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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

Legislative Session 1991

Bill No. CB-30-1991

Chapter No. 10

Proposed and Presented by The Chairman (by request -
County Executive)

Introduced by Council Members MacKinnon, Wineland
and Pemberton

Co-Sponsors _____

Date of Introduction April 16, 1991

EMERGENCY BILL

AN EMERGENCY ACT concerning

The Issuance of Short-term Notes

FOR the purpose of authorizing and empowering Prince George's County, Maryland (the "County") to issue and sell short-term notes for the purpose of providing funds for meeting temporary cash needs of the County to pay budgeted expenses for which other funds are not reasonably available; making certain findings with respect thereto; providing for the issuance of short-term notes as general obligations of the County, the aggregate principal amount of which outstanding at any time shall not exceed \$60,000,000; providing that the notes, together with any renewals thereof, shall have a maturity not in excess of 12 months; directing the application of the proceeds of such notes; authorizing the County Executive to

determine certain details of any notes and the procedure for the issuance and sale of such notes; providing for the levy and collection of taxes necessary for the payment of the principal of and interest on such notes when due; covenanting that the proceeds of the notes (or any moneys which may be deemed to be proceeds) shall not be used in a manner which would cause the notes to be "arbitrage bonds" and covenanting as to other matters relating to the tax-exempt status of interest on such notes; providing for the issuance of such notes in registered form, including central depository and book-entry arrangements; and providing generally for the issuance, sale and delivery of general obligation short-term notes of Prince George's County, Maryland.

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that the County Council of Prince George's County, Maryland (the "County Council") hereby finds and determines as follows:

1. As a result of unexpected and unforeseen economic conditions which currently exist and can be anticipated to exist from time to time, the tax and other revenues of Prince George's County, Maryland (the "County"), may at times fall to levels which cannot be addressed entirely by immediate reductions in County expenditures without creating an imminent hazard to the life, health and property of the County's citizens.

2. In order to provide a source of funds to meet the temporary cash needs of the County for budgeted current expenses for which there are no other funds reasonably available and for which

immediate action is required, provisions must be made for short-term borrowing of money by the County, if such borrowing is deemed desirable by the County Executive of the County (the "County Executive").

3. Section 5(P) of Article 25A of the Annotated Code of Maryland, as amended (1990 Replacement Volume) grants to and confers upon the County the express power 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 County Charter and to certain other stated limitations. Section 5(P) further provides that, in addition to certain other obligations, tax anticipation notes or other evidences of indebtedness having a maturity not in excess of 12 months shall not be subject to, or be included as bonds or evidences of indebtedness in computing or applying, the percentage limitation set forth in Section 5(P).

4. The Charter of Prince George's County, Maryland (the "County Charter") provides that the County shall have all powers of local self-government and home rule as are now or may hereafter be provided or implied by the County Charter and by the Constitution and laws of the State of Maryland. The County Charter also grants to the County Council the power to adopt such budget and fiscal laws as it shall deem necessary to implement the objects and purposes of

the County Charter's provisions concerning budget and fiscal matters.

SECTION 2. BE IT FURTHER ENACTED that, pursuant to Section 5(P) of Article 25A of the Annotated Code of Maryland, as amended (1990 Replacement Volume) and the County Charter, the County is hereby authorized to issue, sell and deliver from time to time one or more series of general obligation short-term notes (the "Notes") in order to fund budgeted current expenses for which there are no other funds reasonably available. The maximum principal amount of Notes issued pursuant to this Act outstanding at any time shall not exceed Sixty Million Dollars (\$60,000,000).

Each series of the Notes issued pursuant to this Act shall be issued pursuant to an order or orders of the County Executive (the "Order") which shall contain the matters set forth in Section 5 of this Act and such other matters as the County Executive may determine in connection with the issuance of such Notes.

No Notes shall be issued pursuant to this Act unless the County Executive shall have represented and covenanted for the benefit of the holders from time to time of such Notes either:

(a) that at the time of issuance of such Notes, the County Council has enacted and the County Executive has signed the annual budget and appropriation ordinance for the fiscal year in which such Notes mature and such annual budget and appropriation ordinance includes an appropriation for the purpose of paying, and in an amount sufficient to pay, the principal of and interest due on such Notes to and including their date of maturity; or

(b) if the annual budget and appropriation ordinance for the fiscal year in which such Notes mature has not yet been enacted and signed, that the County Executive (i) covenants that he will include in such annual budget and appropriation ordinance an appropriation for the purpose of paying, and in an amount sufficient to pay, the principal of and interest due on such Notes to and including their date of maturity and (ii) represents that the County Council has adopted a resolution (the "Resolution") determining the maximum aggregate principal amount of such Notes and covenanting to enact the annual budget and appropriation ordinance for the fiscal year in which such Notes mature with the appropriation described in the preceding clause (i).

The Council enacts this Act with the express intention that, upon the adoption of the Resolution containing the covenant set forth in clause (ii) above, this Act and the Resolution shall constitute the binding covenant of the County Council for the benefit of the holders from time to time of such Notes.

SECTION 3. BE IT FURTHER ENACTED that the Notes are specifically exempted from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland, as amended, replaced or recodified from time to time. The powers granted under this Act are additional and cumulative, and the Notes authorized by this Act may be issued, notwithstanding that other note acts or laws may provide of the same or similar purpose. This Act does not modify or repeal any prior acts granting issuing authority for the same or similar purposes.

All Notes issued pursuant to this Act shall have a maturity not in excess of twelve (12) months. The County Executive may provide by order for the renewal of any series of the Notes, provided that such series of the Notes together with any such renewals shall mature not longer than twelve (12) months from the date of original issuance thereof. No Notes shall be issued within a period of thirty (30) days from the date of payment of the principal of any other Notes, unless such subsequently issued Notes mature not longer than twelve (12) months from the date of issuance of the previously issued Notes. Notes issued more than thirty (30) days subsequent to the date of payment of the principal of all previously issued Notes shall not be deemed renewals of such previously issued Notes.

SECTION 4. BE IT FURTHER ENACTED that the proceeds of the sale of the Notes, including any premium and accrued interest received therefor, shall be paid directly to the Director of Finance of the County, who shall deposit the same in the proper accounts of the County. The cost of marketing the Notes, including advertising, printing, legal services and other related expenditures, shall be deducted from the total gross proceeds received for the Notes, and any amount received on account of accrued interest and premium on such Notes shall be set apart by the Director of Finance in separate accounts and applied to the first interest payment on the Notes. The balance of the proceeds of the sale of the Notes shall be expended by the County to meet budgeted expenses in accordance with this Act.

Unless otherwise provided by act or resolution of the County

Council or to the extent and in the manner provided in the Resolution by an order of County Executive, any earnings derived from the investment of the proceeds of the Notes must be used to meet budgeted expenses of the County in accordance with this Act.

SECTION 5. BE IT FURTHER ENACTED that the Order shall determine, with respect to each series of Notes to be issued pursuant to this Act, (i) the then existing temporary cash needs of the County to meet budgeted expenses for which no other funds are reasonably available, (ii) the principal amount of such series of Notes to be issued pursuant to this Act within the limitations established by this Act, the Resolution (if applicable) and other applicable law, and (iii) the latest date by which such Notes are to be paid, subject to the aforesaid limitations. The Order may determine, approve or authorize or, if so provided by order of the County Executive, the Chief Administrative Officer may determine, approve or authorize with respect to Notes issued pursuant to this Act, except as otherwise may be expressly provided in this Act, all matters relating to the sale, issuance, delivery and payment of the Notes and renewals, including (without limitation) the following:

(i) the identification of any series of Notes;

(ii) the form, denominations, manner of execution and authentication and place or places of payment of such Notes and of the interest thereon;

(iii) the maturity or maturities of any Notes within the limitations established by this Act and the Order or the Resolution (if applicable);

(iv) the rate or rates of interest of any Notes or the manner for determining the same;

(v) the interest payment dates of any Notes;

(vi) the redemption provisions applicable to any Notes;

(vii) the manner of sale of any Notes, which may be by public or private (negotiated) sale, and the procedures to be followed in connection with any such sale;

(viii) the form and manner of execution and delivery of documents necessary or deemed appropriate in connection with the authorization, issuance, execution, sale, delivery and payment of and for any Notes; and

(ix) such other matters not inconsistent with the provisions of this Act as are necessary or deemed appropriate to accomplishing the issuance and sale of Notes hereunder.

All or any part of the Notes may be issued in series as funds are required, all as provided in the Order.

None of the Notes shall be sold at less than the par value thereof, except for Notes in the nature of commercial paper, nor shall any such notes bear interest at a rate in excess of the maximum interest rate, if any, specified by the County Council by Public Local Law to be payable on obligations of the County.

The Order may provide that the Notes shall be subject to prior redemption at the option of the County. It is the intent of the county that any obligations of the County issued to refund any Notes and any renewals of any Notes shall constitute a renewal of indebtedness authorized by this Act and shall not constitute

additional indebtedness under such authority or under any other authority. The Notes and any refunding obligations or renewals of the Notes shall be paid within the period specified in Section 3 of this Act. Authority is hereby expressly delegated to the County Executive, or in his or her absence, to the Chief Administrative Officer, to fix the date, the time and the place of the sale of the Notes.

SECTION 6. BE IT FURTHER ENACTED that it is hereby found and determined as follows: (i) it is in the best interest of the County to be able to implement a flexible approach to borrowing (that is, one which provides the ability to utilize variable rate demand obligations, tax exempt commercial paper and short-term municipal obligations [collectively, "Variable Rate Demand Obligations"]); (ii) there is an expanding market for Variable Rate Demand Obligations, which have varying and flexible maturities or redemption features, tender or purchase dates and bear interest at variable rates established by a remarketing agent on the basis of current market conditions, or combinations of such maturities or redemption, tender or purchase dates and rates and to access this market the County must establish procedures consistent with market practices for Variable Rate Demand Obligations; and (iii) existing practices in the market for Variable Rate Demand Obligations and existing requirements of nationally recognized rating agencies require that there be available to the issuer of Variable Rate Demand Obligations a supporting credit or liquidity facility, such as a letter of credit, line of credit or revolving loan agreement,

pursuant to which an alternate source of borrowing will be available during any period in which such obligations cannot be remarked or sold.

Notes are hereby authorized to be issued a short-term or demand obligations or commercial paper, defined above as Variable Rate Demand Obligations, including obligations that are required to be purchased or redeemed prior to stated maturity dates, bear interest at variable rates and mature on dates established from time to time by a remarketing agent on the basis of current market conditions. If any Notes issued in accordance with this Section 6 provide for the mandatory redemption, tender or purchase thereof prior to stated maturity dates, the form of Note may provide, to the extent permitted by law, and authorized in the Order, that the full faith and credit and unlimited taxing power of the County are pledged to the payment of the purchase or redemption price on the due dates for such payments, subject to the limitation on the levy of the real property tax set out in Section 817B of the County Charter.

Without limiting the generality of other provisions of this Act, the County Executive or, if so provided by order of the County Executive, the Chief Administrative Officer, may determine, approve or authorize:

(i) procedures for the determination of the interest rates, the interest payment dates, the maturities and any mandatory redemption, tender or purchase dates of Notes described in this Section 6 in order to implement the financing authorized hereby;

(ii) the form and manner of execution and delivery of

documents necessary or deemed appropriate in connection with the authorization, issuance, execution, sale, delivery and payment of and for Variable Rate Demand Obligations;

(iii) the selection of any trustees, issuing agent, paying agent, tender agent, credit or liquidity facility provider or other provider of financial or related services necessary or deemed appropriate to the authorization, issuance, execution, sale, delivery and payment of and for Variable Rate Demand Obligations; and

(iv) such other matters not inconsistent with this Act necessary or deemed appropriate to accomplishing the authorization, issuance, execution, sale, delivery and payment of and for Variable Rate Demand Obligations.

SECTION 7. BE IT FURTHER ENACTED that for the purpose of paying the interest and redeeming and paying the Notes, as they respectively mature, the County shall, subject to the limitation on the levy of the real property tax set out in Section 817B of the County Charter, include in the levy in each and every fiscal year during which any of the Notes are outstanding ad valorem taxes upon all the legally assessable property within the corporate limits of the county in rate and amount sufficient to provide for the payment, when due, of the interest on the Notes payable during such fiscal year and the principal of all of the Notes maturing in each such fiscal year; and in the event the proceeds from taxes so levied in any such fiscal year shall prove inadequate for such purposes, additional taxes shall be levied, subject also to said limitation,

in succeeding fiscal years to make up such deficiency. The County may apply to the payment of the principal of and interest on the Notes any funds received by it from the State of Maryland, the United States of America, or any agency or instrumentality thereof or from any other source, if such funds are granted for the purpose of assisting the county in financing the appropriations for which the Notes or the respective portions of the Notes are authorized or may be otherwise lawfully applied to such payment; to the extent that any such funds are applied to such purposes in any fiscal year as provided herein, the taxes hereby required to be levied shall be reduced proportionately.

The full faith and credit of the County and the taxing power of the County, subject to said Section 817B limitation, are hereby irrevocably pledged both to the punctual payment of the maturing principal of and interest on the Notes, as and when such principal and interest respectively become due, and to the levy and collection of the taxes hereinabove prescribed as and when such taxes become necessary in order to provide sufficient funds to meet the debt service requirement of the Notes. The County hereby solemnly covenants with each of the registered holders of any of the Notes to take all action as may be appropriate from time to time during the period that any of the Notes remain outstanding and unpaid to provide the funds necessary to make the principal and interest payments on the Notes. The debt service requirements of the Notes shall have a first and prior claim on all moneys of the General Fund of the County on a parity with the claim for moneys required for

payment of debt service on all other County general obligation indebtedness whether issued prior to or after the issuance of the Notes; it is recognized, however, that some general obligation indebtedness of the county constitute a pledge of the unlimited taxing power of the County. The County further covenants and agrees with each of the registered owners of any of the Notes to levy and collect the taxes hereinabove prescribed, such to said limitation.

SECTION 8. BE IT FURTHER ENACTED that the County Executive and the Chief Administrative Officer shall be the officers of the County responsible for the issuance of any Notes within the meaning of the "arbitrage regulations" (defined below).

The County Executive, the Chief Administrative Officer and the Director of Finance shall be the officers of the County responsible for the execution and delivery (on the date of issuance of the Notes) of a certificate of the County (the "Tax and Section 148 Certificate") which complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended ("Section 148"), and the applicable regulations thereunder (the "arbitrage regulations"), and such officials are hereby directed to execute the Tax and Section 148 Certificate and to deliver the same to bond counsel on the date of the issuance of the Notes.

The County shall set forth in the Tax and Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Notes, or of any moneys, securities or other obligations on deposit to the credit of any account of the County which may be

deemed to be proceeds of the Notes pursuant to Section 148 or the arbitrage regulations (collectively, "Note Proceeds"). The County covenants that the facts, estimates and circumstances set forth in the Tax and Section 148 Certificate will be based on the County's reasonable expectations on the date of issuance of the Notes and will be, to the best of the certifying officials' knowledge, true and correct, as of that date.

In the event that Notes are issued pursuant to this Act with the expectation that interest on such Notes will be excludable from gross income for federal income tax purposes, the County covenants with each of the registered holders of any of the Notes that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Note Proceeds which would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 and the regulations thereunder which are applicable to the Notes on the date of issuance thereof and which may subsequently lawfully be made applicable thereto as long as the Notes remain outstanding and unpaid. The County Executive the Chief Administrative Officer and the Director of Finance of the County are hereby authorized and directed to prepare or cause to be prepared and to execute, respectively, any certification, opinion or other document, including, without limitation the Tax and Section 148 Certificate which may be required to assure that the Notes will not be deemed to be "arbitrage bonds" within the meaning of Section 148 and the regulations thereunder.

The County further covenants with each of the registered

holders of any of the Notes (i) that it will not take any action or (to the extent that it exercises control or direction) permit any action to be taken that would cause the Notes or a portion of the Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended, and (ii) that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Notes or a portion of such proceeds that would cause the Notes or a portion of the Notes to be "private activity bonds" within the meaning of Section 141(b) and (c) of the Internal Revenue Code of 1986, as amended.

In the event that Notes are issued pursuant to this Act with the expectation that interest on such Notes will be excludable from gross income for federal income tax purposes, the County Executive may make such covenants or agreements in connection with the issuance of such Notes as he or she shall deem advisable in order to assure the registered holders of such Notes that interest thereon shall be and remain excludable from gross income for federal income tax purposes, and such covenants or agreements shall be binding on the County so long as the observance by the County of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on such Notes from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the County regarding compliance with the provisions of the Internal Revenue Code of 1986, as amended, as the County Executive

shall deem advisable in order to assure the registered holders of such Notes that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of Note Proceeds, the payment of certain earnings resulting from such investment to the United States, limitations on the times within which, and the purpose for which, Note Proceeds may be expended, or the use of specified procedures for accounting for and segregating Note Proceeds. Any covenant or agreement made by the County Executive pursuant to this paragraph shall be set forth in or authorized by an order executed by the County Executive.

SECTION 9. BE IT FURTHER ENACTED that, in the event any official of the County whose signature shall appear on any Notes or on other instruments or documents, or in the event that any official shall take office subsequent to the sale of the Notes, his or her signature shall nevertheless be valid, sufficient and binding for the purposes herein intended.

SECTION 10. BE IT FURTHER ENACTED that the County Executive is hereby authorized to select and appoint a bank or other financial institution to act as paying agent for the payment of the principal and redemption price, if any, of and interest on the Notes and to act as registrar for the Notes. The selection of the paying agent and registrar shall be accomplished in accordance with applicable provisions of law. The County Executive is further authorized, in his sole discretion, to direct that the County serve as paying agent and registrar.

SECTION 11. BE IT FURTHER ENACTED that the powers granted by this Act are additional and cumulative and the Notes authorized by this Act may be issued, notwithstanding that other note acts or laws may provide for the issuance of other notes or the borrowing of money for the same or similar purposes on the same or other terms and conditions. This Act shall be liberally construed to effectuate its purposes, namely, to authorize the borrowing of money and the incurring of indebtedness to meet budgeted expenses. Provisions of this Act shall be deemed met and satisfied if there is substantial compliance with such provisions. this Act is not intended to provide or simply that this Act or any prior act not containing a similar provision precludes the County from exercising any power or prerogative provided by this Act or any other law whether exercised solely pursuant to such other law or in conjunction with the powers provided by this Act.

SECTION 12. BE IT FURTHER ENACTED that, pursuant to Section 30 of Article 31 of the Annotated Code of Maryland, as amended, replaced or recodified from time to time (the "Registration Statute"), the Notes issued hereunder may be issued in "registered form" within the meaning of the Registration Statute, all as may be provided in the Resolution, which may determine, approve or authorize or may provide, to the extent and in the manner provided therein, that the County Executive or, if so provided by order of the County Executive, the Chief Administrative Officer, may determine, approve or authorize the selection of trustees, transfer agents, registrars, paying or other agents, a custodian for a

central depository or book entry system and appropriate agreements with any of the foregoing and such other matters not inconsistent with this Act necessary or deemed appropriate in connection with the issuance of the Notes in "registered form" within the meaning of the Registration Statute.

SECTION 13. BE IT FURTHER ENACTED that, if any one or more of the provisions of this Act, including any covenants or agreements provided herein on the part of the County to be performed, should be contrary to law, then such provision or provisions shall be null and void and shall in no way affect the validity of the other provisions of this Act or of the Notes.

SECTION 14. BE IT FURTHER ENACTED that an emergency is hereby declared to exist affecting the public health, safety or welfare of the citizens of Prince George's County, Maryland, said emergency being the need to authorize short-term borrowing to meet temporary cash needs of the County.

SECTION 15. BE IT FURTHER ENACTED that no notes shall be issued under the authority contained in this Act after June 30, 1993.

SECTION 16. BE IT FURTHER ENACTED that this Act shall take effect on the day it becomes law.

Adopted this 7th day of May, 1991, by an affirmative vote of two-thirds of the members of the full County Council.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____

Richard J. Castaldi
Chairman

ATTEST:

Maurene W. Epps
Acting Clerk of the Council

APPROVED:

DATE: _____

BY: _____
Parris N. Glendening
County Executive