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Senate Bill 695 (as passed by the Senate)
Senate Bill 696 (Substitute S-1 as passed by the Senate)
Senate Bill 697 (as passed by the Senate)
Sponsor: Senator Randy Richardville (S.B. 695)
Senator Virgil Smith (S.B. 696)
Senator Tom Casperson (S.B. 697)
Committee: Transportation

Date Completed: 8-29-14

RATIONALE

The Nonprofit Street Railway Act regulates the formation of street railway companies and authorizes the construction, use, and ownership of street railway systems in Michigan. Recently, there has been discussion pertaining to the development of a regional transit system in the Detroit metropolitan area. As a result, public and private investors have opted to construct a streetcar system in Detroit as a foundation for further transportation development within the city and the region.

Several issues have been raised in regard to the project's legal formation, its tax and other liabilities, and its location in Detroit. Namely, concerns have been raised about the liability of the project for transportation legacy costs associated with, and construction and improvement within, the City of Detroit. Evidently, there also is interest in transferring the assets of the project from the entity currently responsible for its planning and construction to an entity tasked with managing transportation infrastructure and development for the southeastern Michigan region. In addition, the project's plans apparently involve tax exemptions for the property and income of the new project. To address all of these concerns, it has been suggested that the Act be amended to accommodate the new project, and its location within Detroit.

CONTENT

Senate Bill 695 would amend the Nonprofit Street Railway Act to include in the definition of "street railway" a nonprofit corporation formed by a street railway, or by one or more members of the board of directors of a street railway, "for the purposes of assisting the street railway in acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, or maintaining a street railway system or for the purposes of financing a street railway system".

Senate Bill 696 (S-1) would amend the Nonprofit Street Railway Act to do the following:

- Exempt the property, income, and operations of a street railway from State and local taxation.**
- Allow an operating license agreement (for the operation of a street railway system) to require a street railway to pay direct administrative costs incurred by a road authority for administering the agreement.**
- Prohibit an operating license agreement from requiring that a street railway assume responsibility for legacy costs of a public transportation provider.**

- **Prohibit a road authority from requiring a street railway, as a condition of obtaining a licensing agreement, to obtain another license or franchise, assess a fee or charge, or impose any other licensing, regulatory, or franchise requirements.**
- **Require a street railway that constructed, expanded, or modified a street railway system in a qualified city to protect and keep in place the facilities of an affected public utility in a public highway, street, or right-of-way unless sound utility practice required modification or relocation of the facilities.**

Senate Bill 697 would amend the General Property Tax Act to provide that the Act would not apply to real or personal property owned by a nonprofit street railway.

Senate Bill 697 is tie-barred to Senate Bill 696. A more detailed description of Senate Bills 695 and 696 (S-1) follows.

Senate Bill 695

The Nonprofit Street Railway Act provides for the formation of nonprofit street railway companies, defines their powers, and provides the statutory framework for local development of street railway systems.

The Act defines "street railway" as "a nonprofit corporation organized under this act for the purpose of operating a street railway system other than a railroad train for transporting persons or property". The bill would amend this definition to include a nonprofit corporation formed by a street railway, or by one or more members of the board of directors of a street railway, "for the purposes of assisting the street railway in acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, or maintaining a street railway system or for the purposes of financing a street railway system".

Senate Bill 696 (S-1)

The Act provides that a street railway may acquire, own, complete, operate, improve, and maintain a street railway system in and upon streets and highways operated by a road authority with the approval of the road authority. This approval must come in the form of an operating license agreement, which includes the terms and conditions for operating the street railway system. The Act sets forth procedures and requirements for a street railway to enter into an operating licensing agreement with a road authority. (A "road authority" is a governmental agency with jurisdiction over public streets and highways.)

The bill would allow an operating license agreement to require the street railway to pay direct administration costs incurred by the road authority in administering the operating agreement. The bill would prohibit an agreement from requiring a street railway to acquire, accept responsibility for, or obligate itself to assume liability for or pay for any legacy costs of a "public transportation provider". The bill would define that term as it is defined in the Regional Transit Authority Act: "a public or private entity that provides public transportation services and includes a contractor providing services to a public transportation provider".

The bill also would prohibit a road authority from requiring, as a condition to obtaining or holding an operating license agreement, a street railway to obtain any other license or franchise, assess any other fee or charge, or impose any other licensing, regulatory, or franchise requirement, including a provision regulating schedules or fares, unless expressly authorized by the Nonprofit Street Railway Act.

In addition, the Act requires a street railway to pay the costs of the relocation and/or modification of a public utility facility if the street railway requests the modification or relocation, or if the public utility determines, in response to construction or expansion of a street railway system, that the relocation or modification is needed. This requirement applies unless the public utility and the street railway agree otherwise. Under the bill, this requirement would apply to construction, expansion, or modification outside of a qualified city.

("Qualified city" would mean a city that has incorporated an authority under the Municipal Lighting Authority Act., i.e., Detroit. "Public utility" would mean "a provider of communications, data, cable television, electricity, heat, natural or manufactured gas, steam, sewage, video, water, or other similar services". That term also would include a telecommunication provider and a video service provider.)

The bill would require a street railway that constructed, expanded, or modified a street railway system in a qualified city to protect and keep in place the facilities of an affected public utility in a public highway, street, or right-of-way unless sound utility practice required modification or relocation of the facilities. If modification or relocation of the facilities were required, the street railway would have to pay the cost of the modification or relocation, unless the street railway and public utility agreed to an alternative cost allocation, or modification or relocation of the facilities was required because the facilities were in an unauthorized location in the public highway, street, or right-of-way. (If the facilities were located anywhere in a public highway, street, or right-of-way, there would be a rebuttable presumption that they were at an authorized location.)

Notwithstanding those provisions, a qualified city and street railway could agree that the street railway would pay the cost of modifying or relocating a public utility's facilities in the qualified city if the modification or relocation were required by the modification of a street railway system.

In addition to other remedies that might exist at law, a public utility or a street railway could bring an action in circuit court to enforce these provisions.

The bill also specifies that the property of a street railway and its income and operations would be exempt from all taxation by this State or any of its political subdivisions.

Currently, a street railway may transfer a street railway system to a public entity operating a public transportation system if the transfer is authorized by a law enacted after January 12, 2009 (the effective date of amendments allowing a local unit in which a street railway is located to establish a transit operation finance zone). Under the bill, such a transfer could be made with the consent of the public entity.

MCL 472.7 (S.B. 695)
472.13 & 472.15 (S.B. 696)
Proposed 211.7tt (S.B. 697)

BACKGROUND

An association of private sector and philanthropic entities, called M-1 RAIL, formed in 2007 to develop a fixed rail system in downtown Detroit.¹ After conducting studies, M-1 RAIL determined that it would develop a three-mile streetcar system along M-1 Highway (Woodward Avenue, in Detroit). Within two years, the idea for a streetcar system was amended to a 9.3-mile-long light rail system, and the Federal government awarded the project a \$25.0 million Transportation Investment Generating Economic Recovery (TIGER) grant.² By December 2011, however, the parties involved in the project determined that such a light rail project would not be feasible and cancelled it in favor of a bus rapid transit system.

In an effort to preserve some of the project, M-1 RAIL proposed a 3.3-mile streetcar system and, since 2012, has been securing public and private funding commitments to begin construction.

¹ There is another street railway referred to as M-2. In order to satisfy certain tax credit requirements, M-2 was created to hold M-1 RAIL's streetcars, facilities, and other assets. Oral Testimony, Senate Transportation Committee, 2-25-2014; Bill Shea, "M-1 Rail to bidders: Contract will begin Dec. 1; streetcar service will begin February 2016", *Crain's Detroit Business*, 10-14-2013, retrieved 8-19-2014 at: <http://www.craindetroit.com/article/20131014/NEWS/131019917/m-1-rail-to-bidders-contract-will-begin-dec-1-streetcar-service>.

² For a report summarizing fiscal year 2009 TIGER grants, see "Transportation Investment Generating Economic Recovery (TIGER) Grants", United States Department of Transportation, 2-17-2010, retrieved 8-27-2014 at <http://www.dot.gov/tiger>.

Private donors have contributed \$100.0 million to the project and the Federal government also has committed funds to it. In April 2014, the Federal government formally approved the project. Construction on the M-1 rail system began in late-July 2014 and the system is expected to be operational by mid- to late-2016.³

M-1 RAIL expects the costs for the rail system to be approximately \$140.0 million for construction, and \$5.0 million to \$6.6 million annually for operations.⁴ It is estimated that the streetcar will run every eight to 12 minutes between 6 a.m. and 10 p.m. Monday through Saturday and every 12 minutes on Sundays between 8 a.m. and 10 p.m., and that the system will serve between 5,000 and 8,000 people per day. The M-1 rail system will have 20 stations at 12 different locations.⁵

ARGUMENTS

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

Supporting Argument

The bills would protect both the City of Detroit and M-1 RAIL during the construction and the operation of the M-1 streetcar system. The M-1 rail system will be a central piece of an integrated, multimodal transportation system in Detroit. It will be the beginning of a new regional system that will link Detroit to other modes of transportation in the region, including pedestrian traffic, Amtrak trains, and bus routes, including at least one that travels to the Detroit Metropolitan Airport. The bills would help facilitate the arrangement between M-1 and M-2 RAIL (which is necessary for qualification of certain Federal grants), and would ensure that the assets of the M-1 streetcar could be transferred to another entity in the future.

Although the M-1 rail system is an infrastructure project, not a development project, it is expected to bring private sector investment into the region. The M-1 project has already seen over \$100.0 million in private sector investment to construct the system. The Woodward Corridor provides a link to nearly 275,000 residents and 125,000 jobs in the area.⁶ Other streetcar projects across the country have succeeded in catalyzing economic development in the corridor where they operate. For instance, a streetcar project in Seattle, Washington, has been credited with bringing nearly \$2.4 billion in new development to the area.⁷ In Tucson, Arizona, nearly 150 businesses have relocated their operations in expectation of the new streetcar line.⁸ In all, approximately two dozen metropolitan communities are developing systems similar to M-1 as a foundation for economic and transit development.

Opposing Argument

The M-1 rail system will be more expensive than other alternatives, including a bus rapid transit (BRT) system. A BRT system is an efficient and safe form of transportation. High-speed buses also have the benefit of costing less than a railway system and still serve as an economic development and transportation tool. A BRT system would be more flexible because it relies on little to no permanent infrastructure. An ideal BRT system would use a dedicated lane, and be faster than a streetcar because a BRT also would use signal preemption.⁹

Another issue concerns which entity will be responsible for operating and maintaining the system in the future. According to M-1 RAIL, it will operate the system for 10 years before turning it

³ Marlon A. Walker, "M-1 Rail construction to lose freeways as Woodward overpasses are rebuilt", *Detroit Free Press*, 7-1-2014, retrieved 8-6-2014 at <http://www.freep.com/article/20140701/NEWS01/307010155/M-1-Rail-freeways-closing>.

⁴ "FAQ-Funding", M-1 RAIL, retrieved 8-27-2014, at: <http://m-1rail.com/faq/>.

⁵ "FAQ-Streetcar Operations", M-1 RAIL, retrieved 8-27-2014, at: <http://m-1rail.com/faq/>.

⁶ Steve Liedel-Dykema, Presentation on M-1 Rail, Senate Committee on Transportation, 6-10-2014.

⁷ Paul Childs-M-1 RAIL, "M-1 RAIL Streetcar Project: Mission and Vision", Presentation, Senate Committee on Transportation, 2-25-2014.

⁸ *Id.*

⁹ SEMCOG-Woodward Avenue Rapid Transit Alternatives Analysis, "Evaluation of Modes-Overview", retrieved 8-28-2014 at <http://www.woodwardanalysis.com/evaluation/>.

over to another entity.¹⁰ Currently, that entity is assumed to be the Southeast Michigan Regional Transit Authority; however, that is not certain. In any case, it also is not certain how the system will be funded in the future. It is likely that the residents of Detroit eventually will have to pay for the system's upkeep.

Response: Because streetcars are permanent infrastructure and their routes cannot be changed without significant investment, developers are more apt to build near these systems. For this reason, streetcar systems tend to work better than buses at bringing activity to sidewalks, which improves economic development within the city. Ultimately, the streetcar project will be part of an integrated transportation system, which will incorporate bus rapid transit.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 695

The bill would have no fiscal impact on State or local government. To the extent that the bill would expand the number of eligible entities that meet the definition of "street railway", however, it could amplify the impact of Senate Bills 696 (S-1) and 697, as discussed below.

Senate Bills 696 (S-1) and 697

The bills would reduce State and local property tax revenue by an unknown amount that would depend on the specific characteristics of the affected property.

The tax exemption provisions of Senate Bill 696 (S-1) would partially duplicate the exemption in Senate Bill 697. Many nonprofit firms, including M-1 RAIL, are generally exempt from income taxes at the Federal, State, and local levels. As a result, the proposed exemptions, other than the property tax exemption, would primarily apply to sales and use taxes—for both purchases and sales, as well as any potential utility or fuel-related taxes. The magnitude of any revenue loss or foregone revenue is unknown and would depend on the level of economic activity associated with a street railway.

According to the business plan for the M-1 rail project (which is the most developed of the entities that would be affected by the bills), capital costs are expected to total \$137.0 million, representing a taxable value of approximately \$68.5 million. Assuming a nonhomestead millage of 84.9 mills, the bills would reduce property tax revenue by approximately \$5.8 million per year, of which roughly \$2.3 million would be revenue that the City of Detroit otherwise would likely receive, \$0.4 million otherwise would be State Education Tax revenue deposited into the School Aid Fund, and \$1.8 million would be revenue received by local school districts from school operating mills. The remaining \$1.3 million in lost revenue would affect other local units. These reductions would require School Aid Fund expenditures to increase by \$1.8 million per year in order to maintain per-pupil funding guarantees. Combined with the revenue loss under the State Education Tax, the total impact on the School Aid Fund, if per-pupil funding guarantees were maintained, would be a negative \$2.2 million.

The impact of the bills would be greater as more entities qualified under them. To the extent that Senate Bills 695 and 696 (S-1) would expand the number of eligible entities that meet the definition of "street railway", those bills would further reduce State and local property tax revenue and local school district revenue and increase School Aid Fund expenditures.

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¹⁰ "FAQ-Funding", M-1 RAIL, retrieved 8-27-2014 at: <http://m-1rail.com/faq/>.

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