

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 29

(Delegate Carr, *et al.*)

Environment and Transportation

Judicial Proceedings

**Vehicle Laws - Penalties for Failure to Pay Video Toll and Electronic Tolling
Performance Audit**

This emergency bill repeals the authority of the Motor Vehicle Administration (MVA) to suspend the registration of a motor vehicle because the registered owner of the vehicle incurred a toll violation and failed to pay the toll and any associated civil penalties. The bill also requires the Maryland Transportation Authority (MDTA), by May 15, 2022, to competitively bid for a certified public accounting firm to conduct a performance audit of MDTA's electronic tolling operations, as specified. By December 31, 2022, and by each December 31 for the next two years, MDTA must submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a certified copy of the audit conducted *during* that calendar year.

Fiscal Summary

State Effect: No effect in FY 2022. Nonbudgeted expenditures for MDTA increase by *at least* \$100,000 annually from FY 2023 through 2025. Nonbudgeted revenues for MDTA decrease to the extent fewer tolls and penalties are collected under the bill. Special fund revenues and expenditures for the Central Collection Unit (CCU) increase to the extent that additional toll and civil penalty debt is referred to and collected by CCU. General fund revenues may increase due to reversions from CCU. The Joint Audit Committee and the Office of Legislative Audits (OLA) can consult with the certified public accounting firm using existing budgeted resources.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The performance audit must evaluate the efficiency and effectiveness of MDTA's tolling operations and customer service practices, including revenue collection, leakage analysis, and procurement and contracting processes. A certified public accounting firm that provides services to MDTA is not eligible to bid on the performance audit contract. On the award of the performance audit contract, and before commencement of the performance audit, the certified public accounting firm must consult with the Joint Audit Committee and OLA in the development of the scope and objectives of the performance audit.

Current Law: MVA must refuse to renew or suspend the registration of any motor vehicle incurring an electronic toll violation if notified by (1) MDTA that a registered owner has been served with a citation and has failed to pay a toll and civil penalty for the toll violation or has failed to contest liability for the toll violation within the time or in the manner specified in the citation or (2) MDTA or the District Court that a person who elected to contest liability for a toll violation failed to appear for trial or was found guilty of the toll violation and failed to pay the toll and penalty costs.

MDTA advises that in practice, it flags a registration for nonrenewal when the vehicle's license plate has one outstanding transaction or less than \$1,000 in unpaid tolls and penalties and that it flags a registration for suspension when the vehicle's license plate has \$1,000 or more in unpaid tolls and penalties.

MVA's authority to flag and/or suspend vehicle registrations is used by multiple State and local agencies to collect outstanding fees and fines (such as for certain parking violations) and to enforce vehicle laws (such as the requirement to purchase and maintain automobile insurance). However, Chapters 39 and 40 of 2020 repealed MVA's authority to suspend vehicle registrations for failure to pay the penalties associated with red light cameras and speed cameras.

For additional information on toll violations, MDTA, and tolling facilities, please see the **Appendix – Maryland Transportation Authority and Tolling.**

State Fiscal Effect:

Performance Audits

The bill requires MDTA to contract with a certified public accounting firm through at least December 31, 2024, to ensure the required performance audits can be submitted to the Governor, the President of the Senate, and the Speaker of the House of Delegates. Although not specified by the bill, the Department of Legislative Services (DLS) assumes that each

performance audit covers the preceding fiscal year (*e.g.*, the audit due by December 31, 2022, covers fiscal 2022) to ensure the accounting firm has the data necessary to properly conduct the performance audit. This analysis assumes that there is no effect in fiscal 2022 despite the bill’s emergency status and the requirement that MDTA competitively bid for a firm to conduct the performance audit by May 15, 2022. MDTA advises, and DLS concurs, that MDTA is unlikely to be able to finalize a contract in fiscal 2022. As a result, the audit due by December 31, 2022, is likely delayed, and the compressed timeframe likely results in increased costs, as discussed below.

MDTA estimates the total cost for the contract with a certified public accounting firm to be at least \$300,000. For purposes of this analysis, it is assumed that the cost is split evenly between the three fiscal years during which the performance audits must take place. Therefore, nonbudgeted expenditures increase by at least \$100,000 annually from fiscal 2023 through 2025. However, the actual timing of the costs may vary.

As noted above, the cost incurred in fiscal 2023 (for the first performance audit) may be significantly higher depending on when the contract is finalized. Specifically, the accounting firm may only have a few months to complete the audit due by December 31, 2022, and, as a result, MDTA may be required to pay significantly more due to the expedited timeframe. Additionally, overall costs may be significantly higher if the required consultation with the Joint Audit Committee and OLA alters the scope of the contract. (Project scopes and contractor duties are generally negotiated and determined before a contract is finalized; modifying the scope after a contract has been finalized may result in significantly higher costs for MDTA.)

Suspension of Vehicle Registrations

Maryland Transportation Authority: The bill’s repeal of MVA’s authority to suspend a vehicle registration when the vehicle owner incurs a toll violation and does not pay the toll and associated civil penalty may result in fewer of those tolls and penalties being collected overall, specifically from toll violators that have amassed significant amounts of unpaid tolls and penalties. Therefore, nonbudgeted revenues decrease to the extent that the bill results in fewer outstanding tolls and penalties being collected. Even so, MDTA has other means of enforcement (such as registration nonrenewal and referral to CCU), and the extent to which the loss of this enforcement tool affects MDTA’s total collections is unclear.

For illustrative purposes only, MDTA advises that as of April 2021, it has resolved nearly 1.4 million unpaid transactions by issuing suspension warning letters and flagging vehicle registrations, collecting a total of \$31.7 million in unpaid tolls and penalties.

Central Collection Unit: MDTA is required to send its delinquent toll and penalty debt to CCU for collection and, therefore, CCU is likely to be referred additional debts by MDTA

depending on the bill's effect on its collection rate. In addition, CCU recovers its operating expenses by assessing and collecting a 17% fee in addition to and for the debts that it is assigned. Therefore, special fund expenditures increase for CCU to send notices and work to collect the additional debt, and special fund revenues increase correspondingly as the debt is collected; however, the magnitude of any such impact cannot be reliably estimated at this time.

Furthermore, any special fund balance for CCU in excess of 15% of the unit's actual operating expenses reverts to the general fund. Therefore, general fund revenues may increase as additional debt is collected; however, the magnitude of any such impact cannot be reliably estimated at this time.

Additional Comments: As of February 28, 2022, MDTA has implemented an eight-month grace period for people with outstanding tolls and civil penalties. Under the customer assistance plan adopted by MDTA, all outstanding civil penalties are waived for motorists who pay their unpaid tolls by November 30, 2022.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 105 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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Appendix – Maryland Transportation Authority and Tolling

Magnetic Transportation Authority – Generally

Since 1971, the Maryland Transportation Authority (MDTA) has been responsible for constructing, managing, operating, and improving the State’s toll facilities (for example, the Chesapeake Bay Bridge, the Francis Scott Key Bridge, and the Intercounty Connector (ICC)) and for financing new revenue-producing transportation projects. MDTA is governed by nine individuals appointed by the Governor with the advice and consent of the Senate.

MDTA has the authority to set tolls on transportation facilities projects under its supervision. Tolls must provide funds that, when combined with bond proceeds and other available revenues, are sufficient to pay maintenance, repair, and operating costs for transportation facilities projects that are not otherwise paid for; pay the interest and principal of any outstanding bond issues; create reasonable reserves for these purposes; and provide funds for the cost of replacements, renewals, and improvements. Toll revenues are deposited into the Transportation Authority Fund, which is wholly separate from the Transportation Trust Fund.

Transition to All-electronic Tolling and Video Tolling

During 2019 and 2020, MDTA converted all of its toll facilities to all-electronic tolling (AET). As a result, paying a toll in cash is no longer an option, and tolls for vehicles that use an MDTA tolling facility must be paid (1) through the use of an E-ZPass; (2) by having a pay-by-plate account with MDTA; (3) by having a commuter payment plan with MDTA (which allows users to prepurchase a limited number of tolls at a discounted rate); or (4) through a video toll, if the toll is not paid using one of the other methods. With respect to video tolls, MDTA is required to send the registered owner of a motor vehicle that has incurred such a video toll a notice of toll due. The owner then has 30 days to pay the toll amount. An owner who fails to pay the amount due is subject to a civil citation and civil penalty. The civil penalty must be set by MDTA through regulations and is currently \$25.

Chapter 122 of 2015 significantly altered the video tolling collection and toll violation process to allow more flexibility for motorists who incur a video toll, beginning in fiscal 2016. Among other things, Chapter 122 does not allow MDTA to assess a civil citation until 15 days after the toll violation occurs (a toll violation occurs 30 days after the notice of toll due is issued if a person does not pay the video toll by that date). Chapter 122 also authorizes MDTA to waive any portion of a video toll due or civil penalty assessed for a toll violation until the debt is referred to the Central Collections Unit within the Department of Budget and Management.

Toll Rates

MDTA generally has five different levels of toll rates charged at its various toll plazas for vehicles. There is a commuter plan rate, an E-ZPass rate for in-State motorists, an E-ZPass rate for out-of-State motorists, a pay-by-plate rate, and a video toll rate. For example, the toll rates for a two-axle vehicle at the Francis Scott Key Bridge (as well as the Harbor Tunnel and the Fort McHenry Tunnel) are as follows:

- \$1.40 for the commuter plan;
- \$3.00 for in-State E-ZPass;
- \$4.00 for out-of-State E-ZPass;
- \$4.00 for pay-by-plate; and
- \$6.00 for video.

All of MDTA's toll facilities generally use a similar toll structure (although the toll amount may vary); however, MDTA also offers E-ZPass users who live near the Thomas J. Hatem Memorial Bridge unlimited trips across the bridge for \$20 per year.

Recent Audit Findings

A recent audit of MDTA conducted by the Office of Legislative Audits (OLA) contained two findings, and the Joint Audit and Evaluation Committee held a hearing to discuss the findings with MDTA and OLA in December 2021.

First, OLA found that MDTA did not sufficiently determine the impact of certain issues with its electronic toll collection system on its customers and identify and correct related customer overbillings. Specifically, OLA noted that although MDTA investigated and corrected equipment errors during the implementation of its new AET tolling system, it did not always ensure all customers were refunded for those overbillings. OLA recommended that MDTA (1) review and evaluate significant tolling issues and (2) review previously identified electronic toll issues to determine the extent of customer overbillings and, in consultation with legal counsel, assess the practicality of related customer restitution.

Second, OLA found that MDTA did not perform periodic documented reviews of system access capabilities granted to State and contractual employees on its old electronic tolling and customer service system as required by the State's Information Technology Security Manual. The audit report recommended that MDTA perform periodic documented reviews of user access to its electronic tolling and customer service system, including the new systems once implemented, and take appropriate corrective action for any improper or unnecessary user access.

OLA noted that MDTA's response to the audit report indicated general agreement with the findings and recommendations. OLA's report and MDTA's response can be found on [OLA's website](#).