

BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH F. HARRIS  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY  
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE  
DEPUTY COUNSEL

JEREMY M. MCCOY  
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER  
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 1, 2020

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

***RE: House Bill 1***

Dear Governor Hogan:

We have reviewed and hereby approve House Bill 1, “Built to Learn Act of 2020,” for constitutionality and legal sufficiency. While we approve the bill, it is our view that Section 9, which purports to appropriate funds in fiscal year 2021 to the Maryland Stadium Authority (“MSA”), should be viewed as a non-binding expression of intent. We also recommend that a provision be amended in the future to resolve an apparent conflict between provisions in the bill regarding the use of certain funds deposited into the Prince George’s County Public-Private Partnership Fund (“P3 Fund”).

Section 9 of the bill provides that \$500,000 shall be appropriated from the Education Trust Fund (“ETF”) in fiscal year 2021 to MSA for certain start-up and administrative costs. It is our view that this provision does not, and cannot, authorize MSA to expend money from the ETF.

Under the State Constitution, there are two types of laws that can appropriate money from the Treasury: (1) the annual Budget Bill, which is initiated by the Governor, or (2) a supplementary appropriation bill, which is initiated by the General Assembly. Md. Const., Art. III, § 52(2), (5), and (8). Thus, outside of the Budget Bill, the only legislative vehicle for directly appropriating money is a supplementary appropriation bill. A supplementary appropriation bill must comply with the requirements of Article III, § 52(8) of the Maryland Constitution. Among the requirements of § 52(8) is that a supplementary appropriation bill must levy a tax to support the appropriation contained therein.

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Because House Bill 1 does not levy a tax, it is not a supplementary appropriation bill and, therefore, cannot appropriate money. Moreover, it cannot operate as a funding mandate because it relates to funding for fiscal year 2021.<sup>1</sup> Accordingly, it is our view that Section 9 should be construed as a non-binding expression of legislative intent that can be given effect only with a valid appropriation. Possible vehicles for appropriating the funds include the fiscal year 2022 Budget Bill (via a deficiency appropriation) or the statutory budget amendment procedure in State Finance and Procurement Article, § 7-209.

We also recommend that a provision in new § 10-658 of the Economic Development Article be amended to resolve an apparent inconsistency with §§ 4-126.1 and 4-126.2 of the Education Article. Paragraph (1) of § 10-658(c) provides that, to the extent considered appropriate by MSA, money on deposit in the Supplemental Public School Construction Financing Fund (“Financing Fund”) shall be pledged to and used to pay for the following items: debt service on MSA bonds, debt service reserves, and reasonable charges and expenses related to MSA borrowing and the administration of the Financing Fund. Paragraph (2)(ii) states that, in addition to the money on deposit in the Financing Fund, the money deposited by MSA into the P3 Fund in accordance with Education Article § 4-126.1 “shall be pledged to and used to pay for the items listed in paragraph (1) of this subsection ... .” However, under §§ 4-126.1 and 4-126.2, the funds deposited by MSA into the P3 Fund are to be used to make availability payments under a public-private partnership agreement. This inconsistency can be corrected in future legislation.

Sincerely,



Brian E. Frosh  
Attorney General

BEF/DWS/kd

cc: The Honorable John C. Wobensmith  
Keiffer J. Mitchell, Jr.  
Victoria L. Gruber

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<sup>1</sup> A funding mandate – i.e., a law requiring the Governor to include funding for a program in the annual Budget Bill – must have been enacted at least one year before the fiscal year to which it applies. Md. Const. Art. III, § 52(11) and (12).