

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
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 12, 2010

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

RE: *Senate Bill 142*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 142, "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2010, and the Maryland Consolidated Capital Bond Loans of 2003, 2004, 2005, 2006, 2007, 2008, and 2009." In reviewing the bill, we have noted several technical issues.¹

Title

Page 4, line 10 contains a reference to Item KA05(a)(6). There is no item amending KA05(a)(6) of Chapter 485 of the Acts of 2009 in the bill. The body of the bill does amend item KA05(E) of Chapter 485 of the Acts of 2009, but there is no reference to item KA05(E) in the title. Page 4, line 11 contains a reference to item VD01(B). The bill was amended to change the designation of item VD01(B) to VE10(B), but the reference to item VE01(B) was not added to the title. These errors may be corrected in next year's curative bill.

¹ Section 14 of SB 142 amends five provisions of the Economic Development Article to increase from 30 to 90 days the notice the Maryland Stadium Authority is required to give the General Assembly before seeking approval of the Board of Public Works for its bond issues or other borrowing. We reiterate our caution that inclusion of provisions in a supplementary appropriation bill that are not items of appropriation or related to items of appropriation or related to State debt may be subject to challenge. See Bill Review Letters on HB 51 (May 16, 2007); SB 370 (April 5, 2006); and HB 340 (May 19, 2005).

Incorrect References and Grantees

There are a number of grants under Sections ZA02 and ZA03 – Local Senate Initiatives and Local House Initiatives that do not reflect the correct legal entities as grantees and should be corrected in next year's "prior authorization" bill:

1. ZA02(W) (page 29, line28) and ZA03(AD)(page 45, line 34): "Town of Chesapeake Beach" should be "Mayor and Town Council of the Town of Chesapeake Beach."
2. ZA02(BN) (page 37, lines 28-29): "St. Mary of the Assumption" should be either the Board of Directors or the Board of Trustees of St. Mary of the Assumption church and school, which is a corporation of the Catholic Archdiocese of Washington.
3. ZA03(H) (page 41, lines 20-21): "Anne Arundel County Public Schools" should be "Anne Arundel County Board of Education."
4. ZA03(M) (page 42, line 27) and ZA03(S) (page 43, line35): "Baltimore City Fire Department" should be "Mayor and City Council of the City of Baltimore." The Baltimore Fire Department is a department of Baltimore City government.
5. ZA03(Y) (page 45, line 9), ZA03(AB) (page 45, line 25), and ZA03(AC) (page 45, line 29): "Baltimore County Public Schools" should be "Baltimore County Board of Education."
6. ZA03(Z) (page 45, line 12): "Baltimore County Parks and Recreation" should be "County Executive and County Council of Baltimore County."
7. ZA03(BF) (page 50, lines 28-31): There is no legal entity known as "Prince George's VFD." There is, however, a Prince George's County Fire and Rescue Association, Inc. representing 38 separate Volunteer Fire and Rescue Corporations in Prince George's County. It is not possible to determine from the language of Senate Bill 142 who is the correct grantee for this grant.

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Section 2 of Senate Bill 142 amends Chapter 204 of the Acts of 2003 to extend the termination date of a certain authorization for the Maryland Environmental Service (page 55, Item UB00(A), lines 24-26). The amendment contains an incorrect reference to "Notwithstanding Section (1)(5) of this Act" because no termination provision was included in the original Section (1)(5) of Chapter 204, Acts of 2003. The correct reference should be "Notwithstanding Section 2 of Chapter 153 of the Acts of 2003" which was the original enactment of a 7-year automatic termination for State debt authorized on or after June 1, 1997. This may also be corrected in next year's "prior authorization" bill.

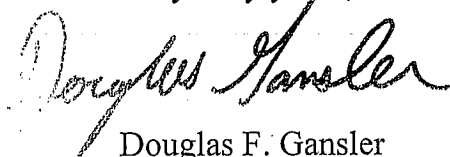
Tax Exempt Bonds

We also note that Senate Bill 142 authorizes an atypically large amount (up to \$24.7 million) for loan programs within the Department of Housing and Community Development (DHCD) (pages 15-18). The Internal Revenue Code imposes limits on the amount of tax-exempt bond proceeds from each bond sale that may be used to finance private loans (\$5.0 million per bond sale; IRC §141(c)). Consequently, the Board of Public Works may be required to issue taxable bonds to fund all of the DHCD authorizations.

Uncodified Multi-year provisions

Senate Bill 142 includes two requirements for annual reports from the Department of Housing and Community Development (page 16, lines 10-14; page 17, lines 2-6). These requirements are of unlimited duration, but because they are uncodified, they will only appear in the Session Laws and not in the Annotated Code. It is advisable to codify all acts except those of very limited duration. *Md. Const.*, Art. III, § 29.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/BAK/kk

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