

Resolution No.: 16-1104  
Introduced: July 14, 2009  
Adopted: September 15, 2009

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: County Council at the Request of the County Executive

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**SUBJECT:** Authority:

- (1) to issue certain bond anticipation notes;
- (2) to borrow money under credit arrangements to pay bond anticipation notes up to \$453,900,000 in anticipation of the issuance of certain bonds, and consolidating this authority with previous authority; and
- (3) for the County Executive to prescribe procedures and enter agreements to issue and sell the notes.

**Background**

1. Montgomery County, Maryland (the "County"), is authorized to borrow money and to issue bonds to finance the cost of certain public facilities under certain existing County laws. The County Council for Montgomery County expects to authorize the County to borrow additional money and to issue additional bonds in the future.
2. Section 12 of Article 31 of the Maryland Code (the "Bond Anticipation Note Act") allows the County to issue and sell its bond anticipation notes on any date in an amount not greater than the authorized amount of bonds as of that date. The principal of and interest on bond anticipation notes must be paid from the first proceeds of sale of the bonds in anticipation of which they are issued, or from the tax or other revenues that the County previously determined to apply to the payment of the principal of and interest on those bonds.
3. Under the Bond Anticipation Note Act (a) bond anticipation notes may be sold by private negotiated sale by the County if the County decides that a private negotiated sale is in the best interest of the County, (b) bond anticipation notes may be issued in the nature of commercial paper, (c) bond anticipation notes may, in the discretion of the County, be secured by a letter of credit, line of credit, or other credit arrangement from or with a bank or other lending institution, (d) the letter of credit, line of credit or other credit arrangement may be made payable out of the first proceeds of sale of the bonds in anticipation of which the notes are issued or from the tax or other revenues that the County previously determined would apply to pay the principal of and interest on those bonds and (e) proceeds of the sale of bond anticipation notes must be spent only for the purposes for which the bonds are authorized and to pay the expenses of issuing the notes and up to 12 months' interest on the notes.

4. The Bond Anticipation Note Act provides that bond anticipation notes must be authorized by resolution that states the authority for the notes and the bonds in anticipation of which the notes are issued and the amount of bond anticipation notes authorized to be issued and prescribes the manner of fixing the terms of the notes, the prices at which they will be sold, and the manner of sale.
5. Section 2C of Article 31 of the Maryland Code allows the county council of any charter county, in authorizing or in providing for the sale of bonds, to provide by resolution that loans and bonds that were authorized by separate laws may be consolidated for sale and issued, sold, and delivered as a single issue of bonds.
6. The County Director of Finance believes that the issuance by the County of bond anticipation notes in the nature of commercial paper as funds are needed will reduce the County's interest costs and improve the County's ability to meet the needs of the County for public borrowing.
7. Resolution No. 14-1307, adopted by the County Council on June 11, 2002, as amended, as currently in effect, authorizes the County, at one time or from time to time to issue bond anticipation notes in the nature of commercial paper and to borrow money under credit arrangements to pay the principal amount of outstanding bond anticipation notes and loans under credit arrangements in the total principal amount of \$894,803,000. As of the date of this Resolution bond anticipation notes in the nature of commercial paper in the total principal amount of \$300,000,000 are outstanding in accordance with certain laws of the County and the Bond Anticipation Note Act and Resolution No. 14-1307.
8. The County wishes to amend and restate the authority to issue bond anticipation notes and borrow money under credit arrangements currently provided by Resolution No. 14-1307.
9. In addition, the County has decided to authorize (a) the issuance, sale, and delivery of additional bond anticipation notes in the nature of commercial paper and borrowings under credit arrangements at any time and from time to time in a total principal amount up to \$453,900,000 in anticipation of issuing bonds authorized to be issued under Chapter 22, Laws of Montgomery County 2009 and (b) issuing bond anticipation notes and additional borrowings under credit arrangements at any time and from time to time to pay the principal amount of those bond anticipation notes and loans under credit arrangements.
10. The Director of Finance believes that private (negotiated) sales of the bond anticipation notes authorized by this Resolution are the most efficient means of marketing the bond anticipation notes in existing markets, are in the best public interest of the County, and will result in the lowest cost to the County.

**Action**

The County Council for Montgomery County, Maryland adopts the following resolution:

**Section 1.** The following terms have the following meanings when used in this Resolution unless the terms of this Resolution expressly or by necessary implication require otherwise:

- (a) “Authorized Amount” means \$1,348,703,000, less the aggregate principal amount of Notes paid after the effective date of this Resolution with proceeds of Bonds and other legally available funds, as that amount may be amended from time to time by resolution of the County Council.
- (b) “Authorizing Legislation” means (i) laws of the County previously enacted under which Notes were authorized to be issued before this Resolution was adopted; (ii) laws of the County specified in Section 8 of this Resolution; and (iii) laws of the County enacted after the effective date of this Resolution and specified in an amendment to this Resolution.
- (c) “Bond Anticipation Note Act” means Section 12 of Article 31 of the Maryland Code, as amended from time to time.
- (d) “Bonds” means general obligation bonds that are authorized to be issued by the County under the Authorizing Legislation.
- (e) “County” means Montgomery County, Maryland.
- (f) “County Executive” means the County Executive of the County.
- (g) “Credit Arrangement” means any line of credit, letter of credit, or other arrangement with a bank or other lending institution entered into by the County under this Resolution from time to time under which the lending institution agrees to provide funds to pay the principal or interest on any Notes. “Credit Arrangement” includes all documents executed and delivered by the County to evidence its payment obligations with respect Loans made to pay the principal of or interest on Notes.
- (h) “Loans” means amounts advanced under any Credit Arrangement to pay the principal of or interest on any Note or loan under a Credit Arrangement.
- (i) “Notes” means bond anticipation notes in the nature of commercial paper issued under this Resolution. “Notes” includes both the bond anticipation notes originally issued and all bond anticipation notes issued to pay the principal of any bond anticipation notes or to repay any Loans.

**Section 2.** The County may issue at one time or from time to time, in accordance with the Authorizing Legislation and the Bond Anticipation Note Act, bond anticipation notes of the County for the public purposes and uses specified in the Authorizing

Legislation in a total principal amount at any one time outstanding equal to the difference between (a) the Authorized Amount and (b) the total principal amount of outstanding Loans. The proceeds of the initial sale or sales of the Notes, after paying the expenses of issuing and sale of the Notes, must be applied only in accordance with Section 12(a) of the Bond Anticipation Note Act.

**Section 3.** The Notes may be issued in anticipation of the issuance of Bonds pursuant to the Authorizing Legislation. On the maturity date of any Notes, the principal amount of those Notes must be paid from the proceeds of additional Notes issued in principal amount equal to the principal amount of the maturing Notes or from Loans. The County intends ultimately to pay the principal of the Notes from the proceeds of the Bonds in anticipation of which the Notes are issued.

**Section 4.** The Notes must be issued as notes in the nature of commercial paper from time to time as determined by the County Executive in accordance with Section 10 of this Resolution. The Notes must have maturities of not less than one day nor more than 270 days.

**Section 5.** The Notes and the obligation of the County to repay Loans are general obligations of the County and constitute a pledge of the full faith and credit and taxing power of the County. If the County is unable to issue the Bonds in sufficient time to pay the principal of and interest on the Notes when due (unless those Notes are paid with proceeds of additional Notes or Loans) and any Loans when due (whether at maturity or otherwise), the County covenants that it will levy ad valorem taxes on real and tangible personal property and intangible property subject to taxation by the County without limitation of rate or amount and, in addition, on such other intangible property as is subject to taxation by the County within limitations prescribed by law, in an amount sufficient, together with funds available from other sources, to make such payments.

**Section 6.** Under the Authorizing Legislation and the Bond Anticipation Note Act, the Council finds that the best interests of the County will be served by selling the Notes at private (negotiated) sales under terms and conditions set by the County Executive under Section 10 of this Resolution.

**Section 7.** In accordance with the Authorizing Legislation and the Bond Anticipation Note Act, the County covenants that (a) it will pay the principal of and interest on the Notes and any Loans, to the extent not paid from the proceeds of the sale of the Notes or Loans or other available funds, from the proceeds of the Bonds, and (b) it will issue the Bonds when, and as soon as, the reason for deferring their issuance no longer exists. Nothing in this Resolution limits the right of the County to issue other bonds or notes before or simultaneously with the issuance of the Bonds in anticipation of which any Notes are issued.

**Section 8.** Under Section 2C of Article 31 of the Maryland Code, the Council authorizes the County to consolidate for sale and issue, sell, and deliver at any one time and from time to time Notes issued for the following general purposes:

- (a) public schools and community colleges and other purposes provided in Chapter 20-14(a) of the County Code - Chapter 22, Laws of Montgomery County 2009;
- (b) public roads, streets, highways, sidewalks, storm drainage systems and such other purposes as provided in Chapter 20-14(b) of the County Code - Chapter 22, Laws of Montgomery County 2009;
- (c) public buildings, parks and recreation, fire and such other purposes as provided in Chapter 20-14(c) of the County Code - Chapter 22, Laws of Montgomery County 2009;
- (d) mass transit and such other purposes as provided in Chapter 20-14(d) of the County Code - Chapter 22, Laws of Montgomery County 2009;
- (e) parking lot districts (Bethesda) and such other purposes as provided in Chapter 20-14(e) of the County Code - Chapter 19, Laws of Montgomery County 1981, Chapter 14, Laws of Montgomery County 1982, and Chapter 10, Laws of Montgomery County 1983;
- (f) parking lot districts (Silver Spring) and such other purposes as provided in Chapter 20-14(e) of the County Code - Chapter 9, Laws of Montgomery County 1983, and Chapter 6, Laws of Montgomery County 1984; and
- (g) public housing and such other purposes as provided in Chapter 20-14(f) of the County Code - Chapter 22, Laws of Montgomery County 2009.

**Section 9.** The County hereby covenants that it will take, or refrain from taking, all actions necessary to comply with Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended, which apply to the Notes in order to preserve the excludability of the interest on the Notes from gross income for Federal income tax purposes. Without limiting the generality of the preceding sentence, the County must (a) not use or permit the use of any of the proceeds of the Notes in a manner that would cause the interest on the Notes to be included in gross income for Federal income tax purposes, (b) make periodic determinations of the rebate amount and timely pay any rebate amount, or installment thereof, to the United States of America and (c) prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

**Section 10.** The County Executive may decide, by executive order or otherwise, all matters necessary to effect the authorization, sale, security, issuance, delivery and payment of or for the Notes, subject to this Resolution.

**Section 11.** The County may enter into one or more agreements in connection with issuing Notes on terms that the County Executive approves by executive order or otherwise, including (a) agreements for the sale or placement of Notes; (b) Credit Arrangements; and (c) agreements with fiscal agents for the authentication and delivery

of and payment for Notes from time to time. Nothing in this Section limits the authority granted to the County Executive in Section 10. This Resolution does not require the County Executive to enter into a Credit Arrangement for any Notes.

**Section 12.** The County ratifies and confirms the validity of all bond anticipation notes previously issued under Resolution No. 14-1307, and all agreements previously entered into and actions previously taken under Resolution No. 14-1307.

**Section 13.** This Resolution takes effect when the law introduced as Expedited Bill No. 29-09 takes effect.

This is a correct copy of Council action.



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Linda M. Lauer, Clerk of the Council