Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 255 (Senators DeGrange and Kasemeyer)
Budget and Taxation Appropriations

Department of Transportation and Maryland Transportation Authority - Debt, Authority, and Financing

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This bill modifies provisions relating to the authority of the Maryland Department of Transportation (MDOT) and the Maryland Transportation Authority (MdTA) to issue Grant Anticipation Revenue Vehicle (GARVEE) bonds; among other things, the bill establishes a maximum amount ($750 million) of GARVEE bond issuances. The bill establishes a financing plan for the InterCounty Connector (ICC) that incorporates the use of cash as well as the issuance of GARVEE bonds and revenue bonds and states the intent of the General Assembly that there be a bicycle and pedestrian path adjacent to the ICC. The bill also repeals specified restrictions on MdTA's ability to issue revenue bonds but establishes a ceiling of $1.9 billion on the principal balance of such bonds secured by toll revenue. The bill also clarifies the General Assembly's oversight regarding proposed MdTA projects.

The bill takes effect June 1, 2005.

Fiscal Summary

State Effect: Total GARVEE bond issuances would increase by an estimated $115 million over the five-year period. General fund expenditures would increase by an estimated $214.9 million over the five-year period. The bill provides for the transfer of $22 million in FY 2005 and an additional $8 million in FY 2006 from the Transportation Trust Fund (TTF) to MdTA. TTF revenues would decrease by $50 million in FY 2007 due to the repeal of the provision requiring a general fund transfer if the unappropriated surplus is over $10 million. Based on these changes, nonbudgeted revenues would increase by $133 million in FY 2006 and by $387.9 million over the five-year period.

Debt service on the GARVEEs would increase by $6.1 million in FY 2006 and by $100.5 million over the five-year period compared to current law.

($ in millions)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SF Revenue	$0	($50.0)	$0	$0	$0
NonBud Rev.	133.0	50.0	150.0	50.0	4.9
GF Expenditure	0	0	50.0	50.0	114.9
SF Expenditure	8.0	0	0	0	0
NonBud Exp.	6.1	6.1	27.2	27.2	33.8
Net Effect	$118.9	($6.1)	$72.8	($27.2)	($143.8)

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

Local Effect: The bill would not directly affect local government operations or finances.

Small Business Effect: None. The bill would not directly affect small businesses.

Analysis

Bill Summary: The bill repeals the provision limiting annual debt service on GARVEE bonds to 13% of the State's average annual federal highway aid authorization; establishes a maximum amount ($750 million) of GARVEE bonds that could be issued; and reduces the length of maturity of such bonds from 15 years to 12 years. The bill provides for an alternative if future federal aid is insufficient to pay the debt service on GARVEEs issued. The bill modifies the definition of "tax-supported debt" to include GARVEE bonds, thereby making such bond issuances count toward the State's capital debt affordability limit.

The ICC financing plan established by the bill is as follows:

- MdTA must issue not more than $750 million in GARVEE bonds;
- MdTA must also issue revenue bonds (in addition to GARVEE bonds);
- the Governor must transfer to MdTA: (1) from the TTF, $22 million in fiscal 2005, $38 million in fiscal 2006, and at least $30 million per year for fiscal 2007 through 2010; (2) from the general fund, an aggregate appropriation equal to $264.9 million by fiscal 2010, including at least $50 million per year for fiscal 2007 through 2010; and (3) at least $10 million federal aid from any source in amounts as deemed prudent.

To accommodate the general fund component of the ICC financing plan, the bill also repeals the provision that requires a general fund transfer to the TTF if the unappropriated general fund surplus exceeds $10 million.

The bill states the intent of the General Assembly that, if the ICC costs less than currently projected, any cost savings must be applied as reductions in the amount of MdTA toll-backed revenue bonds issued.

The bill provides that the General Assembly fully supports the inclusion of a continuous bike and pedestrian path as part of the ICC. MDOT is urged to review all options for an East-West trail system that would link the Shady Grove Metrorail Station with U.S. Route 1.

The bill also repeals a provision that prohibits MdTA, beginning July 1, 2005, from issuing bonds to finance all or part of the cost of a transportation facility project until the General Assembly has approved, by legislation, the specific project and maximum principal amount of bonds to be issued. Instead, the bill establishes a cap of $1.9 billion on the aggregate outstanding and unpaid principal balance of revenue bonds as of June 30 of any year.

Finally, the bill: (1) requires MdTA to provide specified information to specified committees of the Maryland General Assembly and the Department of Legislative Services regarding a proposed acquisition or construction of a revenue-producing transportation facilities project and provides for review and comment by the committees; (2) requires MdTA to submit a report to specified committees of the General Assembly by December 1 of each year on the status of the ICC; and (3) requires MdTA to submit a report to specified committees of the General Assembly by June 1, 2005 that includes a cost-benefit analysis of a loan under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA) credit program as compared to issuing bonds secured by toll revenue to finance the ICC and indicates whether MdTA plans to apply for a TIFIA loan to finance the ICC.

Current Law: By statute, the General Assembly oversight of MdTA consists of:

- review of MdTA's operating and capital spending plans; however, the General Assembly has no authority to reduce MdTA's budget or restrict its expenditures;
- receipt of notice when MdTA enters into a contract for a new revenue-producing facility and may review and comment upon such notices but may not approve or disapprove of the contract; and
- receipt of notice of proposed increases in tolls.

During the 2004 session, however, the General Assembly expanded its oversight of MdTA by adopting provisions that prohibit MdTA from issuing bonds to finance a transportation facility until the General Assembly has approved the specific project and the maximum amount of bonds to finance the project. These provisions, which were part of the Budget Reconciliation and Financing Act of 2004 (Chapter 430), would have taken effect on June 1, 2004, but were modified by the Maryland Consolidated Capital Bond Loan of 2004 (Chapter 432) to instead take effect on July 1, 2005.

Pursuant to Chapter 430, MDOT and MdTA may pledge federal aid to repay bonds as long as the annual payments of principal and interest on the bonds do not exceed 13% of the State's average annual federal highway aid authorization. The date of maturity may not exceed 15 years from the date of issuance.

In Maryland, GARVEE bonds issued by State transportation agencies are not secured by the full faith and credit of the State, nor with any other State revenues, including the TTF. GARVEE bonds are not counted as part of the State's capital debt affordability. MDOT is required to report the proposed issuance of GARVEEs to the Legislative Policy Committee for review and comment 45 days before each issuance.

Background: Established in 1971 as an independent, nonbudgeted State agency, MdTA is responsible for the operation of the State's seven existing toll facilities. MdTA has assumed an expanded role in financing non-tolled transportation facilities since the 1980s. MdTA has provided fund transfers and loans to the TTF and has assumed responsibility for building non-tolled facilities that could not be financed through the TTF. MdTA has also served as the conduit through which debt backed by a variety of revenue sources has been issued on behalf of MDOT.

In 2004, control over the construction of the proposed ICC highway was transferred from MDOT to MdTA. In addition to overseeing the project's design and implementation, MdTA is expected to provide the majority of the financing for the project through the issuance of: (1) revenue bonds backed by tolls on its existing facilities as well as tolls that would be collected on the ICC; and (2) GARVEE bonds. The Governor's capital budget for MdTA for fiscal 2006 totals approximately $490 million in nonbudgeted funds. It assumes bond sales of $440 million in fiscal 2006.

A GARVEE is a debt financing instrument authorized under federal law to receive federal reimbursement of debt service and related financing costs. GARVEE bonds are considered special limited obligations; two of the three rating agencies consider these bonds as tax-supported. Future federal highway aid dollars are the primary security and source of debt service payments for these bonds.

Under current law, annual payments of principal and interest on the bonds cannot exceed 13% of the State's average annual federal highway aid authorization. In order to finance the ICC, however, MDOT originally proposed raising this percentage to 20%. MDOT is projecting actual expenses for the ICC of $2.4 billion. MDOT's financing plan associated with the draft environmental impact statement (DEIS) completed in December 2004 (DEIS financing plan) assumed a GARVEE bond issuance of $1 billion, MdTA toll-backed debt (revenue bonds) of $1.2 billion, and a cash contribution of $200 million ($150 million in TTF PAYGO funds and $50 million in federal PAYGO funds).

Because federal transportation reauthorization legislation is not yet finalized, it is not yet clear what Maryland's funding level will be. MDOT projects that Maryland will receive $530 million per year in federal highway aid on average from the new reauthorization, which is $100 million higher than the State's average receipt of $430 million per year during the Transportation Equity Act for the 21st Century (TEA-21) period. MDOT's projection, however, does not appear to reflect the obligational authority limitations imposed by Congress annually on such aid. Under TEA-21, Maryland generally received an obligational authority of 94%, which meant that Maryland could only obligate 94% of the amount it received in contract authority under TEA-21. This means that, even if the State received an average amount of $530 million in contract authority, the State could expend only about $498 million per year.

MdTA advises that GARVEE bonds are a critical component of the ICC financing plan. MdTA also advises that the oversight restrictions established in Chapters 430 and 432 limit its ability to remain responsive to the transportation needs of its citizens.

The U.S. Department of Transportation provides credit assistance to major surface transportation projects of national or regional significance through the TIFIA credit program. TEA-21 authorized $10.6 billion in TIFIA assistance over the five-year period from federal fiscal 1999 through 2003.

The TIFIA credit program offers three types of financial assistance: direct loans with flexible repayment terms, loan guarantees, and standby lines of credit representing secondary sources of funding. TIFIA assistance involves a competitive federal application process. TIFIA projects must have an investment grade rating. The TIFIA contribution must be limited to 33% of the project cost, and the borrower must have dedicated revenues for repayment of the assistance, if necessary.

A project's estimated eligible costs must be at least $100 million or 50% of the state's annual federal highway aid apportionment, whichever is less. The threshold for Intelligent Transportation Systems projects is at least $30 million. The project must also be supported in whole or part by user charges or other nonfederal dedicated funding sources.

State Fiscal Effect: Nonbudgeted revenues would increase by $133 million in fiscal 2006 ($125 million in additional GARVEE issuances and $8 million in additional transfers from the TTF); future year estimates reflect mandated general funds and modified GARVEE issuances in fiscal 2008 and 2010.

Nonbudgeted expenditures would increase by $6.1 million in fiscal 2006, escalating to $33.8 million in fiscal 2010 for increased debt service costs associated with the issuance of additional GARVEE bonds. It is assumed that any additional reporting requirements, including preparing a cost-benefit analysis, could be handled with existing resources. Additional detail is provided below.

GARVEE Issuances and Associated Debt Service

By repealing the provision that authorizes the use of up to 13% of the federal highway aid authorization for debt service on GARVEEs, by reducing the maturity length on those issuances from 15 to 12 years, and by directing MdTA to issue not more than $750 million in GARVEEs, the bill could result in an increase in GARVEE issuances of an estimated $115 million over the five-year period. This estimate assumes that $375 million in GARVEE bonds would be issued in fiscal 2006, $325 million in fiscal 2008, and $50 million in fiscal 2010.

Notwithstanding existing statutory limitations, MDOT's DEIS financing plan indicated an intention to issue $1 billion in GARVEE bonds ($400 million in fiscal 2006, $400 million in fiscal 2008, and $200 million in fiscal 2010). Under current law, assuming a AAA bond rating and insurance, and based on the projected federal highway aid authorization of $530 million annually, DLS estimates that total GARVEE bond sales would be limited to $635 million ($250 million in fiscal 2006, $225 million in fiscal 2008, and $160 million in fiscal 2010).

Appendix 1 shows the estimated annual cumulative debt service under current law and under the bill. This estimate assumes that $375 million in GARVEE bonds would be issued in fiscal 2006, $325 million in fiscal 2008, and $50 million in fiscal 2010. As reflected in Appendix 1, total debt service over the five-year period would increase by an estimated $100.5 million ($6.1 million in both fiscal 2006 and 2007, $27.2 million in both fiscal 2008 and 2009, and $33.8 million in fiscal 2010). Total debt service over the terms of the issuances would increase by $94.1 million; the overall increase is less than the increase from fiscal 2006 through 2010 due to the reduction in the length of the term. (Legislative Services notes that, compared to MDOT's DEIS financing plan, under one set of assumptions, the bill's financing plan would result in a decrease in total debt service of an estimated $456 million over the terms of the issuances – $250 million less in principal and $206 million less in interest.)

General Fund Mandate/TTF Sweeper Repeal

Under current law, the Rainy Day Fund's "sweeper" provision provides that, when there is a surplus of unappropriated funds in the general fund at the close of a fiscal year, the first $10 million of any such surplus will be retained by the general fund, while the next $11 million to $60 million will be transferred to the TTF, until a specified total has been repaid to the TTF. Any surplus amount exceeding $60 million will be appropriated to the Rainy Day Fund.

In order to finance the general fund component of the financing plan, the bill repeals the TTF "sweeper" provision and, beginning in fiscal 2007, requires the Governor to include in the State budget an appropriation to MdTA that includes at least $50 million per year for fiscal 2007 through 2010. Under current law, based on the current general fund forecast for fiscal 2007, the TTF sweeper would be triggered; accordingly, under this bill, TTF revenues would decrease by $50 million in fiscal 2007. The general fund forecast for future fiscal years, however, indicates a deficit; accordingly, under current law, it is unlikely that the TTF sweeper would be triggered. It is assumed that under this bill the Governor would transfer to MdTA the minimum amount of general funds required, $50 million, from fiscal 2007 through fiscal 2009, and would transfer the remainder in fiscal 2010. The bill's mandate, therefore, would result in an increase in general fund expenditures of $50 million in fiscal 2008, and 2009 and $114.913 million in fiscal 2010.

MDOT's DEIS financing plan did not include the use of general funds.

TTF Mandate

As part of the financing plan established by the bill, the bill directs the Governor to transfer $22 million from the TTF to MdTA in fiscal 2005, $38 million from the TTF to MdTA in fiscal 2006, and at least $30 million annually from the TTF to MdTA for fiscal 2007 through 2010. MDOT's DEIS financing plan called for the use of $30 million annually from fiscal 2006 through 2010; the fiscal 2006 capital budget includes $30 million for the ICC. Accordingly, the bill would result in an increase in TTF expenditures of $22 million in fiscal 2005 and $8 million in fiscal 2006. There would be no net impact on the TTF from fiscal 2007 through 2010; the bill simply codifies the $30 million in MDOT's DEIS financing plan.

Federal Fund Impact

The bill directs the Governor to transfer to MdTA of at least $10 million federal aid from any source in amounts as deemed prudent. MDOT's DEIS financing plan included $10 million in federal funds annually from fiscal 2006 through 2010; the fiscal 2006 capital budget includes $10 million for the ICC. This bill codifies the budgeted amount for fiscal 2006. Based on recent information from the Federal Highway Administration, the $10 million in MDOT's DEIS financing plan for fiscal 2007 through 2010 would not have been appropriated. Accordingly, the bill has no impact on federal fund expenditures.

MdTA Revenue Bond Impacts

Under the bill, an estimated $1.247 billion in revenue bonds would still be issued by MdTA over the five-year period; this is unchanged from MDOT's DEIS financing plan. The bill's ceiling on the aggregate outstanding and unpaid principal balance of revenue bonds secured by toll revenue ($1.9 million as of June 30 of any year), enables MdTA to complete its proposed capital projects in the Consolidated Transportation Program through fiscal 2010.

Additional Comments: Appendix 2 compares the ICC financing plan established under the bill to MDOT's DEIS financing plan. The financing plan established under the bill relies on debt for 81% of the total projected cost; MDOT's DEIS financing plan relied on debt for 92% of the total projected cost.

Legislative Services notes, however, that, in the absence of legislation that would have allowed for the issuance of $1 billion in GARVEE bonds, under current law, additional sources of funding (a TIFIA loan, toll-backed debt, the TTF, or the general fund) would have had to have been identified in order to finance the ICC.

Additional Information

Prior Introductions: None.

Cross File: As introduced, HB 1351 (Delegates Conway and James) – Appropriations. Although not identified as a cross file, HB 1352 as passed is identical to SB 255 as passed.

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

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Appendix 1
Comparison of Estimated Debt Service Under Current Law and Under SB 255

Annual and Cumulative Estimated Debt Service Under Current Law (13%)

	2006 Issuance	2008 Issuance	2010 Issuance	Total
FY 2006	$12,225,000			$12,225,000
FY 2007	12,225,000			12,225,000
FY 2008	26,440,000	$12,060,000		38,500,000
FY 2009	26,439,887	12,060,000		38,499,887
FY 2010	26,435,788	24,475,000	$9,360,000	60,270,788
FY 2011	26,436,236	24,474,556	9,360,000	60,270,792
FY 2012	26,439,276	24,473,468	17,915,000	68,827,744
FY 2013	26,437,952	24,474,860	17,914,533	68,827,344
FY 2014	26,435,551	24,476,588	17,914,815	68,826,954
FY 2015	26,440,119	24,476,508	17,914,093	68,830,719
FY 2016	26,439,209	24,472,476	17,915,610	68,827,295
FY 2017	26,435,867	24,472,348	17,917,320	68,825,535
FY 2018	26,437,891	24,473,444	17,917,175	68,828,510
FY 2019	26,437,592	24,473,084	17,913,128	68,823,803
FY 2020	26,437,525	24,473,588	17,913,130	68,824,243
FY 2021		24,472,008	17,914,550	42,386,558
FY 2022		24,480,396	17,914,755	42,395,151
FY 2023			17,916,113	17,916,113
FY 2024			17,925,698	17,925,698
Principal	**$250,000,000**	**$225,000,000**	**$160,000,000**	**$635,000,000**
Interest	**$118,142,889**	**$117,288,324**	**$91,625,918**	**$327,057,131**
Total P&I	**$368,142,889**	**$342,288,324**	**$251,625,918**	**$962,057,131**

Note: Under current law, the maximum annual debt service could total an estimated $68,900,000.

Appendix 1 (cont'd)
Annual and Cumulative Estimated Debt Service Under SB 255

	2006 Issuance	2008 Issuance	2010 Issuance	Total
FY 2006	$18,337,500			$18,337,500
FY 2007	18,337,500			18,337,500
FY 2008	48,307,500	$17,420,000		65,727,500
FY 2009	48,306,967	17,420,000		65,726,967
FY 2010	48,304,796	42,830,000	$2,925,000	94,059,796
FY 2011	48,307,563	42,828,024	2,925,000	94,060,587
FY 2012	48,306,356	42,828,152	6,745,000	97,879,508
FY 2013	48,307,509	42,826,364	6,746,530	97,880,403
FY 2014	48,306,864	42,828,640	6,744,898	97,880,401
FY 2015	48,305,265	42,830,424	6,744,518	97,880,206
FY 2016	48,303,311	42,827,160	6,744,513	97,874,983
FY 2017	48,291,356	42,829,292	6,744,005	97,864,653
FY 2018		42,826,460	6,747,118	49,573,578
FY 2019		42,823,572	6,747,680	49,571,252
FY 2020			6,744,815	6,744,815
FY 2021			6,742,645	6,742,645
Principal	**$375,000,000**	**$325,000,000**	**$50,000,000**	**$750,000,000**
Interest	**$144,722,484**	**$138,118,088**	**$23,301,720**	**$306,142,292**
Total P&I	**$519,722,484**	**$463,118,088**	**$73,301,720**	**$1,056,142,292**

Note: Total debt service under MDOT's DEIS financing plan, which assumed $1 billion in GARVEE issuances, was estimated at $1.5 billion.

Appendix 2
ICC Financing Plan Established Under SB 255 Compared to
MDOT's Draft Environmental Impact Statement Financing Plan
($ in Millions)

ICC Financing Plan Under SB 255

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Rev Bonds	$40			$235	$130	$572	$180	$90	$1,247
GARVEE			$375		325		50		750
GF				50	50	50	115		265
TTF		22	38	30	30	30	30		180
FF			10						10
Total	**40**	**22**	**423**	**315**	**535**	**652**	**375**	**90**	**$2,452**
Cumulative	$40	$62	$485	$800	$1,335	$1,987	$2,362	$2,452	

MDOT's DEIS Financing Plan

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Rev Bonds	$40			$235	$130	$572	$180	$90	$1,247
GARVEE			$400		400		200		1,000
TTF			30	30	30	30	30		150
FF			10	10	10	10	10		50
Total	**40**	**$0**	**440**	**275**	**570**	**612**	**420**	**90**	**$2,447**
Cumulative	$40	$0	$480	$755	$1,325	$1,937	$2,357	$2,447	

Note: MDOT's DEIS financing plan is not consistent with current law, as the $1 billion in estimated GARVEE bond issuances would exceed the annual statutory 13% limitation on the use of future federal aid for debt service. Under current law, an estimated $635 million in GARVEE bonds could be issued. SB 255 repeals the percentage limitation and instead limits GARVEE bond issuances to $750 million.