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April 22, 2008

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

RE: Senate Bills 203, 297 and 773

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 203, "Department of Labor, Licensing, and Regulation - Consolidation of Workforce Development Functions - Transfer of Adult Education and Literacy Services and Education Programs for Correctional Facilities," Senate Bill 297, "Tax Credit for Employer Established Work-Based Learning Programs for Students," and Senate Bill 773, "State Department of Education - Adult Education and Family Literacy Services." We write to discuss the interaction of these bills.¹ We recommend that Senate Bill 203 be signed before Senate Bill 773.

Senate Bill 203 transfers adult education and literacy services functions currently administered by the State Department of Education to the Department of Labor, Licensing, and Regulation. It creates an Adult Education and Literacy Services Office in the Division of Workforce Development in the Department of Labor, Licensing, and Regulation and provides that this new Office "shall be the sole agency in the State responsible for administering and supervising policy and funding for adult education and literacy." Page 15, lines 28-30. Section 3 of the bill provides that the "responsibility for the provision of adult education and literacy services in the State shall be transferred to the Department of Labor, Licensing, and Regulation on July 1, 2009." Page 28, lines 21-23. The responsibility for education and workforce skills training in the adult correctional institutions also transfers on that date. Page 28, lines 24-26. The Act takes effect July 1, 2008.

Senate Bill 773 amends Education Article § 5-218 to require the Department of Education to compile an annual list by county of adult education and literacy services offered to the public, and to distribute the list to the county board and county superintendent or chief executive officer of each

¹ In a letter to the Honorable Norman H. Conway dated April 7, 2008 we advised that the repeal of CS § 3-507(b)(2) in House Bill 1048 would prevail over the conforming amendment to that section in Senate Bill 203 regardless of the order in which they are signed. House Bill 1048 was approved in our letter of April 2, 2008 to Governor O'Malley, but has not, as of the date of this letter, been signed.

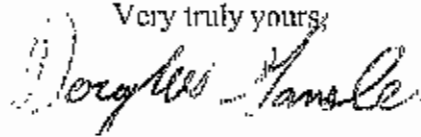
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local school system in the State and post the list on its public website. Senate Bill 203 repeals Education Article § 5-218, but enacts equivalent provisions as Labor and Employment Article § 11-806. It is our view that the new language in Senate Bill 733 should be treated as an amendment to Labor and Employment Article § 11-806, which will contain the language that the General Assembly sought to amend by passing Senate Bill 773.² To allow this, Senate Bill 733 should be signed after Senate Bill 203.

Senate Bill 297 creates a new Subtitle in the Education Article entitled "Approved Paid Work-Based Learning Programs." The new provisions permit employers, unions and trade associations to establish work-based learning programs for students between the age of 16 and 23, and to claim a tax credit based on the wages paid to students in the program. The bill provides that "the Department" is to adopt regulations to implement its provisions, and that programs must be approved by "the Department." In the context of the Education Article, "the Department" is the Department of Education. It seems clear that the program created by Senate Bill 297 is one that would have been transferred to the Department of Labor, Licensing, and Regulation by Senate Bill 203. However, because the actual transfer does not occur until July 1, 2009, the Subtitle can be moved in the next session to accomplish this goal.

Please feel free to contact us if you have any questions about the interactions of these bills.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/lck

cc: The Honorable Nancy J. King
The Honorable Catherine E. Pugh
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro

² This transfer could be confirmed in next year's corrective bill.