

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

Senate Bill 239 (Senator Brochin, *et al.*)
 Judicial Proceedings

Maryland Transit Administration - Audio Recordings - Requirements and Limitations

This bill requires audio recording devices on State 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. The Maryland Transit Administration (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 \$1.8 million in FY 2015 only to uninstall existing audio recording systems, install audio recording systems that meet the bill’s requirements, and post and update signs on MTA fleet buses. Buses 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. Revenues are not affected.

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	1.8	0	0	0	0
Net Effect	(\$1.8)	\$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: 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,

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. MTA reports that all 735 of its fleet buses are equipped with audio recording devices; however, the device is only activated in 396 buses. MTA has plans to procure approximately 50 new buses each year over the next several years.

MTA advises that its audio recording devices are built into the cameras located in the front and back of its buses. In buses where the recording device is activated, the system records both audio and visual data at all times. Previously recorded sections of data are recorded over unless the operator activates the “save” feature to prevent a section from being recorded over. Saved recordings are downloaded to the MTA database when the bus completes its route for the day. MTA reports that because the audio recording circuitry is integrated with the video circuitry, the video and audio recorders cannot be turned on or off independent of one another. As such, MTA reports that it is not feasible to add an on/off switch specifically tailored to audio at this time. Thus, a completely new surveillance system needs to be purchased and installed to meet the bill’s requirement that the operator have exclusive control of the device and activate it only in specified situations.

MTA's metro cars and light rail cars are equipped with cameras that record video to a unit in the vehicle. Approximately 28% of the 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 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 cars are ordered, they will be equipped with both audio and video camera equipment. Light rail vehicles are currently in the process of a mid-life overhaul, and while no audio is currently planned, MTA reports that overhaul would be the ideal time to add audio surveillance if it is desired.

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 \$1.8 million in fiscal 2015 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 735 buses require retrofitting with new systems to meet the bill's requirements;
- a per unit retrofitting cost of \$2,500, 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 28% 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 would need 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: 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), Office of the Attorney General, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2014
ncs/lgc

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