

Legislative Analysis



STREET RAILWAY COMPANIES ("LIGHT RAIL" PACKAGE)

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

Amendments to Public Act 35 of 1867

House Bill 6542 as enrolled
Public Act 481 of 2008
Sponsor: Rep. Bert Johnson

Senate Bill 1589 as enrolled
Public Act 486 of 2008
Sponsor: Sen. Jason E. Allen

Amendments to Public Act 51 of 1951

Senate Bill 1588 as enrolled
Public Act 485 of 2008
Sponsor: Sen. Jud Gilbert, II

Senate Bill 1590
Public Act 487 of 2008
Sponsor: Sen. Tupac A. Hunter

Amendments to Related Statutes

House Bill 6543 as enrolled
Public Act 482 of 2008
Sponsor: Rep. Tom Pearce

House Bill 6546 as enrolled
Public Act 483 of 2008
Sponsor: Rep. Gabe Leland

House Bill 6625 as enrolled
Public Act 484 of 2008
Sponsor: Rep. Hoon-Yung Hopgood

Senate Bill 1592 as enrolled
Public Act 488 of 2008
Sponsor: Sen. Bill Hardiman

House Committee: Transportation
Senate Committee: Transportation

Complete to 1-29-09

A SUMMARY OF THE BILLS LISTED ABOVE AS ENROLLED

On December 19, 2008 the House and Senate passed a number of related bills intended to establish a legal structure and authority for street railway (or "light rail") systems in the state. The bills also provided methods of funding these systems. The bills were approved by the Governor on January 9, 2009.

Although in committee testimony the bills were described as intended to support a proposed street railway system along Woodward Avenue in Detroit, and the introduced versions of House Bill 6542 and Senate Bill 1589 would have effectively limited authority to Detroit, the bills as signed into law are *not geographically limited* and could be used to establish street railway systems in other communities in the state.

House Bill 6542 and Senate Bill 1589 both revise Public Act 35 of 1867. The enacted bills eliminate or repeal much of the previously existing act, creating what is essentially

an entirely new act. The act is renamed the Nonprofit Street Railway Act. The two bills, as enacted, work together and are consistent with each other.

House Bill 6542 contains most of the provisions authorizing and regulating street railway companies. Senate Bill 1589 primarily provides for the establishment of tax increment finance zones (called transit operations finance zones). These zones would allow the street railway to use captured tax revenues from the growth in property values within the zone for the expenses of operating the system.

Senate Bills 1588 and 1590 put street railways into the state's major transportation funding statute, Public Act 51 of 1951. The remaining bills make complementary amendments to several related statutes.

The following is a more detailed summary of this package of bills (italicized words have definitions specific to the bills).

Street Railway Companies and Systems (House Bill 6542)

The bill would:

- Change the name of the act to the Nonprofit Street Railway Act. [Section 1]
- Authorize the new organization of a nonprofit *street railway* for the purposes of acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway system. A *street railway* is defined in the act as "a nonprofit corporation organized under this act for the purpose of operating a *street railway system* other than a railroad train for transportation persons or property." The bill indicates that the Nonprofit Corporation Act applies to a *street railway* organized under the act unless otherwise inconsistent with the act. The bill also allows an existing nonprofit corporation to become a *street railway* by amending its articles of incorporation and under the same provisions as a newly organized *street railway*. [Sections 9 and 11 for authorization provisions, Section 7 for definitions]
- Define a *street railway system* as the facilities, equipment, and personnel required to provide and maintain a public transportation system operated on rails at grade or above or below ground within a city, village, or township and using streetcars, trolleys, light rail vehicles or trams, for the transportation of persons or property [but not railroad trains]. As noted above, the introduced versions of the bills would have applied only to a city with an automated light rail system operating on an elevated single track loop of at least two miles under the Urban Cooperation Act. This would have effectively limited the bill's authority to Detroit. This limitation was not included in the enacted bills. The bills could be used to establish street railway systems anywhere in the state.

- Authorize a *street railway* to acquire property or rights or interest in property; to transport persons and property and receive just and fair compensation; erect and maintain buildings, structures, stations, depots, fixtures, and machinery; borrow money and issue bonds and notes; and mortgage property. [Section 13]

[Note that the bills as introduced would have granted a street railway system the same power and right to obtain property under the Uniform Condemnation Procedures Act as a railroad has under the Railroad Code. The enacted legislation does not include condemnation authority.]

- Authorize a *street railway* to acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a *street railway system* on the streets and highways of a *road authority* on terms and conditions imposed by the *road authority*.

Road authority is defined as the governmental agency having jurisdiction of the street or highway [over which the street railway would operate]. The bill requires that the approved terms and conditions be embodied in an *operating license agreement* between the *street railway* and each applicable *road authority*, and requires an open meeting process in adoption of the operating license agreement. The bill gives the *road authority* power to approve or disapprove a proposed *operating license agreement*. The bill also requires the *street railway* to pay for costs incurred by the *road authority* in constructing the *street railway system* or in mitigating the impact of the *street railway system* on road users, the environment, and surrounding neighborhoods. [Section 13; Section 7 for definitions]

[Note: These Section 13 provisions include a reference to "township road authority" although townships do not have jurisdiction over highways or streets in the state, and townships do not appear to be included in the bill's definition of "road authority."]

- Grant the *road authority* power to establish and prescribe rules and regulations applicable to *street railways* regarding grading, paving, obstructing, or repairing of a street or highway, and regarding the construction, maintenance, or obstruction of public service facilities, including water, light, heat, power, sewage disposal, and transportation.

The bill also contains provisions requiring *street railway systems* to conform to the grades of streets and highways and to lay and maintain track as prescribed by the *road authority*. [Sections 17 and 19; Section 7 for definitions]

- Allow a *street railway* company to transfer a *street railway system* to a public entity operating a public transportation system if the transfer is authorized by a law enacted after the effective date of the enacted bills. [Section 13 (4)]

- Permit a *street railway* to generate electricity and electric power for its own use. This authority would be subject to applicable law and any applicable regulations of the state, or a city, township, or village. [Section 15]
- Establish penalties for certain violations. It would be a felony (1) to cause or attempt to cause the derailment of a streetcar, tram, or trolley of a street railway by placing an impediment on a track or (2) to willfully endanger or attempt to endanger the life of a person working on or traveling on the street railway. The penalty would be imprisonment for life or any number of years. It would be a misdemeanor to throw a stone, brick, or other missile at a streetcar, tram, or trolley of a street railway, punishable by a fine of not less than \$100 or more than \$500 and/or imprisonment for not less than 10 days or more than 90 days. [Section 21]

Statements of Legislative Intent and Statutory Construction (House Bill 6542)

- Put into statute a statement of legislative findings and intent indicating that:
 - ** "The Legislature finds and declares that there exists in this state a need to encourage the development of transportation facilities and the provision of public transportation services by authorizing the acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining of nonprofit *street railway* companies and systems and that public assistance . . . [to] . . . nonprofit *street railway* companies and systems is declared to be a public purpose."
 - ** "It is the intent of the Legislature that a *street railway* constructed by a nonprofit corporation under the act be designed to adapt to or connect with other public transit systems.
 - ** "It is the intent of the Legislature that resources expended to construct a *street railway system* under the act qualify as the "state and local match funds for transit systems eligible for federal funding." [Section 3]
- Declare that for purposes of statutory construction:
 - ** "The act is to be construed liberally to effectuate the legislative intent and purpose of the act as complete and independent authorization for the performance of each and every act and thing authorized in the act and all powers granted in this act shall be broadly interpreted to effectuate the intent and purposes of this act and not as a limitation of powers."
 - ** "Unless permitted by the State Constitution . . . or this act or agreed to by a street railway, any restrictions, standards, conditions, or prerequisites of a city, village, or township otherwise applicable only to a street railway and enacted after [PA 481 of 2008] do not apply to a street railway. This . . . is intended to prohibit

special local legislation or ordinances applicable exclusively or primarily to a street railway and not to exempt a street railway from laws generally applicable to other entities." [Section 5]

Tax Increment Finance Zones (Senate Bill 1589)

The bill would:

- Allow a city, village, or township to establish a special kind of tax increment finance zone, to be called a transit operations finance zone, if the department determined such a zone was "necessary for the best interests of the public to promote and finance transit operations in the zone." This kind of zone could only be established at the request of a street railway, and with the consent of the Michigan Department of Transportation. This would allow the street railway to use captured tax revenues from the growth in property values within the zone for the expenses of operating the system.
- Limit the boundaries of a transit development finance zone to no more than one-quarter mile in distance from a street railway system, and require a city, village, or township to consult with the street railway, the state transportation department, affected taxing jurisdictions, and other relevant entities before designating a zone. The local unit could conduct a planning study and designate a zone *before* the implementation of street railway system service within the zone.
- Require the local unit to enter into an agreement with the street railway and the DOT for the creation of a zone (if the local unit and DOT found it in the best interests of the public to promote and finance transit operations). The agreement would, among other things, have to include the geographic boundaries of the zone, any tax increment finance plan, and a description of the specific actions to be taken by the parties to the agreement. A public hearing would have to be held before a zone agreement could be entered into.
- Mandate that the local unit provide other taxing jurisdictions within a zone the opportunity for a meeting before including a tax increment finance plan within a zone agreement and require that the local unit fully inform the taxing jurisdictions of the fiscal and economic implications of the plan. The taxing jurisdictions could present recommendations for the plan. (However, the act does not allow taxing jurisdictions to opt out; that is, to prevent their revenues from being captured.)
- Define "tax increment revenues" so as to *exclude* state and local K-12 school taxes, taxes levied by public libraries, taxes specifically levied for bonded indebtedness, as well as taxes already being captured by other TIFAs. This means such revenues would not be captured for use by the street railway.
- Restrict the revenue distributed to a street railway from a tax increment finance plan for any tax year to the lesser of (1) 25 percent of any operating deficit of the

street railway for the prior fiscal year, or (2) \$4 million. Revenue from a TIFA could only be used for operating expenses. The local unit would have to report annually (with assistance from the street railway) to the DOT and the State Tax Commission on the use of TIFA revenues. The STC could promulgate rules for the administration of the tax increment finance programs and could institute TIFA enforcement proceedings.

State Funding Provisions (Amendments to PA 51)

Senate Bill 1588 would amend Section 10c of Public Act 51 of 1951 [which governs state appropriations for most state transportation programs] to include street railways under the definition of "public transportation" and "comprehensive transportation" and to include street railway cars in the definition of "transit vehicles."

Senate Bill 1590 would amend Section 10e of Public Act 51 of 1951 to require, beginning with the 2009-10 state fiscal year, the Governor and State Budget Director to include in annual budgets submitted to the Legislature, an appropriation "from a fund or funds other the Comprehensive Transportation Fund to a street railway ... equal to the difference between the annual operating expenses of the street railway and revenue received by the street railway during the same annual period, including but not limited to, tax increment revenues received by the street railway under Section 23 of the Nonprofit Street Railway Act." The bill would limit the amount of the appropriation request to "8 percent of the total private investment in the street railway as determined by the department."

The bill also indicates that a street railway is not an eligible authority or eligible governmental agency for purposes of Subdivision (4)(a) of Section 10e. This provision of the bill would make street railways ineligible for local bus operating assistance.

Complementary Amendments to Related Acts

Senate Bill 1592 would amend the State Transportation Preservation Act (1976 PA 295) to allow the Department of Transportation to provide financial assistance to street railways.

House Bill 6543 would amend the Nonprofit Corporation Act to include street railway unless it conflicted with the Nonprofit Street Railway Company Act.

House Bill 6546 would amend the Railroad Code to specify that it does not apply to street railways organized under the Nonprofit Street Railway Company Act.

House Bill 6625 would amend the Code of Criminal Procedure to make the sentencing guidelines reflect the new felonies created by House Bill 6542.

FISCAL IMPACT:

Senate Bills 1588 and 1590

The Comprehensive Transportation Fund (CTF) is a state-restricted fund created in Section 10b of Public Act 51 of 1951 (Act 51). The CTF is restricted for public transportation purposes as defined in the act; Section 10e provides for a priority order of annual appropriations from the CTF.

Senate Bill 1588 would amend Section 10c of Act 51 to include "street railway" under the definition of "public transportation" and "street railway car" under the definition of "transit vehicle." The bill would put street railways within the definition a public transportation and thus eligible for state support from the CTF. However, nothing in either Senate Bill 1588 or Senate Bill 1590 provides for a specific CTF appropriation for street railways.

Senate Bill 1590 would amend Section 10e of Act 51 to require, beginning with the 2009-10 state fiscal year, the Governor and State Budget Director to include in annual budgets submitted to the legislature, an appropriation "from a fund or funds other than the Comprehensive Transportation Fund to a street railway ... equal to the difference between the annual operating expenses of the street railway and revenue received by the street railway during the same annual period, including but not limited to, tax increment revenues received under Section 23 of the Nonprofit Street Railway Act." The bill would limit the amount of the appropriation request to "8% of the total private investment in the street railway as determined by the department."

It is not clear if this provision means 8% of the original private capital investment in the street railway, or 8% of the private investments, capital and or operating, made during the fiscal year of the request. The bill does not include a definition of "annual operating expense."

The bill indicates that a street railway is not an eligible authority or eligible governmental agency for purposes of Subdivision (4) (a) of Section 10e. This provision of the bill would make street railways ineligible for local bus operating assistance, although *not* ineligible for other state assistance from the CTF. Note that the bill as introduced would have provided street railways state grant assistance from CTF-funded local bus operating program.

The amount of the difference between the annual operating expenses of any specific street railway and the revenues of the street railway (including any tax increment revenues) cannot be determined at this time. The requirement that the Governor and State Budget Director include a specific appropriation in a budget request does not assure that the budget request will be enacted into law. And the bill's directive that the executive budget request include an appropriation from a fund or funds other than the CTF does not preclude CTF funding in the enacted budget.

Senate Bill 1592

The State Transportation Preservation Act (1976 PA 295) was originally enacted at a time when railroad bankruptcies and the abandonment of unprofitable rail lines threatened Michigan with the loss of approximately 1,100 miles of track, representing over 35 percent of Michigan's rail freight system. To preserve rail service the State of Michigan, under authority of the act, acquired a number of these rail facilities (over 1,100 miles). While the state subsequently divested itself of much of this rail property, it still owns approximately 535 miles of active mainline railroad track. The department is authorized by the act to provide financial assistance for the maintenance of a railroad in the state. Senate Bill 1592 would amend the act to also allow the department to provide financial assistance to a street railway. The bill is only permissive; it would establish no new requirements for the department and would have no direct fiscal impact.

House Bill 6542

The bill gives a *road authority* with jurisdiction over the street or highway over which the street railway would operate power to impose terms and conditions on the street railway. The bill requires that the approved terms and conditions be embodied in an operating license agreement between the *street railway* and each applicable *road authority*. However, in some cases, the road authority with jurisdiction over the street or highway is not the same governmental agency with political jurisdiction. This situation obtains in Detroit. Woodward Avenue is under the jurisdiction of the Michigan Department of Transportation but is still within the political boundaries of the city of Detroit.

It is not clear if a city, Detroit in the above example, would still have the power under Article VII, Section 29 of the 1963 Michigan Constitution to regulate street railways within the city, through franchise agreements, even those street railways operating on state trunkline highways, such as Woodward Avenue.

Senate Bill 1589

The creation of tax increment finance zones would divert revenue from local taxing units to street railways to assist in covering operating expenses. The bill, however, protects K-12 school taxes, library taxes, and taxes needed for bonded indebtedness from capture, as well as revenues already promised to other kinds of tax increment finance arrangements within the same geographical territory. The fiscal impact is indeterminate.

Legislative Analysts: Chris Couch
William E. Hamilton
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.