

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 800 (Senator Brochin, *et al.*)
 Judicial Proceedings

Maryland Transit Administration - Audio Recordings - Requirements and Limitations

This bill requires audio recording devices on Maryland Transit Administration (MTA) transit vehicles used for transit service to be (1) capable of recording oral communications of both the vehicle operator and the vehicle’s passengers; (2) under the exclusive control of the vehicle operator; and (3) activated only in the event of an incident involving public safety that requires documentation. MTA must post a specified notice on vehicles equipped with audio recording devices. Audio recordings may be made available only in specified circumstances and must be limited to the portion of the recording that is pertinent to the crime or incident under investigation. The bill prohibits audio recordings from being used for data mining purposes. MTA must keep a log of the name, address, and affiliation of each person granted access to an audio recording. MTA, in collaboration with the Office of the Attorney General, must adopt implementing regulations.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by approximately \$7.5 million in FY 2016 only to retrofit systems on MTA buses to meet the bill’s requirements and post and update signs on MTA fleet buses. Transit vehicles procured in future years can be purchased with systems that meet the bill’s requirements at no additional cost; thus, expenditures are not affected in future years. Any impact on law enforcement agencies is assumed to be minimal. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	7,500,000	0	0	0	0
Net Effect	(\$7,500,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The bill's requirements apply only to MTA transit vehicles.

Small Business Effect: Minimal.

Analysis

Bill Summary: The notice posted in vehicles must state that (1) the vehicle is equipped with an audio recording device; (2) the device may be activated by the operator in the event of an incident involving public safety that requires documentation; and (3) by boarding the vehicle, the passenger consents to having his/her conversation recorded in the event the operator deems it necessary to activate the audio recording device.

Audio recordings may be made available only in connection with a specific crime for which there is probable cause for investigation or prosecution or in connection with an incident where access to the recording is necessary for penalty purposes. Audio recordings may only be made available to (1) an investigative or law enforcement officer acting under interception of communications provisions in the Courts and Judicial Proceedings Article; (2) an individual whose conversation is recorded; (3) the legal representative of an individual whose conversation is recorded or who is the subject of a specified investigation; (4) the MTA Administrator, or a designee; or (5) the MTA Administrator, or a designee, when investigating a complaint involving the conduct of an employee or a passenger.

Current Law: Under the Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act), it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, "intercept" is defined, in part, as "the... acquisition of the contents of any... oral communication through the use of any... device." Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called "two-party consent"). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a "reasonable expectation of privacy."

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer's duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

A "transit service" is the transportation of persons and their packages and baggage and of newspapers, express, and mail in regular route, special, or charter service by means of transit facilities between points within the metropolitan transit district. Transit service does not include taxicab service, vanpool operation, or railroad service. A "transit vehicle" is a mobile device used in rendering transit service.

Background: MTA operates a comprehensive transit system throughout the Baltimore-Washington metropolitan area, including more than 50 local bus lines in Baltimore and other services such as the light rail, metro subway, commuter buses, Maryland Area Regional Commuter (MARC) trains, and mobility/paratransit vehicles.

MTA has begun to install and activate audio surveillance equipment in its local bus vehicles, in part, to serve as an after-the-fact investigative tool in the event of a criminal incident or crash. MTA reports that all 750 of its fleet buses are equipped with video recording devices; however, only 487 buses have audio capability active. MTA has plans to procure approximately 50 new buses each year over the next several years.

Approximately 82% of the metro rail car fleet is audio capable; however, the proper circuitry is not installed to allow audio recording. At this time, MTA does not have any plans to add audio surveillance equipment to metro rail cars, but MTA reports this feature could be added to existing equipment in approximately six months at a relatively low cost. MTA advises that when new metro rail cars are ordered, they will be equipped with both audio and video camera equipment. All light rail cars do not currently have audio capability. However, for a "mid-life overhaul" beginning in March 2016, MTA plans to add audio surveillance equipment into rail cars that will enable the operator to have exclusive control of the equipment whereby the device can only be activated in the same specified situations described in the bill.

At this time, MTA does not have, nor does it plan to install, audio surveillance equipment in MARC trains or commuter buses. However, MTA is exploring the feasibility of installing video and audio on mobility vehicles in future years.

State Expenditures: Because MTA's audio surveillance system is not configured to allow operators to readily activate and deactivate the system, this analysis assumes that MTA must uninstall existing systems in transit vehicles equipped with an audio surveillance system and replace them with new systems that are capable of meeting the bill's requirements.

MTA's TTF expenditures increase by approximately \$7.5 million in fiscal 2016 to replace existing audio systems with systems that allow operators to selectively activate and deactivate audio recordings. This estimate assumes:

- existing audio recording systems on 750 buses require retrofitting with new systems to meet the bill's requirements;
- a per unit retrofitting cost of \$10,000, based on costs incurred by the Washington Metropolitan Area Transit Authority to install the same system in its bus fleet; and
- minimal costs to post new signs and update existing signs to include the information required by the bill.

The Maryland Department of Transportation (MDOT) advises that buses procured in future years can be purchased already equipped with systems that meet the bill's requirements at no additional cost. Thus, expenditures are not affected in future years.

As noted above, MDOT also advises that approximately 82% of its rail car fleet has an audio capability built into its camera system, but that the audio system is not functional. To activate these audio systems, MDOT needs to purchase additional appropriate motherboards and install them into the camera system on each car. Because the bill applies to transit vehicles that are "equipped" with audio recording devices but does not define the term "equipped," and because the systems in these rail cars are not currently functional, this analysis assumes that these systems are not subject to the bill's requirements.

This estimate assumes the Judiciary can absorb any costs associated with additional cases that may be filed as a result of audio recording evidence.

Additional Comments: Because the bill does not define a "public safety incident" that requires documentation, the circumstances under which an operator should activate audio surveillance equipment are not clear.

Additional Information

Prior Introductions: SB 239 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 938 of 2013, a similar bill, received a hearing in the House Environmental Matters Committee but was subsequently withdrawn.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

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