

Legislative Analysis



REGIONAL TRANSIT AUTHORITY

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5731

Sponsor: Rep. Bert Johnson

House Bill 5732

Sponsor: Rep. Jon Switalski

House Bill 5733

Sponsor: Rep. Marie Donigan

Committee: Intergovernmental and Regional Affairs

Complete to 2-22-10

A SUMMARY OF HOUSE BILLS 5731 - 5733 AS INTRODUCED 12-18-09

All three bills deal with the creation of a new regional transit authority in the Detroit metropolitan area. Initially the public transit region to be served by the authority would be made up of the counties of Wayne, Oakland, and Macomb; however, other counties could join under a process provided in the legislation.

House Bill 5731 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*, 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 in this act."

As defined in the act, the public transit region would initially consist of *a county in which a qualified city is located, and all other counties immediately contiguous to a qualified city*. A *qualified city* is defined in the act as a city with a population greater than 700,000 as of the most recent decennial census. The new act also provides for the participation of other counties, adjacent to participating counties, in the regional transit authority. (Only the city of Detroit currently meets the definition of a qualified city. Detroit is in Wayne County, and the counties contiguous to Detroit are Oakland and Macomb.)

House Bill 5732 provides for the funding of the new regional transit authority. It would amend Public Act 51 of 1951 (MCL 247.660c, et seq.), the act governing state transportation funding. Among other things, the bill would define a regional transit authority organized under the Regional Transit Authority Act as an "eligible authority" under PA 51. This would entitle the authority to receive operating grants (i.e., local bus operating assistance) from the Comprehensive Transportation Fund (CTF) under Section 10e of Act 51.

House Bill 5733 would make a complementary amendment to the Motor Bus Transportation Act (MCL 474.104) essentially exempting the transit operations of a

regional transit authority from the requirements of the Motor Bus Transportation Act in the same way that other public transit service providers are currently exempted.

DETAILED ANALYSIS OF HOUSE BILL 5731

The following is a section-by-section description of House Bill 5731. Section 1 provides the act's name and Section 2 provides definitions of terms.

Creation of Regional Transit Authority

Section 3 of the bill would establish a new regional transit authority within a public transit region as defined in the act, for the purpose of "planning, acquiring, owning, operating, or causing to be operating a public transit system and carrying out the rights, duties, and obligations provided in this act."

The bill defines *public transit region* (in Section 2) as an area consisting of a county in which a qualified city is located, all other counties immediately contiguous to a qualified city, or a county added to an authority as provided in the act. [The definition references Section 3, although it appears the intended reference is to Section 4.] As noted earlier, Detroit is currently the only city in Michigan that would meet the definition of "qualified city." The three applicable counties are Wayne, Oakland, and Macomb counties.

The bill defines *public transit* (in Section 2) as the movement of people and goods by publicly or privately owned bus, railroad car, rapid transit vehicle, taxicab, or other conveyance which provides general or special service to the public. The bill excludes charter, sightseeing, or dedicated school transportation from the definition. The bill indicates that public transit is a transportation purpose within the meaning of Article IX, Section 9 of the 1963 Michigan Constitution.

The bill also defines *public transit system* as meaning all plants, equipment, work instrumentalities, and real and personal property and rights, used or useful for public transit.

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 public transit region. An adjacent county not included in a public transit region and not a participant in the authority could petition to be included, and would be included if the authority board approved its inclusion. If the authority was levying a tax, then the petitioning county would be a provisional member without voting power and without public transit service, until a majority of the electors of the petitioning county approved a tax levy. That vote would occur 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. Specifically the bill provides for one member to be appointed by the governor ("governor's representative") and one member each from each transit district. (The representative of the governor would be the director

of the Department of Transportation or the chair of the State Transportation Commission.) The bill defines "transit district" as a qualified city, the county in which a qualified city is located, all other counties immediately contiguous to a qualified city, and other counties added to the authority as provided for in the act. In the initial establishment of the authority, there would be four transit districts as defined in the act: Detroit, Wayne County, Oakland County, and Macomb County.

The bill provides for the governor's representative to serve on the board only to establish or preserve an odd number of members. If additional counties are added to the authority to create an odd number of transit districts represented on the board, the governor's representative would no longer be a board member under the bill.

The bill provides for the appointment of each board member by the chief executive officer of the appointing transit district (i.e., the mayor of Detroit and the chief executive officers of the participating counties). The bill provides for four-year terms for the appointed board members. The bill requires the initial appointment of board members within 60 days of the effective date of the act. The bill also provides for the appointment of board members from counties added to the authority under provision of Section 4.

No board member, other than the governor's representative, could be an elected officer of a local unit of government. Each board member would have to be a resident and registered elector in the transit district he or she represents. Board members would serve without compensation, but the bill does provide for the reimbursement of actual necessary expenses. The bill would exclude those not of good moral character, and accused or convicted felons from serving on the board. The bill directs that board members possess business, financial, or professional experience related to public transit systems.

Board Meetings

Section 6 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 bill directs that board members elect a chair from the board and other officers as the board considers necessary. The bill requires annual election of all officers.

After the initial organizational meeting, the board would establish a schedule of regular meetings, but would be required to meet at least quarterly. A special meeting could be called by the chairperson, or as provided in adopted bylaws. Meetings would be subject to the Open Meetings Act. All actions would be by simple majority vote, although the board could specify in its bylaws that certain actions required approval of a super-majority not to exceed four-fifths of the serving members.

The board would have to keep a written record of each meeting, and all records and other documents would be made available to the public in compliance with the Freedom of Information Act.

The board would provide for a system of accounts, and obtain an annual audit by an independent certified public accountant. The board would adopt a budget and report on its audit in the manner provided by the Uniform Budgeting and Accounting Act. Among other things, the board would have to adopt a procurement policy, and meet the needs of

the authority using competitive procurement methods to secure the best value for the authority. The bill specifies, in detail, how an authority must establish contracting policies, establish policies and procedures for hiring professional service contractors, and utilize competitive bidding for all purchases and contracts, with certain exceptions.

The board could employ the personnel it considered necessary, and would have to establish policies to ensure that employees (and those recruited for employment) were treated without discrimination.

Other Board Powers

Section 7 of the bill specifies in detail the kinds of things an authority can do to implement the purposes, objectives, and provisions of the bill, including among other things adopt a corporate seal; 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; procure insurance or become a self-funded insurer; invest money contract for goods and services, employ legal and technical experts; establish and maintain an office; and adopt reasonable rules and regulations for the orderly, safe, efficient, and sanitary operation and use of a public transit system owned by the authority.

Public Transit Plans

Also under Section 7, the authority would have to adopt a public transit plan for its region, and also adopt any regional transit plans approved by an entity that, before September 15, 2010, was authorized to engage in transit planning under the Metropolitan Transportation Authorities Act. The plan would have to be updated by the authority annually. The authority would have to coordinate service overlap, rates, routing, scheduling, and like functions between operators of public transit, and also coordinate the operating and capital transit plans of transit agencies within the public transit region.

Fares, etc

Under Section 7, the authority could charge fares and enter into contracts for the service provided by the public transit system as necessary to provide funds to meet the obligations of the authority.

Authority as Designated Recipient

Section 8 of the bill specifies that 90 days after the effective date of this legislation, an authority would become the "designated recipient" for its public transit region for the purpose of receiving federal and state mass transportation funding.

Property Acquisition, Tax Exemption, etc.

Under Section 9 of the bill, an authority could acquire property for a public transit system in many ways, including by using the appropriate statute for the purpose of condemnation of property located within the public transit region.

The property of an authority created under the new act would be public property devoted to an essential public and governmental purpose. Likewise, income of the authority would be for a public and governmental purpose. The property of the authority and its income, activities, and operations would be exempt from all taxes and special

assessments of the state or a political subdivision of the state. However, authority property leased to private persons would not be exempt from taxation.

The bill specifies that if an authority sought to enter into an agreement for a whole or partial transfer of operational jurisdiction, management, control, ownership, or other interest in or relating to a public transit system owned by a qualified city, then the CEO of the qualified city could enter into and execute the agreement or arrangement, notwithstanding any provision to the contrary set forth by law, ordinance, or charter, including but not limited to, any requirement in law, ordinance, or charter that a vote of the electors of the qualified city is required.

Source of Revenues

Section 10 of the bill would authorize an authority can 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, grants, loans, appropriations, the proceeds from sales, repayments of loans, the proceeds of a tax, and investment earnings.

An authority could levy taxes within the public transit region only as approved by the board, and only by an aggregate majority of electors of the entire public transit region voting on the authorization of taxes, subject to both of the following: (1) in any tax year, 100 percent of the revenues generated in a county would have to be applied to the cost of services rendered by the public transit system in that county; and (2) no tax levied would be subject to capture by any entity with the power to capture tax increment revenues.

Bonding

Under Section 11 of the bill, an authority could issue self-liquidating revenue bonds under the Revenue Bond Act of 1933, or other such acts. The bonds would not be a general obligation of the authority, but would be payable solely from the revenue of the public transit system. However, if the authority issued self-liquidating revenue bonds with a pledge of the full faith and credit of the authority, then those revenue bonds would be subject to the Revised Municipal Finance Act. The bill describes in detail other kinds of bonds and notes an authority could issue, and the conditions and purposes for doing so.

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.

BACKGROUND AND DISCUSSION:

This section discusses the differences and conflicts between House Bill 5731 and the existing Metropolitan Transportation Authorities Act

The regional transit authority that would be established under House Bill 5731 would appear to be a successor to the current Regional Transit Coordinating Council (RTCC), established under Sections 4a and 4b of the Metropolitan Transportation Authorities Act (1967 PA 204). However, there appear to be conflicts between House Bill 5731 and the

provisions of current law, and the bill package does not include bills to amend or repeal Sections 4a or 4b of the Metropolitan Transportation Authorities Act. It is not clear how the apparent conflict between the two acts would be resolved. Specifically:

** Under Section 8 of House Bill 5731, within 90 days of the effective date of the new act, the regional transit authority would become the "designated recipient" for the purpose of receiving federal and state mass transportation funding.

However, under the Metropolitan Transportation Authorities Act, the RTCC is currently the designated recipient of state and federal operating and capital assistance for the region. The RTCC then redistributes those funds to subrecipients, primarily the Detroit Department of Transportation (DDOT), the Suburban Mobility Authority for Regional Transportation (SMART), and the Detroit Transportation Corporation (DTC).

** Under current law, the RTCC may designate a city with a population over 750,000 (Detroit), SMART, and other transit systems not included in cities over 750,000, as subrecipients of federal and state transportation funds. Similar authorization is not included in the new act.

** Under current law, the RTCC has authority for planning and transit coordination functions. Specifically, 1967 PA 204 states that the RTCC "may adopt public transportation plans for its metropolitan area. The council shall coordinate service overlap, rates, routing, scheduling, and like functions between operators of public transportation." Section 7(2) of House Bill 5731 directs the new regional transit authority to "adopt public transit plans for [the] public transit region."

** The RTCC does not have the authority under current law to actually *operate* a transit system. The Metropolitan Transportation Act specifically states: "[The RTCC] shall not have 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."

Among other things, House Bill 5731 grants power to the new regional transit authority power to *operate* a transit system. The bill would essentially combine the planning and coordinating powers of the RTCC with the operating powers of current transportation systems.

** The proposed regional transit authority would differ from the RTCC with regard to form of governance. The RTCC has four voting members: the mayor of Detroit, the Wayne and Oakland county executives, and the head of the Macomb County Board of Commissioners. [The Macomb County Executive would become the fourth member of the RTCC under the county's new form of county organization.]

** Under provisions of 1967 PA 204, all actions of the RTCC must be authorized by unanimous votes. Under provisions of House Bill 5731, the board of the regional transit authority would act by a simple majority vote of all serving board members, although the bill allows the board to establish, in bylaws, a supermajority, not to exceed 4/5ths of serving members, for certain board actions.

** The current RTCC meets infrequently, sometimes going a year or more between meetings. Section 6 of House Bill 5731 would require the regional transit authority board to meet not less than quarterly.

** While Section 4 provides a method for including adjacent counties into the regional transit authority after the initial creation, the bill does not appear to provide a method for withdrawing from the authority after entry.

** Section 10 of the bill would allow an authority to levy taxes within the public transit region as approved by the board (and with a public vote). Neither the RTCC nor SMART, both organized under the Metropolitan Transportation Act of 1967, have the authority to levy taxes; the "SMART millage" used to support SMART operations is actually levied by the Oakland County Public Transportation Authority, the Wayne County Transit Authority, and Macomb County.

FISCAL IMPACT:

The bill package does not appear to have a direct impact on state revenue or expense. The fiscal implications of the bill package with regard to local agencies would seem to depend on how the proposed new Regional Transit Authority would impact and interact with existing transit authorities and providers, such as the RTCC, SMART, and DDOT.

For additional background information on public transit in Southeast Michigan, see this House Fiscal Agency publication:

<http://www.house.mi.gov/hfa/PDFs/transportation%20DARTA%20update.pdf>

Legislative Analyst: J. Hunault
Chris Couch
Fiscal Analyst: William E. Hamilton

■ 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.