

**PRINCE GEORGE'S COUNTY, MARYLAND**

**DEBT MANAGEMENT POLICY**

# Table of Contents

INTRODUCTION .....	3
DEBT MANAGEMENT PROGRAM OBJECTIVES .....	3
COMPREHENSIVE CAPITAL PLANNING.....	3
TYPES OF DEBT OBLIGATIONS.....	4
VARIABLE RATE DEBT .....	7
REVENUE BONDS .....	11
DEBT STRUCTURE .....	11
METHOD OF SALE .....	12
REFINANCING OF OUTSTANDING DEBT .....	14
CONDUIT FINANCINGS .....	15
CREDIT RATINGS .....	16
DEBT LIMITS .....	18
DEBT RATIOS AND DEBT TARGETS .....	20
ANNUAL DEBT REPORT.....	20
MISCELLANEOUS.....	21
AMENDMENTS AND/OR EXEPTIONS .....	23
 <u>APPENDIX A</u>	
DERIVATIVES POLICY .....	24
PURPOSE.....	24
BACKGROUND.....	24
AUTHORITY .....	24
PERMITTED USES.....	24
NO SPECULATION.....	25
FORM OF SWAP AGREEMENTS .....	25
METHODS TO SOLICIT AND PROCURE INTERST RATE SWAPS.....	26
REVENUE SOURCE FOR DERIVATIVE PRODUCTS .....	27
TYPES OF RISK EXPOSURE AND MITIGATION STRATEGIES .....	27
COUNTERPARTY CREDIT STANDARDS .....	29
MONITORING AND REPORTING.....	30
 <u>APPENDIX B</u>	
GLOSSARY .....	32
 <u>APPENDIX C</u>	
STATUTORY CROSS-REFERENCES.....	36

## I. INTRODUCTION

This Debt Management Policy (“Policy”) for Prince George’s County, Maryland (“County”) is intended to provide guidelines for the issuance of bonds and other forms of indebtedness to finance capital improvements, equipment acquisition and other related services. This Policy will establish principles to lower the County’s long-term cost of capital, sustain the County’s credit ratings, and effectively manage the County’s financial risk.

The Office of Finance, as a part of its ongoing responsibility to manage the County’s Debt Management Program (“Debt Program”), will use these policies to establish certain debt management goals, structure debt and the use of derivative products, comply with applicable laws and regulations, and achieve the lowest cost of borrowing for the County. The Office of Finance will evaluate each transaction and take into consideration its long-term implications such as, the cost of borrowing, variable rate capacity, credit enhancement, opportunities to refund debt obligations and other similar considerations.

## II. DEBT MANAGEMENT PROGRAM OBJECTIVES

The objectives of the County’s Debt Program are as follows:

- **Integrity** - To maintain or enhance the County’s credit worthiness and reputation and to ensure the trust of those who have or will purchase the County’s debt or other forms of borrowing;
- **Vigilance** - To comply with all agreements, laws, regulations, contracts, covenants and policies;
- **Equity** - To be fair, reasonable and equitable to each generation of taxpayers, rate payers, users and other beneficiaries when distributing the debt burden or costs of service;
- **Diligence** - To carefully analyze and evaluate financial decisions related to debt and strive for the lowest possible cost; and,
- **Innovation** - To retain and when possible enhance the County’s current choices by utilizing innovative financing options that develop in the marketplace, when appropriate.

## III. COMPREHENSIVE CAPITAL PLANNING

The County’s Capital Improvement Program (CIP) ensures adequate (a) infrastructure (roads, bridges, solid waste collection system, stormwater facilities); (b) physical plants (buildings, schools, libraries, police and fire stations, structures, etc.); and, (c) related service delivery.

Through the CIP, the County maintains the current system, structures and facilities and when necessary expands or modifies the County's infrastructure in reasonable anticipation of change.

**Capital Improvement Program (CIP)** - The County's Charter requires that the County prepare a multi-year capital improvement program for consideration and adoption by the County Council as part of the County's budget process. The capital improvement program describes revenue sources and expenditures for the current year and the next succeeding five fiscal years. The CIP is updated annually.

The CIP is primarily funded with general obligation bonds. However, the County will first attempt to fund capital projects with current-year operating money ("pay-go"), grants, developer contributions, and/or dedicated revenue. The use of these other financing sources, such as pay-go, reduces the County's debt obligation in the long-term.

**Capital Budget** - The Capital Budget consists of expenditures to be made in the first year of the Capital Improvement Program and provides the appropriation authority to spend the funds needed to initiate or continue work on capital projects during that budget year. Since capital facilities provide benefits over a period of many years, the County normally spreads the cost by using general obligation bonds to finance these expenditures. This ensures that construction costs are not borne solely by today's taxpayers, but that future beneficiaries of these capital projects also help to pay for them.

#### **IV. TYPES OF DEBT OBLIGATIONS**

The County may consider issuing various types of debt and alternative structures to the extent permitted by State and local law. Based upon the project to be financed, the Office of Finance will determine the appropriate type of debt obligation to utilize.

##### **A. Long-Term Bonded Debt**

The County can issue various types of tax-exempt and taxable debt which includes, but is not limited to, the following:

##### **1. Tax-Exempt Debt**

**Consolidated Public Improvement Bonds** - The consolidated public improvement bonds are general obligations of the County to which its full faith and credit and taxing power are irrevocably pledged. To provide for the payment of the bonds, the County is empowered and directed to levy ad valorem taxes upon all the legally assessable property within the corporate limits of the County subject to the limitations set forth in Sections 811 and 812 of the County Charter. Principal payments are made in installments, the first of which will be payable within two years of the date of issue. Consolidated Public Improvement Bonds require voter approval, except for school construction bonds or obligations pursuant to the charter. The County also issues general obligation bonds for self-supporting debt which includes, but is not limited to, the following: mass transit facilities, school facilities, stormwater facilities, and solid waste facilities.

**Certificates of Participation (COPs)** – COPs are tax-exempt government securities used to raise funds to improve and construct buildings or purchase equipment. Unlike general obligations, COPs are not secured by the full faith and credit of the County. Rather, they are subject to annual appropriation by County Council.

**Revenue Bonds** - The County will, when feasible, issue debt with a defined revenue source to preserve the use of general fund supported debt for projects with no stream of user-fee revenues. Revenue bonds supported solely from fees are not included when rating agencies calculate debt ratios.

**Special Tax District Bonds** – Special Tax Districts are both a financing vehicle and land planning tool that provides incentives to the development community to pursue projects that address public policy concerns. The property owners in a special tax district pay the debt service on the bonds issued through an additional tax. State legislation enables special obligation bonds to pay for infrastructure improvements that benefit the residents of the special taxing district and the immediate vicinity.

**Tax Increment Financings (TIFs)** – TIFs are a tool to use future gains in taxes to finance the current improvements that create those gains. TIFs are used to fund public projects such as, infrastructure, land acquisition, demolition, and planning costs. Once these projects are completed there is often an increase in the value of surrounding real estate, and often new investment such as, new or rehabilitated buildings. This increased site value and investment results in increased tax revenues. The increased tax revenues are the “tax increment”. Tax Increment Financing dedicates this increased revenue, or a portion thereof, to pay debt service on the bonds issued to pay for the project.

**Local Government Insurance Trust Bonds** – The Local Government Insurance Trust (LGIT) provides loss control and risk management to Maryland local governments. Through LGIT, the Self-Insurance Liability Funding Program provides liability coverage to local governments that are self-insured. This program requires local governments to fund their liability accounts. Each participating local government may draw upon its account to pay settlements for liability claims. The County issued bonds to fund its account within the General Fund of the Self-Insurance Pool.

## **2. Taxable Debt**

**Pension Obligation Bonds (POBs)** – An unfunded pension liability is the gap between what has been promised to retirees and what is likely to be available to meet those promises. One method to close this gap is to issue taxable pension obligation bonds. Pension bonds are generally issued by the plan sponsor or pension system entity and backed by tax revenues.

**Other Post Employment Benefits (OPEB) Bonds** – Accounting rule GASB (as defined herein) Statement No. 45 requires that other (non-pension) post employment benefits be accounted for much like pension obligations. An unfunded OPEB liability is the gap between what has been promised to retirees and what is likely to be available to meet those promises. Like POBs, taxable bonds can be issued to fund this unfunded liability.

## **B. Other Long-Term Liabilities**

In addition to long-term bonded debt, the County may also have other long-term liabilities.

**Section 108 Loans** – Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program administered by the US Department of Housing and Urban Development. Section 108 provides communities with a source of financing for economic development projects. Section 108 allows governments to transform a portion of their CDBG funds into federally guaranteed loans. Local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations as security for the loan.

**Vested Compensated Absences and Termination Benefits** – County employees are granted vacation and sick leave in varying amounts. In the event of termination, an employee is reimbursed for accumulated vacation in full, and for sick leave in varying amounts based on years of service. Participants in the plans administered by the State Retirement and Pension System may apply accrued sick leave benefits as service credits toward retirement. Vested or accumulated vacation and sick leave are recognized as an expense and liability as the benefits accrue to employees. Current amounts are such amounts expected to be paid within one year.

**Landfill Closure and Post-closure Care Cost** – Proper closure of solid waste landfills is important for long-term environmental protection. The federal government requires that the owner or operator of a landfill pay for proper landfill closure, at least 30-years of post-closure care, and corrective action for environmental problems caused by the landfill. The expense related to these requirements have led some governments to issue general obligation bonds to pay for the costs associated with closing publicly-owned landfills.

**Capital and Operating Leases** – Lease Obligations may also be appropriate for financing capital. Lease financing should be considered when determined to be more beneficial, either economically or from a policy perspective. Factors to be considered and evaluated include: the useful life of the asset, the terms and conditions of the lease, market convention, and the impact on debt capacity and budget flexibility. The County has entered into leases for equipment and real property.

## **C. Short-Term Debt**

Traditionally, local governments have issued long-term fixed rate debt at or about the time the bond proceeds are needed to initiate capital project construction. However, other borrowing instruments may be more efficient and cost effective. Below are borrowing instruments that the County may consider based upon the projects to be financed and its financial position.

**Tax and Revenue Anticipation Notes** - Borrowing for cash flow purposes through the use of tax and revenue anticipation notes is often desirable to manage the timing difference between when revenues are received and when expenditures are made over the course of a fiscal year.

**Bond Anticipation Notes** - In certain circumstances, it may be appropriate for the County to issue short-term obligations to finance a capital project. This obligation is later refunded with a more conventional long-term financing.

**Grant Anticipation Notes** - The County may issue short-term notes to be repaid with the proceeds of State or Federal grants if appropriate for the project.

**Commercial Paper** - Commercial Paper (CP) is a short-term obligation with maturities ranging from 1 to 270 days. It is often used as interim financing until a project is completed to take advantage of lower interest rates. Once a project is completed, the County may recommend refunding CP with a long-term financing obligation, if appropriate.

#### **D. Interfund Borrowing**

Short-Term Notes for Operations - Under the provisions of Section 814 (Transfer of Appropriations) of the County Charter, the County may affect an interfund cash borrowing not to exceed \$5 million from the General Fund to the Capital Project Fund to meet temporary cash requirements (See Section 10-182.07 of the County Code).

Borrowings from Bond Proceeds - Section 10-182.04 of the County Code authorizes the County to undertake interfund cash borrowings from available bond proceeds currently in hand, to meet temporary cash requirements not exceeding \$15 million for financing capital projects of the County for which general obligation bonds of the County have been authorized for sale.

#### **V. VARIABLE RATE DEBT**

Variable-rate markets focus on the short end of the yield curve (typically involving repricing increments of less than one year). It is often appropriate to issue variable rate debt to diversify the debt portfolio and improve the match of assets to liabilities. Variable rate debt may also provide interest cost savings. When the cycle of long term rates moves down to or near historic lows, consideration will be given to fixing (converting to a fixed rate maturity alternative) all or a portion of the then outstanding variable rate debt to take advantage of long term fixed rates. The use of variable rate bonds will be evaluated on a case-by-case basis taking into account then current market conditions, anticipated future borrowing needs and the County's overall debt composition.

##### **A. Types of Variable Rate Debt**

There are two primary methods of issuing variable rate debt - variable rate demand obligations and auction rate securities. Below are general characteristics of each.

##### **Variable Rate Demand Obligations (VRDOs)**

- a) Investor has the explicit right to put bonds back to the issuer/ bank every reset period.
- b) Periodic interest rate resets, typically daily or weekly, through investment bank remarketing.
- c) Liquidity facility required.

- d) Interest rates adjusted by remarketing agent as a minimum rate required for VRDOs to trade at par.
- e) Owners of VRDOs can tender the securities at any reset period.
- f) VRDOs are subject to optional redemption (callable) at any time.
- g) Interest is usually paid monthly, but can be paid semi-annually.
- h) In the event of a failed remarketing attempt, interest is paid at a predetermined rate.
- i) The liquidity provider will generally not hold the bonds for more than one year before the issuer will have to redeem the bonds at par and restructure or eliminate the variable rate program.

### **Auction Rate Securities (ARS)**

- a) Long-term nominal maturity.
- b) ARS have a long-term nominal maturity in which the interest rate is reset through an auction procedure.
- c) An auction may be held daily, every 7, 28, 35, 49 days, or six months, usually with interest paid at the end of each auction period.
- d) In an auction, the Broker-Dealer submits bids, on behalf of current and prospective investors, to the Auction Agent. The Auction Agent will set the next interest rate by determining the lowest rate to clear the total outstanding amount of ARS.
- e) No liquidity facility required.
- f) In the event of a failed auction, the existing holders are required to hold on to the existing bonds at the maximum rate.

## **B. Criteria for Issuing Variable Rate Debt**

Any recommendation for the use of variable rate debt must have findings consistent with the following criteria:

**Balance sheet risk mitigation** - The maintenance of variable rate debt liabilities in an amount equal to or less than the amount of variable rate assets prudently reduces the County's risk of exposure to changes in interest rates. For example, the County currently maintains significant exposure from variable rate assets in the form of the short-term investment of available cash. Offsetting this exposure with variable rate liabilities would serve to hedge against such interest rate risk.

In determining the appropriate amount of variable rate debt to be issued for risk mitigation purposes, the following factors should be analyzed:

- The historic average of cash balances over the course of several prior fiscal years;
- Projected cash balances based upon known demands and on County fund balance policies; and
- Any basis risk (The difference in the performance or duration of the County's investment vehicle compared to the variable rate debt instrument to be used by the County).



**Risk Exposure** - Since the inception of municipal variable rate products in the early 1980s, variable interest rates have borne an average rate that is substantially below the average for fixed rates. Accordingly, issuers who have accepted variable rate risk have experienced reduced costs of borrowing. One of the goals of this Policy is to define a prudent range of risk exposure. This Policy incorporates the Rating Agencies' (as defined herein) guidelines that 15% to 20% of outstanding debt can be in a variable rate mode without representing undue risk. In determining the amount of risk the County should assume, the County should consider the specific fund exposed to the risk and the budgetary flexibility that fund has in accommodating such risk. The analysis of risk exposure should be performed on the basis of "net" risk; that is, variable rate liability exposure net of any interest rate hedge provided by the availability of cash or risk mitigation tools such as interest rate swaps.

**Interim Financing** - Since the expectations of variable-rate investors are, by their nature, short-term, variable rate debt can be redeemed on short notice without any penalty in the form of a call premium or higher initial interest rates. This feature makes variable rate bonds a preferred tool for financing projects for which a prepayment or restructuring is a high probability. Certain variable rate products, most notably commercial paper, can be issued incrementally as funds are needed to finance current construction and can reduce the long-term cost of construction financing. Often, commercial paper will be refunded with a long-term financing when the project is completed. The County should consider issuing commercial paper in connection with its major debt-financed construction programs, especially when interest earnings on construction and capitalized interest funds are at a rate lower than the rate of long-term bonds, thereby increasing the amount of debt that must be issued to fund a program. Variable rate debt should also be considered in lieu of a long-term fixed rate financing when a refunding or restructuring of the debt is likely due to potential changes in the use of the project or credit quality.

**Synthetic Fixed Rate** - The County can simultaneously issue variable rate debt and enter into corresponding swap agreements that have the effect of creating a net fixed rate obligation at a significantly lower net interest cost than the cost of issuing traditional fixed rate debt. The use of variable rate debt should be considered in those instances where the issuance of synthetic fixed rate debt is a viable and cost-effective alternative, subject to the provisions of the County's Derivatives Policy (Appendix A).

### **C. Selection and Diversification of Service Providers**

In selecting swap counterparties, liquidity providers, remarketing agents, broker-dealers, credit enhancement providers and so on for its variable rate program, the County should diversify its exposure and create competition among the various service providers.

### **D. Liquidity**

For variable rate debt requiring a liquidity facility to protect against remarketing risk the Office of Finance will conduct a comparative analysis of the following:

- Alternative forms of liquidity, including direct pay letters of credit, standby letters of credit, and lines of credit, in order to balance the protection offered against the economic costs associated with each alternative;
- Credit ratings of liquidity providers, seeking the highest short-term credit ratings;
- Review and negotiate the most favorable covenants to the County for the Reimbursement Agreement or Standby Purchase Agreement;
- Relative trading values for bonds secured by alternative liquidity facilities;
- All cost components related to the liquidity facility, including commitment fees, standby fees, draw fees, and interest rates charged against liquidity draws;
- The term of the facility, selecting the provider offering the longest term all other factors being equal; and
- The potential use of self-liquidity.

#### **E. Budgeting**

The Office of Finance will analyze each variable rate bond issuance to determine the budgeted amount for debt service. The factors to be analyzed include historic interest rates, projected interest rates, and the effect of risk mitigation products such as interest rate swaps or caps. To protect against volatile interest rate surges, some margin will be included in the budgeted amount. The analysis will be done in conjunction with the formulation of the County Executive's proposed budget.

#### **F. Monitoring and Reporting**

The Office of Finance will manage the County's variable rate bond issuances, including the performance of actual interest rates compared to the interest rates assumed at the time of budget formulation. The Office of Finance will recommend to the Office of Management and Budget any appropriate mid-year budget adjustments. In addition, the Office of Finance will review the following on a periodic basis:

- a. Whether balances remaining at the end of the fiscal year, accruing from actual lower interest rates than those assumed in the budget process, will be reserved for future interest rate stabilization or otherwise applied for interest rate management;
- b. The performance of the individual remarketing agents as compared to other remarketing agents, other similar programs and market indices;
- c. The factual circumstances, such as balance sheet factors or the relative amount of debt that supported the original issuance of the variable rate debt; and

- d. Reporting variable rate debt in accordance with Generally Accepted Accounting Principles (GAAP) and with rules promulgated by the General Accounting Standards Board (GASB).

## **VI. REVENUE BONDS**

### **Overview of Revenue Bonds**

Revenue Bonds are used to account for certain public services that are self-supporting by generating their own revenues from fees, charges and other receipts. For instance, the Stormwater Management Enterprise Fund is used to account for and support the County's stormwater management functions. In addition, the Solid Waste Enterprise Fund supports a wide variety of environmental, recycling, and solid waste collection and disposal services.

### **Criteria for Revenue Bonds**

- a) Revenue bonds issued in support of enterprise projects must be fully supported by the annual revenues of the enterprise fund.
- b) Annual revenues must meet or exceed the debt service coverage requirement in the indenture for revenue-supported bonds in addition to all other revenue bond covenants.
- c) If an indenture does not exist, bonds backed by revenues from an enterprise fund, must meet general revenue bond criteria and coverage as specified by the Rating Agencies.

## **VII. DEBT STRUCTURE (Applies to all debt obligations issued by the County unless otherwise indicated)**

**Payment of Bonds on a Parity Basis** - The consolidated public improvement bonds are payable on a parity basis with all other tax-supported general obligation debt of the County which has been issued and is outstanding, or which may be issued in the future.

**Form of Bonds** - Bonds may be issued in fully registered form and sold through the book-entry system of The Depository Trust Company, New York, New York or successor thereto.

**Original Issue Discount or Premium** - The County's bonds may be sold at a discount or premium; however, coupons must be at least 95% of par value. The maximum permitted premium and discount will be stated in the Notice of Sale.

**Call Provisions** - The County desires early calls at low or no premium because such features allow the County to refinance debt more easily for debt service savings when interest rates decline. The County may consider bonds with shorter periods of call protection and/or higher call premiums if such bonds are reasonably expected to generate a significantly lower cost of capital over the life of the bonds. Non-callable bonds may be considered if such bonds are

reasonably expected to generate a significantly lower cost of capital over the life of the bonds. The County will evaluate optional redemption provisions for each issue to assure that the County does not pay unacceptably higher interest rates to obtain such advantageous calls.

**Interest Rates** - The County may use fixed-rate or variable-rate debt to finance its capital needs. The par amount of outstanding variable rate debt should not exceed 20% of total outstanding debt.

**Bond Insurance** – Bond insurance may be purchased directly by the County prior to the bond sale or at the underwriter’s option and expense for either an entire issue or specific maturities. This form of credit enhancement guarantees the payment of principal and interest on the bonds; thereby, providing a higher credit rating and thus a lower borrowing cost. Given the County’s high credit ratings, the County will assess whether it is cost effective to purchase bond insurance on a case-by-case basis. When insurance is purchased directly by the County, the present value of the estimated debt service savings from insurance should be greater than the insurance premium.

**Term Bonds** - The County may permit an underwriter(s) to designate two or more consecutive annual principal payments as term bonds which mature on the maturity date of the last principal payment of the sequence. Any term bond so designated shall be subject to mandatory sinking fund redemption in each year on the principal payment date.

**Capitalized interest** – Capitalized interest increases the amount of debt to be issued and therefore will be avoided unless essential from a credit standpoint, as in the case of lease-purchase obligations. Interest on general obligation bonds will not be capitalized.

**Term of Debt Repayment** - The County Charter (Section 822) requires that all bonds shall mature within the probable useful life of the improvement or undertaking with respect to which they are to be issued. If the bonds are to be issued for several improvements or undertakings, then the average probable useful life of all such improvements or undertakings is used. The Charter also provides that no bonds shall mature and be payable more than forty (40) years after their date of issuance. The final maturity of revenue bonds and special tax obligations will be limited to thirty (30) years. The County will prudently amortize its debt while taking in account policy goals and changing market circumstances. The County intends to amortize no less than 65% of its outstanding debt in 10 years. A refunding undertaken for savings should not extend the life of the bonds to be refunded. Refundings undertaken for debt restructuring purposes can be exempted from the aforementioned requirement and should be examined in light of the overall debt portfolio targets.

## **VIII. METHOD OF SALE**

### **A. Overview of Competitive and Negotiated Sales**

There are three primary methods of issuing debt obligations: competitive sale, negotiated sale, and private placement. In a competitive sale, underwriters submit sealed bids and the underwriter or underwriting syndicate with the lowest True Interest Cost (TIC) is awarded the

sale. State law (Section 10 of Article 31 of the Annotated Code of Maryland) requires that all bonds sold or offered for sale by a public body in the State shall, unless the enabling act authorizing the issuance and sale of the bonds specifically exempts the same from the provision of Section 10 or specifies a different method of sale, be offered at public sale to the highest bidder(s) after due notice of such sale has been given by an advertisement. In a negotiated sale and private placement, the underwriter or underwriting syndicate is selected by the County. Also, the interest rates and underwriter's fee are negotiated prior to the sale, based on market conditions. A private placement sale or limited public offering may be used to tailor a debt issue to the specific needs of a particular investor or sector for issues with a complex structure or unusual circumstances. The financial advisor shall concur, in writing, with the decision to sell bonds in a private placement.

## **B. Criteria for issuing bonds on a Competitive or Negotiated Basis**

The County and its financial advisor shall set the terms of the sale to encourage as many bidders as possible. For all negotiated sales or private placements, underwriters will be required to demonstrate sufficient capitalization and experience related to the debt issuance. It shall be the policy of the County to issue debt through a competitive sale whenever feasible. When a negotiated sale would provide significant benefits to the County that would not be achieved through a competitive sale, the County may elect to sell debt obligations through a private or negotiated sale upon approval by the County Council. It is usually not feasible to issue bonds through a competitive sale for certain types of financings, such as variable rate debt, commercial paper and specialized financings like Special Taxing Districts. For negotiated sales, qualified minority or women owned firms should be included in the underwriting team, and equal opportunity should be provided to all members of the team, to hold the position of syndicate manager.

When determining whether to use a competitive or negotiated sale, the Office of Finance will consider both the Issuer and Financing Characteristics listed below.

### **Issuer Characteristics**

1. **Market Familiarity** – A frequent issuer can generally sell most issues through a competitive sale since investors and underwriters are familiar with its credit quality. Frequent issuers do not require as much pre-marketing in order to have a successful sale. A negotiated sale may be appropriate if extensive pre-marketing to investors is advantageous.
2. **Credit Strength** – The higher the credit quality of the issuer, the less likely the need for negotiated sale due the demand for high quality municipal bonds.
3. **Policy Goals** – The competitive sale does not provide the issuer influence over choosing the underwriting syndicate. If the issuer finds that influencing the composition of the syndicate and the distribution of bonds are worthwhile policy objectives for a particular financing, then the issuer may want utilize a negotiated sale.

## **Financing Characteristics**

1. Type of Debt Instrument – New types of instruments may require an education process that is more conducive to a negotiated sale. As the market becomes more familiar with the issuer’s debt instrument, the need to educate the market diminishes. All things being equal, familiar debt instruments would be better suited to competitive sales.
2. Issue size – The bond size influences both investor interest and the market’s ability to absorb the bonds. In general, if the bond amount is too small or too large, then the issuer should consider a negotiated sale. A small bond sale may not attract market attention without a sales effort, while a large sale may be difficult for the market to absorb without the pre-sale activity offered by the negotiated sale process.
3. Market conditions – When the market has interest rate stability, flexibility in the timing of the sale is not critical. However, the timing of the sale is critical when there is a volatile market. If this is the case, then a negotiated sale could be more appropriate.
4. Story bonds – When bonds are unique or have a “story” associated with them, then the pre-marketing process is essential. These bonds require additional explanations and are called “story” bonds because to develop sufficient market interest, the issuer has to “tell a story” and explain why the bonds are a solid investment.

## **IX. REFINANCING OF OUTSTANDING DEBT**

The Office of Finance, with the assistance of the County’s financial advisor(s), will monitor on an ongoing basis potential savings available by refinancing outstanding debt of the County.

### **A. Legal Authority to Refinance Outstanding Debt**

Section 24 of Article 31 of the Annotated Code of Maryland authorizes the County to issue bonds for the purpose of refunding any of the County’s bonds then outstanding, including the payment of any redemption premium and any interest accrued. Refunding bonds shall be issued with the prior approval of the County Council. In addition, the County adopted CR-85-2006 which permits bonds authorized to be sold by separate acts of authorizing legislation be consolidated for sale and issued, sold and delivered as one or more single issues of bonds.

### **B. Legal Requirements for the proceeds of Refunding Bonds**

As specified in Section 24 of Article 31 of the Annotated Code of Maryland, the proceeds of refunding bonds may be deposited in an escrow trust established in the name of the issuer. Money in the trust fund may be invested and reinvested in direct obligations of, or obligations of the principal of and the interest on which are guaranteed by, the United States of America or in certificates of deposit or time deposits secured by direct obligations or obligations the principal of, and the interest on which, are guaranteed by, the United States of America. Proceeds of refunding bonds shall be so invested and applied as to assure that the principal, interest and

redemption premium, if any, on the bonds being refunded shall be paid in full on their respective maturity, redemption or interest payment dates.

### **C. Criteria for Issuing Refunding Bonds**

The County will consider refunding outstanding debt if one or more of the following conditions exist:

- a) Present value savings are at least 3% of the par amount of the total refunding amount (if utilizing swaps then present value savings must be at least 5% of the total refunding amount) and present value savings are at least 2% for each maturity;
- b) The bonds to be refunded have restrictive or outdated covenants;
- c) Restructuring debt is deemed to be desirable;
- d) Change type of debt instrument; or
- e) A minimum of 70% of the maximum call option value can be achieved.

### **D. Determination of Debt Limitation**

For the purpose of determining whether refunding bonds issued are within any debt limitation applicable to the County, the amount of bonds to be refunded shall be subtracted from, and the amount of refunding bonds to be issued shall be added to, the aggregate of the County's outstanding debt.

## **X. CONDUIT FINANCINGS**

Conduit financings are securities issued by a government agency to finance a project of a third party, such as a non-profit organization or other private entity. The County may sponsor conduit financings for activities (e.g., economic development, housing, etc.) that have a general public purpose and are consistent with the County's overall service and policy objectives.

### **A. Legal Authority to Issue Conduit Bonds**

**Private Activity Bond Authority** - Pursuant to Section 146 of the Internal Revenue Service (IRS) Code and Section 13-807 of the Financial Institutions Article of the Annotated Code of Maryland, Maryland's Secretary of Business and Economic Development each calendar year notifies the counties of the aggregate dollar amount of private activity bonds that may be issued by each county in any calendar year. The State ceiling for all "Private Activity" Bonds is based on the State population at \$75 per capita (Section 146 (d)(1) of the IRS Code). Initially, 50% of the State ceiling is allocated to the counties in the State, consisting of 35% of the ceiling designated for the issuance of housing bonds and 15% of the ceiling for non-housing bonds. The allocation to each county for housing bonds is 35% of the State ceiling multiplied by a fraction

(the numerator of which is the population of the County and the denominator is the population of the State). The allocation to each county for the issuance of non-housing bonds is 15% of the State ceiling multiplied by a fraction (See Section 13-802 of the Financial Institutions Article of the Annotated Code of Maryland).

**Non-profit Bond Authority** - Federal tax law allows for state and local governments to issue tax-exempt securities on behalf of nonprofit corporations exempt from taxes under Section 501(c)(3) of the Internal Revenue Service (IRS) Code.

**Revenue Bond Authority** (Maryland Economic Development Revenue Bond Act) - Sections 14-101 through 14-109 of Article 41 of the Annotated Code of Maryland empower the counties of the State to borrow money by issuing revenue bonds for the purpose of financing and refinancing the costs of acquisition of one or more facilities. Among the declared legislative purposes of the Act are to relieve conditions of unemployment in the State, to encourage the increase of industry and commerce and a balanced economy in the State, to assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through reduction, or abatement of pollution of the environment and the utilization and disposal of waste, to promote economic development, to protect natural resources and encourage resource recovery and generally to promote the health, welfare, and safety of the residents of each of the counties of the State. The County may issue revenue bonds with the approval of the County Council to accomplish any of the declared purposes stated in Article 41. The revenue bonds thus issued will be a limited obligation of the County and will not be issued upon the County's full faith and credit of taxing powers.

**County Liability** - While the County may issue debt on behalf of these organizations, repayment of the debt is secured solely by the nonprofit corporation or other private entity. No County funds are pledged to support the bonds and no appropriation will be made in the event of default. As such, these financings are referred to as "conduit" financings.

## **B. Criteria for Issuing Conduit Debt**

The County will consider several criteria when issuing conduit debt. These factors include, but are not limited to, the history of the organization and its facilities; the population served by the facilities; the population employed at the facilities; a complete description of the proposed project(s) to be financed; the sources and uses of funds; and, a complete statement of the public purpose served through the financing. The County will also take into consideration the organization's credit rating.

## **XI. CREDIT RATINGS**

### **A. Overview of Credit Rating Agencies**

The County has earned strong credit ratings from Moody's Investors Service, Standard & Poor's and Fitch Ratings (collectively, the "Rating Agencies"). These high credit ratings reduce the interest costs paid by the County on the amounts borrowed.



The County's ability to borrow at the lowest cost of funds depends upon its credit standing as assessed by the Rating Agencies. Determination of a credit rating by a rating agency is based on the rating agency's assessment of the credit worthiness of an issuer with respect to a specific obligation. To arrive at a judgment regarding an issuer's credit worthiness, the Rating Agencies analyze the issuer in four broad, yet interrelated areas:

- |     |                                     |                       |
|-----|-------------------------------------|-----------------------|
| (1) | Economic Base                       | (3) Debt Burden       |
| (2) | Financial Performance & Flexibility | (4) Fiscal Management |

**Economic Base** – Incorporates local and national economic factors and trends. The foundation of an entity's fiscal health is its economy. Financial growth prospects and volatility of major revenue sources depend on the performance of the local economy.

**Financial Performance & Flexibility** – The powers of a municipality establish the entity's ability to plan for changes in the political, economic, and financial environment and the capacity to respond in a timely fashion.

**Debt Burden** – The analysis of debt focuses on the nature of the pledged security, the debt repayment structure, the current debt-service burden, and the future capital needs of an issuer. Manageable debt levels are an important consideration, since accelerated debt issuance can overburden a municipality while low debt levels may indicate under-investment in capital facilities.

**Fiscal Management** – Fiscal Management involves several areas: accounting and reporting methods; revenue and expenditure structures and patterns; annual operating and budgetary performance; financial leverage and equity position; budget and financial planning; and contingent financial obligations, such as off-balance sheet debt, pension liabilities & other post-employment benefits.

## **B. Ratings Strategy**

The County Executive and his/her senior staff will continue the practice of meeting regularly with credit analysts from the rating agencies to keep them informed of the County's borrowing plans and financial condition. Generally, face-to-face meetings will occur annually with each rating agency and, at a minimum, conference calls will be offered to credit analysts in connection with each issuance of debt. In addition, the analysts will periodically be invited to the County. These meetings will include discussions regarding the County's community economic development projects, management initiatives and revenue outlook.

As a part of the annual report prepared by the Office of Finance (as described herein), the County will evaluate its credit strengths and weaknesses identified in the rating agency reports. When addressing efforts to enhance the County's credit rating, the County will have to balance its current flexibility (and related ability to meet the challenges facing the community) with potential limitations or restrictions which may be required in an effort to seek a rating enhancement. The Office of Finance will include recommended actions to address any

weaknesses identified by the rating agencies. These recommendations will be considered in light of other County policies and objectives.

## **XII. DEBT LIMITS**

**A. Legal Limits** – Under Article 25A of the Annotated Code of Maryland (the “State”), the County is authorized to undertake borrowings for any public purposes of the County, provided that the aggregate amount of indebtedness outstanding at the time of issuance shall not exceed 6% of the assessable base of real property of the County and 15% of the County’s assessable base of personal property excluding:

- a) Tax anticipation notes or other indebtedness with a maturity of one year or less;
- b) Tax Increment Financing Bonds or other indebtedness of the County payable primarily or exclusively from incremental taxes or other revenues levied in special taxing areas or districts; and
- c) Obligations issued for self-liquidating (or self-supporting) projects payable primarily or exclusively from the proceeds of assessments or charges for special benefits or services.

## **B. Policy Limits**

In addition to the County’s legal limitations on the amount of debt issued, there are also policy guidelines and limitations on the issuance of debt.

**Spending Affordability Committee** – Pursuant to Section 10-112.22 of the County Code, the County’s Spending Affordability Committee (“the Committee”) makes advisory recommendations to the County Executive, the County Council and the Office of Management and Budget (OMB) about the County’s spending levels for the next fiscal year consistent with the capacity of the tax base and revenue sources of the County to finance public services and long-term debt. The Committee is composed of members with demonstrated competence in areas such as, accounting, financial analysis and planning, economics, budget and fiscal management, etc. (See Section 10-112.21 of the County Code). Each year the Committee submits two reports, one on October 1 (preliminary) and the other on January 1 of the following calendar year (final), to the County Executive, the County Council, and the OMB with recommendations on the maximum total general fund appropriations, which includes the appropriations for debt service, and the appropriate levels of general fund reserves and fund balances for the ensuing fiscal year.

In developing the spending affordability guidelines, the Committee considers the following factors, among others:

- a) Growth and stability of the local economy;
- b) Growth in the assessable base and ad valorem property tax revenues;
- c) Estimated revenues from the County, State, and Federal governments;

- d) Changes in personal income and other measures of tax capacity;
- e) Debt affordability indicators such as, the ratio of net bonded debt to total assessed value, the ratio of debt service to general fund expenditures, debt per capita, and the ratio of per capita debt to per capita income;
- f) The level of inflation and inflation trends;
- g) Commercial construction, housing and other ancillary industry-related planning, zoning, permitting, financing, and sales activity;
- h) The level of unemployment and labor force trends; and
- i) Projected population and school enrollment changes.

The Committee reports are important elements of the budget process. When developing the budget of the ensuing fiscal year, the County Executive and County Council take into account the Committee's recommendations in determining the total spending level and the appropriate debt service amount.

**Long-Term Debt Affordability Model** - The determination of how much indebtedness the County should incur each year is based upon the County's Comprehensive Debt Affordability Model (the "Model"), which analyzes the long-term borrowing needs of the County and the impact of planned debt issuances on the long-term affordability of all outstanding debt.

The Model incorporates various other fiscal planning tools of the County including a six-year revenue and expenditure projections model. In addition, the Model distinguishes various funding sources, such as General Fund revenues and school surcharge revenues, for each year's debt service. The model also differentiates debt service spending by functional areas such as school construction projects and non-school construction projects. Projection data are updated on a regular basis. In order to foresee possible risks and prepare preventative measures, different debt affordability scenarios are tested based on different revenue, expenditure, interest rate, and debt structure assumptions. A fiscally responsible and efficient borrowing plan is implemented each year to ensure the County's short-term and long-term financial soundness.

**Debt Affordability Measures** - One of the strengths of the County's high credit ratings is its moderate debt level relative to other comparable jurisdictions and as compared to the resources available to repay the debt. The issuance of debt must be carefully monitored to maintain a balance between debt and resources.

In both the debt affordability planning process and the Spending Affordability Committee work process, important debt affordability measures are examined to determine the County's debt capacity. Debt ratios (as discussed below) are compared to those of other jurisdictions in the area, the Rating Agencies' standards, and the County's historical ratios to determine debt affordability.

### **XIII. DEBT RATIOS AND DEBT TARGETS**

#### **A. Debt Ratios**

Debt ratios, along with total debt, can have a significant impact on bond ratings, which in turn affects the cost of borrowing. It is also important to consider how these debt ratios change over time.

The most common debt ratio measures are as follows:

- 1) Debt outstanding – the principal amount of debt that remains to be paid by the County.
- 2) Debt as a percentage of assessed value (or estimated full value) - indicates the burden the County’s debt places on the property tax base - the main source of County revenue.
- 3) Debt per capita - assesses the relative magnitude of the County’s debt position compared to other issuers.
- 4) Debt service as a percentage of general fund expenditures - indicates the amount of flexibility that the County has in its budget.
- 5) Rapidity of debt repayment – indicates how much long-term debt is retired after 10 years.
- 6) Debt to personal income - takes into account all earnings of the County’s taxpayers that could be taxed to pay debt service and is perhaps the most comprehensive indicator.

#### **B. Debt Targets**

In connection with the aforementioned debt ratios, the County has set the following debt targets to ensure the current and future flexibility and financial vitality of the County.

- 1) Net direct debt issued should not exceed 3% of the County’s assessable base (This target is more conservative than the State’s requirement that net debt not exceed 6% of the assessable base);
- 2) Annual debt service should not exceed 8% of the County’s general fund expenditures;
- 3) No less than 65% of outstanding debt should be retired in 10 years.

### **XIV. ANNUAL DEBT REPORT**

The Office of Finance will prepare annually a report which reviews the outstanding debt of the County. This report will be transmitted to the Chief Administrative Officer and Deputy Chief Administrative Officer by August 1.

The annual report will include, but not be limited to, the following:

- 1) An analysis of the debt ratios identified above including their change over time and a comparison to comparable jurisdictions;
- 2) An analysis of the strengths and weakness as identified by the Rating Agencies in their respective ratings reports; and
- 3) For variable rate bonds, an analysis of the actual interest rates compared to assumed interest rates, performance of companies providing professional services, and percentage of variable rate debt.

## **XV. MISCELLANEOUS**

**Federal Tax Law** – The Office of Finance will evaluate and ensure compliance with all applicable tax law. The Office of Finance is responsible for maintaining a system for record keeping and reporting to meet the arbitrage rebate compliance requirements of the federal tax code. This effort includes tracking investment earnings on bond proceeds, calculating rebate payments in compliance with tax law, and remitting any rebateable earnings to the federal government in a timely manner in order to preserve the tax-exempt status of the County’s outstanding debt issues.

**Covenant Compliance** - Additionally, general financial reporting and certification requirements embodied in bond covenants are monitored to ensure that all covenants are complied with.

The evaluation will also require the development of a rationale for the funding strategy that considers not only the economics and risks of the strategy, but also its projected budgetary impact. Furthermore, the evaluation will consider, and the strategy will ensure, intergenerational equity.

**Reporting Requirements** - The County will comply with the standards of the Government Finance Officers Association for financial reporting and budget presentation and the disclosure requirements of the Securities and Exchange Commission.

The County will comply with Rule 15(c) 2-12 of the Securities and Exchange Commission by filing an annual report with each Nationally Recognized Municipal Securities Information Repository and State Repository, if any, that provides certain financial information and operating data relevant to investors in County obligations. In addition, the County will take additional efforts to make information available to investors through its website and other appropriate communication platforms.

**Evaluation** - The Office of Finance will evaluate proposed financings or funding strategies for capital projects. This evaluation will consider cash flow forecasts, the risks associated with the strategy, and interest rate sensitivity analysis (to the extent applicable) to estimate the probable and potential cost of the strategy and the County's ability to meet its obligations thereunder.

**Applicability of Policy to Other County Issuers** - This Policy does not apply to the Industrial Development Authority, Housing Authority, Redevelopment Authority, and Revenue Authority all of which have the legal authority to issue debt.

## **AMENDMENTS AND/OR EXEPTIONS**

This Debt Management Policy constitutes a dynamic or living document and as such will be subject to periodic review and/or amendments to ensure that financial and operational flexibility is maintained. Additionally, from time to time, circumstances may suggest that an exception be approved to one or more of the policy constraints established herein. Amendments and/or exceptions must be submitted through the County Executive to the County Council and will become effective only after approved by the County Council.

**Approved by the County Council \_\_\_\_\_, \_\_\_\_, 2008**

## **APPENDIX A**

### **DERIVATIVES POLICY**

#### **I. PURPOSE**

The purpose of this Derivatives Policy is to provide guidelines for the County's use of derivative financial products. This Policy describes the circumstances and methods by which Swaps (as defined herein) will be used, the guidelines to be employed when Swaps are used, and who is responsible for carrying out these policies. The purposes for which the County will consider the use of these products are as follows:

- A. To prudently reduce exposure to changes in interest rates in the context of a particular financing or the overall asset/liability management of the County; or
- B. To achieve a lower net cost of borrowing with respect to the County's debt.

#### **II. BACKGROUND**

A derivative is a financial instrument created from or whose value depends upon (is derived from) the value of one or more separate assets or indices of asset values. As used in public finance, derivatives may take the form of interest rate swaps, futures, options contracts, options on swaps and other hedging mechanisms such as caps, floors, collars and rate locks (collectively referred to herein as "Swaps"). Derivative products can be an important interest rate management tool that, when used properly, can increase a governmental entity's financial flexibility, provide opportunities for interest rate savings, alter the pattern of debt service payments, create variable rate exposure, change variable rate payments to fixed rate payments and otherwise limit or hedge variable rate payments. The County may consider the use of derivative products consistent with County and State laws.

#### **III. AUTHORITY**

Section 34 of Article 31 of the Annotated Code of Maryland enables the County to utilize derivative products. Under this Authority, the County may enter into Swaps as authorized by the County Council in connection with the issuance or payment of certain debt obligations, before, concurrently with, or after the actual issuance of the debt. The Office of Finance will recommend the use of these products only in a manner consistent with the State Code and only if the County Council can make the requisite finding therein.

#### **IV. PERMITTED USES**

Due to the continual innovation of the financial markets, this Derivatives Policy recognizes that the reasons for the use of the Swaps may change over time, taking advantage of market developments as they evolve and are tested. Among the strategies which the County will consider in applying Swaps are:



1. Managing the County's exposure to floating rates, through interest rate swaps, caps, floors, collars, and other option products;
2. Hedging floating rate risk with caps, collars, basis swaps, and other instruments;
3. Locking in fixed rates in current markets for use at a later date, through the use of forward swaps, swaptions, rate locks, options, and forward delivery products;
4. Reducing the cost of fixed or floating rate debt, through swaps and related products to create synthetic fixed or floating rate debt;
5. More rapidly accessing the capital markets than may be possible with conventional debt instruments;
6. Managing the County's exposure to the risk of changes in the legal and regulatory treatment of tax-exempt bonds, including changes in federal marginal tax rates and other changes in tax laws that may affect the value of tax-exempt bonds relative to other investment alternatives;
7. Managing the County's credit exposure to financial institutions and other entities through the use of offsetting swaps and other credit management products; and
8. Other applications to enable the County to increase income, lower costs, or strengthen the County's balance sheet.

## **V. NO SPECULATION**

The County will not use derivative products for speculative purposes.

## **VI. FORM OF SWAP AGREEMENTS**

The Office of Finance shall determine the appropriate terms for an interest rate swap agreement on a case-by-case basis. To the extent possible, the interest rate swap agreements entered into by the County will contain the terms and conditions set forth in the International Swap and Derivatives Association, Inc. ("ISDA") Master Agreement, including any schedules and confirmations. However, the County reserves the right to amend these terms and conditions including the remedies and obligations as are appropriate to benefit the County. The schedule may be modified to reflect specific legal requirements, business terms and changes to the remedies and obligations as determined by the Office of Finance.

**General Terms** - Subject to the provisions contained herein, the terms of any County Swap agreement shall adhere to the following guidelines:

- Downgrade provisions triggering termination shall be reflective of the relative credit strength of the County or relevant agency in comparison with the Swap provider. The comparison should give weight to the prevailing greater credit strength of public sector

entities as compared with private sector financial institutions. In no event should the downgrade trigger for the County be worse than those affecting the Swap provider;

- The County will strive to minimize or avoid cross default provisions;
- The specific indebtedness related to credit events in any Swap agreement should be narrowly defined and refer only to indebtedness of the County that could have a materially adverse effect on the County's ability to perform its obligations under the Swap;
- Debt should only include obligations within the same or superior lien as the Swap obligation;
- Collateral thresholds for the Swap provider should be set on a sliding scale reflective of credit ratings. Collateral requirements should be established and based upon the credit ratings of the Swap provider or its guarantor;
- Eligible collateral should generally be limited to direct and indirect obligations of a U.S. Treasury where the principal and interest are guaranteed by the United States. At the discretion of the County, other high-quality obligations of a U.S. Government Agency not secured by the full faith and credit of the U.S. Government may be used as collateral;
- The County shall have the right to optionally terminate a swap agreement "at market" at any time over the term of the agreement. The Swap provider should have no similar right to terminate unless agreed to by the County.

## **VII. METHODS TO SOLICIT AND PROCURE INTEREST RATE SWAPS**

The Office of Finance will solicit and procure interest rate swap agreements by competitive bid whenever feasible. The Office of Finance will determine which parties are allowed to participate in a competitive transaction but these parties must conform to the minimum credit standards outlined in this Policy.

Notwithstanding the above, the Office of Finance may procure interest rate swap agreements by negotiated methods if it has determined that due to the size or complexity of a particular interest rate swap competitive bidding is undesirable, impractical or impossible and a negotiated transaction would result in the most favorable pricing. If appropriate, the County should use an independent financial advisory firm to assist in the price negotiations.

Regardless of the method of procurement, the County will obtain a finding from an independent financial advisory firm that the terms and conditions of the interest rate swap agreement reflect a fair market value of such agreement as of the date of its execution.

### **Evaluation**

Recommendations to enter into Swaps will be made based on analysis performed by the Office of Finance. Recommendations should analyze the following elements:

1. The County's overall notional amount of derivatives will be less than 50% of outstanding debt after the proposed Swap is executed;
2. The appropriateness of the transaction for the County based on the balance of risks and rewards presented by the proposed transaction, including a detailed description of the risks it presents, and risk mitigation measures, where applicable;
3. The legal framework for the transaction within the context of Maryland statutes, County authorization, and relevant indenture and contractual requirements (including those contained in credit agreements), as well as any implications of the transaction under federal tax regulations;
4. The potential effect that the transaction may have on the credit ratings of outstanding County obligations;
5. The potential impact of the transaction on any areas where the County's capacity is limited, now or in the future, including the use of variable-rate debt, bank liquidity facilities or letters of credit, and bond insurance;
6. The ability of the County to handle any administrative burden that may be imposed by the transaction, including accounting and financial reporting requirements; and
7. Other implications of the proposed transaction as warranted.

## **VIII. REVENUE SOURCE FOR DERIVATIVE PRODUCTS**

Net swap payments will be paid from the County's debt service fund – a portion of the general fund. Termination payments will be paid from the County's general fund, subject to appropriation.

## **IX. TYPES OF RISK EXPOSURE AND MITIGATION STRATEGIES**

Before entering into a swap agreement, the Office of Finance will evaluate the risks inherent in the transaction. Below are some of the risks to be evaluated and the County's strategy to mitigate those risks.

Interest Rate Risk - The risk that market interest rates increase on direct variable-rate bonds or synthetic variable rate swaps. *Mitigation Strategy: The County will limit total variable rate exposure per the defined limits, utilize caps and collars on synthetic variable-rate debt, and take advantage of low interest rate environments to convert variable rate debt to fixed rate debt.*

Amortization Risk - Amortization risk is defined as the mismatch of the maturity/expiration of the underlying obligation and its hedge, the swap agreements. Amortization risk can occur when the underlying variable rate bonds are called before the final maturity. This would cause the repayment schedule of the bonds to differ from the underlying notional amount of the swap agreement. *Mitigation Strategy: The County will eliminate amortization risk by making the maturity and amortization of the swap coterminous with those of the bonds, when feasible. In the case of early redemption, before undertaking a refunding of the bonds, the Office of Finance will consider the implications on the related swap agreement.*

Basis Risk - Basis risk refers to the mismatch between the interest rate received from the swap contract (based on a variable rate index) and the interest actually paid on the County's variable rate bonds. That is, the risk of receiving insufficient receipts from the variable-rate component of a synthetic fixed-rate swap to pay the interest due on the underlying variable-rate debt issued by the County. *Mitigation Strategy: The Office of Finance will evaluate different swap indices as part of its analysis of the swap agreement and identify the amount of basis risk that may result from various indices. The Office of Finance will also consider the cost/benefit of matched rate swaps and limit total exposure to variable receipts based on taxable indices that hedge tax-exempt variable debt issued by the County.*

Tax Events Risk - Tax events risk is defined as the risk created by potential changes to the Federal and State income tax codes on the interest rates to be paid by the County on its variable rate bonds. Tax events risk is a form of basis risk. *Mitigation Strategy: The Office of Finance will evaluate the potential impact of changes in marginal tax brackets as part of its analysis of basis risk. The County will limit total direct variable-rate debt, synthetic variable-rate debt, and synthetic fixed-rate debt in which the County receives a variable payment based on a taxable index or rate.*

Credit Risk - Credit risk refers to the occurrence of an event modifying the credit rating of the counterparty. Certain derivative products create continuing exposure to the creditworthiness of financial institutions that serve as the County's counterparty on such transactions. *Mitigation Strategy: Setting credit standards that must be met by the counterparty to participate in a transaction can minimize the risk. (See also Counterparty Credit Standards)*

Collateral Posting Risk - Collateral posting risk is the risk that the County is required to post collateral in favor of the swap counterparty in advance of a swap termination event or final bond repayment. This usually occurs where the swap documents have symmetrical credit provisions requiring issuers to post collateral at identical rating thresholds as the swap counterparties. *Mitigation Strategy: The County will seek to exclude provisions that require it to post collateral.*

Counterparty Risk - Counterparty risk refers to the failure of the counterparty to perform pursuant to the terms of the swap agreement (e.g. make its required payments). *Mitigation Strategy: The Office of Finance will attempt to minimize the counterparty risk by establishing strong minimum credit standards and diversifying the County's exposure to counterparties. To that end, before entering into a transaction, the Office of Finance will analyze the County's existing exposure to that counterparty and then determine how the proposed transaction would*

*affect the exposure. The exposure should not be measured solely in terms of the amount, but rather how changes in interest rates would affect the County's exposure ("Value at Risk").*

**Liquidity/Rollover Risk** - Rollover risk arises due to the shorter term of most liquidity provider agreements (2 – 10 years) relative to the longer-term amortization schedule of the County's variable rate bonds. In particular, the County may incur higher renewal fees when new agreements are negotiated or the liquidity bank market constricts such that it is difficult to secure third-party liquidity at any interest rate. *Mitigation Strategy: The County will negotiate longer terms on provider contracts to minimize the number of rollovers or use self-liquidity, if appropriate.*

**Termination Risk** - Termination risk is the risk that the swap could be terminated prior to the scheduled maturity by the counterparty due to any of several events, such as, a ratings downgrade, covenant violations, and swap or bond payment defaults. This is of particular concern if the termination occurs in a market that dictates a termination payment by the issuer. For certain types of swaps, a payment by the County may be required if interest rates have fallen causing the market value of the remaining payments to be in favor of the counterparty. *Mitigation Strategy: The Office of Finance will minimize termination risk by limiting the circumstances under which the contract can be terminated particularly where a payment may be required, and seek the ability to assign the agreement to a creditworthy entity in lieu of termination. Termination payments will be subject to appropriation. The County will also consider progressive collateralization and budgeting of potential termination payments as conditions increase the possibility of a termination payment. The County will also seek to incorporate nonparallel downgrade provisions benefiting the County in the swap documents.*

## **X. COUNTERPARTY CREDIT STANDARDS**

Many Swap products can create for the County a continuing exposure to the creditworthiness of financial institutions that serve as the County's counterparties on Swap transactions. To protect the County's interests in the event of a credit problem, the Office of Finance will recommend entering into a swap agreement with a counterparty only if it meets certain criteria.

### **Use of Highly-rated counterparties**

The County will require that the counterparty is rated double-A or better by at least two of the Rating Agencies or that the payment obligations of the counterparty are unconditionally guaranteed by an entity with such a credit rating.

### **Collateralization on Downgrade**

The obligations of the counterparty will be collateralized at levels and with securities acceptable to the County, as set forth in the swap agreement, should the rating (a) of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or (b) of the entity that unconditionally guarantees its payment obligations, if so secured, fall below the double-A category.

## **Termination**

If a counterparty's credit is downgraded below a second threshold (to be determined by the County and identified in the applicable swap agreements), even with collateralization, the County may exercise a right to terminate the transaction prior to its scheduled termination date. The County will seek to require, whenever possible, that terminations triggered by a counterparty credit downgrade will occur on the side of the bid-offered spread which is most beneficial to the County, and which would allow the County to go back into the market to replace the downgraded party with another suitable counterparty at no out-of-pocket cost to the County.

The County's Swap counterparties will be required to notify the County in the event a credit agency takes negative action with regard to the counterparty's credit rating, including both an actual downgrading of the credit rating as well as the publication of a notice by a rating agency that the counterparty's rating is in jeopardy of a downgrading (e.g., being placed on Credit Watch or being assigned a negative outlook).

As previously indicated, in order to limit the County's counterparty risk, the County will seek to avoid excessive concentration of exposure to a single counterparty or guarantor by diversifying its counterparty exposure over time. Exposure to any counterparty will be measured based on the termination value of any Swap contracts entered into with the Counterparty, as well as such other measurements as the County may deem suitable to measure potential changes in exposure, such as "value at risk" or "peak exposure". Termination value will be determined at least annually, based on a mark-to-market calculation of the cost of terminating the Swap contract given the market conditions on the valuation date. Aggregate Swap termination value for each counterparty should take into account netting of offsetting transactions (i.e., fixed-to-floating vs. floating-to-fixed). As a matter of general principle, the County may require counterparties to provide regular mark-to-market valuations of Swaps they have entered into with the County, and may also seek independent valuations from third party professionals.

A termination payment to or from the County may be required in the event of a termination of a swap agreement due to a default of either the County or the counterparty, certain additional termination events or optional termination by the County. Prior to making any termination payment due to the default of a counterparty, the County will evaluate whether it is financially advantageous for the County to obtain a replacement counterparty to avoid making such termination payment.

## **XI. MONITORING AND REPORTING**

The Office of Finance is responsible for determining the appropriate use of derivative products in conjunction with the County's debt financing and programmatic needs, and making recommendations to the County Executive and County Council. The Office of Finance will be responsible for internally managing and monitoring the County's derivative products, which includes, monitoring interest rates, conducting swap termination value analysis, calculating and making payments, managing collateral, and budgeting and accounting for derivatives. The Office of Finance will also manage exposure such as, counterparty credit, collateral posting

levels, variable rate exposure levels and basis risk. The County will disclose its derivatives position in accordance with GASB guidelines in its annual financial statements.

## APPENDIX B

### GLOSSARY

**Amortization** - Liquidation of a debt through installment payments.

**Arbitrage** - The difference between interest earned on funds borrowed at a lower tax-exempt rate and interest on funds that are invested at a higher-yielding taxable rate. Under the Tax Reform Act of 1986, with very few exceptions, arbitrage earnings must be rebated back to the federal government.

**Average Maturity** - The weighted average of the expiration dates for a portfolio of debt securities.

**Basis Point** - The smallest measure used in quoting yields on bonds and notes. One basis point is 0.01% of yield. For example, a bond's yield that changed from 3.50% to 3.00% would be said to have moved 50 basis points.

**Benchmark** - A bond whose terms are used for comparison with other bonds of similar maturity. The global financial market typically looks to U.S Treasury securities as benchmarks.

**Bid** - Price at which a buyer is willing to purchase a security.

**Bond** - (1) The written evidence of debt, bearing a stated rate or stated rates of interest, or stating a formula for determining that rate, and maturing on a certain date, on which date and upon presentation a fixed sum of money plus interest is payable to the holder or owner. A municipal bond issue is usually comprised of many bonds that mature over a period of years; (2) Long-term securities with a maturity of greater than one year.

**Bond Swap** - The sale of a bond and the purchase of another bond of similar market value. Swaps generally are done in order to establish a tax loss, upgrade credit quality, or to extend or shorten duration.

**Call Option** - The right to buy an underlying asset (e.g., a municipal bond) after a certain date and at a certain price. Bonds can be callable under a number of different circumstances, including at the option of the issuer, or on a mandatory or extraordinary basis.

**Collateral** - Assets pledged to secure an obligation. The assets are potentially subject to seizure in the event of default.

**Competitive** - A process by which two or more institutions are contacted to obtain prices for specific securities.



**Coupon** - The rate of interest payable annually. Where the coupon is blank, it may indicate that the bond is a "zero-coupon," or a new issue where the coupon has yet to be determined, or that it is a variable-rate bond.

**Delivery** - The providing of a security in an acceptable form to the entity or to an agent acting on behalf of the entity and independent of the seller. Acceptable forms can be physical securities or the transfer of book-entry securities. The important distinction is that the transfer accomplishes absolute ownership control by the purchasing entity.

**Depository Bank** - A local bank used as the point of deposit for cash receipts.

**Derivative** - A financial instrument whose value is based on, and determined by, another security or benchmark.

**Discount** - (1) Amount (stated in dollars or a percent) by which the selling or purchase price of a security is less than its face amount; (2) Amount by which the amount bid for an issue is less than the aggregate principal amount of that issue.

**Discount Note** - Short-term obligations issued at a discount from face value, with maturities ranging from overnight to 360 days. They have no periodic interest payments; the investor receives the note's face value at maturity.

**Discount Rate** - The rate the Federal Reserve charges on loans to member banks.

**Downgrade** - A negative change in credit ratings.

**General Obligation Bond (GO)** - A municipal bond secured by the pledge of the issuer's full faith and credit, and backed by their taxing authority.

**Generally Accepted Accounting Principles (GAAP)** - The common set of accounting principles, standards and procedures that companies use to compile their financial statements. GAAP are a combination of authoritative standards (set by policy boards) and the commonly accepted ways of recording and reporting accounting information.

**Government National Mortgage Association (Ginnie Mae)** - Provides funds for government loans and takes over special assistance and liquidation functions of Fannie Mae.

**Government Security** - Any debt obligation issued by the U.S. Government, its agencies or instrumentalities. Certain securities, such as Treasury bonds and Ginnie Maes, are backed by the government as to both principal and interest payments. Other securities, such as those issued by the Farm Credit Bank System and Freddie Macs, are backed by the issuing agency.

**Governmental Accounting Standards Board (GASB)** - Formed in 1984 is the source of generally accepted accounting principles (GAAP) used by State and Local governments in the United States of America. The mission of the GASB is to establish and improve standards of state and local governmental accounting and financial reporting that will result in useful

information for users of financial reports and guide and educate the public, including issuers, auditors, and users of those financial reports.

**Hedge** - A transaction that reduces the interest rate risk of an underlying security.

**Interest** - The compensation paid or to be paid for the use of money, usually expressed as an annual percentage rate. Interest rates change in response to a number of things including revised expectations about inflation, and such changes in the prevailing level of interest rates affects the value of all outstanding bonds.

**Letter of Credit (LOC)** - A commitment, usually issued by a bank, used to guarantee the payment of principal and interest on debt issues. The Letter of Credit is drawn down if the issuer is unable to make the principal and/or interest payments on a timely basis.

**LIBOR (London Interbank Offered Rate)** - The rate banks charge each other for short-term Eurodollar loans. LIBOR is frequently used as the base for resetting rates on floating-rate securities.

**Liquidity** - The ease and speed with which an asset can be converted into cash without a substantial loss in value.

**Market Price** - For securities traded through an exchange, the last reported price at which a security was sold; for securities traded "over-the-counter," the current price of the security in the market.

**Market Risk** - The risk that the market value of an investment, collateral protecting a deposit, or securities underlying a repurchase agreement will decline.

**Maturity Date** - The date when the principal amount of a security becomes due and payable, if not subject to prior call or redemption.

**Net Interest Costs** - Total interest earnings on cash and cash equivalents less interest paid on outstanding debt obligations.

**Notes** - Short-term promises to pay specified amounts of money usually secured by specific sources of future revenues, such as taxes, federal and state aid payments, and bond proceeds.

**Notional Amount** - The amount used to determine the interest payments on a swap.

**Par Value** - The nominal or face value of a debt security; that is, the value at maturity.

**Premium** - The amount by which a bond sells above its par value.

**Principal** - The invested amount on which interest is charged or earned.

**Refunding** - Sale of a new bond issue, the proceeds of which are to be used, immediately or in the future, to retire an outstanding bond issue by essentially replacing the outstanding issue with the new issue. Refundings are typically done to save interest cost, extend the maturity of the debt, or to change existing restrictive covenants.

**Registered Bond** - A bond whose owner is registered with the issuer or its agent. Transfer of ownership can only be accomplished when the securities are properly endorsed by the registered owner.

**Risk** - A measure of the degree of uncertainty and/or of financial loss inherent in an investment or decision.

**Securities** - Bonds, notes, mortgages or other forms of negotiable or non-negotiable instruments.

**Spread** - (1) The difference between the price at which an issue is purchased from an issuer and the price at which it is offered by the underwriters to the first holders. (2) The difference in price or yield between two securities. The securities can be in different markets, or within the same securities market between different credits, sectors or other relevant factors.

**Swap** - A transaction in which an investor sells one security and simultaneously buys another with the proceeds, usually for about the same price.

**Termination Payment** - A payment made by a counterparty that is required to terminate the swap. The payment is commonly based on the market value of the swap, which is computed using the rate on the initial swap and the rate on a replacement swap.

**Treasury Bills** - Treasury Bills are short-term debt obligations of the U.S. Government which are issued at a discount to par value, have no coupon rate and mature at par value. They offer maximum safety of principal since they are backed by the full faith and credit of the United States Government. Treasury bills, commonly called "T-Bills" account for the bulk of government financing, and are the major vehicle used by the Federal Reserve System in the money market to implement national monetary policy. T-Bills are issued on a regular basis with initial maturities of 91 days, 182 days, and 364 days. They are more popularly referred to as 3-month, 6-month and 1-year Treasury bills. Because Treasury bills are considered "risk-free," these instruments generally yield the lowest returns of the major money market instruments.

**U.S. Government Agency Securities** - A variety of securities issued by several U.S. agencies. Some are issued on a discount basis and some are issued with coupons. Some are backed by the full faith and credit guarantee of the U.S. Government, while others are not. Certain securities, such as Treasury bills and Ginnie Maes, are backed by the government as to both principal and interest payments. Other securities, such as those issued by the Farm Credit Bank System and Freddie Macs, are backed by the issuing agency.

**Volatility** - A statistical measure of the variance of price or yield over time. Volatility is low if the price does not change very much over a short period of time, and high if there is a greater change.

**APPENDIX C**  
**STATUTORY CROSS-REFERENCES**

**Section 811. Tax Levy and Balanced Budget.**

When the County budget shall have been finally adopted in the Annual Budget and Appropriations Ordinance, the Council shall thereupon by separate resolution levy and cause to be raised the amount of taxes required by the budget in the manner provided by law so that the budget shall be balanced as to proposed income and expenditures.

(Amended, CB-92-1974, ratified Nov. 5, 1974; petition ratified Nov. 7, 1978; Amended, CB-68-2002, ratified Nov. 5, 2002)

**Editor's Note:** Former Section 817A was amended and renumbered to be Section 811.

## **Section 812. Tax Rate Limitation.**

(a) (1) Except as provided in this Section 812, the Council shall not levy a real property tax which would result in a total collection of real property taxes greater than the amount collected in fiscal year 1979;

(2) The Council may levy a real property tax which would result in a total collection of real property taxes greater than the amount collected in fiscal year 1979 if the real property tax rate does not exceed Two Dollars and forty cents (\$2.40) for each One Hundred Dollars (\$100.00) of assessed value.

(b) In the event that any annual collection of real property taxes exceeds the limits set forth in this section as estimated in the annual budget projections, said excess shall be placed in the contingency fund, and, if not used during the current fiscal year, said excess will be included in the budget estimate for real property taxes in the following fiscal year.

(c) In the event the County Council shall establish, pursuant to proper authority, any separate class of residential real property tax, then, and in that event, all other classes of real property taxes would be exempt from this section, and the total real property taxes on residential real property shall not exceed the total amount of taxes collected on residential real property in fiscal year 1979.

(d) In accordance with the provisions of Section 9-105 of the Tax-Property Article of the Annotated Code of Maryland, on or before January 1 of each year, the County Council shall set, by law, the homestead credit percentage for the taxable year beginning the following July 1. The homestead credit percentage shall be no greater than 100% plus the percentage of increase in the Consumer Price Index for the previous twelve months, rounded to the nearest whole number, but not more than 105%.

(Petition ratified Nov. 7, 1978; CB-63-1984, ratified Nov. 6, 1984; CB-89-1992, ratified Nov. 8, 1994; Amended, CB-68-2002, ratified Nov. 5, 2002)

**Editor's Note:** Section 7, Chapter 80, 2000 Laws of Maryland, provides that any limit on a local tax rate in a Charter provision that is expressed as a rate to be applied to an assessment of real property shall be construed to mean a rate equal to 40% times the rate stated in the Charter provision. Accordingly, the \$2.40 rate stated in Section 817B(a)(2) shall be construed to be \$.96

Former Section 817B was renumbered with minor amendments to be Section 812.

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/108/index.cfm>.



## Section 108 Loan Guarantee Program

**The Section 108 Loan Guarantee Program is a source of financing allotted for the economic development, housing rehabilitation, public facilities rehab, construction or installation for the benefit of low- to moderate-income persons, or to aid in the prevention of slums.**

### Jump To...

- ▶ Introduction
- ▶ Eligible Applicants
- ▶ Eligible Activities
- ▶ Max. Commitment Amount
- ▶ Loan Details
- ▶ For More Information

### Introduction

Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. This makes it one of the most potent and important public investment tools that HUD offers to local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects that can renew entire neighborhoods. Such public investment is often needed to inspire private economic activity, providing the initial resources or simply the confidence that private firms and individuals may need to invest in distressed areas. Section 108 loans are not risk-free, however; local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations to cover the loan amount as security for the loan.

Loan commitments are often paired with Economic Development Initiative (EDI) or Brownfield Economic Development Initiative (BEDI) grants, which can be used to pay predevelopment costs of a Section 108-funded project. They can also be used as a loan loss reserve (in lieu of CDBG funds), to write-down interest rates, or to establish a debt service reserve.

Regulations governing the Section 108 program may be found at 24 CFR 570, Subpart M, "Loan Guarantees."

### Eligible Applicants

Eligible applicants include the following public entities:

- metropolitan cities and urban counties (i.e. CDBG entitlement recipients);
- nonentitlement communities that are assisted in the submission of applications by States that administer the CDBG program; and
- nonentitlement communities eligible to receive CDBG funds under the HUD-

Administered Small Cities CDBG program (Hawaii). The public entity may be the borrower or it may designate a public agency as the borrower.

### **Eligible Activities**

Activities eligible for Section 108 financing include:

- economic development activities eligible under CDBG;
- acquisition of real property;
- rehabilitation of publicly owned real property;
- housing rehabilitation eligible under CDBG;
- construction, reconstruction, or installation of public facilities (including street, sidewalk, and other site improvements);
- related relocation, clearance, and site improvements;
- payment of interest on the guaranteed loan and issuance costs of public offerings;
- debt service reserves;
- public works and site improvements in colonias; and
- in limited circumstances, housing construction as part of community economic development, Housing Development Grant, or Nehemiah Housing Opportunity Grant programs.

For purposes of determining eligibility, the CDBG rules and requirements apply. As with the CDBG program, all projects and activities must either principally benefit low- and moderate-income persons, aid in the elimination or prevention of slums and blight, or meet urgent needs of the community.

### **Maximum Commitment Amount**

Commitments are limited as follows:

1. Entitlement public entities. An entitlement public entity may apply for up to five times the public entity's latest approved CDBG entitlement amount, minus any outstanding Section 108 commitments and/or principal balances of Section 108 loans.
2. State assisted public entities. A nonentitlement public entity may apply for up to five times the latest approved CDBG amount received by its State, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans for which the State has pledged its CDBG funds as security.
3. Nonentitlement public entities eligible under the HUD administered Small Cities Program. For a public entity in Hawaii, the maximum commitment amount is five times the public entity's latest grant under 24 CFR 570, Subpart F, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans.

### **Loan Details**

**Security:** The principal security for the loan guarantee is a pledge by the applicant public entity or the State (in the case of a nonentitlement public entity) of its current and future CDBG funds. Additional security will also be required to assure



repayment of guaranteed obligations. The additional security requirements will be determined on a case-by-case basis, but could include assets financed by the guaranteed loan.

**Repayment:** The maximum repayment period for a Section 108 loan is twenty years. HUD has the ability to structure the principal amortization to match the needs of the project and borrower. Each annual principal amount will have a separate interest rate associated with it.

**Financing Source:** Section 108 obligations are financed through underwritten public offerings. Financing between public offerings is provided through an interim lending facility established by HUD.

**Interest Rates:** Interest rates on interim borrowing are priced at the 3 month London Interbank Offered (LIBO) rate plus 20 basis points (0.2%). Permanent financing is pegged to yields on U.S. Treasury obligations of similar maturity to the principal amount. A small additional basis point spread, depending on maturity, will be added to the Treasury yield to determine the actual rate.

**Default:** To date, there has been no default under Section 108 resulting in a repayment by HUD. In the event of default requiring a payment, HUD would continue to make payments on the loan in accordance with its terms. The source of payments by HUD pursuant to its guarantee would almost always be pledged CDBG funds. However, HUD does have borrowing authority with the U.S. Treasury if the pledged funds are insufficient.

#### **For More Information**

- Case Studies
- Application Details
- Contact Information
- Field Office Directors

Content updated May 2, 2007

**U.S. Department of Housing and Urban Development**  
451 7th Street, S.W., Washington, DC 20410  
Telephone: (202) 708-1112 [Find the address of a HUD office near you](#)

#### **Section 814. Transfer of Appropriations.**

Transfers of appropriations between general classifications of expenditures in the current expense budget within the same agency and within the same fund may be authorized by the County Executive; provided, however, that transfers exceeding a \$250,000.00 aggregate, or such other sum as may be set by legislative act, in one fiscal year may be made on the recommendation of the County Executive with the approval of the County Council. Transfers between agencies of the County government and within the same fund of the current expense budget may be made on the recommendation of the County Executive and with the approval of the Council. Interproject transfers of appropriations between capital projects in the capital budget may be authorized by legislative act of the Council upon request of the County Executive, but no new project shall be created nor any abandoned except in accordance with Section 818 and Section 820 of this Charter. Nothing contained herein shall be construed to prevent the Council, upon request of the County Executive, from providing by law for interfund cash borrowings to meet temporary cash requirements nor to prevent reimbursements among funds for services rendered.  
(Amended, CB-68-2002, ratified Nov.5, 2002; Amended, CB-73-2006, ratified Nov. 7, 2006)

**Editor's Note:** Former Section 818 was renumbered with minor amendments to be Section 814.

**Sec. 10-182.07. Borrowings from the General Fund to the Capital Project Fund.**

(a) Whenever the County Executive deems it desirable to undertake interfund cash borrowings from the General Fund to meet temporary cash requirements to finance capital projects of Prince George's County for which an authorization appears for the current year in the County's Capital Improvement Program, and for which funding will be received from sources other than general obligation bonds of Prince George's County, he shall recommend to the Council for approval by resolution, the borrowing of such sums in an amount up to, but not exceeding, Five Million Dollars (\$5,000,000) in the aggregate for such capital projects, provided, that the Council must find as a matter of fact:

(1) That the funds to be borrowed are not required for immediate expenditure for items in the General Fund;

(2) That the funds to be borrowed are not necessary to meet payments for any contracts or obligations now in effect, or to be in effect before such funds will be repaid;

(3) That funds other than general obligation bonds of Prince George's County will be received to repay the borrowed funds;

(4) That there are no existing legal restraints, or any limitation or obstacle which will prohibit or restrict the anticipated funding from being received by the County; and

(5) That the Director of Finance has certified that funds to be borrowed are available.

(b) Each resolution adopted under this Section shall identify the projects for which the interfund borrowing is authorized, the sources from which repayment is anticipated, and the date by which the repayment will be made. Quarterly reports shall be issued as set forth in Section 10-182.03 of this Division.

(CB-135-1978; CB-42-1985)

**Sec. 10-182.04. Borrowings from bond proceeds.**

(a) Whenever the County Executive deems it desirable to undertake interfund cash borrowings from available bond proceeds currently in hand, to meet temporary cash requirements for financing capital projects of Prince George's County for which general obligation bonds of Prince George's County have been duly authorized for sale, he shall recommend to the Council for their approval, by resolution, that the borrowings of such proceeds on hand be authorized in an amount up to, but not exceeding Fifteen Million Dollars (\$15,000,000) in the aggregate for all such capital projects, provided, that the Council must find, as a matter of fact:

(1) That the funds to be borrowed are not required for immediate expenditure for the capital projects from which such funds are borrowed;

(2) That the funds to be borrowed are not necessary to meet payments for any contracts or obligations now in effect, or to be in effect before such funds are repaid;

(3) That County general obligation bonds to fund the capital projects to be financed with the borrowed funds have been duly authorized for sale by both a bond enabling act and a bond authorization act both duly adopted and in effect;

(4) That to his and to their knowledge there are then existing no legal restraints, or any other limitation or obstacle which would prohibit or restrict the sale of said general obligation bonds of the County;

(5) That the Director of Finance has certified that the said funds are available; and

(6) That all such borrowings authorized are temporary, being for a period of time set forth in said resolution, and all such monies so transferred shall be repaid as determined by the Director of Finance from either:

(A) The first proceeds of sale of the general obligation bonds of the County sold to fund the capital projects financed with the borrowed funds; or

(B) From other available funds.

(CB-9-1977; CB-42-1985)

**Section 822. Form and Term of Bonds.**

All general obligation bonds shall be in serial form and payable as consecutively numbered, in annual installments, the first of which shall be payable not more than two years from the day of issue. Bonds shall be properly authenticated. All bonds shall be made payable within the probable useful life of the improvement or undertaking with respect to which they are to be issued, or, if the bonds are to be issued for several improvements or undertakings, then within the average probable useful life of all such improvements or undertakings. No bonds shall mature and be payable more than forty years after their date of issuance.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, ratified Nov. 5, 2002)

**Editor's Note:** Former Section 826 was amended and renumbered to be Section 822.

**§ 10. Method of advertising and offering for sale.**

All bonds hereafter sold or offered for sale by any public body, pursuant to general or special authority heretofore or hereafter granted, shall, unless the enabling act authorizing the issue and sale of said bonds shall specifically exempt the same from the provisions of this section, or unless such enabling act shall specify a different method of sale, first be offered at public sale to the highest bidder or bidders therefor upon due notice of such sale being given by advertisement inserted at least twice in one or more daily or weekly newspapers having a general circulation in the area in which said public body is located, said sale to be held not sooner than ten days following the first insertion of said advertisement. The form of said advertisement shall be prescribed in the resolution or ordinance of the governing body of said public body authorizing the issue of said bonds and the sale thereof at public sale pursuant to the requirements of this section. Said advertisement shall specify that all bids shall be made in writing by sealed proposals accompanied by a good faith deposit in such amount as the governing body may in its judgment prescribe, and said advertisement shall give notice of the date, place and hour at which proposals will be received and opened and the bonds awarded. Said advertisement shall give a brief description of said bonds by referring to the act of Assembly authorizing the same, the date of issue thereof, the total aggregate par amount thereof, the schedule of maturities thereof, the interest payable thereon or the method of determining the same, the purpose to which the proceeds thereof will be devoted, and the general form thereof, including a statement whether said bonds will be in coupon or registered form and whether the same will be registerable as to principal or interest or both. Said public body may in said advertisement reserve unto itself the right to reject any or all of the bids made pursuant to said advertisement and if all of said bids are so rejected at the public sale of said bonds pursuant to the power so reserved then said public body may, within thirty days of the rejection of all of said bids but not thereafter, offer to sell or sell said bonds at private sale for a price not less than the highest amount bid for said bonds by an acceptable bidder at the public sale thereof, and if said bonds are not sold either at said public sale or at private sale within said thirty-day limitation, then they may not be sold in any manner except upon a subsequent public sale duly advertised in the manner herein specified.

[An. Code, 1951, § 33; 1939, § 35; 1939, ch. 630, § 32.]

## REFUNDING BONDS

### Section

24. Authority to issue; trust fund; amount; determination of debt limitation.

### **§ 24. Authority to issue; trust fund; amount; determination of debt limitation.**

#### (a) *Authority to issue.*-

(1) A municipal corporation subject to the provisions of Article 23A, a county, whether subject to the provisions of Article 25, Article 25A, or Article 25B, Baltimore City, a sanitary commission or district, whether organized under the provisions of public general or public local law, but not including the Washington Suburban Sanitary Commission, a public corporation of the State, and a department, commission, authority, public corporation or other instrumentality of a county or municipal corporation, including Baltimore City, that has power under any public general or public local law to borrow money and to evidence the borrowing by the issuance of its general obligation bonds, revenue bonds or other evidences of obligation by whatever name known or source of funds secured, may issue bonds for the purpose of refunding any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the bonds or other obligations. No refunding bonds shall be issued by any single county, bicounty or multicounty agency or instrumentality without the prior approval of the governing body of each county involved. Refunding bonds issued under the authority of this section may be issued for the public purpose of:

(i) Realizing savings to the issuer in the aggregate cost of debt service on either a direct comparison or present value basis; or

(ii) Debt restructuring that:

1. In the aggregate effects such a reduction in the cost of debt service; or

2. Is determined by the governing body to be in the best interests of the issuer, to be consistent with the issuer's long-term financial plan, and to realize a financial objective of the issuer including, improving the relationship of debt service to a source of payment such as taxes, assessments, or other charges.

(2) The power to issue refunding bonds under this section shall be deemed additional and supplemental to the issuer's existing borrowing power. The procedures for the issuance of refunding bonds shall be the same as those applicable to the bonds or other obligations being refunded, except that:

(i) Refunding bonds may be sold on a negotiated basis without solicitation of bids if the issuer determines in a public meeting that such procedure is in the public interest; and

(ii) Baltimore City may issue bonds to the extent permitted by the Maryland Constitution, to refund obligations previously issued in accordance with the procedures set forth in Article XI, § 7 of the Maryland Constitution without repeating or further complying with such procedures in the issuance of the refunding bonds.

(3) (i) If bonds to be refunded are secured as unconditional general obligations with a pledge of the full faith and credit and unlimited taxing power of the issuer, the issuer may secure an issue of refunding

bonds as unconditional general obligations with a pledge of the full faith and credit and unlimited taxing power of the issuer in the same manner and, with respect to the application of public general and public local law and otherwise, with the same force and effect as the original pledge.

(ii) This paragraph may not be construed to in any way limit the authority granted under this section.

(b) *Trust fund.*- The proceeds of refunding bonds, in amount determined by the issuer, may be deposited in trust with a trust company or other banking institution as trustee, in a trust fund established in the name of the issuer. Money in the trust fund may be invested and reinvested in direct obligations of, or obligations the principal of and the interest on which are guaranteed by, the United States of America or in certificates of deposit or time deposits secured by direct obligations or obligations the principal of, and the interest on which, are guaranteed by, the United States of America. The interest, income and profits, if any, earned or realized on any investment may be deemed to be revenue of a revenue project and may be applied to the payment of the outstanding bonds to be refunded, to the payment of the refunding bonds or otherwise applied in any lawful manner. Money in the trust fund shall be available for the payment of all or any part of the principal, interest and redemption premium, if any, of the bonds or other obligations, or any of them, being refunded and of the refunding bonds, or any of them, and of any other related costs, as the issuer, in its discretion, may prescribe. Proceeds of refunding bonds shall be so invested and applied as to assure that the principal, interest and redemption premium, if any, on the bonds or other obligations being refunded shall be paid in full on their respective maturity, redemption or interest payment dates. Bonds or other obligations being refunded that are subject to redemption prior to their stated maturity dates may be called for redemption on the earliest redemption date or at such later date as the issuer may determine.

(c) *Amount.*- Refunding bonds may be issued in one or more series, each series being in whatever principal amount the issuer determines shall be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of bonds or other obligations refunded. All or any part of the refunding bonds may be made payable from money in, and secured by, the trust fund in addition to or in lieu of any other money or security that the issuer may provide for the payment or security of the refunding bonds.

(d) *Determination of debt limitation.*- For the purpose of determining whether refunding bonds issued under this section are within any debt limitation applicable to an issuer, the amount of bonds or other obligations to be refunded shall be subtracted from, and the amount of refunding bonds to be issued shall be added to, the aggregate of the issuer's outstanding bonds.

[1977, ch. 825; 1984, ch. 132; 1985, ch. 11, § 4; 1991, ch. 315; 1994, ch. 651.]



1 of 1 DOCUMENT

UNITED STATES CODE SERVICE  
 Copyright © 2008 Matthew Bender & Company, Inc.,  
 one of the LEXIS Publishing (TM) companies  
 All rights reserved

\*\*\* CURRENT THROUGH P.L. 110-239, APPROVED 6/3/2008 \*\*\*  
 \*\*\* WITH GAPS OF 110-234 and 110-236 \*\*\*

TITLE 26. INTERNAL REVENUE CODE  
 SUBTITLE A. INCOME TAXES  
 CHAPTER 1. NORMAL TAXES AND SURTAXES  
 SUBCHAPTER B. COMPUTATION OF TAXABLE INCOME  
 PART IV. TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS  
 SUBPART A. PRIVATE ACTIVITY BONDS

**Go to the United States Code Service Archive Directory**

*26 USCS § 146*

§ 146. Volume cap [Caution: See prospective amendment note below.].

(a) General rule. A private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

(b) Volume cap for state agencies. For purposes of this section--

(1) In general. The volume cap for any agency of the State authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(2) Special rule where state has more than 1 agency. If more than 1 agency of the State is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency.

(c) Volume cap for other issuers. For purposes of this section--

(1) In general. The volume cap for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as--

(A) the population of the jurisdiction of such issuing authority, bears to

(B) the population of the entire State.

(2) Overlapping jurisdictions. For purposes of paragraph (1)(A), if an area is within the jurisdiction of 2 or more governmental units, such area shall be treated as only within the jurisdiction of the unit having jurisdiction over the smallest geographical area unless such unit agrees to surrender all or part of such jurisdiction for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

(d) State ceiling. For purposes of this section--

(1) In general [Caution: For calendar years beginning in 2008, see § 3.16 of *Rev. Proc. 2007-66* (26 USCS § 1 note) for provision that the amounts used to calculate the State ceiling for the volume cap for private activity bonds is the greater of (i) \$ 85 multiplied by the State population, or (ii) \$ 262,095,000.]. The State ceiling applicable to any State for any calendar year shall be the greater of--

(A) an amount equal to \$ 75 (\$ 62.50 in the case of calendar year 2001) multiplied by the State population, or

(B) \$ 225,000,000 (\$ 187,500,000 in the case of calendar year 2001).

(2) Cost-of-living adjustment. In the case of a calendar year after 2002, each of the dollar amounts contained in paragraph (1) shall be increased by an amount equal to--

## 26 USCS § 146

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) [26 USCS § 1(f)(3)] for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$ 5 (\$ 5,000 in the case of the dollar amount in paragraph (1)(B)), such increase shall be rounded to the nearest multiple thereof.

(3) Special rule for states with constitutional home rule cities. For purposes of this section--

(A) In general. The volume cap for any constitutional home rule city for any calendar year shall be determined under paragraph (1) of subsection (c) by substituting "100 percent" for "50 percent".

(B) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying subsections (b) and (c) with respect to issuing authorities in such State other than constitutional home rule cities, the State ceiling for any calendar year shall be reduced by the aggregate volume caps determined for such year for all constitutional home rule cities in such State.

(C) Constitutional home rule city. For purposes of this section, the term "constitutional home rule city" means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(4) Special rule for possessions with populations of less than the population of the least populous state.

(A) In general. If the population of any possession of the United States for any calendar year is less than the population of the least populous State (other than a possession) for such calendar year, the limitation under paragraph (1)(A) shall not be less than the amount determined under subparagraph (B) for such calendar year.

(B) Limitation. The limitation determined under this subparagraph, with respect to a possession, for any calendar year is an amount equal to the product of--

(i) the fraction--

(I) the numerator of which is the amount applicable under paragraph (1)(B) for such calendar year, and

(II) the denominator of which is the State population of the least populous State (other than a possession) for such calendar year, and

(ii) the population of such possession for such calendar year.

(e) State may provide for different allocation. For purposes of this section--

(1) In general. Except as provided in paragraph (3), a State may, by law provide a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue tax-exempt private activity bonds.

(2) Interim authority for governor.

(A) In general. Except as otherwise provided in paragraph (3), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds.

(B) Termination of authority. The authority provided in subparagraph (A) shall not apply to bonds issued after the earlier of--

(i) the last day of the 1st calendar year after 1986 during which the legislature of the State met in regular session,

or

(ii) the effective date of any State legislation with respect to the allocation of the State ceiling.

(3) State may not alter allocation to constitutional home rule cities. Except as otherwise provided in a State constitutional amendment (or law changing the home rule provision adopted in the manner provided by the State constitution), the authority provided in this subsection shall not apply to that portion of the State ceiling which is allocated to any constitutional home rule city in the State unless such city agrees to such different allocation.

(f) Elective carryforward of unused limitation for specified purpose--

(1) In general. If--

(A) an issuing authority's volume cap for any calendar year after 1985, exceeds

(B) the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority, such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes.

(2) Election must identify purpose. In any election under paragraph (1), the issuing authority shall--

(A) identify the purpose for which the carryforward is elected, and

(B) specify the portion of the excess described in paragraph (1) which is to be a carryforward for each such purpose.

(3) Use of carryforward.

(A) In general. If any issuing authority elects a carryforward under paragraph (1) with respect to any carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for such purpose.

(B) Order in which carryforward used. Carryforwards elected with respect to any purpose shall be used in the order of the calendar years in which they arose.

(4) Election. Any election under this paragraph (and any identification or specification contained therein), once made, shall be irrevocable.

(5) Carryforward purpose. The term "carryforward purpose" means--

(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a) [26 USCS § 142(a)],

(B) the purpose of issuing qualified mortgage bonds or mortgage credit certificates,

(C) the purpose of issuing qualified student loan bonds, and

(D) the purpose of issuing qualified redevelopment bonds.

(g) Exception for certain bonds. Only for purposes of this section, the term "private activity bond" shall not include--

(1) any qualified veterans' mortgage bond,

(2) any qualified 501(c)(3) bond,

(3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), (12), (13), (14), or (15) of section 142(a) [26 USCS § 142(a)], and

(4) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) [26 USCS § 142(a)] (relating to high-speed intercity rail facilities).

Paragraph (4) shall be applied without regard to "75 percent of" if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1) [26 USCS § 142(b)(1)]).

(h) Exception for government-owned solid waste disposal facilities.

(1) In general. Only for purposes of this section, the term "private activity bond" shall not include any exempt facility bond described in section 142(a)(6) [26 USCS § 142(a)(6)] which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit.

(2) Safe harbor for determination of government ownership. In determining ownership for purposes of paragraph (1), section 142(b)(1)(B) [26 USCS § 142(b)(1)(B)] shall apply, except that a lease term shall be treated as satisfying clause (ii) thereof if it is not more than 20 years.

(i) Treatment of refunding issues. For purposes of the volume cap imposed by this section--

(1) In general. The term "private activity bond" shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond.

(2) Special rules for student loan bonds. In the case of any qualified student loan bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of--

(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(3) Special rules for qualified mortgage bonds. In the case of any qualified mortgage bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of--

(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(4) Average maturity. For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A) [26 USCS § 147(b)(2)(A)].

(5) Exception for advance refunding. This subsection shall not apply to any bond issued to advance refund another bond.

## 26 USCS § 146

(j) Population. For purposes of this section, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) released by the Bureau of Census before the beginning of such calendar year.

(k) Facility must be located within state.

(1) In general. Except as provided in paragraphs (2) and (3) no portion of the State ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside such State.

(2) Exception for certain facilities where state will get proportionate share of benefits. Paragraph (1) shall not apply to any exempt facility bond described in paragraph (4), (5), (6), or (10) of section 142(a) [26 USCS § 142(a)] if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

(3) Treatment of governmental bonds to which volume cap allocated. Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5) [26 USCS § 141(b)(5)]--

(A) for an output facility, or

(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a) [26 USCS § 142(a)], if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6) [26 USCS § 141(b)(6)]) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility.

(l) Issuer of qualified scholarship funding bonds. In the case of a qualified scholarship funding bond, such bond shall be treated for purposes of this section as issued by a State or local issuing authority (whichever is appropriate).

(m) Treatment of amounts allocated to private activity portion of government use bonds.

(1) In general. The volume cap of an issuer shall be reduced by the amount allocated by the issuer to an issue under section 141(b)(5) [26 USCS § 141(b)(5)].

(2) Advance refundings. Except as otherwise provided by the Secretary, any advance refunding of any part of an issue to which an amount was allocated under section 141(b)(5) [26 USCS § 141(b)(5)] (or would have been allocated if such section applied to such issue) shall be taken into account under this section to the extent of the amount of the volume cap which was (or would have been) so allocated.

(n) Reduction for mortgage credit certificates, etc. The volume cap of any issuing authority for any calendar year shall be reduced by the sum of--

(1) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) [26 USCS § 25(c)(2)(A)(ii)] during such year, plus

(2) the amount of any reduction in such ceiling under section 25(f) [26 USCS § 25(f)] applicable to such authority for such year.

#### **HISTORY:**

(Added Oct. 22, 1986, P.L. 99-514, Title XIII, § 1301(b), 100 Stat. 2630; Dec. 22, 1987, P.L. 100-203, Title X, § 10631(b), 101 Stat. 1330-455; Nov. 10, 1988, P.L. 100-647, Title I, § 1013(a)(9), (10), (28), (40), Title VI, § 6180(b)(3), 102 Stat. 3538, 3543, 3544, 3728; Dec. 19, 1989, P.L. 101-239, Title VII, § 7816(s)(2), 103 Stat. 2423; Oct. 24, 1992, P.L. 102-486, Title XIX, § 1921(b)(3), 106 Stat. 3028; Aug. 10, 1993, P.L. 103-66, Title XIII, § 13121(a), 107 Stat. 432; Oct. 21, 1998, P.L. 105-277, Div J, Title II, § 2021(a), 112 Stat. 2681-903; Dec. 21, 2000, P.L. 106-554, § 1(a)(7) (Title I, § 161(a)), 114 Stat. 2763, 2763A-624; June 7, 2001, P.L. 107-16, Title IV, § 422(c), 115 Stat. 66; Oct. 22, 2004, P.L. 108-357, Title VII, § 701(c), 118 Stat. 1539; Aug. 10, 2005, P.L. 109-59, Title XI, Subtitle C, § 11143(c), 119 Stat. 1965.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prospective amendment:

**Sunset of amendments made by Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).**

Pursuant to § 901(a)(1), (b) of Act June 7, 2001, P.L. 107-16 (26 USCS § 1 note), the amendments made to this section

## 26 USCS § 146

by such Act shall not apply to taxable, plan, or limitation years beginning after December 31, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if the amendments had never been enacted.

## Amendments:

In 2005, P.L. 109-59, Sec. 11143(c) (applicable to bonds issued after 8/10/2005, pursuant to Sec. 11143(d) of P.L. 109-59, which appears as a note to Code Sec. 142), amended subsec. (g)(3) by substituting "(14), or (15) of section 142(a), and" for "or (14) of section 142(a) (relating to airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, qualified public educational facilities, and qualified green building and sustainable design projects), and".

In 2004, P.L. 108-357, Sec. 701(c) (applicable to bonds issued after 12/31/2004, as provided by Sec. 701(e) of P.L. 108-357, which appears as a note to Code Sec. 142), amended subsec. (g)(3) by substituting "(13), or (14)" for "or (13)", and substituting "qualified public educational facilities, and qualified green building and sustainable design projects" for "and qualified public educational facilities".

In 2001, P.L. 107-16, Sec. 422(c) (applicable to bonds issued after 12/31/2001, as provided by Sec. 422(f) of P.L. 107-16, which appears as a note to Code Sec. 142), amended subsec. (g)(3) by substituting "(12), or (13)" for "or (12)", and substituting "environmental enhancements of hydroelectric generating facilities, and qualified public educational facilities" for "and environmental enhancements of hydroelectric generating facilities".

In 2000, P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 161(a) of Subtitle F of Title I of H.R. 5662, as introduced on Dec. 14, 2000 (applicable to calendar years after 2000, as provided by Sec. 161(b) of such H.R. 5662, which appears as a note to this section)), amended subsec. (d) by substituting paras. (1) and (2) for ones which read:

"(1) In general. The State ceiling applicable to any State for any calendar year shall be the greater of--

"(A) an amount equal to the per capita limit for such year multiplied by the State population, or

"(B) the aggregate limit for such year.

Subparagraph (B) shall not apply to any possession of the United States.

"(2) Per capita limit; aggregate limit. For purposes of paragraph (1), the per capita limit, and the aggregate limit, for any calendar year shall be determined in accordance with the following table:

Calendar Year	Per Capita Limit	Aggregate Limit
1999 through 2002 ....	\$ 50	\$ 150,000,000
2003 .....	55	165,000,000
2004 .....	60	180,000,000
2005 .....	65	195,000,000
2006 .....	70	210,000,000
2007 and thereafter ...	75	225,000,000."

In 1998, P.L. 105-277, Div J, Title II, Subtitle C, Sec. 2021(a) (applicable to calendar years after 1998, as provided by Sec. 2021(b), which appears as a note to this section), amended subsec. (d) by substituting paras. (1) and (2) for ones which read:

"(1) In general. The State ceiling applicable to any State for any calendar year shall be the greater of--

"(A) an amount equal to \$ 75 multiplied by the State population, or

"(B) \$ 250,000,000.

Subparagraph (B) shall not apply to any possession of the United States.

"(2) Adjustment after 1987. In the case of calendar years after 1987, paragraph (1) shall be applied by substituting--

"(A) '\$ 50' for '\$ 75', and

"(B) '\$ 150,000,000' for '\$ 250,000,000'."

In 1993, P.L. 103-66, Sec. 13121(a) (applicable to bonds issued after 12/31/93, as provided by Sec. 13121(b)), amended subsec. (g)(4) by inserting "Paragraph (4) shall be applied without regard to '75 percent of if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1))."

In 1992, P.L. 102-486, Sec. 1921(b)(3)(A), substituted ", (2), or (12)" for "or (2)" in para. (g)(3) . . . Sec. 1921(b)(3)(B), substituted ", docks and wharves, and environmental enhancements of hydroelectric generating facilities" for "and docks and wharves" in para. (g)(3), effective for bonds issued after 10/24/92.

In 1989, P.L. 101-239, Sec. 7816(s)(2), redesignated para. (g)(3) added by Sec 6180(b)(3)(C) of P.L. 100-647 [see below] as (g)(4), effective for bonds issued after 11/10/88.

In 1988, P.L. 100-647, Sec. 1013(a)(9), amended subpara. (f)(5)(A) [as in effect before amendment by P.L. 100-203, Sec. 10631(b)] . . . Sec. 1013(a)(10)(A), substituted "paragraphs (2) and (3)" for "paragraph (2)" in para. (k)(1) . . . Sec. 1013(a)(10)(B), added para. (k)(3) . . . Sec. 1013(a)(28)(A), amended subpara. (i)(2)(A) . . . Sec. 1013(a)(28)(B), amended subpara (i)(3)(A) . . . Sec. 1013(a)(28)(C), redesignated para. (i)(4) as (i)(5) and added new para. (i)(4) . . . Sec. 1013(a)(40), substituted "with respect to a possession" for "with respect a possession" in subpara. (d)(4)(B), effective as if included in the provision of P.L. 99-514 to which the amendment relates, as provided by Sec. 1019(a) of P.L. 100-647, which appears as a note to Code Sec. 1.

Prior to amendment subpara. (f)(5)(A) [as added by P.L. 99-514, Sec. 1301(b)] read as follows:

"(A) the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),".

Prior to amendment subpara. (i)(2)(A) read as follows:

"(A) the maturity date of the bond to be refunded, or".

Prior to amendment subpara. (i)(3)(A) read as follows:

"(A) the maturity date of the bond to be refunded, or".

--P.L. 100-647, Sec. 6180(b)(3)(A), deleted "and" at the end of para. (g)(2) . . . Sec. 6180(b)(3)(B), substituted ", and" for the period at the end of para. (g)(3) . . . Sec. 6180(b)(3)(C), added new para. (g)(3) [sic (4)], effective for bonds issued after 11/10/88.

In 1987, P.L. 100-203, Sec. 10631(b), amended subpara. (f)(5)(A), applicable as provided by Sec. 10631(c) of such Act, which appears as a note to Code Sec. 142.

Prior to amendment, subpara. (f)(5)(A) [as amended by P.L. 100-647, Sec. 1013(a)(9), see above] read as follows:

"(A) the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),".

In 1986, P.L. 99-514, Sec. 1301(b), added Code Sec. 146 as part of the amendments to Part IV of subchapter B of chapter 1, effective for bonds issued after 8/15/86. For transitional rules, see Secs. 1312-1318 of this Act reproduced in the note following Code Sec. 141.

Other provisions:

**Application of Oct. 21, 1998 amendments.** Act Oct. 21, 1998, P.L. 105-277, Div J, Title II, Subtitle C, § 2021(b), 112 Stat. 2681-903, provides: "The amendment made by this section [amending subsec. (d) of this section] shall apply to calendar years after 1998."

**Application of Dec. 21, 2000 amendments.** Act Dec. 21, 2000, P.L. 106-554, § 1(a)(7), 114 Stat. 2763 (enacting into law § 161(b) of Subtitle F of Title I of H.R. 5662 (114 Stat. 2763A-624), as introduced on Dec. 14, 2000), provides: "The amendments made by this section [amending subsec. (d)(1), (2) of this section] shall apply to calendar years after 2000."

**NOTES:**

Related Statutes & Rules:

This section is referred to in 26 USCS §§ 25, 42, 141, 142, 144, 145, 149, 1394, 1400L, 7871.

**§ 13-807. Administration.***(a) Powers of Secretary.-*

(1) The Secretary may make any and all allocations, apportionments, determinations, and findings required or permitted by this subtitle.

(2) Any allocations, apportionments, determinations, and findings of the Secretary shall be made in the Secretary's sole and absolute discretion, subject to the provisions of this subtitle, shall be conclusive, and are not subject to review or approval under either the Maryland Administrative Procedure Act or any other law of the State of Maryland or by any agency or political subdivision of the State of Maryland.

*(b) Certification.-* At the request of any issuer or its bond counsel made in connection with the issuance of any bonds, and in order to show compliance with the requirements of the Code, the Secretary or such person as the Secretary shall designate by written order may issue such certifications as may be reasonably required in order to establish the existence of a valid allocation for the proposed bond issuance and to establish that the Maryland State ceiling has not been exceeded, and the Secretary or such person designated by the Secretary in accordance with this subsection shall be the State official designated by State law for the purpose of certifying in connection with the information report required by § 149 of the Code that the bonds included in an issue meet the requirements of § 146 of the Code.

*(c) Amount of allocations.-* The actual dollar amount of all allocations shall be determined by the Secretary. Allocations to issuers of the Maryland State ceiling under § 13-802 of this subtitle shall be based on the most recent census estimate of the resident populations of the State of Maryland and the counties released by the U.S. Bureau of the Census before January 1 of the year in which the allocations are made, as determined by the Secretary.

[1987, ch. 598, § 1.]



**§ 13-802. Allocation of State ceiling.**

The Maryland State ceiling shall be initially allocated for the period from the first day of each calendar year through September 30 of the same year, as follows:

(1) (i) There is allocated to the counties a total of 50 percent of the Maryland State ceiling, consisting of 35 percent of the Maryland State ceiling designated initially for the issuance of housing bonds and 15 percent of the Maryland State ceiling designated for the issuance of bonds other than housing bonds.

(ii) The allocation to each county for housing bonds shall equal 35 percent of the Maryland State ceiling multiplied by a fraction, the numerator of which is the population of the county and the denominator of which is the population of the State of Maryland.

(iii) The allocation to each county for bonds other than housing bonds shall be composed of:

1. A minimum allocation equal to 12 percent of the Maryland State ceiling multiplied by a fraction, the numerator of which is the population of the county and the denominator of which is the population of the State of Maryland; and

2. A bonus allocation equal to 3 percent of the Maryland State ceiling multiplied by a fraction, the numerator of which shall be the average issuance of bonds other than housing bonds by the county for the immediately preceding 3 calendar years, and the denominator of which shall be the average issuance of bonds other than housing bonds by all counties for the immediately preceding 3 calendar years.

(iv) Any county may redesignate any portion of its housing bond allocation for the issuance of any other bonds for which an allocation is required under the Code if such redesignation is approved by the mayor, county executive, or board of county commissioners. Any transfer by a county of any portion of its housing bond allocation under this subtitle shall be conditioned upon its use by the transferee for housing bonds.

(v) No portion of the allocation to each county for other than housing bonds may be used for the issuance of housing bonds.

(2) (i) There is allocated to the Secretary for reallocation to municipalities 2.5 percent of the Maryland State ceiling. The Secretary shall process requests for allocations to municipalities in the order in which completed requests are received by the Secretary.

(ii) A completed request from a municipality shall include:

1. Evidence that the municipality has complied with the requirements for public notice, public hearing, and public approval established by the Code;

2. A copy of a letter from bond counsel for such proposed issue to the effect that an allocation would be necessary in order to issue such bonds as tax-exempt under the Code; and

3. Any other information as the Secretary may require.

(iii) Any reservation of allocation pursuant to this paragraph shall remain effective until the earlier to occur of:

1. Receipt of notice to the Secretary from the municipality withdrawing its request for an allocation;

2. The end of the 60th calendar day following the date on which the reservation was made without the bonds having been issued, except that the Secretary, for good cause shown, may extend the expiration date for any such reservation of allocation; and
  3. September 30 of the calendar year in which the reservation was issued without the bonds having been issued by such date.
- (iv) Upon the issuance of any bonds pursuant to a reservation of allocation which remains effective on the date of such issuance, the reservation shall automatically convert to an allocation under this section.
- (3) There is allocated to the Community Development Administration 25 percent of the Maryland State ceiling for the issuance of housing bonds.
- (4) (i) There is allocated to the Secretary for the Secretary's reserve 22.5 percent of the Maryland State ceiling for use in accordance with this paragraph. The Secretary may at any time make any allocation of a portion of the Secretary's reserve to any State issuer or local issuer in any amount and in any order that the Secretary, in the Secretary's sole discretion, may determine will advance one or more of the goals described in subparagraph (iii) of this paragraph.
- (ii) In making allocations from the Secretary's reserve, preference shall be given to projects of State issuers that advance one or more of the goals described in subparagraph (iii) of this paragraph.
- (iii) The goals to be advanced by the issuance of bonds requiring allocations under this paragraph are:
1. Increasing the supply, quality, and geographic distribution of housing for low-income persons;
  2. Expanding opportunities for homeownership;
  3. Creating significant job opportunities;
  4. Locating job-creating facilities in enterprise zones or areas of high unemployment, urban redevelopment, or planned unit development;
  5. Reducing, recycling, or treating solid or hazardous wastes;
  6. Assisting in the expansion or modernization of existing Maryland industry and the attraction of new and diverse firms to Maryland;
  7. Promoting the health, safety, education, or welfare of the citizens of Maryland; and
  8. Providing opportunities for minority business enterprise as borrower, lessee, or contractor or subcontractor for construction, services, or supplies.
- (iv) Any application to the Secretary for an allocation from the Secretary's reserve shall describe how the project to be funded by the issuance of the bonds would advance one or more of the goals described in subparagraph (iii) of this paragraph and shall include such other information as the Secretary may require. In processing applications for allocations and in reserving allocations, the Secretary may give a preference for projects that demonstrate readiness to proceed.
- (v) Upon the issuance of any bonds pursuant to a reservation of allocation under this paragraph which remains effective on the date of such issuance, such reservation shall automatically convert to an allocation pursuant to this section.

(vi) Except in the case of allocations to municipalities under paragraph (2) of this section, the Secretary may require any local issuer, other than a county, to submit a request for an allocation of the Maryland State ceiling to or through a county.

[1987, ch. 598, § 1; 1988, ch. 6, § 1; 1992, ch. 22, § 1.]

**§ 14-101. Definitions.**

- (a) *In general.*- In this subtitle, the following words have the meanings indicated.
- (b) *Acquisition.*- "Acquisition" means the acquisition, construction, reconstruction, equipping, expansion, extension, improvement, rehabilitation, or remodeling of 1 or more facilities.
- (c) *Authority.*- "Authority" means an industrial development authority created under § 14-103 of this subtitle. As used in this subtitle, authority does not include the Maryland Industrial Development Financing Authority.
- (d) *Bonds.*- "Bonds" means revenue bonds or notes including, without limitation, bond anticipation notes and notes in the nature of commercial paper or other instruments, certificates, or evidences of obligation issued and sold by any public body pursuant to this subtitle to finance or refinance 1 or more facilities or to refund outstanding bonds.
- (e) *Chief executive officer.*- "Chief executive officer" means the president, chairman, mayor, county executive, or other chief executive officer of a public body, if any, however designated, whether elected to the office or acting as such under law.
- (f) *County.*- "County" means any of the 23 counties of Maryland, and the Mayor and City Council of Baltimore.
- (g) *Facility or facilities.*- "Facility" or "facilities" means any land or interest in land, buildings, structures, working capital not exceeding 25% of the bonds if the bonds issued to finance the acquisition of the working capital are secured by a letter of credit or an interest in property, machinery, equipment, furnishings, or other real or personal property or interest in them, or any combination of them, the acquisition of which the legislative body of a municipality or county, the board of directors of an authority, or the Maryland Industrial Development Financing Authority, in its sole and absolute discretion, finds and determines by resolution will accomplish 1 or more of the legislative purposes set forth in § 14-102 of this subtitle, including, without limitation, that or those which may be financed from the proceeds of the issuance and sale of bonds the interest on which is exempt from federal income taxation under the provisions of § 103 of the federal Internal Revenue Code or any other federal statute hereafter enacted. A facility does not constitute a capital project of any public body within the meaning of any statutory or charter provision.
- (h) *Facility applicant.*- "Facility applicant" means any individual, public or private corporation, partnership, association, firm, or other entity, whether or not created for the purpose of making a profit, which, pursuant to a letter of intent or similar agreement with a public body, requests a public body to participate in the financing of 1 or more facilities in the manner provided in this subtitle for use by 1 or more facility users.
- (i) *Facility user.*- "Facility user" means any individual, public or private corporation, partnership, association, firm, or other entity, whether or not created for the purpose of making a profit, which owns, leases, or uses all or any part of a facility, and may include a facility applicant.
- (j) *Finance board.*- "Finance board" means any board, agency, or instrumentality of a municipality or county, other than its legislative body, which is now or hereafter authorized by any statutory or charter

provision to issue and sell bonds of the municipality or county.

(k) *Lease*.- "Lease" means any lease agreement entered into between a public body and 1 or more facility users in connection with any bonds issued under this subtitle.

(l) *Loan agreement*.- "Loan agreement" means any loan agreement entered into between a public body and 1 or more facility users in connection with any bonds issued under this subtitle.

(m) *Municipality*.- "Municipality" means a municipal corporation subject to the provisions of Article XI-E of the Constitution.

(n) *Public body*.- "Public body" means any county, municipality, authority, or the Maryland Industrial Development Financing Authority.

(o) *Public port*.- "Public port" means the public ports and harbors on the Chesapeake or Isle of Wight Bays and their tributaries within the State, including, without limitation, Baltimore Harbor (the Patapsco River and its tributaries north and west of North Point and Bodkin Point), the Port of Cambridge (the south side of the Choptank River between Hambrook's Bar and the Emerson C. Harrington Bridge) and the Port of Crisfield (the Little Annemessex River east of James Island).

(p) *Sale agreement*.- "Sale agreement" means any installment sale agreement entered into between a public body and 1 or more facility users in connection with an issue of bonds under this subtitle.

[1982, ch. 791, § 4; 1983, ch. 73, § 2; 1986, ch. 5, § 4; 1988, ch. 110, § 1; 1995, ch. 327.]

**§ 14-102. Legislative findings; declaration of purpose; construction of subtitle; permitted exercise of powers.**

(a) *Legislative findings.*- The General Assembly makes the following findings:

- (1) Conditions of unemployment exist in many areas of the State;
- (2) The acquisition of new facilities and existing facilities is essential to relieve this unemployment and to establish a balanced economy within the State;
- (3) The present and prospective health, happiness, safety, right of gainful employment, and general welfare of the citizens of each of the counties and municipalities of the State will be promoted by the acquisition of facilities;
- (4) The control or abatement of pollution of the environment of the State, including that by noise, is necessary to retain existing industry and commercial enterprises in, and attract new industry and commercial enterprises to, the State and to protect the health, welfare, and safety of the citizens of the State, to protect the natural resources of the State, and to encourage the economic development of the State; and
- (5) The public ports of the State are assets of value to the entire State; the residents of all parts of the State benefit directly from the waterborne commerce that they attract and service; and any improvement to these ports that increases their export and import commerce will benefit the people of the entire State.

(b) *Declaration of purpose.*- The General Assembly declares its legislative purpose to:

- (1) Relieve conditions of unemployment in the State;
- (2) Encourage the increase of industry and commerce and a balanced economy in the State;
- (3) Assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction, or abatement of pollution of the environment and the utilization and disposal of wastes;
- (4) Promote economic development;
- (5) Protect natural resources and encourage resource recovery; and
- (6) Generally promote the health, welfare, and safety of the residents of each of the counties and municipalities of the State.

(c) *Construction of subtitle.*- This subtitle shall be liberally construed to effect its purposes.

(d) *Permitted exercise of powers.*- It is the policy of this State to permit the exercise of the powers granted by this subtitle irrespective of the fact that such activities may displace or limit free economic competition.

[1982, ch. 791, § 4; 1983, ch. 510; 1986, ch. 5, § 4.]



**§ 14-103. Industrial development authority.**

(a) *Adoption of resolution by county or municipality; articles of incorporation.*- In order to accomplish the legislative policy set forth in § 14-102 of this subtitle, the legislative body of any county or municipality may adopt a resolution which creates an industrial development authority. The resolution and any resolution adopted pursuant to subsection (d) or (k) of this section, is deemed to be administrative in nature and not subject to referendum and, except in a county or municipality that does not have a publicly elected chief executive officer, shall be subject to approval of the chief executive officer. The resolution shall include proposed articles of incorporation of the authority that state:

- (1) The name of the authority, which shall be "Industrial Development Authority of (here insert the name of the incorporating county or municipality)";
- (2) The authority is formed under this subtitle;
- (3) The names, addresses, and terms of office of the first directors of the authority;
- (4) The location of the principal office of the authority;
- (5) The purposes for which the authority is formed; and
- (6) The powers of the authority, subject to the restrictions or limitations on the powers of the authority set forth in subsections (g), (h), (j), and (k) of this section.

(b) *Self-executing.*- This provision is self-executing and fully authorizes any county or municipality to create an authority, and, notwithstanding any other statutory or charter provision, no further charter amendment or enabling legislation, ordinance, bill, or other similar action need be taken by the legislative body of any county or municipality to implement the authority conferred hereby, other than the adoption of the administrative resolution referred to in this section.

(c) *Filing of articles of incorporation.*-

- (1) The chief executive officer of the incorporating county or municipality, or any other official designated in the administrative resolution referred to in subsection (a) of this section, shall execute and file the articles of incorporation with the State Department of Assessments and Taxation.
- (2) When the Department receives the articles, it shall stamp them with the time and date of receipt.
- (3) If the Department determines that the articles are in accordance with law, it shall endorse the articles "approved" and issue a certificate of approval attached to the endorsed articles.
- (4) When the Department issues the certificate of approval, the authority becomes a body politic and corporate and an instrumentality of the county or municipality creating it, and is conclusively considered to have been lawfully and properly created and authorized to exercise its powers.

(d) *Amendments to articles of incorporation.*- The incorporating county or municipality, by administrative resolution, adopted as provided in subsection (a) of this section, may adopt amendments to the articles of incorporation, which may contain any provisions that lawfully may be contained in articles of incorporation at the time of the amendment. The amendments shall be filed with the State



Department of Assessments and Taxation. If the Department approves the amendments as to form, it shall endorse them "approved", and issue a certificate of approval of the amendments. When the Department issues the certificate of approval, the amendments are effective and are conclusively considered to have been lawfully and properly adopted.

(e) *Recordation of articles of incorporation and amendments.*- The Department shall record endorsed articles of incorporation and amendments in records kept for that purpose.

(f) *Exercise of authority's powers to accomplish legislative purposes.*-

(1) (i) An authority shall be created and operated, and its powers exercised, solely to accomplish 1 or more of the legislative purposes set forth in this subtitle.

(ii) The incorporating county or municipality may utilize the authority's exercise of its powers to accomplish 1 or more of the legislative purposes.

(2) (i) An authority or incorporating county or municipality may exercise its powers irrespective of any effect on economic competition.

(ii) The powers granted to the county or municipality pursuant to this paragraph shall not be construed:

1. To grant to the county or municipality powers in any substantive area not otherwise granted to the county or municipality by other public general or public local law;

2. To restrict the county or municipality from exercising any power granted to the county or municipality by other public general or public local law or otherwise;

3. To authorize the county or municipality or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

4. To preempt or supersede the regulatory authority of any State department or agency under any public general law.

(g) *Administration of authority.*-

(1) Except as restricted or limited in its articles of incorporation, an authority has all powers enumerated in this subtitle, but the incorporating county or municipality is not precluded from directly exercising the powers conferred by this subtitle after the creation of an authority.

(2) The board of directors governs the authority and exercises its powers by resolution.

(3) Three voting directors constitute a quorum; however, the board may not act upon a resolution except by the affirmative vote of at least 3 voting directors.

(4) Except as provided in this subtitle or the resolution creating an authority, the procedures of the incorporating county or municipality control any matter relating to the internal administration of the authority.

(h) *Board of directors.*-

(1) The board of directors of an authority consists of the 5 members appointed by the legislative body of the incorporating county or municipality. Nominations shall be submitted by the county's or municipality's chief executive officer, except in a county or municipality that does not have a publicly elected chief executive officer. The chief executive officer may nominate 1 or more individuals for any

vacancy on the board of directors, including the original 5 members, but is not required to nominate more than 1 individual for any vacancy.

(2) Appointment procedures shall be provided in the resolution creating the authority.

(3) The original 5 members of the board of directors shall be appointed for terms of from 1 to 5 years, respectively, commencing from the date of creation of the authority. Except as provided for original members, each serves a 5 year term and until his successor is appointed. A member appointed to fill a vacancy serves for the remainder of the unexpired term. A member may succeed himself.

(4) An officer or employee of the incorporating county or municipality may not be a director, but if so provided by resolution, he may be an ex officio, nonvoting member of the authority.

(5) The board shall elect from its membership a chairman and other officers. An ex officio member may hold any office other than chairman.

(6) A director shall not receive compensation, but shall be reimbursed for actual expenses incurred in the performance of his duties.

(7) A director may be removed at any time with or without cause. Procedures for removal shall be those provided in the resolution creating the authority or any subsequent resolution.

(i) *Powers of authority.*- An authority may:

(1) Receive funds from its incorporating county or municipality, the State, any other governmental unit, or any nonprofit organization;

(2) Charge fees or other charges for its services;

(3) Have employees and consultants as it considers necessary; and

(4) Utilize the services of other governmental units.

(j) *Benefit of net earnings of authority.*- The net earnings of an authority, aside from those necessary to pay debt service or to implement the public purposes or programs of the incorporating county or municipality, may not inure to the benefit of any person other than the incorporating county or municipality.

(k) *Changes in or termination of authority.*- The incorporating county or municipality, in its sole discretion, subject to the provisions of this section and to any limitations imposed by law upon the impairment of contracts, may by resolution adopted at any time provide for or change the structure, organization, procedures, programs, or activities of the authority, or terminate the authority. Except in a county or municipality that does not have a publicly elected chief executive officer, the resolution is subject to the approval of the chief executive officer. Upon termination of an authority, title to all its property shall vest in the incorporating county or municipality and all obligations and assets of the authority shall be transferred to and assumed by the municipality or county.

(l) *Powers and discretion of counties and municipalities.*- For the purposes of this subtitle, each county and municipality is deemed to have all of the powers and discretion granted in this section to industrial development authorities, including the power to make loans to private enterprises engaged in competition with enterprises not receiving the loans.

[1982, ch. 791, § 4; 1983, chs. 8, 510; 1986, ch. 5, § 4; 2004, ch. 25.]

**§ 14-104. Issuance and sale of revenue bonds.**

(a) *In general.*- In order further to accomplish the legislative policy of this subtitle, in addition to whatever other powers it may have and notwithstanding any limitation of law, any public body may issue and sell its bonds, as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, for the purposes of financing or refinancing any costs of the acquisition of 1 or more facilities for 1 or more facility users or of refunding outstanding bonds, including the necessary expenses of preparing, printing, selling, and issuing those bonds, the funding of reserves, and the payment of interest with respect to financing such acquisition in such amounts, or for such period, as the public body deems reasonable. Bonds issued by an authority shall be deemed to be issued on behalf of the public body that created the authority. Bonds issued by the Maryland Industrial Development Financing Authority shall be issued on behalf of the State and shall be issued in accordance with the requirements of the Maryland Industrial Development Financing Authority Act.

(b) *Acquisition of facilities from bond proceeds.*- A public body may accomplish the acquisition of 1 or more facilities from the proceeds of the sale of its bonds by 1 or more of the following methods:

- (1) By leasing them to 1 or more facility users under a lease;
- (2) By selling them to 1 or more facility users under a sale agreement;
- (3) By lending proceeds of the sale of bonds to 1 or more facility users under a loan agreement to be used to finance or refinance 1 or more facilities; or
- (4) In such other manner as the public body deems appropriate to accomplish the purposes of this subtitle.

(c) *Lease of acquired facilities; lease provisions.*- In the event 1 or more facilities are to be leased to 1 or more facility users, the lease may provide that at the time the principal of and interest on the bonds (or so much thereof as may be applicable to the particular facility user) are paid in full, the facility user may or shall purchase or otherwise acquire whatever facilities were acquired with the proceeds of the bonds. In such event, the consideration for the conveyance or acquisition may be set at a nominal figure.

(d) *Implementation of authority to issue bond by county or municipality.*- To implement the authority conferred upon it by this subtitle to issue bonds, the legislative body of any county or municipality, the board of directors of any authority, or the Maryland Industrial Development Financing Authority, may adopt a resolution pursuant to which it shall:

- (1) Specify and describe the facility or facilities;
- (2) Generally describe the public purpose to be served and the financing or refinancing transaction to be accomplished under this subtitle;
- (3) Specify the maximum principal amount of the bonds that may be issued; and
- (4) Impose any terms or conditions on the issuance and sale of the bonds it deems appropriate. Except in a county or municipality that does not have a publicly elected chief executive officer, the resolution shall

be subject to the approval of the chief executive officer.

(e) *Specification, prescription, etc., of matters, details, forms, documents or procedures for authorization, sale, security, issuance, delivery, or payment of or for bonds.*- The legislative body of any county or municipality, the board of directors of any authority, or the Maryland Industrial Development Financing Authority, by resolution, may itself specify and prescribe, or may authorize:

(1) Its finance board, by resolution; or

(2) Its chief executive officer, by executive order or otherwise; or

(3) Any other appropriate administrative officer, by order or otherwise with the approval of its chief executive officer, to specify, prescribe, determine, provide for or approve such matters, details, forms, documents, or procedures as the legislative body, board of directors, or the Maryland Industrial Development Financing Authority deems appropriate to the authorization, sale, security, issuance, delivery, or payment of or for the bonds, including, without limitation, creation of security for the bonds and provision for the administration of bond issues such as trust or other agreements with banks or trust companies regarding any countersignature or delivery of bonds or security for bonds. The resolution or trust agreement may contain a pledge or assignment of revenues to be received in connection with the financing or refinancing of a facility and the lien of the pledge or assignment shall be valid and binding against any person having a claim of any kind against the public body, irrespective of whether the person has notice. No resolution, trust agreement, lease, sale agreement, loan agreement, or other instrument adopted or entered into by a public body under this subtitle need be filed or recorded except in the records of the public body, regardless of any contrary provision of public general or public local law. The chief executive officer or administrative officer acting pursuant to a resolution of a legislative body shall exercise any authority granted the officer in order to accomplish the legislative policy of this subtitle and the public purposes of the resolution as declared by the legislative body, subject to the limitations set forth in this subtitle and any limitations prescribed by the legislative body by resolution.

(f) *Administrative nature of resolution.*- The resolution adopted pursuant to this section is administrative in nature, is not subject to procedures required for legislative acts, and is not subject to referendum. It is the declared legislative intent that this subtitle is self-executing and fully authorizes and enables any county, municipality, authority, or the Maryland Industrial Development Financing Authority, to issue and sell bonds as its limited obligations and not upon its faith and credit at any time and from time to time for the purpose of financing any costs of the acquisition of 1 or more facilities, and notwithstanding any other statutory or charter provision, no further charter amendment, enabling legislation, ordinance, bill, or other similar action need be taken by the legislative body of any county or municipality, by the board of directors of any authority, or by the Maryland Industrial Development Financing Authority to implement the authority hereby conferred, other than the adoption of such administrative resolution.

(g) *Acquisition by eminent domain not authorized.*- This subtitle shall not be construed to authorize any county or municipality to acquire any facility by eminent domain.

(h) *Conclusive presumption of finding of county or municipality.*- In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this subtitle or any security therefor, any finding by the legislative body of the county or municipality, by the board of directors of any authority, or by the Maryland Industrial Development Financing Authority as to the public purpose of any action taken under this subtitle and the appropriateness of those actions to serve the public purpose shall be conclusive.

(i) *Alternative procedures for issuance.*- As an alternative to the procedures for the issuance of bonds

authorized by this subtitle, any municipality, by charter amendment adopted pursuant to Article 23A of this Code, or any charter county, by charter amendment adopted pursuant to Article XI-A of the Constitution of Maryland, may provide for the issuance of revenue bonds on such terms and conditions as it may deem necessary or appropriate to enable it to achieve the legislative policy of this subtitle.

[1982, ch. 791, § 4; 1983, ch. 73, § 2; 1984, ch. 255; 1986, ch. 5, § 4.]

**§ 14-105. Exemption from taxation.**

The principal amount of bonds, the interest payable thereon, their transfer, and any income derived therefrom, including any profit made in the sale or transfer thereof, is and shall remain exempt from taxation by the State and by its several counties and municipalities.

[1982, ch. 791, § 4; 1986, ch. 5, § 4.]

**§ 14-106. Form of bonds; security; execution; maturity; sale or other disposition; bonds payable from revenue; appointment of receiver.**

(a) *Forms of bonds; security.*- Bonds may be in bearer coupon form, or may be registrable as to principal alone or as to both principal and interest. Each bond is deemed to be a "security" within the meaning of § 8-102 of the Commercial Law Article of the Code, whether or not it is either one of a class or series or by its terms is divisible into a class or series of instruments.

(b) *Execution of bonds.*- Bonds shall be signed by the chief executive officer of the public body or such other officer as may be designated by resolution, and the seal of the public body shall be affixed thereto and attested by the clerk or other similar administrative officer of the public body as may be designated by resolution. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be such officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. Signature may be by facsimile in accordance with § 2-303 of the State Finance and Procurement Article.

(c) *Maturity.*-

(1) Except as provided in paragraph (2) of this subsection, bonds shall mature not later than 30 years from their date of issuance.

(2) If a bond is secured by a mortgage insured by a department of the federal government, the bond shall have a term of maturity that does not exceed the term of the insurance.

(d) *Sale or other disposition of bonds.*- Bonds shall be sold in such manner, either at public or private (negotiated) sale, and upon such terms, at, above, or below par, as the public body acting in accordance with § 14-104 (e) of this subtitle deems best. Any contract for the acquisition of any facility may provide that payment shall be made in bonds. Bonds are not subject to the limitations of § 9, 10, or 11 of Article 31 of the Code.

(e) *Bonds payable solely from revenue.*- Bonds and the interest on them are limited obligations of the public body the principal of, premium if any, and interest on which are payable solely (except for bond anticipation notes and notes in the nature of commercial paper) from revenues or moneys to be received in connection with the financing or refinancing of a facility or from any other moneys made available to the public body for such purpose. Neither the bonds nor the interest thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of any public body within the meaning of any constitutional or charter provision or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of any issuing public body. Each bond, on its face, may plainly state that it has been issued under the provisions of this subtitle and that it does not constitute an indebtedness to which the faith and credit of any public body is pledged.

(f) *Appointment of receiver.*- If there is any default in the payment of the principal of or interest on any bond, any court having jurisdiction of the action may appoint a receiver or take such other action as the court deems appropriate to provide for the payment of any bonds, and the court shall apply any available revenue in conformity with this subtitle and the resolution adopted pursuant thereto.

[1982, ch. 791, § 4; 1983, ch. 8; ch. 73, § 2; 1984, ch. 4; 1985, ch. 717, § 1; 1986, ch. 5, § 4.]





**§ 14-107. Written statement.**

Repealed by Acts 1987, ch. 598, § 2, effective July 1, 1987.

**§ 14-108. Applicability and prerequisites for lease or contract as security for revenue bond.**

(a) *Applicability of section.*- This section applies to any lease or contract under which:

(1) The State or any agency of the State is to be an initial user or occupant of a facility financed by revenue bonds issued under this subtitle; or

(2) A facility financed by revenue bonds issued under this subtitle is to be built on State-owned property.

(b) *Required approval as prerequisite to entering lease or contract.*- A lease or contract which is subject to this subsection and which forms any part of the security for revenue bonds issued under this subtitle, may not be entered by the State or any agency of the State unless:

(1) The Legislative Policy Committee of the General Assembly has authorized the facility as consistent with the capital budget approved by the General Assembly; and

(2) The Board of Public Works has specifically approved the bond issue for that facility.

[1982, ch. 791, § 4; 1986, ch. 5, § 4.]

**§ 14-109. Short title.**

This subtitle may be referred to as the Maryland Economic Development Revenue Bond Act.

[1982, ch. 791, § 4; 1986, ch. 5, § 4.]

---

Article 25A

**EXPRESS POWERS**

Section

5. Enumeration.

5A. Power to displace or limit competition.

6. Separability.

**§ 5. Enumeration.**

The following enumerated express powers are granted to and conferred upon any county or counties which hereafter form a charter under the provisions of Article XI-A of the Constitution, that is to say:

*(A) Local Legislation*

- (1) To enact local laws for the county, including the power to repeal or amend local laws of the county enacted by the General Assembly upon the matters covered by the express powers in this article.
- (2) To provide for the enforcement of all ordinances, resolutions, bylaws and regulations adopted under the authority of this article by fines, penalties and imprisonment, enforceable according to law as may be prescribed. A penalty may not exceed \$1,000 for any offense, unless otherwise authorized in this subsection, or provide for imprisonment for more than six months.
- (3) To provide for the enforcement of local fair housing laws by fines or penalties that do not exceed the fines or penalties provided in the federal Fair Housing Act Amendments of 1988 for enforcement of similar federal fair housing laws.
- (4) To provide for the enforcement of local employment discrimination laws or public accommodations discrimination laws by fines or penalties that do not exceed \$5,000 for any offense.
- (5) To provide for enforcement of all ordinances, resolutions, bylaws, and regulations adopted under the authority of this article by civil fines and penalties.

*(B) County Property and Franchises*

To provide for the protection of the county property; to provide for the acquisition by purchase, lease, or otherwise, and condemnation of property required for public purposes in the county; to dispose of any real or leasehold property belonging to the county, provided the same is no longer needed for public use; to provide for the financing of any housing or housing project in whole or in part, including the placement of a deed of trust, mortgage, or other instrument upon the property to ensure repayment of funds used to purchase, construct, rehabilitate, or otherwise develop the housing project; to grant any franchise or right to use the same, or any right or franchise in relation to any highway, street, road, lanes, alley or bridge; to grant one or more exclusive or nonexclusive franchises for a community antenna system or other cable television system that utilizes any public right-of-way, highway, street, road, lane, alley, or bridge, to impose franchise fees, and to establish rates, rules, and regulations for franchises

granted; and to provide for the leasing as lessor to the State or any political subdivision or other agency thereof, or to any county agency, or to any person, any property belonging to the county or any agency thereof, in furtherance of the public purposes of such county or agency, upon such terms and compensation as said county may deem proper, and after such disposition, grant or lease shall have been advertised once a week for three successive weeks in one or more newspapers of general circulation published in said county, stating the terms thereof and the compensation to be received therefor, and giving opportunity for objections thereto. Provided, however, that easements for public utilities may be granted without advertisement.

*(C) County Institutions*

To erect, establish, maintain and control hospitals, almshouses, pesthouses or other similar institutions within the county, and make all regulations for the government and conduct of the same; to erect, establish and maintain courthouses; to establish, maintain, regulate and control county jails, and county houses of correction or detention and reformatories, and to regulate all persons confined therein; to make proper provision for female and juvenile offenders.

*(D) Advertising and Printing*

To provide for county advertising, printing and publishing, including that of all ordinances, bylaws or resolutions adopted by the county council and of annual statements of expenses of the county government.

*(E) Audits and Claims*

To audit the accounts of all county officers, assisting the Legislative Auditor or other State officer clothed with authority in the performance of this duty; to provide for proof of all claims against the county before their payment.

*(F) Contracts and Bonds; Purchases Through Purchasing Bureau*

To provide for competitive bidding for any county work and the making and awarding of contracts requiring bonds whenever proper. To also provide for the purchase of materials, supplies, and equipment through the Purchasing Bureau of the State Department of General Services whenever desirable.

*(G) Drainage*

- (1) To provide, as far as necessary, for the draining of swamp and lowlands.
- (2) With regard to a redetermination as to which lands continue to benefit from a prior drainage improvement project:
  - (i) At the request of the board of managers of a drainage association, the county council shall appoint a

board of viewers to determine if the original determination as to which lands have benefited from the improvements has changed;

(ii) The board of viewers shall have the same qualifications, rights, powers, privileges, and duties as the original board of viewers;

(iii) The board of viewers shall report its findings to the county council. The report shall be considered in the same manner as the original report, including the same right to a public hearing and the right to judicial review; and

(iv) Any revision in the original determination as to which lands benefit from the improvements shall become the basis for all future assessments for paying for the improvements, including related expenses such as damages, and the maintenance of the improvements.

#### (H) *Election Districts and Precincts*

To rearrange and create election districts and precincts.

#### (I) *Court Records*

To provide for recording, indexing and keeping indexed all records in the office of the clerk of the court, register of wills and of the records of the commissioners and county council to the extent that such matters are not provided for by general law.

#### (J) *Health and Nuisances*

To prevent, abate and remove nuisances; to prevent the introduction of contagious diseases into such county; and to regulate the places of manufacturing soap and candles and fertilizers, slaughterhouses, packinghouses, canneries, factories, workshops, mines, manufacturing plants and any and all places where offensive trades may be carried on, or which may involve or give rise to unsanitary conditions or conditions detrimental to health.

Nothing in this article or section contained shall be construed to affect in any manner any of the powers and duties of either the Secretary of Health and Mental Hygiene or the Secretary of the Environment or any public general laws of the State relating to the subject of health.

#### (K) *Highways, Bridges and Streets*

To provide for grading, shelling, graveling, paving and curbing, or for regrading, reshelling, regraveling, repaving, recurbing and repairing any street, road, lane, alley, footway, bridge, culvert, highway or public place within said county, or any part thereof, now or hereafter condemned, ceded, opened, widened, extended or straightened as public property; and for assessing the cost of any such work upon the assessable basis of the county; to compel by fine or penalty the owner or possessor of any lot to grade, regrade, pave, repave or repair the footways in front thereof; to regulate the opening of street

surfaces.

(L) *Livestock*

To regulate the conditions under which dogs, cows, sheep, pigs, cattle and livestock of any and every kind may be at large, or may pass over the streets, roads, alleys, lanes, bridges, highways and public places.

(M) *Fish and Game*

To pass local fish and game laws.

(N) *Fences*

To regulate the making and keeping secure of fences and provide for the procedure to enforce the rights of the parties, and a lien for repairs, made by an owner not in default.

(O) *Assessments, Levy and Collection of Taxes*

To direct the class or subclass of improvements on land and personal property which shall be made subject to the county tax levy, and to provide for the levy thereupon and upon the value of land in accordance with Article 15 of the Declaration of Rights of the Constitution of Maryland as amended, of any sum which may be necessary to pay and discharge the principal and interest of any loan which may heretofore have been obtained, or which may hereafter be obtained by such county, according to law, and to create a sinking fund to meet the liabilities thus incurred, and levy upon the property so subject to taxation from time to time such sums as may be necessary to provide therefor; as well as to collect from such property so subject to the levy such sums as may be necessary for the support and maintenance of the county government.

To provide for the prompt collection of all taxes due the county; and for the sale of real estate, as well as leasehold and personal property, for the payment of the same.

To rectify errors in the assessment of property; to provide for the reduction or abatement of assessments improperly made, and for the reimbursement of moneys paid in consequence of such errors.

To levy and collect taxes for the organization, operation, maintenance of libraries, fire and ambulance services, and other municipal services and to authorize the purchase, sale, construction, maintenance, and operation of all real and personal property necessary or incidental to such services, and to establish, modify, amend and abolish special taxing areas for any of the purposes enumerated in this article, except that nothing herein contained shall be construed to permit the modification or abolition of existing special taxing areas performing municipal services, (other than furnishing fire protection or library



service) and governed or administered by a citizen's committee or a commission elected or appointed independently of the county council.

To levy and collect taxes to provide for the payment of additional retirement or disability benefits to such former employees of the county as may, in the opinion of the county council, be entitled to receive such additional benefits.

(P) *Bonds or Evidences of Indebtedness*

(1) To provide for the borrowing of moneys on the faith and credit of the county and for the issuance of bonds or other evidences of indebtedness therefor in such sums, for such purposes, on such terms and payable at such times, and from such taxes or other sources as may have been or may be provided by or pursuant to local law, subject to any limitations imposed by the charter adopted by the county and to the following limitations:

(i) The aggregate amount of bonds and other evidences of indebtedness outstanding at any one time shall not exceed a total of 6 percent of the assessable basis of real property of the county and 15 percent of the county's assessable basis of personal property and operating real property described in § 8-109(c) of the Tax - Property Article of the county, except that (a) tax anticipation notes or other evidences of indebtedness having a maturity not in excess of 12 months, (b) bonds or other evidences of indebtedness issued or guaranteed by the county payable primarily or exclusively from taxes levied in or on, or other revenues of, special taxing areas or districts heretofore or hereafter established by law, and (c) bonds or other evidences of indebtedness issued for self-liquidating and other projects payable primarily or exclusively from the proceeds of assessments or charges for special benefits or services, shall not be subject to, or be included as bonds or evidences of indebtedness in computing or applying, the limitations established in this section.

(ii) Any local law authorizing the borrowing of money or issuance of bonds or other evidences of indebtedness shall be submitted to the registered voters of the county for approval or rejection, if a petition for such submission is filed pursuant to the provisions of the charter and local laws of the county. If the charter contains no such provisions, any local law authorizing the borrowing of money or issuance of bonds or other evidences of indebtedness shall be submitted to the registered voters of the county for approval or rejection, if a petition for such submission, bearing the signatures of 10 per centum or more of such voters, is filed with the board of supervisors of elections of the county within 75 days after the enactment of such local law.

(2) To provide for the issuance of bonds or other obligations payable as to principal and interest and premium, if any, solely from the funds or revenues received from or in connection with any system, project, or undertaking, all or part of which is financed from the proceeds of such bonds or obligations. Bonds or obligations issued under this paragraph do not constitute an indebtedness of the county or a pledge of its faith and credit or taxing power, may be sold at private (negotiated) sale, and are not subject to the limitations of paragraph (1) of this subsection, Article 31, §§ 10 and 11 of the Code, or any provision of the issuing county's charter. Nothing in this paragraph shall be construed as a limitation on the power of a county to issue revenue bonds under the provision of any other applicable law.

(3) The bonds, notes, and any other evidences of obligation issued under this section, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this State, or by any of its political subdivisions, municipal corporations or public agencies of any kind.

*(Q) County Officers*

(1) To provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Constitution or public general law, and to establish a merit system, if deemed desirable, in connection with the appointment of all county officials and employees not elected or appointed under the Constitution and the public general laws; to fix the qualifications and term of office of such county executive authority as may be established, and to fix its compensation; provided that the county council may enact local laws designed to prevent conflicts between the private interests and public duties of any county officers, including members of the county council, and to govern the conduct and actions of all such county officers in the performance of their public duties, and to provide for penalties, including removal from office, for violation of any such laws or the regulations adopted thereunder.

(2) To provide for the conduct of a special election to fill a vacancy in the county council that occurs upon the death or resignation of a member of the county council or on forfeiture of office by a member of the county council.

*(R) Protection of County Credit*

To prevent the credit of the county in any manner being given or loaned to or in aid of any individual, association or corporation.

*(S) Amendment of County Charter*

To pass any ordinance facilitating the amendment of the county charter by vote of the electors of the county and agreeable to Article XI-A of the Constitution.

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.

Provided, that the powers herein granted shall only be exercised to the extent that the same are not provided for by public general law; provided, however, that no power to legislate shall be given with reference to licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.

*(T) Road, Waste Disposal, Soil Erosion and Building Ordinances*

To enact local laws enabling the county council to adopt from time to time, after reasonable notice and opportunity for public hearing and with or without modifications, ordinances and amendments thereof for the protection and promotion of public safety, health, morals, comfort and welfare, relating to any of

the following: the location, construction, repair, and use of streets and highways; the disposal of wastes; the control of problems of soil erosion and of the preservation of the natural topography in newly developed and other areas; and the erection, construction, repair and use of buildings and other structures; and to enact local laws providing appropriate administrative and judicial proceedings, remedies, and sanctions for the administration and enforcement of such ordinances and amendments.

*(U) County Board of Appeals*

To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the court may appeal from the decision to the Court of Special Appeals in the same manner as provided for in civil cases.

*(V) Recreation*

To enact local laws providing for the development and administration of a comprehensive recreational program including the construction, equipment and use of park, community center, and recreational buildings and facilities, the acquisition of sites therefor, including financial support for artistic, musical, and cultural public and private nonprofit organizations and activities, and the furnishing of recreational and other municipal services in connection therewith; and to exercise any power or authority conferred by the provisions of Article 25 of this Code, in the subtitle "Public Recreation and Parks".

*(W) Storm Drainage*

To enact local laws providing for the creation of a storm drainage district or districts and the levying of taxes therein, the financing, construction and maintenance of storm drainage projects, and the regulation of storm drainage facilities.

*(X) Planning and Zoning*

(1) (i) To enact local laws, for the protection and promotion of public safety, health, morals, and welfare, relating to zoning and planning, including:

1. The power to provide for the right of appeal of any matter arising under such planning and zoning laws to the circuit court, except as is provided in § 5 (U) of this article. Any decision of the circuit court may be appealed to the Court of Special Appeals; and

2. The power to establish a program for the transfer of development rights.

(ii) To provide by ordinance that a violation of a zoning law or regulation enacted under this section may be a civil zoning violation. The violation shall be enforced as provided in Article 66B, § 7.02 of the Code.

(2) (i) It has been and shall continue to be the policy of this State that the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls.

(ii) It has been and shall continue to be the policy of this State that planning and zoning controls shall be implemented by local government.

(iii) To achieve the public purposes of this regulatory scheme, the General Assembly recognizes that local government action will displace or limit economic competition by owners and users of property.

(iv) It is the policy of the General Assembly and of this State that competition and enterprise shall be so displaced or limited for the attainment of the purposes of the State policy for implementing planning and zoning controls as set forth in this article and elsewhere in the public local and public general law.

(v) The powers granted to the county pursuant to this paragraph shall not be construed:

1. To grant to the county powers in any substantive area not otherwise granted to the county by other public general or public local law;

2. To restrict the county from exercising any power granted to the county by other public general or public local law or otherwise;

3. To authorize the county or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

4. To preempt or supersede the regulatory authority of any State department or agency under any public general law.

#### *(Y) County Board of Health*

To organize and establish a county board of health to act instead of the county council as the county board of health under Title 3, Subtitle 2 of the Health - General Article.

#### *(Z) Federally Assisted Watershed Projects*

To have the same powers enumerated in subsection (dd) of § 3 of Article 25 of this Code.

(AA) *Commission to Establish Compensation for County Councils*

To establish by ordinance a commission empowered to set compensation and allowances to be paid to members of county councils. When established, the commission shall set the compensation and allowances within 15 days after the beginning of the fourth year of the term of each council. The commission by resolution shall submit its determination for compensation and allowances to the county council. The commission may recommend an increase or decrease in the compensation paid to members of the county council, but in no event may compensation or allowances be less than provided in the charter of the respective counties. Upon receiving the resolution, the council may reduce or reject the commission's recommendation, but it shall not increase any item in the resolution. The recommendations contained in the resolution shall become effective upon the adoption by the council of an ordinance encompassing the recommendations, but the salary specified at the time a council takes office shall not change for that period during which the council was elected.

The ordinance making any change in the salary paid to members of the county council shall be ordained prior to the election for the members of the next succeeding council and take effect only for the members of the next succeeding council.

(BB) *Historic and Landmark Zoning and Preservation*

To enact laws generally for historic and landmark zoning and preservation or to enact those laws in accordance with the provisions of Article 66B, § 8.01 et seq., or to enact such laws to be administered generally by an Historic District Commission and to provide for appeals. The authority conferred by this subsection shall be in addition to any existing charter provisions or local law providing for planning and zoning.

(CC) *Waiver of Sovereign Immunity*

Repealed.

(DD) *Commercial or Industrial Redevelopment Projects*

To make use of federal or State financial assistance for commercial or industrial redevelopment projects for the purpose of making grants, loans, or guaranteeing loans to private entities; provided, that the authority granted by this subsection may be used only for commercial or industrial redevelopment projects and may not be used for residential or housing projects.

(EE) *Conditioning Acceptance of Certain Land Development*

To enact local laws conditioning the acceptance of any development of land for residential purposes approved by appropriate local authorities upon a demonstration, acceptable to local authorities, of

compliance by the developer with the pertinent underground electric and telephone residential service regulations, including those pertaining to deposits, promulgated by the Public Service Commission of Maryland.

(FF) *Commercial District Management Authority*

In accordance with the provisions of this subsection, to establish a commercial district management authority for any commercial district within its geographical limits.

(1) As to each authority it establishes, the county governing body:

(i) Shall specify the membership, organization, jurisdiction, and geographical limits of the authority;

(ii) Shall specify one or more of the following as the purposes of the authority:

1. Promotion;

2. Marketing; and

3. The provision of security, maintenance, or amenities within the district;

(iii) May specify the provisions of the county charter or local law relating to personnel, procurement, or similar operational matters that apply or do not apply to the authority, except that minority business enterprise procurement and equal employment opportunity laws may not be waived;

(iv) May approve the annual budget of the authority if the county governing body levies an ad valorem tax to support the authority; and

(v) May provide such financing as it deems appropriate for the authority through fees which may be charged to, or taxes which may be levied against, businesses subject to the authority's jurisdiction.

(2) An authority established pursuant to this subsection may not:

(i) Exercise the power of eminent domain;

(ii) Purchase, sell, construct, or, as a landlord, lease office or retail space; or

(iii) Except as otherwise authorized by law, otherwise engage in competition with the private sector.

(3) Any fees or taxes imposed under this subsection shall be used only for the purposes stated in this subsection and may not revert to the general fund of the county.

(4) The county governing body may establish an authority pursuant to this subsection as a special taxing district.

[An. Code, 1951, § 5; 1939, § 3; 1924, § 3; 1918, ch. 456, § 3; 1949, ch. 339, § 3 (Q); ch. 646, § 3 (P); 1950, ch. 86, § 3 (Q); 1951, ch. 670, § 3 (U), (V), (W); 1953, ch. 199; 1955, chs. 558, 581; 1957, ch. 399, § 13; ch. 777; 1959, ch. 614, § 1; ch. 644; 1961, chs. 162, 462; 1962, ch. 36, § 21; 1964, chs. 14, 57; 1966, ch. 212; 1971, ch. 753; 1972, ch. 181, § 23; ch. 259, § 4; 1973, ch. 891; 1973, 1st Sp. Sess., ch. 4, § 5; 1974, chs. 122, 615; 1975, ch. 70, § 1; ch. 267, § 2; 1976, ch. 472, § 5; chs. 477, 825; 1977,

ch. 234; 1978, ch. 742; 1980, chs. 325, 416, 429, 537; 1982, ch. 562, § 4; ch. 770, § 4; ch. 825; 1983, chs. 8, 395; 1984, ch. 285, § 3; ch. 752; 1985, ch. 10, § 1; chs. 41, 742; 1986, ch. 605; 1987, ch. 594; 1988, ch. 6, § 1; 1989, ch. 5, § 1; 1991, chs. 565, 566; 1993, ch. 368; 1995, ch. 278; 1996, ch. 674; 1999, ch. 651; 2000, ch. 61, § 6; ch. 80, § 2; 2001, ch. 114, § 1.]

**§ 5A. Power to displace or limit competition.**

(a) *Public transportation.*-

(1) It has been and shall continue to be the policy of the State to authorize each chartered county to displace or limit competition in the area of public transportation in order to provide for adequate, economical, and efficient delivery of transportation services; to protect its citizens from inconsistent and excessive prices; to provide necessary and desired services in all areas of the county; to enable the county to provide public transportation in order to conserve energy and reduce air pollution, congestion, traffic hazards and accidents; to encourage the use of public transportation by the contribution by the county of capital and operating funds to enable transportation to be provided at the lowest cost to all citizens, especially the indigent; and to promote the general welfare by conducting a comprehensive transportation system.

(2) Each chartered county has the authority to grant one or more franchises for a transportation system on an exclusive or nonexclusive basis, to impose franchise fees, to establish certain rates, to establish rules, regulations, and licensing requirements to govern the operation of the franchises, to provide for the enforcement of any such measure, and to conduct a public transportation system on an exclusive basis, including the establishment of rules, regulations, and rates, notwithstanding any anticompetitive effect.

(b) *Water and sewer systems.*-

(1) It has been and shall continue to be the policy of the State to authorize each chartered county to displace or limit competition in the area of water and sewerage systems in order to assure delivery of adequate, economical, and efficient services to its citizens, to avoid duplication of facilities, to provide for the health and safety of its citizens, to control disease, to prevent blight and other environmental degradation, to utilize efficiently the public right-of-way; to protect limited natural resources for the benefit of the citizens of the county; and to promote the general health and welfare by providing for adequate water and sewerage systems.

(2) (i) Each chartered county has the authority to grant one or more franchises or enter into contracts for water and sewerage systems on an exclusive or nonexclusive basis to any person, to impose franchise fees, to establish certain rates and charges, and to establish rules, regulations, and licensing requirements and to provide for the enforcement of any such measure notwithstanding any anticompetitive effect.

(ii) In the event that a chartered county has the enabling authority granted by any other law to operate water and sewerage systems, such systems shall be operated by such county without regard to any anticompetitive effect.

(3) It has been and shall continue to be the policy of the State that each chartered county is directed and authorized to exercise all powers regarding waste collection and disposal notwithstanding any anticompetitive effect. This subsection does not apply to any portion of a generator's waste which is directed by the generator to a specific facility for reuse, reclamation or recycling, or for disposal on its own property.

(c) *Publicly owned or leased land.*-

(1) It has been and shall continue to be the policy of the State to authorize each chartered county to displace or limit competition in the award of concessions on, over or under property owned or leased by the county and in the leasing or subleasing of property owned or leased by the county in order to utilize properly the assets of the county for the best public purpose; to provide necessary or desirable governmental services at the lowest possible cost; to protect the public from unscrupulous business practices and excessive prices; to provide for the accessibility to public property by as many citizens as possible; and to promote the general welfare by utilizing public property for the benefit of the citizens of the community.

(2) Each chartered county has the authority to displace or limit competition by granting one or more franchises for any concession on, over or under property owned or leased by the county on an exclusive or nonexclusive basis, to control prices and rates for such franchises; and to establish rules and regulations to govern the operation of the franchises and to provide for the enforcement of any such measure; and to lease or sublease publicly owned or leased land, improvements to land or both on terms to be determined by the county without regard to any anticompetitive effect.

(d) *Construction of grant of power.*- The powers granted to any county pursuant to this section shall not be construed:

(1) To grant to such county powers in any substantive area not otherwise granted to such county by other public general or public local law;

(2) To restrict such county from exercising any power granted to such county by other public general or public local law or otherwise;

(3) To authorize such county or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

(4) To preempt or supersede the regulatory authority of any State department or agency under any public general law.

[1983, ch. 397.]

**§ 6. Separability.**

Any judicial declaration of the invalidity or unconstitutionality of any clause or power herein set forth shall not be construed to declare invalid any other part of this article or of this article as a whole.

[An. Code, 1951, § 6; 1939, § 4; 1924, § 4; 1918, ch. 456, § 4.]





## **DIVISION 1A. SPENDING AFFORDABILITY COMMITTEE.**

### **Sec. 10-112.21. Spending Affordability Committee.**

(a) There is hereby established a Spending Affordability Committee which shall be composed of five (5) members. Three members shall be appointed by the County Executive and confirmed by the County Council. Two members shall be appointed by the County Council. The County Executive shall designate one member to serve as chairman of the Committee. Each member shall serve for a period of two (2) years. The terms shall be staggered. The Chief Administrative Officer and the Administrator of the County Council, or their designees, shall serve as ex-officio members of the Committee.

(b) The members of the Committee shall, by virtue of their education and employment, have a demonstrated competence in one or more of the following areas: Accounting, Financial Analysis, Economics, Budget and Fiscal Management, Public Finance, Fiscal Planning, or related fields.

(c) The County Executive shall provide assistance to the Committee. County agencies shall cooperate at all levels with the Committee in providing information upon request.

(CB-9-1993; CB-50-1997)

**Sec. 10-112.22. Duties and Responsibilities.**

(a) The Spending Affordability Committee shall make advisory recommendations to the County Executive, the County Council, and the Office of Management and Budget concerning:

- (1) Spending affordability;
- (2) Ways to improve the County's budgetary procedures and policies; and
- (3) Other related areas upon request of the County Executive or County Council by

resolution.

(b) On or before October 1 of each year, the committee shall submit to the County Executive and the County Council a preliminary report recommending County spending levels for the next fiscal year consistent with the capacity of the tax base and revenue sources of the County to finance public services and long-term debt. A copy of this report shall be filed with the Clerk of the Council and be made available for public inspection.

(1) The report shall provide recommendations for the following spending affordability guidelines:

- (A) A ceiling on total general fund appropriations for the ensuing fiscal year;
- (B) Separate maximum general fund spending allocations for:
  - (i) The Board of Education;
  - (ii) Debt service; and
  - (iii) All other general government expenditures, in the aggregate, for the

ensuing fiscal year; and

(C) Appropriate levels of general fund reserves and fund balances for the ensuing fiscal year.

(c) On or before January 1 of each year, the Committee shall submit to the County Executive and the County Council a final report on spending affordability guidelines for the County Executive's proposed capital and operating budgets for the ensuing fiscal year. This report shall contain the Committee's final recommendations concerning each of the spending affordability guidelines. A copy of this report shall be filed with the Clerk of the Council and be made available for public inspection.

(1) In developing the spending affordability guidelines, the Committee shall consider the following factors, among others:

- (A) Growth and stability of the local economy;
- (B) Growth in the assessable base and ad valorem property tax revenues;
- (C) Estimated revenues from the County, State, and Federal governments;
- (D) Changes in personal income and other measures of tax capacity;
- (E) Debt affordability indicators such as a ratio of net bonded debt to total assessed

value, the ratio of debt service to general fund expenditures, debt per capita, and the ratio of per capita debt to per capita income;

- (F) The level of inflation and inflation trends;
- (G) Commercial construction, housing and other ancillary industry-related planning, zoning, permitting, financing, and sales activity;
- (H) The level of unemployment and labor force trends; and
- (I) Projected population and school enrollment changes.

(d) In developing the proposed capital and operating budgets, the County Executive shall consider the Committee's spending affordability recommendations. If the proposed budget exceeds any of the recommended affordability guidelines, the County Executive must explain in writing the

justification for exceeding the recommendations.  
(CB-9-1993; CB-50-1997)

## Rule 15c2-12 -- Municipal Securities Disclosure

---

Preliminary Note: For a discussion of disclosure obligations relating to municipal securities, issuers, brokers, dealers, and municipal securities dealers should refer to Securities Act Release No. 7049, Securities Exchange Act Release No. 33741, FR-42 (March 9, 1994). For a discussion of the obligations of underwriters to have a reasonable basis for recommending municipal securities, brokers, dealers, and municipal securities dealers should refer to Securities Exchange Act Release No. 26100 (Sept. 22, 1988) and Securities Exchange Act Release No. 26985 (June 28, 1989).

- a. *General.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer (a "Participating Underwriter" when used in connection with an Offering) to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (an "Offering") unless the Participating Underwriter complies with the requirements of this section or is exempted from the provisions of this section.
- b. *Requirements.*
  1. Prior to the time the Participating Underwriter bids for, purchases, offers, or sells municipal securities in an Offering, the Participating Underwriter shall obtain and review an official statement that an issuer of such securities deems final as of its date, except for the omission of no more than the following information: The offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).
  2. Except in competitively bid offerings, from the time the Participating Underwriter has reached an understanding with an issuer of municipal securities that it will become a Participating Underwriter in an Offering until a final official statement is available, the Participating Underwriter shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the most recent preliminary official statement, if any.
  3. The Participating Underwriter shall contract with an issuer of municipal securities or its designated agent to receive, within seven business days after any final agreement to purchase, offer, or sell the municipal securities in an Offering and in sufficient time to accompany any confirmation that requests payment from any customer, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of this rule and the rules of the Municipal Securities Rulemaking Board.
  4. From the time the final official statement becomes available until the earlier of-
    - i. Ninety days from the end of the underwriting period or
    - ii. The time when the official statement is available to any person from a nationally recognized municipal securities information

repository, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

5.

- i. A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide, either directly or indirectly through an indenture trustee or a designated agent:
  - A. To each nationally recognized municipal securities information repository and to the appropriate state information depository, if any, annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;
  - B. If not submitted as part of the annual financial information, then when and if available, to each nationally recognized municipal securities information repository and to the appropriate state information depository, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;
  - C. In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice of any of the following events with respect to the securities being offered in the Offering, if material:
    1. Principal and interest payment delinquencies;
    2. Non-payment related defaults;
    3. Unscheduled draws on debt service reserves reflecting financial difficulties;
    4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;
  6. Adverse tax opinions or events affecting the tax-exempt status of the security;
  7. Modifications to rights of security holders;
  8. Bond calls;
  9. Defeasances;
  10. Release, substitution, or sale of property securing repayment of the securities;
  11. Rating changes; and
- D. In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.
- ii. The written agreement or contract for the benefit of holders of such securities also shall identify each person for whom annual financial information and notices of material events will be provided, either by name or by the objective criteria used to select such persons, and, for each such person shall:
    - A. Specify, in reasonable detail, the type of financial information and operating data to be provided as part of annual financial information;
    - B. Specify, in reasonable detail, the accounting principles pursuant to which financial statements will be prepared, and whether the financial statements will be audited; and
    - C. Specify the date on which the annual financial information for the preceding fiscal year will be provided, and to whom it will be provided.
  - iii. Such written agreement or contract for the benefit of holders of such securities also may provide that the continuing obligation to provide annual financial information and notices of events may be terminated with respect to any obligated person, if and when such obligated person no longer remains an obligated person with respect to such municipal securities.
- c. *Recommendations.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has procedures in place that provide reasonable assurance that it will receive

prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of this section with respect to that security.

d. *Exemptions.*

1. This section shall not apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more, if such securities:
  - i. Are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes:
    - A. Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and
    - B. Is not purchasing for more than one account or with a view to distributing the securities; or
  - ii. Have a maturity of nine months or less; or
  - iii. At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.
2. Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as an issuer of such municipal securities delivers the securities to the Participating Underwriters:
  - i. No obligated person will be an obligated person with respect to more than \$10,000,000 in aggregate amount of outstanding municipal securities, including the offered securities and excluding municipal securities that were offered in a transaction exempt from this section pursuant to paragraph (d)(1) of this section;
  - ii. An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide:
    - A. Upon request to any person or at least annually to the appropriate state information depository, if any, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and
    - B. In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice



of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

- iii. the final official statement identifies by name, address, and telephone number the persons from which the foregoing information, data, and notices can be obtained.
3. The provisions of paragraph (b)(5) of this section, other than paragraph (b)(5)(i)(C) of this section, shall not apply to an Offering of municipal securities, if such municipal securities have a stated maturity of 18 months or less.
  4. The provisions of paragraph (c) of this section shall not apply to municipal securities:
    - i. Sold in an Offering to which paragraph (b)(5) of this section did not apply, other than Offerings exempt under paragraph (d)(2)(ii) of this section; or
    - ii. Sold in an Offering exempt from this section under paragraph (d)(1) of this section.
  - e. *Exemptive authority.* The Commission, upon written request, or upon its own motion, may exempt any broker, dealer, or municipal securities dealer, whether acting in the capacity of a Participating Underwriter or otherwise, that is a participant in a transaction or class of transactions from any requirement of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.
  - f. *Definitions.* For the purposes of this rule-
    1. The term "authorized denominations of \$100,000 or more" means municipal securities with a principal amount of \$100,000 or more and with restrictions that prevent the sale or transfer of such securities in principal amounts of less than \$100,000 other than through a primary offering; except that, for municipal securities with an original issue discount of 10 percent or more, the term means municipal securities with a minimum purchase price of \$100,000 or more and with restrictions that prevent the sale or transfer of such securities, in principal amounts that are less than the original principal amount at the time of the primary offering, other than through a primary offering.
    2. The term "end of the underwriting period" means the later of such time as
      - i. the issuer of municipal securities delivers the securities to the Participating Underwriters or
      - ii. the Participating Underwriter does not retain, directly or as a member or an underwriting syndicate, an unsold balance of the securities for sale to the public.
    3. The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or

operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents previously provided to each nationally recognized municipal securities information repository, and to a state information depository, if any, or filed with the Commission. If the document is a final official statement, it must be available from the Municipal Securities Rulemaking Board.

4. The term "issuer of municipal securities" means the governmental issuer specified in Section 3(a)(29) of the Act and the issuer of any separate security, including a separate security as defined in rule 3b-5(a) under the Act.
5. The term "potential customer" means
  - i. Any person contacted by the Participating Underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in an Offering,
  - ii. Any person who has expressed an interest to the Participating Underwriter in possibly purchasing such municipal securities, and
  - iii. Any person who has a customer account with the Participating Underwriter.
6. The term "preliminary official statement" means an official statement prepared by or for an issuer of municipal securities for dissemination to potential customers prior to the availability of the final official statement.
7. The term "primary offering" means an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities
  - i. That is accompanied by a change in the authorized denomination of such securities from \$100,000 or more to less than \$100,000, or
  - ii. That is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.
8. The term "underwriter" means any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose

interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

9. The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents previously provided to each nationally recognized municipal securities information repository, and to a state information depository, if any, or filed with the Commission. If the document is a final official statement, it must be available from the Municipal Securities Rulemaking Board.
  10. The term *obligated person* means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities).
- g. *Transitional provision.* If on July 28, 1989 a Participating Underwriter was contractually committed to act as underwriter in an Offering of municipal securities originally issued before July 29, 1989, the requirements of paragraphs (b)(3) and (b)(4) shall not apply to the Participating Underwriter in connection with such an Offering. Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before July 3, 1995; *except that* paragraph (b)(5)(i)(A) and paragraph (b)(5)(i)(B) shall not apply with respect to fiscal years ending prior to January 1, 1996. Paragraph (c) shall become effective on January 1, 1996. Paragraph (d)(2)(ii) and paragraph (d)(2)(iii) of this section shall not apply to an Offering of municipal securities commencing prior to January 1, 1996.

**§ 34. Interest rate exchange agreements or contracts.**

(a) *Definitions.* -

(1) In this section the following words have the meanings indicated.

(2) "Bonds" means general obligation bonds or notes, revenue bonds or notes, or other evidences of obligations by whatever name known or source of funds secured, issued by a county.

(3) "County" means any county in the State or Baltimore City.

(b) *Authority to enter into agreements.* -

(1) Notwithstanding any other provision of law, and in addition to any other authority, to improve the management of debt service or interest rate risks on its bonds or to reduce the cost of servicing its bonds, the Mayor and City Council of Baltimore City or the governing body of a county may enact, by local law or resolution, authority for the county to:

(i) Enter into interest rate exchange agreements or contracts providing for payments based on levels of or changes in interest rates, or combinations of the foregoing; and

(ii) Appoint any agents necessary to implement and administer such agreements or contracts.

(2) (i) A county that proposes to enter into one or more interest rate exchange agreements or contracts shall enact a local law or resolution that shall authorize the transaction upon the terms and conditions established by the county in the law or resolution.

(ii) 1. In the law or resolution that authorizes the transaction or in a separate resolution, the county may provide for the final form of the agreement or contract and the final terms and provisions of the agreement or contract, after giving due consideration to the creditworthiness of the counterparty or counterparties.

2. The county may delegate to an officer, official, board, or agency of the county specified in the law or resolution the power to provide for the final form of the agreement or contract and the final terms and provisions of the agreement or contract, after giving due consideration to the creditworthiness of the counterparty or counterparties.

(3) An interest rate exchange agreement or contract may be entered into in connection with, or incidental to, any bonds of the county prior to, at the time of, or subsequent to, the issuance of any of those bonds.

[2003, ch. 235; 2004, ch. 25.]