

Capital Debt Affordability Committee

**Treasurer Nancy K. Kopp, Chair
Treasury Building Assembly Room
80 Calvert St.
Annapolis, MD**

Agenda

November 15, 2013

10:00 AM

Treasurer's Opening Comments

Discuss Preliminary Guidance on the Purple Line Light Rail Transit Project, Public-Private Partnership

Amber Teitt, Director of Debt Management, State Treasurer's Office

Open Meetings Training



CAPITAL DEBT AFFORDABILITY COMMITTEE
Nancy K. Kopp, Chair

November 15, 2013

The Honorable James T. Smith, Jr.
Secretary
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

Dear Secretary Smith:

In your letter dated September 6, 2013, you requested preliminary guidance from the Capital Debt Affordability Committee (CDAC) regarding the anticipated availability payment financing structure proposed for the Purple Line Light Rail Transit project that has been designated as a public-private partnership (P3). More specifically, you requested that CDAC provide preliminary guidance on parameters for structuring the availability payments to avoid classification as tax-supported debt that would impact the State's debt affordability analysis.

Section 8-104 of the State Finance and Procurement (SF&P) Article defines tax-supported debt as "State debt...and debt of the Department of Transportation, the Maryland Stadium Authority, and other units of State government which, in the opinion of the Committee, are supported directly or indirectly by State tax revenues." In past determinations on questions of whether specific projects might result in tax-supported debt, the CDAC has relied upon a review of financial documents and, when necessary, sought guidance from additional sources, including: (1) the Comptroller's Office, advised by the State's independent auditor, regarding whether an agreement was considered debt from an accounting perspective; and (2) the Office of the Attorney General regarding applicable legal precedent in relation to the direct or indirect use of State tax revenues. In addition, SF&P §8-112 also directs the CDAC, in making its annual estimate of the total amount of new State debt that prudently may be authorized for the next fiscal year, to consider "the criteria that recognized bond rating agencies use to judge the quality of issues of State bonds."

MDOT staff made a presentation to the CDAC at its September 12, 2013 meeting on the preliminary concept for the Purple Line P3 financial structure. Based upon that information, MDOT believes: (i) there is a strong rationale to not include the Purple Line availability payments in the State's tax-supported debt calculation; and (ii) obtaining preliminary guidance from the CDAC is critical to initiate a competitive P3 solicitation for the Purple Line.

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As the proposed Purple Line P3 is the first project to fall under the framework established by Chapter 5 of the 2013 Laws of Maryland, the CDAC has sought guidance on the treatment and classification of P3 projects from the Comptroller's Office, the Office of the Attorney General, the State's independent auditor and rating agencies.

CDAC cannot reach a conclusion on whether an availability payment structure used to finance the Purple Line P3 is tax-supported debt, based on a **preliminary** financial concept rather than final financial documents. Only at the point in time that an agreement and the underlying financial structure are finalized will the CDAC be able to make a determination on whether the anticipated availability payment structure used to finance the Purple Line P3 is tax-supported debt. In order to accommodate your request for guidance, the CDAC offers the following **preliminary** guidance regarding the elements of a financial structure that would exhibit characteristics of non-tax-supported debt:

- All project-related debt will be held directly by the private concessionaire;
- Project-related debt will have no recourse to the State, nor will any State assets be pledged as items of security for such debt;
- The documentation establishing the "availability payment" concept should clearly distinguish between project operating costs and project capital costs and should include sufficient detail to factually support the distinction from both an accounting and a legal perspective. Please note that independent third party advice may be required;
- At no time may the operating portion of availability payments be classified as debt in the State's financial statements;
- Any portion of the availability payments deemed to be an operating payment will be paid by an annual operating appropriation from the Transportation Trust Fund;
- The capital portion of the availability payments will be subject to legislative review and approval through the annual legislative cap placed on MDOT's non-traditional debt;
- Any portion of the availability payment deemed to be a capital payment may only be paid, subject to annual appropriation, from non-tax revenue sources within the Transportation Trust Fund. Documentation of the use of non-tax revenues is essential, demonstrated through the use of a trustee to collect and hold identified non-tax revenues and to make appropriate payments;
- MDOT/MTA will submit an annual report to the CDAC containing: (i) a description of the financing structure, including any modifications to payments and/or changes to structure; (ii) a description of how the project is reflected in financial statements,

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including a statement as to any change in accounting practices or definitions; (iii) evidence that the capital portion of availability payments paid to date were paid with non-tax revenues; and (iv) an on-going covenant and agreement that all future capital portions of availability payments will be made strictly from non-tax revenues; and

- At critical project milestones, MDOT will provide updates on the project's financial structure and any other items relevant to CDAC consideration. Updates will include access to pertinent documents and highlights on relevant items. Detailed briefings will be provided upon request.
- MDOT will provide to the CDAC detail, when available, regarding the source of any local contribution and its intended use.

The intent of this letter is not to provide a project checklist but rather is to provide preliminary guidance on characteristics of an availability payment financing structure that would exhibit characteristics of non-tax-supported debt. The CDAC cannot come to a conclusion on whether the financing structure of the Purple Line P3 is considered tax-supported debt until such time that a fact specific review of the contractual and financial obligations of MDOT, including the nature of any contributions from local governments or any other sources, in relation to this project may be completed by all relevant parties.

Although the State may conclude that the financing structure is not State tax-supported debt, the rating agencies conduct independent analyses of debt liabilities and may arrive at a different conclusion based on their interpretations of the State's obligations. In light of the Committee's charge in relation to the rating agencies, the Treasurer will consider any rating agency analyses in conducting an analysis of a proposed transaction pursuant to SF&P §10A-203, as will CDAC in conducting its annual review in accordance with SF&P §8-112 and §10A-104.

Sincerely,



Nancy K. Kopp

State Treasurer

Chair of the Capital Debt Affordability Committee

cc: The Honorable Peter Franchot, State Comptroller
The Honorable T. Eloise Foster, Secy. Dept. of Budget and Management
Mr. Paul B. Meritt
The Honorable James E. DeGrange, Sr.
The Honorable Adrienne A. Jones