

Legislative Analysis



REGIONAL TRANSIT AUTHORITY

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House Bill 5731 (Substitute H-3)
Sponsor: Rep. Bert Johnson

House Bill 5732 (Substitute H-2)
Sponsor: Rep. Jon Switalski

House Bill 5733 without amendment
Sponsor: Rep. Marie Donigan
Committee: Intergovernmental and Regional Affairs

First Analysis (5-19-10)

BRIEF SUMMARY: The three bills would create a new regional transit authority in the Detroit metropolitan area, initially serving a public transit region comprising the counties of Wayne, Oakland, and Macomb, but open to riders in other counties whose officials followed a process described in the legislation.

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 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/PDFs/transportation%20DARTA%20update.pdf>

THE APPARENT PROBLEM:

Among the nation's 39 largest urban metropolitan areas, the Detroit Metro Area is the only metropolitan area that does not have a regional public transportation network, according to a spokesperson for the American Public Transportation Association.

The APTA points out that public transit--that is, traveling on buses, trains, subways, trolleys, and ferries--is used each weekday by 35 million Americans. In recent decades, public transportation ridership has increased faster than the U.S. population and the use of the nation's highways. More than 7,700 providers of public and community transportation offer Americans freedom, opportunity, and the choice to travel by means other than a car.

The public transit service options in the Detroit Metropolitan area include: the Regional Transit Coordinating Council (RTCC), which while set to expire in the summer of 2010 has recently authored the new "Comprehensive Regional Transit Service Plan" adopted

by the Southeast Michigan Council of Governments (SEMCOG) to recommend an enhanced public transit network; the Suburban Mobility Authority for Regional Transportation (SMART), which operates buses in the Metro Detroit counties of Wayne, Oakland, and Macomb; the Detroit Transportation Corporation (DTC), which operates the automated and elevated train that encircles a portion of downtown Detroit (called the People Mover) and is proposing a system for light rail transit; and the Detroit Department of Transportation (DDOT), which operates buses to provide service to an estimated 140,000 people each day (and which has a fare and ride agreement with SMART). While these transit options serve many citizens, they are only loosely coupled, when they are linked at all.

Federal funds for public mass transit are made available to regional urban centers whose officials demonstrate a willingness and ability to work cooperatively, first creating and then implementing regional transit plans, and then by developing reliable funding systems. Unable to demonstrate adequate regional cooperation, the communities in southeastern Michigan have failed to win very much needed federal funding for public transit projects.

To better ensure the creation of a revitalized public transit network that serves the citizens on Wayne, Macomb, and Oakland counties, legislation has been introduced to create a new Regional Transit Authority.

THE CONTENT OF THE BILLS:

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 is tie-barred to House Bills 5732 and 5733, so that it could not go into effect unless those bills were also enacted into law.

House Bill 5731 (H-3) 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 (H-2) 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.

The bill specifies that beginning on the effective date of the Regional Transit Authority Act and continuing for two years, federal and state formula grants to the Regional Transit Coordinating Council or to a successor designated recipient, would be distributed under the bylaws of the Regional Transit Coordinating Council in effect on April 1, 2010. During those two years, the Regional Transit Coordinating Council or a successor designated recipient could reduce funding levels for grant recipients in an amount not greater than five percent of the current funding level each year.

House Bill 5732 is tie-barred to House Bill 5731 and to a bill not yet introduced (request no. 06979 '10), so that it could not go into effect unless those bills were also enacted into law.

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 name of the new act--the Regional Transit Authority Act--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 authority would become effective upon the appointment of a majority of all members of the board.

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. 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 specifies that each board member, other than the governor's representative, would be appointed by the chief executive officer of the transit district that the member will represent. Further, the appointment of a board member from a qualified city must be ratified by a majority vote of the city council. 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.

The bill specifies that no board member shall serve on boards related to the authority, including but not limited to, all of the following: (1) Suburban Mobility Authority for Regional Transportation (SMART); (2) Detroit Department of Transportation (DDOT); (3) Southeast Michigan Council of Governments (SEMCOG); and (4) Detroit

Transportation Corporation (DTC). 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 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 (who is not the governor's representative) 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. Further, the board would be required to adopt bylaws within 90 days of the organizational meeting. 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. For purposes of this subsection, "certain action" would include, but would not be limited to, any budgetary, financial, taxation, or membership issues before the board.

The board would have to keep a written record of each meeting. 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. Within 90 days of the first meeting of the board, the board would develop and approve an administrative budget and identify funding for that budget. The board would adopt the 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 (including the requirement that construction, repair, remodeling, or demolition be conducted by employees), establish policies and procedures for hiring professional service contractors, utilize competitive bidding for all purchases and contracts, with certain exceptions, and assure that the policies and procedures follow applicable federal requirements.

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.

Funding Recommendations

The bill requires that no later than 180 days after the first meeting of the board, the board report to the legislature (in writing) its final recommendations including, but not limited

to, funding recommendations. The board would make its final recommendations from among the recommendations for funding, development, and operation of a regional transit system contained in the Comprehensive Regional Transit Service Plan adopted by the Regional Transportation Coordinating Council in 2008.

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 reviewed by the authority annually, and updated as necessary. 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 immediately upon its creation under Section 3, 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 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, 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. The bill requires that any funding appropriated to the authority from local units of government be returned to the local units, if the authority ceased to operate before the funding was used/

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.

Employee Protections

Section 12 specifies that if an authority entered into an agreement or arrangement for the whole or partial transfer of operational jurisdiction, management, control, ownership, or other interest in or relating to a public transit system owned or operated by a local government or a transit authority, then the employees that were necessary for the operation of the transit system would be transferred to and appointed as employees of the authority, subject to all rights and benefits.

These employees would be given seniority credits and sick leave, vacation, insurance, and pension credits in accord with the records or labor agreements from the acquired system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired system would continue to have rights, privileges, benefits, obligations, and status with respect to the established system. The authority would assume the obligations of any systems acquired by it with regard to wages, salaries,

hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for employees. The bill specifies that if the employees of an acquired system were not guaranteed sick leave, health and welfare, and pension or retirement pay based on seniority by the acquired system, then the political subdivision would not be required to provide those benefits retroactively.

Under the bill, no employee who was transferred to a position with the authority could be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefit that he or she enjoyed as an employee of the acquired system.

The bill also specifies that the authority, as of the transfer date, would immediately assume and be bound by any existing collective bargaining agreements, until a new collective bargaining agreement was effective. Employees whose employment was not transferred to the authority would be reassigned within the local government or transit authority under the terms of any applicable collective bargaining agreements. Further, a representative of the employees or a group of employees would be entitled to represent them after the transfer to the authority (if the employees concurred). The rights and benefits protected by this subsection could be altered by a future collective bargaining agreement or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the authority.

Under Section 12, transferred employees could not, by reason of the transfer, have their accrued local government pension benefits or credits diminished, and the bill explains in detail the manner in which the post-transfer service of employees would be credited by local government retirement systems. The bill specifies that for each employee transferred from a transit system, the transit system retirement plan would have to contribute, as applicable, to the trustees of the local government retirement system, an amount (determined by the local government system's actuary) sufficient to fund the accrued liability for all of that employee's retirement and other post employment benefits under the system on a current basis, as those liabilities were accrued up to the date of transfer.

For each employee who elected to remain a member in the local government retirement system or the transit system retirement system, the authority would be required, on a timely basis, to contribute to the trustees of the appropriate retirement system an amount determined by the retirement system's actuary to be sufficient to fund the liability for all of that employee's retirement and other post-employment benefits.

The section specifies that nothing in it would prohibit an authority from establishing a retirement system for employees hired after the creation of the authority, nor would anything prohibit employees from transferring to that retirement system, at their option.

Finally, the authority would be required to honor all existing employee protection agreements.

Section 13 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.

Privatization Cost Analysis

Section 14 of the bill requires that in the event of the authority proposing privatization, there would have to be a cost analysis. That cost analysis would have to include both of the following: a) all necessary monitoring and oversight of the private entity by the State of Michigan; and b) up-to-date cost estimates for using reputable companies that have a previous history or reputation for providing quality services and that will provide services covered by performance bonds.

The bill would prohibit the authority from proceeding with privatization of services unless it established cost savings of at least 10 percent of the cost of using employees of the authority to provide the services.

Repeal

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).

ARGUMENTS:

For:

Proponents of these bills argue that an effective regional public transit network is vital to economic growth in southeastern Michigan. They point out that public transportation is good for American workers and their companies, and that every \$1 billion of investment in the nation's transportation infrastructure supports 36,000 jobs--jobs in manufacturing, construction, finance, insurance and real estate, retail and wholesale trade, and services. Further, public transportation also moves people to and from their jobs. Businesses near public transportation have better employee reliability and less absenteeism and turnover. Finally, the 36,000 jobs supported and created by every \$1 billion of investment in public transportation result in roughly \$3.6 billion in business sales, and generate nearly \$500 million in federal, state, and local tax revenues, proponents say. They say that overall, every \$1 invested in public transportation generates \$4 in economic activity.

In particular, proponents note that regional public transportation increases real estate values and boosts development. For example, the city of Dallas had \$3 billion in transit-oriented development (sometimes called TOD projects) in 2005. By 2008, it was \$7 billion--associated with an additional \$78 billion in tax revenues. In Charlotte, North Carolina, there is \$1.8 billion in projected TOD investment, expected to provide an additional \$24.1 million annually in tax revenue.

For:

Those who support these bills and a revitalized regional transportation network in southeastern Michigan also note that public transportation reduces our country's dependence on expensive foreign oil, offering citizens an alternative to rising gas prices; and is a responsible environmental choice that when combined with land use development and operational efficiencies can reduce greenhouse gases by 24 percent,

making much smaller the nation's carbon footprint. How do these savings achieved via public transit affect travelers?

The Texas Transportation Institute studies traffic congestion in 439 urban areas of the United States; researchers there report that the average annual delay per traveler has climbed from 14 hours in 1982 to 36 hours in 2007. According to the TTI studies of small, medium, and large metropolitan areas, public transportation saves citizens millions of hours of delay and employers billions of dollars in congestion costs. Further, that increase in mobility is available to people of all ages, including school children and those who are poor and disabled.

Against:

A spokesperson for the City of Detroit raises four main objections to the legislation.

First, the legislation is poorly timed. Currently city officials have petitioned the Federal Transit Administration to fund a local light rail system on Woodward Avenue, from 8 Mile Road to Jefferson Avenue downtown. Recently, the city received a \$25 million federal grant for the first phase of the project (from Jefferson to Grand Boulevard). City officials are concerned that these bills would hurt their appeals for additional federal funding, since the new Regional Transit Authority proposed would, among other things, "become the designated recipient...for federal and state transportation operating and capital assistance grants." According to committee testimony, it takes at least a year for the federal government to approve a "designated recipient" to receive federal funds. Consequently, Detroit city officials fear their light rail project will be unacceptably delayed at least a year.

Second, the spokesman for the City of Detroit notes that there is no source of funding for the proposed Regional Transit Authority. The City of Detroit asks that the legislation not advance "until a dependable statewide or regional funding source has been identified and effectuated."

Third, the city notes that the governance structure prescribed by the legislation gives them pause for concern. In particular, the bill would allow the proposed Regional Transit Authority Board (comprising appointees by the governor, Detroit mayor with council consent, the Wayne and Oakland County executives, and the Macomb County board of commission chair) to adopt bylaws that would require a four-fifths vote of serving members, for certain action. The city spokesman notes that this super-majority rule contained in Section 6 of House Bill 5731 (H-3) stands in stark contrast to the current RTCC protocol which allows action only after a unanimous vote of the membership.

Fourth, the city of Detroit--a home rule city having a home rule charter--is concerned the legislation may infringe on home rule. The city spokesman has said: "Specifically, House Bill 5731 Section 9 calls for whole or partial transfer of operational jurisdiction, management, control, ownership or other interest in...a public transit system owned or operated by (Detroit)...notwithstanding any provisions to the contrary... set forth by law, ordinance or charter."

POSITIONS:

The Michigan Department of Transportation supports the bills. (5-18-10)

The Regional Transit Coordinating Council supports the bills. (2-23-10)

The Metropolitan Affairs Coalition supports the bills. (2-23-10)

The Detroit Zoological Society supports the bills. (2-23-10)

The Transportation Equity Network supports the bills. (2-23-10)

The Southeast Michigan Council of Governments (SEMCOG) supports the bills. (2-23-10)

Transportation Riders United supports the bill. (3-16-10)

The Michigan Department of Transportation supports the bills. (3-9-10)

Spokespersons for the following organizations testified about the positive impacts of regional transportation networks: The City of Birmingham City Planning Department; the American Public Transportation Association; and the City of Detroit. (3-9-10)

The AFL-CIO supports the bills. (5-18-10)

The Wayne County Executive Office supports the bills. (5-18-10)

AFSCME supports the bills as amended. (5-18-10)

The City of Detroit opposes the bills. (5-18-10)

The Oakland County Executive opposes the bills. (5-18-10)

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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.