

DOUGLAS R. GANSLER
ATTORNEY GENERAL

KATHLEEN WINTREBE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 22, 2008

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

Re: House Bill 1337

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 1337, "Maryland Clean Energy Center." While we approve the bill for your signature, we write to note several provisions that should be clarified or corrected in future legislation.

HB 1337 creates a new Subtitle 8 under Title 10 of the Economic Development Article (EC) to establish the Maryland Clean Energy Center (Center) as a body politic and corporate and as an instrumentality of the State. Its purpose is to promote and assist in the development of the clean energy industry in Maryland, to promote the deployment of clean energy technology in the State, and to collect, analyze, and disseminate industry data. The bill also establishes the Maryland Clean Energy Technology Incubator Program to promote entrepreneurship and the creation of jobs in the clean energy technology industry. In addition to other powers, the Center is granted the authority to borrow money and issue bonds to finance any part of the cost of a project or for any corporate purpose of the Center. The bill also contains provisions relating to the Center's finances and the handling of its money and securities.

As described above, however, there are several technical problems with HB 1337:

- EC § 10-817(b) [page 14 of the bill] requires the Center to deposit its money into a State or national bank or federally insured savings and loan association that has a total paid-in capital of at least \$1,000,000. This amount appears to be inadequate and paid-in-capital alone is not considered to be a good indicator of solvency. By contrast, for example, the State Treasurer requires banks which hold State monies to have a minimum rating of "B" by LACE Financial Corporation or equivalent from a comparable rating agency.

- There is no requirement that the Center's funds on deposit with a bank or savings and loan be collateralized, which is a standard requirement for all State agencies, instrumentalities, and political subdivisions. See State Finance and Procurement Article, § 6-209 and Art. 95, § 22.
- EC § 10-840(b)(1) [page 22 of the bill] refers to the Center's bonds as a "general obligation" of the Center. The term "general obligation" is a term of art typically associated with taxing power, which the Center does not have. A more appropriate term would be "special obligation."
- EC § 10-840(c)(2)(vi) [page 23 of the bill] and § 10-850(a) [page 31 of the bill] refer to coupon bonds. The Federal Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) [Public Law No. 97-248] required all new bond issues to be in registered form and effectively eliminated the use of coupon or bearer bonds. The references in HB 1337 to coupon bonds should be clarified to conform to federal law.
- EC § 10-840(h)(2)(x) and § 10-841(c)(1)(i) [both on page 25 of the bill] refer to mortgaging of a project or site. Generally a pledge or mortgage of existing State property creates or constitutes State debt. *Lacher v. Board*, 243 Md. 500 (1966); *Baltimore v. Gill*, 31 Md. 375 (1869). As the Center is a body politic and instrumentality of the State, these provisions may inadvertently impact the State's debt capacity should the Center mortgage existing State properties or facilities that it acquires. These provisions should be clarified to apply only to new projects or sites that have not been in State ownership.
- EC § 10-843(b)(1) [page 27 of the bill] provides that each bond "shall state on its face that the State and its political subdivisions are not obliged to pay the bond or the interest on the bond *except from revenues of the project or the portion of the project for which the bond is issued.*" (emphasis added). Because under the fiscal structure of the Center, the State and its political subdivisions would never pay the bond or interest on the bond, this provision should end before the italicized clause to avoid any ambiguity.

The Honorable Martin J. O'Malley
April 22, 2008
Page 3

We recommend the above technical problems be reviewed for clarification in future legislation. The above issues notwithstanding, we approve HB 1337 for your signature.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/BK/lck

cc: The Honorable Dana Stein
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro