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May 4, 2022

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

RE: *House Bill 441, “Baltimore City - Pretrial Release of Defendant - Notice”*
House Bill 785, “Courts - Baltimore City Jobs Court Pilot Program and
Circuit Court Real Property Records Improvement Fund”
Senate Bill 586, “Criminal Procedure and Public Safety - Courts and
Criminal Justice in Baltimore City”

Dear Governor Hogan:

We have reviewed HB 441, HB 785, and SB 586 for constitutionality and legal sufficiency. In doing so, we have considered whether HB 785 or SB 586 violate Maryland Constitution Article III, § 29, which requires that each bill have a single subject. We have concluded that while one provision of HB 785 raises a single subject issue, it is not clearly unconstitutional.¹

Article III, § 29 of the Maryland Constitution provides, in relevant part, that “every Law enacted by the General Assembly shall embrace but one subject.” This provision traditionally has been given a “liberal” reading so as not to interfere with or impede legislative action. *Maryland Classified Employees Ass’n Inc. (“MCEA”) v. State*, 346 Md. 1, 13 (1997). As the Court of Appeals explained:

¹ In reviewing a bill passed by the General Assembly prior to its approval or veto by the Governor, we apply a “not clearly unconstitutional” standard. 93 *Opinions of the Attorney General* 154, 161, n. 12 (2008).

That liberal approach is intended to accommodate a significant range and degree of political compromise that necessarily attends the legislative process in a healthy, robust democracy. It has sufficient fluidity to accommodate, as well, the fact that many of the issues facing the General Assembly today are far more complex than those coming before it in earlier times and that the legislation needed to address the problems underlying those issues often must be multifaceted.

Id. at 14. *See also Delmarva Power v. Public Service Com'n*, 371 Md. 356, 368-369 (2002) (noting that this deferential approach recognizes the nature of the legislative process, the compromises necessary in this process, and the complexity of the issues which necessitates multifaceted legislation). At the same time, the Court's liberal approach to the one subject requirement was "never intended to render the Constitutional requirement meaningless" *Id.*

A bill meets the one subject requirement if its provisions are "germane" to the same subject matter. *Migdal v. State*, 358 Md. 308, 317 (2000); *Porten Sullivan Corp. v. State*, 318 Md. 387, 407 (1990). "Germane" means "in close relationship, appropriate, relative, [or] pertinent." *Id.* Two matters can be regarded as a single subject because of a direct connection between them or because they each have a direct connection to a broader common subject. For purposes of assessing how closely connected and interdependent the provisions of a bill may be, the "notions of connection and interdependence may vary with the scope of the legislation involved." *MCEA*, 346 Md. at 14 (quoting *Porten Sullivan*, 318 Md. at 407).

The three bills each have sections in common with at least one of the other bills. House Bill 441, as enacted, requires that the Department of Public Safety and Correctional Services notify the Baltimore Police Department if a criminal defendant is released prior to trial. This bill does not have a single subject issue, but is relevant to the analysis of the other bills.

Senate Bill 586, as introduced, was an identical companion bill to HB 441, and, as enacted, contains the same provisions with respect to reporting of pretrial releases in Baltimore City. SB 586 has also been amended to include provisions related to the creation of a Jobs Court Pilot Program in the District Court sitting in Baltimore City and funding for that program as well as a requirement that the Baltimore Police Department report to the Governor and the General Assembly regarding firearms destroyed, seized, or recovered by the Baltimore Police Department during the preceding calendar year. As amended, all

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of the provisions in SB 586 apply only to Baltimore City and relate, at least tangentially, to the control of crime in Baltimore City. The Jobs Court Pilot Program provisions in SB 586 are virtually identical to the original provisions in HB 785, which, for reasons discussed below, can be given effect despite the single subject issue raised by that bill. The final provision, however, is identical to SB 667, which never made it out of Judicial Proceedings. Nevertheless, all three provisions are related to courts, criminal proceedings, and reporting of related matters in Baltimore City. While each takes a separate and narrow approach, in light of the deferential standard we apply in bill review, we cannot say that SB 586 is clearly unconstitutional.

Finally, HB 785, as introduced, related only to the Jobs Court Pilot Program, but was amended in the Senate to authorize the Judiciary to transfer up to \$12 million of its fiscal year 2022 General Fund appropriation to the Circuit Court Real Property Records Improvement Fund established under § 13-602 of the Courts Article. The amendment was unanimously supported by the two Senate committees who voted on it, and the provision raised no concerns during the floor debates. As a result, even though there is a slight risk that a court reviewing this provision, if challenged, would declare it violates Article III, § 29 of the Maryland Constitution, it is very unlikely that the entire bill would be declared unconstitutional. The Court of Appeals has held that later added “foreign matter” can be severed from the bill and the original provision can be given effect. *Migdal*, 358 Md. at 323-324.

Sincerely,

A handwritten signature in blue ink that reads "Brian E. Frosh". The signature is written in a cursive style and is contained within a thin black rectangular border.

Brian E. Frosh
Attorney General

BEF/SBB/kd

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