

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2010, Legislative Day No. 13
Resolution No. 58-10

Mr. John Olszewski, Sr., Chairman
By Request of County Executive

By the County Council, July 6, 2010

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act to provide for the issuance and sale by Baltimore County, Maryland as its limited obligations and not upon its faith and credit or pledge of its taxing power, of one or more series of its bonds in an aggregate principal amount not to exceed \$10,000,000, for the purpose of financing and refinancing the costs of the acquisition, improvement and installation by Maryvale Preparatory School, Incorporated of a certain facility located or to be located at 11300 Falls Road in Baltimore County and to be used by Maryvale Preparatory School, Incorporated in its business of ownership and operation of an independent school; providing for the issuance and sale of notes in anticipation of the issuance and sale of such bonds; authorizing the County Executive or the County Administrative Officer, by executive order or otherwise to specify, prescribe, determine, provide for or approve certain matters, details, forms, documents or procedures appropriate to the authorization, sale, security, issuance, delivery, or payment of or for such bonds; providing that neither the bonds nor any interest or premium thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of Baltimore County, Maryland within the meaning of any constitutional or charter provision or statutory limitation and that neither the bonds nor any interest thereon shall ever constitute or give rise to any pecuniary liability of Baltimore County, Maryland; and generally specifying and describing various matters in connection therewith, as required or permitted by such Act.

RECITALS

The Maryland Economic Development Revenue Bond Act, being Maryland Code Annotated, Economic Development Article, Sections 12-101, *et seq.*, as amended (the “Act”), authorizes the counties and municipalities of the State of Maryland (the “State”) to issue and sell revenue bonds or revenue refunding bonds as limited obligations and not upon their faith and credit or pledge of their taxing power, at any time and from time to time, for the purposes of financing or refinancing the costs of the acquisition and improvement of one

or more facilities for one or more facility users or of refunding outstanding bonds, including the necessary expenses of preparing, printing, selling, and issuing those bonds, the funding of reserves, and the payment of interest with respect to financing such acquisition and improvement in such amounts, or for such period, as the public body deems reasonable.

The General Assembly of the State of Maryland, in the Act, declares the legislative purposes of the Act to be (1) relieve conditions of unemployment in the State of Maryland; (2) encourage the increase of industry and commerce and a balanced economy in the State of Maryland; (3) assist in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State of Maryland through, among other things, the development of ports, the control or abatement of environmental pollution, and the use and disposal of waste; (4) promote economic development; (5) protect natural resources and encourage resource recovery; and (6) promote the health, welfare, and safety of the residents of the State of Maryland.

The Act provides that a public body may accomplish the acquisition and improvement of one or more facilities from the proceeds of the sale of its bonds by one or more of the following methods: (1) by leasing them to one or more facility users under a lease (as defined in the Act), (2) by selling them to one or more facility users under a sale agreement (as defined in the Act), (3) by lending the proceeds of the sale of the bonds to one or more facility users under a loan agreement (as defined in the Act) to be used to finance or refinance one or more facilities, or (4) in such other manner as the public body deems appropriate to accomplish the purposes of the Act.

The County Council of Baltimore County, Maryland may implement the authority conferred upon it by the Act to issue bonds by adopting a resolution which (1) specifies and describes the facility or facilities, (2) generally describes the public purpose to be served and the financing or refinancing transaction to be accomplished under the Act, (3) specifies the maximum principal amount of the bonds that may be issued, and (4) imposes such terms or conditions on the issuance and sale of the bonds as the County Council of Baltimore County, Maryland deems appropriate.

Under the Act, the County Council of Baltimore County, Maryland may itself specify

and prescribe by resolution such matters, details, forms, documents, or procedures as the County Council deems appropriate to the authorization, sale, security, issuance, delivery or payment of or for the bonds, including, without limitation, creation of security for the bonds and provision for the administration of bond issues such as trust or other agreements with banks, trust companies, or other financial institutions regarding any countersignature or delivery of bonds or security for bonds. In the alternative, the County Council by resolution may authorize either the County Executive, by executive order or otherwise, or any other appropriate administrative officer, by order or otherwise with the approval of the County Executive, to specify, prescribe, determine, provide for, or approve such matters regarding the bonds as the County Council itself could specify and describe.

Baltimore County, Maryland, a body politic and corporate and a political subdivision of the State and a public body (the “County”) has received a letter of intent (the “Letter of Intent”) and a Revenue Bond Application dated May 18, 2010 from Maryvale Preparatory School, Incorporated, a Maryland non-profit corporation (the “Applicant”), pursuant to which the Applicant has requested the County to participate in the financing and refinancing of (1) the costs of the acquisition and improvement of a facility located in Baltimore County, Maryland (the “Project”) and (2) the costs of issuance, capitalized interest and other costs related to the transaction, by the issuance and sale by the County of its economic development revenue bonds in an aggregate principal amount not to exceed \$10,000,000 pursuant to and in accordance with the Act (the “Bonds”).

The Project will consist of and may include (a) the improvement, construction, equipping and placing into service of an approximately 30,000 square foot building which will house an auditorium, a lobby and gallery space, a music classroom and practice space, a technology resource center, additional classrooms and other space to be used in the operation of the Applicant’s school, (b) enhancements and upgrades to the Applicant’s athletic fields, (c) re-orienting and re-constructing the Applicant’s entrance driveway and interior driveways and related improvements, (d) constructing and installing a storm water management facility, (e) other improvements to the Applicant’s facilities relating to the foregoing, (f) funding certain working capital needs of the Applicant, including reserves for

interest and debt service and (g) funding the costs of issuing the Bonds. The Letter of Intent states that the Applicant will use the Project in its business of operating an independent school. The Letter of Intent further states that the Applicant will use all or a portion of the proceeds of the Bonds to reimburse the Applicant for costs of the Project paid by the Applicant prior to the issuance of the Bonds.

The Letter of Intent further expresses the Applicant's intention that the interest payable on such bonds shall be excludible from the gross income of the owners of such bonds for purposes of federal income taxation pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), but the Applicant recognizes that the County can give no assurance and makes no representation that the interest on the Bonds, if issued, will be tax-exempt.

The Letter of Intent also expresses the Applicant's intention to designate the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

The County, based upon the findings and determinations set forth below, has determined to participate in the financing of the costs (to the fullest extent permitted by the Act) of the acquisition and improvement of the Project by the issuance, sale and delivery, at any time, and from time to time, in one or more series, of the Bonds in an aggregate principal amount not to exceed \$10,000,000.

NOW THEREFORE, IN ACCORDANCE WITH THE ACT:

SECTION 1. BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That words and terms used in this Resolution (including the Recitals) that are defined in the Act shall have the meanings indicated in the Act unless the context clearly requires a contrary meaning.

SECTION 2. BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That acting pursuant to the Act, it is hereby found and determined as follows:

- (1) The County is a “public body” within the meaning of the Act.
- (2) The Applicant is a “facility applicant” and a “facility user” within the meaning of the Act.
- (3) The Project is a “facility” within the meaning of the Act.
- (4) The Letter of Intent is a “letter of intent” with the meaning of the Act.
- (5) The County Executive is the “Chief Executive Officer” within the meaning of the Act.
- (6) The issuance and sale of the Bonds by the County, pursuant to the Act, for the sole and exclusive purpose of financing and refinancing the costs (to the fullest extent permitted by the Act) of the acquisition and improvement of the Project will facilitate and expedite the acquisition and improvement of the Project.
- (7) The acquisition and improvement of the Project and the financing and refinancing thereof as provided in this Resolution will promote the declared legislative purposes of the Act by (1) relieving conditions of unemployment in the State of Maryland; (2) encouraging the increase of industry and commerce and a balanced economy in the State of Maryland; (3) assisting in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State of Maryland through, among other things, the development of ports, the control or abatement of environmental pollution, and the use and disposal of waste; (4) promoting economic development; (5) protecting natural resources and encourage resource recovery; and (6) promoting the health, welfare, and safety of the residents of the State of Maryland. Specifically, it is anticipated that the acquisition and improvement of the Project by the Applicant will (x) enhance the educational opportunities provided by the Applicant, (y) strengthen the ability of the Applicant as an educational institution to attract and educate students, and (z) improve the Applicant’s long term viability in the operation of its independent school.
- (8) The Act provides that the Bonds and the interest on the Bonds are limited obligations of the County. The Act further provides that, except for bond anticipation notes and notes in the nature of commercial paper, the principal of, premium, and interest on the Bonds are payable solely from: (i) money from the financing of the Project; or (ii) other

money made available to the County. The Act further provides that Bonds and the interest on them: (i) are not debts or charges against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation; and (ii) may not give rise to any pecuniary liability of the County.

(9) Neither the proceeds of the Bonds of any series nor the payments of the principal of and premium, if any, and interest on the Bonds of any series will be commingled with the County's funds or will be subject to the absolute control of the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the County to insure that the proceeds of the Bonds of any series are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized in this Resolution do not constitute any physical public betterment or improvement or the acquisition and improvement of property for public use or the purchase of equipment for public use. The Project does not constitute a capital project of the County within the meaning of any statutory or charter provision. The public purposes expressed in the Act are to be achieved by facilitating the acquisition and improvement of the Project.

SECTION 3. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That this Resolution, among other things, evidences the present intent of the County to issue, sell, and deliver the Bonds in accordance with the terms and provisions of this Resolution. Each of the County Executive and the County Administrative Officer is hereby authorized, empowered, and directed to accept the Letter of Intent on behalf of the County in order to further evidence the present intent of the County to issue and sell the Bonds in accordance with the terms and provisions of this Resolution.

SECTION 4. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County issue, sell, and deliver the Bonds as limited obligations of the County, at any time or from time to time and in one or

more series, in an aggregate principal amount not to exceed \$10,000,000 subject to the provisions of this Resolution.

The County will lend the proceeds of the Bonds of any series to the Applicant (the “Loan”) pursuant to the terms and provisions of a loan agreement (the “Financing Agreement”), to be used by the Applicant for the sole and exclusive purpose of financing and refinancing (1) the costs (to the fullest extent permitted by the Act) of the acquisition and improvement of the Project, and (2) the costs of issuance, capitalized interest and other costs related to the transaction and permitted by the Act.

The Financing Agreement entered into with respect to the Bonds of any series shall require that (1) the proceeds of the Bonds of such series be used solely to finance and refinance (a) the costs (to the fullest extent permitted by the Act) of the acquisition and improvement of the Project and (b) the cost of certain working capital needs of the Applicant, including reserves for interest and debt service and (c) the costs of issuing the Bonds, and (2) the Applicant make payments which will be sufficient to enable the County to pay the principal of and interest and premium, if any, on the Bonds of such series when and as the same become due and payable.

The Bonds and the interest on the Bonds are limited obligations of the County. Except for bond anticipation notes and notes in the nature of commercial paper, the principal of, premium, and interest on the Bonds are payable solely from: (i) money from the financing of the Project; or (ii) other money made available to the County. The Bonds and the interest on them: (i) are not debts or charges against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation; and (ii) may not give rise to any pecuniary liability of the County.

SECTION 5. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That, as permitted by the Act, the provisions set forth in this Resolution for the issuance and sale of the Bonds are intended and shall be deemed to include provisions for the issuance and sale of bond anticipation notes and/or refunding revenue bonds without the adoption of any further resolution or other action by the

legislative body of the County. Accordingly, the words “bonds” and “Bonds”, as used in this Resolution, shall include such bond anticipation notes and/or refunding revenue bonds, unless the context clearly requires a contrary meaning. At no time shall the aggregate principal amount of any bond anticipation notes or refunding revenue bonds exceed the amount set forth in Section 4 of this Resolution. It is intended that the aggregate principal amount of issued and outstanding bond anticipation notes, when added to the aggregate principal amount of issued and outstanding Bonds and refunding revenue bonds, shall not exceed the aggregate principal amount set forth in Section 4 of this Resolution at any time. For the purposes of applying the foregoing limitation in the event that any refunding bonds or bonds issued to repay bond anticipation notes are issued, the outstanding principal amount of any bonds or bond anticipation notes, respectively, provision for the payment of which has been made from the proceeds of such refunding bonds or such bonds, respectively, or from other sources, shall not be taken into account in determining the aggregate principal amount of bonds issued, sold and delivered pursuant to this Resolution.

SECTION 6. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County reserves the right, in its sole and absolute discretion, to take any actions deemed necessary by the County in order to insure that the County (a) complies with present federal and State laws and any pending or future federal or State legislation, whether proposed or enacted, which may affect or restrict the issuance of its bonds, and (b) issue its bonds within the limits imposed by such present laws or any such pending or future legislation or any future local laws, to finance those facilities which the County determines, in its sole and absolute discretion, will provide the greatest benefit to the residents of the County and the State.

In particular, the County reserves the right to choose to issue its bonds (within the meaning of the Act and any present or future State or local laws) for facilities other than the Project, and in such order of priority as it may determine in its sole and absolute discretion.

Pursuant to the provisions of this Section 6, the County reserves the right in its sole and absolute discretion, to, among other things, (1) never issue the Bonds, (2) issue only a

portion of the aggregate principal amount of the Bonds required by the Applicant, (3) restrict the use of the proceeds of the Bonds, (4) delay indefinitely the issuance of the Bonds, or (5) take any other actions deemed necessary by the County, in its sole discretion, in order to ensure that the County achieves the goals set forth in the Act and in this Resolution.

SECTION 7. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That, the Bonds may be issued at any time or from time to time and in one or more series, and each series of the Bonds shall be identified by the year of issue or by some other or additional appropriate designation; provided, however, that the Bonds shall be issued and delivered within one year of the date of enactment of this Resolution, unless the Bonds are issued within any time period specified in any time extension for the issuance of the Bonds provided pursuant to a resolution of the County Council supplemental to this Resolution.

SECTION 8. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the Bonds shall be executed in the name of the County and on its behalf by the County Executive or the County Administrative Officer, by his or her manual or facsimile signature, and by the Director of Budget and Finance by his or her manual signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Executive Secretary to the County Executive of Baltimore County or the County Administrative Officer, by his or her manual or facsimile signature. The County Executive, the County Administrative Officer, the Director of Budget and Finance, the Executive Secretary to the County Executive, and other officials of the County are hereby authorized and empowered to do all such acts and things and execute, acknowledge, seal and deliver such documents and certificates, including (without limitation) the Financing Agreement, as the County Executive or County Administrative Officer may determine to be necessary to carry out and comply with the provisions of this Resolution, subject to the limitations set forth in the Act and any limitations set forth in this Resolution. If any officer whose signature or countersignature

or a facsimile of whose signature or countersignature appears on the Bonds of any series or on any of the aforesaid documents ceases to be such officer before the delivery of the Bonds of such series or any of the other aforesaid documents, such signature or countersignature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

SECTION 9. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That, as permitted by the Act, the Bonds of any series shall be sold at private (negotiated) sale at par, or at such other price as the County Executive or the County Administrative Officer, with the consent of the Applicant, deems appropriate or may be sold at public (competitive bid) sale, at par or above or below par, in either or both of which events, the Bonds of such series shall be sold in such manner and upon such terms as the County Executive or the County Administrative Officer deems to be in the best interests of the County.

SECTION 10. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That prior to the issuance, sale and delivery of the Bonds of any series, the County Executive or the County Administrative Officer, by executive order or otherwise, may approve the issuance of the Bonds, and:

(1) shall prescribe the form, tenor, terms and conditions of and security for the Bonds of such series;

(2) shall prescribe the principal amount, rate or rates of interest, denomination or denominations, date, and maturity or maturities (within the limits prescribed by the Act and the Code);

(3) if necessary, may appoint a trustee, a bond registrar or a paying agent or agents for the Bonds of such series;

(4) shall approve the form and contents of, and execute and deliver (where applicable), the Financing Agreement, and such other documents, including (without limitation) trust agreements, assignments, mortgages, deeds of trust, and security instruments

to which the County is a party and which may be necessary to effectuate the issuance, sale and delivery of the Bonds of such series;

(5) may prepare and distribute, in conjunction with representatives of the Applicant and any prospective purchasers of or underwriters for the Bonds of any series, both a preliminary official statement and a final official statement, offering memorandum, private placement memorandum or other similar document in connection with the sale of the Bonds of any series, if determined to be necessary or desirable in connection with the sale of the Bonds of such series, provided, however, that any such preliminary official statement, offering memorandum, private placement memorandum or other similar document shall be clearly marked to indicate that it is subject to completion and amendment;

(6) may execute and deliver a contract or contracts for the purchase and sale of the Bonds of any series (or any portion thereof) in form and content satisfactory to the County Executive or the County Administrative Officer;

(7) shall determine the time of execution, issuance, sale and delivery of the Bonds of such series and prescribe any and all other details of the Bonds of such series;

(8) shall determine the method, and approve the terms, of the sale of the Bonds of such series, as provided in Section 9 of this Resolution;

(9) shall provide for the direct payment by the Applicant of all costs, fees and expenses incurred by or on behalf of the County in connection with the issuance, sale and delivery of the Bonds of such series, including (without limitation) costs of printing (if any) and issuing the Bonds of such series, legal expenses (including the fees of bond counsel and issuer's counsel) and compensation to any person (other than full-time employees of the County performing services by or on behalf of the County) in connection with the issuance of the Bonds;

(10) may provide for the issuance and sale (subject to the passage at the time of any appropriate resolution authorizing the same) of one or more series of additional bonds and one or more series of refunding bonds;

(11) may provide for the funding of reserves for the Bonds of such series and for the payment of interest on the Bonds of such series;

(12) may, if requested to do so by the Applicant, subject to the advice of bond counsel, designate, or join with the Applicant in the designation of, the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended; and

(13) may specify, prescribe, determine, provide for or approve such other matters, details, forms documents or procedures and do any and all things necessary, proper or expedient in connection with the authorization, security, issuance, sale, delivery or payment of or for the Bonds of such series and in order to accomplish the legislative policy of the Act and the public purposes of this Resolution, subject to the limitations set forth in the Act and any limitations prescribed by this Resolution.

SECTION 11. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That before or after the issuance, sale and delivery of the Bonds of any series, regardless of the date on which such Bonds are issued, the County Executive or the County Administrative Officer is hereby authorized and empowered, by executive order or otherwise, to supplement the executive order provided for by Section 10 of this Resolution and thereby approve on behalf of the County any amendments or supplements to or substitutes for the forms and provisions of the Bonds, the Financing Agreement, any trust agreement or similar agreement and all other documents executed and delivered on behalf of the County in connection with the issuance, sale and delivery of the Bonds pursuant to the provisions of such documents, provided that (1) each such supplemental executive order or orders and each amendment, supplement or substitute to such document shall be in accordance with the provisions of the Act, this Resolution, and the documents executed and delivered in connection with the Bonds and then in effect and (2) all of the foregoing shall be subject to any approval by the County Council as may be required pursuant to federal tax law.

SECTION 12. AND BE IF FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That, except as provided in this Section, the provisions of this Resolution are severable, and if any provision, sentence, clause, section or

part hereof is held to be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability, shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Resolution or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Resolution would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Resolution or any part hereof are inapplicable had been specifically exempted here from, except that neither the Bonds of any series nor the interest thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provisions or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of the County.

SECTION 13. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County hereby approves Timothy E. Dixon, Esquire and The Law Office of Timothy E. Dixon, PA as Bond Counsel and McGuireWoods LLP as issuer's counsel in connection with the issuance and sale of the Bonds and the other transactions contemplated by the Resolution.

SECTION 14. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, Than this Resolution shall take effect on the date of its adoption by the County Council and approval by the County Executive.