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## BILL ANALYSIS



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Senate Bills 1150 and 1151 (as introduced 5-29-12)  
Sponsor: Senator Arlan Meekhof  
Committee: Government Operations

Date Completed: 6-6-12

**CONTENT**

**Senate Bill 1150 would amend Public Act 246 of 1921, which regulates carriers by water, to do the following:**

- Preempt local ordinances.
- Name the Act the "State Carriers by Water Uniform Regulation Act".

The bill also would repeal a section of an 1899 local act that authorizes a city council to regulate and license ferries.

**Senate Bill 1151 would amend Public Act 246 of 1921 to do the following:**

- Provide that a carrier providing service to a city, township, or village under an agreement with the local unit would be subject to the Act.
- Provide that the Act would apply notwithstanding a public act, local ordinance, resolution, or charter provision to the contrary.
- Authorize the Public Service Commission (PSC) to regulate the schedule, as well as the rates, fares, and charges, of a carrier by water.
- Require the PSC to establish a standardized form for a uniform carrier by water local franchise agreement.
- Allow a franchising entity (a city, village, or township) to require a person providing carrier by water service and using the public rights-of-way in that local unit to obtain a franchise.
- Allow local unit of government to impose only those requirements authorized under the Act.
- Specify provisions that a uniform franchise agreement would have to include.
- Provide that a uniform franchise agreement would be fully transferable to a carrier's successor.
- Provide that a uniform franchise agreement would be in effect for 10-years and could be renewed for additional 10-year periods.
- Provide that a franchise agreement existing on the bill's effective date could not be renewed or extended, but the carrier could continue to provide service under several options.
- Prohibit a franchising entity that authorized two or more carriers to provide service from enforcing a term or requirement of one agreement that was more burdensome than a term or requirement in another agreement.
- Require a carrier to calculate and pay an annual carrier by water fee to the franchising entity.
- Require a franchising entity to provide a carrier with open, nondiscriminatory access to the entity's public rights-of-way.
- Allow a franchising entity to impose a permit fee on a carrier only to the extent it imposed the same fee on all carriers.
- Provide for the confidentiality of trade secrets and commercial or financial information submitted to a franchising entity.
- Require a carrier to cooperate with the owner or operator of a bridge when operating near or under the

**bridge, and to cooperate with Federal and State law enforcement officials when operating near an international border.**

**-- Authorize the PSC to order remedies and penalties for violations of the Act.**

**In addition, until December 31, 2016, the bill would require the PSC to determine the amount of its appropriations attributable to performing duties under the Act, and impose an assessment against each carrier based on the proportion of its gross revenue to the gross revenue of all carriers in the State; and set a minimum assessment of \$50.**

The bills are described in detail below.

### **Senate Bill 1150**

#### Local Preemption

The bill specifies that, notwithstanding any contrary provision of a local act, charter, ordinance, or resolution, the provisions of Public Act 246 of 1921 would apply, and the contrary provision would not apply.

The bill states a legislative finding that the Act "addresses matters of statewide concern and is an exercise of legislative power consistent with the duty of the legislature to provide for the protection of the water resources of this state and to guard the people's interest in water resources as a matter of paramount public concern necessary for the health, safety, and general welfare of the people under section 52 of article IV of the state constitution of 1963". (That section declares that the conservation and development of the State's natural resources are of paramount public concern, and requires the Legislature to provide for the protection of the air, water, and other natural resources of the State.)

The bill also expresses the legislative intent that the Act obtain uniformity in the laws of the State relating to carriers by water.

#### Local Act Repeal

The bill would repeal Chapter 16 of Local Act 437 of 1899, which authorizes the council of a city to regulate and license ferries from the city or any place of landing in it to the

opposite shore, or from one part of the city to another; require the payment of a license fee; impose restrictions on the maintenance, management, and operation of the ferries; and provide for the punishment of violators.

The bill expresses a legislative intent that this repeal "is included in this general act to assure compliance with the constitutional mandate under section 29 of article IV of the state constitution of 1963 prohibiting the legislature from passing a local or special act where a general act can be made applicable".

### **Senate Bill 1151**

#### Tariff; Local Agreement

The bill would delete language that required all people engaged in the transportation of freight, passengers, or express by water wholly within the State to file with the PSC its schedule of rates, fares, and charges, within 30 days after the Act took effect. The bill, instead, would require a carrier by water to file with the PSC a tariff detailing rates, fares, charges, and schedules for transporting passengers, freight, express, or other property.

("Carrier by water" would mean a person engaged in, or indicating to the public that the person is engaged in, the business of transporting passengers, freight, express, or other property by water wholly within this State, including a ferry operator.)

The Act states that the rates or operation of any ferry company operating within any municipality under an agreement with the municipality is not affected the Act. The bill would delete this provision.

Beginning on the bill's effective date, a carrier providing a service to a city, township, or village under an agreement with that local unit would be subject to the Act, including the requirements regarding fares and the time and manner of operation. A tariff in effect under the Act, including one established by order of the PSC, would take precedence over any inconsistent or conflicting local law, ordinance, resolution, rule, regulation, policy, or practice.

The Act authorizes the PSC to suspend a tariff for up to 30 days and requires the PSC to schedule a hearing for a date not more

than 20 days after the date of the suspension. Under the bill, the PSC could suspend a tariff for up to 90 days and would have to schedule a hearing for a date not more than 45 days after the date of the suspension.

The bill would refer to a schedule, in addition to a rate, fare, or charge, in provisions that deal with complaints to the PSC, regulation by the PSC, and investigations by the PSC.

The bill states that the provisions of the Act would apply notwithstanding a provision of a public act or local ordinance, resolution, or charter provision to the contrary.

The bill expresses a legislative intent that the provisions of the Act "constitute an exercise of general control by the legislature, provide uniformity, address matters of statewide concern, are necessary to provide for the protection of the waters of the state, are comprehensive and general in nature, and apply to the entire state".

#### Transporting Near a Bridge or Border

The bill would require a carrier, when transporting passengers, freight, express, or other property near or under a bridge, to actively cooperate with the owner or operator of the bridge on matters relating to the safety and security of the bridge. When transporting passengers, freight, express, or other property near an international border, a carrier would have to cooperate actively with State and Federal law enforcement officials relating to homeland security, customs, and immigration.

#### Uniform Franchise Agreement

Within 30 days after the bill's effective date, the PSC would have to issue an order establishing a standardized form for the uniform carrier by water local franchise agreement, to be used by each franchising entity in the State. ("Franchising entity" would mean a local unit of government within which a carrier offers carrier by water service through a franchise. "Local unit of government" would mean a city, village, or township.)

A local unit of government could require a person providing carrier by water service and using the public rights-of-way within the

local unit to obtain a franchise. If it did so, the local unit could only impose requirements authorized under the Act. If a local unit required a franchise, a person could not provide carrier by water service within that local unit without first obtaining a uniform carrier by water local franchise.

The uniform franchise agreement would have to contain all of the provisions set forth in the bill, including the following:

- The name of the person seeking to provide carrier by water service.
- A description of the geographic area to be served.
- A requirement that the person pay the carrier by water franchise fee.
- A requirement that the person agree to comply with all valid and enforceable Federal and State statutes and regulations.
- Requirements that the person cooperate with the owner or operator of a bridge, or with State and Federal law enforcement authorities, when operating near or under a bridge or near an international border.
- A grant of authority by the franchising entity to the person for the provision of carrier by water service in the geographic area to be served.
- A grant of authority by the franchising entity to the person to use and occupy rights-of-way of the entity in the provision of carrier by water service, subject to the laws of the State and the general police powers of the franchising entity not specifically applicable to or limited to carriers by water.
- The penalties provided for in the Act.

A franchising entity would have to notify a carrier as to whether a submitted franchise agreement was complete within 15 business days after the agreement was filed. If the agreement were not complete, the entity would have to notify the carrier of the reasons. A franchising entity would have 30 days after a complete agreement was submitted to approve the agreement. If the franchising entity did not notify the carrier about the completeness of the agreement or approve the agreement within the specified time periods, the agreement would have to be considered complete and approved.

A uniform franchise agreement issued by a franchising entity or an existing franchise of

an incumbent carrier would be fully transferable to any successor in interest to the carrier to which the franchise was initially granted. A notice of transfer would have to be filed with the franchising entity within 15 days after the transfer was completed.

A uniform franchise agreement would be for a period of 10 years, and the carrier could apply for 10-year renewals. A carrier could terminate a uniform franchise agreement or modify the geographic area served by submitting notice to the franchising entity.

As a condition to obtaining or holding a franchise, a franchising entity could not require a carrier to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirements or regulation other than those allowed under these provisions. For this purpose, a franchise requirement or regulation would include any of the following:

- A provision regulating rates, fares, or other charges of a carrier.
- The schedule of a carrier.
- The time and manner of operation of a carrier.
- The keeping and management of vessels of the carrier.
- Imposition or satisfaction of any build-out requirements.
- Requiring the deployment of any facilities or equipment.
- A requirement or regulation within the jurisdiction of the PSC under the Act.

As of the bill's effective date, no existing franchise agreement with a franchising entity could be renewed or extended upon the expiration date of the agreement. Any provisions of an existing agreement that were inconsistent with or in addition to the provisions of a uniform carrier by water local franchise agreement would be unenforceable by the franchising entity. At its option, a carrier could continue to provide carrier by water service in the local unit of government by electing to do one of the following:

- Terminate the existing agreement before it expired and enter into a new franchise under a uniform franchise agreement.
- Amend the existing agreement to include only those provisions required under a uniform franchise and continue under the existing agreement.

- Continue to operate under the terms of an expired franchise agreement until a uniform franchise agreement took effect.

Under the third option, a carrier would have 120 days after the bill's effective date to file for a uniform carrier by water local franchise agreement.

If a franchising entity authorized two or more carriers to provide service through an existing franchise or a uniform franchise agreement, the franchising entity could not enforce a term, condition, or requirement of a franchise agreement that was more burdensome than the terms, conditions, or requirements contained in another franchise agreement.

#### Franchise Fee

A carrier would have to calculate and pay an annual carrier by water franchise fee to the franchising entity as provided in the bill. The fee would have to be paid quarterly within 45 days after the close of each quarter. Each payment would have to include the basis for the calculation of the fee. The franchising entity could not demand any additional fees or charges from a carrier, or demand the use of any calculation method other than allowed by the Act.

If a carrier provided service on a route to two franchising entities, the fee calculated, attributable, and payable to each entity for service on that route would have to be reduced by 50%. A carrier could identify and collect as a separate line item from each user of its service an amount equal to the percentage established under the bill applied against the amount the carrier charged for use of its service.

If there were an existing franchise agreement, the franchise fee would have to be an amount equal to the percentage of gross revenue paid to the franchising entity by the carrier providing service within the local unit of government with the largest number of passengers in the prior calendar year.

After an existing franchise agreement expired or if there were no existing agreement, the fee would have to be an amount equal to the percentage of gross revenue of the carrier not to exceed 1% and

applicable to all carriers. If a carrier provided service on a route to two franchising entities, the combined amount attributable and paid to each entity could not exceed 1% of the gross revenue of the carrier generated by that route.

Not more than once every 24 months, a franchising entity could perform reasonable audits of a carrier's calculation of the fees paid to the entity for the preceding 24-month period. The carrier would have to make all records reasonably necessary for the audits available at the location where the records were kept in the ordinary course of business. The franchising entity and the carrier each would be responsible for its respective costs of an audit. Within 30 days after the franchising entity submitted an invoice, the carrier would have to pay any additional amount due as verified by the franchising entity. Any claims by a franchising entity that fees had not been paid as required, and any claims for refunds or other corrections to the remittance of the carrier, would have to be made within three years from the date compensation was remitted to the franchising entity.

#### Other Franchise-Related Provisions

A franchising entity would have to provide a carrier with open, comparable, nondiscriminatory, and competitively neutral access to the public rights-of-way of the entity. A carrier could not be required to comply with, and a franchising entity could not impose or enforce, any mandatory service, build-out or deployment provisions, schedules, or other requirements, unless specifically authorized under the Act.

A franchising entity could impose a permit fee on a carrier only to the extent it imposed the same fee on all other carriers and the fee did not exceed the actual, direct costs incurred by the entity for issuing the relevant permit. A franchising entity could not impose this fee if the carrier already had paid a permit fee of any kind in connection with the same activity that otherwise would be covered by this permit fee, or were otherwise authorized by law or contract to place the facilities used by the carrier in the public rights-of-way or for general revenue purposes.

Except under the terms of a mandatory protective order, trade secrets and

commercial or financial information submitted under the Act to a franchising entity or commission would be exempt from disclosure under the Freedom of Information Act. If information were disclosed under a mandatory protective order, the franchising entity or commission could use the information for the purpose for which it was required, but the information would remain confidential. There would be a rebuttable presumption that cost studies, customer usage data, marketing studies and plans, and contracts would be trade secrets or commercial or financial information. The burden of removing the presumption would be with the party seeking to have the information disclosed.

The Act would not prohibit a local unit of government and a carrier from entering into a voluntary franchise agreement that included terms and conditions different from those required under the Act, including a reduction in the franchise fee in return for the carrier's making services, equipment, capabilities, or other valuable consideration. This provision would not apply unless it were technically feasible and commercially practicable for each carrier servicing the franchising entity to comply with similar terms and conditions in the franchise agreement and the agreement were offered to each carrier.

#### Violations

After notice and hearing, if the PSC found that a person had violated the Act, the Commission would have to order remedies and penalties to protect and make whole people who had suffered damages as a result of the violation, including the following:

- Ordering the person to pay a fine of at least \$500 but not more than \$1,000 for the first violation; or not less than \$1,000 or more than \$5,000 for a second or subsequent violation.
- Revoking a uniform carrier by water local franchise, if the person had received one.
- Issuing a cease and desist order.

The PSC could not impose a fine for a violation if a carrier had otherwise fully complied with the Act and showed that the violation was an unintentional and bona fide

error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. The carrier would bear the burden of proving that a violation was an unintentional and bona fide error.

If the PSC found that a party's complaint or defense was frivolous, the Commission would have to award the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and the party's attorney. All parties of interest would have the same rights to appeal and review an order or finding of the PSC.

#### Assessment against Carrier

Within 30 days after an appropriation to the PSC, it would have to ascertain the amount of the appropriation attributable to the actual costs to the Commission in exercising its duties under the Act. This amount would have to be assessed against each carrier doing business in the State. Each carrier would have to pay a portion of the total assessment in the same proportion that the carrier's gross revenue for the prior calendar year derived from operations in the State bore to the total gross revenue of all carriers derived from doing business in the State during the same year. Each carrier would have to pay a minimum assessment of \$50.

These provisions would not apply after December 31, 2016.

"Gross revenue" would mean all consideration of any kind or nature, including cash, credits, property, and in-kind contributions received by a carrier from users for the provision of carrier by water service within the geographic area of a franchising entity. The bill indicates what gross revenue would and would not include.

#### Limit on Authority

The authority of a franchising entity and the PSC to administer the Act would be limited to the powers and duties explicitly provided for under the Act. Neither a franchising entity nor the PSC would have the authority to regulate or control a carrier under the Act as a public utility.

Proposed MCL 460.209 & 460.211 (S.B. 1150)  
MCL 460.201 et al. (S.B. 1151)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 1150**

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

### **Senate Bill 1151**

The bill would have a likely neutral fiscal impact on State government, and an indeterminate fiscal impact on local units of government. Under the bill, the Public Service Commission would likely incur some new costs associated with promulgating rules and conducting investigations as specified in the bill. These costs would be paid for by carriers regulated under the Act so the net fiscal impact on the PSC would likely be neutral. Additionally, the bill specifies that those found in violation of the Act could be ordered to pay a \$500 to \$1,000 administrative fine for the first violation, and \$1,000 to \$5,000 for subsequent violations. The bill does not specify where the fine revenue would be deposited, so it would likely lapse to the Motor Carrier Fees Fund to support PSC operations as they relate to carriers by water.

The bill would have an indeterminate fiscal impact on local governments that enter into franchise agreements with carriers by water. Expiring franchise agreements could not be renewed unless they complied with the provisions in the bill and were standard to all carriers with which a given local unit entered into franchise agreements. The bill specifies the type and amount of fees paid by carriers to local units, and to the extent that these provisions would increase or decrease the amounts paid by carriers to local units according to their respective franchise agreements, revenue to local units could increase or decrease.

Fiscal Analyst: Josh Sefton

#### S1112\§1150sa.

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.