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May 11, 2012

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

*Re: Senate Bill 151*

Dear Governor O'Malley:

We have reviewed and hereby approve Senate Bill 151, "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2012, and the Maryland Consolidated Capital Bond Loans of 2005, 2006, 2007, 2008, 2009, 2010, and 2011" for constitutionality and legal sufficiency. We write to point out several interpretive and technical issues with the bill.

**Interpretive Issues**

As introduced, SB 151 included a provision in the Public School Construction item to set aside \$50 million in public school construction funds to fund projects to improve energy efficiency in schools. During the legislative process, an amendment was added to that item to restrict \$25 million of the appropriation until the Interagency Committee on School Construction ("IAC") submits a report regarding "the standards that will be used to allocate funds among projects that improve the energy efficiency of schools," and to reduce the entire appropriation by \$25 million. The amendment did not alter the original reference to the \$50 million set aside. Page 8, lines 2-20. While it is not entirely clear from the language in the bill, the Conference Committee report and Joint Chairmen's Report make clear that the legislative intent was to reduce the funding for public school construction by \$25 million, and that the reduction was to be taken from the set aside for energy efficiency projects. It is our view that the IAC should interpret the amount of the set aside as \$25 million, and that the General Assembly may correct this drafting oversight next year.

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Senate Bill 151 contains three sections to preauthorize the issuance, sale, and delivery of State general obligation bonds in 2013, 2014, and 2015, Sections 12, 13, and 14, respectively. Sections 12 and 13 are each subject to a corresponding delayed effective date. Section 14, added by amendment, however, was not made subject to a similar delayed effective date, despite clear legislative intent that it be delayed until June 1, 2015. It is our view that Section 14 should be interpreted to take effect June 1, 2015 and that this oversight should be corrected next year.

Page 23, lines 26-34, require a \$2,000,000 grant to the Town of New Windsor to pay a portion of a loan from Maryland Department of the Environment's Water Quality Financing Administration ("MWQFA") for a recently completed wastewater treatment plant. This creates a federal tax issue for the State, because, from the federal perspective, \$2,000,000 from one State fund is being used to pay another State fund, and is thus not considered to be "expended" for federal tax purposes.<sup>1</sup> It is unusual and contrary to customary State financing practice for State general obligation bond proceeds to be appropriated to pay State agencies, and certainly extraordinary to specifically earmark appropriations for such loan repayment purposes. If enacted, this provision will require the State (including the Treasurer's Office, the Comptroller's Office and MWQFA) to track the \$2,000,000 grant and repayment to MWQFA, its investments and earnings, and eventual expenditure for another qualified tax-exempt purpose.

On page 55, in lines 10-12, the grant states: "Before the Department of General Services approves any project with these funds..." However, the Board of Public Works is the approving authority for all bond expenditures. See page 5, Section 1(3), lines 33-34. As the reference to the Department of General Services may be interpreted as inconsistent with the authority of the BPW, we recommend amending the quoted language to "Board of Public Works" or inserting the word "recommends approval of" instead of "approves" in corrective legislation next year.

On page 59, in line 23, there is an amendment to reduce an appropriation contained in Chapter 445 of the Acts of 2005, from \$3,147,000 to \$2,862,000. However, the original authorization was already reduced from \$3,147,000 to \$2,832,000 in

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<sup>1</sup> Had the MWQFA loan to the Town of New Windsor been financed with bond proceeds, this provision could have created a refunding situation, *i.e.*, the transaction would be considered to be a refinancing of outstanding bonds by issuing new bonds. It is our understanding from MWQFA, however, that the \$4,000,000 loan to New Windsor was a taxable, 0% interest loan that was funded from revolving loan fund balances, and not from MWQFA bonds or State G.O. bonds.

Chapter 483, Acts of 2010. Similarly, on page 60, on line 1, the reference to \$300,000 does not reflect the reduction made by Chapter 483 to \$249,000. While it seems clear that the General Assembly intended to make cuts to these appropriations, it is not clear by how much. If the General Assembly wishes to reduce the appropriations by an additional \$285,000, and \$18,000, respectively, we recommend that it be done through corrective language in the 2013 MCCBL. The first function paragraph omits a reference to an amendment to Chapter 445 of 2005 and should be corrected in future legislation to include “, as amended by Chapter 483 of the Acts of 2010.” A corresponding correction should also be made to the reference to Chapter 445 on page 58, line 26.

### **Technical Issues**

In some cases, an appropriation is made to an agency but requires the ultimate recipient to provide the matching funds. See page 6, lines 5-16. The first clause of the purpose paragraph refers to the requirement that “... certain grantees provide and expend certain matching funds...” Nevertheless, given the nature and context of that of that purpose paragraph reference and the further purpose paragraph provision indicating that the bill is “generally relating to the financing of certain capital projects”, we read the purpose paragraph as encompassing beneficiaries of grants as well as the grantees themselves.

The function paragraph on page 4, lines 6-11 contains an incorrect reference to Chapter 485 of the Acts of the General Assembly of 2009. That Chapter did not amend Section 12 of Chapter 488 of the Acts of 2007 and should be disregarded as surplusage. A corresponding change should be made on page 62, line 33.

The function paragraph on page 4, in lines 29-32 contains a reference to “Item QB08-02(A).” This should be “Item QB08.02(A),” and a corresponding change should be made on page 67, line 18.

On page 10, line 17, the word “historical” should be changed to “historic,” in future corrective legislation.

The language on page 15, lines 14-24 requires the Department of Public Safety and Correctional Services (“DPSCS”) to submit a Facilities Master Plan. It begins with the words “Provided that,” but it is unclear what this language applies to or conditions. It should be interpreted simply as a directive for DPSCS to provide the plan.

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The project description on page 62, in lines 27-30 does not accurately reflect a change made by Chapter 372 of the Acts of 2010 that inserted the words "demolition of the Physical Education Complex and the" before the word "construction". As it is a rule of statutory construction that, whenever possible, legislative enactments should be interpreted to avoid repeals by implication, *Farmers & Merchants Nat'l Bank v. Schlossberg*, 306 Md. 48, 56 (1986), this item of appropriation should be interpreted to read "Provide funds for the *demolition of the Physical Education Complex and the* construction of a new Physical Education Complex, including outdoor athletic fields and Facilities Maintenance and Public Safety Space."

The project description on page 85, lines 16-18 is unclear and should be clarified in future legislation.

In the Miscellaneous Grants portion of SB 151 there are numerous, mostly minor discrepancies in the names of or references to the grantees, some of which may require correction next year. Those are described on the attached list.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/BAK/kk

cc: The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro

**SENATE BILL 151**  
**MISCELLANEOUS GRANTS**

1. Page 25, lines 28-29. "Anne Arundel County Board of Education" should be "*Board of Education of Anne Arundel County*".
2. Page 26, lines 18-19. "Charles E. Smith Life Communities" is a trade name. According to SDAT records, the owner is the Hebrew Home of Greater Washington, Inc., so it appears the grant should be to the "*Board of Directors of the Hebrew Home of Greater Washington, Inc.*" and not to "Board of Governors of the Charles E. Smith Life Communities, Inc.".
3. Page 26, lines 27-28. The name of the grantee should read: "Board of Directors of *The Everyman Theatre, Incorporated*".
4. Page 28, line 13. "the" should be capitalized "*The Maryland School for the Blind, Inc.*"
5. Page 28, line 20. "Directors" should be "*Board of Trustees*".
6. Page 29, line 4. "Sinai Hospital, Inc." should be "*Sinai Hospital of Baltimore, Inc.*".
7. Page 29, line 13. "Advisory Board" should be "*Board of Directors*".
8. Page 30, line 26. "Board of Governors" should be "*Board of Directors*".
9. Page 30, line 37. There should be a comma "," after the word "County".
10. Page 31, line 29. The name "Brook Lane Health Service" should be plural "Brook Lane Health *Services*" as in line 28; the word "Incorporated" should be "*Inc.*" as in line 28, and to be consistent with usage throughout the bill.
11. Page 32, lines 3-4. Should read: "Board of Directors of *The Union Memorial Hospital*".
12. Page 32, line 12. The name is incorrect. Should be "Upper Chesapeake Medical *Center, Inc.*" as in line 11. The word "Incorporated" should be "*Inc.*" as in line 11, and to be consistent with usage throughout the bill.
13. Page 32, lines 38-39. Should read: "Board of Directors of *The Maryland Food Bank, Inc.*".

14. Page 33, line 5. The grant should be to the "*Board of Trustees of the Lyric Foundation, Inc.*" not to the "Lyric Foundation, Inc."
15. Page 33, lines 21 and 24. "Inc." should be "*Incorporated*". The grant does not specify what the public purpose of the grant is, it merely repeats in line 25 the title of the grant from line 21: "Friends Aware, Inc. Site and Project Development".
16. Page 34, lines 5-6. "Anne Arundel County Board of Education" should be "*Board of Education of Anne Arundel County*".
17. Page 34, line 12. The correct legal name of the grantee is the plural "*Samaritan Houses, Inc.*"
18. Page 34, line 20. There should be a comma "," after the word "County".
19. Page 34, lines 40-41. Grantee should read: "Board of Trustees of *The Arch Social Club, Incorporated*".
20. Page 35, line 13-14. The first grantee's name should read: "Board of Directors of the Babe Ruth *Birthplace* Foundation, Inc."
21. Page 36, lines 20-21. The correct legal name of the grantee, according to SDAT records, is: "Board of Trustees of *The Miles Washington Conner Family Support Center of Sharon Baptist Church, Inc.*"
22. Page 36, line 34. "Corp." should be "*Corporation*".
23. Page 37, lines 14-15. The Grantee name is: "Board of Directors of *The Children's Home, Inc.*".
24. Page 37, line 22. The grant should be to the "*Board of Directors of the Lansdowne Volunteer Fire Association No.1, Inc.*" not to the "Lansdowne Fire Department".
25. Page 38, line 14. The grant should be to the "*Board of Governors of the Calvert Marine Museum Society, Inc.*" not to the "Calvert Marine Museum Society, Inc."
26. Page 39, lines 27-28. The Grantee name is: "Board of Directors of *The Jude House, Inc.*".
27. Page 41, lines 25-26. Grantee name should read: "Board of Directors of the Montgomery Village Sports Association, *Inc.*".

28. Page 41, lines 39-40. Grantee name should read: "Board of Trustees of the National Center for Children and Families, *Inc.*".
29. Page 42, line 32. Delete as surplusage: "Board of Directors of". The MNCPPC is a Commission, it does not have a Board of Directors.
30. Page 43, lines 11-12. Grantee name should read: "Board of Directors of Elizabeth Seton High School, *Inc.*".
31. Page 44, lines 1, 4 and 5. The word "Light" should be the plural "*Lights*" in three places.
32. Page 44, lines 10-11. The Grantee name should read: "Board of Directors of the Community Outreach and Development, *Community Development Corporation*".
33. Page 45, lines 21-24. The Grantees names should read: "Board of Directors of the Korean War Veterans Association Antietam Chapter #312, *Incorporated* and the Mayor and *City Council* of the City of Hagerstown".
34. Page 45, lines 30-39, provides a grant to a Park, not to the owners of the Park. The grantee should be the "*National Park Service, U.S. Department of the Interior*" not the "Chesapeake and Ohio Canal National Historic Park".
35. Page 46, line 13. There should be a comma "," after the word "*Council*" and "*Incorporated*" after the word "*America*".
36. Page 47, lines 3-4. Should read: "Board of Directors of *The Maryland Food Bank, Inc.*".
37. Page 47, lines 10-11. Should read: "Board of Directors of *The Baltimore Children's Museum, Inc.*".
38. Page 47, lines 23 and 27. "Inc." should be "*Incorporated*". The grant does not specify what the public purpose of the grant is, it merely repeats in line 27 the title of the grant from line 23: "Friends Aware, Inc. Site and Project Development".
39. Page 48, lines 27-28. Grantee should read: "Board of Trustees of *The Arch Social Club, Incorporated*".
40. Page 49, line 19. "Corp." should be "*Corporation*".
41. Page 50, line 11. Insert "*, Inc.*" after the word "*Maryland*".

42. Page 50, lines 22-23. The Grantee name is: "Board of Directors of *The Children's Home, Inc.*".
43. Page 50, lines 39-40. The Grantee name is: "Board of Directors of *The Benedictine School for Exceptional Children, Inc.*".
44. Page 51, line 11. Insert "*, Inc.*" after the word "*Foundation*".
45. Page 51, lines 18-19. The Grantee name is: "Board of Directors of *The African American Heritage Society of Charles County, Inc.*".
46. Page 52, line 2. The Grantee name should read: "Board of Directors of the *Cal Ripken, Sr. Foundation*".
47. Page 52, line 22. After the words: "Mayor and City Council of" insert the words: "*the City of*".
48. Page 53, lines 1-2. The Grantee name is: "Board of Trustees of *The National Center for Children and Families, Inc.*".
49. Page 53, lines 29-30. Delete as surplusage: "Board of Directors of". The MNCPPC is a Commission, it does not have a Board of Directors. On line 30, hyphenate "Maryland - National".
50. Page 54, line 2. Delete the word "School". It is not part of the Grantee's legal name.
51. Page 54, lines 32-33. The Grantee does not appear to be a legal entity. It does not appear in the SDAT records.
52. Page 52, lines 40-41. The Grantee name should read: "Board of Directors of the Community Outreach and Development, *Community Development Corporation*".
53. Page 55, line 26. "School Board" should be "*Board of Directors*".