

DOUGLAS F. GANSLER
Attorney General

Katherine Winfree
Chief Deputy Attorney General

John B. Howard, Jr.
Deputy Attorney General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

Sandra Benson Brantley
Bonnie A. Kirkland
Kathryn M. Rowe
Assistant Attorneys General

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

May 16, 2007

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

Re: House Bill 51

Dear Governor O'Malley:

We have reviewed for constitutionality and legal sufficiency House Bill 51, the Maryland Consolidated Capital Bond Loan bill. While we approve the vast majority of the bill for constitutionality, one provision is of doubtful validity. We also write to address several other issues relating to the bill.

“One Subject” and “Single Work, Object or Purpose” Requirements

Section 13 of HB 51 raises the total principal amount of bonds that may be issued by the local governing body of a Code County. Section 14 of the bill amends the Education Article to require the Interagency Committee on School Construction to provide certain recommendations on public school construction projects that comprise 90% of the school construction allocation included in the capital budget submitted by the governor for the following fiscal year.

Article III, § 29 of the Maryland Constitution provides “[e]very Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title.” This Office has taken the position that Art. III, § 29 does not apply to supplementary appropriation bills. The Court, in *Panitz v. Comptroller*, 247 Md. 501, 511 (1967) did not decide the issue, but, assuming that it did, agreed that § 29 was satisfied. As a comprehensive bill relating to the financing of capital projects, this office has concluded that the Capital Budget bill is “unlikely to be vulnerable to challenge on the basis of Article III, § 29. *See* Bill Review letter

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on HB 340, dated May 19, 2005, a copy of which is attached.

However, the Capital Budget bill, as a supplementary appropriations bill, is subject to a more stringent requirement under Maryland Constitution Article III, § 52(8), which provides that every supplementary appropriation, which the Capital Budget bill is, "shall be embodied in a separate bill limited to some single work, object or purpose therein stated." The Court of Appeals has held that even though the Capital Budget "embraces a variety of projects, it falls squarely within the requirements of § 52(8)(a) as interpreted in *Panitz*." *Mayor and City Council of Baltimore v. State of Maryland*, 281 Md. 217, 228 (1977). In the May 19, 2005 Bill Review letter, we stated that:

[P]rincipally, the Capital Budget bill is the enabling legislation for the creation of State debt through the issuance of State of Maryland general obligation bonds, the proceeds of which are used to fund certain capital projects, just as the Budget Bill is principally for making operating appropriations for the coming fiscal year. But the notion that a budget bill or capital budget bill may only contain items of appropriations may misread the constitutional limitations placed on and long history of both. Both bills historically contain budget-related provisions, which are not items of appropriations, included by both the Governor and the General Assembly.

However, in that same letter, we also cautioned against including provisions not directly related to the issuance of State general obligation bonds. We said

The Capital Budget bill holds a unique place and plays a unique role in the overall scheme of the State's finances. It is the enabling legislation for the issuance of State of Maryland general obligation bonds. Its legal sufficiency is relied upon by many, from the individuals who will benefit from local projects to those in the bond markets...[and it] should only be used for lawmaking that is tied closely and directly to the general obligation bond program of the State.

We concluded in 2005 that "the provisions included in HB 340, while embracing a variety of projects, all could be viewed as relating to the financing of capital projects and thus, do not clearly violate either Art. III, § 29 or § 52(8). Should one of the provisions discussed above be held to be invalid, it is clearly severable from the rest of the bill. Md. Const., Article III, 52(15)." It is our view that the provisions of Section 14 concerning the procedures of the Interagency Committee on School Construction (similar to provisions which were included in the last two Capital Budget bills) may be viewed as relating to the financing of

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capital projects included in the bill and thus do not clearly violate either Article III, §29 or §52(8). However, Section 13, while related to the financing of capital projects generally, is not related to the financing of State capital projects and the creation of State debt. Thus, it is our view that the provision does not satisfy the single work, object or purpose requirements of Md. Const., Article III, §52(8). The General Assembly should reenact legislation during the next session providing for the increase in bond authority in Code counties.

Line Item Veto

Article II, § 17(e) of the Maryland Constitution 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 that is dedicated to a stated purpose.” 61 *Opinions of the Attorney General*, 247, 253 (1976). Thus, a provision in a bill that has no sum of money attached to it is not an item of appropriation subject to the Governor’s item veto authority. House Bill 51, Sections 13 and 14, include amendments to the Annotated Code of Maryland, as described above. They are not attached to a sum of money and would not be considered an “item of appropriation” and thus are not subject to item veto. For the past two years 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.” However, Section 14 is related to the allocation of public school construction funds, which unlike the subject of Section 13, is an integral part of the Capital Budget bill.

Capital Debt Affordability Committee (CDAC)

HB 51 includes a provision expressing the intent of the General Assembly that the CDAC authorize \$30,000,000 in Academic Revenue Bonds for the University System of Maryland in fiscal 2009 (page 14, lines 19-27)(emphasis added). Under State Finance and Procurement Article, § 8-112(e), the CDAC is to review on a continuing basis the size and condition of any debt of the USM and other segments of higher education. The CDAC also submits to the Governor and General Assembly the Committee’s estimate of the amount of new bonds for academic facilities that prudently may be authorized for the next year, but does not authorize debt. This estimate is advisory and does not bind the Governor, General Assembly or Board of Public Works.

Title Requirement

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Section 12 of HB 51 makes authorization for four projects, two of which are specifically mentioned in the bill's purpose paragraph and two of which are not. Because the purpose paragraph normally is written now in more general terms than in the past and includes a clause stating "and generally relating to the financing of certain capital projects," the requirements of Article III, § 29 of the Maryland Constitution are satisfied. *See* attached Bill Review letter on HB 340.

Technical Correction to Maryland Consolidated Capital Bond Loan of 2006

Finally, we note that HB 51 makes a technical correction to the 2006 Capital Budget, Chapter 46 of the Acts of 2006. On page 61, line 26, the total principal amount authorized in 2006 is adjusted downward by \$1,940,000. This reflects the deauthorization of \$1,870,000 for the Clifton T. Perkins Center authorized in Chapter 445 of the Acts of 2005 (HB 51, page 61, line 7) and the deauthorization in the 2006 Capital Budget of \$70,000 for the Respite Home on South Haven which was not reflected in the 2006 Capital Budget amended total.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

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cc: Joseph Bryce
Secretary of State
Karl Aro