HB 176

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 176 (Delegate Krebs, *et al.*)
Appropriations and Ways and Means

Transportation Trust Fund Protection Act

This bill proposes to amend the Maryland Constitution to include the Transportation Trust Fund (TTF) and establish rules for its operation and funding. The bill places constitutional restrictions on transfers from TTF and use of TTF monies. It states that constitutional requirements for a majority approval of the amendment in a local jurisdiction do not apply and calls for the amendment to be submitted for a statewide vote at the next general election to be held in November 2014.

Fiscal Summary

State Effect: If adopted, the constitutional amendment would eliminate any transfers or distributions from TTF to the general fund or a special fund beginning in FY 2015. The overall effect on TTF revenues and expenditures is potentially significant but cannot be reliably estimated at this time and depends on whether, and to what extent, TTF revenue distributions are not modified or transfers are not made as a result of the amendment.

Local Effect: To the extent State revenues are affected by the prevention of transfers and redistribution of TTF funds, local highway user aid may be affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires TTF funds to be used only to pay the principal of and interest on transportation bonds and for any lawful purpose related to construction and maintenance of an adequate highway system or any other transportation-related purpose. No part of TTF may revert or be credited to the general fund or a special fund.

The bill creates constitutional authority for TTF's current statutory sources of revenue and requires that not less than the portion of revenue from specified fees and taxes be distributed to TTF as required in specified provisions of law in the Tax-General Article and Transportation Article as they were in effect on July 1, 2012.

The bill creates exceptions to the prohibition on TTF transfers but only for defense or relief purposes and if (1) the State is invaded or a major catastrophe occurs; (2) the Governor proclaims a state of emergency, declares that TTF funds are necessary for the immediate preservation of public health or safety, and proposes a plan to repay TTF within five years; and (3) the General Assembly approves legislation, by a three-fifths vote of both houses, authorizing the use of TTF for defense or relief purposes and approving a repayment plan. The authorizing legislation may contain only those provisions required to authorize the use of TTF for defense or relief purposes.

Current Law: After meeting debt service requirements, the Maryland Department of Transportation (MDOT) may use funds in TTF for any lawful purpose related to the exercise of its rights, powers, duties, and obligations. TTF funds may not be transferred or diverted to the general fund unless legislation is enacted prior to the diversion that repays the TTF funds within five years. Also, no part of TTF may revert or be credited to the general fund and no part may revert or be credited to a special fund, unless the transfer is approved by the Legislative Policy Committee. If the committee fails to reject the transfer within 15 days after the transfer is presented, it is deemed to be approved.

TTF's Gasoline and Motor Vehicle Revenue Account (GMVRA) revenue (commonly known as highway user revenue) must be distributed to MDOT and local jurisdictions as follows:

- 90% in fiscal 2013 and 90.4% in fiscal 2014 and future years to MDOT; and
- the balance to counties, municipalities, and Baltimore City.

Background: MDOT is responsible for statewide transportation planning and the development, operation, and maintenance of key elements of the transportation system. MDOT is organized into several administrations – State highway, motor vehicle, aviation, port, and transit. Other departmental components include the Office of the Secretary and certain advisory and zoning boards. A separate Maryland Transportation Authority (MDTA) operates revenue-generating transportation facilities. Consequently, MDOT is involved in all modes of transportation within the State, including the construction and maintenance of State roads, regulation and licensing of drivers and vehicles, and operation of bus and rail transit services. In addition, MDOT owns and operates Martin State Airport, Baltimore/Washington International (BWI) Thurgood Marshall Airport, and terminals in the Helen Delich Bentley Port of Baltimore.

TTF Revenue Receipts

TTF is a nonlapsing special fund that provides funding for transportation projects. It consists of tax and fee revenues, operating revenues, bond proceeds, and fund transfers. MDOT issues bonds backed by TTF revenues and invests the TTF fund balance to generate investment income. The Maryland Transit Administration, Motor Vehicle Administration, Maryland Port Administration, and Maryland Aviation Administration generate operating revenues that cover a portion of their operating expenditures. **Exhibit 1** shows that TTF's fiscal 2012 end-of-year fund balance totaled $187 million.

Exhibit 1
Transportation Trust Fund Revenues and Expenditures
Fiscal 2012
($ in Millions)

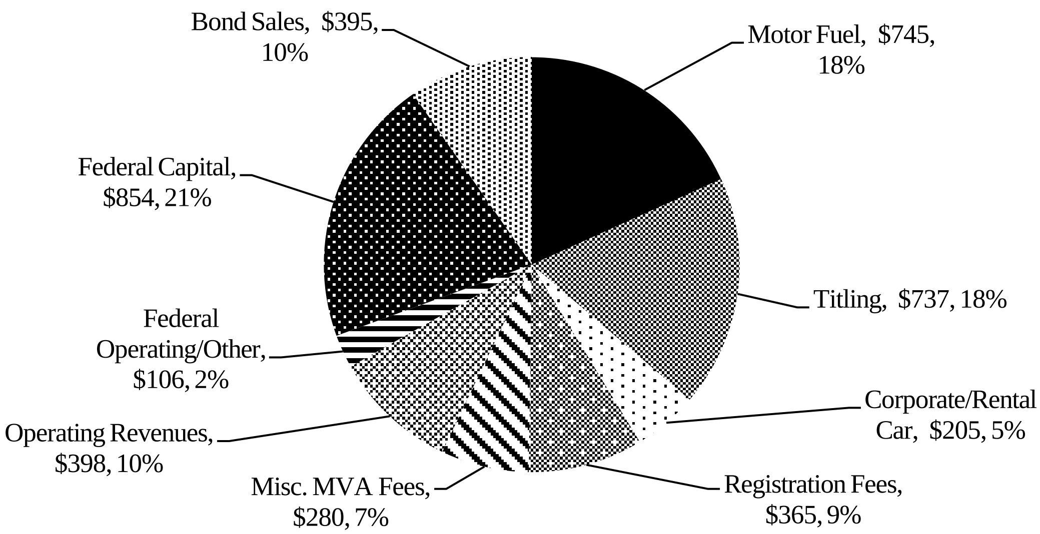
	Actual FY 2012
Starting Fund Balance	**$221**
Revenues	
Titling Taxes	$632
Motor Fuel Taxes	734
Sales Tax	24
Corporate Income, Registrations, and Misc. MVA Fees	795
Other Receipts and Adjustments	515
Bond Proceeds and Premiums	130
Total Revenues	**$2,830**
Uses of Funds	
MDOT Operating Expenditures	$1,572
MDOT Capital Expenditures	736
MDOT Debt Service	172
Highway User Revenues	147
Other Expenditures	237
Total Expenditures	**$2,864**
Final Ending Fund Balance	**$187**

MVA = Motor Vehicle Administration
Source: Maryland Department of Transportation, January 2013

The tax and fee revenues allocated to TTF include motor fuel taxes, titling taxes, vehicle registration fees, a portion of the rental car sales and corporate income taxes, and other miscellaneous motor vehicle fees. **Exhibit 2** shows that TTF's largest revenue sources in fiscal 2014 are the motor fuel and titling taxes and federal aid for the capital program, which represent $2.3 billion (57%) of all fund sources. MDOT is projecting that

$395 million in bonds will be sold to supplement the transportation capital program in fiscal 2014.

Exhibit 2
Transportation Trust Fund
State-sourced Revenues and Federal Funds
Fiscal 2014
($ in Millions)



Total: $4,084 Million

Source: Governor's Budget Books, Fiscal 2014, Volume I, pages 584-588

Highway User Revenues

A portion of TTF revenues is credited to GMVRA and is distributed to local jurisdictions and MDOT. The funds retained by TTF support MDOT's capital program, debt service, and operating costs. Local governments use highway user revenues to help develop and maintain local transportation projects. **Exhibit 3** summarizes the distribution of highway user revenue in fiscal 2013 through 2016.

Exhibit 3
Highway User Revenue Distribution Under Current Law
Fiscal 2013-2016
($ in Millions)

	Fiscal 2013		Fiscal 2014		Fiscal 2015		Fiscal 2016	
	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars
MDOT	90.0%	$1,444	90.4%	$1,578	90.4%	$1,636	90.4%	$1,683
Baltimore City	8.1%	130	7.7%	134	7.7%	139	7.7%	143
Counties	1.5%	24	1.5%	26	1.5%	27	1.5%	28
Municipalities	0.4%	6	0.4%	7	0.4%	7	0.4%	7
Total	**100.0%**	**$1,604**	**100.0%**	**$1,745**	**100.0%**	**$1,810**	**100.0%**	**$1,861**

Note: Totals may not sum due to rounding.
Source: Department of Legislative Services

TTF Transfers to the General Fund

In the past, revenues have been transferred from TTF to the general fund and the general fund has subsequently repaid TTF. (See **Appendix 1**.) In recent years, however, a significant portion of the local share of highway user revenue has been diverted to the State's general fund to help balance the State's budget. (See **Appendix 2**.) Previously, the statutory distribution formula allocated 70.0% of highway user revenue to MDOT and 30.0% to local jurisdictions. However, the Budget Reconciliation and Financing Act (BRFA) of 2009 (Chapter 487, HB 101) reduced the local share of highway user revenues for fiscal 2010 and 2011 and transferred a portion of the revenues to the general fund. That legislation also adjusted the State-local distribution of highway user revenue, beginning in fiscal 2012, to 71.5% to TTF and 28.5% to local jurisdictions. Budget reconciliation legislation in 2010 and 2011 made further adjustments to the allocation of highway user revenues and transfer of TTF revenues to the general fund. There is no statutory requirement to transfer TTF to the general fund in fiscal 2013 or future years.

In accordance with a provision in the BRFA of 2010 (Chapter 484, SB 141), all interest income earned from TTF must be credited to the general fund in fiscal 2010 and 2011. MDOT advises that $5.4 million in interest income was transferred to the general fund in fiscal 2010 and $7.3 million was transferred from TTF in fiscal 2011.

State Fiscal Effect: Assuming approval of the amendment in the November 2014 general election, this bill makes less likely any future transfers from TTF. Likewise, the bill establishes TTF revenue sources as part of the constitution rather than statute, which makes any alteration in the distribution of TTF revenue sources subject to the constitutional amendment process and restricts the State’s flexibility to modify those revenue distributions. Absent one of the specified emergencies, any proposed transfers or changes in distribution to the general fund or another special fund would require an additional constitutional amendment. The Department of Legislative Services advises that, in the absence of the availability of transfers from TTF, any future shortfalls in the general fund could require additional and possibly significant expenditure reductions or revenue increases.

The bill could affect the way MDOT administers its funds in the future due to its more narrow definition of the authorized use of funds from “any lawful purpose” under current law to “any lawful purpose related to the construction and maintenance of an adequate highway system or any other transportation-related purpose.”

State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections’ budget. Pursuant to Chapter 564 of 2001 (HB 1457), the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Local boards of elections’ printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections’ budgets.

Additional Comments: The bill creates a constitutional requirement to dedicate not less than the portion of certain revenues to TTF that were dedicated as of July 1, 2012. This requirement could be interpreted to mean the same dollar amount, effectively establishing a mandatory funding requirement.

Because MDTA is considered a special fund in most circumstances, the bill may preclude MDTA from receiving TTF funds. Specifically, since the State Highway Administration is the designated recipient of federal transportation funds, MDTA may have difficulty with implementing certain federal financing instruments, such as federal Transportation Infrastructure Finance and Innovation Act loans and grant anticipation revenue vehicles. Also, the bill may prohibit fees collected by the Maryland Aviation Administration from being transferred to MDTA to pay debt associated with improvements at BWI Thurgood Marshall Airport.

Additional Information

Prior Introductions: HB 16 of the 2012 second special session was referred to the House Rules and Executive Nominations Committee, but no further action was taken. HB 146 of 2012, HB 21 of the 2011 special session, and HB 518 of 2011 were also similar bills. HB 146 of 2012 received an unfavorable report from the House Appropriations Committee. HB 21 of the 2011 special session was referred to the House Rules and Executive Nominations Committee, but no further action was taken. HB 518 of 2011 received a hearing in the House Appropriations Committee, but no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - February 21, 2013
mlm/lgc

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Appendix 1
Transportation Trust Fund (TTF)
Transfers to/from State General Fund

Fiscal Year	Transfers from TTF to the General Fund	Transfers from the General Fund to TTF
1984	$29.0 million (budget shortfall)[1]	
1986	$100.0 million Maryland Deposit Insurance Fund (Savings and Loan Crisis)[2]	
1987		$15.0 million (partial payback of $129.0 million)
1988		$30.0 million (partial payback of $129.0 million)
1989		$36.0 million (partial payback of $129.0 million)
1990		$36.0 million (partial payback of $129.0 million)
1991	$22.2 million (budget shortfall)[3]	$12.0 million (final payback of $129.0 million)
1992	$48.0 million (budget shortfall)[4] Equal to biennial registration windfall	
1993		
1994		
1995		
1996		
1997		$6.0 million (failure of fuel efficiency legislation)[5]
1998		$21.0 million (failure of fuel efficiency legislation)[5]
1999		$15.0 million (failure of fuel efficiency legislation)[5]
2000		
2001		$25.1 million (Wilson Bridge/Addison Road Extension)[6] $10.2 million (land adjacent to Greenbelt Metro station)[7]
2002		$23.1 million (share of rental car sales tax paid in fiscal 2002 as part of transit initiative)[8]
2003	$160.0 million (budget shortfall)[9]	
2004	$154.9 million (budget shortfall)[9]	
2005		
2006		$50.0 million (partial payback of $314.9 million)[10]
2007		
2008		
2009	See Note [11]	
2010	See Note [11]	
2011	See Note [11]	
2012	$60.0 million [11,12]	
2013	See Note [11]	
2014		$26.0 million[12]
2015		$25.0 million[12]
2016		$21.0 million[12]
Total Paid	**$574.1 million**	**$351.4 million**
ICC Repayment		**$264.9 million** [13]
Total w/ ICC	**$574.1million**	**$616.3 million**

ICC: Intercounty Connector

[1] Authorized by Chapter 62 of 1983. Preamble specified future general fund (GF) repayment.

[2] Authorized by Chapter 1 of 1986. Preamble and body specify repayment of this transfer and the $29.0 million transfer from the 1983 session.

[3] Authorized by Chapter 470 of 1991. Funds were transferred to reduce GF shortfall. The statute contains no reference to GF repayment.

[4] Authorized by Chapter 62 of 1992. Funds transferred to balance the GF budget. The statute contains no reference to GF repayment.

[5] Payment outlined in Chapter 204 of 1993 to make up for the loss of $72.0 million from failure of legislation relating to the fuel efficiency surcharge. GF payments totaled $42.0 million and a planned $30.0 million transfer from TTF was cancelled.

[6] Budget bill appropriations were made in 2001 ($50.0 million) and 2002 ($45.0 million) to supplement TTF to be used for the State's share of constructing a new Woodrow Wilson Bridge (WWB) and a Metro extension from Addison Road to the Largo Town Center. Chapter 440 of 2002 (Budget Reconciliation and Financing Act or BRFA of 2002) removed all funding for WWB and Addison Road except the $25.0 million that had already been expended in 2001.

[7] Chapter 102 of 2001 (fiscal 2002 budget bill) authorized a deficiency appropriation for $10.2 million for the acquisition of land adjacent to the Greenbelt Metro Station. The deficiency was offset by the withdrawal of a $10.0 million appropriation from the Economic Development Opportunities Program Fund.

[8] Chapter 440 of 2002 altered provisions of the transit initiative. The TTF share of the rental car sales tax was returned to 45.0% and $9.6 million from the uninsured motorist fee.

[9] Chapter 203 of 2003 (BRFA of 2003) transferred a total of $314.9 million to the GF and required that the Administration submit a plan by December 1, 2003, on the proposed repayment of funds.

[10] Chapter 430 of 2004 (BRFA of 2004) included a provision to repay TTF the $314.9 million borrowed in 2003 and 2004. It required that a general fund surplus in excess of $10.0 million be appropriated to TTF, not to exceed $50.0 million per year and only until such time that $314.9 million is repaid to TTF.

[11] Chapter 10 of 2008 (SB 46) repealed the sales tax on computer services. As part of the package to offset the GF revenue loss, the TTF share of the sales tax was reduced from 6.5% to 5.3% through fiscal 2013. After fiscal 2013, the TTF share of the sales tax was to revert to 6.5%. The revenue going to the GF instead was projected to be $51.1 million in fiscal 2009, $53.4 million in fiscal 2010, $55.8 million in fiscal 2011, $58.3 million in fiscal 2012, and $60.9 million in fiscal 2013 (this does not include the TTF share of revenue from the computer services sales tax attributed to TTF). These numbers total $279.5 million and are based on projections from the fiscal note for SB 46. The 6.5% sales tax distribution was to go in effect beginning in fiscal 2009, but the change in the sales tax distribution occurred before TTF received any funding. Chapter 397 of 2011 subsequently ended the sales tax distribution to TTF in fiscal 2012 but increased the State share of TTF revenues to keep revenues to TTF at the same level as previously provided. Since TTF never received any funding, this action is not considered a transfer.

[12] Chapter 397 of 2011 (BRFA of 2011) transferred $100.0 million from TTF, with $60.0 million going to the GF and $40.0 million to the Rainy Day Fund. Unlike the Administration's proposal, the bill included the repayment of the $60.0 million from the GF from fiscal 2014 to 2016. The repayment schedule is

$26.0 million in fiscal 2014, $25.0 million in fiscal 2015, and $21.0 million in fiscal 2016 and is done through the reconciliation of corporate income tax revenues and is not an explicit repayment schedule. The $40.0 million to the Rainy Day Fund is repaid through the additional revenue that was raised for transportation in fiscal 2012.

[13] This total reflects general funds or general obligation bond funds anticipated or received by the Maryland Transportation Authority for ICC as part of the repayment of $314.9 million transferred from TTF in fiscal 2003 and 2004. The remaining $50.0 million of the ICC repayment was made in fiscal 2006 and is reflected separately in the table.

Source: Department of Legislative Services

Appendix 2
Highway User Revenues
Transfers to/from State General Fund

Fiscal Year	Transfers from Local Highway User Revenues To the General Fund
2003	$17.9 million[1]
2004	102.4 million[1]
2005	102.4 million[1,2]
2006	22.7 million[3]
2010	304.0 million[4, 5]
2011	377.0 million[5]
2012	187.3 million[6]
2013	See Note[6]
Total	**$1,113.7 million**

Note: Numbers may not sum to total due to rounding.

[1] Chapter 203 of 2003 (the Budget Reconciliation and Financing Act or BRFA of 2003) authorized a reduction of the local share of highway user revenues (HUR) that would then be transferred to the general fund (GF). This included $17.9 million in fiscal 2003, $102.4 million in fiscal 2004, and $51.2 million in fiscal 2005. Since this money came out of the local portion of HUR, the money would not have been retained in the Transportation Trust Fund (TTF) regardless. Statute contains no reference to GF repayment.

[2] Chapter 203 of 2003 authorized a reduction of the local share of HUR and transfer to the GF of $51.2 million. Chapter 430 of 2004 (BRFA of 2004) added an additional $51.2 million to this amount for a total of $102.4 million. Since this money came out of the local portion of HUR, this money would not have been retained in TTF regardless. Statute contains no reference to GF repayment.

[3] Chapter 444 of 2005 (BRFA of 2005) redirected $48.5 million from the local share of HUR to the GF and $25.8 million of Community Safety and Enhancement Program funds were restricted to be used for one-time transportation capital grants allocated under the same statute governing HUR. Since this money came from the local share of HUR, it would not have been retained in TTF regardless. Statute contains no reference to GF repayment.

[4] Chapter 487 of 2009 (BRFA of 2009) transferred $101.9 million from the local share of HUR to the GF in fiscal 2010 and 2011. In addition, $60.0 million was transferred from the local share of HUR to the GF.

[5] During the 2009 interim, the Governor reduced the local share of HUR by $159.5 million in fiscal 2010 with the intention of transferring those funds to the GF in fiscal 2010. SB 141 of 2010, as introduced, continued that reduction in fiscal 2011 and 2012. In total, approximately $340.3 million was to be transferred to the GF in fiscal 2011 and 2012. In fiscal 2010, the prior actions of the legislature plus the $159.5 million transfer resulted in a planned transfer of $321 million. Chapter 484 of 2010 (BRFA of

2010) reduced the fiscal 2010 transfer to the GF in recognition of the local jurisdictions having already received payments in fiscal 2010 greater than the amount allowed for in the Administration's proposal. In fiscal 2011, the GF transfer was $363.4 million, an increase compared to the Administration's proposal to offset the reduced transfer in fiscal 2010. Due to revenue growth, the final amount transferred was $377.0 million. In fiscal 2012, the transfer was $338.4 million, to reflect the Administration's proposal. In fiscal 2013 and beyond, 19.3% of HUR is transferred to the GF; this equates to approximately $339.4 million in fiscal 2013.

[6] Chapter 397 of 2011 (BRFA of 2011) ended the GF distribution of HUR from the local share. The TTF share of the sales tax and a portion of the corporate income tax were given to the GF and the GF share of HUR was retained in TTF.

Source: Department of Legislative Services