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April 29, 2025

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

RE: House Bill 475/Senate Bill 281, "Transportation Equality for Service Members Act"

Dear Governor Moore:

We have reviewed House Bill 475 and Senate Bill 281, "Transportation Equality for Service Members Act," which are cross-filed bills that are not identical. We approve for constitutionality and legal sufficiency House Bill 475. We recommend a veto of Senate Bill 281, however, because in our view the bill violates the single-subject rule encompassed in Article III, § 29 of the Maryland Constitution.¹

Both House Bill 475 and Senate Bill 281 establish uniform definitions related to the military in the General Provisions, State Government, and Transportation Articles. Most are stylistic or technical changes, but there are substantive changes. These changes generally make specified provisions in the Transportation Article applicable to all members of the uniformed services, thereby expanding eligibility for some benefits for those members.

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).

On the evening of Sine Die, a floor amendment to Senate Bill 281 was approved. The amendment added the following provision:

A VEHICLE OWNED BY A LICENSED DEALER IS EXEMPT FROM THE EXCISE TAX IMPOSED BY THIS PART IF THE VEHICLE IS PROVIDED TO A CUSTOMER FOR USE WHILE THE CUSTOMER'S VEHICLE IS NOT IN USE DUE TO REPAIR, MAINTENANCE, OR OTHER VEHICLE SERVICE PERFORMED BY THE DEALER.

Page 8, lines 21-24 (adding new Transportation Article, § 13-810(g)). The only explanation given for the amendment was it is intended to “clarify” the law.

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). *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).

A look at the cases where the Maryland Supreme Court has found that legislation violates § 29 shows that the appropriate focus is “the germaneness of the individual components” of the bill. *Migdal v. State*, 358 Md. 308, 317 (2000) (explaining that germaneness is “[t]he key to evaluating a particular piece of legislation under Article III, section 29”). *See also Porten Sullivan*, 318 Md. at 404 (holding that the legislation at issue contained “two unrelated and disparate sets of provisions” and thus were not a single subject).

In *Migdal v. State*, the legislature added a provision on Sine Die that protected directors of investment companies from shareholder suits to a bill that required written consent to designate an individual as a resident agent. 358 Md. 308 (2000). The State argued that the single subject was “corporations and associations” and noted that the provisions amended the same section of the code. The Court rejected the connection between the two provisions as “too broad and tenuous.” *Id.* at 319 (noting directors and resident agents serve different functions and have different purposes). The Court labeled the investment director provision as “foreign matter.” The Court went on to observe that “[t]he evidence in the record indicates to this Court that the Legislature was aware that they had engrafted an ‘eleventh-hour’ measure containing a separate and distinct function to a previously single-subject bill.” *Id.* at 323.

In *Delmarva Power*, a bill was found to violate Article III, § 29. 371 Md. at 375. Pointing to the “foreign matter” that had been “stealthily incorporated ... during the haste and confusion ... incident upon the close of the [session]” into a bill that had been previously approved by both chambers, the Court held that the addition of the “foreign matter” provisions violated § 29. *Id.* at 377. And the Court has more recently explained:

While this Court has “historically construed the one subject rule liberally in order to give effect to legislation, more recently the court has become stricter in its interpretation and has warned that there are limits to its willingness to find ‘horizontal’ or ‘vertical’ connections between ‘completely separate and unrelated’ provisions in legislation.” Additionally, this Court “is prepared to examine the circumstances surrounding the passage of the challenged legislation.”... For example, ... the Court [has] rejected an “eleventh-hour” engraftment of a bill that inappropriately attempted to include “completely separate and unrelated provisions” of a previously defeated bill. Because the bill in question violated the “one subject rule” by “contain[ing] two distinct and incongruous subjects,” ... the bill was unconstitutional under Article III, Section 29. This, the Court stated, was “precisely the type of legislative action Article III, [S]ection 29 was designed to prevent.”

Elsberry v. Stanley Martin Companies, LLC, 482 Md. 159, 196 (2022) (citations omitted).

In our view, the amendment added to Senate Bill 281 on Sine Die makes it very difficult to defend the bill’s constitutionality in light of Article III, § 29. The amendment is not germane to the rest of the bill, which relates to the definition of members of uniform services and veterans for purposes of the General Provisions, State Government, and Transportation Articles. The amendment provides licensed dealers an exemption from the vehicle excise tax under certain circumstances unrelated to uniform service members or veterans. On the other hand, House Bill 475 does not have the amendment. Accordingly,

we recommend that if you wish to adopt the definition changes, you sign House Bill 475 but veto Senate Bill 281.

Sincerely,

A handwritten signature in black ink, appearing to read "A.G. Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

AGB/SBB/kd

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