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April 30, 2025

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

RE: House Bill 351, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2025, and the Maryland Consolidated Capital Bond Loans of 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024"

Dear Governor Moore:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 351, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2025, and the Maryland Consolidated Capital Bond Loans of 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024" (capital budget bill). We write simply to offer comments on a few of the bill's provisions and to provide, where appropriate, recommendations for future capital budget bills.

We note that the bill does not levy a tax for the funding "preauthorizations"¹ in Sections 13 through 16, which raises a constitutional issue because every supplementary

¹ Preauthorizations, which are given a delayed effective date, are used to signal an intent to fund specific projects in future capital budgets. In effect, they operate as a sort of placeholder for projects that are expected to receive capital funding in the future.

appropriation bill must levy a tax to provide the revenue necessary to pay the appropriations made by the bill. Md. Const., Art. III, § 52(8). However, the normal practice is to repeal preauthorizations in the next year's capital budget bill before those provisions take effect,² which will moot any constitutional issues. Nonetheless, to ensure compliance with constitutional requirements going forward, we recommend that the Legislature, in future capital budget bills, return to the former practice of including a tax levy provision in any preauthorization.

Section 1(7)³ states, in part, that “if bonds have been issued for the loan, the amount of unexpended or unencumbered bond proceeds shall be disposed of as provided in § 8-129 of the State Finance and Procurement Article.” This provision appears to be an artifact from when the State employed cash flow accounting for purposes of allocating project authorizations to bond issues. We recommend that this language be left out of future capital budget bills.

Included in the bill is a grant to Bowie State University for an AI PerVista Security System. Under Internal Revenue Service (“IRS”) rules, grants typically are treated as expended on the date they are funded. Because Bowie State University may be viewed as a related party to the State under IRS rules, providing the funding in the form of a grant may require special administrative tracking or funding through taxable bonds. We recommend that, in the future, project authorizations for State entities conform to regular practice and not be structured as grants.

Section 19 of the bill amends § 5-308 of the Education Article to delay (from 2 to 5 years) the time by which a county government must reimburse the State for any outstanding debt service for a school building that is transferred to the county government. We have previously noted 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; *see also* Bill Review Letter on HB 151 of 2017, dated April 3, 2017.⁴ As Section 19 is directly related to the State's general obligation bond program (in that it governs county reimbursement payments for outstanding debt service on State general

² *See* Section 12 of House Bill 351, which repeals the preauthorizations from last year's capital budget bill. The four separate preauthorizations in House Bill 351 (in Sections 13, 14, 15, and 16) take effect on June 1 in each of the next four years (starting with Section 13, the Maryland Consolidated Capital Bond Loan Preauthorization of 2026, which takes effect on June 1, 2026).

³ On page 116 of the bill.

⁴ Because the capital budget bill is a supplementary appropriation bill, it is subject to the limitations and restrictions in Article III, § 52(8) of the Maryland Constitution, including the limitation that such bills must be limited to a “single work, object or purpose.”

obligation bonds), we do not believe its inclusion in the bill presents a significant constitutional concern, even though it is not subject to gubernatorial item veto.

Lastly, House Bill 351 contains a few authorizations to provide grants to various churches. Section 10 of the bill states that no portion of the funding authorized for any project (including any matching funds) may be “used for the furtherance of an essentially religious endeavor.” Section 10 also authorizes the Board of Public Works to request evidence from a grant recipient that the funds will not be used for a purpose prohibited by the Act. Acting pursuant to that provision, BPW can ensure that funds are used in a manner consistent with the Act and the limitations under the First Amendment to the United States Constitution and Article 36 of the Maryland Declaration of Rights.⁵

Sincerely,

A handwritten signature in black ink, appearing to read 'AGB', followed by the name 'Anthony G. Brown' in a cursive script.

Anthony G. Brown

AGB/DWS/kd

cc: The Honorable Susan C. Lee
Jeremy Baker
Victoria L. Gruber

⁵ 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.”