

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1322 (Delegate McIntosh)
 Appropriations

Operating Budget - Consolidated Transportation Program and Unanticipated Federal Funds

This emergency bill requires the financial forecast that supports the *Consolidated Transportation Program* (CTP) to include, for the summary of revenues and receipts component, a line item of \$35 million for a reserve for changes in revenue sources for each fiscal year included in the forecast. In addition, the bill specifies that, in fiscal 2022 and 2023, money authorized by the federal Infrastructure Investment and Jobs Act (IIJA) generally may not be expended by budget amendment unless the funds are to be used for specified purposes. Funds authorized by budget amendment in accordance with the bill must be expended by June 30, 2023, and may not supplant existing funds. The bill’s restrictions do not apply to a federal fund budget amendment if the Board of Public Works (BPW) determines that the amendment is essential to maintaining the public safety, health, or welfare of the State or protecting the environment or economic welfare of the State. **The bill’s provisions relating to expenditure of IIJA funds by budget amendment terminate June 30, 2023.**

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures decrease by \$35 million annually beginning in FY 2024, as discussed below. Overall federal fund expenditures are not affected; however, the bill potentially affects the purposes for which funds are used in FY 2022 and 2023, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	0	0	(35,000,000)	(35,000,000)	(35,000,000)
Net Effect	\$0	\$0	\$35,000,000	\$35,000,000	\$35,000,000

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

Local Effect: Local government revenues and expenditures are potentially affected, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a budget amendment authorizing expenditure of federal funds may permit the expenditure of funds authorized by IJA if the funds (1) support a project included in the CTP submitted at the 2022 session; (2) target the replacement of lead pipes near schools, childcare facilities, or State residential facilities serving children; or (3) are allocated to projects in underserved communities of the State.

Current Law:

Transportation Trust Fund Forecast

On submission of the annual budget bill to the Presiding Officers of the General Assembly, the Maryland Department of Transportation (MDOT) must submit copies of the approved CTP and the supporting financial forecast to the General Assembly. The financial forecast supporting the CTP must include specified components, including (1) a schedule of operating expenses for each specific modal administration; (2) a schedule of revenues; and (3) a summary schedule for TTF that includes the opening and closing fund balance, revenues, transfers, bond sales, bond premiums, any other revenues, expenditures for debt service, operating expenses, amounts available for capital expenses, bond interest rates, bond coverage ratios, total bonds outstanding, federal capital aid, and the total amount for the Transportation Capital Program.

For each of the required components, the financial forecast must include actual information for the last full fiscal year and forecasts for the current fiscal year, the fiscal year for the proposed budget, and the next four subsequent fiscal years. For the period beyond the budget request year, the financial forecast must maximize the use of funds for the capital program and assume a specified rate of future operating budget growth. In addition, MDOT must incorporate in the forecast the most recent estimates by the Board of Revenue Estimates of (1) the corporate income tax and sales and use tax revenues for each of the six subsequent years, including the current fiscal year and the fiscal year for the proposed budget and (2) motor fuel tax and motor vehicle titling tax revenues for the current fiscal year and the fiscal year for the proposed budget.

The current TTF forecast includes a \$35 million reserve in fiscal 2022 and 2023, in response to uncertainty about the impact of the COVID-19 pandemic on revenues.

Federal Infrastructure Investment and Jobs Act

IIJA, which was signed into law on November 15, 2021, provides \$1.2 trillion in infrastructure spending. Approximately \$550 billion of the funds provided through IIJA represent new or increased funding, with the remainder representing continuation of funding. The Act is expected to provide the State with \$8.2 billion in overall infrastructure funding over five years, of which \$2.8 billion, or 35%, represents new or enhanced funding. Because of the timing of the enactment of IIJA, the fiscal 2023 budget bill, as submitted, does not include any funds from IIJA.

Expenditure of Unanticipated Funds by Budget Amendment

Section 7-217 of the State Finance and Procurement Article authorizes the expenditure of special or federal funds that are not estimated or included in the State budget, or that exceed the estimate in the State budget, by an approved budget amendment. Such funds may be expended for (1) the specific purpose to which the money is dedicated by State law or act of Congress or (2) if the money is not dedicated to a specific purpose, with the approval of the Governor and as authorized in an approved budget amendment, for necessary current operations.

In addition, recurring language in the annual budget bill expressly authorizes revenues in excess of special or federal fund appropriations in the budget bill to be made available by approved budget amendment. Budget amendments that increase a special, federal, or higher education fund appropriation by \$100,000 or more are generally subject to legislative review. Section 30 of the fiscal 2022 budget bill (Chapter 357 of 2021) specifies that such amendments may not be approved by the Governor until (1) the amendment has been submitted to the Department of Legislative Services (DLS) and (2) the budget committees or the Legislative Policy Committee have considered the amendment, or 45 days have elapsed from the date of submission. Specified budget amendments are excluded from the legislative review requirement, including budget amendments solely for the purpose of appropriating federal disaster relief funds. Section 30 further specifies that a budget amendment may not be amended to increase a federal fund appropriation by \$100,000 or more unless documentation evidencing the increase in funds is provided with the amendment and the fund availability is certified by the Secretary of Budget and Management.

In general, as specified under Section 30, a budget amendment may not restore funds for items or purposes specifically denied by the General Assembly or, except for MDOT projects, fund a capital project not authorized by the General Assembly.

However, notwithstanding the above provisions, Section 30 authorizes any federal, special, or higher education fund appropriation to be increased by budget amendment upon a

declaration by BPW that the amendment is essential to maintaining public safety, health, or welfare, including protecting the environment or the economic welfare of the State.

Notification of Proposed Changes to the Transportation Capital Program

The fiscal 2022 budget bill establishes the intent of the General Assembly that projects and funding levels appropriated for transportation capital projects, as well as the total estimated project costs within the CTP, must be expended in accordance with the plan approved during the legislative session. MDOT must notify the budget committees of proposed changes to the CTP if MDOT modifies the program to add a new project that will require the expenditure of funds in the current budget year or change the scope of a project that will increase total project costs by more than 10% or \$1,000,000 (whichever is greater), as specified.

State Expenditures:

Transportation Trust Fund Impact

As noted above, the bill requires the financial forecast that supports the CTP to include, for the summary of revenues and receipts component, a line item of \$35 million for a reserve for changes in revenue sources for each fiscal year included in the forecast. The current forecast already includes a \$35 million reserve in each of fiscal 2022 and 2023 only; thus, this requirement has no impact on TTF expenditures in fiscal 2022 or 2023. Beginning in fiscal 2024, TTF expenditures decrease by \$35 million annually. DLS notes that a transfer to a reserve fund would not affect total MDOT expenditures; it would only reduce funds available for transportation projects as the transfer to the reserve fund would be treated as an expenditure. However, the bill does not require such a transfer. Instead, it requires only that MDOT keeps those funds in reserve, thereby reducing total expenditures.

Federal Fund Impact

The bill also restricts, in fiscal 2022 and 2023, the purposes for which federal funds authorized by IJA may be allocated via budget amendment. The bill's provisions do not apply to any funds that may be added to the fiscal 2022 or 2023 budget through a supplemental budget or future deficiency appropriation for fiscal 2023. It also does not affect future budgets.

To the extent that IJA funds not anticipated in the fiscal 2022 or 2023 budgets are added via budget amendment, the bill potentially affects the purposes for which these funds are used. The CTP is a six-year plan that projects funding for projects out at least four years. Under the bill, MDOT may add IJA funds to projects in the CTP, including those slated to receive funds in future years. Thus, to the extent that such funds are used to supplement

funding for transportation capital projects included in the CTP, State spending for planned transportation capital projects is potentially accelerated. The precise impact cannot be reliably anticipated, as it depends on, among other things, the amount and timing of the funds, the extent to which IJJA funds are otherwise incorporated into the fiscal 2022 or 2023 budgets, and the purposes for which the funds are used. However, the bill does not affect *overall* federal fund spending.

MDOT as well as the Department of Natural Resources and the Maryland Department of the Environment express concern that the bill's requirement that funds added by budget amendment be expended by June 30, 2023, may limit their access to competitive grants and other funding provided by IJJA. However, DLS notes that if they are unable to spend funds added by budget amendment by that deadline, they can either submit a deficiency appropriation or request authorization in the fiscal 2024 budget, which is not affected by the bill.

Local Fiscal Effect: As noted above, the bill potentially affects the purposes for which federal IJJA funds are used in fiscal 2022 and 2023. Local government revenues and expenditures are potentially affected in fiscal 2022 and/or 2023 to the extent that the bill affects any infrastructure funding provided by the State to local governments. Any such impact cannot be reliably anticipated.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Comptroller's Office; Maryland State Department of Education; Public School Construction Program; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Military Department; Department of Legislative Services

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