HB 1416

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1416 (Delegate Stein, *et al.*)
Environmental Matters

Intercounty Connector - Impact on Global Warming - Study

This bill requires the Maryland Department of Transportation and the Maryland Department of the Environment to jointly study the impact that the Intercounty Connector could have on greenhouse gas emissions in the State. The bill prohibits the State from issuing any debt or expending any funds from any source for the ICC until the requirements of the bill are satisfied.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Transportation Trust Fund expenditure increase in FY 2009 to conduct the required study. Potential significant impact on State finances due to delaying the project as discussed below.

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

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

Analysis

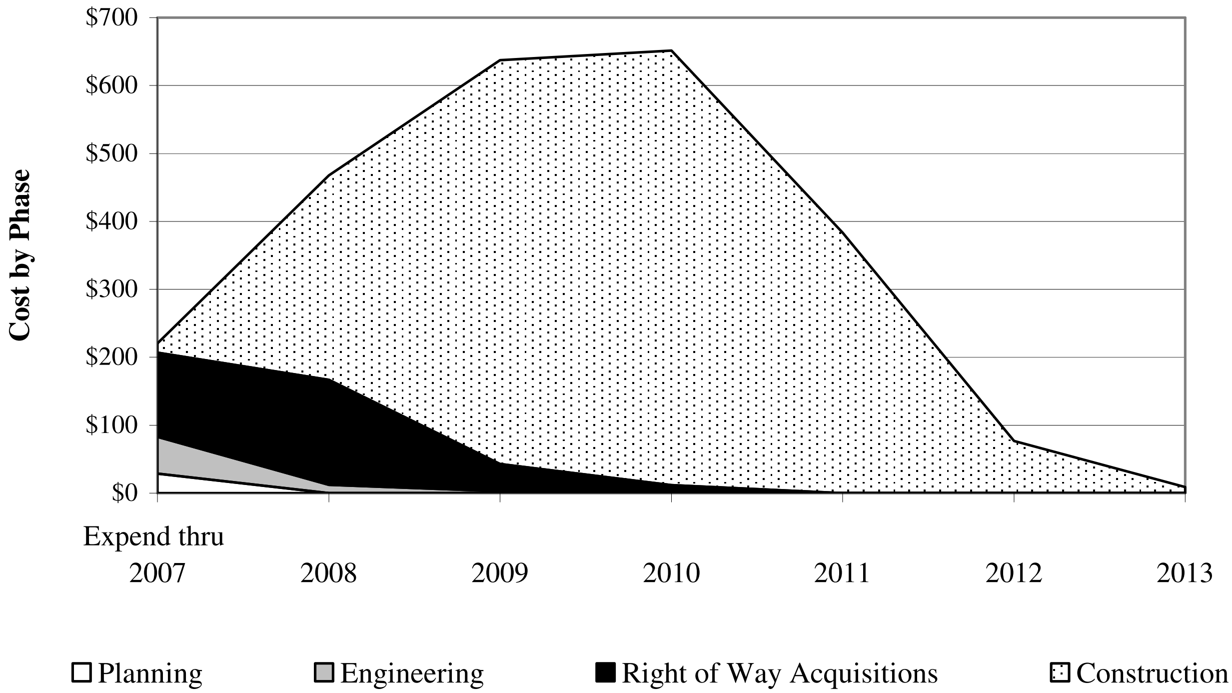
Bill Summary: The required study would assess the impact the ICC would have on • greenhouse gas emissions; • natural resources and public health within the ICC study area; and • the State's ability to meet the proposed greenhouse gas emissions reduction goals set forth in the Climate Commission. The study would also be required to quantify the costs of mitigating the impacts described above. MDOT and MDE are required to establish a public comment period of no less than 45 days, hold at least one public hearing, and report their findings 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 the Maryland Transportation Authority. 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 million, occurs in fiscal 2010.

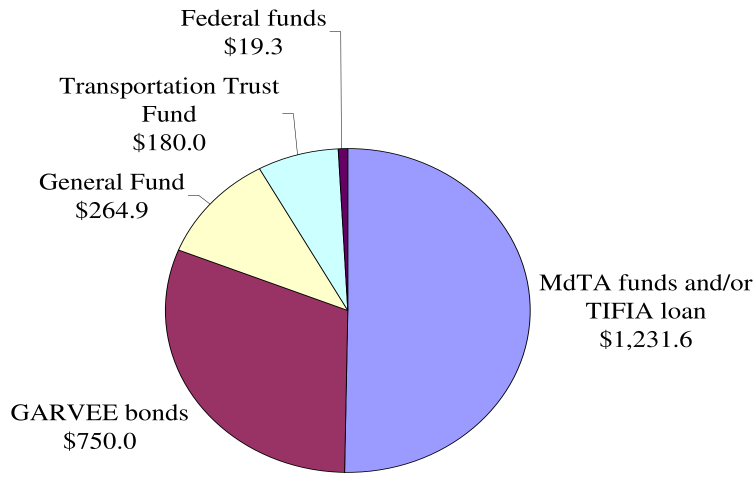
Exhibit 1
ICC Expenditures by Year and Project Phase
Fiscal 2007-2013
($ in Millions)



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 of 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 Study

For purposes of this analysis, it is assumed that the required study would be funded through TTF. Thus, TTF expenditures would increase, perhaps significantly, in fiscal 2009 to conduct the study required by the bill. MDOT estimates that completing the study would cost between $700,000 and $1 million. Legislative Services advises that the cost would likely be significant but cannot be precisely estimated at this time.

Effects from Delaying the ICC

The bill would delay the ICC project by at least five months, since the study required by the bill is due December 1, 2008. 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). 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 contractors.

- MdTA would not be able to issue any 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). Legislative Services notes that MdTA also expects 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.

- Toll revenues could be delayed to the extent that the study 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.

Finally, Legislative Services notes that it is unclear whether the bill would preclude payment of debt service on any bonds already issued for the ICC.

Additional Comments: MDE advises that the timeline established in the bill may be infeasible.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Robert J. Rehrmann

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