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April 15, 2020

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

***RE: House Bill 932***

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 932. We write this letter to address a provision in the bill that expresses the intent of the General Assembly with respect to the distribution of revenues collected in fiscal year 2021. While that provision expresses an intent that certain revenues be distributed to the expenditure accounts of State units, “if necessary,” it is our view that the revenues may be expended only in accordance with a valid appropriation, and House Bill 932 neither appropriates money nor requires that an appropriation be included in the annual Budget Bill.

Section 1 of House Bill 932 extends the State sales and use tax to the retail sales of digital products and directs that the revenues therefrom be distributed to the Blueprint for Maryland’s Future Fund. Section 2 of the bill states:

... That it is the intent of the General Assembly that, if necessary, the Comptroller distribute the sales and use tax collected in fiscal year 2021 on the sale or use of a digital product or code under Title 11 of the Tax – General Article to:

(1) the expenditure accounts of the appropriate units of State government to fund costs associated with the Coronavirus Disease 2019 (COVID-19); and

(2) the Revenue Stabilization Account established under § 7-311 of the State Finance and Procurement Article.

Under the State Constitution, there are two types of laws that can appropriate money from the Treasury: (1) the annual Budget Bill, which is initiated by the Governor, or (2) a supplementary appropriation bill, which is initiated by the General Assembly. Md. Const., Art. III, § 52(2), (5), and (8).

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A law requiring that the Governor include funding for a program in the annual Budget Bill – i.e., a funding mandate – must have been enacted at least one year before the fiscal year to which it applies. Md. Const. Art. III, § 52(11) and (12). Because House Bill 932 was not enacted before July 1, 2019, the start of fiscal year 2020, it cannot mandate funding for the fiscal year 2021 budget. Moreover, it has long been the advice of this Office that a law requiring the Governor to include a minimum level of funding in the Budget Bill is enforceable only if it “clearly prescribe[s] a dollar amount or an objective basis from which a level of funding can easily be computed.” *65 Opinions of the Attorney General* 108, 110 (1980). As section 2 does not refer to a specific dollar amount or provide an objective basis from which an amount can be computed, but appears to leave the allocation of funds to the Comptroller’s discretion, it is our view that Section 2 does not mandate funding in the Budget Bill.

It is further our view that Section 2 cannot be construed as a supplementary appropriation. Supplementary appropriation bills are governed by Md. Const., Art. III, § 52(8), which provides that such a bill must levy a tax for its support, must be limited to a single work, object or purpose, and may not be passed before the Budget Bill. Although House Bill 932 does levy a tax, it passed the General Assembly before final passage of the Budget Bill (Senate Bill 190).

Notwithstanding the expression of legislative intent in Section 2 of the bill regarding the distribution of fiscal year 2021 revenues, it is our view that those revenues may be expended only in accordance with a valid appropriation. If House Bill 932 is enacted, a portion of the fiscal year 2021 revenues might, for example, be distributed to the expenditure account of a State unit to provide revenue support for an existing appropriation, as long as the expenditures are “associated with” COVID-19. However, Section 2 does not itself provide the legal authorization to withdraw money from the State Treasury.

Sincerely,

A handwritten signature in blue ink that reads "Brian E. Frosh". The signature is fluid and cursive, with the first name being the most prominent.

Brian E. Frosh  
Attorney General

BEF/DWS/kd

cc: The Honorable John C. Wobensmith  
Keiffer J. Mitchell, Jr.  
Victoria L. Gruber