HB 1123

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1123 (Delegate Clagett, *et al.*)
Ways and Means

Maryland Economic Development Act of 2014

This bill reduces the corporate income tax (CIT) rate from 8.25% to 7.25% in tax year 2014 through tax year 2018 for corporations that incorporate in or relocate to the State on or after January 1, 2014, and then permanently reduces the CIT rate to 7.25% for all corporations beginning in tax year 2019. After making specified distributions in current law, the Comptroller must distribute 17.56% of the remaining CIT revenue (approximately 12% of *total* CIT revenue) to the Transportation Infrastructure Bank established under the bill. Money in the bank is held in a new special (revolving loan) fund within the Transportation Trust Fund (TTF) and must be used to provide loans and other financial assistance for transportation projects.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Total general fund revenues decrease by $96.0 million in FY 2015, rising to $150.6 million in FY 2019, due to the additional CIT revenue distribution and CIT rate reductions. Special fund revenues for the bank's new fund increase by $93.6 million in FY 2015 and significantly thereafter from the modified distribution. TTF revenues decrease by $519,000 and Higher Education Investment Fund (HEIF) revenues decrease by $188,000 in FY 2015 and significantly thereafter due to CIT rate reductions. Special fund expenditures for the new fund increase by $93.6 million in FY 2015 and significantly thereafter for the bank to provide financial assistance to projects. TTF expenditures increase by $595,000 in FY 2015 and significantly thereafter for staff and consultant expenses for the Maryland Department of Transportation (MDOT) to administer the bank. General fund expenditures increase for the Comptroller by $100,000 in FY 2015 for a one-time programming expense.

($ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	($96.0)	($100.4)	($112.8)	($115.8)	($150.6)
SF Revenue	$92.9	$97.7	$110.0	$113.0	$103.2
GF Expenditure	$.1	$0	$0	$0	$0
SF Expenditure	$94.2	$98.6	$110.8	$113.8	$113.2
Net Effect	($97.4)	($101.2)	($113.6)	($116.7)	($160.6)

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

Local Effect: Local highway user revenues decrease minimally beginning in FY 2015 and by $664,000 in FY 2019.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Required Distribution of CIT Revenue

After distributing CIT revenue to HEIF, the general fund, and TTF, the Comptroller must distribute 17.56% of the remaining CIT revenue (approximately 12% of *total* CIT revenue) to the Transportation Infrastructure Bank established under the bill to provide loans and other financial assistance for transportation projects. Money in the bank is held in a new special (revolving loan) fund within TTF and must be used to provide loans and other financial assistance for "projects." **Exhibit 1** shows the CIT revenue distribution under current law and under the bill.

Exhibit 1
Corporate Income Tax Revenue Distribution
Current Law and Under the Bill

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Current Law					
GF Share	77.45%	77.45%	79.41%	79.41%	79.41%
HEIF Share	6.00%	6.00%	6.00%	6.00%	6.00%
TTF Share	16.55%	16.55%	14.59%	14.59%	14.59%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**
Proposed					
GF Share	65.46%	65.46%	67.07%	67.07%	67.07%
HEIF Share	6.00%	6.00%	6.00%	6.00%	6.00%
TTF Share	16.55%	16.55%	14.59%	14.59%	14.59%
New Fund	11.99%	11.99%	12.34%	12.34%	12.34%
Total	**100.00%**	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Note: Numbers may not sum to total due to rounding. HEIF and TTF *percentages* are unaffected by the bill.

GF = General Fund
HEIF = Higher Education Investment Fund
TTF = Transportation Trust Fund

Definitions

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, revenue anticipation note, lease, lease-purchase, installment sales agreement, specified credit enhancement, or other specified financing agreement.

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.

Transportation Infrastructure Bank and Board

The Transportation Infrastructure Bank is established as a body corporate and politic, with corporate succession, and is an instrumentality of the State exercising public and essential government functions, the revenues of which may not accrue to the benefit of any individual.

The Transportation Infrastructure Bank Board is established and empowered to determine the projects for which loans or other financial assistance may be provided by the bank. The board must establish policies and procedures governing the operations of the bank and perform oversight of the operations of the bank. MDOT must administer the bank under the direction of the board.

The board consists of the Secretary of Business and Economic Development, or the Secretary's designee; three members employed by MDOT, designated by the Secretary of Transportation; one member designated by the Maryland Association of Counties; and two members representing private industry, appointed by the Governor. Board members serve as specified. The board may establish or direct the establishment of federal and State accounts or subaccounts as necessary.

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.

Money in the bank consists of (1) revenue distributed from CIT revenues by the Comptroller as specified in the bill; (2) other money appropriated in the State budget to the bank; (3) payments on project obligations and investment earnings; and (4) any other money from any other source.

Eligibility and Project Selection

An eligible borrower or other project sponsor is eligible to apply for project financing from the bank. The bill specifies the process and requirements associated with applying to the bank for financial assistance.

The board 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 the board.

Project Obligations

Financial assistance from the bank must be evidenced or guaranteed by project obligations provided to finance the project costs. The board 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.

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. The board is authorized to defer payments on a project obligation under specified conditions.

The board 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 the board; or

- take other actions deemed necessary or desirable by the board 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 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 approval by the board, a project sponsor may 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 any (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.

The bill states that 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 board must submit a report semiannually to specified committees of the General Assembly providing information about the financial assistance provided and projects funded during the preceding six-month period.

Current Law/Background:

Maryland's Corporate Income Tax Rate

A corporate income tax rate of 8.25% is applied to a corporation's Maryland taxable income. In general, the Maryland corporate income tax is computed using federal provisions to determine income and deductions.

Every Maryland corporation and every corporation that conducts business within Maryland, including public service companies and financial institutions, are required to pay the corporate income tax.

Chapter 3 of the 2007 special session increased the corporate income tax rate from 7.00% to 8.25%. Chapter 3 also created HEIF and distributed a portion of corporate income tax revenues to that fund. Net corporate income tax revenues are projected to total more than $1 billion in fiscal 2015. Of this amount, $783.2 million is general fund revenues, $167.3 million is TTF revenues, and $60.7 million is HEIF revenues.

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 modal 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.

State Infrastructure Banks

State infrastructure banks (SIBs) are revolving infrastructure investment funds for surface transportation that are established and administered by states. SIBs, much like a private banks, 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 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 $1.16 billion for new authorizations of GO bonds during the 2014 legislative session.

State Fiscal Effect: Each of the bill's effects on general and special fund revenues and expenditures are discussed below. **Exhibit 2** summarizes the general and special fund revenue losses due to the bill. The large revenue impacts in fiscal 2019 are due to the permanent CIT rate reduction to 7.25% for all corporations beginning in tax year 2019. A portion of TTF revenue is distributed to local governments.

Exhibit 2
General and Special Fund Revenue Losses
Fiscal 2015-2019

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
General Fund	-$95,991,000	-$100,367,000	-$112,796,000	-$115,825,000	-$150,579,000
HEIF	-188,000	-159,000	-168,000	-171,000	-2,844,000
TTF	-519,000	-438,000	-408,000	-415,000	-6,919,000
State	*-469,000*	*-396,000*	*-369,000*	*-375,000*	*-6,254,000*
Local	*-50,000*	*-42,000*	*-39,000*	*-40,000*	*-664,000*
Total	**-$96,698,000**	**-$100,964,000**	**-$113,372,000**	**-$116,411,000**	**-$160,342,000**

HEIF = Higher Education Investment Fund
TTF = Transportation Trust Fund

General Fund

Total general fund revenues decrease by $96.0 million in fiscal 2015, rising to $150.6 million in fiscal 2019, due to the additional CIT revenue distribution and the CIT rate reductions. Of that amount, $93.6 million in fiscal 2015, rising to $112.9 million in fiscal 2019, is due to the distribution to the new fund required under the bill. The remaining general fund revenue decrease, which is $2.4 million in fiscal 2015, and rising to $37.6 million in fiscal 2019, is due to reduced CIT revenues from the CIT rate reductions.

General fund expenditures increase by $100,000 in fiscal 2015 for one-time information technology upgrades for the Comptroller.

Higher Education Investment Fund

As shown in Exhibit 2, special fund revenues for HEIF decrease by $188,000 in fiscal 2015, rising to $2.8 million in fiscal 2019, due to the CIT rate reductions.

The Bank's Special Fund

Although the bill specifies that a special nonlapsing revolving loan fund is established for the bank in TTF, the revenues to and expenditures from that fund are not included in the effect on TTF in this analysis. Rather, the board's fund is treated as a new special fund.

Net special fund revenues for the new fund increase by $93.6 million in fiscal 2015, $98.3 million in fiscal 2016, $110.6 million in fiscal 2017, $113.6 million in fiscal 2018, and $112.9 million in fiscal 2019.

Special fund expenditures increase correspondingly as the bank provides financial assistance for eligible projects. Special fund revenues and expenditures for the new fund also increase in future years to the extent loan repayments are made.

Transportation Trust Fund

The bill's required distribution to the bank has no direct effect on TTF revenues, as the distribution is made by the Comptroller *after* the distribution to TTF. Therefore, the effect on TTF revenues is solely due to the CIT rate reductions. As shown in Exhibit 2, TTF revenues decrease by $519,000 in fiscal 2015, of which $469,000 goes to the State, escalating to $6.9 million in fiscal 2019, of which $6.3 million goes to the State, due to CIT rate reductions.

The bill requires MDOT to administer the bank, which MDOT is unable to do with existing staff. Accordingly, TTF expenditures increase by $595,085 in fiscal 2015, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one manager, one financial analyst, and one assistant to administer the bank. Duties include managing the application process, reviewing submissions, determining debt service coverage, drafting semiannual reports, working with outside consultants, facilitating board meetings, managing inquiries, and processing expense reimbursements. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and includes $400,000 in fiscal 2015 for MDOT to engage financial and legal consultants to assist in the establishment of the bank.

Positions	3
Salaries and Fringe Benefits	$179,545
Contractual Services	400,000
Other Operating Expenses	15,540
Total FY 2015 TTF Expenditures	**$595,085**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. MDOT advises that ongoing legal and financial advisory services will be needed but cannot reliably estimate the cost at this time.

State Debt Service

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 overall debt and financial condition.

Local Revenues: Local governments receive a portion of CIT revenues to support the construction and maintenance of local roads and other transportation facilities. As shown in Exhibit 2, local highway user revenues decrease minimally beginning in fiscal 2015 and by $664,000 in fiscal 2019.

Small Business Effect: While many small businesses are pass-through entities or corporations with no tax liability, small businesses that have a corporate income tax liability benefit. Small businesses also benefit to the extent they facilitate or receive financial assistance from the bank.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Business and Economic Development, Maryland Department of Transportation, Department of Budget and Management, Department of General Services, Department of Legislative Services

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