# Department of Legislative Services

Maryland General Assembly
2022 Session

## FISCAL AND POLICY NOTE
## First Reader

House Bill 1324 (Delegate Korman)

Appropriations and Environment and Transportation

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**Transportation - Maryland Rail Authority - Establishment (Maryland Rail Investment Act of 2022)**

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This bill establishes the Maryland Rail Authority (MRA) and its various rights, duties, responsibilities, obligations, powers, and authorities. MRA is authorized to finance projects through the issuance of bonds (which are not considered State debt) for specified railroad facilities projects in the State (such as extended MARC services and the Southern Maryland Rapid Transit System). The bill establishes the Rail Authority Fund (RAF) to pay debt-service for MRA; certain funds from the Transportation Authority Fund must be transferred to RAF. The bill requires the Maryland Transportation Authority (MDTA) to receive MRA's consent before financing projects and issuing debt, as specified, and makes various other changes to MDTA's operations. **The bill takes effect July 1, 2022.**

## Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures decrease beginning in FY 2023 as the authority for affected projects is transferred from the Maryland Department of Transportation (MDOT) to MRA and as TTF is used to pay MRA's operating expenses. TTF revenues decrease significantly beginning in FY 2023, as discussed below. Nonbudgeted revenues and expenditures for MDTA increase significantly beginning in FY 2023 as, among other things, toll rates increase and excess revenues in the Transportation Authority Fund are transferred to RAF. Nonbudgeted revenues and expenditures for RAF increase significantly beginning in FY 2023 as funds are transferred from the Transportation Authority Fund to RAF, bonds are issued, and debt service is paid. State expenditures (all funds) increase to pay higher toll rates. The bill likely has other significant impacts on planned capital spending and the State's transportation system, as discussed below.

**Local Effect:** Local government expenditures increase to pay higher toll rates; however, any such impact cannot be reliably estimated at this time. Revenues are not directly affected.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** Related to the establishment of MRA and RAF, and broadly speaking, the bill:

- establishes MRA and its rights, duties, responsibilities, obligations, staffing requirements, powers, and authorities, including direct supervisory authority over railroad facilities projects, including (1) specified MARC service extensions; (2) replacing the Baltimore and Potomac Tunnel; (3) planning and implementing the Southern Maryland Rapid Transit System; and (4) improvements to existing MARC service lines;
- authorizes MRA to finance the cost of railroad facilities projects, borrow money from time to time for that purpose, and evidence the borrowing by issuing revenue bonds, notes, and other obligations under the terms, conditions, and limitations specified in the bill; any debt issued by MRA is not considered State debt;
- establishes RAF and its authorized uses and requires certain fares, fees, and charges to be remitted to RAF;
- exempts MRA from all federal, State, or local taxes, assessments, and charges, except water and sewer charges, as specified;
- establishes eligibility requirements, term limits, appointment procedures, and ethics and financial disclosure requirements for MRA; and
- specifies that MRA meetings are subject to the Open Meetings Act.

Related to the operations of MDTA and the State's transportation facilities projects, the bill:

- requires the transfer of certain funds from the Transportation Authority Fund to RAF, as specified;
- includes the Executive Director of MRA as an *ex-officio* member of MDTA and clarifies that only appointed members of the authority are entitled to compensation as provided in the State budget and reimbursement for expenses, as specified;
- prohibits MDTA from passing an operating budget or a capital improvement plan that exceeds $2.8 billion;

- requires MDTA to receive consent from MRA before it can finance projects, borrow money, and issue revenue bonds, as specified;
- requires MDTA to determine the optimal tolling rate for each transportation facilities project in which it charges tolls and sets tolling rates that achieve near optimal tolling, as specified (this requirement does not apply to the I-495 and I-270 public-private partnership (P3)); however, MDTA may fix commuter discount rates;
- includes railroad facilities and railroad services in the definitions of "transit facility" and "transit service" related to the rights and responsibilities of the Maryland Transit Administration (MTA); and
- authorizes MDTA police to exercise their authority on MRA property.

A more detailed description of the bill's provisions can be found below.

*Maryland Rail Authority – Established*

MRA is established to supervise, finance, construct, operate, maintain, and repair railroad facilities in the State. MRA may delegate project operations to MTA and use fare revenue to provide MTA with payments for project maintenance. MRA has general supervision over (1) specified MARC service extensions; (2) replacing the Baltimore and Potomac tunnel; (3) planning and implementing the Southern Maryland Rapid Transit System; and (4) improvements to existing MARC service lines. MRA must finance, construct, operate, repair, and maintain these projects in good order and, to the extent practicable, adhere to the State's transit plans. To this end, MRA may finance the cost of railroad facilities projects, borrow money from time to time for that purpose, and issue revenue bonds. A more detailed discussion of MRA's financing powers and obligations is discussed in the following section.

MRA is entitled to the staff provided in the State budget, and the Secretary of Transportation must provide MRA with the personnel of MDOT that the Secretary considers necessary for performance of the maintenance and other functions required of MRA to meet its obligations with respect to its railroad facilities projects. The bill specifies the rights, duties, responsibilities, obligations, powers, and authorities of MRA to accomplish its purpose. Among other things, and broadly speaking, MRA may:

- acquire, hold, and dispose of property and make contracts and agreements in the exercise of its powers and performance of its duties, as specified;
- condemn property for any railroad facilities project authorized to be financed with revenue bonds of prior issues;
- employ and fix the compensation of specified staff (including attorneys, consulting engineers, and construction and financial experts, among others) to exercise its powers and perform its duties, as specified; the expense of employing these persons

may be paid only from revenues or from the proceeds of revenue bonds issued by MRA;

- apply for and receive grants from federal agencies, as specified;
- contract with MTA to authorize MTA police officers to operate on MRA property;
- designate, establish, limit, and control the entrances and exits of a project and prohibit entrance or exit from any undesignated point, as specified; and
- adopt rules and regulations to carry out the bill.

In addition, MRA must:

- when fixing, revising, charging, and collecting rentals, rates, fees, fares and, other charges for its use or for its services, follow existing requirements that apply to MTA related to charges and fares and procedures that MTA must follow before a fare or charge may be changed;
- by September 1 of each year, and in collaboration with and subject to approval of MDTA, (1) develop and adopt a six-year financial forecast for its operations that includes specified schedules and financial information and (2) submit the forecast to the General Assembly;
- provide specified information regarding a proposed contract or agreement to acquire or construct a revenue-producing passenger rail or transit project to specified legislative committees and to the Department of Legislative Services;
- employ a general counsel who serves at the pleasure of the Secretary and is entitled to compensation determined by the Maryland Transit Administrator; and
- make its meetings, meeting minutes, and specified meeting materials available on its website, as specified.

*Maryland Rail Authority – Financing of Projects and Debt*

MRA may finance the cost of railroad facilities projects, borrow money from time to time for that purpose, and issue revenue bonds, notes, and other evidences of obligation under the terms, conditions, and limitations specified in the bill. The bill establishes various procedures, requirements, and limitations that MRA must follow in financing projects, issuing revenue bonds, and repaying debt. Revenue bonds may be issued by MRA without obtaining the consent of any instrumentality, agency or unit of the State and without any proceedings or the happening of any conditions or things other than those required by the bill. If MRA intends to pledge any future federal aid from any source to support repayment of any debt instrument issued under the bill, it must follow specified procedures and adhere to specified terms and limitations.

Revenue bonds secured by fare revenue may be issued in any amount, with specified limitations. However, by April 1, 2024, MRA must submit a report to the General Assembly that includes a recommendation on the maximum aggregate amount of revenue bonds that may be outstanding and unpaid in a fiscal year and whether the maximum aggregate amount should be established in law or regulation.

Debt held by MRA is not considered State debt and must only be payable from the funds from or revenues provided by the bill for that purpose. All revenue bonds, notes, and other evidences of obligation issued under the bill must contain a statement on their face to the effect that (1) the State is not obligated to pay the principal of or the interest on them except from revenues and (2) neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of or the interest on them.

If the proceeds of the revenue bonds are less than the amount required for the purpose for which the bonds are authorized, additional revenue bonds may be issued in a similar manner to provide the amount of the deficiency, as specified.

Revenue bonds, notes, and other evidences of obligation issued under the bill and their issuance and sale are exempt from provisions of State law that require bonds to be sold publicly; instead, MRA may sell them at either public or private sale in the manner and for the price that it determines.

*Rail Authority Fund*

All rentals, rates, fares, fees, and other charges and revenues derived from any railroad facilities project must be set aside in a fund known as RAF, unless they are pledged under an applicable trust agreement, as specified. As noted above, railroad facilities projects include existing service (such as various MARC services) and services in the planning stage (such as the Southern Maryland Rapid Transit System).

RAF must be pledged to and charged with the payment of (1) the interest on bonds issued under the bill as it falls due; (2) the principal of the bonds as it falls due; (3) the necessary charges of paying agents for paying principal and interest; and (4) the redemption price or purchase price of bonds retired by call or purchase as provided in the bond authorizing resolution or trust agreement. The bill establishes other requirements for pledges made from the fund.

The bill does not authorize RAF to be used to pay the operating expenses of MRA.

*Maryland Transportation Authority – Transportation Authority Fund and Optimal Tolling*

All funds collected by MDTA from rentals, rates, fees, tolls, and other charges and revenues that are not needed to meet the obligations of the Transportation Authority Fund and trust agreement and to provide adequate and complete payment of all principal and interest on all bonds issued in connection with specified transportation facilities projects, *must* be transferred to RAF.

Except for the I-495 and I-270 P3, for each transportation facilities project under its control, MDTA must determine the optimal tolling rate for the transportation facilities project and set tolling rates that achieve near optimal tolling. "Near optimal tolling" means a tolling rate that provides 95% or more of the maximum revenue possible based on a transportation facilities project's optimal tolling. "Optimal tolling" means a tolling rate for a transportation facilities project that maximizes revenue, as determined by MDTA.

**Current Law:**

*Maryland Transportation Authority*

Since 1971, MDTA has been responsible for constructing, managing, operating, and improving the State's toll facilities (for example, the Chesapeake Bay Bridge, the Francis Scott Key Bridge, and the Intercounty Connector) and for financing new revenue-producing transportation projects. MDTA is governed by nine individuals appointed by the Governor with the advice and consent of the Senate. Generally, MDTA may issue revenue bonds without obtaining the consent of any instrumentality, agency, or unit of the State and without any proceedings or the happening of any condition or things other than those specifically required by State law. MDTA is a nonbudgeted State agency, meaning that its budget is not subject to the General Assembly's appropriation process.

MDTA has the authority to set tolls on transportation facilities projects under its supervision. Tolls must provide funds that, when combined with bond proceeds and other available revenues, are sufficient to pay maintenance, repair, and operating costs for transportation facilities projects that are not otherwise paid for; pay the interest and principal of any outstanding bond issues; create reasonable reserves for these purposes; and provide funds for the cost of replacements, renewals, and improvements. Toll revenues are deposited into the Transportation Authority Fund, which is wholly separate from TTF.

However, any funds collected by MDTA from rentals, rates, fees, tolls, and other charges and revenues that are not needed to meet the obligations of the Transportation Authority Fund and trust agreement and to provide adequate and complete payment of all principal and interest on all bonds issued in connection with specified transportation facilities projects *may* be transferred to TTF, upon the recommendation of the Secretary of Transportation and subject to the approval of the Board of Public Works.

*Maryland Transit Administration*

MTA is a modal unit within MDOT, and it operates a comprehensive transit system throughout the Baltimore-Washington metropolitan area, including more than 50 local bus lines in Baltimore and other services, such as the light rail, Baltimore Metro subway, commuter buses, MARC trains, and mobility/paratransit vehicles. Except for the Washington Metropolitan Area Transit Authority, MDOT and MTA are generally the agencies responsible for the construction and operation of transit lines in the State.

Generally, MTA is authorized to fix, revise, charge, and collect rentals, rates, fees, fares, and other charges for its use or for its services; however, in doing so, MTA must follow various requirements set out by transportation law. Most notably, to the extent practicable and consistent with providing adequate service at reasonable prices, these revenues must be fixed and adjusted to, together with any other revenues, cover specified operating costs for MTA. Additionally, MTA must increase its fare prices every two years based on a specified formula. Except for these increases, MTA must hold a public hearing when it fixes or revises any fare or rate charged to the general public.

**State Fiscal Effect:** Given the various unknown factors associated with MRA (including how many staff are ultimately needed and the timing and amount of bonds it ultimately issues), a reliable estimate of the bill's overall impact on State finances cannot be made at this time. However, the following sections discuss the bill's various operational and fiscal implications. Broadly speaking, the bill likely has a significant impact on the State's transportation system, including a significant negative impact to MDTA's operations and finances, as discussed below.

*Transportation Trust Fund Expenditures and the Rail Authority Fund*

TTF expenditures decrease as capital expenses for affected projects are transferred from MTA to MRA and increase as TFF is used to pay the operating expenses of MRA. Even though the bill authorizes MRA to use fare revenue and RAF for various purposes, the bill only authorizes RAF (which must receive the fare revenues) to be used to pay *costs related to bond issuances and debt service*. Therefore, for purposes of this analysis, it is assumed that MRA's operating expenses are paid from TTF. Additionally, to the extent that MTA continues to provide support and other services to MRA in the management, operations, and maintenance of the affected projects (which is likely given the complexity and labor intensity of operating transit systems), the effect on TTF expenditures may be more pronounced. Even so, the net effect on TTF expenditures is anticipated to be a decrease, due to the millions in capital costs transferred from MTA to MRA, as discussed below.

For purposes of this fiscal and policy note, it is assumed that RAF is a nonbudgeted fund and that MRA is a nonbudgeted State agency, similar to MDTA. Nonbudgeted revenues to and expenditures from RAF increase significantly as the authority for affected rail projects is transferred from MTA to MRA, as transit revenues from railroad facilities projects are redirected from TTF to RAF, and as bonds are issued and debt service is paid for the projects. Likely included in the transfer of authority and identified at this time, the *Maryland Consolidated Transportation Program (CTP) for fiscal 2022 through 2027* includes $49.5 million for various MARC service related projects and $750,000 for the Southern Maryland Rapid Transit Project.

*Transportation Trust Fund Revenues and Purple Line Debt Service*

The bill requires that all transit service revenues from existing MARC services and other railroad facilities projects be directed to RAF instead of TTF. At a minimum, TTF revenues decrease by $50.0 million annually, which reflects the estimated revenue attributable to existing MARC services. The decrease in revenues, in combination with the increase in expenditures described above, requires MDOT to reassess its planned activities in the upcoming years to ensure funding to pay debt service on outstanding bond issuances. However, given the many unknown fiscal implications of the bill, any such impact cannot be reliably estimated at this time.

Notably, MDOT advises that the bill's redirection of MARC service funding from TTF to RAF does not maintain sufficient revenues to pay the debt service associated with costs for the Purple Line. MDOT recently agreed to a requirement established by the State Treasurer to deposit all transit fares (including MARC fares) into a trust account to ensure that only transit fares are used to pay debt service associated with the Purple Line; by doing so, this debt is not counted as tax-supported State debt. Without the MARC fare revenues, TTF likely needs to supplement funding for the debt service, once again counting the debt as tax-supported State debt. Doing so may cause the State's debt affordability criteria to be breached, requiring fewer bond issuances in future years or reductions in planned capital spending.

*Maryland Transportation Authority – Toll-setting, Fund Transfer, and Budget Limits*

The bill's provisions that require MDTA to establish near optimal tolling rates, transfer MDTA's nonbudgeted revenues to RAF, and establish limits on MDTA's budget authority have significant, but difficult to estimate, impacts on MDTA's operations and finances.

Generally, the requirement to establish near optimal tolling increases MDTA's toll rates – and resulting nonbudgeted revenues – significantly. However, the increase in tolls may have other impacts on driver behavior and the State's transportation system. In some cases, MDTA's facilities provide transportation links for high-volume areas with limited alternatives. To the extent the increase in tolls result in people avoiding the toll facilities, there could be significant operational and fiscal impacts to the State. For example, if people travel through Baltimore City instead of taking the Baltimore Harbor Tunnel, Fort McHenry Tunnel, or Francis Scott Key Bridge, traffic issues in the city would intensify, and Baltimore City may experience significantly more wear and tear on its roads. Similarly, people may choose to divert around the Chesapeake Bay, causing more complex traffic issues during the summer. Moreover, even though the bill authorizes MDTA to establish commuter discount rates, it is unclear how the discounts could be provided while maintaining near optimal tolling.

The bill requires the transfer of specified excess funding from the Transportation Authority Fund to RAF. Thus, nonbudgeted expenditures for MDTA increase significantly, and nonbudgeted revenues to RAF increase correspondingly as the transfer takes place.

The bill prohibits MDTA from passing an operating or capital improvement plan that exceeds $2.8 billion; however, it is unclear whether the bill intends to limit both the operating and capital budget to $2.8 billion each, or if the intent is to limit the combination of the two budgets to $2.8 billion. In either case, the bill results in significant reductions in MDTA's planned spending, particularly due to the limitation on the capital budget. Capital spending for transportation projects is programmed over six years in the CTP, and the CTP for fiscal 2022 through 2027 includes capital and operating costs totaling approximately $6.0 billion. The reduction in spending may result in the delay or cancellation of both planned projects (such as the I-95 Express toll lanes) and future projects (such as the third span across the Chesapeake Bay Bridge).

The loss of toll-setting authority by MDTA, required fund transfers, and budget limitations may affect MDTA's credit rating and violate MDTA's trust agreement, as discussed below.

*Maryland Transportation Authority – Credit Ratings and Trust Agreement*

MDTA's revenues are used to meet its payment obligations to bondholders, and credit rating agencies cite a toll entity's independent ability to set toll rates, free of political consideration or approval from an outside source, as a key factor in achieving an optimal credit rating. The bill's reduction of MDTA's independence and rate-setting authority may result in a downgrade to MDTA's credit rating, directly increasing costs to issue bonds and borrow money. The credit rating of the Miami-Dade County Expressway Authority was downgraded by Fitch Ratings in February 2020 due, in part, to the enactment of legislation that caused interference into the authority's governance and rate-setting. MDOT advises that rate-setting authority makes up 15% of Moody's scorecard methodology in rating toll sector entities.

Additionally, a trust agreement is in place with MDTA's bondholders that requires MDTA to maintain certain financial metrics, set toll rates at a rate sufficient to repay bondholders, and maintain its facilities in a state of good repair, among other things. The loss of authority for MDTA to manage its own operations and the potential downgrade to MDTA's credit rating may result in lawsuits from bondholders, further impacting MDTA's finances as it incurs legal expenses and, potentially, incurs costs to renegotiate its trust agreement.

*Maryland Transportation Authority – Federal Agreements*

MDTA has agreements with the Federal Highway Administration (FHWA) that restrict the use of toll revenues. Specifically, for the Fort McHenry Tunnel, the agreement states that all tolls collected from the operation of the project that are in excess of the revenues needed for debt service and the costs of operation and maintenance must be available for (1) any transportation project eligible for assistance under Title 23 of the U.S. Code; or (2) costs associated with transportation-related facilities under the jurisdiction of MDTA. It is unclear at this time whether the bill's mandatory transfer of funding violates this agreement; however, to the extent that it does, FHWA may impose penalties on MDTA, thereby increasing its nonbudgeted expenditures.

**Small Business Effect:** MDOT contracts with many small businesses to provide various services in the construction and maintenance of transportation projects. In creating more funding for railroad projects through MRA, the bill creates more opportunities for these small businesses to contract with the State.

Additionally, as discussed below, small businesses that regularly use MDTA's toll facilities may be negatively impacted to the extent that MDTA has to significantly increase toll rates to meet the bill's requirements. The higher toll rates that MDOT anticipates needing to set as a result of the bill are likely to significantly increase costs for small businesses that frequently use MDTA's toll facilities, such as independent truck drivers and owners that deliver cargo to and from the Port of Baltimore.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Transportation; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; State Ethics Commission; Fitch Ratings; Department of Legislative Services

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Analysis by: Richard L. Duncan

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