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April 27, 2009

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

**RE: Senate Bills 21, 29 and 965
House Bills 43, 110, and 727**

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency six bills amending Education Article § 7-804. We write to address the handling of the termination clause related to the section.

Education Article § 7-804 was initially amended to permit the use of school vehicles for up to 15 years in Somerset, Wicomico and Worcester counties in 2003. Chapter 420, Laws of Maryland 2003. That provision had a termination date of June 30, 2006, which was extended to June 30, 2011 by Chapter 576, Laws of Maryland 2006, and made permanent by Chapter 107, Laws of Maryland 2008. Meanwhile, the section was amended to include Dorchester County by Chapters 637 and 638, Laws of Maryland 2007. The Dorchester County Laws, Chapters 637 and 638 of 2007 had a termination date of June 30, 2011, which matched the then-existing termination date for the remainder of the provision. The Dorchester County termination date was not affected by Chapter 107 of 2008.

Senate Bill 21 and House Bill 110, identical bills entitled "Dorchester County - School Bus Length of Operation - Sunset Repeal," repeal the June 30, 2011 termination date in Chapter 637, but do not amend the identical termination date in Chapter 638. It is our view that the clear intent of the legislature was to eliminate the termination date with respect to Dorchester County, bringing it into conformity with the remainder of the provision. It is our view, however, that the better practice would have been to amend both Chapter laws where two have been signed, and that it may be advisable to make this change next session.¹

¹ If only one Chapter law is to be signed, it should be the last one signed that is amended, as that is the one that is ordinarily looked to as the law. *State v. Ghajari*, 346 Md. 101 (1997).

The Honorable Martin J. O'Malley
April 27, 2009
Page 2

Senate Bill 29 and House Bill 43 are identical bills that add Talbot County to the list of counties where school vehicles may be used for 15 years. The bills do not address the Dorchester County termination date.

Senate Bill 965 and House Bill 727 are identical bills that add Caroline County to the list of counties where school vehicles may be used for 15 years. These bills are double drafted to account for the possibility that the Dorchester County termination date will take effect. The *Legislative Drafting Manual* reflects that when drafting to an Annotated Code section has been amended in a previous session and that amendment has a termination clause, "it may be necessary to double draft the text, with 'SECTION 1.' being the law now in effect and 'SECTION 2.' being the posttermination reversion." No guidance is given, however, as to when this is necessary. It is our view that where the language being drafted to is not subject to a termination clause, but a termination clause affects a minor portion, such as the inclusion of a county, it is not necessary to double draft. Where the entire provision, or a substantial provision thereof, is subject to termination, as would be the case if Chapter 107 of 2007 had not eliminated the termination clause for the 15 year provision itself, the bill should be double drafted.

While we recommend that Chapter 638 be amended in next year's curative bill, it is our conclusion that all six bills are constitutional and legally sufficient and may be signed into law.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Richard F. Colburn
The Honorable Adelaide C. Eckardt
The Honorable Jeannie Haddaway-Riccio
The Honorable John P. McDonough
Joseph Bryce
Karl Aro