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May 11, 2015

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401

**RE: *House Bill 71, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2015, and the Maryland Consolidated Capital Bond Loans of 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014"***

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 71, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2015, and the Maryland Consolidated Capital Bond Loans of 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014." In reviewing the bill, we have noted some technical and legal issues that we discuss below.

On page 13, in lines 1 through 7, the bill provides that certain funds for the African American Heritage Preservation Grant Program are to be administered in accordance with standards established under § 5A-330 of the State Finance and Procurement Article, which establishes the African American Heritage Preservation Program in the Maryland Historical Trust. We note that the African American Heritage Preservation Program will expire at the end of May 31, 2015, unless House Bill 130 or Senate Bill 601, or both, are enacted. We previously approved these identical bills for constitutionality and legal sufficiency by letter dated April 22, 2015.

On page 67, in lines 3 through 11, the bill amends a 2006 House of Delegates authorization for funds to provide a grant for the repair, renovation, and capital equipping of the Montrose Center for Children and Families in Rockville, Maryland. Specifically, the bill amends the name of the grant recipient. However, the Board of Public Works terminated that authorization in 2013 pursuant to § 8-128 of the State Finance and Procurement Article, and under § 8-129 the unspent bond proceeds were to be dedicated to another use. As the General Assembly did not authorize new funds for this project, we believe the amendment has no legal effect. Of course, the General Assembly, should it choose to do so, may authorize new funds for this project through future legislation.

Section 12 of the bill authorizes the Board of Public Works to incur indebtedness on behalf of the State through a loan to be known as the Maryland Consolidated Capital Bond Loan Preauthorization Act of 2016, the purpose of which is to provide funds for specific projects and programs identified in the bill. We note that there is a discrepancy between the principal amount of the 2016 preauthorization loan and the total amount allocated for the enumerated projects. On page 121, in line 26, the stated total principal amount of the loan is \$378,723,000. However, the total amount allocated for the projects listed in the bill is \$382,128,000. Accordingly, the stated total principal amount of the loan should be corrected in the 2016 Maryland Consolidated Capital Bond Loan bill.

Section 15 of the bill provides that \$48,393,337 in premiums from the sale of State bonds in fiscal years 2015 and 2016 shall remain in the State and Local Facilities Loan Fund or the Annuity Bond Fund and, with the approval of the Board of Public Works, may be expended for certain enumerated programs. In the recent past, pursuant to § 8-132 of the State Finance and Procurement Article, any premium from the sale of State bonds has been used exclusively to pay debt service on the State's general obligation bonds. By using bond premium for the payment of debt service, the State has been able to ensure that any bond premium is expended in sufficient time to meet certain tax-exempt bond requirements. We caution that the State could be required to rebate certain investment earnings to the Internal Revenue Service if the bond premium set-aside for the enumerated projects is not expended in time to meet the tax exempt bond requirements.

The Honorable Lawrence J. Hogan, Jr.  
May 11, 2015  
Page 3

Lastly, throughout the bill, there appear to be some minor mistakes in the names of grantees. We have determined, however, that they lead to no ambiguity and may be corrected administratively.

Sincerely,

A handwritten signature in cursive script, reading "Brian E. Frosh".

Brian E. Frosh  
Attorney General

BEF/DS/kk

cc: The Honorable John C. Wobensmith  
Joseph M. Getty  
Karl Aro