HB 27

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 27 (Delegate Frush)
Appropriations

Transportation - Intercounty Connector - Elimination of Funding

This bill eliminates all funding for the Intercounty Connector (ICC) and requires the Maryland Transportation Authority (MDTA) to retire specified debts incurred to pay for it. It also diverts a portion of future unappropriated general fund surpluses from the Revenue Stabilization Account to the Transportation Trust Fund (TTF).

Fiscal Summary

State Effect: Nonbudgeted expenditures by MDTA for the ICC decrease by $418 million in FY 2010 despite a $250 million expenditure for liquidated damages for cancelled contracts. Out-year expenditure decreases for MDTA stem from elimination of debt service payments and a lack of ICC operating and maintenance expenses. Nonbudgeted revenues for MDTA decrease by $440 million in FY 2010 due to the cancellation of bond and loan funds. Out-year revenue decreases for MDTA are due to additional cancelled bond issuances as well as foregone toll revenue from the ICC. General and special fund expenditure decreases in FY 2010 and 2011 reflect payments to MDTA that would no longer be required.

($ in millions)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
NonBud Rev.	($440)	($568)	($49)	($30)	($51)
GF Expenditure	($63)	($64)	$0	$0	$0
SF Expenditure	($30)	$0	$0	$0	$0
NonBud Exp.	($418)	($604)	($195)	($57)	($89)
Net Effect	$71	$99	$146	$27	$38

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

Local Effect: Montgomery County has purchased rights-of-way to allow for the construction of the ICC. Under this bill, the county could either use that land for other purposes or sell it to generate revenue. In addition to the impact regarding rights-of-way purchases, the elimination of the ICC could also affect long-term economic development efforts in affected areas. Funding may be required to determine reuse and realignment of areas that would have been impacted by the ICC.

Small Business Effect: No direct impact, but the elimination of the ICC could affect long-term economic development efforts.

Analysis

Bill Summary: In a given fiscal year, if the unappropriated general fund surplus exceeds $10 million as of June 30 of the second preceding year, the Governor must appropriate the lesser of $50 million or the excess surplus over $10 million to TTF until the total amount appropriated to TTF reaches $211.9 million. Until that amount has been repaid, if the general fund surplus for the second preceding fiscal year does not exceed the sum of $10 million and the amount required to be paid to TTF, no appropriation to the Revenue Stabilization Account (Rainy Day Fund) needs to be made for the corresponding fiscal year. If the general fund surplus in the second preceding year exceeds the sum of $10 million and the amount required to be paid to TTF, only the portion of the surplus in excess of that amount needs to be transferred to the Rainy Day Fund.

The bill amends the General Assembly's intent with regard to cash flow changes for financing the ICC.

MDTA must retire any outstanding bonds secured by a pledge of future federal aid with unspent bond proceeds, any unspent moneys appropriated for the ICC, or federal fund authorizations from the federal highway program, in that order.

Current Law: The Governor is required to transfer any unappropriated general fund surplus in excess of $10.0 million as of June 30 of the second preceding fiscal year to the Rainy Day Fund.

To help finance the ICC, MDTA must issue not more than $750 million in Grant Anticipation Revenue Vehicle (GARVEE) bonds secured by a pledge of future federal aid (which, if issued, must be retired under this bill). It must also issue revenue bonds not secured by a pledge of future federal aid (which, if issued, do not need to be retired under this bill). From fiscal 2007 to 2010, the Governor must transfer at least $30 million each year from TTF to MDTA. Furthermore, in accordance with Chapter 567 of 2008, the following payments from the general fund to MDTA for the ICC are required: $85.0 million in fiscal 2009, $63.0 million in fiscal 2010, and $63.9 million in fiscal 2011.

The Governor must also transfer at least $10.0 million in federal aid to MDTA in amounts deemed prudent.

Chapter 473 of 2005 requires, beginning in fiscal 2012, the repayment of State transfer tax revenues transferred to the general fund after fiscal 2005 by including the transfer tax special fund in the provisions relating to the disposition of any unappropriated general fund surplus. The repayment provisions only take effect once TTF has been fully repaid in accordance with current statutory requirements.

Background:

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 the State's first fully electronic facility. 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 the first facility in Maryland to utilize congestion pricing, where toll rates vary based on time of day.

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 began in April 2008. Contract B, from MD 97 to US 29, received a Notice to Proceed in January 2009 and Contract D has been deferred. Contract D includes improvements along I-95 adjacent to the ICC/I-95 interchange and is not essential to toll operations on the ICC. Contract D was deferred beyond the six-year program period in response to unanticipated project cost increases. Excluding Contract D, the project remains on schedule for completion in late 2011.

ICC Funding

The rising cost of construction materials, such as fuel, cement, and steel, prompted ICC construction costs to increase by $247.0 million over the past two years. These cost increases were mitigated by $144.0 million in right-of-way savings and the $36.6 million premium realized from the two GARVEE bond issuances. The total cost of the project has increased to nearly $2.6 billion.

Exhibit 1 provides information on the cost of each contract based on the most recent estimates available, the change in cost from the 2007 estimates, and the status of each contract. Also included are estimated right-of-way and noncontract costs.

Exhibit 1
ICC Design-Build Contract Costs and Status
($ in Millions)

Contract	Project Component	2008 Estimate	2007 Estimate	Change	Status
A	I-270 to MD 97	$508	$508	$0	Under construction
B	MD 97 to US 29	597	472	125	NTP January 2009
C	US 29 to I-95	546	562	(16)	Under construction
D	I-95 improvements	98	79	19	Indefinitely deferred
E	I-95 to US 1	75	61	14	NTP June 2009
ROW	Right-of-way	298	330	(32)	Ongoing
Other	Non-contract costs [1]	444	434	10	Ongoing
	Total	**$2,566**	**$2,446**	**$120**	

NTP: Notice to Proceed
ROW: Right-of-way

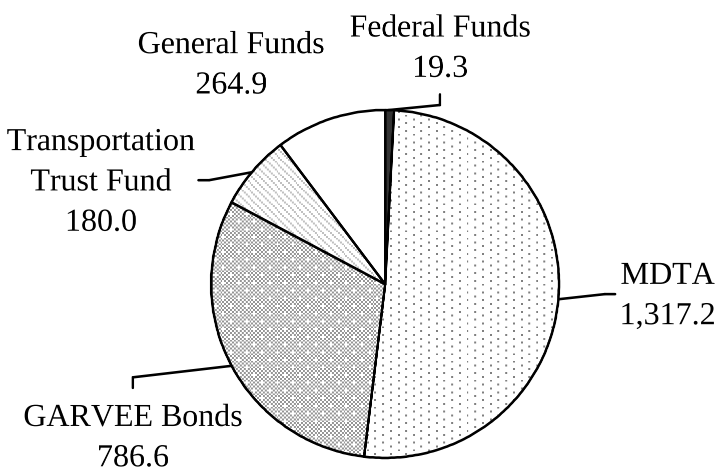
[1] Noncontract costs include State Highway Administration project planning, preliminary engineering, and program management; utilities; park and ride facilities; open road toll equipment; intelligent transportation systems; maintenance/operations facilities; transit; and environmental mitigation costs.

Sources: Maryland Transportation Authority, Department of Legislative Services

Chapters 471 and 472 of 2005 established a $2.4 billion financing plan for the ICC, which included the general fund, TTF, GARVEE bonds, federal funds, and MDTA toll revenue bonds, and/or a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan. As shown in **Exhibit 2**, the funding sources for the ICC remain the same. While construction cost estimates have increased relative to the initial finance plan, deferring Contract D and offsetting savings in right-of-way purchases have tempered project cost growth. The funding plan has seen a slight increase in federal funds and a corresponding decrease in MDTA bonds.

According to the Maryland Department of Transportation (MDOT), the State has spent approximately $634 million on the ICC as of November 30, 2008. Furthermore, current cash flow forecasts indicate that $1.2 billion – nearly half of the ICC's total projected cost – will be spent by the end of September 2009.

Exhibit 2
ICC Finance Plan
($ in Millions)



GARVEE: Grant Anticipation Revenue Vehicle
ICC: InterCounty Connector
MDTA: Maryland Transportation Authority

Note: Funding from GARVEE bonds is shown as $786.6 million. This includes the total authorization of $750.0 million from statute as well as a total of $36.6 million in net premiums received from the two GARVEE bond issuances.

Source: Maryland Transportation Authority, January 2009 Financial Forecast

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). In December 2008, a second bond issuance of $425.0 million was successfully sold. The bonds had a true interest cost of 4.3% and achieved a net premium of $19.7 million.

Also in December 2008, MDTA completed negotiations with the Federal Highway Administration (FHWA) on the terms of a TIFIA loan. MDTA negotiated an interest rate of 2.56% on a loan of $516.0 million.

In March 2008, MDTA issued $573.3 million in revenue bonds, about $72.1 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.

Chapter 567 of 2008 altered the timing of payments from the general fund to MDTA; however, it did not change the total amount of funding provided by the general fund. On October 15, 2008, in order to address a budget deficit, the Governor withdrew $20.0 million from the fiscal 2009 appropriation to MDTA for the ICC through the Board of Public Works. Since the timing and amounts of general fund payments are established in statute, the Administration advised it would propose legislation during the 2009 session to alter the payment schedule.

In the Budget Reconciliation and Financing Act of 2009 (House Bill 101/Senate Bill 166), the Administration alters the timing of payments from the general fund to MDTA and authorizes the use of general obligation (GO) bonds in addition to or instead of general funds for these payments. The bill does not alter the total amount of funding provided to the ICC; it eliminates a fiscal 2009 payment and requires payments of

$146.9 million in fiscal 2010 and $65.0 million in fiscal 2011. The Governor's proposed fiscal 2010 capital budget includes $146.9 million in GO bonds for the ICC. **Exhibit 3** shows the original general fund payment schedule provided in Chapters 471 and 472 of 2005, the changes made during the 2008 session, and the Administration's proposed changes.

Exhibit 3

General Fund Payments for the ICC

FY	Original Finance Plan	2008 Session Changes	Governor's Proposal
2007	At least $50.0 million	$53.0 million	$53.0 million
2008	At least $50.0 million	0	0
2009	At least $50.0 million	$85.0 million	0
2010	Balance to be repaid [1]	$63.0 million	$146.9 million GO
2011	-	$63.9 million	$65.0 million GF/GO

GF: General Funds
GO: General Obligation Bond Funds

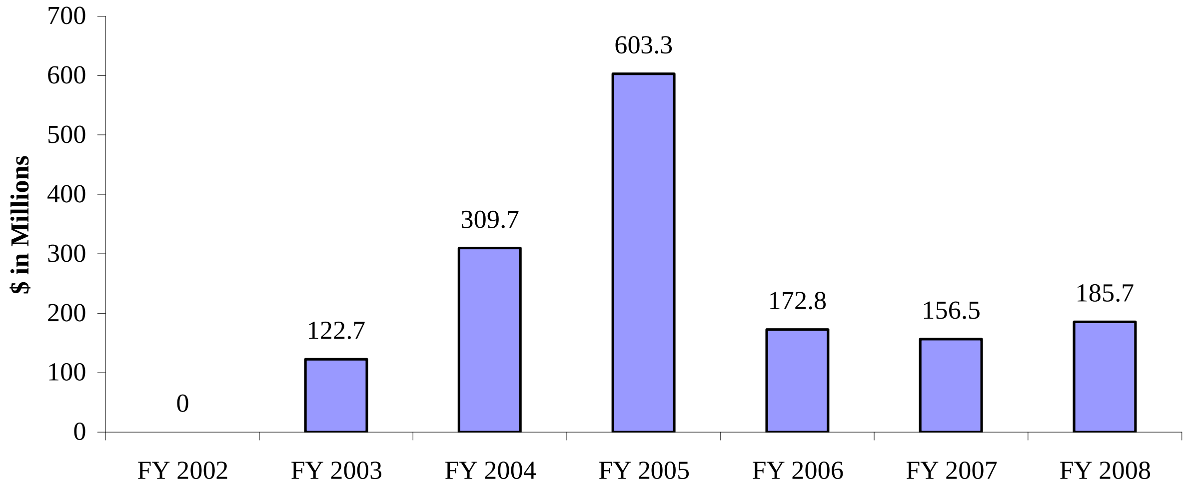
[1] Chapter 203 of 2003 transferred $314.9 million from the Transportation Trust Fund to the general fund to address a budget shortfall. After a repayment of $50.0 million in fiscal 2006, Chapters 471 and 472 of 2005 directed that the remaining balance of $264.9 million be paid to the Maryland Transportation Authority for construction of the ICC. If payments of $50.0 million had been made in fiscal 2007 through 2009, the balance to be repaid in fiscal 2010 would have been $114.9 million.

Source: Department of Legislative Services

Rainy Day Fund: The purpose of the Revenue Stabilization Account or Rainy Day Fund is to retain State revenues for future needs and to reduce the need for future tax increases by moderating revenue growth. The Governor is required to appropriate funds to the account to maintain a sufficient balance. The Governor's proposed fiscal 2010 budget projects an ending balance of $686.9 million in the Rainy Day Fund.

Exhibit 4 shows the unappropriated general fund balances for each of the past seven fiscal years (fiscal 2002-2008). Excluding fiscal 2002, the fund balances have exceeded both the $10.0 million threshold that triggers an appropriation to the Rainy Day Fund under current law, and the $60.0 million threshold that would trigger the maximum $50.0 million appropriation to TTF required by this bill. A general fund unappropriated surplus is not projected for the fiscal 2009-2015 period.

Exhibit 4
Unappropriated General Fund Balances
Fiscal 2002-2008



Source: Department of Legislative Services

State Fiscal Effect: In light of its October 1, 2009 effective date, this analysis assumes the bill will not affect the proposed transfer of $175.7 million in unappropriated general funds from fiscal 2008 to the Rainy Day Fund in the fiscal 2010 budget.

Appendix 1 shows the net effect of the bill on the general fund, TTF, federal transportation aid, and MDTA. The following provides a brief summary of the impact by fund type.

General Fund: The ICC finance plan includes $264.9 million from the State's general fund as repayment of money borrowed from TTF in fiscal 2003 and 2004. This analysis assumes that, if the ICC were cancelled and the Administration's proposal to alter the timing of payments were not adopted, the remaining balance of $126.9 million would be repaid to TTF. However, the bill specifies that $211.9 million must be repaid; this amount includes $85.0 million currently required for fiscal 2009 support of the ICC. Thus, under the bill, general fund repayment directly to TTF and in support of the ICC could be as much as $85.0 million greater than the amount borrowed in fiscal 2003 and 2004. Nevertheless, TTF repayment is likely deferred for several years.

Transportation Trust Fund: The finance plan includes a contribution of $180.0 million from TTF. Through the end of fiscal 2009, $150.0 million will have been paid from TTF to MDTA for construction of the ICC. If the project were cancelled as of October 1, 2009, this analysis assumes TTF would not make its final payment of $30.0 million to MDTA in fiscal 2010.

Federal Transportation Aid: The ICC finance plan includes $19.3 million in federal aid. This money is earmarked for the ICC and would not be available for other projects. The larger effect on federal aid would result from GARVEE bonds, which are repaid by federal aid. At the end of fiscal 2009, GARVEE bonds outstanding will total $704.4 million. Although the bond covenants include an extraordinary call provision that allows for early redemption of the bonds, there will not be enough money available to repay these bonds, so it is assumed that current amortization schedules would be maintained and the bonds would be repaid over the next 12 years. Therefore, there would not be any savings to federal aid associated with the ICC project and federal aid would still be reduced over the next 12 years to pay debt service for bonds already issued.

MDTA: The effect of cancellation of the project on MDTA is much more complex. Consideration must be given not only to bonds that will not be issued, capital expenditures that will not be made to construct the project, and future operating expenses that will not be needed, but also liquidated damages for contracts already awarded, unrealized toll revenues, and unrealized revenue from all other funding sources for the project.

In order to capture the total effect of cancellation of the project, estimates of debt service, operating expenses, and toll revenues are made out to fiscal 2046 to account for the 30- to 33-year maturity of bonds that MDTA would have issued for the project. If the ICC were cancelled, MDTA would suffer a $22.1 million loss in fiscal 2010, as contract cancellation costs would be higher than the amount available in the project fund balance. Over the 36-year term of this analysis, MDTA would come out ahead by $171.5 million; however, if the analysis were projected out further, even by only an additional two years, it would show a net loss for MDTA as a result of unrealized toll revenues. By fiscal 2046, unrealized revenues from the project would be 2.1 times higher than operating expenses, resulting in a year-over-year loss of potential profit.

Cancelling the ICC at this point in the process could have significant impact. To date, much of the land required for right-of-way has already been acquired, the land has been cleared, and construction has begun on two of the contracts. Although demolition of existing work and reforestation of the affected areas could take place, many of the affected landowners have already moved to new locations and their houses have been razed. The State would be left with significant real estate holdings, bought primarily during an inflated housing market, which it would now have to hold or attempt to sell in a depressed housing market.

As of December 31, 2008, $649.6 million has been spent on the ICC. None of this money could be recouped if the project were cancelled. In fact, MDTA would have to pay approximately an additional $250 million as the result of contract cancellation costs for the $1.5 billion in contracts that have already been awarded, demobilization efforts, and costs to restore the site. This does not include the cost of reforestation of the affected area.

Rainy Day Fund: Since a general fund surplus is not projected in fiscal 2009 through 2014, the bill is not expected to impact the Rainy Day Fund. To the extent this estimate changes and transfers to the Rainy Day Fund are reduced, there will be less money available in succeeding years to balance the State's general fund budget.

Transfer Tax/Special Fund: General fund transfers to the transfer tax special fund (for Program Open Space and related programs) required by statute would not be affected. Although the payments are scheduled to begin in fiscal 2012, general fund surpluses are not projected for fiscal 2011 and 2012, so no payments would be made to the transfer tax special fund in fiscal 2013 and 2014, even in the absence of this bill. Once TTF is fully reimbursed, general fund transfers to the transfer tax special fund would begin.

Additional Comments: As described earlier, the Budget Reconciliation and Financing Act of 2009 proposes altering the timing of payments from the general fund to MDTA and the Governor's fiscal 2010 capital budget proposes including $146.9 million in GO bonds for the ICC. Therefore, if the bill and these provisions of other bills are enacted, ICC funds must be deauthorized and would be available for other purposes.

Additional Information

Prior Introductions: The House Appropriations Committee held a hearing on HB 1471 of 2008, a substantially similar bill, but no further action was taken.

Cross File: SB 753 (Senator Pipkin, *et al.*) – Budget and Taxation.

Information Source(s): Department of Budget and Management, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2009
ncs/ljm

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Appendix 1
Effect of Cancellation of the ICC
Fiscal 2010-2046
($ in Millions)

	2010	2011	2012	2013	2014	2015-2046 [1]	Total
General Fund							
GF transfers that would not go to the ICC [2]	$63.0	$63.9					$126.9
GF transfers to TTF [3]						-$211.9	-211.9
Net Effect	**$63.0**	**$63.9**	**$0.0**	**$0.0**	**$0.0**	**-$211.9**	**-$85.0**
Transportation Trust Fund							
Foregone TTF transfers	$30.0						$30.0
GF repayment to TTF[3]						$211.9	211.9
Net Effect	**$30.0**	**$0.0**	**$0.0**	**$0.0**	**$0.0**	**$211.9**	**$241.9**
Federal Aid							
GARVEE bond debt service [4]	-$87.5	-$87.5	-$87.5	-$87.5	-$87.5	-$488.6	-$926.1
Net Effect	**-$87.5**	**-$87.5**	**-$87.5**	**-$87.5**	**-$87.5**	**-$488.6**	**-$926.1**
MDTA Revenues							
MDTA Cash						$103.2	$103.2
MDTA bonds	-$264.0	-$300.0	-$35.9				-599.9
TIFIA loan	-316.0	-200.0					-516.0
Toll revenue [5]		-4.4	-12.9	-$30.3	-$51.0	-4,272.9	-4,371.5
No GF transfers	-63.0	-63.9					-126.9
No TTF transfers	-30.0						-30.0
Project fund balance [6]	233.3						233.3
Net Effect on MDTA Revenues	**-$439.7**	**-$568.3**	**-$48.8**	**-$30.3**	**-$51.0**	**-$4,169.7**	**-$5,307.8**
MDTA Expenses							
No capital ICC expenditures	$662.9	$587.2	$157.5	$7.2	$4.8	$103.2	$1,522.8
MDTA debt service [7]			18.1	27.6	54.9	2,136.5	2,237.0
ICC operations and maintenance [8]	4.7	16.5	19.0	22.4	28.8	1,878.0	1,969.5
Cancelled construction contracts [9]	-250.0						-250.0
Net Effect on MDTA Expenditures	**$417.6**	**$603.7**	**$194.6**	**$57.2**	**$88.5**	**$4,117.7**	**$5,479.3**
Net Effect on MDTA Funds	**-$22.1**	**$35.4**	**$145.8**	**$26.9**	**$37.5**	**-$52.0**	**$171.5**
Net Effect on General Fund [10]							**-$85.0**
Net Effect on TTF							**$241.9**
Net Effect on MDTA							**$171.5**

GARVEE: Grant Anticipation Revenue Vehicle
GF: General Fund
ICC: InterCounty Connector

MDTA: Maryland Transportation Authority
TIFIA: Transportation Infrastructure and Innovation Act
TTF: Transportation Trust Fund

[1] Analysis considers effects of cancellation through fiscal 2046 to account for the maturities of all bonds associated with the project.

[2] Statute provides for payments of $85 million in fiscal 2009, $63 million in fiscal 2010, and $64 million in fiscal 2011. However, in October 2008, the fiscal 2009 payment was reduced by $20 million through the Board of Public Works. A change in statute is required to redistribute the $20 million to later years. MDTA includes in its forecast an additional $10 million in fiscal 2010 and 2011 to account for this.

[3] Assumes that general fund repayment of money borrowed from TTF in 2003 and 2004 will still take place and that the sweeper amendment previously in place would be reinstituted to make that repayment. Also assumes that the Administration's proposal to alter the timing for general fund support of the ICC is not adopted under the Budget Reconciliation and Financing Act of 2009; this bill's requirement for repayment of $211.9 million to TTF only accounts for the $53.0 million payment in fiscal 2007 – it does not factor in the $85.0 million required payment to MDTA in fiscal 2009. Also assumes that general fund surpluses will be available during the fiscal 2015 through fiscal 2046 period allowing the sweeper amendment to take effect.

[4] The TTF forecast already assumes the payment of GARVEE debt service through fiscal 2020. The outstanding balance of GARVEE bonds at the end of fiscal 2009 will be $704.4 million. Since MDTA will not have any money left in the project fund balance after paying for the cost of cancelled construction contracts, this assumes that repayment of the bonds will follow the debt service and maturity schedule already established.

[5] Projections of toll revenue are based on the ICC traffic and revenue estimates prepared by an MDTA consultant.

[6] Current projections show the project fund balance at the end of fiscal 2009 will be $109.8 million. This scenario assumes that fourth quarter fiscal 2009 spending (April through June) will only be 25% of what was originally expected as a result of the passage of legislation cancelling the project.

[7] Includes both revenue bonds issued by MDTA as well as debt service for expected draws on the TIFIA loan. Assumes that bonds issued to date ($72.1 million in fiscal 2008) would not be called early and would follow their normal debt service schedule since they were part of a larger bond issuance to fund other capital projects.

[8] Balance includes 32 years worth of operating and maintenance expenses at an annual increase of 4%.

[9] Estimate is provided by the State Highway Administration. Includes contractor and designer claims, costs incurred to restore the site, and demobilization.

[10] Assumes that the sweeper amendment would be put back in place to repay TTF.

Source: Department of Legislative Services