

Department of Legislative Services  
 Maryland General Assembly  
 2023 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 12

(Delegate J. Lewis)

Environment and Transportation and  
 Ways and Means

Budget and Taxation

**Equitable and Inclusive Transit-Oriented Development Enhancement Act**

This bill establishes the Transit-Oriented Development (TOD) Capital Grant and Revolving Loan Fund and its purpose, funding sources, and authorized uses. For each fiscal year, the Governor must include in the annual budget bill an appropriation sufficient to ensure a fund balance of at least \$5.0 million at the start of the fiscal year. The bill also (1) expands the definition of “transit-oriented development”; (2) alters existing provisions and establishes new provisions relating to the designation of TODs; and (3) requires the Secretary of Transportation to annually submit a report to the General Assembly on efforts to increase TOD throughout the State. **The bill takes effect July 1, 2023.**

**Fiscal Summary**

**State Effect:** *Under one set of assumptions, general fund expenditures increase by \$5.0 million annually beginning in FY 2024 to capitalize the new fund (although funding in FY 2024 is discretionary); special fund revenues to and expenditures from the fund increase correspondingly. Transportation Trust Fund (TTF) expenditures increase by \$258,200 in FY 2024 to administer the fund; future years reflect ongoing expenses. This bill establishes a mandated appropriation beginning in FY 2025.*

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0
GF Expenditure	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0
SF Expenditure	\$5.3	\$5.2	\$5.2	\$5.2	\$5.2
Net Effect	(\$5.3)	(\$5.2)	(\$5.2)	(\$5.2)	(\$5.2)

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

**Local Effect:** To the extent local jurisdictions receive financial assistance from the new fund, local revenues and expenditures increase accordingly.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Definitions*

The definition of “transit-oriented development” is expanded to include a mix of private or public parking facilities, commercial and residential structure, and uses, improvements, and facilities customarily appurtenant to such facilities and uses, that is part of a deliberate development plan or strategy involving property that is adjacent to a planned or existing “transit corridor.” “Transit corridor” means a geographically bound set of two or more contiguous subway, light rail, bus rapid transit, or bus transit stations. “Transit corridor” includes a geographically bound set of two or more contiguous bus transit stations that have fixed-route bus service that operates on a roadway dedicated to buses.

#### *Transit-Oriented Development Capital Grant and Revolving Loan Fund*

The TOD Capital Grant and Revolving Loan Fund is established as a special, nonlapsing fund. The purpose of the fund is to promote the equitable and inclusive development of TODs throughout the State.

The fund consists of (1) money appropriated in the State budget to the fund; (2) money made available for qualifying uses by the fund from other governmental sources, as specified; (3) ground rents or land sale proceeds received from a capital asset being leased or sold to a private party for the purpose of realizing a TOD; (4) payments of principal of and interest on loans made from the fund; (5) investment earnings of the fund; and (6) any other money from any other source, public or private, accepted for the benefit of the fund. Contributions to the fund from ground rents or land sale proceeds must be separately accounted for in the fund and may only be used for the benefit of TODs in the same county in which the real property subject to the ground rent or land sale is located.

The fund may be used by the Maryland Department of Transportation (MDOT) to provide financial assistance to local jurisdictions for TOD design plans, as specified, public infrastructure improvements within a TOD, or gap funding for public or private development within a TOD. A private entity, including a nonprofit entity, participating in the development of a TOD may partner with a local jurisdiction to submit an application for specified financial assistance.

The Smart Growth Subcabinet must establish eligibility requirements and objective scoring standards for the review of applications for financial assistance from the fund. The subcabinet may establish (1) different eligibility requirements and scoring standards for different types of financial assistance and (2) scoring preferences for applications that

demonstrate that the proposed project will enhance access to transit and encourage development around transit stations, as specified. An application for financial assistance must include specified commitments and funding strategies, as applicable.

MDOT must publish the eligibility requirements and scoring standards on its website and, in collaboration the Department of Housing and Community Development (DHCD), support recipients of awards from the fund by supporting any studies, plans, and code changes with technical services.

### *Required Report*

By November 30, 2024, and by November 30 each year thereafter, the Secretary of Transportation must submit a report to the General Assembly on efforts to increase TOD throughout the State. The report must include an analysis of specified issues for each TOD in the State. MDOT must consider the findings of the report for purposes of updating the scoring standards for TOD Capital Grant and Revolving Loan Fund financial assistance applications.

### *Designation of Transit-oriented Developments*

The bill requires the Smart Growth Subcabinet (instead of the Secretary of Transportation after considering a recommendation of the subcabinet) to designate TODs in partnership with local governments.

Generally, an area designated as a TOD after July 1, 2023, must retain the designation for a period of 10 years. Before the end of the 10-year designation period, a local government or multicounty agency may apply to the Smart Growth Subcabinet to have the designation extended for an additional 10 years. However, an area designated as a TOD that is subject to a ground lease or other agreement with the State must retain that designation only for the duration of the ground lease or other agreement.

### *Intent of the General Assembly*

The bill expresses legislative intent that MDOT make all reasonable attempts to include TOD as part of the preferred plan for development in areas served by transit services by providing preference to proposals that further this purpose when (1) distributing funds from State programs offering grants and loans for development and infrastructure investment (including the Complete Streets Program), eligible federal funding, and the proceeds of general obligation bond and grant anticipation revenue vehicle issuances and (2) awarding State tax credits.

## **Current Law:**

### *Transit-oriented Development*

It is the policy of the State that the development of improved and expanded railroad facilities, railroad services, transit facilities, and transit services operating as a unified and coordinated regional transportation system, and the realization of TOD throughout the State, represent transportation purposes that are essential for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality, and the development of the metropolitan area of Baltimore and other political subdivisions of the State.

[“Transit-oriented development”](#) is a mix of private or public parking facilities, commercial and residential structures, and uses, improvements, and facilities customarily appurtenant to such facilities and uses, that is:

- part of a deliberate development plan or strategy involving (1) property that is adjacent to the passenger boarding and alighting location of a planned or existing transit station or (2) property, any part of which is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station;
- planned to maximize the use of transit, walking, and bicycling by residents and employees; and
- designated as TOD by (1) the Secretary of Transportation after considering a recommendation of the Smart Growth Subcabinet and (2) the local government or multicounty agency with land use and planning responsibility for the relevant area.

### *Smart Growth Subcabinet*

The Smart Growth Subcabinet comprises the Special Secretary; the Secretary of Agriculture; the Secretary of Budget and Management; the Secretary of Commerce; the Secretary of the Environment; the Secretary of General Services; the Secretary of Higher Education; the Secretary of Housing and Community Development; the Assistant Secretary of the Office of Neighborhood Revitalization; the Secretary of Natural Resources; the Secretary of Planning; the Secretary of Transportation; a representative of the Governor’s office; the Secretary of Health; the Secretary of Labor; and the Director of the Maryland Energy Administration. The subcabinet must:

- provide a forum for discussion of interdepartmental issues relating to activities that affect growth, development, neighborhood conservation, and resource management;
- work together to promote the understanding of smart growth;
- work together to create, enhance, support, and revitalize sustainable communities;

- meet at least biannually with county and municipal elected leaders and planning officials to discuss local government issues relating to activities that affect smart growth, development, neighborhood conservation, and resource management;
- make recommendations to specified State agencies;
- evaluate and report annually to the Governor and the General Assembly on the implementation of the State's smart growth policy; and
- perform other duties assigned by the Governor.

**State Fiscal Effect:**

*Capitalization and Use of Transit-Oriented Development Capital Grant and Revolving Loan Fund*

The bill requires an annual appropriation to the TOD Capital Grant and Revolving Loan Fund to ensure a fund balance of at least \$5.0 million at the start of each fiscal year; however, the bill does not specify a primary funding source. Moreover, the amount and pace at which these capitalization funds would have to be replenished in any future fiscal year beyond the first depends on numerous factors, including the interest and utilization of the fund, whether grants or loans are provided, the terms and interest rate of any loans issued, the amount of grants and/or loans provided, costs for technical services provided by MDOT and DHCD under the bill (discussed in more detail below), and the availability of funding from other sources. However, for purposes of this analysis, it is assumed that:

- general funds are used to capitalize the fund;
- although discretionary in fiscal 2024, funding is provided beginning in fiscal 2024; and
- \$5.0 million is provided to the fund annually – at least for the first five years (the time period covered by this fiscal and policy note).

Special fund revenues and expenditures increase correspondingly as the TOD Capital Grant and Revolving Loan Fund receives funding and is used for authorized purposes. For purposes of this analysis, it is assumed that all of the capitalization funds are spent each year.

Proceeds from lease agreements on MDOT property may be redirected to the TOD Capital Grant and Revolving Loan Fund. As a result, MDOT may have less flexibility in addressing other transportation expenses.

Additionally, as the bill authorizes MDOT to make loans, special fund revenues to the TOD Capital Grant and Revolving Loan Fund may increase further as such loans are repaid; special fund expenditures increase correspondingly as those funds are redistributed under

the program. However, any such impact cannot be reliably estimated at this time and is not included in this analysis.

*Administrative Costs and Costs to Provide Technical Services to Award Recipients*

TTF expenditures increase by \$258,249 in fiscal 2024, which accounts for the bill’s July 1, 2023 effective date. This estimate reflects the cost of hiring one program manager and one accountant within MDOT to administer the TOD Capital Grant and Revolving Loan Fund program and complete the required annual report. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes \$50,000 in consultant fees to assist with creating an application platform.

Positions	2.0
Salaries and Fringe Benefits	\$192,901
Consultant Costs	50,000
Operating Expenses	<u>15,348</u>
<b>Total FY 2024 TTF Expenditures</b>	<b>\$258,249</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. These costs cannot be paid for by the fund, as administrative expenses are not an authorized use of the fund.

The Smart Growth Subcabinet can designate TODs and establish eligibility requirements and objective scoring standards for the review of applications for financial assistance from the TOD Capital Grant and Revolving Loan Fund using existing budgeted resources.

Regarding the requirement that MDOT collaborate with DHCD to support recipients of awards from the fund by supporting any studies, plans, and code changes with technical services, it is unclear what supporting award recipients with “technical services” means. Accordingly, the extent to which this requirement may result in increased costs for MDOT and DHCD is unknown. For example, MDOT and DHCD can likely provide advice and guidance to award recipients with existing resources; however, they likely incur costs to assist with complex studies and the development of planning documents. In any case, for purposes of this analysis, it is assumed that any costs incurred by MDOT and DHCD to support award recipients with technical services can be covered by the TOD Capital Grant Revolving Loan Fund, as these could be considered project-related costs (and not administrative costs).

*Expansion of the Definition of “Transit-oriented Development”*

By expanding the definition of “transit-oriented development” to include property that is adjacent to a planned or existing transit corridor, the bill significantly expands the areas

that could be designated as TODs. Various policies and programs in statute reference the definition of “transit-oriented development” that is altered by the bill, including some administered by MDOT and DHCD. While the expanded definition does not affect the overall funding for those programs, it likely increases the demand for funding under those programs.

**Local Fiscal Effect:** Local jurisdictions are eligible to receive financial assistance from the TOD Capital Grant and Revolving Loan Fund for design plans for a TOD, public infrastructure improvements within a TOD, or gap funding for public or private development within a TOD. Thus, to the extent that local jurisdictions receive financial assistance from the fund, local revenues and expenditures increase.

**Small Business Effect:** Small businesses located in or involved in the development of a TOD may benefit significantly from TOD projects funded through the TOD Capital Grant and Revolving Loan Fund.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 516 and HB 710 of 2022.

**Designated Cross File:** SB 151 (Senator Augustine) - Budget and Taxation.

**Information Source(s):** Maryland Department of Transportation; Department of Commerce; Prince George’s County; Department of Legislative Services

**Fiscal Note History:** First Reader - January 23, 2023  
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