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May 9, 2013

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

**Re: *House Bill 101 "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2013, and the Maryland Consolidated Capital Bond Loans of 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012"***

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 101, "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2013, and the Maryland Consolidated Capital Bond Loans of 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012." In reviewing the bill, we have noted several legal and technical issues that we discuss below.

Section 19 of the bill amends current law to alter, from 90 to 45 the number of days before seeking approval from the Board of Public Works ("BPW") that the Maryland Stadium Authority ("MSA") must provide plans for certain projects to the General Assembly. Section 20 amends current law by repealing the requirement that school construction funds that have not been contracted for within 2 years of approval of the project revert to a certain fund and authorizing the funds to be available or reserved for certain eligible projects. Maryland Constitution Article III, § 29 mandates that all legislation "embrace but one subject." The Maryland Consolidated Capital Bond Loan of 2013 ("Capital Budget bill" or "MCCBL"), as a supplementary appropriations bill, is subject to an even more stringent single-subject requirement under Md. Const. Art. III, § 52(8), which requires supplementary appropriations bills to be limited to some "single work, object or purpose." Accordingly, this Office has consistently cautioned against including provisions in the Capital Budget bill not directly related to the issuance of State general obligation bonds. We have also said that inclusion of provisions in a

supplementary appropriation bill that are not items of appropriation or related to items of appropriation and thus, not subject to the Governor's veto, may be subject to challenge for that very reason. A legal challenge to the inclusion of provisions in the Capital Budget bill would have particularly serious consequences.<sup>1</sup> Because Sections 19 and 20 include amendments to the Annotated Code of Maryland, we must reiterate our caution relating to their inclusion. Nonetheless, an argument can be made that Section 19 relates to the MSA, a grant recipient under the bill, and Section 20 merely codifies a condition placed on school construction funds, found earlier in the bill. Thus, in our view, these provisions are not clearly unconstitutional.

On page 9, in line 16, a total of \$8,109,000 is authorized for the Aging Schools Program. The allocations for each county are specified in Education Article, § 5-206(f)(2)(ii) and result in \$10 of unallocated authorization. So as to not perpetuate this inconsistency, this may be corrected either by amending the allocation in § 5-206(f)(2)(ii) or authorizing \$10 less in next year's Capital Budget.

On page 66, in lines 14-31, relating to the Maryland Environmental Service ("MES"), there is an error in the amount of the appropriation. In 2010, this 2009 appropriation was modified. It was modified again in 2012, but the 2012 modification did not recognize or incorporate the changes made in 2010. This modification is an attempt to correct the 2012 oversight, but it appears that it is still not correct. We believe that the total remaining appropriation for MES should be \$2,592,000. This should be verified and corrected next year. Further, because this amendment reduces two appropriations in the MCCBL of 2005, the total MCCBL 2005 appropriation needs to be updated to reflect these changes, but there is no Section 1(1) from the MCCBL 2005 in House Bill 101 in which to make that correction.

In the following six places in the bill, the current total debt authorization amounts stated appear to be incorrect and, if so, should be corrected next year:

- Page 67, line 13 – MCCBL of 2006
- Page 68, line 13 – MCCBL of 2007
- Page 70, line 17 – MCCBL of 2008

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<sup>1</sup> The Capital Budget bill is different than most all other legislation. It is the State's authorization to issue bonds of over \$1 billion. A challenge to the Capital Budget bill would have a significant impact on the State's ability to issue bonds and achieve the fiscal goals of the State. Indeed, a protracted legal challenge to the validity of the Capital Budget would likely endanger the State's AAA bond rating.

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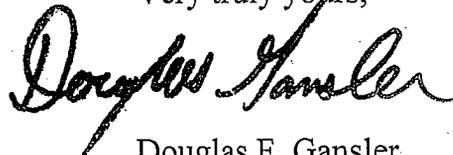
- Page 73, line 18 – MCCBL Preauthorization Act of 2010
- Page 74, line 22 – MCCBL of 2009
- Page 108, Section 21

Our Office would be happy to work with the Department of Legislative Services, the Department of Budget and Management, the Comptroller's Office, and the Treasurer's Office on these corrections.

Section 28 of the bill provides for a June 1, 2013 effective date for the Act, with specified exceptions. Based on the amendments adopted during the legislative process, the reference to Sections 19, 20, and 21 should have been deleted. This should be corrected in next year's corrective bill.

Throughout the bill, there are minor mistakes in the names of grantees. We have determined that, in most instances, they lead to no ambiguity and may be corrected administratively. Two grants, however, present more significant issues. The first is found on page 28, lines 28-34. The named grantee, "Hillel: The Foundation for Jewish Campus Life, Inc.", is a national organization that is not listed in the State Department of Assessments and Taxation ("SDAT") database and does not own the existing building. The correct owner is the University of Maryland Hillel affiliate, whose legal name is "Ben and Esther Rosenbloom Hillel Center for Jewish Life at University of Maryland, Inc." The second is found on page 37, lines 36-41. The grantee name should be "Coastal Conservation Association Maryland, Inc." This organization's status with SDAT, however, is forfeited. Corrections to these two grants should be made in future legislation.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/BAK/kk

cc: The Honorable John P. McDonough  
Stacy Mayer  
Karl Aro