

Presentation to

Government Oversight Committee and
Joint Standing Committee on Transportation

related to
Maine Turnpike Authority

Meghan B. Burke
Mintz Levin

March 11, 2011

Topics To Be Covered

- Introduction – *background; role of outside bond counsel*
- Brief Overview of MTA, its Bonds and Bond Resolutions
- Details under Enabling Act and Bond Resolution Regarding Reserve Maintenance Fund and payment of Operating Expenses
- Specifically Address Questions Raised by Director of OPEGA

Introduction

- Mintz Levin has served as MTA's outside bond counsel since 1990
- Large, full service firm with regionally and nationally recognized public finance practice
- Meghan Burke has been Mintz Levin partner in charge of MTA bond counsel work since 2007
 - Over 20 years bond counsel experience
 - Vast experience with turnpike authorities and other revenue bonds
 - Nationally recognized (*served on NABL Board of Directors; Best Lawyers in America in Public Finance for last three years*)

Role of Outside Bond Counsel

- With input from other bond advisors, drafted Bond Resolutions and other operative bond documents
- Deliver opinion regarding validity and tax-exemption of bonds
Compliance with enabling act and other applicable law
- Render securities law advice in connection with the issuance of bonds
- Provide general guidance regarding compliance with applicable law and Bond Resolutions
- Different role than bond trustee, consulting engineer, traffic consultant, financial advisor and independent auditor

Overview of MTA, its Bonds and Bond Resolutions

- MTA is a political subdivision of the State of Maine; a body politic and corporate *Creature of the State of Maine, but different than State Agencies*
- Governed by Maine Constitution and enabling act (23 MRSA §§1961-1983)
- Two bond resolutions:
 - 1991 General Turnpike Revenue Bond Resolution secures ≈\$380mm principal through 2038*
 - 1996 General Special Obligation Bond Resolution secures ≈\$17mm principal through 2018*
- Actions informed by bond ratings, rating agency criteria
 - MTA (Aa3/A+/AA-) among highest rated toll authorities in the U.S.*
 - Higher ratings lower costs of capital:*
 - According to BofA Merrill Lynch, the incremental cost to fund \$55 million of projects with bonds issued today with all single A ratings would be \$3.5 million
- Also guided by MTA Financial Planning Goals
 - OPEGA report highlights MTA's strong planning process*

Relevant Enabling Act Provisions: Reserve Maintenance Fund and Operating Expenses

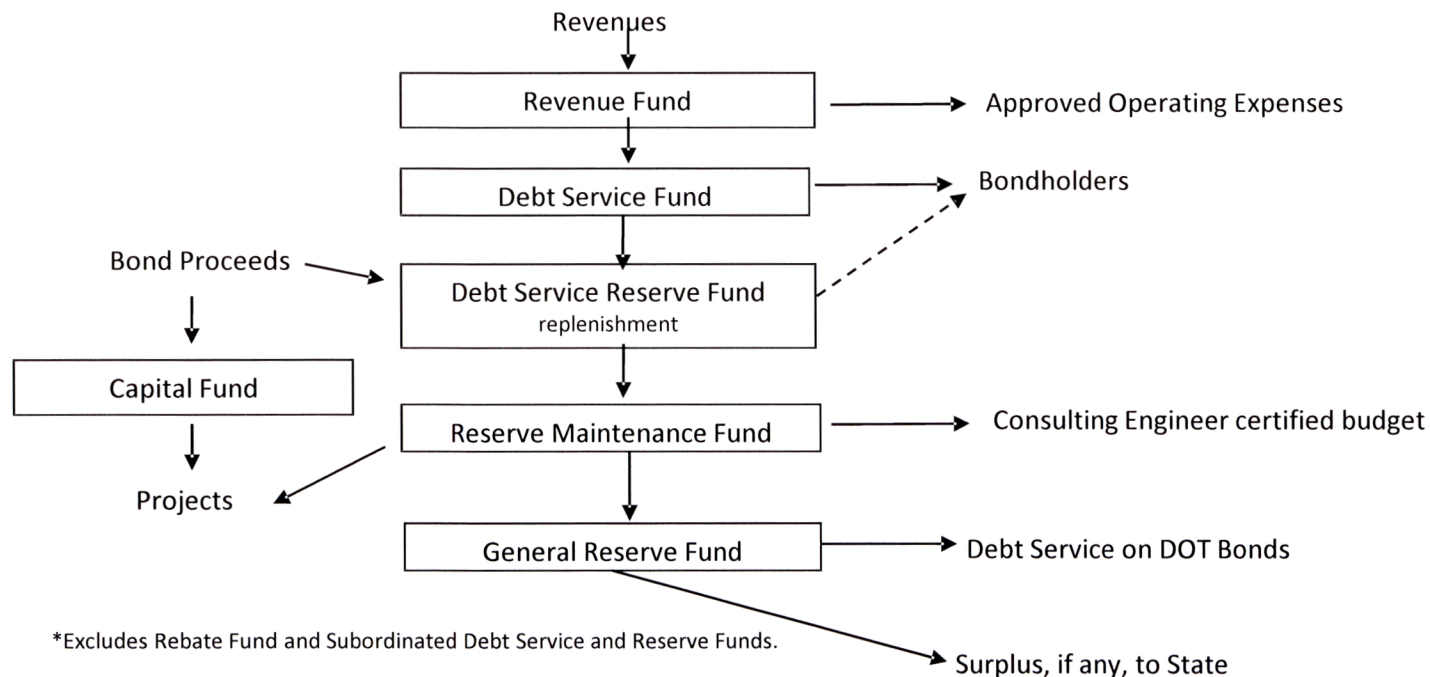
- MTA shall submit annually for legislative approval “a budget for the operating expenses of the authority” §1961(6)
- MTA “may only pay operating expenses in accordance with allocations approved by the Legislature or as necessary to satisfy the requirements of [the bond resolutions]” §1961(6)
- Operating surplus, if any, to DOT §1961(2) and (6)
- Operating surplus means “total annual operating revenues” of MTA, net of operating expenses, reserves for capital expenditure and amounts required by the bond resolutions, including debt service §1964(6-A)

Relevant Enabling Act Provisions: Reserve Maintenance Fund and Operating Expenses (cont.)

- Amounts payable on special obligation bonds issued to fund DOT projects capped at \$4.7mm annually and subordinated to payment of operating expenses and other requirements of bond resolutions §1965(O-1)
- MTA annually “shall present to...the Legislature for informational purposes a statement of the revenues necessary for capital expenditures and reserves, and to meet the requirements of [the bond resolutions] during that calendar year, including debt service and the maintenance of reserves for debt service and reserve maintenance” §1961(6)
- Similarly, expenditures from proceeds of bonds are not subject to specific legislative approval but are subject to debt cap, currently \$486 million of outstanding turnpike revenue bonds (excluding refundings) §1968(1)

Relevant Bond Resolution Provisions: Reserve Maintenance Fund and Operating Expenses

- Bond Resolution is consistent with, but more specific than, enabling act
- Includes flow of funds §503



*Excludes Rebate Fund and Subordinated Debt Service and Reserve Funds.

Relevant Bond Resolution Provisions: Reserve Maintenance Fund and Operating Expenses (cont.)

- Operating surplus, if any, and debt service on special obligation bonds paid in accordance with enabling act through Department of Transportation Provision Account of General Reserve Fund §509(c)
- Reserve Maintenance Fund funded to “Required Reserve Maintenance Deposit” established annually by Consulting Engineer §§504(b)(iv), 101 (definition of “Required Reserve Maintenance Fund”), 803, 806
- Reserve Maintenance Fund spent on:
 - Reserve Maintenance Projects
 - Costs of Turnpike Projects*
 - Insurance premiums
 - Replenishment of Debt Service Reserve Fund, if necessary
 - Emergency expenditures, if shortfall in Revenue Fund and General Reserve Fund §508

*Costs of Turnpike Projects also funded by proceeds of bonds through Capital Fund §503

Relevant Bond Resolution Provisions: Reserve Maintenance Fund and Operating Expenses (cont.)

- Reserve Maintenance Fund expended each year (unlike Debt Service Reserve Fund)
- Funding of Reserve Maintenance Fund is part of coverage calculation for toll covenant and other financial covenants §§101,204,205,801,802
- Specifically, “Revenues” less “Operating Expenses” shall equal :
 - At least 120% of Debt Service*
 - At least 100% of the sum of Debt Service, Required Reserve Maintenance Deposit, Required Debt Service Reserve Deposit and any other Required Deposit §101*

Relevant Bond Resolution Provisions: Reserve Maintenance Fund and Operating Expenses (cont.)

- Operating Expenses are paid in accordance with Annual Budget, as detailed in the Bond Resolution §803
 - MTA adopts preliminary budget by October 20 and final budget by December 20
 - Amendments require approval of consulting engineer
- MTA covenants to make expenditures only in accordance with permitted uses under Bond Resolution and that Operating Expenses will not exceed what is “reasonable and necessary” §803(e)
- All obligations for maintenance, repair and operation are paid from a combination of the Revenue Fund, the Reserve Maintenance Fund and the General Reserve Fund §803(e)
- In addition, “nothing [in §803] shall limit the amount which the Authority may expend for Operating Expenses in any Fiscal Year provided any amounts in excess of the Annual Budget shall be received by the Authority from [sources other than Revenues”] §803(e)

Responses to Questions Raised by OPEGA Director

Question 9 – Comments on Report of OPEGA’s Bond Consultant

- Accurately describes terms of General Turnpike Revenue Bond Resolution, including descriptions of Funds and other covenants and uses and transfer of funds to the State
- Good description of the Contract Clause and potential impairment of contract claims upon legislative action modifying Bond Resolution and adversely impacting the MTA and its bondholders, particularly with respect to specific Maine case that established a more stringent standard
“would prohibit virtually any impairment, regardless of how material”

Question 1 –

Intent of Reserve Maintenance Fund and Permitted Uses

- Purpose of Reserve Maintenance Fund is to promote safety and proper upkeep of MTA assets to ensure willingness of users of turnpike to pay tolls, so bondholders are repaid
- Conduit for expenditure of cash (“pay as you go”) for such upkeep and improvements of MTA assets (as opposed to bond proceeds)
- Positive to bondholders that minimum level of funding is determined by consulting engineer to ensure adequate investment
- Funding is so important that it is part of coverage covenants
- Broad permitted uses of the Fund is consistent with its purposes and virtually identical to what bond proceeds may be used for

Question 2 – “Reasonable and Necessary” Operating Expenses

- The purpose of Section 803 is to help ensure that the minimal amount is drawn from the Revenue Fund ahead of debt service to allow MTA to operate and maintain its assets, so that the enterprise may produce revenues sufficient to repay the debt (as discussed, §803 also allows other expenses to be paid from different sources)
- This section works in concert with the coverage requirements
- Amounts paid from the Revenue Fund are netted against Revenues in the numerator of the coverage calculation
- Amounts paid from the Reserve Maintenance Fund are included in the denominator of the 100% coverage test (Net Revenue must be at least 100% of Debt Service and reserve deposits, including the Reserve Maintenance Fund)
- The determination of whether an expense from the Revenue Fund for Operating Expenses is “reasonable and necessary” is in the reasonable determination of MTA (not an independent third party, such as the consulting engineer)

Question 3 – Bond Counsel Role Regarding Use of Reserve Maintenance Fund

- Consistent with the general function of bond counsel on any bond issuance, outside bond counsel does not specifically determine, review or approve any expenses budgeted or paid by the MTA, including from the Reserve Maintenance Fund
- As needed, bond counsel provides interpretation of the Bond Resolution, including with respect to the funding or use of the Reserve Maintenance Fund

Question 4 – Best Practices/Standards for Use of Reserve Maintenance Fund

- The intent of the Reserve Maintenance Fund is that it be spent; it is not a “reserve” in the same way as the Debt Service Reserve Fund
- In contrast to the Reserve Maintenance Fund, use of the Debt Service Reserve Fund, other than at final amortization of bonds, would cause great alarm, trigger disclosure obligations under federal securities law and likely cause a downgrade or possibly a default on the bonds
- The Reserve Maintenance Fund is a conduit for “pay as you go” expenditures, to avoid the need for additional borrowing
- The Reserve Maintenance Fund and the General Reserve Fund and other funds of this type are typically used to fund expenses that are not payable at the top line, before the payment of debt service
- Use of such type of is common for independent toll authorities (e.g., NJ Turnpike “Maintenance Reserve Fund,” NY Thruway “Reserve Maintenance Payments,” “PA Turnpike “Reserve Maintenance Fund,” MassPike “Capital Reinvestment Fund”)

Question 5 – Paying “Perennial Expenditures” from Reserve Maintenance Fund

- Permitted uses under the Bond Resolution of the Reserve Maintenance Fund are very broad and include the expenditures labeled “Perennial” by MTA to the extent that they are necessary and incidental to MTA projects and planning
- Payment of such expenses, either from a fund like the Reserve Maintenance Fund or from other “bottom bucket” funds, is not atypical of other independent tolling authorities

Questions 6 and 7 – Paying Certain Other Expenditures from Reserve Maintenance Fund

- It is not part of bond counsel’s scope of services to review the specific expenditures funded from the Reserve Maintenance Fund and detailed in the informational report provided to the Joint Committee on Transportation as part of the annual budget review
- In reviewing such expenses, including “employee recognition, sponsorships and donations, lobbying/legislative activity, travel and meals and support for other State efforts,” they are permitted and, therefore, appropriate, to be paid by the Reserve Maintenance Fund under the terms of the Bond Resolution and the enabling act to the extent they are necessary and incidental to MTA projects and planning and are reasonable and necessary in the determination of MTA

Question 8 – Impact of Legislative Oversight of or Mandates with respect to the Reserve Maintenance Fund

- Unusual for independent toll authorities to have any portion of their budgets **approved** by the legislature or the executive branch (reporting universally required)
- MTA provides details about its expenses paid from the Reserve Maintenance Fund to the Joint Transportation Committee for informational purposes as part of the budget process; elevating this review to “approval,” to the extent it interferes with MTA’s ability to fund necessary projects and proper safety and maintenance of the turnpike, could be problematic
- Mandating that such expenditures be paid from the Revenue Fund prior to debt service could dramatically, adversely impact coverage calculations

Could cause the doubling of funding of Debt Service Reserve Fund (if coverage is below 200% of debt service)

Possibly cause failure to meet 120% coverage test without raising tolls or cutting expenses

Thank you