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May 18, 2010

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

RE: Senate Bill 141

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 141, the "Budget Reconciliation and Financing Act of 2010." Senate Bill 141 ("BRFA") is an omnibus bill that executes a variety of actions generally related to the State budget and the financing of State and local government. These actions primarily take the form of transfers of special fund balances to the general fund, adjustments to mandated spending, and use of other funds to cover general fund costs. We write to discuss the interaction between the BRFA and two other bills and an interpretive issue.

House Bill 1117

SB 141 and Chapter 377 of the Acts of 2010 (HB 1117) make identical changes to EN § 4-411(f) and (g). There are no conflicts between the bills.

House Bill 1389

~~House Bill 1389 requires the application of the \$7.50 District Court surcharge, currently applied to a traffic case in which points are assessed as a result of conviction, to all other traffic cases, except as otherwise specified. The bill also amends the distribution of the surcharge revenue under § 7-301(f) of the Courts and Judicial Proceedings Article, which currently provides:~~

- (2) Subject to paragraph (3) of this subsection, the surcharges collected under this subsection shall be credited as follows:

- (i) 50% to the Volunteer Company Assistance Fund to be used in accordance with the provisions of Title 8, Subtitle 2 of the Public Safety Article; and
 - (ii) 50% to the State Helicopter Replacement Fund to be used in accordance with the provisions of § 2-801 of the Public Safety Article.
- (3) After \$20,000,000 is credited to the Volunteer Company Assistance Fund in accordance with paragraph (2) of this subsection, 100% of the surcharges collected under this subsection shall be credited to the State Police Helicopter Replacement Fund to be used in accordance with the provisions of § 2-801 of the Public Safety Article.

HB 1389, if signed, will become effective October 1, 2010, and repeals the current distribution set out above and provides:

- (3) THE COMPTROLLER ANNUALLY SHALL CREDIT THE SURCHARGES COLLECTED UNDER THIS SUBSECTION TO:
- (I) THE VOLUNTEER COMPANY ASSISTANCE FUND TO BE USED IN ACCORDANCE WITH THE PROVISIONS OF TITLE 8, SUBTITLE 2 OF THE PUBLIC SAFETY ARTICLE; AND
 - (II) THE GENERAL FUND AFTER \$20,000,000 IS CREDITED TO THE VOLUNTEER COMPANY ASSISTANCE FUND IN ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH.

The BRFA also amends subsection (f) to provide a different distribution, but only for FY 2010. It is our view that if you choose to sign both bills, they may be harmonized and both may be given effect. Under the BRFA, at the end of FY 2010 (June 30, 2010), the distribution should revert to the distribution required under current law. That distribution should continue for three months, and then beginning October 1, 2010, HB 1389 will take effect and the distribution required under that bill should be followed.

Section 46

Section 46 creates a Public Employees' and Retirees' Benefit Sustainability Commission ("Commission"), with members appointed by the Governor, Senate President, and Speaker of the House. The Department of Legislative Services ("DLS") is designated to provide staff for the Commission. At the request of the Commission, the Department of

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Budget and Management (“DBM”) and the State Retirement Agency (“SRA”) are required to provide information necessary to assist in the work of the Commission. Further, the bill provides that “[t]he costs of the Commission relating to the evaluation of pensions shall be paid by the [SRA].” §46(f)(1). That subsection also provides that the Commission’s costs “relating to the Retiree Health Benefits evaluation shall be paid by [DBM].” §46(f)(2). However, the funding provisions of §46(f) must be considered as expressions of intent only as the General Assembly may not mandate expenditures in Fiscal Year 2011 because legislatively created funding mandates must not only be in effect during the fiscal year covered by the Budget, but must also be enacted before July 1 of the previous fiscal year. Maryland Constitution, Article III, § 52 (11) and (12); 65 *Opinions of the Attorney General* 108, 110 (1980).¹

Further, to avoid any risk to the State Retirement and Pension Systems’ status as “qualified trusts” under the Internal Revenue Code, this language should be interpreted to allow the Board of Trustees and SRA, as fiduciaries of the retirement systems, to exercise discretion and control over the expenditure of Trust funds in a manner consistent with their responsibilities under Division II of the State Personnel and Pensions Article and the Internal Revenue Code. Thus, we recommend that DLS and the SRA come to an agreement on how the desired funding may be accomplished without creating risk to the tax status of the pension plans.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/BAK/kk

cc: The Honorable John P. McDonough
Joseph Bryce
Karl Aro

¹ The bill contains other provisions that appear to mandate appropriations in Fiscal Year 2011. *See, e.g.*, page 16, lines 7-10, amending Economic Development Article, §4-801(g); page 34, lines 14-24, amending Health-General Article, §13-116(a)(1); page 50, lines 9-14, amending Tax-General Article, § 2-202. Further, § 6 (page 51, lines 5-9) appears to stipulate \$200 million “for use in funding the Maryland Medicaid Program for Fiscal Year 2011.” Thus, these provisions should also be interpreted as nonbinding expression of intent and not funding mandates.