HB 1471

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1471 (Delegate Frush, *et al.*)
Appropriations

Transportation - Intercounty Connector - Elimination of Funding

---

This bill eliminates all funding for the Intercounty Connector (ICC) and requires the Maryland Transportation Authority to retire specified debts incurred to pay for it. It also diverts a portion of future unappropriated general fund surpluses from the Revenue Stabilization Account to the Transportation Trust Fund.

Fiscal Summary

State Effect: Nonbudgeted expenditures by MdTA for the ICC decrease by $721.6 million in FY 2009 despite an $80.0 million expenditure for liquidated damages for cancelled contracts. Nonbudgeted revenues for MdTA decrease by $563.1 million in FY 2009 due to the cancellation of planned GARVEE and revenue bond issuances. Out-year revenue decreases for MdTA are due to additional cancelled bond issuances and transfers from the general fund as well as foregone toll revenue from the ICC. General and special fund expenditure decreases in FY 2009 and 2010 reflect payments to MdTA that would no longer be required. Out-year expenditure decreases for MdTA stem from cancelled construction contracts and elimination of debt service payments for retired or cancelled bonds. General fund revenue reductions for the Rainy Day Fund in FY 2010 and 2011 reflect general fund surpluses diverted to the TTF.

($ in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	$0	($50.0)	($50.0)	$0	$0
SF Revenue	0	50.0	50.0	0	0
NonBud Rev.	(563.1)	(619.9)	(354.4)	(92.7)	(30.3)
GF Expenditure	0	(126.9)	0	0	0
SF Expenditure	(30.0)	(30.0)	0	0	0
NonBud Exp.	(721.6)	(743.4)	(489.7)	(215.3)	(166.1)
Net Effect	$188.5	$280.4	$135.3	$122.6	$135.8

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Montgomery County has purchased rights-of-way to allow for the construction of the ICC. Under this bill, the county could either use that land for other purposes or sell it to generate revenue. In addition to the impact regarding rights-of-way purchases, the elimination of the ICC could also affect long-term economic development efforts in affected areas.

Small Business Effect: No direct impact, but the elimination of the ICC could affect long-term economic development efforts.

Analysis

Bill Summary: In a given fiscal year, if the unappropriated general fund surplus exceeds $10 million as of June 30 of the second preceding year, the Governor must appropriate the lesser of $50 million or the excess surplus over $10 million to TTF until the total amount appropriated to TTF reaches $211.9 million. Until that amount has been repaid, if the general fund surplus for the second preceding fiscal year does not exceed the sum of $10 million and the amount required to be paid to TTF, no appropriation to the Revenue Stabilization Account (Rainy Day Fund) needs to be made for the corresponding fiscal year. If the general fund surplus in the second preceding year exceeds the sum of $10 million and the amount required to be paid to TTF, only the portion of the surplus in excess of that amount needs to be transferred to the Rainy Day Fund.

MdTA must retire any outstanding bonds secured by a pledge of future federal aid with • unspent bond proceeds; • any unspent moneys appropriated for the ICC; or • federal fund authorizations from the federal highway program, in that order.

Current Law: The Governor is required to transfer any unappropriated general fund surplus in excess of $10.0 million as of June 30 of the second preceding fiscal year to the Rainy Day Fund.

To help finance the ICC, MdTA must issue not more than $750 million in Grant Anticipation Revenue Vehicle or GARVEE bonds secured by a pledge of future federal aid (which, if issued, must be retired under this bill). It must also issue revenue bonds not secured by a pledge of future federal aid (which, if issued, do not need to be retired under this bill). From fiscal 2007 to 2010, the Governor must transfer to MdTA:

- at least $30 million each year from TTF; and
- at least $50.0 million from the general fund each year, until the aggregate payment equals $264.9 million no later than fiscal 2010.

The Governor must also transfer at least $10.0 million in federal aid to MdTA in amounts deemed prudent.

Chapter 473 of 2005 requires, beginning in fiscal 2012, the repayment of State transfer tax revenues transferred to the general fund after fiscal 2005 by including the transfer tax special fund in the provisions relating to the disposition of any unappropriated general fund surplus. The repayment provisions only take effect once TTF has been fully repaid in accordance with current statutory requirements.

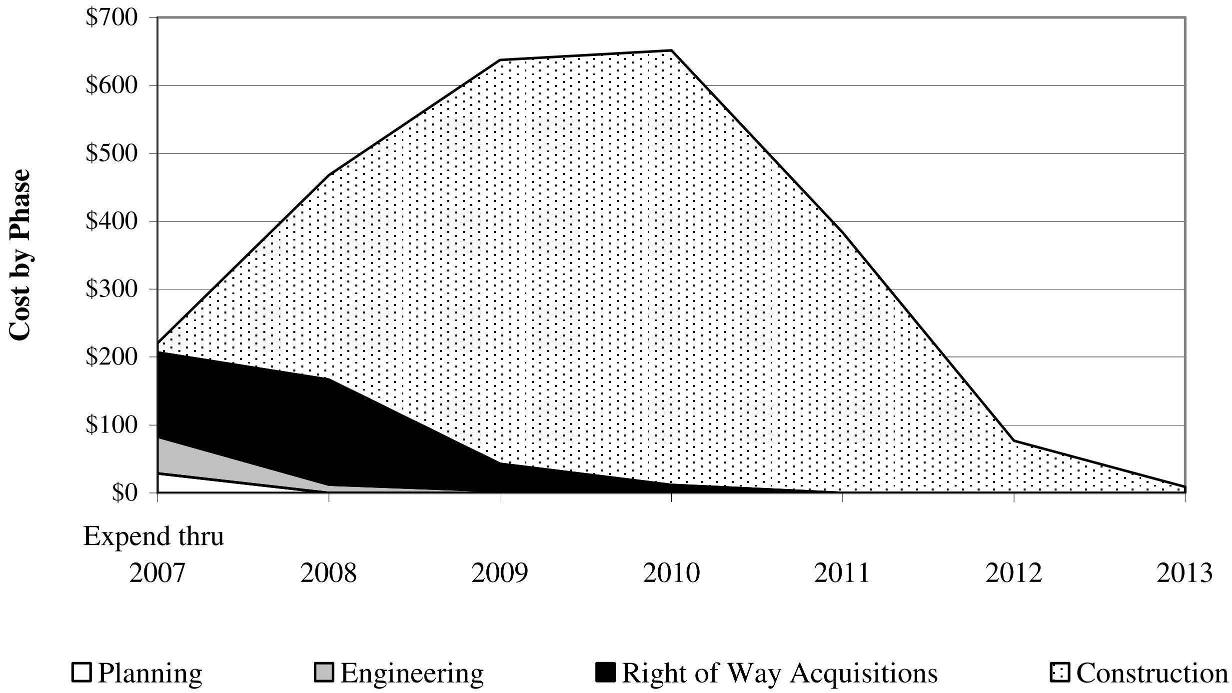
Background:

Intercounty Connector: The ICC is a planned 18.8 mile tolled highway extending from the I-270/I-370 corridor in Montgomery County to the I-95/US 1 corridor in Prince George's County. The ICC will be owned and operated by MdTA. The State Highway Administration, acting on behalf of MdTA, is managing the planning, environmental approvals, design, and construction administration. The six-lane (three each way) highway will be one of the State's first facilities to be fully electronic. All users will pay tolls electronically, either through the use of an E-Z Pass transponder or video tolling. Toll rates for the facility have not been established; however, the ICC will be one of the first facilities in Maryland to utilize congestion pricing, where toll rates vary based on current congestion levels.

Construction of the ICC includes five distinct design-build contracts, to allow for more competitive bidding and simultaneous construction on multiple parts of the highway. In March 2007, Contract A, from I-370 to Georgia Avenue (MD 97), was awarded and major construction of the $478.7 million contract began in November 2007. This portion of the highway will be completed and open to traffic in late 2010. In November 2007, the second major contract was awarded. The $513.9 million Contract C runs from US 29 to I-95, and construction on that portion of the highway is expected to begin in 2008. The remaining three contracts are in various stages of the procurement process. The entire length of the ICC is expected to open to traffic in calendar 2012.

Exhibit 1 shows expenditures by year for each phase of the ICC project. The largest expenditure of funds, $2.0 billion, is committed to construction. The largest outlay of cash for the project, over $651.0 million, occurs in fiscal 2010.

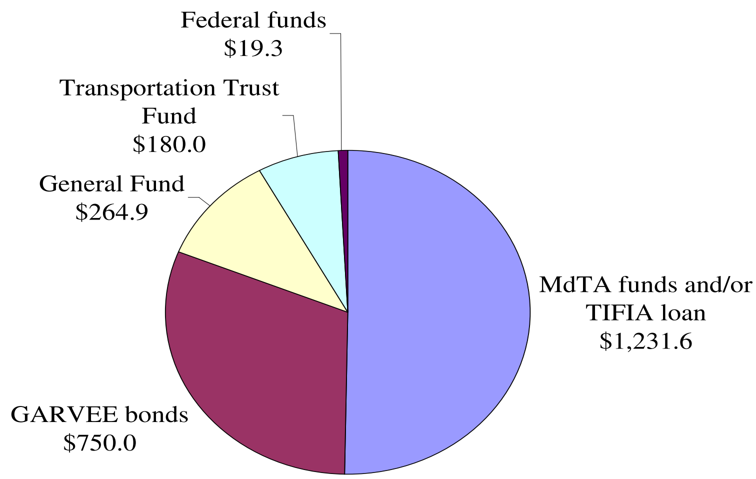
Exhibit 1
ICC Expenditures by Year and Project Phase
Fiscal 2007-2013
($ in Millions)



Source: Maryland Transportation Authority

Chapters 471 and 472 of 2005 established a financing plan for the ICC, which includes the general fund, TTF, GARVEE bonds, federal funds, and MdTA toll revenue bonds, and/or a Transportation Infrastructure Finance and Innovation Act or TIFIA loan. As shown in **Exhibit 2**, in the first annual update to the financial plan submitted to the Federal Highway Administration, MdTA reports that the cost of the project remains at $2.4 billion and the funding sources remain the same. While construction cost estimates increased by nearly $105.0 million relative to the initial finance plan, offsetting savings in right-of-way purchases maintained the total spending estimates. The funding plan has seen a slight increase in federal funds and a corresponding decrease in MdTA bonds.

Exhibit 2
ICC Finance Plan
($ in Millions)



Total: $2,445.9

Source: Maryland Transportation Authority

In June 2007, MdTA issued the first of two tranches of GARVEE bonds. A total of $341.9 million was deposited into the project fund (bond issuance of $325.0 million plus a net premium of $16.9 million). The second issuance of GARVEE bonds is expected in the fall of 2008.

In March 2008, MdTA issued $712.0 million in revenue bonds, about $190.0 million of which is to support the ICC. This is the first of several planned MdTA revenue bond issuances which will provide money for the ICC.

The financing plan also includes $264.9 million in general funds, discussed in more detail below.

In order to support ongoing State spending, the Budget Reconciliation and Financing Act of 2003 transferred $314.9 million from TTF to the general fund, with the requirement that the money be repaid to TTF. During the 2004 session, the Rainy Day Fund statute was amended to require that if there is a surplus of unappropriated funds in the general fund at the close of a fiscal year, the first $10.0 million would be retained by the general fund, and the next $50.0 million would be repaid to TTF. In fiscal 2006, $50.0 million was repaid to TTF under this provision.

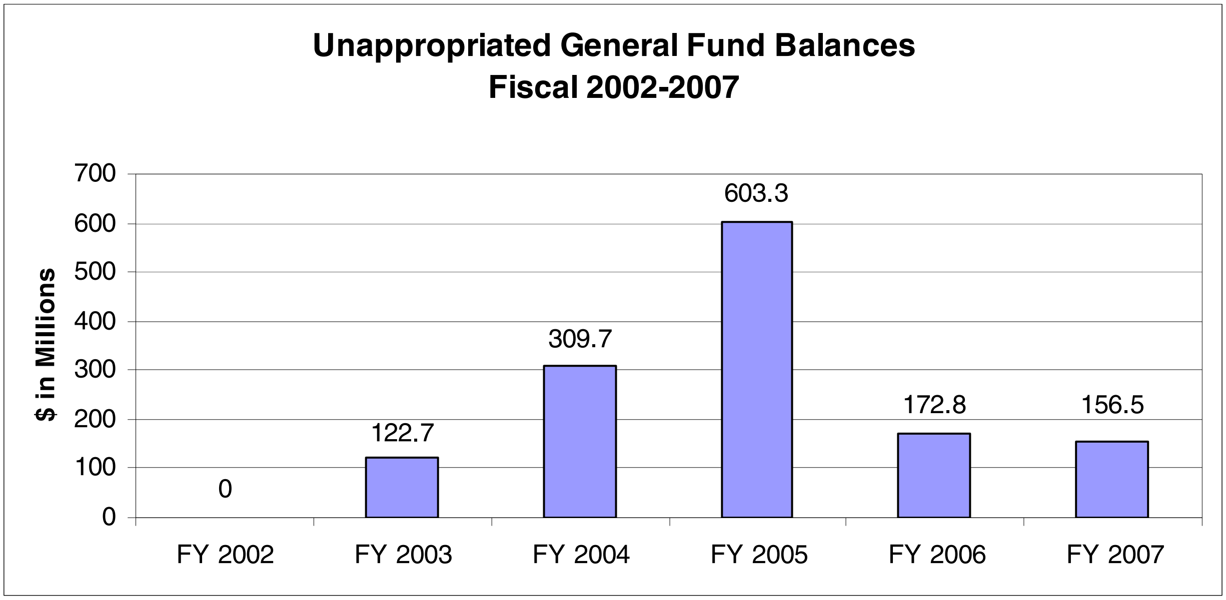
Chapters 471 and 472 of 2005 deleted the provision that provided for repayment of TTF from surpluses in the general fund. In its place, repayment was provided through annual payments to MdTA to fund construction of the ICC until the balance was paid in full. Statute requires that at least $50.0 million be repaid per year between fiscal 2007 and 2010 and that the remaining balance of $264.9 million be repaid in fiscal 2010.

The first payment of $53.0 million was made in fiscal 2007. MdTA reported that then-current cash flow forecasts made a general fund payment unnecessary in fiscal 2008, so general fund support was not provided in that year. The Governor's proposed fiscal 2009 budget includes a transfer of $85.0 million to MdTA for the project.

Rainy Day Fund: The purpose of the Revenue Stabilization Account or Rainy Day Fund is to retain State revenues for future needs and to reduce the need for future tax increases by moderating revenue growth. The Governor is required to appropriate sufficient funds to the account to maintain a balance of at least 7.5% of estimated general fund revenues for that fiscal year. The Governor's proposed fiscal 2009 budget projects an ending balance of $738.9 million in the Rainy Day Fund.

Exhibit 3 shows the unappropriated general fund balances for each of the past six fiscal years. Except for fiscal 2002, the fund balances have exceeded both the $10.0 million threshold that triggers an appropriation to the Rainy Day Fund under current law, and the $60.0 million threshold that would trigger the maximum $50.0 million appropriation to TTF required by this bill. The projected fiscal 2008 and 2009 general fund unappropriated surpluses are each $177.0 million.

Exhibit 3



State Fiscal Effect: The bill's October 1, 2008 effective date means it will not affect the proposed transfer of $146.5 million in unappropriated general funds from fiscal 2007 to the Rainy Day Fund in the fiscal 2009 budget. It will also not affect the Governor's proposed general fund payment to MdTA of $85.0 million, which will reduce the balance owed to $126.9 million. If enacted, presumably MdTA would transfer the $85.0 million to TTF, although that is not required by this bill.

MdTA and ICC Funding: MdTA advises that the two ICC construction contracts include liquidated damage clauses that would require it to pay the contractors an estimated $80.0 million upon cancellation of the contracts, which DLS assumes would be paid from the proceeds of a prior GARVEE bond sale. The GARVEE bond issuance provides for the penalty-free retirement of the bonds under extraordinary circumstances, and MdTA advises that statutory cancellation of the project qualifies under that provision. Therefore, MdTA would not incur any additional costs to retire the bonds. However, as some of the proceeds from the GARVEE bonds have been spent, and more would be spent on the liquidated damages owed to the contractors, MdTA may have to draw as much as $100.0 million in federal highway funds, as allowed by the bill, to fully retire the debt. DLS anticipates that MdTA would use federal funds previously designated for payment of debt service on the GARVEE bonds, so no federal funds would be drawn from other State road projects.

The bill would cancel the payment of $126.9 million due to MdTA in fiscal 2010 from the general fund as the final repayment of the $314.9 million transferred from TTF in fiscal 2003. It would also cancel the required fiscal 2010 payment of $30.0 million payment from TTF. If the bill is enacted, it is also assumed that the $30.0 million payment from TTF to MdTA in fiscal 2009 would not be made. Toll revenue for MdTA projected to be generated by the ICC would decline by $4.4 million in fiscal 2011, $12.9 million in fiscal 2012, and $30.3 million in fiscal 2013. MdTA would forego issuing $408.1 million in GARVEE bonds in fiscal 2009 and approximately $1 billion less in revenue bonds from fiscal 2010 through 2012; the latter would provide it with excess debt capacity and reduced debt service payments that could be used for other projects or to limit anticipated toll increases. DLS anticipates that MdTA would redirect the proceeds of the $190.0 million in revenue bonds already issued for the ICC to other projects, and would therefore continue to owe debt service on those bonds. MdTA could not provide an estimate of the amount of the debt service owed on those bonds in time for inclusion in this Fiscal and Policy Note, so the estimates for future nonbudgeted expenditure decreases could be slightly overstated.

TTF: With projected fiscal 2008 and 2009 unappropriated general fund surpluses of $177.0 million, $50.0 million in general funds would be diverted to TTF in fiscal 2010 and again in fiscal 2011, reducing the balance owed to $26.9 million. There is not projected to be a general fund surplus in fiscal 2010 or 2011, so no payment would be made to TTF in fiscal 2012 or 2013. With the projected return of a general fund surplus in fiscal 2012, the remaining $26.9 million balance would likely be repaid in fiscal 2014.

Rainy Day Fund: With projected fiscal 2008 and 2009 unappropriated general fund surpluses of $177.0 million, the general fund transfer to the Rainy Day Fund in fiscal 2010 and 2011 would be $117.0 million each year, or $50.0 million less than under current law, accounting for the $50.0 million diversions to TTF. With no general fund surpluses projected for fiscal 2010 and 2011, there is no effect on the Rainy Day Fund in fiscal 2012 and 2013; the transfer to the Rainy Day Fund in fiscal 2014 would be reduced by $26.9 million. To the extent that transfers to the Rainy Day Fund are reduced in fiscal 2010, 2011, and 2014, there will be less money available in succeeding years to balance the State budget, possibly necessitating further budget cuts or additional revenues.

Transfer Tax/Special Fund: General fund transfers to the transfer tax special fund (for Program Open Space and related programs) required by statute would not be affected. Although the payments are scheduled to begin in fiscal 2012, general fund surpluses are not projected for fiscal 2010 and 2011, so no payments would be made to the transfer tax special fund in fiscal 2012 and 2013 even in the absence of this bill. Once the TTF is fully reimbursed as projected in fiscal 2014, general fund transfers to the transfer tax special fund would begin.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Maryland Transportation Authority, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2008
ncs/lgc

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510