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May 6, 2025

The Honorable Wes Moore
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401
Delivered via email

RE: House Bill 352, "Budget Reconciliation and Financing Act of 2025"

Dear Governor Moore:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 352, "Budget Reconciliation and Financing Act of 2025" ("BRFA"). We write to highlight two provisions that, in our view, are questionable under the one subject requirement of the Maryland Constitution. However, as explained below, it is our view that the provisions are not clearly unconstitutional.¹ Moreover, those provisions, even if challenged and found unconstitutional by a court, likely would be deemed severable and would not affect the bill's other provisions.

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 constitutional limitation serves the following purposes:

¹ We apply a "not clearly unconstitutional" standard of review for the bill review process. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).

1. To avoid the necessity for a legislator to acquiesce in a bill he or she opposes in order to secure useful and necessary legislation; to prevent the engrafting of foreign matter on a bill, which foreign matter might not be supported if offered independently.
2. To protect, on similar ground, a governor's veto power.

Porten Sullivan Corp. v. State, 318 Md. 387, 408 (1990) (internal citations omitted).

A bill satisfies the one subject requirement if all of its provisions are “germane” to the same subject matter. *Migdal v. State*, 358 Md. 308, 317 (2000); *Porten Sullivan*, 318 Md. at 407. “Germane” means “in close relationship, appropriate, relative, pertinent.” *Porten Sullivan*, 318 Md. at 402. For purposes of Article III, § 29, two matters can be viewed as a single subject either horizontally, because of a direct connection between them, or vertically, because they each have a direct connection to a broader common subject to which the bill relates. *MCEA v. State*, 346 Md. 1, 15-16 (1997).

The Constitution's one subject requirement traditionally has been given a “liberal” reading so as not to interfere with or impede legislative action. *Id.* at 13. This deferential approach is meant to accommodate the nature of the legislative process, the political compromises that are part of that process, and the need to address increasingly complex issues through multifaceted legislation. *Delmarva Power v. PSC*, 371 Md. 356, 368-69 (2002); *MCEA*, 346 Md. at 14. At the same time, the Supreme Court of Maryland has made it clear that its deferential approach was “never intended to render the Constitutional requirement meaningless.” *Delmarva Power*, 371 Md. at 369.

When reviewing BRFAs for compliance with the one subject requirement, this Office analyzes “whether the various provisions of the bill deal with the single subject of balancing the budget and adjusting the finances of State and local government.”² As we have previously noted, typical BRFA provisions are those that enhance State revenues or reduce current or future year expenditures. They “often take the form of fund transfers, the elimination, reduction, or suspension of mandated spending, and revenue raising measures.” Bill Review Letter on Senate Bill 187 of 2018.

The first provision that raises a concern under the one subject requirement appears on page 95 of the enrolled bill, in lines 17 through 28. That provision, which was added by a conference committee amendment, alters the defined term “unit” for purposes of

² Bill Review Letter on House Bill 589 of 2021 (quoting Bill Review Letter on Senate Bill 187 of 2018); *see also* Bill Review Letter on Senate Bill 172 of 2014 (the purpose of the BRFA is “to balance the State operating budget and provide for the financing of State and local government”); Letter to William S. Ratchford, II from Ass’t Atty. Gen. Richard E. Israel, April 1, 1993 (“one-subject of adjusting the finances of State and local government”).

statutory provisions governing the Office of Program Evaluation and Government Accountability (“OPEGA”) in the Department of Legislative Services (Title 2, Subtitle 12, Part V of the State Government Article (“SG”)). The effect of the amendment is to make the Clerks of the Courts subject to performance evaluations conducted by OPEGA.

An OPEGA performance evaluation is a “review of a governmental activity or unit used to determine: (1) whether the governmental activity or unit, if subject to termination, should be reestablished or terminated;[³] and (2) what, if any, statutory or nonstatutory changes should be recommended to the General Assembly to improve the operations and efficiency of the governmental activity or unit.” SG § 2-1230(e). Performance evaluations may include, among other things, an evaluation of “the efficiency, effectiveness, and economy with which resources are used.” SG § 2-1235(b). On completion of an evaluation, OPEGA submits to the General Assembly’s Joint Audit and Evaluation Committee a report that includes its findings, any recommendations for making the program or activity “more efficient or effective,” and “an estimate of the costs or savings, if any, expected from implementing the findings and recommendations.” SG § 2-1238.⁴

The apparent connection between this BRFA provision and the State budget is that an OPEGA evaluation might identify inefficiencies in the operations of a Clerk of the Court, and if those efficiencies are addressed, that could reduce the demands on the State Treasury. Given the rather tenuous connection between the provision and the subject of balancing the State budget, as well as the uncertainty as to whether any savings will be realized, this particular provision is difficult to defend as being within the subject of the BRFA. The same rationale, if accepted for purposes of satisfying the one subject requirement, could be used to justify including in the BRFA any provision that modifies a program (or adds a new program) if there is even the slightest possibility that the program might, eventually, save the State money. We think it is unlikely that a court, if presented with the question, would find that such a tenuous connection with the broad subject of balancing the State budget is constitutionally sufficient under Article III, § 29. Nonetheless, we cannot say that its inclusion in the BRFA is clearly unconstitutional.

The other provision that raises a concern under the one subject requirement (also added by conference committee) is the amendment of Business Regulation Article, § 11-

³ Because Clerks of the Courts are established by the Maryland Constitution (*see* Md. Const., Art. IV, §§ 12, 17, 25, and 41F), they are not units that are subject to termination through ordinary legislation.

⁴ Subjecting Clerks of the Courts to performance evaluations conducted by OPEGA, a legislative branch unit, does not, in our view, violate separation of powers principles. We note that under current law the Office of Legislative Audits (another legislative branch unit) already is required to conduct periodic fiscal and compliance audits of each Clerk of Court. SG § 2-1220. We recognize, however, that an evaluation of a judicial branch unit, and the associated requests for access to confidential records pursuant to SG § 2-1237, could raise separation of powers issues.

518, which increases (from 2% to 3%) the maximum amount that may be deducted from thoroughbred open purses and paid to the organization that represents a majority of thoroughbred owners and trainers.⁵ The Conference Committee Report describes that amendment as increasing “the maximum amount that the Maryland Thoroughbred Horsemen’s Association may deduct from open purses for the use of the [A]ssociation.”

Thoroughbred purses are funded with the proceeds of video lottery terminals, SG §§ 9-1A-27 and 9-1A-28, and those funds are appropriated via the annual budget bill. See HB 350 (Fiscal Year 2026 Budget Bill), Item P00E01.02 (appropriations for the Maryland Racing Commission); Proposed Operating Budget Detail, FY 2026, Volume I, at 677 (budget details for the Maryland Racing Commission). Accordingly, this particular BRFA provision relates to the allocation of State money that is appropriated through the budget process, but it does not appear to relate to *balancing* the State budget or financing State government. It has no impact on the level of State revenues or expenditures.

It is, however, arguably related to legislative action on the budget bill that does reduce State expenditures. Separate provisions in the BRFA dissolve the Maryland Thoroughbred Racetrack Operating Authority (“MTROA”), effective June 30, 2025, and assign MTROA’s responsibilities and functions to the Maryland Stadium Authority and the Maryland Economic Development Corporation (“MEDCO”).⁶ Amendments to the budget bill then strike the fiscal 2026 funding for MTROA (and eliminate 6 positions), contingent on the enactment of the BRFA provisions abolishing MTROA before the start of fiscal 2026. HB 350, Item D29A01.01. Those BRFA provisions (dissolving MTROA and assigning its functions to the Stadium Authority and MEDCO) and the related fiscal 2026 savings are a part of the ongoing transformation of Maryland’s thoroughbred racing industry.

It is our understanding that the additional revenue flowing to the Thoroughbred Horsemen’s Association from the purse deduction will allow the Association to operate additional racing days in the event the Maryland Jockey Club holds fewer racing days as it transitions from operating under MTROA to operating under MEDCO. Accordingly, in light of the fiscal 2026 budget savings attributable to the dissolution of MTROA, and the role of the purse deduction provision in maintaining racing days following MTROA’s dissolution, it is our view that including the purse deduction provision in the BRFA is not clearly unconstitutional under the one subject requirement of Article III, § 29.

⁵ HB 352 at p. 22, line 24, through p. 23, line 9.

⁶ See HB 352 at p. 27, line 18, through p. 29, line 17 (amending Economic Development Article, § 10-646.1), p. 189, lines 24-29 (amending Section 6 of Ch. 111 *Laws of Maryland* 2023, as amended by Ch. 410 *Laws of Maryland* 2024), and p. 185, lines 19-25 (assigning the functions, powers, assets, and liabilities of MTROA, including those related to the Maryland Jockey Club, Inc., to the Maryland Economic Development Corporation).

In closing, we note that the BRFA is an important piece of legislation, and for many years now it has been the primary legislative vehicle by which the Governor and Legislature adjust State revenues and expenditures in order to enact a balanced budget, as required by the State Constitution. Given its important role in the budget process, and the potential impact on the budget if a court were to find that the BRFA, or provisions in it, violate the Constitution's one subject requirement, we caution against including in future BRFAs provisions that do not directly enhance revenues, decrease expenditures, or otherwise serve to balance the budget. Although it is our view that a court likely would find discrete provisions in a BRFA to be severable from its other provisions,⁷ we cannot guarantee how a court would rule on the matter. Moreover, if confronted with a one subject challenge to a BRFA provision, a court might adopt a standard that is more stringent than the one used by this Office to evaluate BRFAs, which would then limit the General Assembly's capacity, going forward, to adopt necessary budget balancing measures through a single omnibus bill.

Sincerely,

A handwritten signature in black ink, appearing to read "A.G. Brown", with a stylized flourish at the end.

Anthony G. Brown

AGB/DWS/kd

cc: The Honorable Susan C. Lee
Jeremy Baker
Victoria L. Gruber

⁷ See General Provisions Article, § 1-210 (declaring as a rule of statutory construction that unless a court finds that “the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent,” a judicial finding that “part of a statute is unconstitutional or void does not affect the validity of the remaining portions of the statute”); *Sanza v. Maryland Bd. of Censors*, 245 Md. 319, 338 (1967) (The test for determining whether provisions of an Act are severable is whether the Legislature would “have enacted the statute ... if it knew that part of the enactment was invalid.”).