

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 9, 2016

SUBJECT: Fiscal Impact Statement – Rail Safety and Security Amendment Act of 2016

REFERENCE: Bill 21-3, Committee Print as shared with the Office of Revenue Analysis on October 25, 2016

Conclusion

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. The bill is estimated to cost \$1.4 million in fiscal year 2017 and \$4.9 million over the four-year financial plan period.

Background

The bill makes several changes to the way the District manages safety oversight of the railroads, railroad carriers, and the DC Streetcar system. The following is a summary of the proposals in the bill.

Department of Energy and Environment Emergency Response and Rail Safety Division

The bill establishes¹ an Emergency Response and Rail Safety Division within the Department of Energy and Environment (DOEE). This Division will:

- Administer safety and security programs for rail systems within the District - including the DC Streetcar;
- Coordinate and conduct emergency responses to spills and releases of hazardous substances;
- Enter into inter-governmental agreements with appropriate federal and state agencies to enhance the capabilities of the District's response to emergencies;

¹ By amending Section 106 of the District Department of the Environment Establishment Amendment Act of 2008, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.06).

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- Oversee the safety and security of rail operations within the District; and,
- Conduct investigative and surveillance activities related to the safety and security of railroad operations within the District.

DOEE State Safety Oversight Agency Designation for DC Streetcar

The bill designates² DOEE as the state safety oversight agency (SSOA)³ upon the approval by the Federal Transit Administration (FTA). Currently, the District of Columbia Fire and Emergency Services Department (FEMS) is the District's SSOA and that will continue until DOEE is approved by FTA. Once certified as the SSOA, DOEE will:

- Oversee the safe operations of the DC Streetcar;
- Conduct investigations into DC Streetcar accidents involving operations or assets;
- Audit the DC Streetcar system for compliance with safety-related plans;
- Issue reports and findings on all aspects of DC Streetcar safety and security including operations and accidents;
- Approve or disapprove safety-related plans;
- Enforce statutes, regulations, and executive orders related to the safe operation of the DC Streetcar including the ability to halt operations due to safety concerns;
- File applications on behalf of the District for FTA assistance; and,
- Conduct operations and actions required by the federal government.

State Railroad Safety Authority

The bill allows DOEE to enter into agreements and certifications with the Federal Railroad Administration (FRA) to conduct inspection, surveillance, enforcement, and investigations for compliance with federal railroad safety laws. DOEE may take action regarding the safety and security of facilities, equipment, rolling stock, and operations of railroads and railroad carriers operating in the District. In order to complete its responsibilities, the bill authorizes DOEE to:

- Review and approve security plans⁴ for rail carriers that transport hazardous materials within or through the District;
- Coordinate and support a plan to respond to emergencies involving railroad operations;
- Issue regulations that promote rail safety and security;
- Require reimbursement of costs from rail carriers for emergency response services;
- Enter any place to inspect railroad equipment, facilities, rolling stock, and operation;
- Inspect and copy records, reports, and other documents related to the safety, security, and operations of a railroad;
- Issue civil fines and penalties for violations of any regulations; and,
- Establish fees that must be paid by rail carriers for inspections, surveillance and investigations.

² By amending Section 106 of the District Department of the Environment Establishment Amendment Act of 2008, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.06).

³ SSOAs are the entity designated to implement the requirements of 49 U.S.C. § 53429 and 49 C.F.R. Parts 659 and 674. SSOAs oversee the safety of rail transit systems that are not regulated by the Federal Railroad Administration.

⁴ As required, by 49 C.F.R. Part 172 for rail carriers and other entities that ship or transport hazardous materials within or through the District.

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The bill requires DOEE to publish a report on rail safety and security twice a year that includes information on the quantity of hazardous materials that were transported through the District and inspections, investigations, and surveillance that were performed by DOEE.

The bill establishes the Rail Safety and Security Fund as a special purpose revenue fund to collect fees for inspection, surveillance, and investigation activities. The revenue deposited into the Fund can only be used for rail safety administration and management expenses. Additionally, rail carriers must reimburse the District for any action taken in response to a rail emergency.

The bill requires⁵ the Homeland Security and Emergency Management Agency (HSEMA) to receive, review, and consistent with applicable federal laws and regulations, approve vulnerability assessments and security plans⁶ developed by rail carriers operating within or transiting through the District.

Rail Advisory Board

The bill establishes a Rail Advisory Board that is required to meet quarterly and serve as an advisory body to the Mayor, Council, HSEMA, and DOEE. The Board must develop and evaluate policy recommendations on the allocation of District funding, rail enhancements, development initiatives, rail safety, homeland security, and community relations. The Board must also develop projects and policies that mitigate environmental impact and enhance the use of rail transportation in the District. Both the District Department of Transportation (DDOT) and DOEE will provide administrative support to the Board so that it can complete its functions. The Board is comprised of eleven members including:

- One from each Class I Railroad⁷ authorized to operate in the District;
- Two labor representatives; two community representatives;
- The Directors of HSEMA, DDOT, and DOEE; and
- The Chief of the Fire and Emergency Medical Services Department.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. The bill is estimated to cost \$1.4 million in fiscal year 2017 and \$4.9 million over the course of the four-year financial plan.

The bill establishes a new Emergency Response and Rail Safety Division at DOEE. The Division will need supervisory personnel and non-personnel resources to carry out its duties. The Division is estimated to cost \$163,000 in fiscal year 2017 and \$869,000 over the course of the four-year financial plan.

⁵ By amending Title II of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes, approved August 11, 1950 (64 Stat. 438; D.C. Official Code § 7-2231.01 et seq.).

⁶ As required by 6 U.S.C. § 1162 and the regulations issued thereunder.

⁷ The District currently has three Class I railroads and include CSX, Norfolk Southern, and Canadian Pacific Railway.

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The bill moves the SSOA from FEMS and places it within DOEE. In order for this move to occur, DOEE must hire industry consultants to complete a two-year FTA certification process. DOEE must also hire two employees and purchase equipment, uniforms, and information technology hardware, and fund other expenses to complete the duties of the SSOA. Until DOEE is certified by the FTA, FEMS will continue to operate as the District's SSOA, therefore, resources cannot be transferred from FEMS to DOEE. Moving the SSOA to DOEE is estimated to cost \$654,000 in fiscal year 2017 and \$1.9 million over the course of the four-year financial plan.

The bill allows DOEE to enter into agreements and certifications with FRA to conduct inspection, surveillance, enforcement, and investigations for compliance with federal railroad safety laws. DOEE requires two additional employees and non-personnel resources, including two vehicles, software, and uniforms, to accomplish these duties. DOEE's state railroad safety oversight functions are estimated to cost \$445,000 in fiscal year 2017 and \$1.4 million over the course of the four-year financial plan.

The bill allows DOEE to collect fees and fines that must be deposited into the Rail Safety and Security Fund. At this time, we are unable to estimate the amount of revenue that will be collected in this Fund. We anticipate that revenue generated by fines and fees will offset some program expenses at DOEE.

The bill requires⁸ HSEMA to approve vulnerability assessments and security plans for railroad carriers operating in the District. The agency does not perform this function and must hire an employee with expertise in railroad security to meet the requirements in the bill. HSEMA will need an additional \$144,000 in fiscal year 2017 and \$603,000 over the course of the four-year financial plan to hire an additional employee.

The bill establishes a Rail Advisory Board that will advise the Mayor, Council, HSEMA, and DOEE on railroad safety matters. In order to carry out its functions, the Board will rely on DDOT and DOEE to provide administrative resources. DDOT - as the Board's primary support agency - will require an additional \$15,000 each year in non-personnel service to complete additional administrative tasks such as hosting a website and printing and translating documents. DOEE can absorb any additional costs within its current budget allocation.

Projected Fiscal Impact for Bill 21-3 – Rail Safety and Security Amendment Act of 2016					
Fiscal Impact	FY 2017	FY 2018	FY 2019	FY 2020	Total
Rail Safety Division ⁽¹⁾	\$162,836	\$228,561	\$235,418	\$242,480	\$869,295
SSOA Move to DOEE ⁽²⁾⁽³⁾	\$653,847	\$697,885	\$289,312	\$297,991	\$1,939,035
State Railroad Safety Authority ⁽⁴⁾⁽⁵⁾	\$444,646	\$313,962	\$323,381	\$333,083	\$1,415,072
HSEMA Security Plan Review ⁽⁶⁾	\$144,114	\$148,438	\$152,891	\$157,478	\$602,921
Rail Advisory Board	\$15,000	\$15,000	\$15,000	\$15,000	\$60,000
Total	\$1,420,443	\$1,403,846	\$1,016,002	\$1,046,032	\$4,886,323

Table Notes:

- ^{1.} Includes one Grade-15 and one Grade-9, Step-5 FTE and a fringe rate of 23.5 percent. Fiscal year 2017 assumes a January 2017 start date. Adjusted by 3 percent annually to account for inflation.

⁸ By amending Title II of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes, approved August 11, 1950 (64 Stat. 438; D.C. Official Code § 7-2231.01 et seq.).

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2. Includes two Grade-14 and one Grade-12, Step-5 FTE and a fringe rate of 23.5 percent and also includes non-personnel services costs. Adjusted by 3 percent annually to account for inflation.
3. Includes a two-year locomotive industry consultant contract that expires at the end of fiscal year 2018.
4. Includes one Grade-14 and one Grade-12, Step-5 FTE and a fringe rate of 23.5 percent and also includes non-personnel services costs. Adjusted by 3 percent annually to account for inflation.
5. Includes a one-time purchase of two work vehicles in fiscal year 2017.
6. Includes one Grade-14, Step-5 FTE and a fringe rate of 23.3 percent and also includes non-personnel services costs. Adjusted by 3 percent annually to account for inflation.