

Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Amanda Mihill, Legislative Analyst *A. Mihill*

SUBJECT: **Worksession #2: Bill 34-10, Finance – Public Facilities – Private Projects**

Bill 34-10, Finance – Public Facilities – Private Projects, sponsored by Councilmembers Leventhal, Knapp, and Elrich, was introduced on May 18, 2010. A public hearing was held on June 22 at which several speakers, including a representative of the County Executive, opposed Bill 34-10. The Committee held a preliminary worksession on Bill 34-10 on July 12.

As introduced, Bill 34-10 would amend the definition of public facilities to specifically exclude the construction, reconstruction, extension, acquisition, improvement, enlargement, alteration, repair, or modernization of any privately owned building or facility.

Background

In his recommended FY11-16 Capital Improvements Project, the County Executive recommended funding certain projects with general obligation (GO) debt, including the Olney Theater, Ivymount School (to assist with renovation and expansion of Annex Building), and CHI Centers (to assist with renovation of MacDonald Knolls facility). During the Council CIP worksessions, Councilmembers learned that while many private projects could not be funded by GO bonds, the County's bond counsel advised that, under existing laws and regulations, GO bonds could be used to fund the Ivymount School project.

Use of general obligation debt for private projects in the County. At the public hearing, Councilmember Leventhal directed Council staff to research whether the County has used GO bonds to fund nonprofit organizations' capital projects in the past. After reviewing the cost-sharing CIP project, Council staff is unaware of any other time that GO debt has been used to fund private organizations' projects. A review of past PDFs of the cost-sharing project shows that the only GO bond funded component in that PDF was for the Old Blair Auditorium (see ©11-12 for the FY09-14 CIP PDF).

Use of general obligation debt in other jurisdictions. At the public hearing, Councilmember Trachtenberg directed staff to provide information about the use of GO bonds for private projects in other jurisdictions. Attached on ©13-15 is a memorandum from Council Grants Manager Peggy Fitzgerald-Bare to the Health and Human Services Committee discussing the use of GO bonds in other jurisdictions, including the use of Maryland state bond bills. This staff memorandum noted that local jurisdictions do not generally use GO proceeds to fund capital projects of private entities; however, Baltimore City gives GO money under its economic development program, and Charles and St. Mary's Counties fund hospitals and nursing homes with bonds backed by a GO pledge.

Issues for Committee Discussion

1. *How much should the use of general obligation bonds for private facilities be restricted?*

The primary question that the Committee must answer is whether to further limit the use of GO bonds for private projects. At the public hearing, Finance Director Jennifer Barrett opposed Bill 34-10 because it limits the County's flexibility in acquiring and upgrading buildings and facilities for governmental functions. Ms. Barrett argued that existing County law and IRS regulations already limit the use of GO bonds and that the Council could limit undesired uses of GO bonds through the adoption of the capital budget and bond authorization bills (see her testimony, ©5-6). Although existing County law and federal regulations may already limit the use of GO bonds, as bond counsel noted (see ©7-9), some projects (such as the Ivymount School) could still be funded with GO bonds.

If Committee members wish to limit the County's authority to use GO bonds for purely private projects, County law can be tightened to do so. Bill 34-10 was introduced for that purpose but, as Ms. Barrett pointed out, was drafted too broadly because it could preclude the County from using GO bonds to buy or renovate buildings from private owners for County government use, such as the GE Tech building. At the July 12 Committee worksession, Councilmember Leventhal indicated his intent to work with Council staff and Finance staff to offer amendments to better reflect the sponsor's intent. That amendment is attached on ©23. In sum, the amendment would:

- Revise the definition of public facilities related to schools to limit the definition to only public schools. In this way, GO bonds could not be used to fund private school capital projects (such as with the Ivymount School project).
- Revise the definition of public facilities to allow the use of GO bonds for façade easements related to a community revitalization project.
- Remove language that specified that GO bond funding could not be used for a variety of capital related projects for nonprofit or for profit buildings. The attached bill draft would instead specify that GO bond funding could not be used to fund any project that does not meet the definition of public facility.
- Make clarifying technical corrections to §20-15 that are not intended to affect the substance of the bill.

Council staff has shared this amendment with staff from Finance who will be prepared to comment on the revisions at the worksession.

2. Should general obligation bonds be issued for leased private facilities?

As drafted, Bill 34-10 would prohibit the use of GO bonds to construct, repair, or acquire a building owned by a private entity. If Committee members endorse the general purpose of Bill 34-10, you should discuss whether to amend the Bill to also prohibit the use of GO bonds in situations where a private entity leases a building (including a County-owned building). If Committee members concur, Council staff will draft revised language that reflects this recommendation.

3. Should there be an exception for critical capital projects?

At the public hearing, Alan Lovell, speaking for CHI Centers, urged that an exception to any GO bond restriction be made for needed renovations and repairs to day program facilities and residential facilities (see testimony, ©10). If Committee members concur with Mr. Lovell’s request and supports the amendment on ©23, Council staff recommends the following amendment:

[[Any such]] General obligation serial maturity bonds may be issued [[under the authority of this division and]] for the purposes enumerated in [[the preceding section]] Section 20-14 at any time, within the limitations provided by law. Bonds must not be used to fund any project that is not a public facility as defined in Section 20-14, unless the Council finds that issuing bonds is necessary to serve a public purpose.

Council staff notes that this type of amendment would broaden, not restrict, current County law. Even if the Committee adopts the language above, the County would still be limited in its issuance of bonds by the IRS regulations.

<u>This packet contains:</u>	<u>Circle</u>
Bill 34-10	1
Legislative Request Report	3
Fiscal Impact Statement	4
Select testimony and related materials	
Jennifer Barrett, Finance Director	5
Memo from Bond Counsel	7
Alan Lovell, CHI Centers	10
FY11-16 CIP Project No. 720601 (Cost Sharing: MCG)	11
Memorandum and attachments from Peggy Fitzgerald-Bare	13
Amendments to Bill 34-10	23

Bill No. 34-10
Concerning: Finance – Public Facilities –
Private Projects
Revised: 5/14/2010 Draft No. 1
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Leventhal and Knapp

AN ACT to:

- (1) amend the definition of public facilities to specifically exclude the construction, reconstruction, extension, acquisition, improvement, enlargement, alteration, repair, or modernization of any privately owned building or facility; and
- (2) generally amend the county finance law.

By amending

Montgomery County Code
Chapter 20, Finance
Section 20-14

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

LEGISLATIVE REQUEST REPORT

Bill 34-10, *Finance – Public Facilities – Private Projects*

DESCRIPTION: Bill 34-10 amends the definition of public facilities in Chapter 20 to exclude the construction, reconstruction, extension, acquisition, improvement, enlargement, alteration, repair, or modernization of any privately owned building or facility.

PROBLEM: County law could be interpreted to allow the use of general obligation bonds to fund private projects that meet the definition of public facilities in §20-14.

GOALS AND OBJECTIVES: To clarify County law such that private projects are not eligible to be funded by general obligation bonds.

COORDINATION: Department of Finance

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested

SOURCE OF INFORMATION: Amanda Mihill, Legislative Analyst, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None.



OFFICE OF MANAGEMENT AND BUDGET

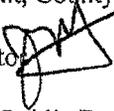
Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

June 23, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Bill 34 – 10, Finance – Public Facilities – Private Projects

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This legislation amends Chapter 20, Finance Section 20–14 of the Montgomery County Code with respect to amending the definition of public facilities to specifically exclude the construction, reconstruction, extension, acquisition, improvement, enlargement, alteration, repair, or modernization of any privately owned building or facility.

FISCAL AND ECONOMIC SUMMARY

Since the subject legislation prohibits, but does not mandate certain actions that would have been taken in the future it does not have a direct, quantifiable fiscal impact. As the Bill is presently written, the County Government would not be able to purchase privately owned buildings or facilities for governmental purposes; with the exception of any fire, rescue, or emergency medical service facility. This could limit flexibility and hinder opportunities to achieve considerable savings or cost avoidance compared to new facility design and construction. For example, this bill as written, would prohibit the purchase of the GE Tech facility.

The following contributed to and concurred with this analysis: David Platt and Glenn Wyman, Department of Finance; and Bryan Hunt, Office of Management and Budget.

JFB:bh

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Jennifer Barrett, Director, Department of Finance
David Platt, Department of Finance
Glenn Wyman, Department of Finance
John Cuff, Office of Management and Budget
Bryan Hunt, Office of Management and Budget

Office of the Director

28
1

Testimony: Bill 34-10, Finance – Public Facilities – Private Projects

Good afternoon, I am Jennifer Barrett, Director of the Department of Finance, and I am here to testify on behalf of County Executive Isiah Leggett on Bill 34-10 Finance – Public Facilities – Private Projects. The County Executive does not support Bill 34-10 because it unnecessarily limits the County’s flexibility in acquiring and upgrading buildings and facilities for governmental functions.

I understand that the bill’s intent is to modify the definition of public facilities under section 20-14 of the Montgomery County Code and specifically restrict the use of the County’s general obligation bond proceeds for the construction, acquisition or alteration of any building or facility owned by a private for-profit or non-profit entity.

Our primary concern has to do with so general a restriction on acquisition or renovation of a building or facility owned by a private entity. In fact, the proposed restrictions are in conflict with the Council’s adopted Capital Improvements Program as well as prior funding decisions by the Council that have proved to be wise investments.

There are instances in which it is most economic to acquire an existing, privately owned building rather than leasing or building a facility. For example, in 1987, the County acquired 401 Hungerford Drive to house governmental offices, including those of HHS. The County acquired 1301 Piccard Drive in 1996 for use for other HHS functions. While funded with Revenue Authority bonds, the County had the option of using GO bonds and could have done so under current code.

The County is now set to purchase the GE Tech Park building for the Public Safety Headquarters, and the Council approved the use of GO bonds to fund a portion of the renovation costs of the building while it is still privately owned. Bill 34-10 would conflict with the Council’s own actions on the CIP in that regard.

In addition, based on the County’s bond counsel’s review of the proposed legislation, it appears that the restrictions cited go far beyond just the acquisition or renovation of privately owned buildings. Bond counsel has noted concerns with the potential for broad interpretation of the limitations. Counsel notes that: “While the word “facility” is not defined, its common meaning could apply to most of the capital facilities that are acquired with the County’s bonds since most are acquired from private parties. It could be applied to prevent the County from acquiring office buildings, park land, equipment, facade easements and agriculture easements from private entities. As a result, the County would lose flexibility regarding the funding of

projects that serve a public function if the project entails the acquisition, construction or improvement of a privately owned building or facility.”

Although Bill 34-10 preserves the ability to finance certain fire, rescue, and emergency medical service facilities with general obligation bonds, the bill diminishes the County’s flexibility to fund other categories of projects that the County may determine serve a public function. The events of this spring have illustrated that the existing provisions of Chapter 20, combined with restrictions on private use and private payment in the IRS regulations, provide ample limits on the uses of General obligation bond proceeds. Consistent with prior discussions with the HHS Committee and full Council, IRS restrictions on the use of tax-exempt bond proceeds have proved to be even more restrictive than existing Chapter 20 provisions, limiting the use of general obligation bonds even on County-owned buildings when there is private use and private payment in violation of the IRS regulations on tax exempt bonds.

The County Executive shares the Council’s belief that general obligation bond proceeds should be used judiciously. Notwithstanding the limitations noted above, the Council can limit undesired uses through the adoption of the capital budget and bond authorization ordinances.

I urge the Council to oppose Bill 34-10 as its good intentions are far outweighed by inherent problems, specifically unnecessary limitations on the County Council’s legislative discretion, additional hurdles to achieving the County’s goals, and specific conflicts with existing law and the approved CIP.

Thank you for your time.

June 22, 2010

MCKENNON SHELTON & HENN LLP

401 East Pratt Street, Suite 2315
Baltimore, Maryland 21202
(410) 843-3500
(410) 843-3501 (fax)

MEMORANDUM

To: Jennifer Barrett
Glenn Wyman
From: Paul D. Shelton
Date: June 11, 2010
Re: Use of GO Bond Proceeds

Bill No. 34-10 was recently introduced in the County Council of Montgomery County, Maryland (the "County Council"). The following summarizes the effect of Bill No. 34-10.

Article IV of Chapter 20 of the Montgomery County Code (the "Code") sets forth terms and conditions pursuant to which Montgomery County, Maryland (the "County") can borrow money to finance public facilities when the County is authorized by law to borrow on its full faith and credit. The County must evidence such borrowing by the issuance of the County's general obligation serial maturity bonds. Bonds authorized by Article IV of Chapter 20 of the Code constitute an irrevocable pledge of the full faith and credit and unlimited taxing power of the County to the payment of the maturing principal and interest on such bonds as and when the same respectively mature. The County Council must authorize the issuance of County general obligation bonds together with the categories of public facilities authorized to be funded with the proceeds of such bonds. Section 20-14 of the Code defines "public facilities" to mean, among other things, the construction and improvement of (a) public school buildings and buildings for school purposes, (b) public roads, sidewalks, free bridges and storm water drainage systems for the County, (c) structures to house any of the functions of or for the use of the County government or administration, (d) transit facilities, (e) off-street parking lots and facilities for the parking of automobiles and other vehicles within certain designated parking lot districts, (f) public housing and housing for persons of low, moderate or eligible incomes and (g) water systems and facilities and sewerage systems and facilities.

In each portion of the definition of public facilities there are requirements that the project be (a) a public function, (b) or under the control of the County, (c) or used by the County or for a function that is typically a governmental function such as transit facilities and mass transit. In addition to these definitional restrictions, the County Council must enact an ordinance to authorize the debt and the projects must be in the capital budget with proper appropriation.

Bill No. 34-10 would amend the definition of public facilities to, among other things, exclude the acquisition, modernization, construction or improvement of any privately owned building or facility whether owned by a for profit or nonprofit entity. This exclusion would not apply to any fire, rescue and emergency medical service facility subject to Chapter 21 of the Code. The Bill does not provide an exception for agriculture easements or façade easements. This legislation as the most current would overturn the recent amendment that allowed agriculture easements to be purchased with general obligation debt. A literal reading of the proposed language would bar the County from acquiring any building or facility privately owned by a for-profit or non-profit entity using general obligation debt.

Section 20-14 of the Code generally permits the County to use the proceeds of general obligation bonds for projects that serve a public purpose. The enactment of Bill No. 34-10 would generally preclude the County from using proceeds of general obligation bonds to finance and refinance County projects involving the extension, acquisition, improvement, construction or any building or facility owned by a private for-profit or non-profit even if the County wishes to acquire a facility to serve a public purpose or that involve government utilized facilities. While the word "facility" is not defined, its common meaning could apply to most of the capital facilities that are acquired with the County's bonds since most are acquired from private parties. It could be applied to prevent the County from acquiring office buildings, park land, equipment, facade easements and agriculture easements from private entities. As a result, the County would lose flexibility regarding the funding of projects that serve a public function if the project entails the acquisition, construction or improvement of a privately owned building or facility. Although Bill No. 34-10 preserves the ability to finance certain fire, rescue and emergency medical service facilities with general obligation debt, Bill No. 34-10 diminishes the County's flexibility to fund other categories of projects that the County may determine serves a public function.

The Council can currently limit the use of general obligation debt through the adaptation of the capital budget and bond authorization ordinances. The enactment of Bill 34-10 would greatly restrict the current use of general obligation and limit the County from exercising its legislative discretion.

The proposed Bill would force the County to attempt to fund acquisitions from private entities with debt that is not supported by its full faith and credit. This will likely result in lower ratings from the national rating agencies and higher borrowing costs for the County. Since most capital acquisitions are from private entities and given the uncertainty of what is or is not a facility, it is likely that a substantial amount of the County's capital program will be subject to the higher borrowing costs and lower ratings.

We are not aware of any Maryland jurisdiction that has a similar restriction on the use of general obligation debt for the acquisition, construction, or improvement of

Memo to Jennifer Barrett, et al.

June 9, 2010

Page 3

buildings and facilities owned by private persons. The most restrictive provision is the prohibition on the acquisition of privately owned facilities. We recommend that the County carefully consider the implication of this restriction.

C·H·I Centers Inc.

Supporting people with disabilities since 1948

Harold Blank D.D.S.
President

Alan Lovell, Ph.D.
Chief Executive Officer

June 22, 2010

Testimony of CHI Centers with Regard to Bill 34-10

CHI Centers is a non-profit agency serving over 1000 individuals with developmental disabilities. Currently CHI Centers operates day programs from five different facilities and twenty-eight residential sites. Of the five day program facilities, CHI Centers leases one from a commercial operation, owns one, and leases three from the Montgomery County Department of Facilities that are former elementary schools that have been closed by the Montgomery County Board of Education.

CHI Centers has had a good track record of obtaining state of Maryland bond funds either through the legislative bond process or through the bond program administered by the Department of Health and Mental Hygiene. County funds and agency fund raising dollars were used to match the state of Maryland bond funding. CHI Centers has completely renovated the former Lone Oak Elementary School and the Hillandale Elementary school. Important aspects of the renovation projects were to bring the building up to current county and state building codes, making need adaptations for people with disabilities and creating an environment for adults rather than for children.

CHI Centers has obtained 1.6 million dollars in state bond funds to renovate the third county-owned facility known as the former MacDonald Knolls Elementary School located in Silver Spring. CHI Centers will lose \$200,000 of these funds if they are not matched and committed in fiscal year 2011. CHI Centers requested funding from the county in its fiscal year 2011 budget which was partially granted by the County Executive and was not supported by members of the County Council.

As CHI Centers understands the legislation being created in Bill 34-10, renovation funding would be restricted with the use of county bond funding. CHI Centers would like to see some means where funds can still be obtained from the county to make needed renovations and repairs to both day program facilities and residential facilities that are either owned by the non-profit corporation or have a long term lease. The state of Maryland determines that a long term lease is at least fifteen years.

In today's tight economy, non profits across our county are having a very difficult time just with their operating budgets. Many difficult decisions are being made to reduce operations without impacting on the people that are served by the non-profit agency.

With both the state and the county, bond funding is a separate funding stream and cannot be used for operating purposes. State and county funds received for operating purposes cannot be used for capital expenses. Therefore CHI Centers would request a mechanism be developed to assist non-profit with needed renovation projects.

10501 New Hampshire Avenue, Silver Spring, MD 20903-1122
Tel 301.445.3350 Fax 301.439.8117 TDD 301.439.5366
www.CHICenters.org Email Info@CHICenters.org

Cost Sharing: MCG -- No. 720601

Category	Culture and Recreation	Date Last Modified	June 04, 2008
Subcategory	Recreation	Required Adequate Public Facility	No
Administering Agency	Recreation	Relocation Impact	None.
Planning Area	Countywide	Status	On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY07	Est. FY08	Total 6 Years	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	882	582	300	0	0	0	0	0	0	0	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	4	4	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	8,419	0	1,544	6,875	5,475	1,400	0	0	0	0	0
Total	9,305	586	1,844	6,875	5,475	1,400	0	0	0	0	0

FUNDING SCHEDULE (\$000)

Current Revenue: General	3,915	586	1,404	1,925	1,925	0	0	0	0	0	0
G.O. Bonds	140	0	140	0	0	0	0	0	0	0	0
Economic Development Fund	1,400	0	0	1,400	0	1,400	0	0	0	0	0
Long-Term Financing	3,850	0	300	3,550	3,550	0	0	0	0	0	0
Total	9,305	586	1,844	6,875	5,475	1,400	0	0	0	0	0

DESCRIPTION

This project provides funds for the development of non-government projects in conjunction with public agencies or the private sector. County participation leverages private and other public funds for these facilities. Prior to disbursing funds, the relevant County department or agency and the private organization will develop a Memorandum of Understanding which specifies the requirements and responsibilities of each.

COST CHANGE

Increase represents County's contribution to match the State's funding for the music venue in Silver Spring and the County's participation in CASA of Maryland, CHI Centers, Jewish Council for the Aging, Montgomery General Hospital, YMCA of Metropolitan Washington - Youth and Family Services Branch, Boys and Girls Club of Greater Washington, Institute for Family Development - Centro Familia, Nonprofit Village, Inc., and Aunt Hattie's Place.

JUSTIFICATION

The County has entered into or considered many public-private partnerships, which contribute to the excellence and diversity of facilities serving County residents.

OTHER

For FY09, County participation is anticipated for the following projects in these amounts:

CASA of Maryland, Inc: \$150,000

CHI Centers: \$50,000

Jewish Council for the Aging: \$250,000

Montgomery General Hospital: \$500,000

YMCA of Metropolitan Washington and Youth and Family Services Branch: \$200,000

Boys and Girls Club of Greater Washington: \$250,000

Institute for Family Development Inc., doing business as Centro Familia: \$75,000. The organization must demonstrate to the County's satisfaction that it has commitments for the entire funding needed to construct the project before the \$75,000 in County funds can be spent.

Nonprofit Village, Inc.: \$200,000

Aunt Hattie's Place: \$250,000. FY09 funds for this item must only be spent on construction. Also, the organization must demonstrate to the County's satisfaction that it has commitments for the entire funding needed to construct the project before the \$250,000 in County funds can be spent. Disbursement of FY09 County funds is conditioned on the owner of the property giving the County an appropriate covenant restricting the use of the leased property to a foster home for boys for a period of ten years from the time the facility commences to operate as a foster home.

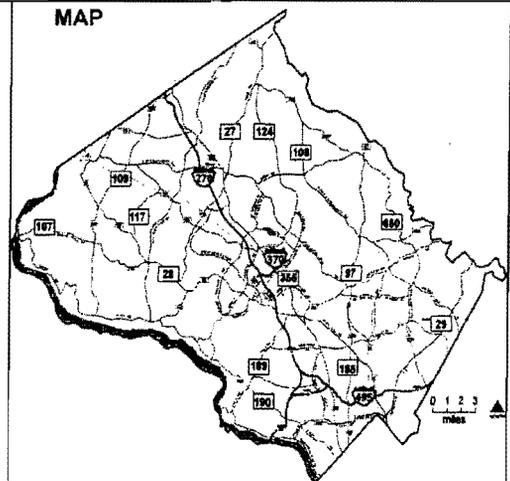
Music venue in Silver Spring: \$3,550,000 (\$150,000 was expended out of the Economic Development Fund in FY07 for a feasibility study for a music venue, and \$300,000 will be expended in FY08, bringing the total County match to the State to \$4,000,000)

APPROPRIATION AND EXPENDITURE DATA		
Date First Appropriation	FY06	(\$000)
First Cost Estimate		
Current Scope	FY08	6,280
Last FY's Cost Estimate		6,280
<hr/>		
Appropriation Request	FY09	2,325
Appropriation Request Est.	FY10	1,400
Supplemental Appropriation Request		0
Transfer		0
<hr/>		
Cumulative Appropriation		5,440
Expenditures / Encumbrances		1,882
Unencumbered Balance		3,558
<hr/>		
Partial Closeout Thru	FY06	0
New Partial Closeout	FY07	0
Total Partial Closeout		0

COORDINATION

Private organizations
 State of Maryland
 Municipalities
 Montgomery County Public Schools
 Community Use of Public Facilities
 Department of General Services
 Department of Economic Development

MAP



Cost Sharing: MCG -- No. 720601 (continued)

For FY10, County participation is anticipated for the following projects in these amounts:
Adventist HealthCare: \$1,400,000

Funds for the music venue in Silver Spring will not be expended until an agreement is reached between the development partners and the County, which includes Council review and approval of the general business terms. The County will own the facility and will fund its contribution with short-term financing proceeds consistent with the terms of the lease agreement with the operator of the music venue.

The Adventist HealthCare Project provides incentive funding to assist with the construction of a medical office building at 8702 Flower Avenue in the Long Branch community. With the announced departure of Washington Adventist Hospital from Takoma Park, construction of this site underscores the County's commitment to access to health care in the Long Branch area. The County initially committed to fund the project with \$700,000 for each of the three years from FY07-FY09 for a total of \$2,100,000. During FY08, the project was substantially delayed due to legal proceedings. The previously programmed \$1,400,000 has been deferred to FY10 and the additional \$700,000 will be programmed in later years. Based on the current project time line, the County's funding schedule will not have any material impact on the project. EDF funds will not be expended until there is an agreement between Adventist HealthCare, the property owner, and the County Executive which includes specific performance requirements. The requirements should address the length and terms of the lease; public use of the garage, the use of the building for medical-oriented businesses, and other EDF requirements including fiscal analysis and job generation. DED, the property owner, and Adventist HealthCare will keep the Council informed of modifications to the project and the status of litigation.

The Old Blair Auditorium Project (a private, non-profit organization) received State bond bill funding of \$600,000 for the renovation of the Old Blair High School Auditorium. The County is providing \$190,000 as a partial match for the State funds with \$50,000 in current revenue in FY06-FY07 for DPWT to develop a Program of Requirements and cost estimate for the project, and a programmed FY06-FY07 bond funded expenditure of \$140,000 to pay for part of the construction. The Council will consider appropriating the \$140,000 after: a) facility planning is complete and the full cost of the renovation is known; b) the County, MCPS, and the Old Blair Auditorium Project resolve issues about management of the renovation project, operation of the facility, and parking for the facility; and c) the Old Blair High School Auditorium project raises the remaining \$410,000 required to match the State funding. MCPS has included funds for a feasibility study for the auditorium in its Facility Planning project (No. 966553). During the study, MCPS will work with the community to develop a new program of requirements for the auditorium.

OTHER DISCLOSURES

- A pedestrian impact analysis will be performed during design or is in progress.

=

MEMORANDUM

May 13, 2010

TO: Health and Human Services Committee

FROM: Peggy Fitzgerald-Bare, Council Grants Manager ^{PJB}

SUBJECT: **CIP Amendment: Cost Sharing: Montgomery County Government
State Match Community Grants**

**State and Other Jurisdictions/ Use of General
Obligation Bonds**

On April 21 the Committee reviewed the County Executive's recommended nonprofit capital project Community Grants contained in the Cost Sharing CIP and the Executive's proposed use of General Obligation bonds for three projects (CHI Centers, Ivymount School, and Olney Theatre). Councilmember Trachtenberg asked for follow-up information on the State of Maryland's criteria and practices for State bond bills for nonprofit capital projects, and also whether other local jurisdictions in Maryland use General Obligation bonds to fund nonprofit capital projects.

State of Maryland State Bond Bills

I have attached portions of a document, *Guidelines for the Submission of Individual Bond Bill Requests to the Maryland General Assembly*, prepared by the Dept. of Legislative Services. This document provides guidance and instructions to applicants seeking State Bond Bills. The complete document can be found at: http://mlis.state.md.us/Other/Bond_bill/Bond_Bill_Submission_guidelines.pdf. Highlights from the document include the following information:

Basic Eligibility Criteria:

- Project must be capital in nature. Can include land acquisition as well as construction.
- Project must have a useful life of 15 years. A group leasing land or a structure related to a proposed capital project must demonstrate that the lease will extend for 15 years or more.
- Project must not be used for religious purposes.
- Certain structures may be subject to historic easement

Evaluation Criteria include:

- Has the organization explored alternative funding sources, including other State capital grant and loan programs?
- What priority does the County delegation place on the project?
- The organization should provide matching funds for the project. The specific bond bill may require either a “hard” (cash in hand) or “soft” (real property, in-kind contributions, or funds expended for project prior to bond bill effective date) match. The required match is typically equal to the State contribution, but can be greater than, equal to, or less than the State contribution.
- Organizations showing a history of adequate fundraising or documentation of adequate future funding are given priority, i.e., the ‘readiness’ factor.
- Local projects serving a wide spectrum of the community or the State as well as an important public purpose are preferred.

Staff also spoke with staff in the State Dept. of Budget and Management who indicated that there are several references in State law to capital grant programs administered by State agencies to provide grants to local governments and non-profit organizations. In addition, the general authority in the State Finance and Procurement Article describes the powers of the General Assembly to borrow money for public purposes, issue State bonds, and discusses the content of the Capital Budget, referencing “other special projects.” The other special projects category refers to local government and non-profit capital projects funded by the State. Each bond bill is submitted as legislation and has a finding of a “public purpose” in authorizing the appropriation to a private entity.

Practices in other Maryland jurisdictions:

According to Finance Department staff they surveyed local jurisdictions, bond counsels, and financial advisory firms conducting business in the State. They contacted ten local government officials, three bond counsels, and a few financial advisory firms.

The Finance Department notes that only a limited number of local jurisdictions regularly issue general obligation debt so the universal of potential respondents is small.

Below are some of their general findings.

“Local jurisdictions, not including the State, generally do not use general obligation proceeds to fund capital projects of private, non-profit or for-profit entities. Harford, Frederick, Prince Georges, Charles, Anne Arundel, and Carroll counties are included in that group. There are some exceptions, including the State. The State gives its general obligation bond proceeds to private entities as part of its annual grants program. This is done through the State’s “Bond Bills” and usually involves matching funds on behalf of

the grantee. The City of Baltimore also gives general obligation money away under its economic development program. Charles County and St. Mary's County continue to fund their hospitals and nursing homes (typically non-profit entities) with bonds backed by a general obligation pledge.

Most local jurisdictions facilitate funding private entities via their conduit bond/economic development bond programs. Via these programs, the county issues tax-exempt bonds and lends the proceeds to the private entity. In almost every financing, the private entity is a non-profit, but there are some very limited opportunities to lend to for-profits. Montgomery County has had a conduit/economic development bond program for many years and issued bonds and lent the proceeds to a range of entities such as Holy Cross Hospital, Riderwood Village, Sidwell Friends School, and Imagination Stage. The State has a similar program run by MHHEFA (Maryland Health and Higher Education Financing Authority). Under such programs, the conduit debt is an obligation of the borrower and not the County or State; therefore, the conduit debt does not compete with the County or State's ability to issue its own debt."

Attachment: Bond Bill Submission Guidelines (pp. 1-3) ©6-12

F:\Community Grants\FY11 Grants Information\cost sharing follow up md bond bill criteria.doc

**Guidelines for the Submission of
Individual Bond Bill Requests to the
Maryland General Assembly**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

November 2007

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 • Washington Area: 301-970-5400

Other Areas: 1-800-492-7122, Extension 5400

TDD: 410-946-5401 • 301-970-5401

Maryland Relay Service: 1-800-735-2258

E-mail: libr@mlis.state.md.us

Home Page: mlis.state.md.us

The Department of Legislative Services does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the admission or access to its programs or activities. The department's Information Officer has been designated to coordinate compliance with the nondiscrimination requirements contained in Section 35.107 of the United States Department of Justice regulations. Requests for assistance should be directed to the Information Officer at the telephone numbers shown above.

Introduction

The *Guidelines for the Submission of Individual Bond Bill Requests to the Maryland General Assembly* is published by the Department of Legislative Services (DLS) to assist those requesting funding from the General Assembly for capital projects through the submission of bond bills. The manual provides a summary of the basic eligibility requirements and evaluation criteria, the legislative process, and the schedule for bond bill consideration by the General Assembly.

Before a bond bill may be scheduled for a hearing, the potential applicant must provide additional information by preparing a "Bond Bill Fact Sheet." These fact sheets provide important information concerning an organization's grant request – information required at the time of the bond bill hearing. Since the start of the 2005 session, DLS staff has coordinated the "Bond Bill Fact Sheet" process. The manual provides an outline of the DLS process as well as copies of all forms necessary for a bond bill to be scheduled for a hearing. This manual is also available in electronic format at <http://mlis.state.md.us/bondbillsub.htm>.

Comments and suggestions directed at improving future editions of the *Guidelines for the Submission of Individual Bond Bill Requests to the Maryland General Assembly* are welcome.

Contents

Introduction.....	iii
Guidelines for the Submission of Individual Bond Bill Requests to the Maryland General Assembly	
Overview of State Funding of Local Projects Bond Bills.....	1
Eligibility	1
Strategies for Achieving Success.....	2
Process	3
Instructions.....	5
Applicant's Proposal	5
Sponsorship/Drafting/Introduction of the Bill	5
Department of Legislative Services Assistance	6
Approval Notifications.....	6
Attachment I	
Bond Bill Project Request Form.....	8
Attachment II	
Sample Senate Bill.....	9
Sample House Bill	11
Attachment III	
Instructions for Completing the State of Maryland Bond Bill Fact Sheet.....	13
Introduction.....	13
Explanation of Fields	14
State of Maryland Bond Bill Fact Sheet	16
Attachment IV	
State Capital Grant and Loan Programs: Potential Sources of Funding for Bond Bill Requests.....	21

Guidelines for the Submission of Individual Bond Bill Requests to the Maryland General Assembly

The capital budget is funded through several sources. These include bond bills, general funds, special funds, and federal funds. Bond bills include the Maryland Consolidated Capital Bond Loan, revenue bonds, and legislative initiatives.

Legislative initiatives are used to fund individual bond bill requests. They are bond authorization bills filed by members of the General Assembly to support specific local or non-state-owned capital projects. These projects include, but are not limited to, health facilities, historic preservation projects, museums, and sports and recreational facilities. Legislative initiatives are not submitted as part of the Governor's capital budget. However, as they have an impact on State finances, the Department of Legislative Services (DLS) reviews them in accordance with procedures established by the Governor and the General Assembly.

The following instructions and attachments provide guidelines to applicants seeking State grants through the submission of individual bond bills.

Overview of State Funding of Local Projects Bond Bills

This document is intended to provide basic information on eligibility and priority for State funding of local capital projects (bond bills). Any group may request funding from the General Assembly for a capital project. As a practical matter, the number and type of projects funded by the General Assembly is limited – requests for funding greatly exceed available resources each year. In some years, the total amount requested for local capital projects has exceeded by 10 times the available resources. Thus, after ascertaining a project's basic eligibility, the General Assembly must assess the project's level of priority among the total number of projects requested.

Eligibility

- **A project must be capital in nature to be eligible for bond bill consideration.** A capital project deals with land and/or structures. Capital projects do not include items such as employee salaries, benefits, expendable equipment (automobiles, for example), or operating costs.

- **A project must have a useful life of 15 years.** Items such as automobiles and computers do not have a useful life of 15 years. A group that is leasing land and/or a structure relating to the proposed capital project must demonstrate that the lease will extend for 15 years or more.
- **A project must not be used for religious purposes.** For example, State funds may not be used to construct a building in which religious services, Sunday school, or religious education will be held, regardless of other non-religious uses planned for the building.
- **Certain structures may be subject to an internal and/or external historic easement.** The applicant must grant the easement to the Maryland Historical Trust as a condition for State funding.

Strategies for Achieving Success

After the General Assembly evaluates the eligibility of a project, all of the projects are evaluated based upon several criteria, including the following:

Alternative Funding

Groups should show that they have explored alternative sources of funding. In addition to requesting alternative funding from agencies, corporations, etc., a group may be asked to show whether a potential revenue source, such as entrance fees, membership fees, or concession profits could cover the cost of the capital project. Please refer to **Attachment IV** of this document for information on potential alternative sources of funding for bond bill requests through State capital grant and loan programs.

Delegation Support

The General Assembly will consider the priority a county delegation places upon a project.

Matching Funds

Groups should provide a matching fund for their projects. Matches may be classified as "hard" or "soft." A "hard" match is "cash in hand" and may include money from any source, other than State sources. A "soft" match MAY be made up of real property, in-kind contributions, (donated services or materials) or funds expended for the project prior to the effective date of the bond bill, June 1 of the year the bill is passed. A "soft" match may consist of a combination of the abovementioned elements, including cash.

A matching fund MAY also be greater than, equal to, or less than the State contribution, though at least an equal match is preferred. Among those projects with unequal matching funds, an applicant providing an unequal matching fund that shows that *at the time of the request*, the group holds or has letters of commitment totaling 25 percent or more of the matching fund will be given priority.

Project Readiness

Groups will be required to supply the General Assembly with a detailed funding analysis prior to the hearings on their bills. Projects that show a history of adequate fundraising or groups that can provide documentation of adequate future funding (e.g., letters of commitment) will be given priority.

State or Local Purpose

Local projects that serve a wide spectrum of the community or the State as well as an important public purpose are preferred.

Process

Sponsors

Organizations seeking funding must contact a senator and a delegate to sponsor a bond bill that requests funding for their project. Bond bills must be introduced in both the House and the Senate, known as cross-files, so organizations must arrange for a sponsor in each house.

Required Information

DLS needs certain information before drafting a bond bill. The "Bond Bill Project Request Form" identifies the required information and is available on the Maryland General Assembly web site at <http://mlis.state.md.us/bondbillsub.htm>. An organization requesting funding should ensure that their sponsors have the required information when their sponsors request that a bond bill be drafted

Bond bills must contain certain technical information to legally permit funds to be disbursed. Therefore, after DLS drafts a bond bill, the sponsor and requesting organization should refrain from altering the language in the bill. If a change is necessary, please contact DLS at (410)946-5350/ (301)970-5350 to request the change.

The most important form is the "Bond Bill Fact Sheet." This form provides background information needed by the budget committees at the time of the bond bill hearings. Legislators use this information as they make their funding decisions and the failure to complete and submit a Fact Sheet may result in the Legislature not funding the bond bill project request. After DLS drafts a bond bill, the applicant will receive an email from DLS that provides a link and access to the applicant's specific Fact Sheet for completion. It is important that the applicant retain the DLS email as the provided link can be used at any time by the applicant to gain access to their Fact Sheet up until the time that it is formally submitted by the applicant through the provided toolbar. Applicants should ensure that they can receive email from bondbillapp@MLIS.state.md.us. The fact sheet form and instructions for completion are provided as a sample (**Attachment III**).

1 non-profit entity, excluding any fire, rescue, and emergency medical service
2 facility subject to Chapter 21.]]

3 **20-15. Borrowing money and issuing bonds-Authority.**

4 (a) [[With regard to]] For any County borrowing authorized by law on the
5 full faith and credit of the County to finance the public facilities
6 defined in [[the preceding section]] Section 20-14, the County must
7 evidence that borrowing or indebtedness by [[the issuance of its]]
8 issuing general obligation serial maturity bonds. Subject to the terms
9 and conditions in this Section, the County Executive must determine
10 the terms and conditions of any such bonds, the interest payable
11 thereon, and the advertising for their sale.

12 (b) [[Any such]] General obligation serial maturity bonds may be issued
13 [[under the authority of this division and]] for the purposes
14 enumerated in [[the preceding section]] Section 20-14 at any time,
15 within the limitations provided by law. Bonds must not be used to
16 fund any project that is not a public facility as defined in Section 20-
17 14.

18 (c) [[All]] Any action taken [[pursuant to]] under this Article must be
19 [[taken]] by order of the County Executive. The County Executive
20 must [[cause]] send a correct copy of every such order to [[be filed
21 with]] the Clerk of the County Council, who must keep a permanent
22 record of [[all of such orders; and certification]] each order.
23 Certification by the Clerk is evidence of the authenticity of [[any
24 such]] each order.