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November 19, 2007

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

Dear Governor O'Malley:

We have reviewed the following bills and hereby approve them for
constitutionality and legal sufficiency:

HOUSE

SENATE

1*
4**
5***

2****
6*****

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/RAZ/BAK/as
Attachments

Footnotes

- * Section 8 of HB 1 makes various changes to the Bureau of Revenue Estimates (BRE) organizational structure. We have concluded that they do not infringe on the Comptroller's constitutional duties relating to estimating revenue. These changes are made to a fairly broad and 60-year old statutory scheme concerning revenue estimates. Further, estimating revenues is not the sole duty of the Comptroller. The Governor has some responsibility for revenue estimates as well. See Md. Const. Art. III, Section 52, which also authorizes the General Assembly to enact implementing legislation which takes precedence over other constitutional provisions.

Also in Section 8, the requirement in Transportation Article, § 2-103.1 that the Department of Transportation incorporate in its financial forecast the most recent estimates by the BRE should not be construed so as to infringe on the Governor's authority under Md. Const. Art. III, Section 52 to prepare revenue estimates. 37 *Opinions of the Attorney General* 121, 132-33 (1952)

The portion of House Bill 1, which addresses the Tax-Property Article, has been reviewed and found constitutional as written. The only concern is that the language could allow a county to apply certain provisions in a manner that may violate the constitutional requirement for uniformity of property taxation. Article 15 of the Declaration of Rights of the Maryland Constitution requires that all assessments and taxes be "uniform within each class or subclass of land, improvements on land and personal property which the respective taxing powers have directed to be subjected to the tax levy." That Article has been interpreted to require the uniformity of treatment for all classes and subclasses of property.

Section 4 of House Bill 1 establishes a new section, § 7-514 of the Tax-Property Article. That section authorizes a county to enter into a payment in lieu of tax

agreement (PILOT) with an owner of a facility for the generation of electricity for “all or a specified part of the real and personal property at the facility” (HB 1, p. 13, lines 25-26) which shall then become exempt. That language could be implemented in a manner that exempts different portions of the property at different facilities, thereby creating a lack of uniformity in the taxation of that specific property. However, a county could also implement this section in a manner where the same property is included in every PILOT and, therefore, is exempt at each facility in the county.

Accordingly, Section 4 is constitutional as written but it will require the counties to apply it in a constitutional manner.

Because the effective dates of these bills are after July 1, 2007, any funding mandates may only apply to fiscal years 2010 and beyond. Md. Const. art. III, Section 52 (11) and (12).

** Attached is a letter of advice on HB 4 dated November 16, 2007 and another on SB 4 dated November 17, 2007 (which is included because it interprets key language contained in HB 4).

*** The mandatory funding provisions in HB 5 in Article 24 - Political Subdivisions - Miscellaneous Provisions, § 9-1104, Natural Resources Article, § 4-209(k) and § 8-707(d) are interpreted as directory for FY 2009, in accordance with Md.Const. Art. III § 52 (11) and (12). The bill alters the funding mechanisms for these programs by repealing the current funding from certain tax and fee revenue and replaces the programs’ funding with these provisions. Thus, we believe that the provisions satisfy the single subject requirement of Art. III § 29 of the Md. Constitution.

**** SB 2 requires the Client Securities Trust Fund, before accepting an annual fee from a lawyer, to verify that the lawyer has paid all undisputed taxes and unemployment insurance contributions. In our view, this legislation is aimed at tax enforcement and not the impermissible regulation of the practice of law in violation of the Separation of Powers Doctrine. *See* attached Letter of Advice on HB 792, dated February 22, 2007 (Requiring the suspension of a lawyer’s license for failure to pay child support does not violate Separation of Powers).

On page 11 of SB 2 subsection (b)(1) makes a reference to an “individual other than one described in subsection (c).” There is no subsection (c). The function paragraph says repealing and reenacting, with amendments Tax - General, § 10-105. The bill only shows and amends § 10-105(b).

We believe the exclusion from taxation of “computer service” as it relates to internet access is consistent with the federal Internet Tax Freedom Act (Title XI of P.L. 105-277, the Omnibus Appropriations Act of 1998)

***** In our view, SB 6's establishment of a subsidy for small employer health benefit plans does not regulate employee benefit plans in contravention of ERISA, 29 U.S.C. §§1001 *et seq.* Nor does ERISA preempt the bill's requirement that licensed insurance producers provide certain information about wellness benefits to small employers, because such a provision constitutes State regulation of insurance permitted by ERISA.

cc: Joseph Bryce
Secretary of State
Karl Aro

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