

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Deputy Attorney General



PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief of Staff

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

April 7, 2026

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

Re: Senate Bill 284, "Budget Reconciliation and Financing Act of 2026"

Dear Governor Moore,

We write to provide our assessment of the constitutionality and legal sufficiency of Senate Bill 284, "Budget Reconciliation and Financing Act of 2026" ("BRFA"). Although there is no constitutional or statutory requirement that this Office provide such a review absent a specific request, it is well established that "before Governors of Maryland approve an act of the General Assembly the Attorney General of Maryland first reviews such legislation to determine whether, in his opinion, it is constitutional," and that "Governors rely upon that advice." *State ex rel. Att'y Gen. v. Burning Tree Club, Inc.*, 301 Md. 9, 34 (1984). It is in that spirit -- and for your benefit as you consider whether to sign this bill -- that we offer the analysis that follows. It is our view that the BRFA is constitutional and legally sufficient, and you may sign it.

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Though constitutional, the BRFA does contain a number of severable¹ provisions that, if challenged, are likely to be found unconstitutional for violating the one subject requirement of Article III, § 29 of the Maryland Constitution. Nonetheless, we are not able to say that any of these provisions are “clearly unconstitutional,”² for a variety of reasons. First, the applicable legal standard can introduce a degree of uncertainty because courts typically weigh several factors when evaluating a one subject challenge. That is particularly true with respect to provisions in a BRFA, given that no court has been called upon to resolve a one subject challenge to a BRFA provision. Thus, there is no guidance from courts on how to apply this legal standard to an “omnibus” budget-related bill that plays a unique role in the legislative process (historically, the BRFA has served as the primary vehicle by which the General Assembly makes the legislative changes that are needed to enact a balanced budget). Second, a BRFA provision may affect State finances in a way that is not easily discernible from the text of the provision alone, or it may be one piece of a broader “give and take” between the Governor and General Assembly on budgetary matters, making it potentially defensible for that reason even when, on its face, it initially appears inappropriate for the BRFA. Third, the condensed timeframe for reviewing the BRFA this year (because of the bill’s early presentment) has made it especially difficult to develop a full understanding of how each BRFA provision is (or is not) tied to the budget.

With that said, there are provisions that raise varying degrees of constitutional concern under the one subject requirement. Most significantly, two related provisions -- the amendments to Land Use Article (“LU”), § 18-106 and new LU § 25-102 -- have no connection to the State budget or State finances, and it is our view that they are very likely to be found unconstitutional if challenged. Several other provisions also raise constitutional concerns, though they are more defensible: the amendments to Transportation Article (“TR”), § 13-936 (historic vehicle registration), Section 8 (Maryland Reparations Commission), Section 4 (taxation of pass-through entities), Health-General Article (“HG”), § 21-2A-04 (Prescription Drug Monitoring Program data retention), and new Public Safety Article (“PS”), § 4-510 (suspension of local law enforcement grants). Each is discussed in turn below.

¹ It is our view that a court likely would find discrete provisions in this year’s BRFA, if deemed unconstitutional, to be severable from its other provisions. 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.”).

² 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).

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 "one subject" requirement serves the following purposes:

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 pertaining to 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.

With respect to the BRFA, this Office has, over the years, developed a particular standard for determining whether the bill's provisions satisfy this constitutional requirement. That is, the various provisions of the BRFA satisfy the one subject requirement if they "deal with the single subject of balancing the budget and adjusting the finances of State and local government."³ As we have noted in prior bill review letters, the BRFA typically includes provisions that enhance revenues and reduce current and future year expenditures, which "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. Conversely, provisions that reduce revenues or increase State expenditures "arguably run counter to the primary purpose of the BRFA," and we have cautioned that "the inclusion of such provisions in the BRFA raises constitutional concerns." *Id.*

³ 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").

To be clear, we are not questioning the substance of the various BRFA provisions discussed herein. We merely seek to highlight constitutional concerns raised by the General Assembly including these measures in the BRFA, rather than passing the measures through standalone bills.

Maryland-National Capital Park and Planning Commission’s Budgets

Amendments to LU § 18-106 (pages 23-24 of the enrolled bill) restrict the authority of the Prince George’s County Council to alter the Maryland-National Capital Park and Planning Commission’s (“MNCPPC”) proposed budgets.⁴ Specifically, those amendments provide that the County Council “may not allocate any part of the budgets allocable solely to the county” to: (1) the County Council, or (2) unless approved on or before June 1, the Prince George’s County government or any third-party business entity or individual. In addition, a new LU § 25-102 (page 25 of the enrolled bill) provides that the Prince George’s County Planning Board⁵ “may not make or award grants,” except as otherwise provided in Division II of the Land Use Article. Though there may be valid reasons for enacting these provisions, they do not have any connection to the State budget or otherwise affect State finances.⁶ Accordingly, it is our view that these provisions are very likely to be found unconstitutional, if challenged.

Historic Vehicle Registration

Amendments to TR § 13-936 (pages 65-67 of the enrolled bill) modify the definition of a “historic motor vehicle,” for purposes of determining eligibility for Class L (historic) vehicle registration, by requiring that a vehicle be “at least 25 years old,” replacing the current requirement that a vehicle be “a model year of 1999 or earlier.” The effect of this change is to make more vehicles eligible for the less expensive Class L (historic) vehicle registration fee, thereby *reducing* anticipated State revenues. The Fiscal and Policy Notes on House Bill 4 and Senate Bill 566, cross-filed bills that have not seen any legislative action but would have amended TR § 13-936 in the same way, estimate that State special fund revenues⁷ would decrease by \$1.8 million in Fiscal Year 2027, growing to an annual decrease of \$7.9 million by Fiscal Year 2031.

⁴ For each fiscal year, MNCPPC prepares a capital budget and an operating budget and submits the proposed budgets to the county executives of Montgomery County and Prince George’s County for approval by each county. LU §§ 18-102 through 18-107.

⁵ The members of MNCPPC who are from Prince George’s County serve as the Prince George’s County Planning Board. LU § 20-201.

⁶ While we have identified the subject of the BRFA as balancing the budget and adjusting the finances of State and local government, we also have expressed the view that “the BRFA can include local government financing measures only to the extent that they are elements of a legislative design with an intended effect on State government financing,” and “[p]rovisions exclusively concerning local government financing but that have no relationship to balancing the State budget are not germane to the subject of the BRFA.” Bill Review Letter on Senate Bill 172 of 2014.

⁷ The Fiscal and Policy Notes indicate that the statutory change would impact revenues to the Transportation Trust Fund, the Maryland Emergency Medical System Operations Fund, the R Adams Cowley Shock Trauma Center, and the Maryland Trauma Physician Services Fund.

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Although the 2025 BRFA⁸ also amended TR § 13-936, that amendment had the opposite effect on State finances. It adopted the current requirement that a car be “a model year of 1999 or earlier” to qualify as an historic vehicle, replacing the previous requirement that a car be “at least 20 years old.” Because the change was expected to increase State revenues,⁹ last year’s BRFA provision was consistent with the “one subject” of the BRFA, and we did not raise any concerns about its inclusion in the bill. But this year’s BRFA provision – having the opposite effect on State revenues – raises a significant constitutional concern.

Maryland Reparations Commission

Section 8 of the BRFA (pages 67-69 of the enrolled bill) amends Chapter 9 of the Acts of the 2025 Special Session, which established the Maryland Reparations Commission (“Reparations Commission”) and was enacted over your veto. The amendments made by Section 8 of the BRFA add members to the Reparations Commission, modify the appointment procedures for certain members, alter the Commission’s duties (by requiring it to hold at least three public hearings and to “continuously solicit” public input), and delay the Commission’s reporting and termination dates. Section 8 was added by a Conference Committee amendment.¹⁰ It is identical to Senate Bill 476 – a bill that never received a committee hearing and was withdrawn by the sponsor.

In our view, using the BRFA as the vehicle for amending the Reparations Commission’s governing statute is problematic under the Constitution’s one subject requirement. There is, at least arguably, some connection between this BRFA provision and budgetary actions taken by the General Assembly. The General Assembly amended the budget bill to appropriate an additional \$200,000 in general funds to State Archives “for the purpose of the Maryland Reparations Commission,” and that additional funding could be used to support the Commission’s additional workload stemming from its new obligations to hold at least three public hearings and to continuously solicit public input. With that said, these BRFA provisions do not serve the purpose of balancing the budget and adjusting the finances of State and local government. Moreover, amending the Reparations Commission’s governing statute via the BRFA arguably circumvents your constitutional veto authority by effectively insulating the matter from a potential veto. As we noted at the outset, one of the purposes of the Constitution’s one subject requirement is to “protect ... a governor’s veto power” by avoiding the need to accept unrelated, objectionable provisions of a bill in order to secure the enactment of a bill’s useful and necessary provisions. Given that you exercised your veto authority with respect to the original legislation establishing the Reparations Commission, a court, if confronted with a one subject challenge to this BRFA provision, might be more inclined to find a constitutional violation.

Taxation of Pass-Through Entities

Section 4 of the BRFA (pages 61-64 of the enrolled bill) amends Tax-General Article (“TG”), § 10-102.1, which relates to the taxation of pass-through entities. It is our understanding

⁸ Ch. 604 of the Acts of 2025.

⁹ The Fiscal and Policy Note for the 2025 BRFA estimated that total special fund revenues would increase by at least \$6.2 million annually, beginning in Fiscal Year 2026.

¹⁰ Conference Committee Amendments to Senate Bill 284, Amendment No. 11.

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that the effect of the amendments is that some Maryland taxpayers will be able to reduce their *federal* tax liability, but the amendments are not expected to affect State finances. We recognize we did not raise concerns about provisions in last year's BRFA that also amended TG § 10-102.1 and, like this year's amendments, were expected to have no impact on State finances. However, we caution that including these provisions in the BRFA can raise concerns under the one subject requirement of the State Constitution because they do not, in our view, relate to the subject of balancing the budget and adjusting the finances of State and local government.

Prescription Drug Monitoring Program – Data Retention

Amendments to HG § 21-2A-04 (pages 20-21 of the enrolled bill) modify requirements for the retention of certain data under the Prescription Drug Monitoring Program ("Program"). Under current law, regulations adopted by the Secretary of Health must establish requirements for the Program's "retention of prescription monitoring data and naloxone data for 3 years." The BRFA deletes the requirement that the data be retained "for 3 years," thereby giving the Secretary of Health the discretion to promulgate regulations that establish a different data retention period. Current regulations require the Program to retain prescription monitoring data and naloxone data "for 5 years from the date of receipt." COMAR 10.47.07.09.F.

It has been suggested that the amendments to HG § 21-2A-04 would allow the Secretary to promulgate regulations providing for a shorter retention period, which could, in turn, produce ongoing savings within the Program. But any savings that might accrue to the Program are purely speculative. Moreover, they do not flow directly from changes made by the BRFA but depend on how the Secretary of Health exercises the new regulatory discretion. In our view, the amendments made to § 21-2A-04 are best characterized as a general policy or programmatic change, as opposed to a measure adopted for the purpose of balancing the State budget. If one were to accept that a general programmatic change like this may be made through the BRFA any time the change could, in theory, lead to some savings, the BRFA could easily evolve into the sort of wide-ranging omnibus legislation that the Constitution's one subject requirement was intended to prohibit.

The BRFA plays an important role in the budget process, and it is central to satisfying the constitutional requirement that the State budget be balanced. We caution that including general programmatic changes in the BRFA, like the one made to HG § 21-2A-04, may invite legal challenges.

Suspension of Local Law Enforcement Grants

We have similar concerns about new PS § 4-510, which appears on pages 28-29 of the BRFA. That provision directs the Comptroller to suspend payment to a county or qualifying municipality of grants from the Police Protection Fund and "any enhanced or discretionary funding for police protection" if the county or municipality is certified as not complying with State law related to immigration enforcement agreements. To be sure, the State might see savings if a local jurisdiction fails to come into compliance before withheld funds revert to the State Treasury at the end of a given fiscal year. But, despite the possible savings to the State, the purpose of PS § 4-510 is not to balance the State budget. Rather, the clear purpose of that provision is to induce compliance with State law as it relates to immigration enforcement agreements.

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In closing, we again caution against including provisions in BRFAs that do not directly enhance revenues, decrease expenditures, or otherwise serve to balance the budget or adjust State finances. We note with concern that this year's BRFA contains a significantly greater number of provisions raising constitutional questions under the one subject requirement than we have identified in recent years. In our bill review letters for the BRFAs enacted in 2023, 2024, and 2025, we identified two, three, and two such provisions, respectively. This year, we identify six. As we noted at the outset, it is our view that a court likely would find discrete provisions in this year's BRFA, if deemed unconstitutional, to be severable from its other provisions, but how a court would ultimately rule on any particular provision is a question that cannot be resolved in the bill review process. 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 traditionally used by this Office, which would then limit the General Assembly's ability to adopt budget balancing measures through a single omnibus bill.

Sincerely,

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

Anthony G. Brown

cc: The Honorable Susan C. Lee, Secretary of State
Jeremy Baker, Chief Legislative Officer
Victoria L. Gruber, Exec. Director of DLS