

INTRODUCED _____
PUBLIC HEARING _____
COUNCIL ACTION _____
EXECUTIVE ACTION _____
EFFECTIVE DATE _____

County Council of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 4

Bill No. 12 - 2011

Introduced by: The Chairperson at the request of the County Executive

AN ORDINANCE providing for the issuance at any one time and from time to time of general obligation bond anticipation notes in anticipation of the issuance of the County's general obligation bonds in an aggregate principal amount outstanding at any one time not to exceed the aggregate principal amount of general obligation bonds authorized to be issued by Howard County, Maryland at the time such notes are issued; providing that such bond anticipation notes shall be sold at private (negotiated) or at public sale for a price at, above or below, the par value thereof, as may be determined by the County Executive; providing that such bond anticipation notes may be issued as variable rate demand obligations, notes in the nature of commercial paper or other similar obligations and authorizing the County Executive to determine various matters and to take various other actions in connection therewith; providing that such bond anticipation notes not paid with bond proceeds may be paid with proceeds of bond anticipation notes authorized by this Ordinance; covenanting to pay the principal of and interest on any such bond anticipation notes with the proceeds of the bonds in anticipation of the sale of which such notes are issued; covenanting to issue the bonds in anticipation of which any such bond anticipation notes are issued as soon as the reason for deferring the issuance thereof no longer exists; providing for the levy and collection of all taxes, charges and assessments necessary for the payment when due of the principal of and interest on all notes issued pursuant to this Ordinance not paid with proceeds of bonds or notes issued under this Ordinance; providing for disbursement of the proceeds of the Notes; delegating authority to the County Executive the power to enter into all agreements which may be necessary or desirable to secure and market the notes authorized pursuant to this Ordinance; generally providing for the issuance, sale and delivery of bond anticipation notes and determining various matters in connection therewith.

Introduced and read first time _____, 2011. Ordered posted and hearing scheduled.

By order _____
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2011.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2011 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this __day of _____, 2011 at ___ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved by the County Executive _____, 2011.

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Recitals**

2 Howard County, Maryland (the "County") is authorized (a) to borrow on its full faith and
3 credit and issue and sell its consolidated public improvement bonds therefor, at one time and
4 from time to time, for the capital projects in the amounts set forth in certain bond enabling laws
5 of the County (the "Bond Enabling Laws"), and (b) has enacted an ordinance, Council Bill No.
6 34-2006, enacted and effective on June 7, 2006, as amended and supplemented (the "Bond
7 Ordinance"), in accordance with Article VI of the Charter of Howard County providing for the
8 issuance and sale of such bonds in one or more series. The Bond Ordinance provides that it shall
9 be modified by a supplemental ordinance prior to the issuance of each series of such bonds in
10 order to provide for, specify and determine various matters in connection therewith.

11 The Bond Enabling Laws, Section 2C of Article 31 of the Annotated Code of Maryland,
12 as amended, and the Bond Ordinance provide that the issues of bonds so authorized, or portions
13 thereof, may be consolidated with one another, and the County Council has determined that it is
14 in the best interest of the County to consolidate portions of the issues of bonds authorized by the
15 Bond Enabling Laws as one or more series of its Consolidated Public Improvement Bonds and
16 Metropolitan District Bonds (collectively, the "Bonds").

17 The Bond Enabling Laws and Section 12 of Article 31 of the Annotated Code of
18 Maryland, as amended (the "Bond Anticipation Note Act"), authorize the County to issue and
19 sell its bond anticipation notes in an aggregate principal amount not greater than the authorized
20 amount of the Bonds, the principal of and interest on such notes to be made payable out of the
21 first proceeds of sale of the Bonds, or from the tax or other revenues which the County shall have
22 previously determined to apply to the payment of the Bonds and the interest thereon. The Bond
23 Anticipation Note Act further provides that (a) such bond anticipation notes may be sold by

1 private negotiated sale by the County to a prospective purchaser or purchasers, if deemed by the
2 County to be in the best interest of the County, (b) such bond anticipation notes may be issued in
3 the nature of commercial paper, (c) such bond anticipation notes may, in the discretion of the
4 County, be secured by a letter of credit, line of credit or other credit arrangement from or with a
5 bank or other lending institution, (d) any such letter of credit, line of credit or other credit
6 arrangement may be made payable out of the first proceeds of sale of the Bonds or from the tax
7 or other revenues which the County shall have previously determined to apply to the payment of
8 the Bonds and the interest thereon, and (e) proceeds of the sale of bond anticipation notes shall
9 be expended only for the public purposes for which the Bonds are authorized, expenses of
10 issuance of the bond anticipation notes and up to 12 months' interest on the bond anticipation
11 notes.

12 The County has determined to authorize the issuance of its bond anticipation notes
13 (collectively, the “Notes” and individually, a “Note”) at any one time and from time to time, as
14 determined by the County Executive of the County (the “County Executive”) pursuant to an
15 executive order, in a maximum aggregate principal amount at any one time outstanding equal to
16 the aggregate principal amount of Bonds authorized to be issued on the date such Notes are
17 issued in anticipation of the issuance of Bonds.

18 **Now, therefore:**

19 **Section 1. Be it enacted by the County Council of Howard County, Maryland,** That
20 all terms used herein with an initial capital letter shall have the meanings given such terms in the
21 recitals to this Ordinance, unless the context clearly indicates a contrary meaning.

1 **Section 2. Be it further enacted by the County Council of Howard County,**
2 **Maryland,** That, pursuant to and in accordance with the Bond Enabling Laws and the Bond
3 Anticipation Note Act, the County hereby finds and determines as follows:

4 (a) Due to current bond and money market conditions, the issuance of long-term
5 bonds in advance of the time that all of the proceeds thereof will be needed will cause the County
6 financial loss on the investment of those proceeds.

7 (b) The County has been advised by its financial advisor that the private,
8 negotiated sale of bond anticipation notes, including (without limitation) notes in the nature of
9 commercial paper is the most efficient means of marketing such obligations in existing markets,
10 will result in minimal administrative burdens upon the County, will be in the best interests of the
11 County and will probably result in the lowest cost to the County.

12 (c) The Notes (hereinafter defined) are to be issued in anticipation of the issuance of the
13 Bonds pursuant to the Bond Enabling Laws and the Bond Ordinance, and it is the intention of the
14 County to pay the principal of the Notes outstanding from time to time at maturity until such
15 Bonds are issued.

16 (d) There is a large market for obligations bearing interest at short-term rates, such as
17 variable rate demand obligations, commercial paper and other short-term municipal obligations
18 having varying maturities and mandatory and optional redemption, tender or purchase provisions
19 and bearing interest at variable rates based on current market conditions, which may be
20 established by a dealer or remarketing or similar agent or other process.

21 (e) The ratings assigned to such obligations and the market for them may be
22 enhanced if there is a supporting credit or liquidity arrangement, such as a letter of credit, line of
23 credit, note purchase agreement or revolving loan agreement (a “Liquidity Facility”), pursuant to

1 which an alternate source of borrowing will be available during any period in which obligations
2 cannot be marketed or remarketed, as the case may be.

3 (f) The probable average useful life of the Projects expected to be financed with the
4 proceeds of the Notes is more than 30 years, and all of the Bonds and all of the Notes will be
5 payable within such period.

6 (g) The aggregate principal amount of the Notes is and shall be within the legal
7 limitation on the indebtedness of the County as set forth in Article VI of the Charter of the
8 County.

9 **Section 3. Be it further enacted by the County Council of Howard County,**
10 **Maryland,** That, pursuant to the Bond Enabling Laws and the Bond Anticipation Note Act, the
11 County is hereby authorized to borrow money and incur indebtedness to pay all or a portion of
12 the costs of the capital projects of the County as authorized pursuant to the Bond Enabling Laws
13 and the Bond Ordinance by issuing and selling, upon its full faith and credit, its bond anticipation
14 notes in an aggregate principal amount outstanding at any one time of not exceeding the
15 aggregate principal amount of Bonds authorized to be outstanding on the date of issuance
16 thereof. Without limiting the generality of the foregoing, the Notes may be issued as notes in the
17 nature of commercial paper. On the maturity date of each Note one or more additional Notes in
18 aggregate principal amount equal to the principal amount of the maturing Note shall be issued,
19 unless the County has theretofore determined to repay all or some portion of such Notes from
20 proceeds of the Bonds then held by or for the account of the County or from other funds then
21 held by or on behalf of the County. Notes may also be issued hereunder to repay Advances
22 (hereinafter defined) under a Liquidity Facility; provided that in no event shall the aggregate
23 principal amount of the outstanding Notes, together with the aggregate principal amount of any

1 Advances not so repaid, on any date exceed the aggregate principal amount of Bonds authorized
2 to be issued on such date.

3 **Section 4. Be it further enacted by the County Council of Howard County,**
4 **Maryland,** That Notes issued from time to time may be sold at private (negotiated) sale or
5 public sale through the solicitation of competitive bids at a price at, above or below, the par
6 value thereof, as may be determined by the County Executive. Without limiting the generality of
7 the foregoing, Notes may be sold to one or more financial institutions or to purchasers obtained
8 by a dealer, remarketing agent or other agent (each, a "Dealer"), pursuant to the terms and
9 conditions set forth in an agreement between the County and the Dealer, in substantially the form
10 as approved by the County Executive pursuant to an executive order (each, a "Dealer
11 Agreement"). The Notes may be sold a public sale as determined by the County Executive. The
12 County Executive is hereby authorized to appoint a Dealer for the Notes pursuant to an executive
13 order, subject to the provisions of this Ordinance. The sale of such Notes shall be for a price at,
14 above, or below the par value thereof as determined by the County Executive.

15 Any such sale of Notes hereunder by private negotiation is hereby determined to be for
16 the County's best interest. Notes issued under this Ordinance are hereby specifically exempted
17 from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland, as
18 amended.

19 **Section 5. Be it further enacted by the County Council of Howard County,**
20 **Maryland,** The County Executive is hereby authorized to appoint one or more fiscal agents
21 providing for the issuance of Notes, their authentication, registration or payment or other similar
22 services (each, an "Issuing and Paying Agent") for the Notes by executive order, subject to the
23 further provisions of this Ordinance. The County and the Issuing and Paying Agent shall enter

1 into and deliver an agreement in substantially the form approved by the County Executive (each,
2 an "Issuing and Paying Agency Agreement").

3 **Section 6. Be it further enacted by the County Council of Howard County,**
4 **Maryland,** That, in order to enhance the marketability of the Notes by providing an immediate
5 source of funding if the Notes or Bonds cannot be issued upon the maturity date of any Notes,
6 the County is hereby authorized to enter into or obtain one or more Liquidity Facilities with or
7 from a financial institution (each, a "Liquidity Provider"), pursuant to which the Liquidity
8 Provider will agree to make advances (each, an "Advance") to or for the account of the County
9 in an aggregate amount outstanding at any time up to the aggregate principal amount of Notes
10 authorized by this Ordinance at such time, in accordance with the terms and conditions set forth
11 in the Liquidity Facility. The County may execute and deliver to any Liquidity Provider a
12 promissory note (each, a "Promissory Note") in a maximum principal amount of equal to the
13 amount available to be advanced under such Liquidity Facility, as determined by the County
14 Executive pursuant to an executive order, in order to evidence the County's payment obligations
15 to the Liquidity Provider under the Liquidity Facility.

16 For the purposes of this Ordinance, the "principal amount" of any Promissory Note as of
17 any date shall mean the aggregate principal amount of all Advances under the Liquidity Facility
18 that is evidenced by any such Promissory Note that have not been repaid. Accordingly, it is
19 contemplated by this Ordinance that the aggregate face amount of Notes and Advances that may
20 be outstanding from time to time hereunder may exceed the aggregate principal amount of Notes
21 authorized to be outstanding hereunder at any one time.

22 **Section 7. Be it further enacted by the County Council of Howard County,**
23 **Maryland,** That the County Executive and the Director of Finance are each hereby authorized to

1 execute and deliver, on behalf of the County, any Dealer Agreement, Issuing and Paying Agency
2 Agreement, Liquidity Facility and Promissory Note in accordance with the provisions of this
3 Ordinance, any disclosure document for Notes, and such other documents, instruments and
4 certificates as shall be deemed necessary or appropriate by the County Executive or the Director
5 of Finance in connection with the issuance, sale and delivery of the Notes.

6 The County Executive is authorized to determine, by executive order, all matters that the
7 County Executive deems appropriate to effect the authorization, sale, security, delivery, and
8 payment of or for the Notes, subject to the provisions of this Ordinance.

9 **Section 8. Be it further enacted by the County Council of Howard County,**
10 **Maryland,** That payment of the proceeds of the initial sale or sales of the Notes (but not the
11 proceeds of any Notes issued to pay the maturing principal amount of any Notes or to repay any
12 Advances) shall be made to the Director of Finance and shall be set apart by her in a separate
13 account or accounts and shall be applied (a) to pay all costs, fees and expenses incurred in
14 connection with the issuance and sale of the Notes to the extent such fees, costs and expenses are
15 not paid from other sources, (b) to pay up to 12 months' interest on the Notes, and (c) to defray
16 all or a portion of the costs of any capital projects of the County authorized pursuant to any Bond
17 Enabling Law enacted from time to time (the "Projects").

18 **Section 9. Be it further enacted by the County Council of Howard County,**
19 **Maryland,** That the County hereby covenants that (a) it will pay the principal of and interest on
20 the Notes and the principal and interest due under each Liquidity Facility, and Promissory Note,
21 to the extent not otherwise paid, from the proceeds of the Bonds, and (b) it will issue the Bonds
22 when, and as soon as, the reason for deferring their issuance no longer exists. Notwithstanding
23 the foregoing, the County expressly reserves the right to issue other bonds or notes prior to or

1 simultaneously with the issuance of any or all of the Bonds, and to use the proceeds of such other
2 bonds or notes to defray costs of capital projects of the County not included in the definition of
3 "Projects" herein or costs of the Projects other than those costs which have been or are to be paid
4 with the proceeds of the Notes.

5 **Section 10. Be it further enacted by the County Council of Howard County,**
6 **Maryland,** That in the event that the County is unable to issue Notes or Bonds in sufficient time
7 to provide for the payment of the principal of and interest on any Notes and amounts due under
8 any Liquidity Facility when due (whether at maturity or otherwise), the County shall levy ad
9 valorem taxes on real and tangible personal property and intangible property subject to taxation
10 by the County without limitation of rate or amount and, in addition, upon such other intangible
11 property as may be subject to taxation by the County within limitations prescribed by law, in an
12 amount sufficient, together with funds available from other sources, to make such payments.
13 The principal of and premium, if any, and interest on the Notes, any Promissory Notes and
14 Advances under any Liquidity Facilities are general obligations of the County and the full faith
15 and credit and the unlimited taxing power of the County are hereby irrevocably pledged to their
16 payment when due (whether at maturity or otherwise). The County hereby covenants and agrees
17 with the Holders, from time to time, of the Notes and with any Liquidity Provider to levy and
18 cause to be collected the taxes hereinabove described and to take any further action that may be
19 appropriate from time to time during the period that any such principal, premium and interest
20 remains outstanding and unpaid to provide the funds necessary to make such payments.

21 **Section 11. Be it further enacted by the County Council of Howard County,**
22 **Maryland,** That the Notes shall be executed, issued, authenticated and delivered, and shall be
23 subject to exchange, transfer and redemption, upon and subject to the covenants, conditions and

1 provisions, as determined by the County Executive in an executive order. The execution and
2 delivery of Notes as herein provided shall be conclusive evidence of the approval of the terms of
3 the Notes and the form of such Notes on behalf of the County.

4 **Section 12. Be it further enacted by the County Council of Howard County,**
5 **Maryland,** (a) The County covenants that it will not make any use of the proceeds of any of the
6 Notes or any moneys, securities or other obligations on deposit to the credit of the County or
7 which otherwise may be deemed to be proceeds of any of the Notes pursuant to the Internal
8 Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder (collectively,
9 the "Code"), which would cause any of the Notes to be "arbitrage bonds" or "private activity
10 bonds" within the meaning of the Code.

11 (b) The County further covenants that it will comply with those provisions of the Code
12 which are applicable to the Notes on the date of issuance of the Notes and which may
13 subsequently lawfully be made applicable to the Notes. To the extent that provisions of the Code
14 apply to only a portion of the Notes, proceeds of the Notes or other moneys, securities or other
15 obligations deemed to be proceeds, it is intended that the covenants of the County contained in
16 this Section 12 be construed so as to require the County to comply with the provisions of the
17 Code only to the extent of such applicability.

18 (c) The County further covenants that it will not (i) take any action, (ii) fail to take any
19 action, or (iii) make any use of the proceeds of any of the Notes which would cause the interest
20 on any of the Notes to be or become includible in the gross income of the holders thereof for
21 purposes of federal income taxation.

22 **Section 13. Be it further enacted by the County Council of Howard County,**
23 **Maryland,** That this Ordinance shall take effect on the date of its enactment.