

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 630

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Assembly Appropriations Committee reports favorably Senate Bill No. 630, with committee amendments.

As amended, this bill provides governance, oversight, and accountability reforms at the New Jersey Transit Corporation (NJ Transit).

Board Composition

The bill establishes five new positions on NJ Transit's board of directors (board), 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. In order to be considered to have experience as a regular public transportation rider, a member is required to have been a public transportation rider in three of the five years preceding the member's appointment or reappointment to the board.

The composition of the board is increased by the bill, 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 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.

Upon enactment of the bill, new members of the board are required to be appointed within 90 days of the bill's effective date.

Chief Ethics Officer

The bill requires NJ Transit to employ a chief ethics officer to investigate allegations and suspicions of unethical conduct or illegal 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, 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, including: executing 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 fare changes and substantial curtailments of service; adopting guidelines for when it is appropriate for the chief ethics officer to forward the results of preliminary investigations to the appropriate authorities; adopting a code of ethics; establishing written policies and procedures on personnel; adopting guidelines for the chief ethics officers; adopting a defense and indemnification policy; and reviewing and updating corporate bylaws at least once every five years. 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 to an oath of office and to execute an acknowledgement that recognizes the duties and obligations of the board member.

Committees

The bill establishes requirements for the audit committee, administration committee, operations and customer service committee, and capital planning and privatization committee.

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 service, or expansion of service.

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, 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, as close as possible to the highest trafficked stop on the route, before implementing any substantial curtailment or abandonment of service, and at least 10 public hearings in separate counties at locations as close as possible to both a rail passenger service line and a motorbus regular route before implementing any fare increase. At least half of the public hearings are required to be held on a State working day. At least two members of the board are required to be in attendance at each public hearing. For substantial curtailment or abandonment of rail service and for fare increases, half of the required hearings are to take place between the hours of 9:00 a.m. and 5:00 p.m. and half are to take place between the hours of 6:00 p.m. and 10:00 p.m.

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.

For emergency situations, NJ Transit may take action and then conduct public hearings as soon as practicable and then use input from those hearings to determine appropriate alternative service measures.

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 requires the administration committee to receive certain reports quarterly from the head of the Office of Equal Opportunity and Affirmative Action and the director of the Human Resources Office at NJ Transit.

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.

Contracting and procurement powers

The bill authorizes the NJ Transit chief of procurement to enter into agreements to defend and indemnify persons who enter into contracts with NJ Transit. The bill expressly authorizes NJ Transit to enter into public-private partnerships, to utilize corporate entities to participate with other private or public entities in furtherance of NJ Transit's powers, to invest the moneys of NJ Transit not required for immediate use, and to employ and retain counsel at NJ Transit's discretion. The bill specifically authorizes NJ Transit to enter into contracts concerning ferry service and light rail passenger service and with any public utility for services to support public transportation or transit operations.

The bill provides that NJ Transit may accept non-conforming bids only if the bid or proposal conforms to all material requirements of the solicitation. The bill provides that NJ Transit does not need to advertise purchases, contracts, or agreements in certain circumstances, including: where State or federal law requires a different process; and to acquire or overhaul ferries or other major equipment used to provide public transportation or transit operations. The bill also provides that NJ Transit may participate in cooperative purchasing agreements and federal supply schedules.

Deviation from Attorney General guidelines

The bill provides that NJ Transit may deviated from policies adopted by the Attorney General in circumstances where those policies are inconsistent with federal laws, regulations, directives, advisory opinions, or other guidelines relating to drug and alcohol testing, alcohol misuse, or prohibit drug use applicable to the NJ Transit Police Department.

Customer Advocate

The bill requires NJ Transit to employ a customer advocate who is required to report the customer advocate's activities for the prior year. The report is required to include: a list of any customer surveys performed and a summary of the results of each; a summary of customer experience enhancements; a list of customer facility improvements; and an account of the on-time performance of rail passenger service, including light rail service, operated by, or under contract to, the corporation.

As amended and reported, this bill is identical to Assembly Bill No. 1241, as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments provide changes to the board structure, including: providing that the two representatives from labor organizations on the board of directors are to be non-voting members; removing the prohibition against holdover board members; and

changing the quorum requirements so that a majority of the appointed members of the board who are authorized to vote constitutes a quorum and so that action may be taken by the affirmative vote of a majority of the appointed members who are authorized to vote. The amendments also remove requirements concerning certain disclosures by board members.

The committee amendments modify certain express duties of the board members so that oversight is required over fare changes and the elimination or substantial curtailment of service. The amendments also remove reference to a “fiduciary obligation” of board members, expressly state that NJ Transit is not subject to civil service rules, require the board to update the NJ Transit bylaws every five years, and establish various board committees, including the audit committee, administration committee, operations and customer service committee, and capital planning and privatization committee.

The amendments incorporate specific requirements for the North Jersey Passenger Advisory Committee and South Jersey Passenger Advisory Committee, which were included in the original iteration of the bill, except the committees are increased to 15 members each.

The amendments make changes to the powers of NJ Transit concerning procurement and contracting, increase indemnification powers, allow NJ Transit to retain counsel and elaborate on the scope of existing powers to enter into public private partnerships.

The amendments make changes to the public hearing requirements when NJ Transit increases fares or abandons or substantially curtails service. Under the amendments, two public hearings are required prior to substantial curtailment of rail service, one public hearing is required for substantial curtailment of bus service, and 10 public hearings are required prior to a fare increase. The definition of substantial curtailment is changed by the amendments. The amendments also allow NJ Transit to take action necessary to address emergency or exigent circumstances, provided the corporation holds a public hearing after the fact.

The amendments remove the requirement that any NJ Transit employee may be called before a legislative committee under the oversight provision in the bill. The amendments make changes to the duties of the chief ethics officer but still require the chief ethics officer to investigate unethical or illegal activity and to establish a whistleblower access and assistance program.

The amendments require NJ Transit to provide more detailed budget information to the Legislature, which includes multi-year budget documents. The amendments also require the establishment of a customer advocate and make changes to the manner in which the new board members are to be appointed as well as changes to the duration of the new board members’ initial terms.

FISCAL IMPACT:

The bill provides for a series of reforms at 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 NJ Transit 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 NJ Transit. 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.