



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 645 (as passed by the Senate)
Sponsor: Senator Tom Casperson
Committee: Transportation

Date Completed: 1-10-18

RATIONALE

Federal law requires state regulation of rail fixed guideway public transportation systems through a safety oversight program, and requires the state to designate a state safety oversight agency. In Michigan, Executive Order 2003-14 transferred authority, powers, and duties related to required oversight of the two rail fixed guideway public transportation systems in the State (the Detroit People Mover and the M-1 RAIL QLINE) to the Director of the Michigan Department of Transportation. The current state safety oversight agency is the Department's Office of Rail. However, the Federal Moving Ahead for Progress in the 21st Century Act, enacted in 2012, introduced many changes to the requirements for a state safety oversight agency, and specifies that the Federal Transit Administration must certify each agency as compliant with the Act by April 15, 2019. A state whose agency is not certified will face a reduction in Federal grant money for rail, bus, and paratransit systems. Because Michigan's safety oversight agency is not in compliance with the new conditions, it has been suggested that the necessary statutory changes be made to bring the State's regulation of rail fixed guideway public transportation systems into compliance with the Federal law.

CONTENT

The bill would enact a new law "to promote the safety and security of rail fixed guideway public transportation systems operating within this state". Specifically, the bill would do the following:

- Establish a State safety oversight entity to supervise and regulate covered rail fixed guideway public transportation systems (RFGPTs) operating in the State in compliance with Federal laws.**
- Designate the Office of Rail within the Michigan Department of Transportation as the State safety oversight entity.**
- Prescribe the powers and duties of the State safety oversight entity.**

"Rail fixed guideway public transportation system" would mean a fixed guideway system, including a fixed guideway system that is in the process of engineering or construction, that uses rail, is operated for the purpose of public transportation, is within the jurisdiction of a state, and is not subject to the jurisdiction of the Federal Railroad Administration. The term would include a rapid rail, heavy rail, light rail, monorail, trolley, streetcar, inclined plane, funicular, and automated guideway system. "Covered rail fixed guideway public transportation system" would mean a transit system operating within the State that is subject to the State safety oversight requirements under 49 CFR 659 and 49 CFR 674 (described below).

The State safety oversight entity would have the power and duty to supervise and regulate covered RFGPTs operating within the State in compliance with all applicable Federal laws and regulations, including 49 USC 5329, 49 CFR 659, and 49 CFR 674, to the extent necessary to fulfill obligations

under Federal law, including investigative, reporting, and safety standards enforcement requirements.

(Under 49 USC 5329, an eligible state must have in effect a state safety oversight program that assumes responsibility for overseeing rail fixed guideway public transportation safety, and must establish a state safety oversight agency, among other things. Under 49 CFR 659, states with rail fixed guideway systems must oversee the safety and security of the systems through a designated oversight agency and funds may be withheld from states that do not comply with requirements of the regulation. Under 49 CFR 674, within three years of April 15, 2016, every state that has a RFGPTS must have an approved state safety oversight program that meets certain criteria, and must establish a state safety oversight agency that has certain responsibilities.)

In accordance with Executive Order 2003-14, the Office of Rail within the Michigan Department of Transportation would be designated as the State safety oversight entity as required by 49 USC 5329.

The State safety oversight entity would have all of the following powers and duties, only to the extent necessary to fulfill its obligations under Federal law and to protect employees, patrons, the general public, and physical assets:

- Enter and inspect the property of the operator of a covered RFGPTS without prior notice to the operator.
- Audit a covered RFGPTS for compliance with Federal and State laws and regulations regarding the safety, security, and emergency preparedness of RFGPTSs, and compliance with rail transit agency rules, plans, and procedures.
- Audit and inspect covered RFGPTSs for an identified hazard, occurrence, or trend at the direction of the State safety oversight entity, the Federal Transit Administration, or the National Transportation Safety Board.
- Require the operator of a covered RFGPTS to initiate a corrective action plan to mitigate a hazard.
- Direct the operator of a covered RFGPTS to mitigate a hazard by a specified date and time.
- Oversee the implementation of a corrective action plan by a covered RFGPTS and provide verification or approval of completion or resolution of the hazard.
- Take action, either through an administrative hearing or in a court of competent jurisdiction, to compel the operator of a covered RFGPTS to mitigate a safety hazard or to prevent the operation of all or part of a covered RFGPTS that the State safety oversight entity had determined to be unsafe.
- Audit, review, approve, and oversee the operator of a covered RFGPTS for compliance with a public transportation agency safety plan adopted under 49 USC 5329.
- Enforce the laws and rules of the State related to the operation and maintenance of a covered RFGPTS in the State, to the extent that enforcement was consistent with Federal law.
- Promulgate rules and regulations as necessary to comply with 49 USC 5329, 49 CFR 659, 49 CFR 670, and 49 CFR 674.

(Part 670 of Title 49 states that it carries out the mandate of 49 USC 5329 to improve the safety of public transportation systems. The regulation establishes rules for the Federal Transit Administration's supervision of the Public Transportation Safety Program, and specifies authority of the Federal Transit Administrator.)

The State safety oversight entity also would have to investigate an accident, incident, or hazard at a covered RFGPTS. The entity could conduct an investigation independently, lead or conduct the investigation with the participation of a rail transit agency, or review and approve investigative reports generated by a rail transit agency.

The State safety oversight entity would be legally and financially independent of the covered RFGPTSs in the State. A covered RFGPTS could not fund State safety oversight activities. The

activities of the State safety oversight entity would have to be governed by a conflict of interest policy.

The bill would take effect 90 days after it was enacted.

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 Moving Ahead for Progress in the 21st Century Act prescribes conditions for the oversight of RFGPTSs that the State safety oversight agency does not currently meet, and requires the Federal Transit Administration to certify a state safety oversight agency by April 15, 2019. If the agency is not certified by that date, the State will lose Federal grant money. The bill is necessary to codify the State's safety oversight agency, and bring the agency's authority into compliance with the new Federal requirements.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would not have a direct impact on State or local government; however, failure to enact the bill would jeopardize Michigan's receipt of Federal Transit Administration (FTA) grant funds amounting to \$142.0 million annually. The Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted in 2012, requires states to certify a State Safety Oversight Agency (SSOA) to oversee rail fixed guideway transit systems by April 2019, or lose FTA grant money. The bill would identify the Office of Rail within the Department of Transportation as Michigan's SSOA, and ensure that Michigan remained in compliance with MAP-21.

Fiscal Analyst: Michael Siracuse

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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.