

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 938 (Delegate Stein, *et al.*)
 Environmental Matters

Transit Service - Audio Recordings - Requirements and Limitations

This bill requires audio recording devices on State and local transit vehicles used for transit service to be (1) under the exclusive control of the vehicle operator and (2) activated only if there is a public safety incident that requires documentation. The Maryland Transit Administration (MTA) or a local transit agency 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 and local transit agencies 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 and local transit agencies, must adopt implementing regulations.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$10,700 in FY 2014 to deactivate audio recording systems and post signs on MTA buses. TTF expenditures increase significantly in FY 2014 and future years to the extent audio recording systems are modified to give exclusive control to vehicle operators. Revenues are not directly affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	10,700	-	-	-	-
Net Effect	(\$10,700)	\$0	\$0	\$0	\$0

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

Local Effect: Local expenditures increase, potentially significantly, in FY 2014 and future years to modify audio surveillance equipment and post signs on transit vehicles. **This bill imposes a mandate on a unit of local government.**

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 and (2) the audio recording device may be activated by the vehicle operator if there is a public safety incident that requires documentation.

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 some other incident in which access to the audio recording is necessary for penalty purposes. In addition, audio recordings may be made available only 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 the designee of a local transit agency; or (5) the MTA Administrator, or a designee, or the designee of a local transit agency when investigating a complaint involving the conduct of an employee or a passenger.

Current Law: Except as otherwise specified in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of specified crimes, including murder, kidnapping, rape, gambling, robbery, HB 938/ Page 2

dealing in a controlled dangerous substance, manufacture or possession of a destructive device, and obstruction of justice.

Wiretapping is also authorized if a person has created a barricade situation and there is probable cause to believe a hostage or hostages may be involved. There are specified exceptions for lawful acts performed by such individuals as (1) a switchboard operator or wire or electronic communication service employee; (2) an investigative or law enforcement officer acting in a criminal investigation or other specified circumstances; (3) a person who is a party to the intercepted communication, where all of the parties have given prior consent; and (4) an employee of a governmental emergency communications center. Law enforcement may place a device within a vehicle to intercept communication to provide evidence of vehicle theft.

“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. By summer 2013, MTA anticipates that the audio surveillance function will be turned on in 158 buses. At this time, approximately 334 of MTA’s 758 buses are equipped with new audio and video surveillance equipment. MTA’s remaining buses are equipped with older video-only surveillance equipment that records to a unit onboard the bus. MTA plans to procure a total of 270 new buses during the fiscal 2013 through 2017 period: 67 in fiscal 2013, 50 in fiscal 2014, 44 in fiscal 2015, 50 in fiscal 2016, and 59 in fiscal 2017. MTA advises that audio and visual camera systems now come standard on new buses.

MTA’s metro cars and light rail cars are equipped with cameras, without audio capability, that record video to a unit in the vehicle. At this time, due to cost, MTA does not have any plans to add audio surveillance equipment to metro cars. However, MTA advises that when new metro cars are ordered, they will be equipped with both audio and video camera equipment. MTA hopes to add audio surveillance equipment to the light rail fleet in the near future.

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 beginning in fiscal 2014.

State Expenditures: Because MTA's audio surveillance equipment is not configured to allow operators to readily activate and deactivate the system, this analysis assumes that MTA must deactivate audio surveillance equipment in transit vehicles.

MTA's TTF expenditures increase by \$10,715 in fiscal 2014 to deactivate audio recording systems and post signs on MTA buses used for transit service. This estimate assumes that (1) audio recording systems are deactivated on 158 buses at a cost of \$25 per bus and (2) 451 MTA buses are equipped with information signs at a cost of \$15 per sign. This estimate assumes that any costs associated with keeping a log, developing regulations, and posting signs on MTA transit service vehicles with audio surveillance equipment in future years can be absorbed.

However, to the extent the bill requires MTA to modify audio surveillance equipment to give vehicle operators exclusive control, TTF expenditures increase significantly in fiscal 2014 and future years. Based on costs incurred by the Washington Metropolitan Area Transit Authority to install a similar system, MTA advises that costs could total \$1.5 million.

Local Expenditures: Local expenditures increase, potentially significantly, in fiscal 2014 and future years to modify audio surveillance equipment and post signs on transit vehicles operated by local transit agencies.

Montgomery County's Ride On buses come equipped with video and audio surveillance equipment that records audio near the bus operator. All Ride On buses with video and audio surveillance equipment have signs alerting passengers that the equipment is being used. Approximately 77% (342 buses) of the Ride On fleet is equipped with video and audio surveillance technology that the county spent \$1.6 million to install. Montgomery County advises its expenditures increase by \$625,000 in fiscal 2014 to modify video and audio surveillance equipment on buses to allow manual activation.

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: None.

Cross File: None.

Information Source(s): Montgomery and Worcester counties, Town of Bel Air, City of Salisbury, Baltimore City, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

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