballot.

If a majority of voters in the public transit region approved the fee, within one year after voter approval, the Secretary of State would have to collect it on all vehicles registered to residents of the region, except historic vehicles, and credit it to the Authority, minus necessary collection expenses as provided in Article IX, Section 9 of the State Constitution. Necessary collection expenses would have to be based upon an established cost allocation methodology.

Senate Bill 967 (S-1)

The bill would allow MDOT or a local road agency to enter into an operating license agreement with a regional transit authority to operate a public transit system on the streets and highways of the State as provided for in State law enacted after January 1, 2012.

As part of the agreement, MDOT or the local road agency could designate at least one lane of a street or highway as a dedicated public transit lane. Such a lane could be reserved for the exclusive use of public transit vehicles operated by a regional transit authority during periods determined by MDOT or the local road agency; however, the lane would have to be made available at all times to emergency services vehicles. Lanes designated and marked as dedicated public transit lanes would be subject to the same provisions as high-occupancy vehicle (HOV) lanes under the Michigan Vehicle Code.

(Under the Vehicle Code, when a lane has been designated as an HOV lane under the MTF law, and has been appropriately marked, the lane must be reserved during

the periods indicated for the exclusive use of buses and HOVs (i.e., motor vehicles carrying at least two occupants, including the driver). The restrictions imposed on HOV lanes do not apply to any of the following:

- Authorized emergency vehicles.
- Law enforcement vehicles.
- Motorcycles.
- Transit and commuter buses designed to transport people, including the driver.
- Vehicles of public utility companies responding to an emergency call.
- Vehicles using an HOV lane to make a turn permitted by law for a reasonable distance in advance of the turn or to enter or exit a limited access highway.
- Taxicabs with at least two occupants, including the driver.
- Bicycles, if the HOV lane is the right-hand lane of a highway open to bicycles.

From December 9, 2008, until December 31, 2010, the MTF law authorized MDOT to designate as HOV lanes one or more lanes of highway US 12 in a city with a population of more than 700,000.)

MCL 257.801 et al. (S.B. 911)
125.3205 (S.B. 912)
247.651 (S.B. 967)

BACKGROUND

State Constitution: Article IX, Section 9

Article IX, Section 9 of the State Constitution provides that all specific taxes, except general sales and use taxes and regulatory fees, imposed on motor vehicle and aircraft fuel sales and registered motor vehicles and aircraft must be used exclusively for transportation purposes.

At least 90% of the specific taxes, excluding general sales and use taxes and regulatory fees, on motor vehicle fuel and registered motor vehicles must be used exclusively for the transportation purposes 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, and reasonable appurtenances to those roads, streets, and bridges.

The remaining balance of those specific taxes, 100% of the specific taxes imposed

on aircraft fuel and registered aircraft, excluding general sales and use taxes and regulatory fees, and up to 25% of the general sales taxes imposed on sales of motor vehicles, motor vehicle fuels, and parts and accessories, must be used exclusively for comprehensive transportation purposes as defined by law.

Under the Michigan Transportation Fund law, "comprehensive transportation purpose" means the movement of people and goods by publicly or privately owned water vehicle, bus, railroad car, street railway, aircraft, rapid transit vehicle, taxicab, or other conveyance that provides general or special service to the public, except for charter or sightseeing service or transportation for school purposes exclusively.

Comprehensive Regional Transit Service Plan

The Regional Transit Coordinating Council adopted the Comprehensive Regional Transit Service Plan for Southeast Michigan on December 2, 2008. The Plan provides a detailed analysis of the existing transit services in the region and recommends enhancements to those services, as well as the development of a transit network for southeastern Michigan. The Plan proposes implementation in phases, with a comprehensive regional transit system in place by 2035. It suggests that the transit region should include Wayne, Macomb, and Oakland Counties, with consideration for the inclusion of Washtenaw, Monroe, and St. Clair Counties.

Regarding enhancements to existing services, the Plan recommends increased frequency, additional routes, and improved transit service for people with disabilities and those in low-density areas. The Plan also calls for the introduction of several rapid transit corridors, including light rail and commuter rail service.

The Plan recommends the establishment of a regional transit organization with the power to fund, build, plan, implement, and operate transit services. In addition, the Plan notes that a regional dedicated source of funding would be needed to match Federal capital dollars and to bond capital projects, as well as provide ongoing operating funds.

Ann Arbor Transportation Authority Transit Master Plan

On March 17, 2011, the Ann Arbor Transportation Authority (AATA) adopted a proposal called the Smart Growth Transit Master Plan, designed to meet Washtenaw County's transit needs for the next 30 years. The plan includes bus improvements, integrated ticketing, travel planning programs, and door-to-door service for senior citizens and people with disabilities. The plan also includes the creation of five bus transit hubs in other Washtenaw County cities, as well as express service between the hubs and the connection of key destinations in Ann Arbor. In addition, the plan calls for regional commuter rail and high-capacity transit services along the area's busiest corridors, including a line between Ann Arbor and Detroit Metro Airport. Several new park-and-ride lots, expanded car and van pool programs, and 20 new miles of bicycle paths also are included in the proposal.

Currently, AATA is organized under Public Act 55 of 1963, which authorizes a city with a maximum population of 300,000 to incorporate a mass transit authority. The expansion of service throughout Washtenaw County under the Smart Growth plan would require the formation of a countywide authority under Public Act 196 of 1986, the Public Transportation Authority Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A comprehensive regional transit system is critical to economic vitality and the quality of life in southeastern Michigan, as well as the entire State. Such a system would facilitate movement around the area, helping people get to work, school, businesses, health care facilities, and recreational opportunities. In addition, it would encourage industrial, commercial, and residential development.

While the Detroit area was once a leader in public transit, services have declined and the region has fallen behind other metropolitan areas over the last few decades. At this time, southeastern

Michigan is the largest region in the nation without comprehensive rapid transit service. Public transit in the region currently is disjointed, containing service gaps both within and between the SMART and DDOT systems. In some places, users experience long wait times and crowded buses, and it might take more than an hour to travel a relatively short distance. In addition, routes and staffing have been cut in recent years due to budgetary issues. Clearly, enhanced services and better coordination are needed to serve the public adequately. The legislation would prescribe the framework for an efficient, multimodal transit system centered on modernized bus service.

Reportedly, during the last 20 years, every dollar spent in the United States to create or expand public transit has spurred between \$6 and \$8 in private investment. A similar investment in southeastern Michigan could stimulate the creation of a significant number of jobs. Additionally, a high-quality public transit system would help the State retain and attract people with the knowledge and talent needed to fill those positions and revitalize the economy. In a recent survey of 20- to 35-year olds conducted by the Michigan Suburbs Alliance, more people cited the poor state of public transit than the weak job market as a reason to leave southeastern Michigan. In addition to allowing ease of movement, public transit can save a substantial amount of money in fuel, parking, and vehicle maintenance costs. Also, mass transit leads to a reduction in vehicle emissions, having a positive impact on air quality and public health. For many people, a user-friendly public transit system is a key component of overall quality of life. The associated convenience and cost-effectiveness are important factors in where people decide to work and live.

Through the proposed special assessment and additional vehicle registration tax, the legislation would provide a dependable funding source for this critical transit system. Currently, DDOT is subsidized heavily by the City of Detroit, and SMART is funded with a millage. Both of these mechanisms are obsolete and unsustainable given the present state of the economy and plunging property values. Senate Bills 909 (S-3) and 911 (S-2) would result in a more reliable revenue stream, if voters approved.

The bills represent the first steps needed to create a world-class transit system in southeastern Michigan. Senate Bill 909 (S-3) would enable the capture of hundreds of millions of Federal dollars through the proposed Authority and set up a framework for the planning, development, and operation of the system. In addition, Senate Bills 909 (S-3) and 911 (S-2) would give residents a voice in funding matters through the special assessment and vehicle registration tax ballot questions. Senate Bill 912 would facilitate zoning and right-of-way clearance, enabling development of the transit system. Senate Bill 967 (S-1) would provide for dedicated lanes to minimize disruption in the operation of transit vehicles. Together, these bills would play a critical role in the creation of a prosperous region, anchored by a flourishing Detroit.

Response: Senate Bill 909 (S-3) should allow the Authority to spend money where it is most needed within the regional system, rather than requiring that 85% of the money raised through a special assessment be spent in the jurisdiction where it was collected. Similar conditions imposed on other transit systems have created inefficiencies. This requirement would diminish the focus on regionalism, and could preclude the Authority from spending money in the most effective way and developing the most useful system.

The bill also should require the approval of the applicable county commission or city council for each board member appointed by a county executive or city mayor, and should provide for the appointment of the citizens' advisory council by an entity other than the Authority board. These revisions would maximize citizen representation and ensure the appointment of quality candidates who were accountable to their respective communities.

In addition, the requirements for a supermajority or unanimous vote for certain board actions should be eliminated in favor of a simple majority vote. These requirements could result in gridlock among the board members on critical issues and impede development of the most effective transit system. The adoption of rail service in particular would be inhibited by the unanimous vote requirement. Transit decisions should be based on the needs of the community and technical expertise, not restricted by stringent voting conditions.

The bill also should contain stronger protections for fairness in the awarding of Authority contracts. A requirement that the Authority provide an annual report on the race, gender, and headquarters location of selected vendors would promote transparency and accountability.

Further, the legislation should specify that the dedication of street lanes to public transit would be accomplished through the creation of new lanes rather than a reduction in the number of lanes used currently for private and commercial traffic. The use of existing lanes for public transit could result in reduced capacity for all other vehicles, inconvenient or circuitous turns, and the disruption of traffic signal progression. This would be contrary to the goals of reduced congestion and greater efficiency. The bills should include consideration for the continued functionality of the road system for all users, not just public transit riders.

In another matter, it is unclear whether the \$250,000 that would be appropriated to the Authority for start-up costs under Senate Bill 909 (S-3) would be sufficient. An increased amount might ensure that the Authority had the resources it needed to fulfill its duties.

Opposing Argument

Under Senate Bill 909 (S-3), the City of Detroit would not have sufficient representation on the Authority board. The City's population is more than twice that of Washtenaw County's and nearly equal to Macomb County's. In addition, high unemployment and automobile insurance rates in Detroit have made driving unaffordable for many people, leading to a disproportionate number who must rely on public transit. For these reasons, Detroit should have more voting power on the board. The appointment of two members to represent Detroit, rather than one, would more accurately reflect ridership and take into account the importance of the City in the coordination of service.

Response: In addition to the member appointed to represent Detroit exclusively, the bill specifies that one of the Wayne County members would have to be from the City. Under this arrangement, Detroit would be adequately represented.

Opposing Argument

The legislation would impede local control by providing that Authority decisions would not

have to comply with zoning and land use ordinances. Communities enact such ordinances for a reason, and they should not be preempted by the proposed Authority. Regional transit authorities have been established successfully elsewhere in the country without the ability to supersede zoning decisions. Rather than simply overriding deliberately crafted local policies, the Authority should work with local units to resolve conflicts in the development of the public transit system.

Opposing Argument

Senate Bill 909 (S-3) would prohibit the proposed Authority from assuming the liabilities or legacy costs of existing transit systems without voter approval, which could have a negative impact on the employees of those systems. Under the bill, collective bargaining agreements and pension systems could be eliminated unfairly for former SMART and DDOT employees. In addition, the bill potentially would be incompatible with Federal labor laws and could jeopardize hundreds of millions of Federal transit dollars for which the Authority could be eligible. The legislation should include stronger protections for employees of the existing transit systems that would be incorporated under the umbrella of the proposed Authority.

Response: Voters should have the ability to prevent the carrying forward of costs that might be unaffordable. The workers of any new transit system implemented by the proposed Authority should be subject to employment conditions and benefits typically expected at this time in both the public and private sectors.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 909 (S-3)

State: The Governor is recommending a supplemental appropriation for FY 2011-12 of \$250,000 in restricted Comprehensive Transportation Fund money to cover the initial start-up costs of the proposed Regional Transit Authority (RTA). Following that initial appropriation, it is anticipated that all future costs to administer and operate the RTA would come from proposed

planning grants and revenue generated in the region from bonds or additional fees to local residents.

Additionally, the State could lose revenue from the tax exemptions that would be granted to the property on which the RTA would be located. The amount of potential loss in revenue is indeterminate and dependent on the exact location of the property and its valuation at the time the tax exemption would be granted.

Local: The RTA could issue self-liquidating revenue bonds for the purpose of acquiring, improving, enlarging, or extending a public transit system. The bonds would be payable solely from the revenue of the public transit system and thus would not be a cost to the State or local residents. However, local residents within the RTA could be asked to support a variety of funding proposals via ballot initiatives to cover the costs of administering and operating the RTA. Proposals could include the requirement for local residents to pay a special assessment and/or additional vehicle registration fees to support the RTA and its projects.

Senate Bill 911 (S-2)

State: The Department of State estimates a cost to the Department of \$1.3 million to implement the provisions of this bill. These costs consist of a one-time \$1.1 million for the programming necessary to add the additional fee to all vehicle registrations, along with a one-time cost of \$66,000 for staffing costs associated with the programming. In addition, there would be an annual cost of an estimated \$100,000 for the Department to distribute the revenue directly to the Regional Transit Authority. Finally, there could be some additional costs associated with the staff at branch offices who would collect the additional fee; however, this cost is indeterminate at this time and would depend on the approval of the additional fee.

Local: According to the Department of State, based on FY 2009-10 data, the average cost of a passenger vehicle registration is \$103. This equates to an average valuation of a passenger vehicle of \$21,000. In the four counties (Macomb, Oakland, Washtenaw, and Wayne) that would comprise the Regional Transit Authority, there were approximately 3.0 million vehicle registrations in FY 2009-10.

If approved by the voters within the RTA, the additional fee of \$1.20 per \$1,000 of a vehicle's value would result in an average increase of an estimated \$25 per vehicle. Based on the 3.0 million transactions in FY 2009-10, this would equate to an estimated additional \$75.0 million annually in revenue for the proposed RTA.

Local residents would be required to pay up to \$1.20 per \$1,000 in vehicle valuation, per vehicle annually. The cost to a local resident would depend on the number of vehicles he or she owned and their value. As stated above, the cost based on the average value of a vehicle in FY 2009-10 would be an estimated \$25 per year, per vehicle.

Senate Bills 912 and 967 (S-1)

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.