
Maryland Department of Transportation Fiscal 2010 Budget Overview

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

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Analysis of the FY 2010 Maryland Executive Budget, 2009

J00 – MDOT – Fiscal 2010 Budget Overview

Budget Overview

The Maryland Department of Transportation (MDOT) is responsible for statewide transportation planning and the development, operation, and maintenance of key elements of the transportation system. It 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.

Transportation in Maryland is funded through the Transportation Trust Fund, a nonlapsing special fund revenue account whose revenue sources include motor fuel tax receipts, titling tax receipts, vehicle registration fees, a portion of the corporate income and sales taxes, revenues generated by the individual modes, proceeds from the sale of bonds, and federal highway and transit aid.

Analysis in Brief

Issues

Fiscal Stimulus for Transportation Infrastructure Spending: The House passed House Resolution 1, the American Recovery and Reinvestment Act, which includes funding for highway and transit projects totaling an estimated \$706 million over two years. Any funding received by the State for transportation infrastructure will likely be used for system preservation projects and projects that were recently removed from the capital program. There are several issues surrounding the funding that are discussed in further detail in the issue. **The Department of Legislative Services (DLS) recommends that MDOT discuss in further detail what projects might be funded and the challenges presented with a quick timeline for awarding projects.**

Upcoming Federal Aid Issues: There is a funding shortfall in the federal Highway Trust Fund (HTF) which provides Maryland's federal aid for highway and transit. The current authorization bill for transportation funding is set to expire at the end of this federal fiscal year. A key part of the authorization debate will be the funding of the HTF and how funds are distributed to states. **DLS recommends that MDOT discuss the important policy issues in the upcoming debate and their impact on Maryland. In addition, MDOT should discuss the impact if a solution is not identified for the HTF.**

Legislative Involvement in Public-private Partnerships: Public-private partnerships (P3s) have been identified as one manner in which states can construct new projects or monetize existing assets. Protecting the public interest and ensuring legislative oversight is an important issue that the State may want to consider prior to a P3 being developed. A summary is provided of a larger report that lays out a potential legislative framework for any future P3s. **DLS recommends that a statutory**

framework enabling MDOT to enter into P3s be adopted. That statutory framework should include policy parameters defining specific elements of any future agreement.

Recommended Actions

1. Add annual budget language pertaining to capital budget changes.
2. Add annual budget language on non-transportation expenditures.
3. Add budget bill language to establish an annual position ceiling.
4. Add budget bill language abolishing 38 positions and reducing \$2.8 million in special funds departmentwide.
5. Add budget bill language requesting monthly reports on stimulus funding.

Updates

Commission to Study Southern Maryland Transportation Needs Releases Final Report: The Commission to Study Southern Maryland Transportation Needs was established under Chapter 14 of 2006 to study transportation needs in Southern Maryland. The unique geographic location and population growth of the area necessitate special transportation needs. The Commission's final report recommended several top priority projects and strategies, while acknowledging that funding will be an issue.

Overview

During the 2007 special session, revenues to the Transportation Trust Fund (TTF) were increased. As a result, an additional \$2.1 billion in capital spending was added to the capital program from fiscal 2008 through 2013. The additional funding was evenly divided between the State Highway Administration (SHA) and the Maryland Transit Administration (MTA) for a number of new construction projects as well as ongoing system preservation projects.

In the 2008 legislative session, the TTF's share of the sales tax was reduced from 6.5 to 5.3% as part of the repeal of the computer sales tax. This legislative change, coupled with weak vehicle sales toward the end of fiscal 2008, resulted in a revenue write-down in the 2009-2014 draft *Consolidated Transportation Program* (CTP). In total, the six-year draft special fund capital program was reduced by \$1.1 billion. The draft CTP was released prior to the economic collapse in fall 2008, and as a result, the Maryland Department of Transportation's (MDOT) final 2009-2014 CTP includes an additional \$1.1 billion in reductions to the special fund capital program.

The final 2009-2014 CTP attempts to maintain as much of the capital program as possible in the short-term. This policy decision is reflected in the department dropping below the administrative level for its coverage ratio. In addition, cost containment actions totaling \$23.3 million in fiscal 2009 have been taken in the operating budget.

The current financial program contains several downside risks. In particular, estimates of revenue may be overstated, and operating budget spending may be understated. While an out-year forecast for revenues and spending is an estimate, the downside risk to these assumptions is that the covenant with bond holders may be violated in the short-term, the department's debt may be downgraded resulting in additional interest costs, and/or the capital and operating budgets may require further reductions.

The discussions of federal stimulus may provide additional funding in the short-term that may be used to offset reductions to the capital program and system preservation. However, there is a long-term concern regarding the ongoing level of federal aid. The current funding sources for ongoing federal aid are inadequate to maintain current spending levels. The department has made some accounting for this in its capital program; however, additional cuts may be needed to the capital program or, conversely, a positive solution to the funding issues may result in more federal aid than is currently anticipated.

Transportation Trust Fund Overview

The TTF is a nonlapsing special fund that provides funding for transportation. It consists of tax and fee revenues, operating revenues, bond proceeds, and fund transfers. MDOT issues bonds backed by TTF revenues and invests the TTF fund balance to generate investment income. MTA, the Motor Vehicle Administration (MVA), the Maryland Port Administration (MPA), and the Maryland Aviation Administration (MAA) generate operating revenues that cover a portion of their operating expenditures.

The tax and fee revenues include motor fuel taxes, rental car sales taxes, titling taxes, vehicle registration fees, a portion of the corporate income and sales taxes, and other miscellaneous motor vehicle fees. A portion of these revenues are credited to the Gasoline and Motor Vehicle Revenue Account (GMVRA). Thirty percent of the GMVRA revenues are distributed to local jurisdictions, and the remainder is retained by the TTF. The funds retained by the TTF support the capital program, debt service, and operating costs.

Fiscal 2008 Transportation Trust Fund Revenue Closeout

The TTF closed fiscal 2008 with a balance of \$53.0 million – \$47.0 million less than the administrative level of \$100.0 million. As shown in **Exhibit 1**, revenues totaled \$2,911.0 million and were \$118.0 million (3.9%) less than the estimate. State-sourced revenues declined \$96.0 million (4.3%) of which the titling tax was \$64.0 million (9.0%) less than estimated while motor fuel tax revenues were \$9.0 million less than the estimate. State-sourced revenues did not meet estimates due to continued deterioration in the economy and higher gasoline prices which affected fuel consumption and vehicle purchases. Other major changes to revenues include a smaller bond sale and an increase in operating and miscellaneous revenues.

Operating budget expenditures were \$27 million higher due to winter maintenance and diesel fuel costs. The capital budget was \$74 million less than estimated with \$60 million due to changes in SHA's program. Specifically, most of this is due to cash flow changes in a number of projects and additional federal funds which allowed for less special fund spending. In addition, due to weak revenue attainment, the local share of Highway User Revenues (HUR) was \$22 million less than estimated.

Fiscal 2009 Year-to-date Revenue Receipts

The largest tax and fee revenues in the TTF are motor fuel taxes, titling taxes, and registration fees. Due to the economic recession and its impact on vehicle sales and economic activity, fiscal 2009 revenues were revised downward from the January 2008 estimate. Titling tax revenue was revised downward by \$217 million, motor fuel tax revenues by \$39 million, and registration fees by \$15 million. Fiscal 2009 attainments from these three sources are expected to total \$1.7 billion and represent a majority of GMVRA revenues. Collections through December 2008 are below estimated levels for each revenue source. To meet each of the revenue estimates, revenues will need to exceed historical attainments or grow at a rate greater than the past six months to meet the current revenue estimates.

Exhibit 1
Transportation Trust Fund Closeout
Estimated Revenues Compared to Actual Revenues Received
Fiscal 2008
(\$ in Millions)

	<u>2008</u> <u>Projected</u>	<u>2008</u> <u>Actual</u>	<u>Variance</u>
Starting Fund Balance	\$190	\$190	\$0
Revenues			
Titling Taxes	\$714	\$650	-\$64
Motor Fuel Taxes	764	755	-9
Corporate Income, Registrations, Rental Car, and Miscellaneous MVA Fees	749	726	-23
Other Receipts and Adjustments	517	530	13
Bond Proceeds and Premiums	285	250	-35
Total Revenues	\$3,029	\$2,911	-\$118
Uses of Funds			
MDOT – Operating Expenditures	\$1,461	\$1,488	\$27
MDOT – Capital Expenditures	896	822	-74
MDOT – Debt Service	121	122	1
Highway User Revenues	551	529	-22
Other Expenditures	90	87	-3
Total Expenditures	\$3,119	\$3,048	-\$71
Ending Fund Balance	\$100	\$53	-\$47

MDOT: Maryland Department of Transportation

MVA: Motor Vehicle Administration

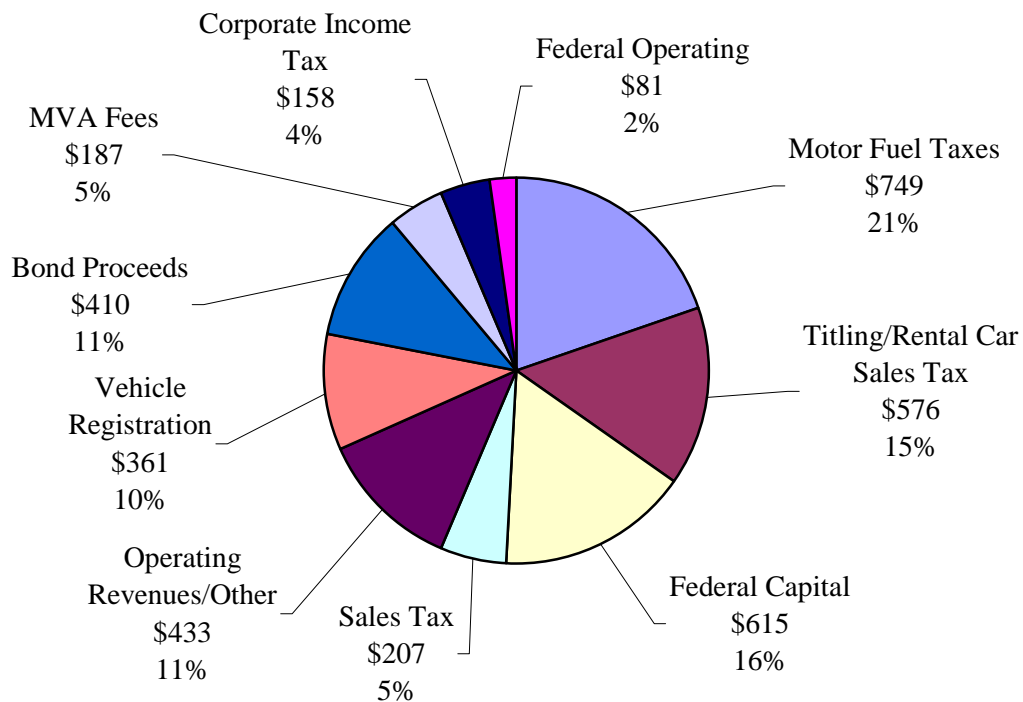
Note: Numbers may not sum to total due to rounding.

Source: Maryland Department of Transportation, September 2008

Fiscal 2009 through 2014 Revenue Projections

Exhibit 2 shows that the TTF’s largest revenue sources in fiscal 2010 are the motor fuel and titling taxes and federal aid for the capital program, which represent almost \$1.9 billion (52%) of all fund sources. MDOT is projecting that \$410 million in bonds will be sold to supplement the transportation capital program in fiscal 2010.

Exhibit 2
Transportation Trust Fund
State-sourced Revenues and Federal Funds
Fiscal 2010
(\$ in Millions)



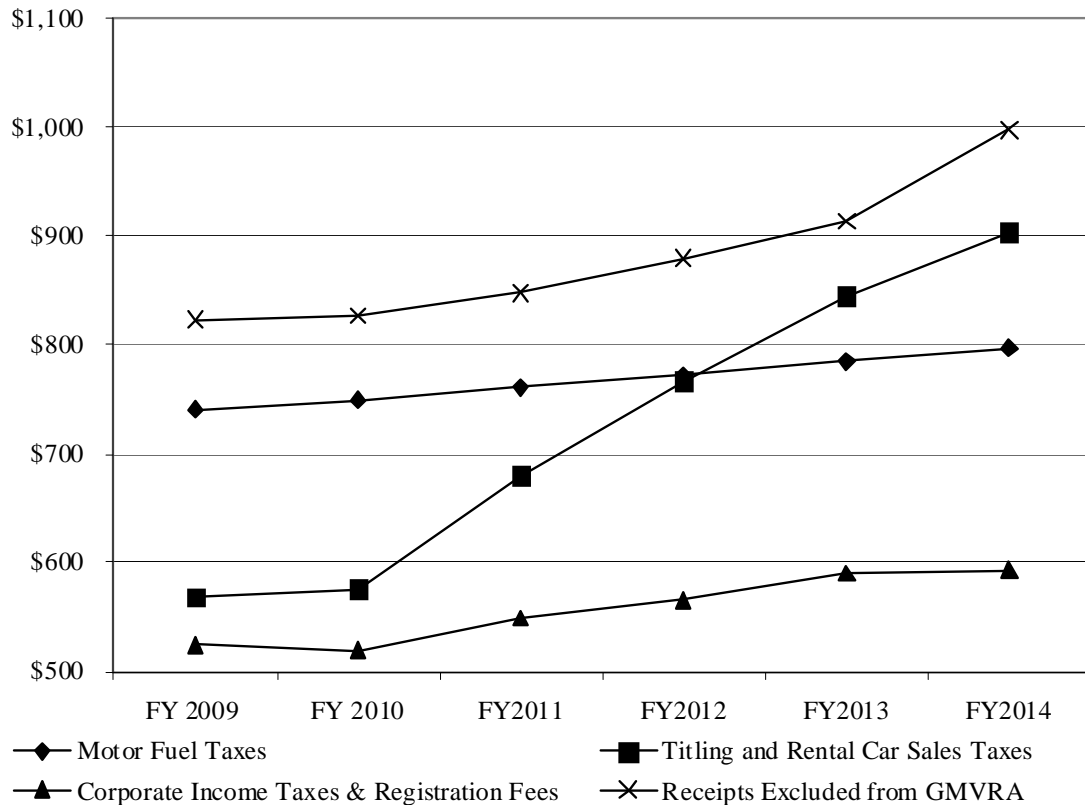
MVA: Motor Vehicle Administration

Source: Governor’s Budget Books, Fiscal 2010, Volume I, pages 620-624

Exhibit 3 shows that MDOT’s State-sourced revenues are expected to grow throughout the financial forecast period. Over the six-year period, GMVRA revenues are expected to increase from a total of \$1.595 billion in fiscal 2009 to \$1.939 billion in fiscal 2014, an average annual growth rate of 3.98%. The estimate for titling and rental car sales tax revenue is expected to decline slightly from fiscal 2009 to 2010 and then grow from fiscal 2011 to 2014 for an average annual growth rate of 10.00% over the 6 years. Motor fuel tax receipts are expected to grow approximately 1.50% annually with registrations fees at 1.20% annual growth. The growth from fiscal 2013 to 2014 for receipts excluded from GMVRA is due to the sales tax distribution rate to the TTF changing from 5.30 to 6.50%.

A summary of the total financial forecast may be found in **Appendix 1**.

Exhibit 3
Transportation Trust Fund
Forecasted State-sourced Revenues
Fiscal 2009-2014
(\$ in Millions)



GMVRA: Gasoline and Motor Vehicle Revenue Account

Source: Maryland Department of Transportation, Transportation Trust Fund Forecast, January 2009

MDOT's Forecast Assumptions Contain Risks

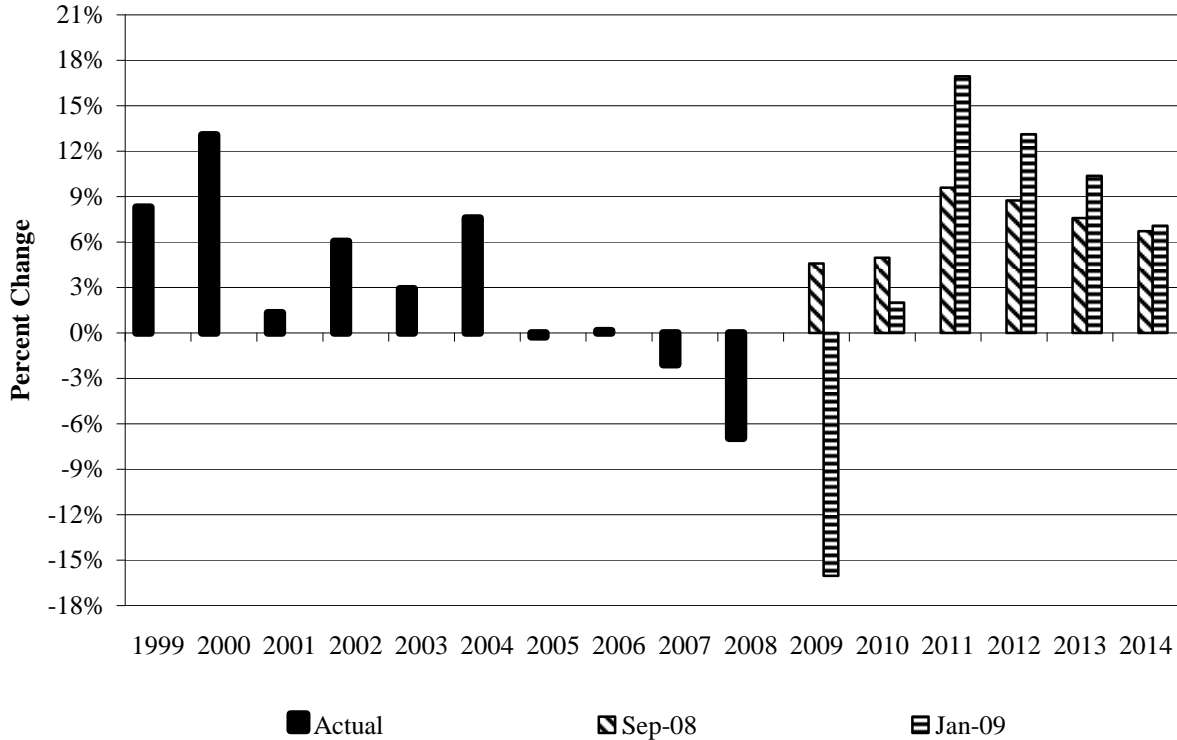
The department's financial forecast contains several assumptions that create a degree of downside risk to the department's ability to maintain a fiscally prudent financial plan and deliver its planned capital program. Following are specific areas of concern.

Strong Rebound in Titling Tax Revenues

Vehicle sales declined 18.3% in Maryland in calendar 2008, and a weak year in vehicle sales is once again forecasted in calendar 2009, which is why the titling tax estimate has been revised downward so dramatically. The department estimates that the economy will recover in calendar 2010 and 2011 such that revenue growth is estimated to be 17.0% in fiscal 2011 and 13.0% in fiscal 2012 as shown in **Exhibit 4**. MDOT indicates that based upon past dramatic declines in vehicle sales, the following fiscal year has shown revenue growth over 20.0%. In addition, several economic forecast firms have indicated strong vehicle sales in calendar 2010. These same forecasting firms are also predicting high levels of unemployment, which seems inconsistent. The relationship between pent-up demand and employment and how this translates into vehicle sales will need to be closely monitored.

There is likely to be a bounce back in vehicle sales and titling tax revenue growth; however, predicting when and how much that recovery will be is difficult at best. The downside risk is that if revenues do not meet the estimate, further reductions will need to be made to the capital program and/or the operating budget.

Exhibit 4
Titling Tax Growth Rate
 Fiscal 1999-2008 Actual, Fiscal 2009-2014 Estimated

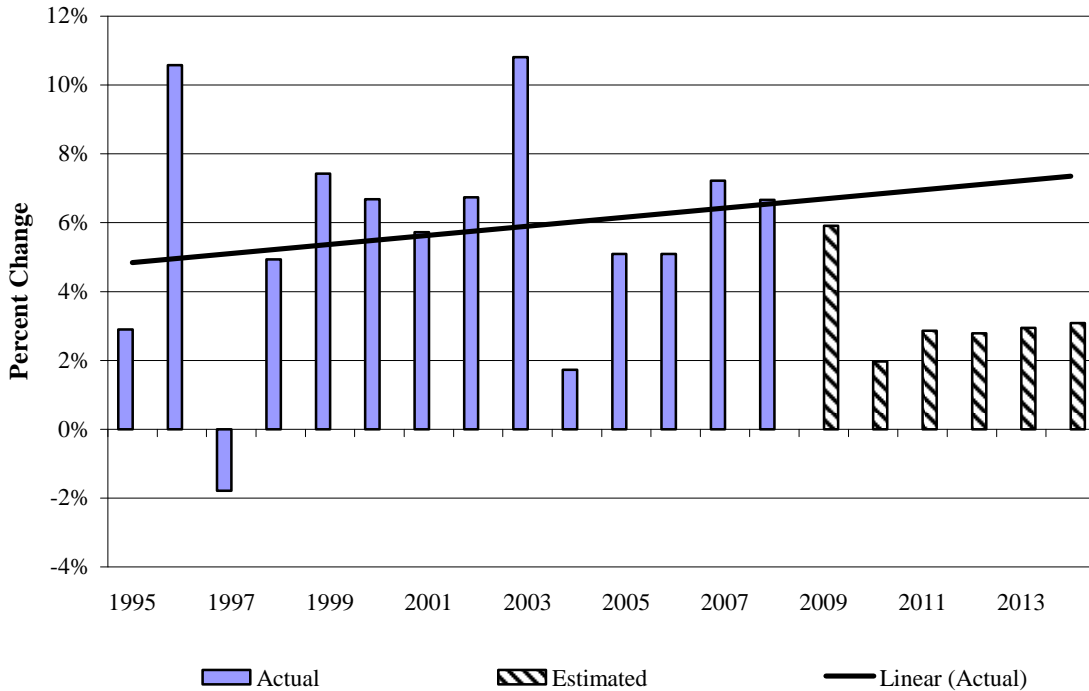


Source: Maryland Department of Transportation

Out-year Operating Budget Assumptions May Be Understated

As a result of the downturn in revenues, the department has undertaken internal cost containment within the operating budget, which results in a reported savings of \$23 million in fiscal 2009. The six-year annual average for operating growth in the forecast is 3.3%. Historically, since fiscal 1994, operating budget growth has been 5.7% as shown in **Exhibit 5**. By depressing the out-year estimate for budget growth, the department has freed up additional cash and created additional bonding capacity for the capital program. Once again, the downside risk to this strategy is that if operating budgets exceed the level estimated in the near term, bonding capacity will be reduced, and the capital program will need to be further reduced.

**Exhibit 5
Operating Budget Growth
Fiscal 1995-2014**

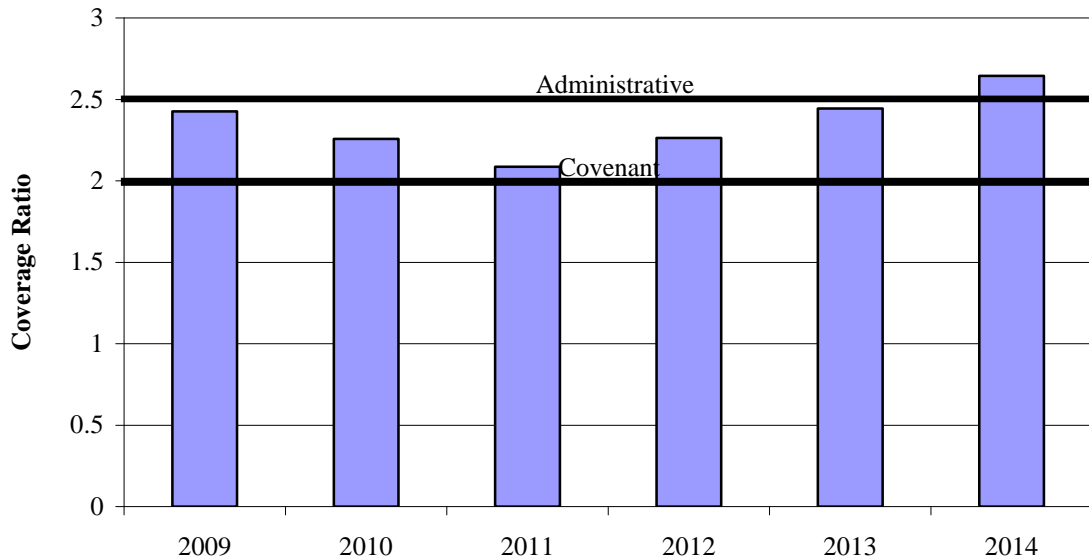


Source: Department of Legislative Services

Administrative Levels for Debt Have Been Breached

In its agreements with bondholders, MDOT agrees to maintain a coverage ratio of prior year net income and pledged taxes being 2.0 times greater than the maximum annual debt service in a given fiscal year. To ensure fiscal prudence, MDOT historically has maintained an administrative coverage ratio of 2.5. The higher administrative level has been in place as a prudent hedge against large unexpected changes in revenue or operating spending which could cause coverage ratios to fall below 2.0. As shown in **Exhibit 6**, due to the write down in revenues and an attempt to maintain as much of the capital program as possible, MDOT has decided to go below the administrative level with a coverage ratio of 2.1 in fiscal 2011. By fiscal 2014, MDOT returns to a coverage ratio of 2.6 under its assumptions for revenue growth and constrained operating growth. MDOT indicates that the rating agencies may be satisfied knowing that the financial forecast returns to past practice by fiscal 2014.

Exhibit 6
Net Income Coverage Ratio
Fiscal 2009-2014



Source: Department of Legislative Services

Moving below the administrative ratio of 2.5 is not problematic; however, coming so close to the 2.0 threshold based upon the department’s revenue and operating budget estimates is a risk. Specific to fiscal 2011, should revenues come in less than currently estimated in fiscal 2010 and/or operating expenditures exceed projected levels, MDOT could fall below the 2.0 coverage ratio.

The Department of Legislative Services (DLS) recommends that MDOT discuss the following:

- **why it projected such a strong recovery in titling tax revenues given the instability in the broader economy and automobile industry, as well as economic forecasts for high unemployment;**
- **what the implication is for the financial forecast if the titling tax estimate for growth is not achieved;**
- **if the operating budget assumptions in the forecast are realized, what the impact will be on operations;**

- **why the department made the policy decision to go below the 2.5 times net coverage ratio;**
- **how comfortable the department is that it can maintain the 2.1 coverage ratio in fiscal 2011 based upon the fiscal 2010 allowance and revenue uncertainty; and**
- **what happens if the coverage ratio drops below 2.0.**

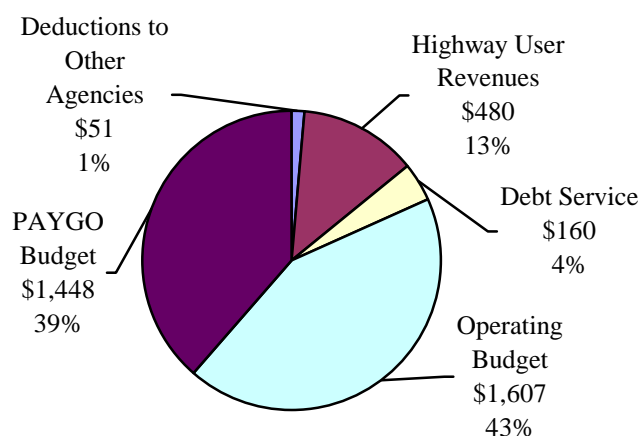
Fund Transfers Between the TTF and Other Funds

In fiscal 2009 and 2010, the TTF will transfer the final two \$30 million special fund contributions to MDTA for the InterCounty Connector (ICC). This is required by Chapters 471 and 472 of 2005, which established a finance plan for the ICC.

Budget Overview

Exhibit 7 illustrates fiscal 2010 spending for MDOT. The pay-as-you-go (PAYGO) capital program, at \$1.5 billion, represents 43% of MDOT’s budget. Over 40% of the budget is allocated for the operations of the various modal administrations. Highway user revenues, representing a portion of tax and fee revenue that is divided among local jurisdictions, comprise 13% of the budget. The remainder of revenue is allocated for debt service on Consolidated Transportation Bonds (CTB).

Exhibit 7
Fiscal 2010 Transportation Trust Fund Uses
Total Spending: \$3.7 Billion
(\$ in Millions)



PAYGO: pay-as-you-go

Source: Maryland Department of Transportation

Proposed Budget

Exhibit 8 categorizes the fiscal 2010 proposed budget by operating and PAYGO capital budgets for each modal administration, debt service, and local highway user grants. The fiscal 2010 allowance decreases \$46.7 million (1.2%) compared to the fiscal 2009 working appropriation. The decrease in the budget is almost entirely in the capital program and can be attributed to a decline in revenues due to the national economic downturn. Special funds increase a total of \$28.9 million (1.0%) over the fiscal 2009 working appropriation. Federal funds decrease a total of \$74.2 million (9.1%). Almost all of the federal fund decrease is in the capital budget and is caused by cash flow changes.

**Exhibit 8
Transportation Budget Overview
Fiscal 2008-2010**

	<u>2008 Actual</u>	<u>2009 Working</u>	<u>2010 Allowance</u>	<u>2009-10 Change</u>	<u>2009-10 % Change</u>
Operating Programs					
Secretary's Office	\$69,692,983	\$76,397,855	\$76,968,001	\$570,146	0.7%
WMATA	193,026,097	213,300,000	215,150,000	1,850,000	0.9%
State Highway Administration	238,792,604	221,988,027	223,348,823	1,360,796	0.6%
Port Administration	104,887,421	112,289,689	112,591,281	301,592	0.3%
Motor Vehicle Administration	145,837,806	156,037,290	157,924,796	1,887,506	1.2%
Transit Administration	556,602,416	589,821,581	596,269,182	6,447,601	1.1%
Aviation Administration	178,071,856	185,628,464	184,244,864	-1,383,600	-0.7%
Subtotal	\$1,486,911,183	\$1,555,462,906	\$1,566,496,947	\$11,034,041	0.7%
Debt Service	\$118,986,885	\$141,933,925	\$159,698,275	\$17,764,350	12.5%
Local Highway User Grants	\$529,443,853	\$478,269,300	\$480,014,100	\$1,744,800	0.4%
Capital					
Secretary's Office	\$29,421,736	\$51,385,773	\$36,196,590	-\$15,189,183	-29.6%
WMATA	79,974,747	70,270,000	72,041,000	1,771,000	2.5%
State Highway Administration	972,606,839	938,063,000	782,917,000	-155,146,000	-16.5%
Port Administration	122,926,158	125,758,693	114,552,920	-11,205,773	-8.9%
Motor Vehicle Administration	19,096,280	32,020,580	31,526,663	-493,917	-1.5%
Transit Administration	202,481,997	315,664,001	426,868,432	111,204,431	35.2%
Aviation Administration	62,987,006	36,149,131	27,963,230	-8,185,901	-22.6%
Subtotal	\$1,489,494,763	\$1,569,311,178	\$1,492,065,835	-\$77,245,343	-4.9%
Total of All Funds					
Special Fund	\$2,878,249,047	\$2,930,045,372	\$2,958,944,841	\$28,899,469	1.0%
Federal Fund	746,447,393	813,561,715	739,330,316	-74,231,399	-9.1%
Reimbursable Fund	140,244	1,370,222	0	-1,370,222	-100.0%
Grand Total	\$3,624,836,684	\$3,744,977,309	\$3,698,275,157	-\$46,702,152	-1.2%

WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland State Budget

Operating Budget Analysis

MDOT's operating allowance includes operating expenditures for each of the modes, debt service, and local HUR. The fiscal 2010 operating allowance totals \$2.2 billion, a 1.4% increase over the fiscal 2009 working appropriation. Over two-thirds of the operating allowance is used for the operating budgets of each of the modes.

Fiscal 2009 Actions

Cost Containment

In response to a legislative mandate from the 2008 session to withdraw at least \$50.0 million in general fund appropriations, \$50.1 million in general funds, \$7.4 million in special funds, and \$17.6 million in federal funds appropriations were withdrawn through the Board of Public Works (BPW) in June 2008. At MDOT, these withdrawn appropriations included \$2.2 million in special fund and \$305,787 in federal fund savings in health insurance due to a fund swap.

MDOT has identified a number of additional actions to curtail spending in fiscal 2009. In total, these cost containment actions will reduce MDOT's budget by \$23.3 million in fiscal 2009. **Exhibit 9** provides a breakdown by mode of the total cost containment actions in fiscal 2009. Categorizations of cost containment include contractual services, information technology purchases, general operations, advertising, and vehicle and personnel costs.

Exhibit 9 Cost Containment Actions Fiscal 2009

	<u>2009</u>
Office of Transportation Technology Services (within TSO)	\$1,139,320
Washington Metropolitan Area Transit Authority	1,000,000
State Highway Administration	5,074,000
Port Administration	1,077,891
Motor Vehicle Administration	4,681,119
Transit Administration	4,743,000
Aviation Administration	5,607,576
Total	\$23,322,906

TSO: The Secretary's Office

Source: Maryland Department of Transportation

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Similar to this year, during the 2008 session, MDOT identified several cost containment actions that it planned to take in fiscal 2008. When reviewing the closeout analysis of MDOT's spending, it was unclear whether or not the department cancelled all of the appropriations that it had identified. It is possible that MDOT did not follow through with all of the cost containment actions it had identified during session or the money was used for other purposes.

Operating Programs

The fiscal 2010 operating program increases by \$11.0 million (0.7%) over the fiscal 2009 working appropriation. Over half of the increase is associated with MTA, which increases by \$6.4 million (1.1%). The largest percentage change is at MVA, which increases by \$1.9 million (1.2%).

The change for MTA is attributed to the following:

- \$14.0 million increase in fuel related expenditures largely due to the fiscal 2009 working appropriation being understated relative to current spending patterns;
- \$4.8 million for personnel related costs, in particular worker's compensation payments and health insurance; and
- \$13.0 million reduction in grants to locally operated transit systems.

The increase at MVA is primarily the result of increases in health insurance expenditures.

Personnel

As **Exhibit 10** shows, the fiscal 2010 allowance contains 9,134.5 regular positions, the same as the fiscal 2009 working appropriation. Contractual full-time equivalents (FTE) decrease in the fiscal 2010 allowance by 0.3 FTE (0.2%), for a total of 168.6 FTEs.

Exhibit 10
MDOT Regular and Contractual Full-time Equivalents
Fiscal 2008-2010

	<u>2008</u> <u>Actual</u>	<u>2009</u> <u>Working</u>	<u>2010</u> <u>Allowance</u>	<u>2009-10</u> <u>Change</u>	<u>2009-10</u> <u>% Change</u>
Regular Positions					
Secretary's Office	328.0	334.0	334.0	0.0	0.0%
State Highway Administration	3,196.5	3,228.5	3,228.5	0.0	0.0%
Maryland Port Administration	290.0	291.0	291.0	0.0	0.0%
Motor Vehicle Administration	1,604.5	1,611.5	1,611.5	0.0	0.0%
Maryland Transit Administration	3,039.5	3,136.5	3,136.5	0.0	0.0%
Maryland Aviation Administration	535.5	533.0	533.0	0.0	0.0%
Grand Total	8,994.0	9,134.5	9,134.5	0.0	0.0%
Contractual FTEs					
Secretary's Office	4.2	6.0	6.5	0.5	8.3%
State Highway Administration	11.8	22.0	22.0	0.0	0.0%
Maryland Port Administration	0.7	1.5	1.7	0.2	13.3%
Motor Vehicle Administration	96.4	118.4	118.4	0.0	0.0%
Maryland Transit Administration	33.0	19.0	19.0	0.0	0.0%
Maryland Aviation Administration	0.6	2.0	1.0	-1.0	-50.0%
Grand Total	146.7	168.9	168.6	-0.3	-0.2%

FTEs: full-time equivalents

Source: Maryland State Budget

The additional revenue provided for in the 2007 special session allowed MDOT to significantly increase its operating and capital budgets, as well as create 210 new positions. The effect of these new positions was mitigated by the abolition of 66 positions at MDOT through BPW in October 2008. This BPW action was part of a larger State effort at cost containment that abolished 830 positions and withdrew \$347.8 million in general, special, and federal fund appropriations.

Of the 66 abolished positions at MDOT, 44 were vacant and 22 were filled positions. MTA had 63 positions abolished, including 30 vacant management positions, 20 filled management positions, and 13 vacant union maintenance positions. In addition, 3 positions from MAA's Office of Real Estate were abolished, and those functions were transferred to SHA.

As **Exhibit 11** shows, even when taking these position abolitions into consideration, MDOT has nearly 400 vacancies departmentwide, or 4.2%, of its authorized positions. **Due to the large number of vacant positions, declining revenues, and significant position abolitions statewide in the Governor’s fiscal 2010 budget that excludes MDOT, DLS recommends the abolition of 38 positions at MDOT with a corresponding reduction of \$2.8 million to account for the resulting personnel cost savings.**

**Exhibit 11
MDOT Vacancies
As of January 1, 2009**

	<u>2009 Working</u>	<u>Vacant Positions</u>	<u>% Vacant</u>	<u>Positions Vacant Over 12 Months</u>
Regular Positions				
Secretary’s Office	334.0	16.0	4.8%	1.0
State Highway Administration	3,228.5	149.5	4.6%	0.0
Maryland Port Administration	291.0	15.0	5.2%	0.0
Motor Vehicle Administration	1,611.5	58.5	3.6%	0.0
Maryland Transit Administration	3,136.5	96.0	3.1%	0.0
Maryland Aviation Administration	533.0	49.5	9.3%	6.0
Total	9,134.5	384.5	4.2%	7.0

Source: Maryland Department of Transportation

Debt Service

The budgeted fiscal 2010 debt service payment is \$159.7 million, an increase of \$17.8 million over the fiscal 2009 working appropriation. The increase in debt service is largely due to the planned issuance of \$415.0 million of debt in fiscal 2009 and an issuance of \$410.0 million in fiscal 2010.

At the end of fiscal 2010, total CTB debt outstanding is expected to total \$1.9 billion, which remains below the statutory cap of \$2.6 billion. Additional discussion of debt service trends and issues may be found in the MDOT Debt Service Requirements analysis, budget code J00A04.

Local Highway User Revenues

HUR are derived from a portion of tax and fee revenues that are deposited in GMVRA and subsequently distributed among the TTF, Baltimore City, counties, and municipalities. Local distributions are based on vehicle registrations and road mileage. The fiscal 2010 allowance for HUR shows an increase of \$1.7 million from the fiscal 2009 working appropriation. Unlike past years, the

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2009 working appropriation has been adjusted to reflect the downward revision in fiscal 2009 revenue estimates. The fiscal 2009 working appropriation is \$478.3 million, \$70.4 million less than the legislative appropriation of \$548.7 million.

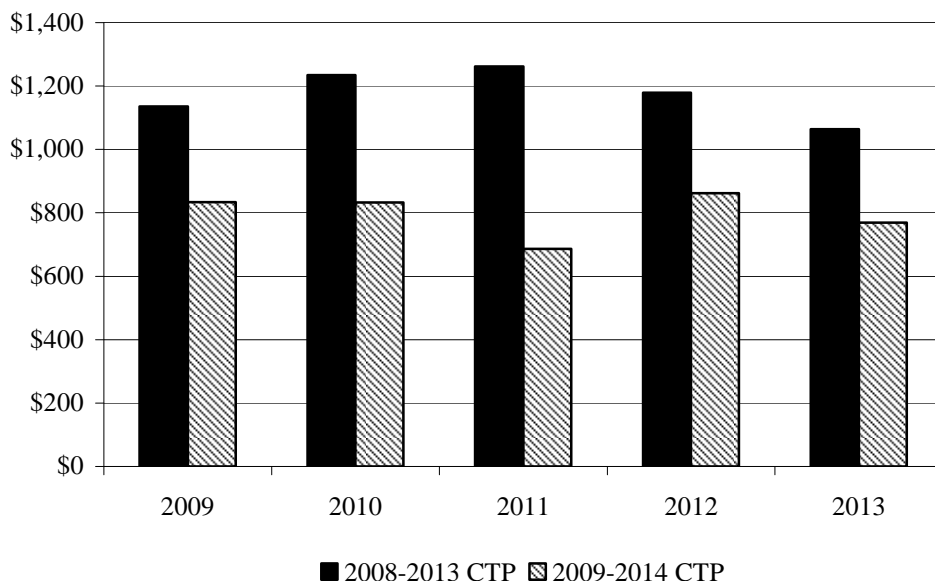
PAYGO Capital Budget Analysis

The CTP is issued annually to the General Assembly, local elected officials, and interested citizens. The CTP provides a description of projects proposed by MDOT for development and evaluation or construction over the next six-year period. For the period fiscal 2009 to 2014, the CTP totals approximately \$8.5 billion for projects supported by State, federal, and “other” funds. Other funds include MDTA financing, Certificates of Participation, and debt backed by passenger facility charges (PFC) and customer facility charges (CFC). To date, other funding has primarily been used by MAA for its recent capital expansion program at BWI Thurgood Marshall Airport. This type of funding has also been utilized for projects by MPA and MTA.

Fiscal 2009 – 2014 CTP Reductions

Due to the revenue downturn and legislative changes to the sales tax distribution, MDOT reduced the 2009-2014 CTP by \$2.2 billion in special funds. The September draft CTP reduced the capital program by \$1.1 billion, and an additional \$1.1 billion was reduced from the final CTP in January 2009. The \$2.2 billion reduction to the capital program is slightly more than the \$2.1 billion that was added in January 2008 after the 2007 special session. **Exhibit 12** shows the special fund difference in the 2008 CTP compared to the 2009 CTP for the comparable fiscal years. For example, the fiscal 2009 special fund working appropriation is approximately \$350 million less than the legislative appropriation.

Exhibit 12
Fiscal 2009 to 2013 Special Fund CTP Comparison
(\$ in Millions)



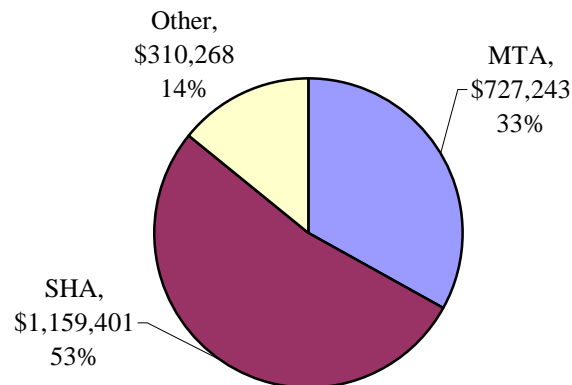
CTP: Consolidated Transportation Program

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

With the first round of reductions, MDOT indicated that an effort was made to maintain projects already under construction, system preservation and safety projects, and ongoing programs like dredging at MPA. As a result, projects that were delayed in the first round of reductions typically were construction projects added as part of the revenue increase. In the second round of reductions, system preservation projects could not be spared. For example, system preservation for all modes totaled \$4.8 billion in the 2008-2013 CTP compared to \$4.0 billion in the 2009-2014 CTP.

MTA and SHA received the largest share of reductions, as shown in **Exhibit 13**, since they received the majority of the additional funding from the revenue increase. MTA received \$865 million (42%) of the revenue increase and experienced approximately \$727 million (33%) in reductions. SHA received approximately \$1.0 billion (50%) of the revenue increase and \$1.2 billion (53%) of the reductions. MDOT indicates that any further substantial reduction to MTA’s capital program would have potentially resulted in reduced federal funds and that MTA had entered into several long-term ongoing procurement contracts. **DLS recommends that MDOT discuss with the committees if the department is in danger of not being able to match federal funds as a result of special fund reductions to the capital program.**

Exhibit 13
\$2.2 Billion in Special Fund Capital Reductions by Mode
Fiscal 2009-2014
(\$ in Thousands)



MTA: Maryland Transportation Authority
SHA: State Highway Administration

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

Exhibit 14 shows that the major projects and the six-year special funds total were reduced. This total represents 68% of the total reduction to the program.

Exhibit 14
Major Project Reductions
(\$ in Thousands)

<u>Mode</u>	<u>County</u>	<u>Description</u>	<u>6-year</u>
SHA	SW	Special fund reduction to federally funded system preservation program	\$243,794
SHA	SW	Reduction to resurfacing	134,643
All Modes		Reduction in special funds across all modes for minor projects and system preservation	98,845
MTA		Track improvements on the Penn Line – four main tracks	84,625
SHA	PG	MD 5 Branch Ave Metro – Phase 2	60,403
SHA	F	I-70, MD 144 to MD 355 (Phase 2D)	57,217
		Baltimore Red Line Corridor Transit Study	54,642
WMATA		Reduction in out-years of Metro Matters agreement set to expire in fiscal 2010	54,371
MTA		Corridor Cities Transitway (D&E)	45,034
SHA	HO	US 29, Seneca Drive to MD 175 (Phase 1)	41,888
MAA		Reduction in pavement/taxiway work for runway to offset operating revenue loss of \$38 million	38,691
MTA		MARC coach purchase – all lines	36,823
SHA	AA	BRAC intersections – Fort Meade	36,518
SHA	MO	BRAC intersections – Bethesda	35,483
MTA		BUS Kirk Division bus modernization	33,513
SHA	H	BRAC intersections – Aberdeen Proving Grounds	32,842
SHA	CH/PG	US 301 protective right-of-way	32,300
MTA		Purple Line (D&E)	30,193
MTA		MARC III coaches (50) overhaul	30,166
MTA		Environmental compliance efforts at MTA	27,478
SHA	BA	I-795 at Dolfield Road	27,121
SHA	PG	MD 4 at Suitland Parkway	26,558
SHA	SW	Traffic management	21,744
SHA	SW	Safety and spot improvements	21,436
MTA		Over the Road coaches	20,000
MTA		Light Rail LTV mid-life overhaul	18,866
SHA	SW	Truck weight	18,200
MTA		Bus replacement purchases	17,958
SHA	MO	MD 97 at Randolph Road	17,649
SHA	SW	Congested intersections	15,000

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<u>Mode</u>	<u>County</u>	<u>Description</u>	<u>6-year</u>
SHA		Statewide planning	15,000
MTA		Commuter bus coaches	14,313
SHA	PG	MD 295 at National Harbor	14,300
MAA		Airside pavement safety improvements	13,526
MTA		New main shop	13,400
SHA	SW	Urban reconstruction	<u>11,468</u>
		Total	\$1,496,008

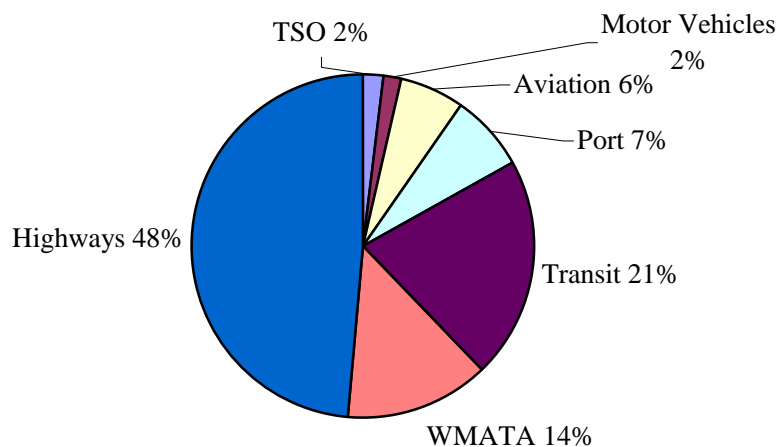
AA: Anne Arundel County
 BA: Baltimore County
 BRAC: Base Realignment and Closure
 CH: Charles County
 D&E: Development and Evaluation
 F: Frederick County
 PG: Prince George's County
 H: Harford County
 HO: Howard County
 MAA: Maryland Aviation Administration
 MO: Montgomery County
 MTA: Maryland Transit Administration
 SHA: State Highway Administration
 SW: Statewide
 WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

Fiscal 2009-2014 Consolidated Transportation Program

Exhibit 15 shows the funding level for each mode over the six-year period. Funding for SHA accounts for the largest portion of the program at 48%. Transit funding, including the Washington Metropolitan Area Transit Authority (WMATA) and MTA, accounts for 35% of funding.

Exhibit 15
MDOT Proposed Capital Funding by Mode
2009-2014 CTP
Total Program – \$8.4 Billion



CTP: Consolidated Transportation Program

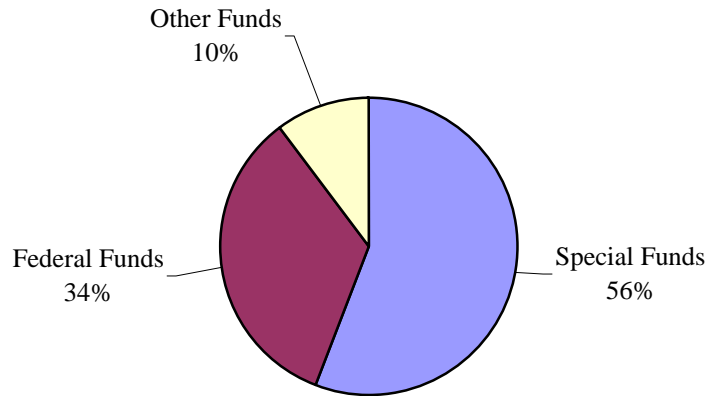
TSO: The Secretary's Office

WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

Exhibit 16 shows that special funds support 56% of the six-year capital program compared to 64% in the 2008-2013 CTP. The decline in special funds is due to the revenue downturn.

Exhibit 16
MDOT Proposed Capital Funding by Source
2009-2014 CTP
Total Program \$8.4 Billion

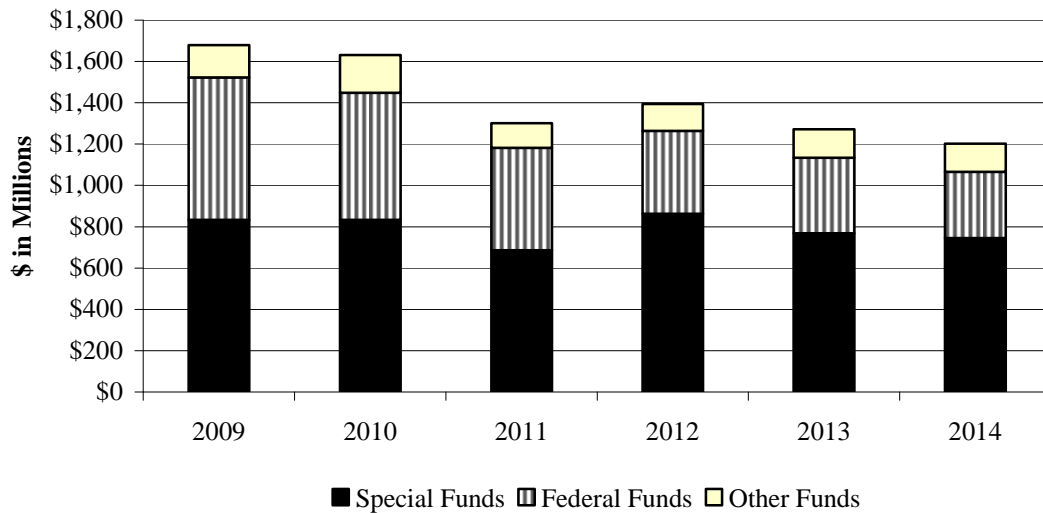


CTP: Consolidated Transportation Program

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Programs*

Exhibit 17 shows the level of special, federal, and other funds for each fiscal year of the capital program. The dip in spending for fiscal 2011 is due to a smaller bond sale reducing available funding. The increase in fiscal 2012 is due to cash flow for projects being moved from fiscal 2009 and 2010 to fiscal 2012 and beyond, and more available revenue as MDOT estimates that the economy will recover strongly beginning in fiscal 2011. Federal funds decline throughout the six-year period because of conservative federal aid attainment estimates and cash flow.

Exhibit 17
MDOT Proposed Capital Funding by Year
2009-2014 CTP
Total Program \$8.4 Billion

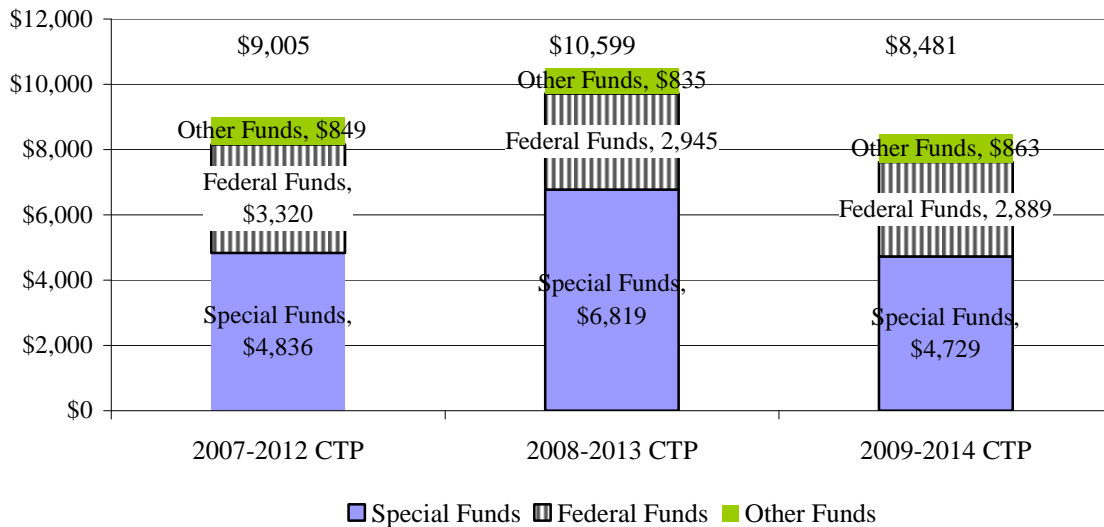


CTP: Consolidated Transportation Program

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

The 2009-2014 CTP decreases by \$2.1 billion, or 20%, compared to the 2008–2013 CTP with the decline due to the write down in revenues. **Exhibit 18** shows that special funds in the 2009-2014 CTP are roughly equal to the 2007-2012 capital program. Federal funds have also declined since the 2007-2012 CTP; however, this is largely due to Grant Anticipation Revenue Vehicle bond debt service payments and conservative federal fund estimates.

**Exhibit 18
Comparison of CTP Funding
Fiscal 2007-2009
(\$ in Millions)**



CTP: Consolidated Transportation Program

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

Fiscal 2008 and 2009 Cash Flow Changes

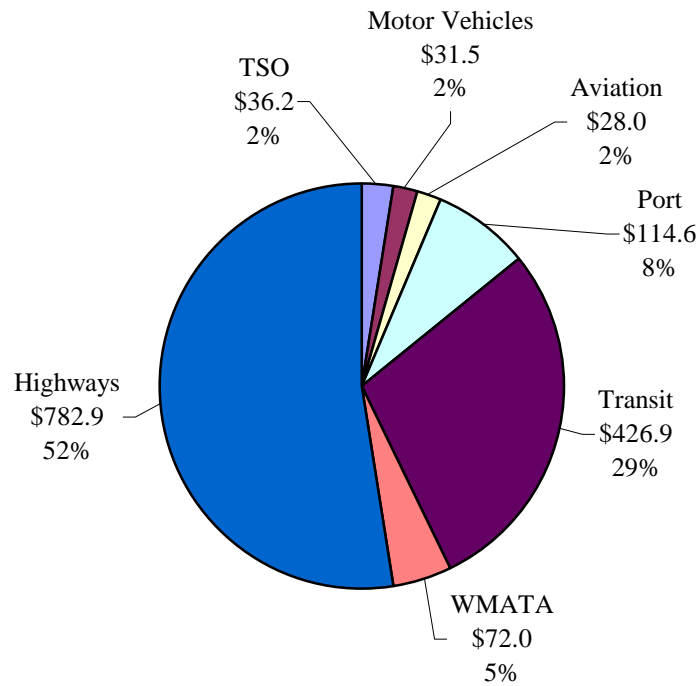
Fiscal 2008 ended with capital special fund expenditures being \$74 million less than the working appropriation. A majority of this funding is due to cash flow changes in a number of SHA projects as well as additional federal aid that allowed for special funds to be used for other purposes. The additional funding was reprogrammed in fiscal 2010 and later fiscal years for projects.

The fiscal 2009 working appropriation is approximately \$166 million less than the legislative appropriation. The decline is due to the reductions in the capital program as a result of the revenue downturn. Total fiscal 2009 capital reductions total approximately \$226 million in special funds with an additional \$70 million being moved out into later fiscal years due to cash flow changes in projects. This reduction is offset by a \$129 million increase in federal funds being used earlier in the capital program than originally assumed and federal funds being used to offset special fund reductions.

Fiscal 2010 Allowance

Exhibit 19 shows that excluding other funding, the fiscal 2010 PAYGO capital budget totals approximately \$1.5 billion, a decline of \$77 million (4.9%) compared to the fiscal 2009 working appropriation with \$833 million in special funds and \$659 million in federal funds. The decrease in the allowance is because federal funds decline \$75 million due to lower estimates of federal aid attainment, cash flow changes in projects, and federal aid being utilized in fiscal 2009 to offset special fund reductions.

Exhibit 19
MDOT's PAYGO Capital Budget Fiscal 2010 Allowance*
\$1.49 Billion



* excludes other funding

PAYGO: pay-as-you-go

TSO: The Secretary's Office

WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation, January 2009 *Consolidated Transportation Program*

The largest decline in fiscal 2010 is for highway spending, which declines \$155.0 million, (16.5%) compared to fiscal 2009. The fiscal 2010 allowance of several other modes declined

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including \$15.2 million (29.6%) at the Secretary’s Office, \$11.2 million (8.9%), at MPA, and \$8.2 million (22.6%) at MAA.

The MTA’s fiscal 2010 allowance increased \$111.2 million and WMATA increased \$1.8 million compared to the fiscal 2009 working appropriation. This increase is due to the decision to maintain funding for a number of MTA’s ongoing procurements and projects and the cash flow associated with those projects.

Other Funds

The fiscal 2009-2014 CTP also includes \$183.7 million in “other” funding as shown in **Exhibit 20**. The other funding is comprised of pass through federal money for WMATA, debt backed with local county participation, and debt backed by PFCs and CFCs.

Exhibit 20
MDOT Fiscal 2010 Other Funds
(\$ in Thousands)

<u>Project</u>	<u>Other Source</u>	<u>FY 2010</u>
Owings Mills Joint Development	Local	0*
Elderly Handicapped Nonprofit Services	Local	917
MARC Silver Spring Transit Center	Local	13,309
Langley Park Transit Center	Local	3,600
Greyhound Station	Local	850
Bethesda Metro Entrance D&E	Local	2,000
LOTS Central Maryland Transit Facility D&E	Local	769
Minor Projects	Local	81
Total Other Funds MTA		\$21,526
Metro Matters	WMATA Federal	98,531
Total Other Funds WMATA		\$98,531
Hagerstown Airport	Direct Federal	6,000
D/E Baggage System and Claim	PFC	20,137
Terminal Improvement Project	PFC	6,040
Terminal Modernization Program	PFC	3,952
UR-Airfield Lighting Cable Replacement	PFC	6,093
B/C airfield Ramp Regrades	PFC	10,544
External IT Infrastructure Upgrades	PFC	2,180
BWI Thurgood Marshall Airport (closed-circuit TV)	PFC/TSA	1,758
TSA Area CCTV Replacement	TSA	1,190
Consolidated Rental Car Facility Courtyard Improvements	CFC	1,537
Gate G Modifications	PFC	1,711
Minor Projects (3 Projects)	PFC/TSA/CFC	2,457
Total Other Funds MAA		\$63,599
Grand Total		\$183,656

CFC: Customer Facility Charges
D&E: Development and Evaluation
MDOT: Maryland Department of Transportation
PFC: Passenger Facility Charges
TSA: Transportation Security Administration
WMATA: Transportation Washington Metropolitan Area Transit Authority

* Baltimore County is contributing \$13.1 million to the project, but MDOT does not include this spending in the CTP.

Source: Maryland Department of Transportation

Issues

1. Fiscal Stimulus for Transportation Infrastructure Spending

As part of an economic stimulus package, President Barack H. Obama and Congress have discussed providing funding for transportation infrastructure projects. The House Appropriations Committee recently announced an \$850 billion economic Recovery and Reinvestment Plan that includes infrastructure funding. Many economists have indicated that including transportation funding could serve as a stimulant to the economy due to the projected length of the recession. In addition, there is a growing consensus that there needs to be an increased level of investment in infrastructure. The benefit of investing in transportation in the short-term is that it creates, or maintains, jobs. Over the long-term, transportation investment can benefit businesses and facilitate economic growth once a recession has begun.

Potential Funding and Provisions Included in House Bill

The House Appropriations Recovery and Reinvestment Plan may be illustrative of what Maryland might expect from a stimulus bill. Highway and transit funding through formulas could total \$706 million over two years. **Exhibit 21** provides a summary of the funding provisions.

Issues

There are elements of the transportation stimulus that are important to consider.

- **Local Projects Likely Are Not Eligible for Funding:** Projects that have not completed existing federal requirements will not be exempted or fast tracked for federal funding. As a result, local counties and municipalities likely will not be eligible for federal stimulus money as their projects do not involve federal funding (except for bridge projects) or likely meet existing federal requirements.
- **No Matching Requirement:** States will not need to provide matching funds for highway and transit projects.
- **The Process of Funding Will Likely Involve a “Use Or Lose” Mechanism:** States will likely have 90 days from the date of enactment to advertise projects. Any funds not committed in this time period may be lost. The House bill extends the period to spend funds provided that a 50% spend rate is met within 90 days.
- **State Agencies Will Likely Need to Collaborate and Expedite Approvals for Contracts and Permits:** On the State level, this means that contracts will need to be quickly approved by the Board of Public Works and the Maryland Department of the Environment.

**Exhibit 21
Major Infrastructure Components of House Appropriations Recovery and
Reinvestment Plan**

<u>Mode</u>	<u>Total Funding</u>	<u>Maryland Estimate</u>	<u>Relevant Provisions</u>
Highways	\$30 Billion	\$478 Million This includes \$264 million spent at the State’s discretion, \$21.6 million for Transportation Enhancement projects, and \$193.4 million for projects in designated areas.	<ol style="list-style-type: none"> 1. No State match 2. At least 50% of funding for enhancement and designated area projects must be obligated within 75 days or funds are lost. If 50% threshold is achieved, funds are available until June 1, 2010. 3. Of the \$264 million, 50% must be obligated within 90 days and the funds are available until August 1, 2010.
Transit	\$9.5 Billion	\$228 Million Funding available for bus and rail projects in both Baltimore and Washington as well as rural areas.	<ol style="list-style-type: none"> 1. No State match 2. Half of funds must be obligated within 90 days. If threshold met, then jurisdictions have one year for half of remaining funds and two years for all funds.
MARC	\$300 Million	Unclear Funds are awarded competitively and priority is given to projects awarded within 180 days. MDOT may apply for this funding.	<ol style="list-style-type: none"> 1. No State match 2. Priority is given to projects awarded within 180 days.
Airport	\$3 Billion	Unclear (although MDOT has identified \$81 million in projects) Funds awarded through a discretionary grant program.	<ol style="list-style-type: none"> 1. If the project is selected, 50% of funds must be under contract within 90 days. 2. Unclear if program provides 100% federal funds or requires State match.

Source: Maryland Department of Transportation

- ***State Funds May Be Replaced by Federal Funds.*** For some projects, particularly transit projects, federal stimulus may replace existing State dollars for projects. This would result in State funding that could be reallocated to other capital projects.
- ***Maintenance of Efforts Requirements:*** The final House bill includes a provision indicating that MDOT must continue with its planned capital spending. In other words, MDOT must spend what it has planned, and stimulus funds are in addition to that.

Conclusion

The federal stimulus will provide funding for many projects that were taken out of the CTP due to funding issues. In addition, the likely types of projects that will be funded by a federal stimulus are system preservation projects or projects that have met existing federal requirements and can be awarded quickly. **DLS recommends that:**

- **MDOT brief the committees on the challenges to the potential timeline to spend funds and what is being done to address those challenges;**
- **MDOT provide a list of the major projects that might be funded as a result of a stimulus and the impact on the capital program if additional funding is provided; and**
- **a section be included in the budget bill that would require MDOT to provide monthly status reports to the budget committees, as long as stimulus funding is received, regarding the level of available funding, how much has been awarded and spent, the projects awarded, and any changes in special funds for existing projects.**

2. Upcoming Federal Aid Issues

Introduction

On September 5, 2008, the United States Department of Transportation announced that aid disbursements to states would be rationed due to a funding shortfall in the Highway Trust Fund (HTF). A short-term fix through fiscal 2009 was passed by Congress. However, the long-term solvency of the HTF and funding programs will again be addressed next year as Congress debates a six-year transportation funding authorization bill before the current one expires on September 30, 2009.

Background on Federal Funding

Federal transportation aid for transportation is predominantly derived from an 18.4 cents tax on gasoline and a 24.4 cents tax on diesel fuel. Revenues are deposited into the HTF and then distributed to states for highway and transit spending. Funding levels are set in a six-year

authorization bill with the current authorization expiring after federal fiscal 2009. Under the current authorization, Safe, Accountable, Flexible and Efficient Transportation Act – A Legacy for Users, Maryland is expected to receive average annual funding of \$720 million, which includes \$580 million for highways and \$140 million for transit.

Funding Shortfall in the Highway Trust Fund

From 1996 to 2000, receipts to the HTF exceeded outlays which created a significant fund balance. The past two authorizations have set spending levels higher than the level of receipts to draw down the fund balance. However, stagnant revenue growth resulted in the federal Office of Management and Budget as well as the Congressional Budget Office (CBO) projecting the highway portion of the HTF having a negative cash balance late in federal fiscal 2009. Federal law requires the HTF to maintain a positive cash balance to ensure all prior obligations of funds can be met. Therefore, it is anticipated that either additional revenue would be needed to maintain current levels of spending or federal transportation aid to states would need to be reduced.

The announcement of the shortfall in fiscal 2009 occurred sooner than anticipated. To address the shortfall, Congress transferred \$8 billion from the federal general fund to keep the HTF solvent through fiscal 2009. Additional transfers could be required to keep the fund solvent if the reauthorization is not passed on timely basis, or if economic weakness persists.

Issues for the Upcoming Transportation Authorization

The debate on the next transportation authorization is likely to focus on how the HTF is funded and how funds are distributed given the funding shortfall. Specifically:

- ***How much should be made available for federal transportation funding?:*** To maintain current funding levels, revenues to the HTF need to be increased. An increase in the gas tax, the main funding source of the HTF, is politically unpopular and other revenue sources are still being debated. If expenditures are reduced to meet current revenue levels, CBO indicated in January 2008 that a 20% reduction in spending levels would be needed, which could mean a \$145 million reduction in federal aid for Maryland.
- ***How should transportation be financed?:*** Alternative means to finance transportation infrastructure have been suggested instead of gas tax increases. These funding alternatives have included increasing the use of toll-based financing as a user fee, utilizing either public funds or private sector investment through public-private partnerships. Given the recent declines in vehicle miles traveled, eliminating the gas tax and replacing it with a vehicle miles traveled fee is another option under consideration.
- ***How should transportation funds be used?:*** There is a concern that current funding programs do not adequately address the needs for transportation investment and are not linked to national performance measures. Alternative funding proposals have focused on

concentrated funding for transit programs, intercity rail, urban areas where congestion is highest, system preservation, and projects that move freight and goods.

The last authorization was completed two years late. With the issues to address as well as a late start due to the election, it is unlikely that a new authorization will be in place before the current one expires. Due to the HTF funding shortfall, freezing current spending levels under a continuing resolution, as has been done in the past, is not feasible.

Another potential complication for the upcoming reauthorization is that the discussion surrounding highway and transit stimulus funding may distract from the long-term funding concerns of the HTF. Some advocacy groups have expressed concern that Congress may be unwilling to address the issue due to the infusion of cash and spending from the stimulus.

Impact on Maryland

In the 2009 to 2014 CTP, MDOT has included conservative estimates regarding the level of federal aid it anticipates receiving. Despite the lower assumed level of federal aid, the out-year assumptions of federal aid may still be high. If federal aid is less than estimated, further reductions to the capital program will be needed. Conversely, should increased funding levels be included in a new authorization, this will offset the impact of downward revisions of revenue on the capital program.

Another important issue for Maryland is that we are considered a donor state. Due to how federal aid is distributed, several states contribute more in motor fuel tax receipts than they receive in federal aid. In the case of Maryland, for every dollar paid in taxes, Maryland receives 92 cents. **DLS recommends that MDOT discuss with the committees the donor state issue and if it will lobby to change or increase the amount of aid Maryland receives relative to the amount it contributes.**

Conclusion

Due to the funding shortfall and increasing demands for investment, there is uncertainty regarding how transportation will be financed and how federal aid will be distributed to states. The breadth of issues to be confronted will force federal policymakers into a much broader policy and funding debate than in prior authorizations. Maryland's share of future federal aid and how those funds can be used will likely be different under the next authorization compared to past authorizations. **DLS recommends that MDOT discuss what it feels are the most important policy issues to be addressed in the authorization and their potential impact on Maryland. In addition, MDOT should discuss the outlook for federal funds in federal fiscal 2010 should no agreement be reached and the long-term outlook for federal funds and the capital program.**

3. Legislative Involvement in Public-private Partnerships

Governments across all levels in the United States recognize a need to increase the level of investment in transportation; however, there is ongoing debate as to how best to fund that investment. Recently, there has been an aversion to raising gas taxes on the state and federal level; therefore, there is a growing interest in turning to the private sector to assist in the financing of infrastructure through public-private partnerships (P3). Ensuring that the public interest is protected in a P3 agreement is an important policy issue that the State should consider. This can be accomplished by developing a role or process whereby the legislative body has the opportunity to review or approve an agreement or through a comprehensive statutory framework that includes policy parameters.

Following is a summary of a longer report written by DLS found in **Appendix 2**.

Legislative Oversight of P3s

Currently there are 25 states that have some form of legislative authorization for P3s. Of the 25 states that have authorized P3s, 5 have some form of legislative approval. In Maryland, the P3 program is established and guided by a patchwork of regulations, Attorney Generals' opinions, and statute. Certain proposals include limited legislative oversight before a proposal is issued and awarded through BPW.

Recommendation

Should the General Assembly determine P3s are an appropriate financing mechanism, DLS recommends that the General Assembly develop and adopt a broad statutory framework for MDOT to enter into P3 agreements. This framework should allow the State to utilize this financing mechanism while protecting the interests of the State and the taxpayer. As such, legislation should establish a stand alone section in the Transportation Article, making MDOT responsible for administering and overseeing any public-private partnership.

MDOT would have broad discretion in soliciting and negotiating agreements with the private sector, within the context of broad policy parameters established in law. The executive would have flexibility, the legislature would not need to micromanage projects, the private sector would have clarity regarding State policy, and the taxpayer interests would be protected. Following are the major policy objectives the General Assembly should define initially and in doing so provide legislative oversight of any future agreement:

- ***Limit P3 Projects to State Solicited Projects or Specific Projects:*** By only allowing for solicited projects, MDOT will not be overwhelmed by project proposals from the private sector that may be superfluous to the needs of the State. Another alternative would be for the legislature to specify that P3 arrangements may only be used for a certain type of transportation facility (e.g., toll facilities) or to a specific project.

- ***Limit Proposals to New Toll Facilities:*** Currently toll facilities owned and operated by the Maryland Transportation Authority (MDTA) should not be part of a P3 agreement; only new facilities should involve P3s. In precluding existing facilities from a P3 agreement, the legislature can avoid issues with the MDTA's bond holders and Trust Agreement involving an existing facilities' revenue stream to the pool of revenues used to pay for debt service. Another concern with leasing existing facilities for an extended period of time is that the State could underestimate the value of the asset and as a result not fully capture all available equity from the facility.
- ***Definition of an Agreement:*** The legislature should exempt transit oriented development projects from any P3 framework and focus on large projects that involve the construction, leasing, significant improvement to an existing transportation facility.
- ***Legislative Authorization:*** The legislature may want to consider a process that would require legislative authorization of a P3. The authorization may come initially and require that individual projects be authorized or could come at the end of the process once an agreement has been reached by the public and private sector. Another option would be to require that legislative review of a proposed agreement must occur during a legislative session such that legislation could be enacted if necessary.
- ***Future Toll Rates:*** The legislature should develop a framework that allows for predictable toll rate increase over the length of the agreement. This could mean that future toll increases are linked to inflation, vehicle miles traveled, or another metric. Another option would be to specify a rate of return on its investment that the private sector could not exceed over the life of the agreement.
- ***Length of Agreement:*** The legislature should set in place a maximum length on any lease term. At a minimum a lease agreement should not exceed 35 years.
- ***Non-compete Clauses:*** The legislature should indicate that non-compete clauses should not be part of any P3 agreement.
- ***Revenue Sharing:*** The legislature should express the desire that any P3 include annual, ongoing revenue sharing. The private sector and MDOT can determine whether or not such a revenue sharing agreement would also include an upfront lump sum payment in addition to any ongoing annual revenue payments to the State. Furthermore, the State should stipulate that it should receive a portion of any benefit or revenues derived from the private sale or refinancing of any portion of its rights and costs to a facility.
- ***Use of Funds:*** The current Maryland program for P3s does not provide where the proceeds from an agreement will go, how those funds will be used, and if the funds will be reinvested in transportation. Maryland should indicate that any funds received under a P3 are to be used for transportation purposes and/or at a minimum that the funds are to be appropriated by the General Assembly.

- ***Public and Local Government Input or Oversight:*** Toll-based infrastructure development represents a major philosophical shift in transportation finance, which the public often does not realize until programs enter revenue service. To ascertain public acceptance, a process could be developed that would allow for the public to express their opinions and views of a proposed P3 through public hearings or some other means.
- ***Financing Sources:*** The legislature should indicate that no State funds or debt mechanisms may be used as part of the financing for a P3.
- ***Ongoing Reporting and Performance Measures:*** The legislature should require an annual report that indicates the current status of the leased facility, traffic flows, revenue, expenditures, planned maintenance activities, and safety issues. In addition, any agreement should clearly define performance measures that the private entity must adhere to and report on.
- ***Ongoing Maintenance Requirements:*** As part of the agreement, the private entity should also be required to provide the ongoing maintenance for the facility.
- ***Ongoing Contract Oversight:*** Given that P3 contracts are for an extended period there should be a process defined for contract oversight to ensure that the contract parameters are reached and that the interests of the State are continually monitored.
- ***Police Jurisdiction and Laws:*** The legislature should also indicate that the vehicle and other laws of Maryland are applicable to any leased facility. In addition, the legislature should also indicate that State police may patrol the facility and issue citations.
- ***Remedies in Case of Default by Private Sector:*** As with any contract, there exists the potential that the private contractor could default on its contract and/or payments to the State. The legislature should outline a process should this event occur and indicate whether the State will assume ownership and operation of the facility, secure another private sector contract, or pursue other options.

Other issues to consider include the following:

- Eminent Domain;
- property tax exemptions;
- appeal processes; and
- Union and Minority Business Enterprise involvement.

In sum, by creating a comprehensive framework that includes policy parameters, the Executive Branch can solicit any P3 project. Current statutory procedures for notification and review by the legislature could remain in place, so that any proposal would receive legislative oversight or could be strengthened through an authorization process. **DLS recommends that MDOT discuss the future of P3s in the State for financing transportation projects and the oversight role of the legislature. The legislature should consider introducing legislation to establish a statutory framework for P3s. This legislation should address the policy parameters outlined within the issue.**

Recommended Actions

1. Add the following language:

It is the intent of the General Assembly that projects and funding levels appropriated for capital projects, as well as total estimated project costs within the Consolidated Transportation Program (CTP), shall be expended in accordance with the plan approved during the legislative session. The department shall prepare a report to notify the budget committees of the proposed changes in the event the department modifies the program to:

- (1) add a new project to the construction program or development and evaluation program meeting the definition of a “major project” under Section 2-103.1 of the Transportation Article that was not previously contained within a plan reviewed in a prior year by the General Assembly and will result in the need to expend funds in the current budget year; or
- (2) change the scope of a project in the construction program or development and evaluation program meeting the definition of a “major project” under Section 2-103.1 of the Transportation Article that will result in an increase of more than 10 percent or \$1,000,000, whichever is greater, in the total project costs as reviewed by the General Assembly during a prior session.

For each change, the report shall identify the project title, justification for adding the new project or modifying the scope of the existing project, current year funding levels, and the total project cost as approved by the General Assembly during the prior session compared with the proposed current year funding and total project cost estimate resulting from the project addition or change in scope.

Notification of changes in scope shall be made to the General Assembly concurrent with the submission of the draft and final CTP. Notification of new construction project additions, as outlined in paragraph (1) above, shall be made to the General Assembly prior to the expenditure of funds or the submission of any contract for approval to the Board of Public Works.

Explanation: This annual budget bill language requires the department to notify the budget committees of proposed changes to the transportation capital program that will add a new project that was not in the fiscal 2009 through 2014 CTP or will increase a total project’s cost by more than 10% or \$1.0 million, due to a change in scope. Reports are to be submitted with the draft and final versions of the CTP, with each using the 2009 session CTP as the basis for comparison.

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Information Request	Author	Due Date
Capital budget changes	Maryland Department of Transportation	With draft CTP With final CTP

2. Add the following language:

It is the intent of the General Assembly that funds dedicated to the Transportation Trust Fund shall be applied to purposes bearing direct relation to the State transportation program, unless directed otherwise by legislation. To implement this intent for the Maryland Department of Transportation (MDOT) in fiscal 2010, no commitment of funds in excess of \$250,000 may be made nor such an amount may be transferred, by budget amendment or otherwise, for any project or purpose not normally arising in connection with the ordinary ongoing operation of MDOT and not contemplated in the approved budget or the last published Consolidated Transportation Program without 45 days of review and comment by the budget committees.

Explanation: This annual language prohibits MDOT from using transportation funds for uses other than for transportation-related purposes without review and comment by the budget committees.

Information Request	Author	Due Date
Information on non-transportation expenditures exceeding \$250,000	MDOT	As needed

3. Add the following language:

The Maryland Department of Transportation (MDOT) shall not expend funds on any job or position of employment approved in this budget in excess of xxx positions and xxx contractual full-time equivalents paid through special payments payroll (defined as the quotient of the sum of the hours worked by all such employees in the fiscal year divided by 2,080 hours) of the total authorized amount established in the budget for MDOT at any one time during fiscal 2010. The level of contractual full-time equivalents may be exceeded only if MDOT notifies the budget committees of the need and justification for additional contractual personnel due to:

(1) business growth at the Helen Delich Bentley Port of Baltimore or Baltimore/Washington International Thurgood Marshall Airport which demands additional personnel; or

(2) emergency needs that must be met (such as transit security or highway maintenance).

The Secretary shall use the authority under Sections 2-101 and 2-102 of the Transportation Article to implement this provision. However, any authorized job or position to be filled above the regular position ceiling approved by the Board of Public Works shall count against the Rule of 50 imposed by the General Assembly. The establishment of new jobs or positions of employment not authorized in the fiscal 2010 budget shall be subject to Section 7-236 of the State Finance and Procurement Article and the Rule of 50.

Explanation: The General Assembly has established a position ceiling for MDOT each year to limit growth in regular positions and contractual full-time equivalents.

Information Request	Author	Due Date
Additional regular positions and contractual full-time equivalents	MDOT	As needed

4. Add the following language:

Provided that 38 regular positions are abolished in the Maryland Department of Transportation (MDOT) budget and that \$2,765,660 in special funds is reduced effective July 1, 2009. It is the intent of the General Assembly that these positions be reduced from the pool of vacant positions, and that the number of positions in this budget shall be reduced by 38 regular positions and that MDOT may allocate these reductions among the various personnel classifications and the modes as appropriate. In addition, MDOT shall submit a report to the budget committees by June 15, 2009, which details which positions were abolished by Administration, the amount of savings, if each position was vacant, and the impact of the reductions on the operations. The budget committees shall have 45 days to review and comment on the report from the time of submission.

Explanation: The fiscal 2010 budget submitted by the Governor includes the abolition of 1,000 vacant positions, 13 filled positions, and a provision for reductions in personnel costs of \$30.0 million, which may require additional layoffs. As a special fund agency, the Maryland Department of Transportation (MDOT) was spared in these position reductions. However, transportation revenues have declined just as severely as general fund revenues over the past year as the result of the national economic downturn. This language abolishes 38 positions from MDOT based on an analysis of position reductions at other agencies. As of January 1, 2009, MDOT has 384.5 vacant positions, 7 of which have been vacant for over 12 months. This action also reduces MDOT's appropriation by \$2.8 million to reflect the cost savings of abolition of these positions. In addition, MDOT shall provide a report to the budget committees by June 15, 2009, for review that details which positions were reduced, if the positions were vacant, the amount of savings, and the impact of the reductions.

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Information Request	Author	Due Date
Report on vacant position reductions	MDOT	June 15, 2009

5. Add the following language:

Provided that the Maryland Department of Transportation (MDOT) shall submit monthly reports to the budget committees once any additional federal funds from a federal stimulus or economic recovery bill are received and for the duration of those funds being available to the State. The monthly reports shall include information regarding the level of available funding, how much has been awarded and spent, the projects that have received funding by county, and any changes to the special funds associated with a project that might be funded by additional federal aid.

Explanation: As part of the broader economic stimulus or recovery package being discussed on the federal level, federal aid for transportation maybe provided. This language would require MDOT to submit monthly reports to the budget committees for as long as additional federal aid is available. The monthly reports would detail what funds are available, what projects are being funded and their location, and the impact on special funds.

Information Request	Author	Due Date
Monthly report on federal stimulus spending	MDOT	Monthly upon receipt of funds

Updates

Commission to Study Southern Maryland Transportation Needs Releases Final Report

The Commission to Study Southern Maryland Transportation Needs (Commission) was established under Chapter 14 of 2006 and extended through Chapters 27 and 28 of 2008. The 21-member commission was established to study transportation needs in Southern Maryland. It collected data and analyzed existing conditions and trends of the transportation system; hosted a series of public meetings; identified existing and future transportation needs, costs, and challenges; and prepared a Transportation Needs Assessment report. The commission submitted the Southern Maryland Transportation Needs Assessment in June 2008.

Due to its unique geographic location and its status as the fastest growing region in the State, Southern Maryland has distinct transportation needs. Three major highways connect the region to the north (MD 210, US 301/MD 5, and MD 4), but only US 301 connects the region to the south. Commuting times in Southern Maryland are among the highest in the nation. In 2000, the average travel time to work in Southern Maryland was just over 35 minutes compared to a Maryland statewide average of 30 minutes and a national average of 25 minutes. A slightly larger proportion of Southern Maryland commuters drive alone and a lower proportion use public transportation than for the nation as a whole.

Between \$6.0 and \$7.3 billion in transportation system needs were identified in the Southern Maryland Transportation Needs Assessment. Of this total, between \$2.1 and \$2.4 billion was identified as the top regional priorities, and another \$3.3 to \$4.1 billion were identified as county projects of regional importance. MDOT estimated that Southern Maryland can expect to receive between \$640 and \$770 million between 2012 and 2030 in 2008 dollars. This represents about 30% of the top regional priority needs that were identified and about 10% of the total need.

The top priority projects identified by the Needs Assessment include:

- a western bypass of Waldorf and limited upgrade to US 301;
- a second span of the Thomas Johnson Memorial bridge; and
- expanded transit service to Southern Maryland with a focus on developing a high capacity transit service in the MD 5/US 301 corridor.

The commission also recommended that the State and counties continue to promote strategies to reduce traffic congestion and promote strategic funding for transportation improvements in Southern Maryland, including:

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- providing improved transit options through analysis of and investments in high capacity transit options, park and ride facilities, commuter bus routes, and local transit;
- enhancing information available to transit and highway users;
- promoting access management, operational improvements and travel demand strategies to improve the efficiency of the transportation system;
- promote strategic capacity expansions; and
- provide multi-modal trail, bike and pedestrian infrastructure and connectivity where needed.

Realizing that funding may be an issue, the commission reported that new financing mechanisms, such as local option sales taxes, tax increment financing, property taxes, or other sources, may be necessary. In addition, revenue generating strategies, such as tolls on bridges (the Governor Harry W. Nice Memorial Bridge is already a toll facility) or new limited access highway facilities, may be necessary.

**Transportation Trust Fund Forecast
Fiscal 2008-2014
(\$ in Millions)**

	Actual FY 2008	Estimate FY 2009	Estimate FY 2010	Estimate FY 2011	Estimate FY 2012	Estimate FY 2013	Estimate FY 2014
Opening Fund Balance	\$190	\$53	\$100	\$100	\$100	\$100	\$100
Closing Fund Balance	\$53	\$100	\$100	\$100	\$100	\$100	\$100
<u>Net Revenues</u>							
Taxes and Fees	\$1,541	\$1,699	\$1,708	\$1,844	\$1,956	\$2,068	\$2,206
Operating & Misc.	531	512	514	511	519	527	530
Transfers btw. TTF and GF	0	0	0	0	0	0	0
MDTA Transfer	-30	-30	-30	0	0	0	0
Net Revenues Subtotal	2,042	2,181	2,192	2,355	2,475	2,595	2,736
Bonds Sold	227	415	410	165	290	145	60
Bond Premiums	23	7	0	0	0	0	0
Total Revenues	\$2,292	\$2,603	\$2,602	\$2,519	\$2,765	\$2,741	\$2,797
<u>Expenditures</u>							
Debt Service	\$122	\$142	\$160	\$179	\$206	\$223	\$248
Operating Budget	1,488	1,576	1,607	1,653	1,699	1,749	1,803
State Capital	821	837	834	686	860	768	745
Total Expenditures	\$2,431	\$2,555	\$2,601	\$2,519	\$2,765	\$2,741	\$2,797
<u>Debt</u>							
Debt Outstanding	\$1,269	\$1,608	\$1,940	\$2,022	\$2,208	\$2,238	\$2,157
Debt Coverage - Net Income	3.1	2.5	2.3	2.1	2.3	2.4	2.6
Local Highway User Revenues	\$531	\$478	\$479	\$514	\$541	\$565	\$582
<u>Capital Summary</u>							
State Capital	\$821	\$837	\$834	\$686	\$860	\$768	\$745
Net Federal Capital (Cash Flow)	625	689	615	496	402	365	321
Subtotal Capital Expenditures	\$1,446	\$1,526	\$1,449	\$1,182	\$1,262	\$1,133	\$1,066
GARVEE Debt Service	36	40	87	87	87	87	87

GARVEE: Grant Anticipation Revenue Vehicle
 GF: general fund
 MDTA: Maryland Transportation Authority
 TTF: Transportation Trust Fund

Source: Maryland Department of Transportation, January 2009

**Legislative Frameworks and Oversight
of Public-private Partnerships**

Executive Summary

Governments across all levels in the United States recognize a need to increase the level of investment in transportation; however, there is ongoing debate as to how best to fund that investment. Recently, there has been an aversion to raising taxes on the state and federal level to fund this increased level of investment; therefore, there is a growing interest in turning to the private sector to assist in the financing of infrastructure through public-private partnerships (P3s).

Currently there are 25 states that have some form of legislative authorization for P3s. Of the 25 states that have authorized P3s, 5 have some form of legislative approval. In Maryland, the P3 program is established and guided by a patchwork of regulations, Attorney General's opinion, and statute. Certain proposals include limited legislative oversight before a proposal is issued and awarded through the Board of Public Works. Given lack of clarity regarding the legislature's policy stance on P3s or any form of legislative oversight to protect the public interest, the legislature should consider developing a policy stance and a comprehensive framework.

The Department of Legislative Services recommends that should the General Assembly determine that P3s are an appropriate mechanism for enhancing transportation infrastructure, there should then be a comprehensive statutory framework enacted in the Transportation Article that allows for the Maryland Department of Transportation to enter into specified P3s. The framework should also include policy parameters expressing the legislature's intent on specific issues that would be included in a contract such as toll rate increases, revenue sharing, public input, how any proceeds from a P3 should be allocated, and other potential issues. DLS would also recommend that the General Assembly, once it has defined its policy parameters for a P3, consider a legislative authorization process for a P3 project either at the beginning or end of the process, and continue to be notified of specific financial parameters once an agreement is reached.

Introduction

In recent years the federal government and states have been averse to funding transportation infrastructure through tax increases, in part due to rising gasoline costs. Interest in utilizing private sector financing has developed as a way to expand and maintain the nation's transportation infrastructure. These arrangements with the private sector are known as public-private partnerships (P3s) and are a relatively new phenomenon to the United States. They are not simply limited to transportation but can extend to such areas as lotteries or school construction for example.

P3s have a longer history internationally. For example, toll road concessions started in Spain in the 1960s; however, P3 arrangements increased dramatically in the past 25 years. Internationally, transportation finance tends to rely more heavily on private investment compared to the United States as other countries do not have a motor fuel tax dedicated for transportation projects. Based upon the literature, the movement to P3s internationally can also be attributed to a broader expansion of privatization in the early 1990s, and recognition that the public sector could either not afford or could not deliver the necessary transportation infrastructure in a timely manner. The presence of P3s is strong in Europe, particularly in England where the government in the early 1990s went through an effort to privatize government operations to create efficiencies for taxpayers.

According to a Federal Highway Administration report, since 1985 there have been 2,096 P3 public works projects at a cost of \$887.4 billion planned and funded worldwide. Of the total number of projects, a little over 50% have been completed since 2004. Overall, the international experience with P3s has been successful in the sense that the private sector has not defaulted on its contract and citizens have continued to use the roadway.

Purpose

The purpose of this paper is to help the legislature establish policy parameters, based on best practices, **before** P3 proposals are implemented in Maryland. Areas of focus included:

- the importance of legislative oversight and other states experiences;
- Maryland's current process for legislative oversight;
- best practices for a statutory framework;
- policy issues; and
- conclusion and recommendations.

The Importance of Legislative Oversight and Other States Experiences

Little is known regarding the long-term impact and effect of P3s on developing and expanding transportation infrastructure. Whether public entities that have entered into these agreements have sufficiently capitalized on their assets and received a favorable rate of return is still an outstanding question. Ensuring that the public interest is protected is an important policy issue that needs to be contemplated by the State. One manner in which the public interest can be protected is to develop a process whereby an independent body, like the legislature, has the opportunity to review and/or approve a potential P3 agreement, which is a contract that is executed between the Executive Branch and the private entity.

Using the Federal Highway Administration’s database of states that have authorized P3s, only 5 of 25 states that have authorized P3s have a statutory process for legislative approval. Other forms of legislative oversight are reflected in:

- legislative notification requirements;
- the legislature’s role in appointing members to boards which are responsible for approving contracts; or
- authorizations for a certain number of projects/pilot programs.

Legislatures have also included policy directives in their authorizing statutes, such as limits to the length of an agreement and use of excess funds, as a way to influence and exert oversight over P3 agreements. Following is a summary of the research as well as other observations from what other states have included in their statutory frameworks.

Legislative Approval

Several states have developed processes to provide legislative or public input into P3 agreements. **Exhibit 1** highlights the five states that have an explicit statutory legislative approval requirement. Legislative approval can occur before or after an agreement is entered into. For example, California, Indiana, and Tennessee each require an authorization before entering into a P3 or have authorized only a set number of P3 projects. Florida and Delaware also have developed different legislative approval processes depending on whether or not a project has been solicited or unsolicited by the department of transportation. Of note is that California, Florida, and Indiana, each of whom require some form of legislative approval, have each entered into some form of a P3 agreement.

Exhibit 1
States with Legislative Approval Requirements

<u>State</u>	<u>Legislative Process</u>
California	The legislature has 60 days to approve or reject a proposal otherwise the proposal becomes law. Current law stipulates that any approval for a P3 project must be enacted in statute. Also the legislature cannot amend an agreement. Currently there are only 4 projects authorized for P3 agreements.
Delaware	<i>Unsolicited projects</i> must be approved or rejected by the co-chairs of the Joint Bond Bill Committee. <i>Solicited projects</i> can be reviewed and agreements entered into by the Secretary, provided that the project has been specifically authorized by the General Assembly.
Florida	<i>New projects:</i> Legislative approval is evidenced by approval of the project in the department's work program. In addition, if the terms of an agreement exceed 75 years, then it must be specifically approved by the legislature. <i>Lease Agreements:</i> The analysis of any lease should be provided to the Legislative Budget Commission for review and approval prior to awarding a contract on an existing toll facility.
Indiana	After August 1, 2006, a P3 agreement for a toll road requires passage of an authorizing statute.
Tennessee	Current law authorizes 2 pilot projects for tollways. If the department tries to enter into an agreement not within the pilot program then the General Assembly has to authorize the project through annual funding recommendations.

Source: Department of Legislative Services

Legislative Oversight

There are other ways that legislatures can have oversight of P3 agreements. Following are four examples:

Notification and Information to Legislature: Several states do not require legislative approval of a P3 agreement; however, statute requires notification to specified legislative committees, similar to the process Maryland currently has in place. For example, Georgia requires that a report with a proposed letter of intent to negotiate be provided to the House and Senate Transportation Committee; however, their approval is not required. Utah requires reports to the legislature on the status and progress of a toll way subject to a P3.

Authorizations/Pilot Programs: Four states have limited the number of projects that can be completed either through the use of a pilot program or by simply authorizing a specific number of projects. An authorization for a project can imply a tacit approval from the legislature of agreements that may eventually be reached.

Appointed Members to Transportation Commissions: While not a direct form of oversight, several states require state transportation commissions, with some members appointed by the legislature, to approve P3 agreements. For example, Alaska has a transportation commission that must approve a P3 agreement. Its members are appointed by the legislature.

Policy Decisions Defined in Statute: In some cases states may not have required legislative approval or notification of a P3; however, the authorizing statute indicated specific policy parameters for a P3 agreement. For example, Colorado has limited concessions to 99 years, Indiana has limited concessions to 75 years, Delaware and Texas have limited toll concessions to no more than 50 years, and Florida has set a limit of 30 years.

Other states have also defined in statute how future toll increases are to be calculated or considered. Several states used broad language that indicated the agreement should allow for a “reasonable” rate of return for the private entity through toll increases. Other states were more explicit in defining future toll increases. For example, Florida requires a revenue sharing agreement and that future toll increases shall be indexed to the consumer price index or some other inflationary measure.

In some states the authorization for P3s was quite simplistic and in other states the authorization was quite comprehensive. Typically the most comprehensive statutory authorizations came from states like Indiana, Texas, and California which have entered into P3 agreements. These states appear to have developed their framework in response to a specific proposed project rather than proactively establishing broad policy parameters.

Maryland’s Current Process for Legislative Oversight

Maryland’s current P3 framework is based upon an Attorney General’s opinion from 1996 and Maryland Transportation Authority (MDTA) regulations. Current statute provides that the legislature is to be notified 45 days before a solicitation is issued and before a contract is approved by the Board of Public Works with specified financial information to be included. This provision in statute does not represent a broad statutory framework for P3s or a clear process for legislative oversight and approval. MDTA regulations for the P3 program include provisions for performance milestones and require that the maximum rate of return to the private entity be negotiated as part of the agreement.

During the 2008 session, House Bill 1238 (failed) would have defined P3s and established stronger legislative oversight of any proposals through either the MDTA or MDOT.

Best Practices for a Statutory Framework

Based upon the research of other states' legislative oversight of P3s as well as literature on P3s, there is an evolving statutory best practices framework. Following is a summary of some of the major points:

- ***Definition of a P3 Project:*** The first step in any statutory framework is to define what a highway P3 agreement is and what projects fall under the P3 umbrella. Other states have developed comprehensive and useful definitions of P3 agreements and the type of projects involved.
- ***Rate Setting Authority:*** Several states have attempted to address the issue of how future toll rates are set and how much they can increase over time. Some states have completely turned rate setting authority over to the private entity while others have developed a process where a commission or the state would have approval of a toll rate increase. In terms of how much the toll rate can increase some states have linked future toll increases to inflation or have indicated that toll rates should allow for a “reasonable rate of return” for the private sector.
- ***Length of Agreement:*** Rather than allowing the department and the private entity to determine the length of any long-term lease/concession agreement, the legislature can define in statute the maximum length of an agreement it believes is appropriate. The literature has indicated that shorter-term agreements (50 years and less) are better for the public interest. Several states have defined the maximum term of a lease as anywhere from 33 to 90 years.
- ***Non-competing Clauses:*** Several states have inserted statements prohibiting the use of non-compete clauses. In an effort to maximize the use and profit of a leased facility, the private sector has in the past negotiated non-compete clauses. This means that the state or local entity is not allowed to develop or even enhance roadways in the vicinity of the leased roadway. As a result, the feeder transportation network to the leased facility becomes antiquated and does not serve the best interests of the public.
- ***Revenue Sharing:*** A majority of the P3 leasing agreements that have been completed in the U.S. have involved an upfront lump sum payment. Another option that is increasingly being recommended is to forgo the large upfront payment for a revenue sharing arrangement that would provide for an ongoing revenue stream to the state over the term of the agreement. This arrangement would compel the public and private sectors to work together to maximize revenue over the length of the agreement while also protecting the public's interest. Another option is a hybrid of the first two where there is a smaller upfront lump-sum payment as well as ongoing revenue sharing.
- ***Use of Funds:*** Of the 25 states that have authorized P3s, 11 of those states have clearly indicated that any revenue derived from a P3 is to be used for transportation related purposes.

- ***Solicited and Unsolicited Projects:*** An unsolicited project policy opens the process to allow the private sector to submit ideas for potential P3 agreements. The benefit to opening the process is to identify opportunities that may not otherwise have been considered. The downside to opening the process is that states may become overwhelmed by solicitations, many of which may not be viable or complement the state’s transportation plan.
- ***Local Government and Public Input:*** A small number of states that have authorized P3s have outlined a process for local government involvement which ranges from the opportunity to comment on an agreement to veto authority. In the case of Delaware, the relevant Metropolitan Planning Organization has 45 days to approve the project once approved by the Transportation Commissioner. In Minnesota, “a governing body of a county or municipality through which a facility passes may veto the project within 30 days of approval by the commissioner.” In addition, several states provided that local governments are allowed the opportunity to provide comments on a project or agreement. Other states also have developed a hearing process where the public would have the opportunity to respond to a proposed agreement. In some states there were also independent bodies that had to review a proposal before any final agreement could be reached.
- ***Financing Sources:*** The financing arrangements for P3 agreements are sophisticated and complex. In many cases these deals may require some form of state investment. Other states have either limited the types of state financing for a P3 agreement or prohibited state involvement. Should the private sector acquire the financing necessary for a deal through the private markets, this is a likely indication that the agreement does not make financial sense for either the private entity or the state.

There are a number of other elements that could be considered as part of a comprehensive framework. These could include the following:

- Eminent Domain;
- property tax exemptions;
- police jurisdiction;
- ongoing contract oversight;
- remedies in case of default by the private sector;
- appeal process;
- Union and Minority Business Enterprise involvement;
- ongoing maintenance requirements; and
- legislative reporting mechanisms

Policy Issues

While MDOT has indicated that there are no plans currently underway to move ahead with a P3, it is a financing mechanism that is likely to be used in the future given current and future revenue constraints. In anticipation of the future use of a P3, there are several issues that the General Assembly should consider:

- ***Need for Statewide Policy:*** The General Assembly has not clearly indicated its position regarding the role of P3s as an option for transportation finance. Currently, P3s are allowed due to regulations that were reviewed by a joint legislative committee, an opinion of the Attorney General from 1996, and a statutory provision regarding reporting requirements. Combined, these individual components do not represent a clear expression of intent from the entire legislative body that P3s are an appropriate financing tool for transportation infrastructure in the State. Given the recent introduction of P3s into the U.S., their complexity, and long-term uncertainty, the legislature should indicate its policy preference clearly in statute.
- ***Need for Comprehensive Framework:*** Should the legislature determine that P3s are appropriate mechanisms for financing and expanding the transportation network, there should also be a statutory framework. Of the 25 states reviewed, Maryland was the only State that did not specifically provide a statutory authorization for P3 agreements. The benefit of a statutory framework is that there is no longer any ambiguity regarding the legislature's position on P3s and MDOT and MDTA have clarity prior to moving ahead with a solicitation. A statutory framework should also be comprehensive in nature to adequately address the ancillary issues that arise with a P3.
- ***Establish Parameters Before Agreement Is Reached:*** In doing research on legislative oversight of P3s, it was noted that the states that had the most comprehensive statutory frameworks for P3 agreements were states that developed their framework in response to a proposed P3 agreement. States that provided for a statutory authorization for P3s prior to an agreement being reached conversely often did not include policy parameters or consider specific policy issues in the authorizations. By not indicating policy parameters prior to an agreement being reached, legislatures defer to the Executive Branch to protect the interests of the state and taxpayers. The legislature in its role as a check and balance in government, can exercise legislative oversight of P3s and protect the interest of the state and taxpayers by establishing the parameters for a P3 agreement before an agreement is reached. Legislative parameters could include direction regarding the length of a P3 agreement, the extent of future toll increases, expectations for the ongoing operation of a facility, or a desire for a revenue sharing arrangement rather than a lump sum payment.

- **Legislative Authorization:** As was noted earlier, of the 25 states that have a statutory P3 authorization, 5 states have some form of legislative approval. Legislative approval or authorization of a P3 could take on several forms. For example, the legislature could authorize a specific project or pilot project before an agreement is reached. The alternative to an authorization for a project before an agreement is reached would be to require legislative approval once an agreement has been reached. This type of approval allows the legislature to fully understand the financial and operational implications of an agreement. Legislature authorization of a project can occur at the beginning of the process before a solicitation for a project is issued, once an agreement is reached, or at both the beginning and the end of the process. Should the legislature determine that a legislative authorization process is warranted, when that authorization should occur is also an important consideration. A legislative authorization process ensures that the legislature has input into a specific project or agreement.
- **Responsibility for the P3 Program:** Maryland's P3 program is operated by MDTA. MDOT modes such as the Maryland Port or Transit Administrations may also become involved in a P3 arrangement; however, MDTA is the administrative agency and liaison for the private sector. MDTA is responsible for the toll roads, bridges, and tunnels in the State and not necessarily other transportation facilities. Given that MDTA has a singular focus as opposed to MDOT which has oversight over all modes, and to a great extent the State's transportation network, having MDOT be responsible for the program would provide for a greater degree of oversight and continuity. In addition, having MDOT oversee a program provides a degree of certainty that a P3 agreement will conform to the State's long range transportation plan.
- **Solicited versus Unsolicited Proposals:** In Maryland, the MDTA can only accept solicited proposals for highways. The benefit of only allowing for solicited proposals to be considered is that the State can define which projects to pursue under this financing model. For the other modes of transportation in the State, MDTA can receive unsolicited proposals for P3 projects. The potential exists that MDTA could receive project proposals that make little sense for the State to pursue and are not part of the State's long-range transportation plan. However, the benefit of unsolicited proposals is that a project may be suggested that is not part of the State's plan and does make sense.
- **Limiting Future P3 Agreements:** P3 agreements typically involve two types of transactions, the leasing of an existing facility (e.g., the Bay Bridge) or constructing a new facility with the private entity retaining the rights to collect revenue on that facility for the length of the contract. For Maryland, the leasing of an existing MDTA facility is complicated due to the trust agreement with MDTA bond holders. It is impractical for the revenue from one of the facilities to be removed from MDTA's revenue stream unless MDTA retired or defeased its debt. To prevent any issues with the bond holders, one option would be to limit future P3 agreements to new construction. This policy would also provide certainty that future toll rates on existing facilities would be managed by the State rather than a private entity motivated by profit.

Conclusions and Recommendations

As the demands for transportation infrastructure continue and the ability to pay for those needs is insufficient, P3s may be one option that the State may want to consider as a way to expand and enhance the transportation network. Should the General Assembly determine this is an appropriate financing mechanism, the Department of Legislative Services would recommend that the General Assembly develop and enact a broad statutory framework for MDOT to enter into P3 agreements. This framework should allow the State to utilize this financing mechanism while protecting the interests of the State and the taxpayer. As such, legislation should establish a stand alone section in the Transportation Article, making MDOT responsible for administering and overseeing any public private partnership.

This model would give MDOT broad discretion in soliciting and negotiating agreements with the private sector, within the context of broad policy parameters established in law. The executive would have flexibility, the legislature would not need to micromanage projects, the private sector would have clarity regarding State policy, and the taxpayer interests would be protected. Following are the major policy objectives the General Assembly should define initially and in doing so provide legislative oversight of any future agreement:

- ***Limit P3 Projects to State Solicited Projects or Specific Projects:*** By only allowing for solicited projects, MDOT will not be overwhelmed by project proposals from the private sector that may be superfluous to the needs of the State. Another alternative would be for the legislature to specify that P3 arrangements may only be used for a certain type of transportation facility (e.g., toll facilities) or to a specific project.
- ***Limit Proposals to New Toll Facilities:*** Currently toll facilities owned and operated by the Maryland Transportation Authority should not be part of a P3 agreement; only new facilities should involve P3s. In precluding existing facilities from a P3 agreement, the legislature can avoid issues with MDTA's bond holders and Trust Agreement involving an existing facilities' revenue stream to the pool of revenues used to pay for debt service. Another concern with leasing existing facilities for an extended period of time is that the State could underestimate the value of the asset and as a result not fully capture all available equity from the facility. From a policy perspective, the need for P3s is driven by the need to expand the existing transportation infrastructure and a lack of revenues; therefore, P3s should focus on expanding the network through new facilities and not rely on existing facilities for the financing of an expanded transportation network.
- ***Definition of an Agreement:*** The legislature should exempt transit oriented development projects from any P3 framework and focus on large projects. Any definition should at least include the leasing or construction of a new transportation facility, or significant capital improvement to an existing facility and perhaps include a dollar threshold.
- ***Legislative Authorization:*** The legislature may want to consider a process that would require legislative authorization of a P3. The authorization may come initially and require that

individual projects be authorized or could come at the end of the process once an agreement has been reached by the public and private sector. Another option would be to require that legislative review of a proposed agreement must occur during a legislative session such that legislation could be enacted if necessary.

- ***Future Toll Rates:*** The legislature should develop a framework that allows for predictable toll rate increase over the length of the agreement. This could mean that future toll increases are linked to inflation, vehicle miles traveled, or another metric. There should also be a process whereby the private sector would report to the legislature on toll revenues and if the private sector's revenues exceed a certain threshold, toll rate increases would be suspended in that year. Another option to limit future toll increases would be to specify a rate of return on its investment that the private sector could not exceed over the life of the agreement.
- ***Length of Agreement:*** The legislature should set in place a maximum length on any lease term. At a minimum a lease agreement should not exceed 35 years.
- ***Non-compete Clauses:*** The legislature should indicate that non-compete clauses should not be part of any P3 agreement.
- ***Revenue Sharing:*** The legislature should express the desire that any P3 include annual, ongoing revenue sharing. The private sector and MDOT can determine whether or not such a revenue sharing agreement would also include an upfront lump sum payment in addition to any ongoing annual revenue payments to the State. Furthermore, the State should stipulate that it should receive a portion of any benefit or revenues derived from the private sale or refinancing of any portion of its rights and costs to a facility.
- ***Use of Funds:*** The current Maryland program for P3s does not provide where the proceeds from an agreement will go, how those funds will be used, and if the funds will be reinvested in transportation. Maryland should indicate that any funds received under a P3 are to be used for transportation purposes and/or at a minimum that the funds are to be appropriated by the General Assembly. The General Assembly may also want to consider creating a separate fund from which the proceeds are deposited and can only be withdrawn through legislation that designates specifically how the funds are to be allocated and appropriated in future fiscal years.
- ***Public and Local Government Input or Oversight:*** Toll-based infrastructure development represents a major philosophical shift in transportation finance, which the public often does not realize until programs enter revenue service. To ascertain public acceptance, a process could be developed that would allow for the public to express their opinions and views of a proposed P3 through public hearings or some other means. Another alternative would be to appoint an independent body with public membership to review proposed P3 arrangements. The legislature could also develop a process that allows for local governments to participate in the decisionmaking process, either through a review and comment period, or approval. This may be as simple as indicating that a local metropolitan planning organization (MPO)

must approve a proposed agreement or that a proposed agreement must be part of a MPO's long-range plan.

- ***Financing Sources:*** The legislature should indicate that no State funds or debt mechanisms may be used as part of the financing for a P3.
- ***Ongoing Reporting and Performance Measures:*** The legislature should require an annual report that indicates the current status of the leased facility, traffic flows, revenue, expenditures, planned maintenance activities, and safety issues. In addition, any agreement should clearly define performance measures that the private entity must adhere to and report on.
- ***Ongoing Maintenance Requirements:*** As part of the agreement, the private entity should also be required to provide the ongoing maintenance for the facility. This should include maintaining the facility at least at existing State standards with the State Highway Administration responsible for monitoring and suggesting maintenance projects. As part of the ongoing reporting requirements, there should be annual updates to the legislature as to the current state of the facility and what maintenance efforts are underway and being planned.
- ***Ongoing Contract Oversight:*** Given that P3 contracts are for an extended period there should be a process defined for contract oversight to ensure that the contract parameters are reached and that the interests of the State are continually monitored. There should also be a process identified to address any conflicts between the State and the private entity and how those conflicts are to be addressed.
- ***Police Jurisdiction and Laws:*** The legislature should also indicate that the vehicle and other laws of Maryland are applicable to any leased facility. In addition, the legislature should also indicate that State police may patrol the facility and issue citations.
- ***Remedies in Case of Default by Private Sector:*** As with any contract, there exists the potential that the private contractor could default on its contract and/or payments to the State. The legislature should outline a process should this event occur and indicate whether the State will assume ownership and operation of the facility, secure another private sector contract, or pursue other options.
- Other issues to consider include the following:
 - Eminent Domain;
 - property tax exemptions;
 - appeal processes; and
 - Union and Minority Business Enterprise involvement.

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In sum, by creating a comprehensive framework that includes policy parameters, the Executive Branch can solicit any P3 project. Current statutory procedures for notification and review by the legislature could remain in place, so that any proposal would receive legislative oversight or could be strengthened through an authorization process.