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Governor

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Lieutenant Governor

DAVID R. BRINKLEY
Secretary

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Deputy Secretary

HOUSE BILL 1423 Human Services – Department of Aging – Budget (Bridges, et al)

POSITION: OPPOSE

DATE: March 3, 2020

COMMITTEE: House Appropriations Committee

SUMMARY OF BILL: HB 1423 prohibits the Secretary of the Department of Aging (DOA) from including changes to the current budget allocations within the DOA’s budget request submitted to the Department of Budget and Management for the upcoming fiscal year, unless at least six months prior to the budget request, the Secretary notified the Governor, General Assembly, and any local jurisdiction that received funding in current agency budget that a change to a funding allocation was going to be requested in the DOA’s budget submission.

EXPLANATION OF POSITION: The Department opposes the bill because the provisions (1) infringe impermissibly on Executive Privilege and (2) conflict with the Governor’s constitutional authority to direct the form and timing of budget estimates from State agencies in developing the Budget.

Executive Privilege. Budget documents requested by and provided to the Governor in confidence by agencies as part of making up the Budget are “privileged from disclosure under the judicially recognized and constitutionally based Doctrine of Executive Privilege,” subject to certain potential exceptions under certain circumstances for purely factual materials. 66 Opinions of the Attorney General (1981). The Opinion advises that while the General Assembly may ask an agency to respond to its own independent requests for information and advice related to the Budget, it may not require that an agency “repeat what the agency told the Governor.” Therefore, requiring that the Department of Aging provide notice to the General Assembly and local jurisdictions before altering its budget requests to the Governor from the allocations it received in the prior year’s budget would infringe on Executive Privilege.

Governor’s Constitutional Budget Authority. Further, the legislation conflicts with Article III, Section 52(11) of the Maryland Constitution, which states, in part, that “for purposes of making up the Budget, the Governor shall require from the proper State officials...such itemized estimates and other information, in such form and at such times as directed by the Governor.” The legislation would require the Secretary of Aging to provide funding allocations under certain circumstances, “at least six months before

submitting the budget.” In contrast, Maryland’s Constitution states that “the Governor shall” require such information in such form and at such time “as directed by the Governor.” Therefore, the bill conflicts with the Governor’s constitutional authority to direct the form and timing of budget estimates from State agencies, for purposes of making up the Budget.

For these reasons, the Department respectfully requests an unfavorable report.

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