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April 3, 2017

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

RE: *House Bill 151, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2017, and the Maryland Consolidated Capital Bond Loans of 2006, 2008, 2009, 2010, 2012, 2013, 2014, 2015, and 2016"*

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 151, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2017, and the Maryland Consolidated Capital Bond Loans of 2006, 2008, 2009, 2010, 2012, 2013, 2014, 2015, and 2016" ("Capital Budget Bill"). We write to address two provisions of the bill – Section 14 and a provision added to the appropriation for the Public School Construction Program.

The Capital Budget Bill is the enabling legislation for the creation of State debt through the issuance of State general obligation ("GO") bonds, the proceeds of which are used to fund various capital projects. Section 14 of the bill adds a new § 8-303 to the State Finance and Procurement Article to expressly provide that funds appropriated in an Act authorizing the creation of State GO debt may be used to reimburse a grant recipient for an expenditure incurred before the effective date of the Act. Because this provision is not related to a specific item of appropriation, and thus is not subject to gubernatorial item veto under Article II, § 17(e) of the Maryland Constitution, we have considered whether the inclusion of this provision in the Capital Budget Bill is appropriate.

Article II, § 17(e) gives the Governor the "power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items." An "item" is "an indivisible sum of money dedicated to a stated purpose." 61 *Opinions of the Attorney*

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General 247, 253 (1976). We have said that “inclusion of provisions in a supplementary appropriation bill that are not items of appropriation or related to items of appropriation and thus, are not subject to veto, may be subject to challenge on that very basis, particularly when these same provisions may arguably fall outside the single work, object or purpose requirement applicable to a supplementary appropriation bill.” Bill Review Letter on HB 340, dated May 19, 2005.¹ Section 14 is directly related to the Capital Budget Bill and the State’s GO bond program in that it governs how GO bond proceeds appropriated in the annual Capital Budget Bill may be used. Although the provision is not subject to gubernatorial item veto, we do not believe its inclusion in the bill presents a significant constitutional concern.

Questions have arisen as to whether a provision added to the appropriation for the State’s Public School Construction Program (Item DE02.02(B)) is subject to gubernatorial item veto. That provision states that the school construction funds are to be allocated by the Interagency Committee on School Construction, and the allocations are not subject to approval by the Board of Public Works. Unlike Section 14, the amendment to Item DE02.02(B) is attached to a sum of money – the \$285 million appropriation for public school construction. Accordingly, the \$285 million appropriation, including the attached provision regarding the allocation of funds, is subject to item veto. However, it is our view that the attached provision, which is not itself a separate item of appropriation – i.e., “an indivisible sum of money dedicated to a stated purpose” – but is a condition or qualification on the appropriation to which it is attached, is not independently subject to item veto.

Sincerely,



Brian E. Frosh
Attorney General

BEF/DS/kk

cc: The Honorable John C. Wobensmith
Chris Shank
Warren Deschenaux

¹ As a supplementary appropriation bill, the Capital Budget Bill is subject to Article III, § 52(8) of the Maryland Constitution, which, among other things, provides that such bills shall be limited to some “single work, object or purpose.”