

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

DEC 01 1988

House Bill 5571 (Substitute S-2 as passed)

Sponsor: Representative Curtis Hertel

House Committee: Transportation

Senate Committee: State Affairs, Tourism, and Transportation

Date Completed: 10-19-88

RATIONALE

The Metropolitan Transportation Authorities Act of 1967 established the Southeastern Michigan Transportation Authority (SEMTA) and other regional transportation authorities in major metropolitan areas of the State. SEMTA includes the Counties of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne, and is governed by a 15-member board representing counties and cities within the authority. Almost since its creation, and certainly within the past 10 years, SEMTA has been plagued with controversy concerning its effectiveness. Some have suggested that the authority was doomed from the start because of its lack of a local permanent tax base to assure adequate funding to the system. SEMTA's critics also allege mismanagement of the authority's operations and polarization of its board, and point to massive cost overruns and delays in the construction of the People Mover (which was subsequently taken over by the City of Detroit), SEMTA's failure to effect a merger with the Detroit Department of Transportation, SEMTA's inability to raise local revenue, and threats by several SEMTA members to withdraw from the system. At the same time, Federal transportation funding has been dramatically reduced. For these reasons, many people believe that restructuring public transportation services in southeastern Michigan is essential.

CONTENT

The bill would amend the Metropolitan Transportation Authorities Act to reorganize the Southeastern Michigan Transportation Authority by doing the following:

- Requiring Wayne, Oakland, and Macomb Counties, and Detroit to incorporate the "Regional Transit Coordinating Council" (RTCC). The RTCC also would include a rotating representative of Livingston, Monroe, St. Clair, and Washtenaw Counties, and would act by a four-fifths vote.
- Providing that the RTCC could establish public transportation policy but would not have authority over operating personnel or assets.
- Allowing SEMTA to dissolve and incorporate as a successor authority, which would assume the assets and liabilities of SEMTA.
- Requiring SEMTA to convey to Detroit the assets and liabilities used by or attributable to the city in its transportation activities. The RTCC would be the governing body of SEMTA until the transfer of assets.
- Allowing a county or local authority to withdraw from the authority within 12 months after the bill took effect.
- Providing for the continuation of collective bargaining agreements with an existing authority.

- Providing that the authority's board would be composed of the chief executive officers of Wayne, Oakland, and Macomb Counties, and a rotating representative of Livingston, Monroe, St. Clair, and Washtenaw Counties. The board would act by a three-fourths vote.
- Providing for a senior citizen and handicapper committee to advise the RTCC.

Council

The bill would require the chief executive officer of a city with a population of 750,000 or more within a "metropolitan area", each county in which the city was located, and all other counties immediately contiguous to the city to form a corporation, to be known as the Regional Transit Coordinating Council, in order to establish and direct public transportation policy within a metropolitan area. The council would consist of the mayor of Detroit, the Wayne and Oakland County executives, and the chair of the Macomb County Board of Commissioners. Livingston, Monroe, St. Clair, and Washtenaw Counties would be represented on the RTCC by a person from one of the counties. The counties would choose their member in a manner determined by them. The representative member would have to rotate between the counties.

The council could adopt public transportation plans for its metropolitan area and would have to coordinate service overlap, rates, routing, scheduling, and like functions between operators of public transportation. The council would 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. The council would have to act by a four-fifths vote of its membership and meet regularly but at least quarterly. A council member could not designate another representative to serve in his or her place on the council. Meetings of the council would be subject to the Open Meetings Act.

The bill provides for the incorporation of a council or an authority to be accomplished by adoption of articles of incorporation, and specifies that the validity of the incorporation would have to be conclusively presumed unless questioned in court within 60 days after publication of the articles. The articles would have to state the name of the council or authority, its purposes, the constituent units of and the metropolitan area comprising the council or authority, the person responsible for publishing and filing the articles, and the method of amending the articles. The articles of incorporation also would have to provide

H.B. 5571 (S-2) (10-19-88)

for the conduct of the council's affairs, including the appointment of a general secretary to the council.

Withdrawal from Authority

If a county or an authority located in a county whose chief executive officer was not an RTCC member, or a local authority that had a service area within the service area of the authority coordinated by the council, elected to withdraw from the authority or incorporated authority within 12 months after the bill's effective date, the authority would have to convey to the county or authority all assets or liabilities used by or attributable to that county or authority. The Department of Transportation would have to reduce the level of State funding to the authority or incorporated authority by the amount attributable to the withdrawing county or authority and send those funds directly to that county or authority.

If a county, whose chief executive officer was a member of the council, withdrew from SEMTA, the county could not contract for public transportation services with the authority and would not be permitted to retain any assets of the authority. Further, the county would lose its seat on the council.

Collective Bargaining

A public authority created or incorporated under the Act would have the right to bargain collectively and enter into agreements with labor organizations. An authority would be bound by any existing collective bargaining agreement applicable to that system until the agreement expired and, except as permitted by an existing agreement, would have to retain the employees covered by that agreement. The acquisition or incorporation of a public transportation system by the public authority could not adversely affect any existing rights and obligations contained in the existing agreement. Members and beneficiaries of any pension or retirement system established by the existing system would continue to have the same rights, privileges, benefits, obligations, and status under the new authority.

If an existing collective bargaining agreement were expiring at the time a public transportation system was acquired or incorporated, the acquisition or incorporation would not affect the obligation of the parties to bargain collectively under the public employment relations Act. Employees who quit the acquired system to enter military service would have the same rights regarding the system established by the public authority as they would have had under the acquired authority under Public Act 263 of 1951 (which provides for the rights of public employees who enter the armed forces).

Operating and Capital Assistance Grants

The RTCC's articles of incorporation would have to provide for the allocation between the city and any authority representing the counties of any grants applied for by the council. The council would be considered an authority under the Act for the sole purpose of receiving transportation operating assistance grants. The council would be a "designated recipient" for the purposes of the Federal Urban Mass Transportation Act to apply for Federal and State transportation operating and capital assistance grants. The council could designate the City of Detroit and the SEMTA system each, however, as a subrecipient of Federal and State transportation funds. To the extent required by the Federal Act, the council, the city, and the authority would have to execute a supplemental agreement conferring on the designated subrecipients the right to

receive and dispense grant funds and containing other provisions required by Federal law and regulation. The grant application would have to designate the distribution of all capital and operating funds that would be paid directly to Detroit and SEMTA. If the recipient were the council, the general secretary would have to remit to Detroit and SEMTA their designated distribution as soon as possible and not more than 10 business days after the general secretary received the funds.

Before any State or Federal funds were distributed to any of the eligible authorities or eligible governmental agencies coordinated by the RTCC, a financial audit of the transit operations for the fiscal year immediately preceding the most recently completed fiscal year would have to be given to the Transportation Department. Each audit would have to be in accordance with the Uniform Budgeting and Accounting Act and generally accepted accounting standards, and would have to satisfy Federal grant compliance audit requirements.

Reorganization of SEMTA

As soon as practicable after the bill's effective date, the board of SEMTA or a successor authority would be required to allocate and convey to Detroit all assets and liabilities used by or attributable to the city in its transportation activities located within the city's service area and not pertaining to the transportation activities of any other entity. Before any conveyance could be completed, however, the board would be required to authorize a comprehensive audit of all assets and liabilities. Copies of the audit would have to be given to the Michigan Department of Transportation and the Auditor General. Assets and liabilities not used by or attributable to the city would remain the property of SEMTA.

If SEMTA elected to incorporate and formed an authority as provided in the bill, SEMTA would be dissolved, effective when the successor authority became operative, and all of its assets and liabilities would be assumed by the successor. A constituent unit would not be responsible or liable for any of the obligations of SEMTA or of any authority formed under the Act. Notwithstanding any other provision of the Act, the RTCC would be the governing body of SEMTA until the transfer of assets to Detroit was accomplished.

Under the Act, SEMTA's governing board consists of fifteen members appointed on the basis of population according to the latest Federal census, with certain exceptions. The bill would delete current provisions regulating the appointment of board members, and would require that the board be composed of the chief executive officer of each county in which a city having a population of 750,000 or more was located within the area served by SEMTA and all other counties immediately contiguous to the city (Wayne, Oakland and Macomb Counties), or their designees. Livingston, Monroe, St. Clair, and Washtenaw Counties would be represented on the board by a person from one of the counties; the representative would rotate between the counties. By a three-fourths vote, the board would have to adopt bylaws and rules of procedure for its meetings, which would be subject to the Open Meetings Act.

The bill would require the board to obtain an annual audit according to the Uniform Budgeting and Accounting Act. The audit also would have to conform to generally accepted government auditing standards as promulgated by the U.S. General Accounting Office, and satisfy Federal grant compliance audit requirements. A copy of the annual audit would have to be filed with the State Treasurer and the

Michigan Department of Transportation. The board also would be required to prepare budgets and appropriations acts in accordance with the Uniform Budgeting and Accounting Act. If it were ending a fiscal year in a deficit condition, the board would be required to file a financial plan to correct the deficit condition in the manner provided in the State Revenue Sharing Act. A copy of the financial plan also would have to be filed with the Michigan Department of Transportation.

Other Provisions

If an emergency financial manager had been appointed under the Local Government Fiscal Responsibility Act with respect to an authority established under the Metropolitan Transportation Authorities Act, the emergency financial manager could exercise the authority and responsibilities provided in the bill to the extent allowed under the Fiscal Responsibility Act.

The bill would require the establishment of an advisory committee composed of riders who are senior citizens or handicappers and who live within the SEMTA service area. The committee would have to report its concerns to the council on a regularly scheduled basis.

The bill would exempt authorities from the Motor Bus Transportation Act in the exercise of their power within their geographical boundaries.

Finally, the bill would delete sections that pertain to activities of SEMTA in the first 18 months of its operation (MCL 124.408), and to a use tax imposed until 1983 (MCL 124.416a).

MCL 124.402 et al.

SENATE COMMITTEE ACTION

The Senate committee adopted a substitute that would require the incorporation of the proposed council, rather than simply establishing the council; add a member to the council and the board who would represent Livingston, Monroe, St. Clair, and Washtenaw Counties (the out-counties); provide for the council to act by a four-fifths vote, and the board by a three-fourths vote, rather than unanimously; provide for the council to control SEMTA until the transfer of assets to Detroit; and permit the out-counties to withdraw from the authority.

(The Senate adopted the substitute, as well as amendments that would require the continuation of collective bargaining agreements with SEMTA, and permit local authorities to withdraw from the authority.)

FISCAL IMPACT

The bill would have no fiscal impact on State government. The impact that the reorganization would have on local units of government is not determinable.

ARGUMENTS

Supporting Argument

In order to combat SEMTA's alleged mismanagement and poor operating procedures, the bill would separate the authority's policy-making functions from its operations. While the Regional Transit Coordinating Council would be responsible for establishing public transportation policy and plans, it would have no authority over operating personnel and could not own operating assets. Because council members would be elected officials, who could not designate representatives to serve in their place on the

council, the members would be accountable to their constituents and could effectively address transit issues. At the same time, paring down the authority's board from 15 to four members also would increase accountability and reduce the opportunity for confusion and inefficiency.

Supporting Argument

Currently, Livingston, Monroe, St. Clair, and Washtenaw Counties have input on how transit issues are addressed, and they should not be disenfranchised. Including a representative of the out-counties on the RTCC and the board would assure them a continued voice in both the policy-making and operating functions of the authority. Without board and council representation, the out-counties would have no way to protect their interests in receiving transportation funding, technical assistance (with grant-writing or training, for example), service agreements, and purchase arrangements (under which costs are lower because SEMTA can buy such things as fuel and tires at a discount). As a result, without representation the counties could experience higher costs and deteriorated service. While out-county representation on the council and board would ensure that the "Big Four" (Wayne, Oakland, and Macomb Counties, and Detroit) remained accountable to all of the counties in the authority, the Big Four obviously would command the majority of the votes in both bodies.

Response: Representation on the council and board, or lack of representation, would neither protect nor jeopardize the out-counties' level of funding. Under the law that provides for transportation funding (Public Act 51 of 1951), a minimum level of funding is guaranteed to an entity that was a recipient of transportation funds in the previous fiscal year. Because the recipient in this case is SEMTA itself, not the counties, it is the authority, not the counties, that is entitled to transportation funding. This would not change under the bill.

Further, board and council representation is not necessary to protect the interests of the out-counties. In a letter of June 3, 1988, the leaders of the Big Four offered them commitments that SEMTA would continue to provide technical advice and administrative assistance, use of rolling stock and other physical assets, and funding levels.

Supporting Argument

The proposed advisory committee would give senior citizens and handicappers an opportunity to be heard when transportation decisions were being made. These people are highly dependent upon public transportation for their mobility, and have long been denied adequate service. The committee could attempt to ensure that their concerns, such as the repair of lifts, were addressed.

Opposing Argument

It would be inappropriate to include a representative of the out-counties on the RTCC or the board. Just as local policy and operations decisions are made solely by transportation officials in those counties, the suburban Detroit counties should have the opportunity to make transit decisions without the input or interference of the outlying counties. In fact, once its budget is adopted, most matters taken up by SEMTA's board pertain to strictly practical matters, such as whether to add a particular line, that do not concern the out-counties. If they did not want to remain in the authority and maintain the current relationship, the out-counties could withdraw and establish an independent authority.

Response: Forming one or more independent authorities would be highly impractical for the out-counties. Not only would this alternative exacerbate the problems they could face if they remained in the authority without representation, such as reduced technical assistance, it also would force them to pay operating costs that one county has estimated could total \$100,000 annually. Any reorganization of public transportation in southeastern Michigan should work to cut costs and increase efficiency, not to raise costs and diminish services.

Opposing Argument

Under language added in the Senate, an authority would be bound by collective bargaining agreements entered into by its predecessor and would have to retain employees hired under those agreements. This would erode the independence of the new authority and could reduce its ability to operate efficiently.

Response: The proposed language would parallel provisions included in Public Act 196 of 1986, which created the Public Transportation Authority Act.

Opposing Argument

Allowing local authorities to withdraw from the incorporated authority would be ill advised. This could lead to a number of small, uncoordinated authorities operating within the metropolitan area of the incorporated authority.

Legislative Analyst: S. Margules

Fiscal Analyst: B. Bowerman

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.