

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
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

May 3, 2010

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

RE: Senate Bill 413

Dear Governor O'Malley:

We have reviewed Senate Bill 413, "Property Tax Credit – Replacement Home Purchased After Acquisition of Dwelling for Public Use." While we approve the bill for your signature, we write to discuss the constitutional issue raised by the bill's repeal of the five-year limit of this property tax credit.

Senate Bill 413 amends Tax-Property Article ("TP"), § 9-246, which was enacted in 2007 as identical cross filed bills, Senate Bill 486 and House Bill 755 (Chapters 558 and 559, Laws of Maryland (2007)). Section 9-246 authorizes the Mayor and City Council of Baltimore City or the governing body of a county or municipal corporation to create, by law, a tax credit against county or municipal property taxes for property purchased as the replacement principal residence of a homeowner after his prior residence is acquired by a government entity for public use. The calculation of this credit for the replacement residence is based on what the homestead property tax credit would have been on the acquired residence in the tax year after the acquisition. Therefore, the credit has no relationship to the value of the current home and represents a different percentage of that property's market value in every situation. This credit is currently limited by TP § 9-246 to a five-year term over which it is phased out.

The 2007 legislation was the subject of a bill review letter dated May 2, 2007. Since the Office of the Attorney General has opined that the homestead tax credit violates the uniformity clause of Article 15 of the Maryland Declaration of Rights, *72 Opinions of the Attorney General* 350 (1987), the bill review letter indicated that the 2007 legislation raised a question of whether the new credit would also violate the same constitutional provision. Maryland courts and this Office have held that a lack of uniformity for a short

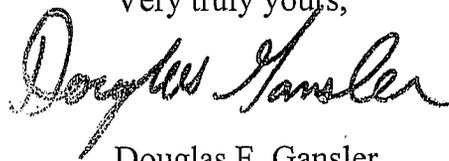
The Honorable Martin O'Malley
May 3, 2010
Page 2

duration does not rise to such a dimension as to offend the uniformity requirement of Article 15. *Rogan v. Calvert County*, 194 Md. 299, 310-12 (1949); *62 Opinions of the Attorney General* 859 (1977). Consequently, we concluded that because the property tax credit authorized under the original TP § 9-246 was limited to 5 years, it would not offend Article 15.

Senate Bill 413 repeals the five year limitation and the five-year phase out of the credit. The effect of this repeal is to allow a fixed credit for the replacement property that will be based on what the homestead tax credit would have been on the acquired property for the tax year after its acquisition by a government entity. The Attorney General has opined that fixed credits or other credits not reasonably based on current market value violate uniformity for the reasons stated in *62 Opinions of the Attorney General* 54 (1977). Therefore, unless the credits are short in duration, the local law enacted pursuant to Senate Bill 413 would be unconstitutional.

Under current TP § 9-246, local governments are authorized to provide by law the amount and duration of the credit. The five-year limitation of the credit (which is being repealed by Senate Bill 413) provided a guarantee that local governments would not be able to extend the property tax credits beyond five years. The enactment of Senate Bill 413 removes that guarantee. Nonetheless, the property tax credit may still be operated constitutionally if the local governments are instructed to authorize them only for limited periods of time.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/BAK/DML/kk

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