

LEGISLATIVE FISCAL ESTIMATE
[Second Reprint]
SENATE, No. 630
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JUNE 12, 2018

SUMMARY

Synopsis: Provides governance, oversight, and accountability reforms at NJT.

Type of Impact: Increased State cost.

Agencies Affected: New Jersey Transit Corporation (NJ Transit).

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------|----------------------|----------------------|----------------------|
| State Cost | Indeterminate | | |

- The bill provides for a series of reforms at New Jersey Transit Corporation (NJ Transit) that will require additional staff salaries, fringe, and materials; outside contract work; and additional reporting and transparency.
- New costs with discrete estimates include a new chief ethics officer which will likely cost between \$200,000 and \$230,000 per year, and a performance audit every five years which could cost around \$1.3 million per audit. In addition there are numerous other requirements under the bill with indeterminate costs due to additional duties imposed on NJ Transit leadership, reporting requirements, transparency measures, public hearings, new committees, and financial and management controls. These other requirements will have additional indeterminate direct costs, largely in the form of additional staff.
- The intention of these reforms is to improve the overall performance of NJ Transit as a business operation. Notable among these reforms are the implementation of industry best practices, additional financial and management controls, and requirements that the corporation become more transparent and provide more justification for its activities. These reforms are intended to result in indirect savings by eliminating waste and other mistakes throughout the corporation. To the extent that these reform efforts are successful, it is possible that the indirect efficiencies from reform will more than offset the direct costs imposed by the bill.

BILL DESCRIPTION

This bill provides governance, oversight, and accountability reforms at the New Jersey Transit Corporation.

Board Composition

The bill establishes five new positions on NJ Transit's board of directors, and restructures the existing board so that all public members are required to either have experience as regular public transportation riders or have expertise in human resources, real estate investment or development, or certain transportation topics. The board goes from four public members chosen by the Governor to eight public members chosen by the Governor. Four of the eight members are to be chosen upon the recommendation of the North Jersey Transportation Planning Authority, the New Jersey members of the Delaware Valley Regional Planning Commission, the President of the Senate, and the Speaker of the General Assembly respectively. The bill provides for the appointment and initial terms of office for certain board members. The bill prohibits a board member from serving for more than 90 days beyond the expiration of that board member's term unless reappointed to the board. The bill adds a labor organization member to the board, bringing the number of labor organization members to two. The bill requires that one labor organization member be appointed by the Governor upon the recommendation of the labor organization representing the plurality of the employees of NJ Transit involved in motorbus operations and that one labor organization member be appointed by the Governor upon the recommendation of the labor organization representing a plurality of the employees of NJ Transit involved in rail operations. The bill provides that the two labor organization members are voting members of the board.

Report of Political Contributions and Gifts

The bill requires board members to annually disclose certain political contributions made within the two preceding years and gifts received over \$250 to the board and the chief ethics officer.

Chief Ethics Officer

The bill requires NJ Transit to employ a chief ethics officer to investigate allegations and suspicions of unethical conduct or criminal activity within NJ Transit and to determine whether NJ Transit is in compliance with applicable State law. The chief ethics officer is to operate independently of the executive director and is to report directly to the board of directors.

Board Meetings

The bill requires that the board hold a minimum of 10 public board meetings per year. The bill provides that the agenda of a board meeting, including any revised agenda, be provided to the public at least five calendar days prior to the meeting and that one-half of board meetings be held in the evening after 6:00 p.m. The bill requires each notice of a board meeting, board agenda, and the minutes of each board meeting be published on NJ Transit's website. The bill also requires that each board meeting be viewable in real time on NJ Transit's website and be archived and made available to the public on NJ Transit's website.

New Board Responsibilities

The bill imposes new statutory duties on the board of directors, including: executing direct oversight of NJ Transit's management team in the effective and ethical management of NJ Transit; monitoring the implementation of fundamental financial and management controls and

operational decisions of NJ Transit; establishing certain personnel policies; approving quarterly schedule changes; adopting guidelines for when it is appropriate for the chief ethics officer to forward the results of preliminary investigations to the appropriate authorities; and adopting a code of ethics. The bill provides that the board members are to perform their duties in good faith and with the appropriate degree of diligence, care, and skill and to apply independent judgment in the best interest of NJ Transit, its mission, and the public. The bill requires board members to take and subscribe an oath of office and to execute an acknowledgement that recognizes the duties and obligations of the board member.

The bill requires that the New Jersey Transit Corporation board of directors issue and publish on the corporation's website a statement, prior to the approval of any contract listed as an item on the board's agenda, that provides an analysis of the costs of shifting any service from one currently performed by regular corporation employees to private contractors, and make various certifications that the contract is in compliance with existing law, meets a minimum quality of service standard, is in the public interest, and that the contractor does not have an adjudicated record of noncompliance with federal or state regulatory statutes concerning labor relations, occupational safety and health, non-discrimination and affirmative action, environmental protection, and conflicts of interests.

Committees

The bill establishes an employee relations committee made up of board members and expands the audit committee, which is made up of board members, to include finance.

The bill provides that the board is to appoint members of NJ Transit's advisory committees and requires that the committees have no fewer than nine members and no greater than 15 members. The members are to be selected upon a merit-based application process and the membership is to include representation of certain populations. The bill requires at least two members of an advisory committee to have experience as regular motorbus regular route service riders and at least two members to have experience as regular rail passenger service or light rail service riders. The advisory committees are required to conduct at least two public hearings per year in two different counties to gather information from interested parties and the general public. The advisory committees are required to issue an annual report to the board. The board is to review recommendations and solicit written input from each advisory committee prior to the adoption of any proposed fare increase, curtailment of services, or expansion of services.

Audits

The bill requires the State Auditor to perform audits of NJ Transit every six years, which are to focus on specific areas to be determined by the State Auditor. The bill also requires NJ Transit to hire an independent firm to conduct a study at least once every five years on the financial management practices and budget reporting practices of mass transit agencies throughout the country and to prepare and issue a report on its findings. Following the issuance of the report, NJ Transit is required to adopt financial management and budget reporting policies and practices that are in line with the best practices of mass transit agencies throughout the country. Upon the affirmative vote of seven members of the board of directors, NJ Transit may opt not to adopt individual policies or practices that are in line with the best practices of mass transit agencies throughout the country.

Change of Service or Fare Increase Requirements

The bill requires that NJ Transit hold at least two public hearings in the counties affected, within one-half mile of the route and, to the extent practicable, near each terminus of the route before implementing any substantial curtailment or abandonment of service, and at least 10

public hearings in separate counties at locations within a quarter mile of both a rail line and bus route before implementing any fare increase. Each public hearing is required to consist of an afternoon and evening session, where each session lasts at least two hours and the sessions are in the same place and on the same day. At least half of the public hearings are required to be held on a State working day. At least two members of NJ Transit's board of directors are required to be in attendance at each public hearing. In addition to the public hearing requirements, NJ Transit is required to provide a postal mailing address and electronic mailing address where members of the public may provide written comments regarding the proposed fare increase or substantial curtailment or abandonment of service. NJ Transit is required to prepare and publish a written response concerning any issue or concern raised by a member of the public at any public hearing or in any written comment. NJ Transit is required to provide notice of its intent to discontinue, substantially curtail, or abandon service to each county and municipality whose residents will be affected. "Substantial curtailment" and "substantially curtail" is defined to include, but not be limited to: the elimination of a motorbus regular route, scheduled trip, or scheduled stop along a motorbus regular route or of a rail passenger service line, scheduled trip, or scheduled stop along a rail passenger service line; a reduction of 30 minutes or more in the beginning or end of service for the corporation's adopted schedule or timetable for a scheduled stop along a motorbus regular route or rail passenger service line; and any change to a motorbus regular route or rail passenger service which may increase barriers to accessibility for a person with disabilities.

Appearance before the Legislature

The bill requires NJ Transit, at the request of the chairperson of any standing legislative committee, as approved by the presiding officer, to appear before that committee to present testimony and provide documents on any topic or subject requested by the committee and to respond to any questions by members of the committee.

Reports

The bill requires NJ Transit to report information to the Governor and the Legislature regarding its employees, including the average salary, number of employees in management positions, and number of employees that are not in management positions in key demographic groups, which are to include, at minimum, race, ethnicity, and gender. The bill also requires NJ Transit to report certain accident information and safety violations to the Governor and Legislature.

The bill requires NJ Transit to utilize multi-year budget documents that cover the most recently completed fiscal year, the estimated results for the fiscal year in progress, a recommendation for the fiscal year to commence, and estimated needs and projections for the following fiscal year and to provide those documents to the Commissioner of Transportation, the President of the Senate, the Speaker of the General Assembly, the Assembly Transportation and Independent Authorities Committee, and the Senate Transportation Committee. The budget documents are required to provide detailed information on several key areas listed in the bill.

The bill also requires the board to approve and NJ Transit to transmit a report containing certain information regarding NJ Transit's real property interests to the Commissioner of Transportation, the President of the Senate, the Speaker of the General Assembly, the Assembly Transportation and Independent Authorities Committee, and the Senate Transportation Committee.

Residency Waiver for Certain Positions

The bill provides that any person hired by NJ Transit as an engineer or mechanic or any other position certified by the board as a position of critical need is exempt from the residency requirement established in N.J.S.A.52:14-7.

FISCAL ANALYSIS***EXECUTIVE BRANCH***

None received.

OFFICE OF LEGISLATIVE SERVICES

This bill is expected to result in an indeterminate increase in the operating costs of the New Jersey Transit Corporation. The magnitude of increased costs is indeterminate because it is not clear how the leadership of NJ Transit will implement many of the changes required under the bill. Many of the changes include reporting requirements, and establishing responsibilities of various leadership positions at NJ Transit. It is not possible to know the extent to which existing staff would be able to meet these requirements or the degree to which leadership already meets some of these requirements, and as a result it is not clear to what degree additional staff might be necessary.

The board of directors will be increased by five members. These members are not compensated, but are reimbursed for actual and necessary expenses in the performance of their duties. The 13 directors will now have to report various political contributions and gifts annually, participate in additional public hearings for fare changes and the substantial curtailment or abandonment of service at various locations throughout the State, execute greater oversight of NJ Transit's management team, establish additional financial and management controls over NJ Transit operations, directly approve quarterly schedule changes, establish certain personnel policies, adopt a code of ethics, establish a new employee relations committee, and oversee revised advisory committees.

Given the substantial increase in these responsibilities, it is likely that these members will face a significant increase in the actual and necessary costs in the performance of their duties. The board may determine that it requires some level of staff assistance in order to perform these duties. The cost of additional staff salaries, benefits, and equipment will be realized as additional NJ Transit costs. There is no way to know at this point how significant the burden of these requirements will be in the form of additional staff and equipment. The costs will likely be determined by the board over time once it begins performing these duties.

The bill specifically establishes a new chief ethics officer, who directly reports to the board, rather than the executive director. This position would likely be compensated at a level comparable to the existing auditor general who also has administrative responsibilities directly to the board. The current salary of the auditor general is approximately \$160,000 per year. The annual cost of fringe, office supplies, and reimbursable work expenses such as work-related transportation and training could reasonably add another \$40,000 to \$70,000 to that amount for an annual cost of \$200,000 to \$230,000 per year plus an indeterminate amount for additional staff, if the corporation cannot reallocate existing staff to support the chief ethics officer.

The bill requires NJ Transit to hire an outside firm to perform a performance audit of the corporation every five years, with the first to occur within two years of the enactment of the bill.

It is not clear how much the performance audit will cost; however, the State recently secured the services of NorthHighlands to conduct a performance audit of NJ Transit pursuant to Governor Murphy's Executive Order No. 5. That audit is currently expected to cost \$1.3 million. Depending on the similarity of that audit to the one secured under the bill, the cost every five years could be similar.

The NJ Transit is also required to have additional public hearings when considering fare increases and the substantial curtailment or abandonment of service, and to hold those hearings at additional locations with broader hours, and to publish all of the responses to public comments whether provided in person at public hearings or submitted via other means. There will likely be a cost to NJ Transit for additional public notification, additional staff at hearings, and additional work to document all public responses. These costs are not clear at this point, but will likely include personnel costs, as well as overhead costs for printing, postage, public notices, IT services, transportation for staff and board members, and possibly costs related to renting spaces for the hearings.

The bill also requires a new annual report providing an inventory of NJ Transit real property interests with appraised values. Additionally, a number of new requirements are added to the information that NJ Transit must provide in its annual report and annual budget. Many of the items required in these reports and the annual property inventory are pieces of information related to NJ Transit's business operations, so there should not be a significant cost in generating the additional information, but there will still be a notable staff cost in gathering this information internally, processing the raw data into a report, and communicating it as a public document. This is likely to entail an indeterminate amount of additional staff time. In addition to the increase in report drafting, NJ Transit may not have current appraisals of all of its property. Depending upon the method of appraisal, which is not prescribed in the bill, there may be an additional initial cost to secure an appraisal service to evaluate existing NJ Transit property.

Many of these costs will be recurring costs that will increase the base cost of NJ Transit operations. The cost of the performance audit will likely be realized in year two, and then every five years thereafter. The cost of equipment for new staff is likely to be realized initially, but infrequently thereafter. The cost of real estate appraisal service may or may not be realized depending upon the appraisal method but would be realized initially, but infrequently thereafter.

The intention of these reforms is to improve the overall performance of NJ Transit as a business operation. Notable among these reforms are the implementation of industry best practices, additional financial and management controls, and requirements that the corporation become more transparent and provide more justification for its activities. These reforms are intended to result in NJ Transit operating more efficiently and generating indirect savings by eliminating waste and developing standards in line with the best practices of mass transit agencies. To the extent that these reform efforts are successful, it is possible that these indirect efficiencies from reform will more than offset the direct costs imposed by the bill. These savings can range from avoiding fines for noncompliance with federal regulation, to lower contract costs through more effective contract design, reduced staffing due to more efficient organization of business operations, and increased worker productivity.

Section: Authorities, Utilities, Transportation and Communications

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).