HB 1595

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1595 (Delegate Mizeur, *et al.*)
Environmental Matters

Intercounty Connector - Public Health Impacts from Air Pollution - Assessment

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This bill prohibits the State and the Maryland Transportation Authority from spending State funds or issuing State debt for the planning, design, or construction of, or the purchasing of rights-of-way for, the Intercounty Connector until the Maryland Department of Transportation and the Maryland Department of the Environment meet specified requirements relating to assessing the public health impacts of air pollution generated by vehicular traffic on specified roads relating to the ICC.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Significant Transportation Trust Fund expenditure increase in FY 2009 to conduct the required assessment. Potential significant impact on State finances related to the ICC as discussed below.

Local Effect: None. The bill would not directly affect local government finances.

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

Analysis

Bill Summary: MDOT and MDE are required to fully assess, disclose, and hold public hearings on the direct, indirect, and cumulative public health impacts of air pollution generated by vehicular traffic on the ICC and other federal, State, and local roads and highways within the ICC study area. The bill establishes requirements for the cumulative assessment required under the bill. MDOT and MDE are directed, to the extent feasible, to ensure that the project-specific assessment required under the bill uses the best available tools and data for several specified purposes generally relating to air pollution from motor vehicles resulting from the ICC. Among other things, the assessment must • model projected emissions of air pollution from motor vehicles traveling on the ICC and other specified roads in the area; • quantify the cumulative short-term and long-term public impacts of exposure to air pollution from motor vehicles traveling on the ICC and other roads; • quantify the potential risks to at-risk populations; and • include a specified sensitivity analysis.

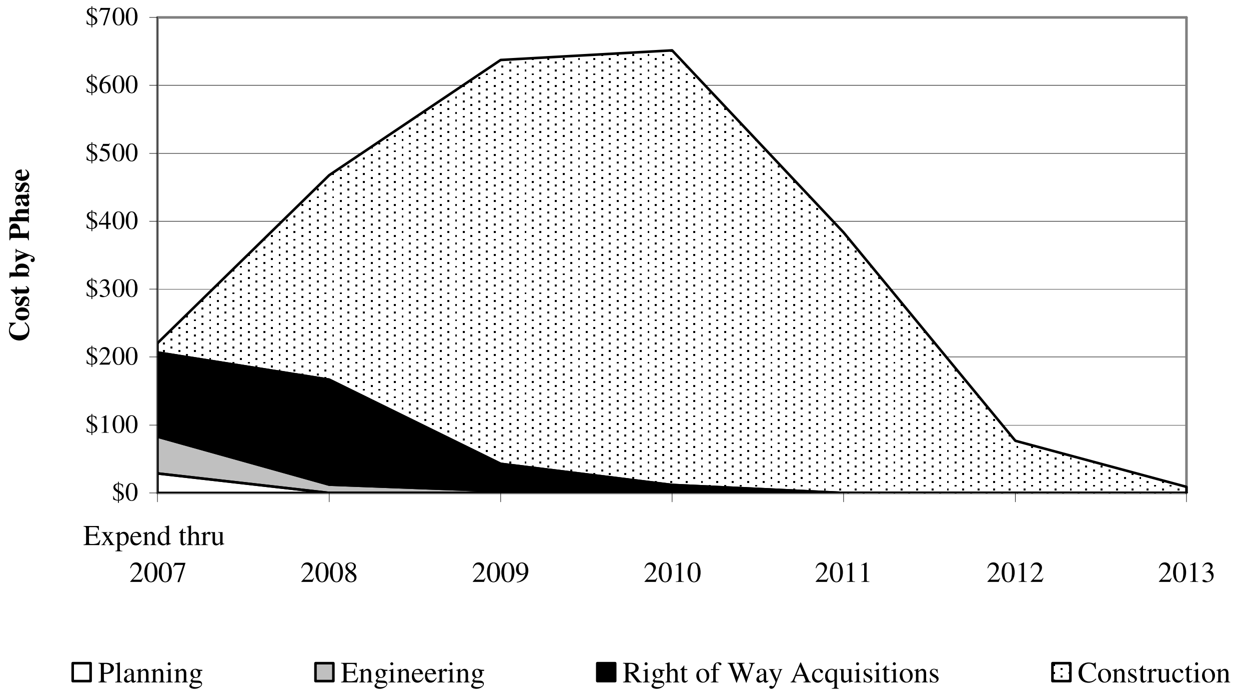
On completion of the required assessment, MDOT and MDE must publish the results, establish a reasonable period for written public comment, and convene public hearings. Following the public hearings and a review and consideration of the written comments submitted by the public, MDOT and MDE must jointly issue a written response to the substantive issues and report to the Governor and the General Assembly by December 1, 2008.

Current Law/Background: 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.

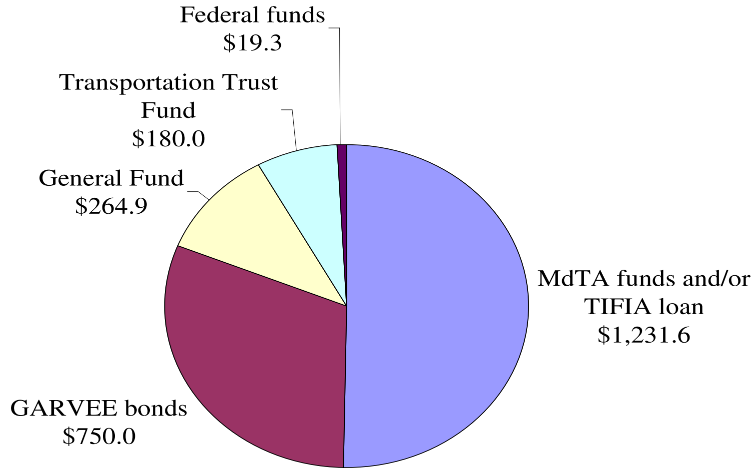
Exhibit 1
ICC Expenditures by Year and Project Phase
Fiscal 2007-2013
($ in Millions)



Source: Maryland Transportation Authority

Chapters 471 and 472 of 2005 established a financing plan for the ICC, which includes the general fund, the Transportation Trust Fund, Grant Anticipation Revenue Vehicle or 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 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.

In December 2006, separate actions were filed in two different U.S. District Courts challenging certain federal agency and metropolitan planning organization environmental analyses and decisions relating to the ICC. Maryland was not named as a defendant in either case but successfully filed motions to intervene and consolidate the cases. In November 2007, a federal judge dismissed both lawsuits, finding that Maryland had adequately addressed all environmental concerns. These decisions were appealed on January 7, 2008. The Audubon Naturalist Society, a plaintiff in one of the original lawsuits, declined to join the appeal but sent a letter supporting the remaining plaintiffs.

There is also a pending lawsuit filed in Maryland that alleges a violation of State law requiring that other alternatives be adequately considered. The State filed a motion to dismiss.

State Fiscal Effect:

Required Assessment

For purposes of this analysis, it is assumed that the required assessment would be funded through TTF. Although a reliable estimate of any increase in TTF expenditures in fiscal 2009 to conduct the required assessment cannot be made at this time, it would be significant (perhaps several million dollars). MDOT and MDE both advise that the State does not have the expertise needed to conduct the assessment required by the bill and thus would have to hire several specialized contractors. In addition, both MDOT and MDE advise that the bill's requirements could *not* be completed by the December 1, 2008 deadline established by the bill.

Effects on the ICC Project

The bill prohibits the State and MdTA from spending any State funds or issuing any State debt for the ICC until the bill's requirements are met. This would prohibit the State/MdTA from spending general funds and TTF funds, issuing GARVEE bonds, and spending GARVEE bond proceeds while the bill's requirements are being completed. Under current law, the latest project update anticipates expenditures of $540.5 million in fiscal 2009 ($25.5 million for right-of-way purchases and $515.0 million for construction). The bulk of this spending is from the funding sources described above that would be restricted under this bill.

However, it appears that MdTA could still issue toll-backed revenue bonds and spend any available MdTA cash for the ICC, since those sources are generally not considered "State debt" or "State funds." MDOT advises, however, that it is unclear whether MdTA would do so. Under current law, MdTA plans to issue a total of $600.0 million in revenue bonds in fiscal 2009 for its capital program, with about $125.0 million going to the ICC. If MdTA were to expedite its future issuances of ICC-related toll-backed revenue bonds currently planned for fiscal 2010 through 2012 in order to continue with the project under this bill, this would necessitate that it increase its tolls earlier than currently anticipated.

In any event, the bill *could* delay the ICC project by *at least* five months, since the study required by the bill is due December 1, 2008. (As noted above, however, both MDE and MDOT advise that this deadline is infeasible.) A delay could have the following potential impacts:

- MDOT advises that to date almost $1 billion has been awarded in two ICC-related contracts. Delays could significantly increase State expenditures due to increased inflation costs. In addition, since the contracts have already been awarded, the State would likely be subject to delay claims (penalties) from the contractors.

- MdTA would not be able to issue any State debt until completion of the bill's requirements. The next GARVEE bond sale is scheduled for September 2008; MdTA would be required to delay this sale under the bill. This would also expose the State to potential interest rate fluctuations (up or down).

- Toll revenues could be delayed to the extent that the bill delays the ICC completion date. However, because toll revenues are not anticipated to be significant in the first few years that the ICC is in operation, it is assumed that any loss of toll revenue from any delays resulting from this bill alone would likely not be significant.

Legislative Services notes that, in a project as large as the ICC, delays are inevitable. Accordingly, it is difficult to estimate the impact of this bill alone on the project completion date and ultimately, on State finances.

Legislative Services also notes that it is unclear whether the bill would preclude payment of debt service on any bonds already issued for the ICC, although it is possible that MdTA could use its funds, which do not appear to be restricted by this bill, for those purposes, to the extent such funds are available.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Maryland Transportation Authority, Maryland Department of the Environment, Maryland Department of Planning, Anne Arundel County, Montgomery County, Prince George's County, Maryland-National Capital Park and Planning Commission, Department of Legislative Services

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