Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 754 (Senator Conway)
Budget and Taxation

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

This bill requires that, to be eligible to participate in a public-private partnership (P3) with the State, a private entity, as defined by the bill, must certify whether it had any direct involvement in the deportation of people to extermination or death camps from 1939 to 1945; if the entity had such involvement, it must also certify that it has provided reparations to all identifiable victims or to their families. Likewise, a reporting agency under provisions of law relating to P3s is prohibited from establishing a P3 or executing an agreement with a private entity that is required to make a certification under the bill but (1) does not do so or (2) certifies that it has not provided reparations to all identifiable victims or their families.

The bill takes effect July 1, 2014.

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.

Analysis

Bill Summary: "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.

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.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1326 (Delegate Reznik, *et al.* - Ways and Means and Environmental Matters) is designated as a cross file, it is not identical.

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

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mc/ljm

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