Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 972 (Delegate Marriott, *et al.*)
Environmental Matters

Maryland Transit Administration - Regulation of Privatization Contracts

This bill establishes several requirements that the Maryland Transit Administration (MTA) must follow to enter into a privatization contract for services and specifies the content of those contracts. It also requires MTA to certify the contracts with the Comptroller and gives the Comptroller final approval authority over such contracts.

Fiscal Summary

State Effect: Potentially significant increase in Transportation Trust Fund (TTF) operating and capital expenditures in FY 2005 and annually thereafter if MTA could not privatize certain contracts and realize the savings associated with outsourcing. The cost for MTA to handle the services of one contract alone (paratransit service) is approximately $9.5 million. Revenues would not be affected.

Local Effect: None.

Small Business Effect: The bill would likely reduce the number of contracts awarded to private transit contractors, who contract with subcontractors that include small businesses. If a contractor maintained a contract, the contractor could potentially be requested to increase wages and benefits.

Analysis

Bill Summary: The bill prohibits MTA from entering into a privatization contract unless certain requirements are met and limits the term for contracts to three years. A privatization contract under the bill means an agreement or combination of agreements between MTA and a nongovernmental entity for services valued at $100,000 or greater, that are substantially similar to, and in lieu of, services provided by MTA employees. The bill also outlines bid procedures for privatization contracts.

For each position in which a bidder will employ a person whose duties are performed by a regular MTA employee, the request for bid required must include a statement of the minimum wage rate to be paid for the position, which may not be less than the first step of the grade or classification of the comparable regular MTA position.

Every privatization contract must:

- establish the wage rate for each position that may not be less than the first step of the grade or classification of the comparable MTA position;
- require the contractor to pay not less than a percentage, comparable to the percentage paid for by State employees, of the costs of health insurance plans for every employee employed for at least 20 hours per week under the contract and the employee's spouse and dependent children;
- require the contractor to submit quarterly payroll records to MTA, listing the name, address, Social Security number, hours worked, and the hourly wage paid for each employee in the previous quarter;
- require the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons, and to take affirmative steps to provide equal opportunity for all persons; and
- cost 15% less than the estimated cost of providing the services using regular MTA employees.

The Attorney General may bring a civil action for equitable relief to enforce these requirements or to prevent or remedy the dismissal, demotion, or other action prejudicing any employee as a result of a report of a violation.

MTA must prepare an assistance plan for each employee displaced as a result of the contract, including any training needed to place the employee in a comparable position. It must also provide adequate resources for encouraging and assisting MTA employees or their representatives to submit a bid to provide mass transit services.

MTA must publicly designate the bidder to which it proposes to award the contract and prepare a comprehensive analysis of the contract cost based on the designated bid. If the designated bidder is headquartered outside the State, the contract cost has to be increased by the amount of income tax revenue, if any, that will be lost to the State, as determined by the Comptroller. Prior to the award, MTA shall certify in writing to the Comptroller that it has complied with the bill.

The Comptroller may only object to the privatization contract if MTA has failed to comply with one or more of the requirements. The objection of the Comptroller is final and binding on MTA, unless the objection is withdrawn. The Comptroller may extend the time to make an objection to the privatization contract for an additional 30 business days and must state the reason for the extension.

Current Law: Contracts sponsored by the Maryland Department of Transportation (MDOT) for construction and architectural/engineering services, maintenance, and rolling stock and transit system property require approval by the Board of Public Works. MDOT does not need approval from another governmental entity for transit service contracts. Neither State procurement law nor departmental polices requires contractors to provide quarterly payroll information or ensure that employee wages or fringe benefits are comparable to that of State employees. State agencies are not required to provide unions with resources to bid on State contracts.

Background: The bill closely resembles a Massachusetts law that applies to public building construction. That law has identical provisions related to bid procedures, wage and health insurance requirements, and authority for the attorney general to bring a civil action. The Massachusetts law also mandates contract certification with the state auditor.

MTA is currently bidding for a contractor to handle paratransit service. The former provider, Yellow Transportation, has protested the award of the contract to other companies to the State Board of Contract Appeals.

State Expenditures: MTA advises that the bill would increase the cost of providing transit service, particularly paratransit, as it would limit the agency's ability to hire contractors. About 14% of MTA employees operate paratransit routes; the remainder is served by a private company. MTA estimates that it will cost an additional $9.5 million a year to provide 475,000 paratransit trips without contractors. MTA paid the contractor $10.6 million in fiscal 2003 to provide this service.

Capital expenditures could also increase to the extent that MTA will be required to purchase its own vehicles. It advises that it will likely need 46 new buses and 58 sedans, which will total $3.6 million. Other contracts affected by the bill include those for cleaning bus shelters and Metro stations. MTA employees clean 190 shelters and the Association of Retarded Citizens of Baltimore (ARC) cleans 101 shelters. The ARC contract is worth $241,453 for fiscal 2004.

The Comptroller's Office advises that the bill's requirement to estimate lost income tax revenue due to contracts with out-of-state businesses will involve a significant amount of work but anticipates such estimates to be done rarely. It also notes that bidders will likely form a Maryland subsidiary or find a Maryland partner to submit the bid.

Additional Information

Prior Introductions: None.

Cross File: SB 424 (Senator McFadden, *et al.*) – Finance.

Information Source(s): Comptroller's Office, Maryland Department of Transportation, Department of Legislative Services

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mll/mdr

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