

MARYLAND STATE TREASURER
Dereck E. Davis

April 7, 2022

The Honorable Brian E. Frosh
Maryland Attorney General
200 St. Paul Place Baltimore, Maryland 21202
opinions@oag.state.md.us

Re: Authority of Board of Public Works to Issue Subject to Appropriation Bonds

Dear Attorney General Frosh:

Pursuant to Section 8-118(a) of the State Finance and Procurement Law Article of the Annotated Code of Maryland, the Board of Public Works is required to exercise the powers and perform the duties that the General Assembly delegates to the Board in connection with the creation of State debt. The Board of Public Works has designated the Treasurer as its lead Member with respect to the Board's creation of State special and general obligation debt.¹

As you know, the State has significant capital financing requirements. Total agency capital requests are estimated at \$10 billion over the next five years. However, it is anticipated that the Department of Budget and Management's five-year capital improvement program over the same period will recommend issuing only \$5.5 billion of general obligation bonds.²

Affordability is the primary limitation on the financing of needed State capital projects. One driver of affordability is the constitutional limitation on the State's debt. Under the Maryland Constitution, the General Assembly is required to discharge the principal amount of State debt within 15 years. My understanding, nevertheless, is there has been significant legal wrangling regarding what constitutes "debt" under the Maryland Constitution.

As the Board's lead Member with respect to the State's special and general obligation debt, I wish to be familiar with all of the options at the Board's disposal when it comes to meeting the State's capital needs. In particular, I would like to identify the options available to the Board of

¹ See Board of Public Works Secretary's Action Agenda Item 21, July 2, 2014.

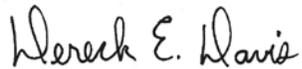
² Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations for Fiscal Year 2023 submitted to the Governor and General Assembly of Maryland dated November 2021, p. 19.

Public Works under the Maryland Constitution with respect to the issuance of obligations with maturities in excess of 15 years.

To that end, I am seeking the opinion of the Maryland Attorney General as to the following: is there a constitutional impediment to the State either (i) entering into leases with an amortization in excess of 15 years or (ii) issuing bonds with a maturity longer than 15 years, in each case, if the payment of principal and interest on the bonds is subject to appropriation by the General Assembly?

Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink that reads "Dereck E. Davis". The signature is written in a cursive style with a large initial 'D'.

Dereck E. Davis
Maryland State Treasurer