

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1322 (Delegate Clagett)  
Ways and Means and Appropriations

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Transportation Infrastructure Bank

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This bill establishes a Transportation Infrastructure Bank (a special, nonlapsing fund) in the Transportation Trust Fund (TTF) to provide loans and other financial assistance for projects selected by the Maryland Department of Transportation (MDOT). MDOT must administer the bank and up to 20% of the bank's capitalization may be used for grants to governmental entities to finance projects. By January 1 and July 1 annually, MDOT must submit a report on the bank to specified committees of the General Assembly providing information about the financial assistance provided and projects funded during the preceding six-month period.

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Fiscal Summary

**State Effect:** General fund expenditures increase potentially significantly in FY 2014 and in subsequent years to capitalize the bank. TTF revenues increase correspondingly. TTF expenditures increase, potentially significantly, in FY 2014 and subsequent years to administer the bank and provide financial assistance.

**Local Effect:** Local revenues and expenditures increase in FY 2014 and subsequent years to the extent local governments receive financial assistance from the bank; however, any impact cannot be reliably estimated.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Definitions*

A “governmental entity” is a political subdivision; a local, regional, State, or federal entity; an entity established by an interstate compact; an instrumentality, a corporation, or an entity established by the State, a political subdivision, or the federal government; or any combination of two or more of the previously listed entities. A “private entity” is any private or nongovernmental entity that has executed a public-private partnership agreement to develop and construct a transportation infrastructure project.

An “eligible borrower” is a private entity; a governmental entity; an instrumentality, corporation, or entity established by a private or governmental entity; or any combination of two or more of the previously listed entities. A “project sponsor” is any private or governmental entity involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance, or financing of a project.

A “project” is the construction, reconstruction, rehabilitation, or replacement of a highway, transit facility, freight rail facility, port facility, or airport facility. A “project obligation” is a bond, note, debenture, interim certificate, grant, revenue anticipation note, lease, lease-purchase, installment sales agreement, specified credit enhancement, or other specified agreement.

#### *Transportation Infrastructure Bank Establishment*

The bank consists of money appropriated in the State budget, payments on project obligations and investment earnings, and any other money from any other source. MDOT may make grants to the bank to enable it to carry out its corporate purposes and exercise its powers. MDOT may establish or direct the establishment of federal and State accounts or subaccounts as necessary.

Project obligations must be payable, in whole or part, from a reliable repayment source pledged for that purpose. The pledge of repayment sources and other property securing any project obligation may be subordinate to the pledge securing any other senior debt obligations incurred to finance the project. The interest rate on a project obligation must be determined by reference to specified items. The repayment schedule for projects must require (1) the amortization of principal beginning within 5 years following the later of substantial project completion or the date on which the project obligation was incurred and (2) a final maturity date of not more than 35 years following substantial project completion. MDOT is authorized to defer payments on a project obligation under specified conditions.

Financial assistance provided or committed by the bank (1) is not State debt or local government debt; (2) does not constitute a pledge of the full faith and credit of the State or a local government; (3) does not directly or indirectly obligate the State or a local government to impose any tax; and (4) must be payable solely from legally available money held by the bank.

The bank is not (1) a bank or trust company within the jurisdiction or under the control of the State, the Comptroller, or the U.S. Treasury Department or (2) subject to the provisions of any specified State or federal securities, securities exchange, or securities dealer law.

### *Eligibility and Project Selection*

While an eligible borrower or other project sponsor may apply for project financing, only governmental entities may apply for a grant. The bill specifies the process and requirements associated with applying to the bank for financial assistance.

MDOT must (1) issue guidelines for scoring project applications in accordance with specified criteria; (2) apply the scoring guidelines to each proposed project; and (3) publish each proposed project and the score it receives. Recipients of the bank's financial assistance must comply with policies and guidelines established by MDOT.

### *Project Obligations*

Financial assistance from the bank, excluding grants, must be evidenced or guaranteed by project obligations provided to finance the project costs. MDOT may sell any project obligation acquired under the bill and apply the proceeds of the sale to the making of additional loans and the provision of other financial assistance for financing projects or other corporate purposes of the bank.

MDOT may require that an eligible borrower or other project sponsor covenant to perform any of the following:

- establish and collect tolls, rents, rates, fees, and other charges to produce revenue sufficient to pay all or a portion of specified costs;
- create and maintain a special fund (1) as security for or the source of the scheduled payments on the project obligations or (2) for the operation, maintenance, repair, or replacement of the project or any portion of the project or other property of the eligible borrower or other project sponsor;

- deposit into any such special fund amounts sufficient to make any payments as they become due and payable;
- create and maintain other special funds as required by MDOT; or
- take other actions deemed necessary or desirable by MDOT to secure payment of the project obligations and to provide for remedies in the event of any default or nonpayment by the eligible borrower or other project sponsor, including specified items.

An eligible borrower or project sponsor, including any governmental entity, that provides project obligations to the bank is authorized to take any action and make and carry out any contracts with the bank or MDOT that are contemplated in the bill. Contracts among all eligible borrowers or other project sponsors need not be identical and may be structured according to the needs of the contracting eligible borrower or other project sponsor and the bank.

Subject to MDOT approval, a project sponsor is authorized to establish and contract with a special purpose or limited purpose instrumentality, corporation, or other entity for the purpose of having the entity serve as the eligible borrower with respect to a project.

#### *Other Requirements and Provisions*

The bill states that the bank performs an essential governmental function and is not required to pay taxes or assessments to the State or a local government on (1) capital, money, or property of the bank; (2) operations of the bank; (3) income of the bank; (4) project, property, or project obligation acquired by the bank; or (5) income of any project, property, or project obligation acquired by the bank.

The bank is exempt from specified general procurement provisions of the State Finance and Procurement Article.

#### **Current Law/Background:**

##### *Maryland Department of Transportation*

MDOT is responsible for statewide transportation planning and the development, operation, and maintenance of key elements of the transportation system. MDOT is organized into several administrations – State highway, motor vehicle, aviation, port, and transit. Other departmental components include the Office of the Secretary and certain advisory and zoning boards. A separate Maryland Transportation Authority operates revenue-generating transportation facilities. Consequently, MDOT is involved in all

modes of transportation within the State, including the construction and maintenance of State roads, regulation and licensing of drivers and vehicles, and operation of bus and rail transit services. In addition, MDOT owns and operates Martin State Airport, Baltimore/Washington International Thurgood Marshall Airport, and terminals in the Helen Delich Bentley Port of Baltimore.

### *State Infrastructure Banks*

State Infrastructure Banks (SIBs) are revolving infrastructure investment funds for surface transportation that are established and administered by states. A SIB, much like a private bank, can offer a range of loans and credit assistance enhancement products to public and private sponsors of highway construction projects or transit capital projects.

SIBs may give a state the capacity to make more efficient use of its transportation funds and leverage federal resources by attracting public and private investment. Alternatively, SIB capital can be used as collateral to borrow in the bond market or to establish a guaranteed reserve fund. Some SIBs are capitalized with federal-aid surface transportation funds and matching State funds, while some states have established SIBs or separate SIB accounts capitalized solely with state funds. As loans or other credit assistance forms are repaid to the SIB, its initial capital is replenished and can be used to support a new cycle of projects.

Several states have transportation infrastructure banks, including Florida, Ohio, South Carolina, and Virginia. Virginia recently established a transportation infrastructure bank with a \$282.7 million initial capitalization composed of \$32.7 million in general funds and \$250.0 million from its transportation fund.

### *State Debt Limit*

Chapter 43 of 1978 created the Capital Debt Affordability Committee (CDAC) to recommend an estimate of State debt to the General Assembly and the Governor. CDAC is chaired by the State Treasurer, and other committee voting members are the Comptroller, the Secretaries of Transportation and Budget and Management, and an individual appointed by the Governor. When reviewing State debt, CDAC considers general obligation (GO) bonds, consolidated transportation bonds, stadium authority bonds, bay restoration bonds, Grant Anticipation Revenue Vehicle revenue bonds, and capital leases supported by State revenues. While the Governor and the General Assembly are not bound by CDAC's recommendations, the State has always adhered to CDAC's recommended limits. CDAC recommended a limit of \$1.08 billion for new authorizations of GO bonds during the 2013 legislative session.

**State Fiscal Effect:** To establish the bank, an initial capitalization of funds, an ongoing stream of dedicated revenues, or a combination of both is required to support the issuance of financial assistance and the bank's administration costs. The amount of capitalization directly impacts the amount and number of loans that an infrastructure bank can provide. In addition, to establish and operate the bank, dedicated funding is required for the development and management of an administrative structure, program policies, evaluation guidelines, contracting procedures, and monitoring functions. In addition to requiring permanent staff, the bank may require contractual assistance to establish a functional structure, depending on the complexity of bank management, processes, and overall integration within existing State functions.

Because the bill requires the bank to be established but does not identify specific capitalization funds, this analysis assumes that general fund expenditures increase significantly in fiscal 2014 and in subsequent years to capitalize the bank. Because the bank is a part of TTF, the general fund expenditure increase prompts a corresponding increase in TTF revenues. Also, TTF revenues increase in future years to the extent loan repayments are made. TTF expenditures increase, potentially significantly, in fiscal 2014 and subsequent years to administer the bank and provide financial assistance; however, any impact cannot be reliably estimated.

While not assumed in this analysis, the bank may be capitalized with revenue from a variety of sources, including existing TTF revenues, federal funds, and bonds. *For illustrative purposes*, MDOT advises that Florida's transportation infrastructure bank receives \$10 million annually in fuel and excise tax revenue as well as periodic bond revenues and has one full-time staff person dedicated to the administration functions.

While the bill states that the bank's debt is not State debt, the Department of Legislative Services advises that rating agencies and other financial institutions are likely to consider the bank's debt when evaluating the State's debt and financial condition.

**Small Business Effect:** Small businesses benefit to the extent they facilitate or receive financial assistance from the bank.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Carroll, Harford, and Montgomery counties; towns of Bel Air and Leonardtown; City of Salisbury; Board of Public Works; Comptroller's Office; Maryland Department of Transportation; Federal Highway Administration; Department of Legislative Services

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