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April 27, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

***Re: House Bill 943, "Economic Competitiveness and Commerce –
Restructuring"***

Dear Governor Hogan:

We have reviewed and hereby approve HB 943 for constitutionality and legal sufficiency. We write this letter, however, to make the recommendations below.

Among other things, HB 943 prohibits the newly created Department of Economic Competitiveness and Commerce from submitting "a budget request before the [Maryland Economic Development] Commission reviews the request." (Page 23, lines 11-12.) The Governor's constitutional budget authority grants the Governor the right to require from an Executive Branch agency "such itemized estimates and other information, in such form and at such times as directed by the Governor." Article III, § 52(11). Moreover, the Attorney General has previously recognized that the disclosure of Executive branch budget requests is subject to Executive Privilege. 66 Op. Att'y Gen. 98 (1981) (advising that budget recommendations submitted to the Governor and the Department of Budget and Management are protected by Executive Privilege). Finally, we note that the Commission has legislative members; as a result, a reviewing court is likely to conclude that the separation of powers doctrine in Article 8 of the Declaration of Rights prohibits requiring the Governor to share constitutionally privileged information with another branch of government. In light of the foregoing, we recommend that this provision be interpreted as a non-binding expression of legislative intent.

In addition, Section 10 provides that "it is the intent of the General Assembly" that in FY16 "at least \$1,000,000" in the DBED budget "be transferred by budget amendment

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to the Maryland Public-Private Partnership Marketing Corporation,” and that “the office within the Department of Business and Economic Development that supports the growth of the life sciences industry in Maryland, be transferred to the Maryland Technology Development Corporation.” Section 10 should be construed as authorization for the Governor to transfer funds by budget amendment, not as a mandatory requirement that the Governor transfer any funds or functions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Brian E. Frosh".

Brian E. Frosh
Attorney General

BEF/SB/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro