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May 7, 2024

The Honorable Wes Moore  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401  
*Delivered via email*

***RE: Senate Bill 361, "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2024, and the Maryland Consolidated Capital Bond Loans of 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023"***

Dear Governor Moore:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 361, "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2024, and the Maryland Consolidated Capital Bond Loans of 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023" (the Capital Budget Bill).

Section 2 of the bill amends provisions of prior year's capital budget bills. Amendments to Chapter 537 of the Acts of 2020 (the 2020 Capital Budget Bill) reduce the authorized amounts for several projects and reduce the total amount authorized by the 2020 Capital Budget Bill. We note that these reductions to project authorizations total

\$11,856,416, whereas the total amount authorized in the 2020 Capital Budget Bill is reduced only by \$11,756,416. This should be corrected in next year's Capital Budget Bill.

Section 1(9) of the bill authorizes the Board of Public Works ("BPW") to approve appropriations notwithstanding technical differences in the name of the grantee or the description or location of the project. Prior to BPW approval, in certain circumstances, the Department of Budget and Management ("DBM") is required to notify the Office of Policy Analysis ("OPA") within the Department of Legislative Services of (1) the "differences between [the] appropriation ... and the proposed use of funds" and (2) the "justification that the proposed use of funds is consistent with the public purpose of the appropriation." Section 1(9)(b). The bill states that OPA shall have 45 days to review and comment on the proposed use of the funds, and if OPA does not submit written objections within 45 days, DBM "shall provide certification in writing to the Board of Public Works that the proposed use of funds may be approved . . . ." Section 1(9)(c).

To the extent Section 1(9)(c) might be construed as allowing OPA to reject a proposed use of funds, the provision likely would be viewed as an impermissible "legislative veto." As OPA is an agency of the General Assembly,<sup>1</sup> OPA's rejection of a proposed use of funds would constitute a legislative reversal through non-legislative action. *See Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). Accordingly, Section 1(9) should be construed as providing OPA with a 45-day review and comment period after which BPW may approve the proposed use of funds, notwithstanding comments provided by OPA, as long as the proposed use satisfies the criteria of Section 1(9).

Lastly, we comment on several items that authorize the expenditure of funds for Seed Church, The Lord's Church, St. Mark's Church, and Pleasant Grove Baptist Church. Section 1(3), Items ZA00(GL), ZA02(AD), (CN), (DC), and ZA03(AD). Section 10 of the bill provides that no portion of the funding authorized for a project, including any matching funds, may be used for "the furtherance of an essentially religious endeavor." That provision also authorizes BPW to request evidence from a grant recipient that the funds

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<sup>1</sup> OPA is a unit of the Department of Legislative Services in the Legislative Branch of State government. State Government Article, §§ 2-1202 and 2-1206.

will not be used for any purpose prohibited by the Act. Acting pursuant to this provision, BPW can ensure that funds are used in a manner consistent with the restrictions in Section 10, as well as the limitations of the Establishment Clause and Article 36 of the Maryland Declaration of Rights.<sup>2</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "AGB", with a stylized flourish extending to the right.

Anthony G. Brown

AGB/DWS/kd

cc: The Honorable Susan C. Lee  
Eric G. Luedtke  
Victoria L. Gruber

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<sup>2</sup> The Establishment Clause of the First Amendment to the United States Constitution prohibits Congress and the states from enacting any law “respecting an establishment of religion.” Article 36 of the Maryland Declaration of Rights provides, in relevant part, “nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry.”