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May 10, 2012

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

RE: Senate Bill 365

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 365, "Higher Education – The Charles W. Riley Fire and Emergency Medical Services Scholarship." We write to discuss several implementation and interpretive issues with the bill.

Senate Bill 365 repeals the Charles W. Riley Fire and Emergency Medical Services Tuition Reimbursement Program ("Reimbursement Program") and creates a new Charles W. Riley Fire and Emergency Medical Services Scholarship ("Scholarship"). The bill is scheduled to take effect on July 1, 2012.

Although funds were appropriated in FY 2013 for the Reimbursement Program, because the bill, and thus the repeal of the Reimbursement Program, would take effect July 1 of this year, there will be no Reimbursement Program after that date and no authorization to provide reimbursements during FY 2013.¹ This appears to be contrary to the intent that may be inferred from language in Section 2 of the bill requiring that funds *remaining* in the Reimbursement Program after June 30, 2013 go to the Scholarship Fund.

It has also come to our attention that the Maryland Higher Education Commission ("MHEC") uses funds appropriated in one fiscal year to reimburse tuition paid two

¹ This issue was raised in the Fiscal and Policy Note on the Third Reader version of SB 365, but was not rectified in the final version of the bill.

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academic years earlier. For example, funds appropriated in FY 2013 would have been used to reimburse eligible individuals for tuition paid during the 2010-2011 academic year. Thus, in addition to there being no reimbursement available for academic year 2010-2011 as discussed in the previous paragraph, there will be no tuition reimbursement for the 2011-2012 academic year, nor for the 2012-2013 academic year. The new Scholarship is intended to provide scholarships beginning with the 2013-2014 academic year. Thus, there is a three-year gap in funding.

As introduced, the bill would have applied only to volunteer firefighters and ambulance or rescue squad members. The eligibility criteria for the Scholarship were amended to make clear that both career and volunteer firefighters and ambulance or rescue squad members would be eligible. (Page 3, lines 27-29). This was consistent with the wording of the Reimbursement Program that is being repealed by the bill. (Page 2, lines 39-40). As further amended, the bill created a distinction between career and volunteer firefighters by specifying that a career firefighter may only use the scholarship for courses credited toward a degree in fire service technology or emergency medical technology. (Page 4, lines 2-18). That amendment made no provision whatsoever for ambulance or rescue squad members. Thus, the bill was further amended by including the words "OR AMBULANCE OR RESCUE SQUAD MEMBER" in the provision relating to career firefighters. Volunteer ambulance or rescue squad members were not included in the provision that allows volunteer firefighters to use the scholarship for any course of study. This leaves an ambiguity as to whether all ambulance or rescue squad members are intended to be limited to using the scholarship solely for courses credited toward a degree in fire service technology or emergency medical technology, or whether volunteer ambulance or rescue squad members were intended to be treated like volunteer firefighters and were left out by drafting error. Because volunteer ambulance or rescue squad members are clearly not included in the provision applicable to volunteer firefighters, we would have to interpret all ambulance or rescue squad members to be included within the provision applicable to career firefighters.

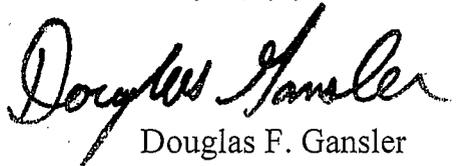
Senate Bill 365 also contains a provision that requires a Scholarship recipient to work for at least one year as a volunteer or career firefighter or ambulance or rescue squad member in a organized fire department or ambulance or rescue squad in the State after completion of an eligible program. (Page 5, lines 21-26). But the bill neglects to spell out the consequence for failure to meet this requirement. While MHEC may implement this requirement through provisions in scholarship agreements providing for consequences, we advise that it should also consider addressing the scope of such consequences in regulation.

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The bill also requires any gift or grant received by MHEC for the Scholarship Fund to be deposited with the State Treasurer *in a nonbudgeted account*. It is unclear why an unbudgeted account is to be used, other than the fact that other statutory financial aid programs include similar language.² It is our view that this type of language is unnecessary and inappropriate, and should be corrected in future legislation.

Finally, special funds for the Reimbursement Program come from surcharge revenue under Courts and Judicial Proceedings Article, §7-301. Subsection (f)(3) of that section should be amended to reflect the change to the Scholarship. This may be included in next year's corrective bill.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/BAK/kk

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

² See e.g. ED §§18-107, 18-310(b)(2)(iii), 18-601(g)(3), 18-604, 18-708(o), and 18-2706(b)(3).