

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1326 (Delegate Reznik, *et al.*)  
Ways and Means and Environmental  
Matters

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**Public-Private Partnerships - Disclosure of Involvement in Deportations -  
Requirement**

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This bill prohibits a private entity, as defined by the bill, that had direct involvement in the deportation of people to death or extermination camps from 1939 to 1945 from qualifying as a bidder on a public-private partnership (P3) with the State unless the entity makes specified certifications.

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**Fiscal Summary**

**State Effect:** No direct effect on State finances, but the bill may jeopardize federal fund revenues for the Purple Line light rail project. Loss of those funds could imperil the entire project.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** An “entity” is (1) a corporation, affiliate, or any other similar organization or a successor in interest of the corporation, affiliate, or similar organization that controls, or is controlled or owned or partially owned by or under common control with, a corporation that had direct involvement in the deportation of victims or (2) a member of a partnership or a consortium that includes an entity that certifies that it had direct involvement in the deportation of victims.

“Direct involvement” means ownership or operation of the trains on which individuals were transported to extermination camps, death camps, or any facility used to transition individuals to those camps from September 1, 1939, until September 2, 1945. “Reparations” includes any restitution or settlement paid by an entity to all identifiable victims in connection with the entity’s direct involvement in deportations. It does not include any other restitution or settlement paid by the entity or any affiliated party or foreign government that does not specifically arise from the entity’s direct involvement in deportations.

The bill does not affect any other State law requiring disclosure of information regarding the entity’s involvement in deportations.

Before an entity attempts to be qualified as a bidder through a request for qualifications, the entity must certify to a reporting agency whether the entity had any direct involvement in the deportation of victims. If an entity certifies that it had direct involvement, the entity must also certify and disclose the following information:

- whether the entity has any records related to the deportations in its possession, custody, or control;
- if the entity has such records, a detailed description of the full contents of the records and their location;
- whether the entity has provided restitution and reparations to all identifiable victims of the deportations or to their families; and
- if restitution or reparations have not been made, whether the entity has otherwise reached a settlement agreement with all identifiable victims or their families.

If the entity certifies that it had direct involvement in deportations, it may provide any mitigating circumstances in narrative and documentary form in the certification.

**Current Law:** Chapters 482 and 483 of 2011 require an entity that submits a formal bid or offer to provide Maryland Area Regional Commuter (MARC) train service to disclose whether it was directly involved in the deportation of victims during the same time period specified in this bill. If the bidder or offeror had direct involvement, it must disclose specified details of that involvement. Prior to the enactment of Chapters 482 and 483, the Maryland Attorney General issued an opinion that included a view expressed by the Federal Transit Administration’s General Counsel that the Maryland law violated federal competitive bidding requirements and could result in the loss of federal funds. As a result, the Maryland Transit Administration (MTA) chose to segregate funding for certain operations and maintenance activities so that federal funds were not used for the commuter services covered by the 2011 law.

**Background:** Chapter 5 of 2013 established a State policy on the use of P3s and expressly authorized specified State agencies (reporting agencies) to enter into P3s. Chapter 5 established a process and associated reporting requirements for State oversight of P3s and instituted a process for both solicited and unsolicited P3 proposals that must be followed before the Board of Public Works may approve a P3 agreement.

The Purple Line is a proposed 16-mile light rail line extending inside the Washington, DC Capital Beltway from New Carrollton in Prince George's County to Bethesda in Montgomery County. Construction is anticipated to begin in fiscal 2015 following the completion of a P3 bidding process that is still underway, assuming MTA receives \$900 million in federal funding for the project as well as regional contributions. The total estimated cost to construct the Purple Line is \$2.2 billion.

In December 2013, the Maryland Department of Transportation and MTA announced the selection of four consortia to bid on the Purple Line under the State's P3 process. One of those consortia includes Keolis, a firm founded in the 1990s that is 70% owned by the French firm Société Nationale des Chemins de Fer Français (SNCF). During World War II, SNCF was paid by Germany to transport 76,000 Jews and other prisoners to Nazi death camps. SNCF's chairman issued a formal apology to Holocaust victims in 2011, but the firm has not paid reparations to victims or their families. In response to Chapters 482 and 483, SNCF posted 1.3 million documents online related to its involvement in transporting victims to death and extermination camps.

**State Fiscal Effect:** Unlike MARC train service, MTA advises that federal funds cannot be segregated under the proposed Purple Line P3 agreement. Therefore, to the extent that the bill conflicts with federal procurement laws or regulations, it may jeopardize federal funds for the Purple Line. Given the substantial share of federal funds proposed for the project, the loss of those funds could imperil the entire project.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, SB 754 (Senator Conway - Budget and Taxation) is not identical.

**Information Source(s):** Maryland Department of Transportation, *Washington Post*, *Bethesdanow.com*, Department of Legislative Services

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