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May 7, 2012

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

RE: *Senate Bill 153*

Dear Governor O'Malley:

We have reviewed for constitutionality and legal sufficiency Senate Bill 153, "Creation of State Debt – Qualified Zone Academy Bonds." In our view, the timing of SB 153 raises questions as to its validity in the authorization of State debt because it was passed by the General Assembly before the Budget Bill was enacted. Accordingly, we recommend that you veto SB 153 and that similar legislation be introduced and passed during the forthcoming Special Session of the General Assembly.

Senate Bill 153 would authorize the creation of State debt in the amount of \$15,324,000, the proceeds to be used as grants to the Interagency Committee on School Construction and the Maryland State Department of Education for certain development or improvement purposes authorized under the federal Qualified Zone Academy Bond ("QZAB") program. Maryland's federal allocation of \$15,324,000 in QZABs must be issued before the end of calendar year 2012, so it is essential that a State QZAB authorization be enacted this year.

Senate Bill 153 is a supplementary appropriation bill, governed by the Executive Budget Amendment of the Maryland Constitution, which provides, in part:

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Either House may consider other appropriations but both Houses shall not finally act upon such appropriations until after the Budget Bill has been finally acted upon by both Houses.

Md. Const., Art. III, §52(8). Senate Bill 153 was passed by the General Assembly on March 29, 2012. The Budget Bill, SB 150, was not passed until April 9, 2012. This, then, raises a question of SB 153's validity in the face of the Constitutional requirement cited above. Aside from the timing, there is no suggestion that SB 153 did not meet all other requirements for passage or is in any other respect of doubtful constitutionality.

The Executive Budget Amendment expressly provides a key distinction between supplementary appropriation bills generally and certain capital budget bills. It provides:

In the event of any inconsistency between any of the provisions of this Section and any of the other provisions of the Constitution, the provisions of this Section shall prevail. *But nothing herein shall in any manner affect the provisions of Section 34 of Article 3 of the Constitution or of any laws heretofore or hereafter passed in pursuance thereof*, or be construed as preventing the Governor from calling extraordinary sessions of the General Assembly, as provided by Section 16 of Article 2, or as preventing the General Assembly at such extraordinary sessions from considering any emergency appropriation or appropriations.

Md. Const., Art. III, §52(14) (emphasis added). Article III, §34 governs the issuance of State debt, the collection of taxes sufficient to pay interest on such debt, repayment and other restrictions on the sale of bonds and use of their proceeds. While the Executive Budget Amendment, by its own terms, prevails over any other Constitutional provision inconsistent with it, the second sentence of §52(14) makes clear that the State's debt obligations under §34 shall not be affected by the provisions of the Executive Budget Amendment.

Because SB 153 has not taken effect and no debt has been issued pursuant to its authorization, the provision of §52(14) cited above does not obviate the infirmity with regard to SB 153. It is of significance, however, with regard to two bills from prior years. During our review of SB 153, we became aware that similar timing circumstances in the passage of QZAB authorization bills occurred in both 2010 and 2011, with SB 202 (Chapter 523, Acts of 2010) and HB 86 (Chapter 96, Acts of 2011), respectively, having been enacted prior to the respective year's Budget Bill. Because of provisions contained in Article III, §34 and the State's obligations with respect to bonds issued under what

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appeared at the time to be proper authority, it is our opinion that both the 2010 and 2011 QZAB bills are valid authorizations of State debt, despite the timing anomalies. To remove any doubt, however, we recommend that the new QZAB bill to be introduced at the Special Session include a provision to ratify those two prior authorizations.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/BAK/kk

cc: The Honorable John P. McDonough
Joseph Bryce
Karl Aro