Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 182 (Chair, Budget and Taxation Committee)
(By Request – Departmental – Transportation)

Budget and Taxation Appropriations

Maryland Transportation Authority

This departmental bill increases the limit on the aggregate outstanding and unpaid principal balance of revenue bonds issued by the Maryland Transportation Authority from $1.9 billion to a maximum of $3.0 billion; however that amount must be reduced by any Transportation Infrastructure Finance and Innovation Act (TIFIA) loan or line of credit. The bill requires MdTA to annually develop, adopt, and submit draft and final six-year financial forecasts and status reports to the General Assembly. The bill also spreads out the general fund's support of the Intercounty Connector and provides MdTA with one of two financing options to manage cash flow, contingent upon passage of SB 46 of 2008, the Budget Financing Act (Chapter 10).

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: The bill would increase MdTA's ability to issue bonds from $1.9 billion to a maximum of $3.0 billion, beginning July 1, 2008, which will significantly increase the amount of debt issued by MdTA than would otherwise occur under current law. Due to Chapter 10 of 2008, general fund payments to MdTA for the ICC decrease by $63.9 million in FY 2010, but increase by $63.9 million in FY 2011.

($ in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
NonBud Rev.	$0	($63.9)	$63.9	$0	$0
Bond Rev.	0	-	-	-	-
GF Expenditure	0	(63.9)	63.9	0	0
NonBud Exp.	0	-	-	-	-
Net Effect	$0	$0	$0	$0	$0

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: The Maryland Department of Transportation and MdTA have determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill increases the limit on the aggregate outstanding and unpaid principal balance of revenue bonds issued by MdTA from $1.9 to a maximum of $3.0 billion. The maximum aggregate amount of revenue bonds that may be outstanding and unpaid must be reduced by the amount of:

- any TIFIA loan extended to the State; or
- any line of credit extended to the State under TIFIA, to the extent the State draws on the line of credit.

Under current law, financing for the $2.4 billion ICC project includes the general fund, the Transportation Trust Fund, Grant Anticipation Revenue Vehicle or GARVEE bonds, federal funds, and MdTA toll revenue bonds, and/or a TIFIA line of credit. Under this bill, with passage of legislation imposing a 6.25% income tax surcharge on taxpayers with net taxable income in excess of $1 million, applicable January 1, 2008 (which has been signed into law as Chapter 10), general fund appropriations in an aggregate amount equal to $264.9 million would be extended beyond fiscal 2010 (current law) to fiscal 2011, as follows: • $85.0 million in fiscal 2009; • $63.0 million in fiscal 2010; and •$63.9 million in fiscal 2011.

As presented below, options for flexibility remain, including MdTA or TTF cash or short-term bond anticipation notes (BANs). Specifically, the bill establishes the intent of the General Assembly that MdTA implement the following cash flow changes for financing the ICC:

- for fiscal 2009, the principal amount of the second tranche of GARVEE bonds may be increased by $17.0 million (a total of $750.0 million was originally authorized) for a total of $425.0 million, plus any bond premium generated in conjunction with that issuance;

- for fiscal 2010, MdTA may • issue up to a $75.0 million BAN secured by its TIFIA line of credit, and • invest general fund appropriations to generate interest income that offsets the BAN interest cost;
- MdTA may borrow up to $75.0 million interest free from TTF to be repaid from the general fund appropriations, as provided for in the bill; or
- MdTA may use unencumbered MdTA cash balances which are sufficient in fiscal 2010 to cover the change to the general fund repayment.

Funds received via TIFIA may be substituted for MdTA toll-backed revenues bonds for financing the ICC.

MdTA must annually develop and submit a six-year financial forecast for its operations. MdTA must submit a draft of the financial forecast when the budget bill is submitted to the General Assembly and a final MdTA-approved financial forecast on or before July 1 of each year. Among other things, the forecast must include actual information for the last full fiscal year and forecasts for each of the six subsequent fiscal years. The six-year forecast period includes the current fiscal year, the fiscal year for the proposed budget, and the next four fiscal years.

The bill modifies existing reporting requirements regarding the status of the ICC. Specifically, the bill requires that the annual status report, which must be submitted until completion of construction of the ICC, also include • planned expenditures; • funding sources; • a schedule of debt service for GARVEE and MdTA revenue bond issuances; and • financing assumptions.

Current Law/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 nontolled transportation facilities since the 1980s. MdTA has provided fund transfers and loans to MDOT's TTF and has assumed responsibility for building revenue-generating transportation facilities in lieu of financing by TTF. MdTA has also served as the conduit through which debt backed by a variety of revenue sources has been issued by several MDOT modal administrations.

Primarily driving the need for the proposed increase in the cap is the simultaneous construction of two large capital projects: the ICC and the Express Toll Lanes on I-95 north of Baltimore. In total, these two projects account for $3.6 billion in MdTA's total six-year $4.4 billion capital program. Other major projects are lane expansions and numerous improvements along I-95, the redecking and painting of the Bay Bridge and improvements to the Hatem Bridge, and interchange and associated improvements to the Baltimore tunnels.

Revenue Bonds

Revenue bonds secured by toll revenues may be issued by MdTA in any amount as long as the aggregate outstanding and unpaid principal balance does not exceed $1.9 billion. Revenue bonds issued by MdTA are backed by toll revenues and do not count against State debt limits.

MdTA advises that when the current cap was imposed in 2005 (Chapters 471 and 472), MDOT and MdTA acknowledged in written testimony that periodic adjustments would need to be considered to fully fund the existing capital program. If the bond cap is not increased, MdTA will have to reduce its capital program and/or increase tolls to produce adequate cash to pay for projects on a pay-as-you-go basis.

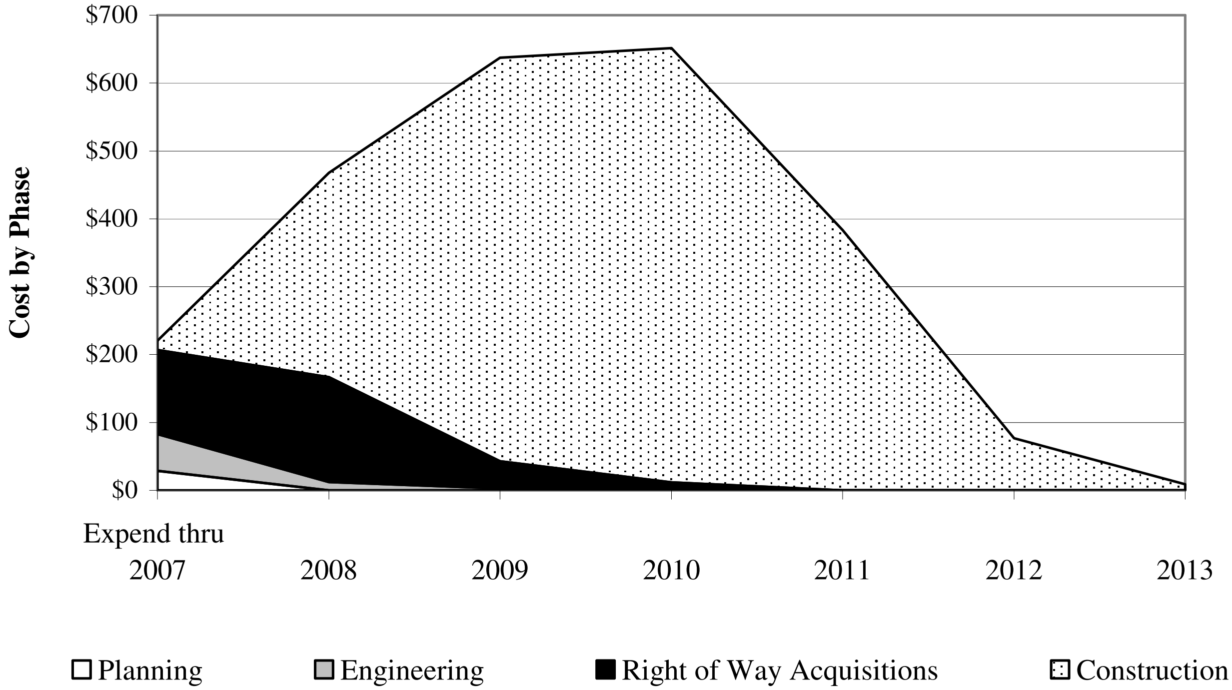
Intercounty Connector

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.

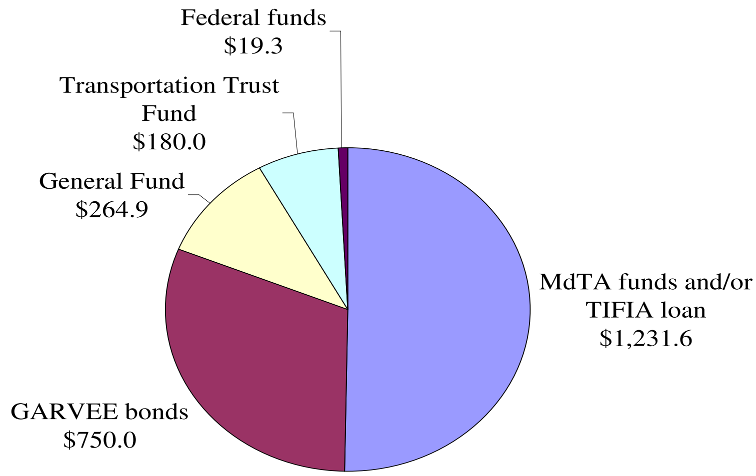
Exhibit 1
ICC Expenditures by Year and Project Phase
Fiscal 2007-2013
($ in Millions)



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 TIFIA line of credit. 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 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 fiscal 2009 budget includes a transfer of $85.0 million to MdTA for the project.

MdTA must submit an ICC status report to the Senate Budget and Taxation Committee, the House Appropriations Committee, and the House Committee on Ways and Means by December 1 of each year. The report has to • provide a comparison of the projected and actual progress of the ICC project; • provide revised estimates concerning total project cost, statements of cost savings/overruns relative to the initial $2.447 billion estimate provided January 2005; and • a description of any changes to the structure to the financing plan for the ICC project.

Budget Financing Act

Chapter 10 of 2008 repeals the sales and use tax on computer services imposed by Chapter 3 of the 2007 special session and imposes a 6.25% income tax surcharge on taxpayers with net taxable income in excess of $1 million. The Act's income tax provision is applicable to taxable years for three years only, beginning December 31, 2007.

State Fiscal Effect: Increasing MdTA's bond cap from $1.9 billion to as much as $3.0 billion (inclusive of any TIFIA loan or line of credit) (by 58% or $1.1 billion) will significantly increase the amount of debt issued by MdTA than would otherwise occur under current law. An increased amount of debt will require a larger portion of annual revenues be used to pay for debt service and the growing operating program. As a result, a smaller amount of yearly revenues will be available for capital costs.

To maintain and improve facilities to accommodate existing traffic and future needs of Maryland drivers and interstate traffic, MdTA proposes to use a combination of cash and toll revenue bonds to finance its current $4.4 billion capital program (fiscal 2008-2013). In addition, as described above, funding for the ICC includes a number of different funding sources: GARVEE bonds; special funds from TTF; general funds; and federal funds. The issuance of toll revenue bonds to fund the capital program would increase the balance of bonds outstanding based on MdTA's December 2007 forecast, as indicated in **Exhibit 3**.

Exhibit 3
Balance of MdTA Bonds Outstanding Under the Bill
Year-end Fiscal 2008-2013
($ in Billions)

Estimated Balance	Fiscal Year
$1.24	2008
$1.89	2009
$2.43	2010
$2.81	2011
$2.91	2012
$2.88	2013

Modified Financing Plan

Contingent on the passage of SB 46 of 2008, which was signed into law as Chapter 10, the bill smoothes out the general fund payments to MdTA for the ICC as shown in **Exhibit 4**.

Exhibit 4
General Fund Repayment for the ICC
Current Law vs. SB 182
($ in Millions)

		2009	2010	2011	2012	Total
Current Law	General Fund Repayment	$85.0	$126.9			$212.0
SB 182	General Fund Repayment	85.0	63.0	63.9		212.0
Change		**($0.0)**	**($63.9)**	**$63.9**	**$0.0**	**$0.0**

Legislative Services notes the fiscal 2009 budget included a contingent reduction of $32.0 million in general funds if SB 46 of 2008 had failed.

Legislative Services notes that the bill also increases MdTA's limit on debt outstanding from $1.9 billion to up to $3.0 billion (inclusive of any TIFIA loan or line of credit) and provides additional flexibility for MdTA with respect to the ICC cash flow to account for the change in the general fund repayment by using one or more of the following options:

- issuing BANs backed by the draw on the federal line of credit;
- permitting TTF to lend $75.0 million in special funds to MdTA to cover cash flow needs, then repaying TTF when general fund repayment is received; or
- suggesting that MdTA use its unencumbered cash balance, which is sufficient in fiscal 2010, to cover the change to the general fund repayment.

MdTA advises that the delay of general funds for the ICC could require MdTA to accelerate the issuance of debt and potentially increase the amount of debt issued for the purpose of paying capitalized interest and finance costs.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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