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LOCAL GOVERNMENT LAW BULLETIN No. 2009-02

New Mandate Requires Local Debt Policies by September 1, 2009

With the economy garnering so much attention this spring, the State of Maryland is signaling its intention to more closely oversee local government finances. Chapter 693, Acts of 2009 was signed into law by Governor O'Malley on May 11, 2009, requiring all local governments to adopt a "local debt policy" and file it with the State Treasurer.

Since 1995, local governments have been required to adopt and file with the State Treasurer a local investment policy. Under the new law, counties and municipalities now are required to adopt and file with the State Treasurer a local debt policy. The enacted legislation (House Bill 811) requires that each local governing body adopt by resolution, motion, or ordinance a debt policy that meets the needs of the local government and that is consistent with Articles 23A, 24, and 31 of the Maryland Annotated Code, the provisions of the Maryland Constitution, and local law. Beyond these mere references to State and local law, no statutory or regulatory guidelines are provided as to the content or format of a local debt policy. Thus, local governments have been granted flexibility to tailor their policies according to the size and complexity of their organization.

In addition to the development of a debt policy, the legislation mandates other activities. For example, the financial report that is required to be filed annually with the State now must list all categories of indebtedness, such as variable interest rate debt instruments, interest rate exchange agreements, futures, options and other derivatives. As in the past, the financial report is to be submitted to the Department of Legislative Services; but now it must also be filed with the State Treasurer. Furthermore, the legislation requires reporting a local government's debt portfolio and/or its investment portfolio to the State Treasurer when requested and in whatever format and timeframe requested by the State Treasurer.

The new law's effective date is October 1, 2009; however, there is an oddity worth noting in the legislation: the requirement that all local debt policies be adopted by September 1, 2009 (a month before the effective date) and sent "promptly" to the State Treasurer. It is reasonable to expect that a local government would be compliant if its adopted debt policy is received by the State Treasurer "promptly" after October 1.

If you have questions whatsoever about the legislation or would like assistance in drafting a debt policy to comply with the new mandate, please refer to your routine contact in our Local Government Practice Group or Victor K. Tervalo, Esquire, at 410-659-4984 or vtervala@fblaw.com.

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