

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 1567

### STATE OF NEW JERSEY 218th LEGISLATURE

DATED: FEBRUARY 5, 2019

#### SUMMARY

- Synopsis:** Requires certain employers to provide certain pre-tax transportation fringe benefits.
- Type of Impact:** Increased State revenue and State cost.
- Agencies Affected:** New Jersey Transit, New Jersey Turnpike Authority, South Jersey Transportation Authority, Department of Labor and Workforce Development.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual Impact</u></b>
<b>State Cost</b>	Indeterminate
<b>State Revenue</b>	Indeterminate

- The bill will result in an indeterminate increase in State revenue from fines imposed on employers that do not provide pre-tax transportation fringe benefits as required by the bill. The amount of revenue from the fines is unknown because the level of employer compliance with the bill cannot be known until the bill takes effect.
- The bill requires a public awareness campaign promoting the availability of pre-tax transportation fringe benefits. These programs would entail a new State cost; however, the State currently provides marketing funding for pre-tax fringe benefit programs in the annual transportation capital program. If additional capital program funding were to be provided to market the program, it would not likely impact overall state expenditures as the size of the capital program is already statutorily limited to \$16 billion from FY 2017 through FY 2024. If the public awareness campaign is expanded and funded outside of the capital program, it will require an increase in State expenditures of an amount that will depend upon the types of marketing activities undertaken.

#### BILL DESCRIPTION

This bill requires every employer in New Jersey that employs at least 20 persons to offer a pre-tax transportation fringe benefit to all of the employer's employees. The federal government

is only required to provide the benefit to federal employees that are not already eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit, and is only required to provide the benefit to employees covered by a collective bargaining agreement, after the expiration of the agreement in place on the effective date of the bill. A pre-tax transportation fringe benefit is a benefit that allows an employee to set aside wages on a pre-tax basis, which is then only made available to the employee for the purchase of certain eligible transportation services, including transit passes and commuter highway vehicle travel. The employer is not required to offer a qualified parking or bicycle benefit, but may offer those benefits.

The bill also establishes a \$100 to \$250 penalty for the first time any employer is found to be in violation of this requirement. An employer has 90 days from the date of the violation to offer the pre-tax transportation fringe benefit program before the fine is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit is a subsequent violation subject to a \$250 penalty. The penalty is to be imposed only once in any 30 day period. The Commissioner of Labor and Workforce Development is authorized to ensure that employers provide the pre-tax transportation fringe benefit if required and issue citations for failure to comply with the requirement.

The bill also requires the New Jersey Transit Corporation to establish a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority. The campaign is to encourage the public to contact employers about pre-tax transportation fringe benefits.

Pre-tax transportation fringe benefits can be offered directly by employers or through third party providers. The federal benefit levels available for 2018 are \$260 per month and are subject to cost-of-living adjustments by the federal Internal Revenue Service for transit passes and commuter highway vehicle travel. The transportation fringe benefit is not subject to payroll tax for the employer or the employee, allowing both the employer and employee to reduce their federal tax payments.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

This bill will result in an indeterminate increase in revenues from the imposition of fines on businesses that do not provide pre-tax transportation benefits to employees when required under the law. These fines are for \$100 to \$250, and after a 90 day period to comply with the requirement, continuing violations are for \$250 each month. It is not clear how much revenue these fines may generate, because it is not possible to know the future level of compliance with the requirement. It is generally expected that the level of compliance will be high, because the transportation fringe benefit provides a benefit to both employers and employees. By decreasing employee federal taxable income, both employers and employees face a lower payroll tax burden. This potential monetary benefit for employers indicates that employers may comply with the bill at a high rate.

The bill also entails a State cost in the form of a required public awareness campaign to promote the availability of the pre-tax transportation fringe benefit. It is not clear whether this requirement will represent a new State cost though, as the State already provides funding for

mass marketing of pre-tax transportation fringe benefits through the State transportation capital program. If the amount of funding provided for marketing efforts is increased through the capital program, it may result in a change in the distribution of capital program funding rather than an increase in the total amount of capital program appropriations because there is already a \$16 billion statutory cap on capital program appropriations from FY 2017 through 2024.

It is also possible that any new public awareness efforts could be supported through a General Fund appropriation, rather than through the capital program. In that case, those expenditures would represent an increase in State costs. It is not clear at this time how much, if any, additional amount will be expended on a public awareness campaign. The amount of the likely expenditure will depend upon the types of marketing and outreach activities selected by those administering the program. OLS has no basis on which to project what decisions those implementing the provisions of the bill would make.

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