Agenda Item 3.3
March 23, 2010
Introduction

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 11-10, FY2011 Budget Reconciliation and Financing

Expedited Bill 11-10, FY2011 Budget Reconciliation and Financing, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on March 23, 2010. A public hearing is tentatively scheduled for May 4 at 7:30 p.m.

According to the Executive, Bill 11-10 would implement the FY 2011 operating and capital budgets by:

(1) authorizing the County to pledge the water quality protection charge as security for certain debt obligations;
(2) transferring the County's equal employment opportunity program from the Office of Human Resources to the Office of Human Rights;
(3) authorizing the County to impose and collect a fee to recover costs generated by providing emergency medical services transports;
(4) increasing the fuel-energy tax; and
(5) suspending for the next 2 fiscal years the current requirement that portions of the recordation tax be allocated to: (a) the cost of County Government capital projects; and (b) rental assistance programs for low and moderate income households.

As the County Executive's memo acknowledges on ©14-15, the wide range of subjects in this Bill raises the question of compliance with the "one-subject rule" that was inserted in County law last year (see Bill 31-09) at County Code §2-82(a)(1). The Executive argued that the Attorney General has upheld similar state laws for compliance with the similar state constitutional requirement, and the County Attorney cited a recent Attorney General opinion to that effect (see ©16-23). Council staff has not concluded whether we agree with the Executive and County Attorney on this issue.

A somewhat related issue is whether this Bill, if enacted as introduced, would be subject to referendum under County Charter §114. That Charter provision allows "any legislation enacted by the Council" to be referred to the voters on a timely filed petition with sufficient

signatures. However, §114 excludes, among other laws, any "legislation (1) appropriating money or imposing taxes". We understand that the County Attorney is prepared to argue that enacting an increase in the fuel-energy tax in this Bill, as proposed, would insulate the entire Bill from being subject to a referendum. On this issue, we have also not reached a firm conclusion.

In any case, neither of these legal issues is well settled and both could ultimately be decided through time-consuming appellate litigation. In reviewing this Bill, the Council should assess the likelihood that such litigation could further postpone the receipt of revenue or budget savings assumed to result from enacting this Bill.

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Expedited Bill No. 11-10
Concerning: FY 2011 Budget Reconciliation and Financing
Revised: 3-19-10 Draft No. 1
Introduced: March 23, 2010
Expires: September 23, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) implement the FY 2011 County operating and capital budgets;
(2) authorize the County to pledge the water quality protection charge as security for certain debt obligations;
(3) transfer the County's equal employment opportunity program from the Office of Human Resources to the Office of Human Rights;
(4) authorize the County to impose and collect a fee to recover costs generated by providing emergency medical service transports;
(5) provide for a schedule of emergency medical services transport fees, fee waiver criteria, permitted uses of fee revenues, and other procedures to operate the emergency medical services fee program;
(6) prohibit a Local Fire and Rescue Department from imposing a separate emergency medical services transport fee;
(7) require the Executive to issue certain regulations to implement an emergency medical services transport fee;
(8) require a certain annual transfer be made as payment of residents' uninsured portion of the emergency medical services transport fee;
(9) generally amend County law regarding the provision of emergency medical services;
(10) increase the fuel-energy tax;
(11) generally amend the fuel-energy tax;
(12) amend County law requiring the allocation of certain revenue received from the recordation tax; and
(13) generally provide for the financing of the County budget and the implementation of cost saving measures.

By amending
Montgomery County Code:

Chapter 2, Administration
Section 2-64I, Functions.

Chapter 19, Erosion, Sediment Control and Stormwater Management
Section 19-35, Water Quality Protection Charge.

Chapter 27, Human Rights and Civil Liberties
Section 27-4, Office of Human Rights.

Chapter 52, Taxation
Section 52-14, Fuel-energy tax.

Laws of Montgomery County 2009
Chapter 17

By adding
Montgomery County Code:
Chapter 21, Fire and Rescue Services
Section 21-23A. Emergency Medical Services Transport Fee

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 2-64I is amended as follows:

2-64I. Functions.

The Office of Human Resources has the following functions:

(a) Under the administration of the Chief Administrative Officer, supervise the County merit system in accordance with the County Charter[,] and local, state, and federal laws[, rules] and regulation.

(b) Assist all appointing authorities in [the implementation of] implementing merit system [charter] provisions and [the] personnel regulations [of the county executive].

(c) Assist the County Executive in [the development and administration of] developing and administering a career service and [in the administration of] a comprehensive management personnel program.

(d) Provide cooperative personnel services to political subdivisions of [Montgomery] the County or agencies supported in whole or in part by County taxes [levied by the county council] and [to] the [Montgomery County] Revenue Authority.

(e) Perform related duties as assigned.

(f) [Develop and administer the equal employment opportunity program, unless this responsibility is transferred to the office of the chief administrative officer in accordance with the termination provision of chapter 1, section 5 of the 1981 Laws of Montgomery County.

(g)] Administer the County employee complaint/grievance procedures.

Sec. 2. Section 19-35 is amended as follows:

19-35. Water Quality Protection Charge.

* * *

(f) The Director must deposit funds raised by the Charge, and funds for this purpose from any other source, into a stormwater management

28 fund. Funds in the stormwater management fund may be applied and
29 pledged to pay debt service on debt obligations to finance the
30 construction and related expenses of stormwater management
31 facilities as approved in the Capital Improvements Program. [The]
32 Funds in the stormwater management fund must only be
33 [appropriated] used for:
34 (1) construction, operation, financing, and maintenance of
35 stormwater management facilities, and related expenses,
36 including debt service payments related to construction and
37 related expenses of stormwater management facilities;
38 * * *
39 **`Sec. 3. Section 21-23A is added as follows:**
40 **21-23A. Emergency Medical Services Transport Fee.**
41 (a) *Definitions.*
42 In this Section the following terms have the meanings indicated:
43 (1) *Emergency medical services transport* means transportation by
44 the Fire and Rescue Service of an individual by ambulance or
45 other Fire and Rescue Service vehicle used for a similar
46 purpose. *Emergency medical services transport* does not
47 include transportation of an individual under an agreement
48 between the County and a health care facility.
49 (2) *Federal poverty guidelines* means the applicable health care
50 poverty guidelines published in the Federal Register or
51 otherwise issued by the federal Department of Health and
52 Human Services.
53 (3) *Fire and Rescue Service* includes each local fire and rescue
54 department.

55 (b) *Imposition of fee.* The County must impose a fee for any emergency
56 medical services transport provided in the County and, unless
57 prohibited by other law, outside the County under a mutual aid
58 agreement.
59 (c) *Liability for fee.* Subject to subsection (d), each individual who
60 receives an emergency medical services transport is responsible for
61 paying the emergency medical services transport fee.
62 (d) *Hardship waiver.*
63 (1) The Fire Chief must waive the emergency medical services
64 transport fee for any individual whose household income is at or
65 below 300 percent of the federal poverty guidelines. An
66 individual must request a waiver on a form approved by the Fire
67 Chief.
68 (2) The Fire Chief may deny a request for a waiver if an individual
69 who claims financial hardship under this Section does not
70 furnish all information required by the Fire Chief.
71 (e) *Payment of Residents' Uninsured Portion of the Emergency Medical*
72 *Services Transport Fee.*
73 (1) Tax revenues received by the County must be treated as
74 payment, on behalf of County residents, of the balance of each
75 resident's portion of the emergency medical services transport
76 fee that is not covered by the resident's insurance.
77 (2) The County Council must annually transfer from the General
78 Fund to the Consolidated Fire Tax District Fund an amount that
79 the Council estimates will not be covered by residents'
80 insurance as payment of all residents' uninsured portion of the
81 emergency medical services transport fee.

82 (f) *Obligation to transport.* The Fire and Rescue Service must provide
83 emergency medical services transport in accordance with applicable
84 medical protocols to each individual without regard to the individual's
85 ability to pay.
86 (g) *Restriction on Local Fire and Rescue Departments.* A local fire and
87 rescue department must not impose a separate fee for an emergency
88 medical transport.
89 (h) *Use of revenue.* Except for the transfer received from the General
90 Fund under subsection (e) and in the first fiscal year this fee is
91 implemented, the revenues collected from the emergency medical
92 services transport fee must be used to supplement, and must not
93 supplant, existing expenditures for emergency medical services and
94 other related fire and rescue services provided by the Fire and Rescue
95 Service.
96 (i) *Regulations; fee schedule.* The County Executive must adopt a
97 regulation under method (2) to implement the emergency medical
98 services transport fee program. The regulation must establish a fee
99 schedule based on the cost of providing emergency medical services
100 transport. The fee schedule may include an annual automatic
101 adjustment based on inflation, as measured by an index reasonably
102 related to the cost of providing emergency medical services transports.
103 The regulation may require each individual who receives an
104 emergency medical services transport to provide financial
105 information, including the individual's insurance coverage, and to
106 assign insurance benefits to the County.
107 **Sec. 4. Sec. 27-4 is amended as follows:**
108 **27-4. Office of Human Rights.**

109 * * *

110 (b) (1) The County Executive may assign additional staff to assist the
111 Commission in carrying out this Article. The Commission
112 may, with the approval of the County Executive, engage the
113 services of volunteer workers and volunteer consultants, who,
114 subject to [appropriations] appropriation, may be reimbursed
115 for out-of-pocket expenses incurred in performing volunteer
116 services. Services of an individual as a volunteer worker or
117 consultant must not be considered as [service of] employment
118 in any County or state merit system [of the county or state].
119 (2) If the Commission and the County Attorney [determine] agree
120 that a representational conflict exists [within] in the County
121 Attorney's office, [then] the County Attorney may employ
122 special legal counsel to represent the Commission, after
123 [consultation with] consulting the Commission, [and approval
124 by] if the County Council approves.
125 (3) The Director may receive sworn complaints alleging
126 discrimination that violates this chapter.
127 (4) Before a complaint is certified to the Commission under
128 Sections 27-7(f)(2) or (g)(4), the Director may investigate,
129 resolve, or conciliate the complaint.
130 (5) The Director may issue regulations under method (2) to [carry
131 out] perform the responsibilities of the Director and the Office
132 of Human Rights under this Article.
133 (6) The Director must [carry out] perform any other [duties
134 described] duty specified in this Chapter.

135 (7) The Director must develop and administer the County's equal
136 employment opportunity program.
137 * * *
138 **Sec. 5. Section 52-14 is amended as follows:**
139 **52-14. Fuel-energy tax.**
140 (a) A tax is levied and imposed on every person transmitting, distributing,
141 manufacturing, producing, or supplying electricity, gas, steam, coal,
142 fuel oil, or liquefied petroleum gas in the County. Beginning on July
143 1, 2010, the tax rates in dollars are:
144 (1) For fuel-energy transmitted, distributed, manufactured,
145 produced, or supplied for residential and agricultural purposes:

FUEL-ENERGY	TAX RATE
Electricity (per kilowatt hr)	$0.0072924198
Natural Gas (per therm)	$0.0628010617
Steam (per therm)	$0.0822605134
Coal (per ton)	$18.6267531744
Fuel oil (per gallon):	
No. 1	$0.0899987212
No. 2	$0.0933631594
No. 3	$0.0933631594
No. 4	$0.0955500442
No. 5	$0.0974004852
No. 6	$0.0995873700
Liquefied petroleum gas (per pound)	$0.0135686262

146 (2) For fuel-energy transmitted, distributed, manufactured,
147 produced, or supplied for non-residential purposes:

FUEL-ENERGY	TAX RATE
Electricity (per kilowatt hr)	$0.0193251926
Natural Gas (per therm)	$0.1664230814
Steam (per therm)	$0.2179903605
Coal (per ton)	$49.3578373320
Fuel oil (per gallon):	
No. 1	$0.2384966112
No. 2	$0.2474123724
No. 3	$0.2474123724
No. 4	$0.2532076172
No. 5	$0.2581112858
No. 6	$0.2639065305
Liquefied petroleum gas (per pound)	$0.0359568595

The County Council [must] may set the rates for various forms of fuel and energy by resolution adopted according to the requirements of Section 52-17(c). The Council may, from time to time, revise, amend, increase, or decrease the rates, including establishing different rates for fuel or energy delivered for different categories of final consumption, such as residential or agricultural use. The rates must be based on a weight or other unit of measure regularly used by [such] persons in the conduct of their business. The rate for each form of fuel or energy should impose an equal or substantially equal tax on the equivalent energy content of each form of fuel or energy for a particular category of use. The tax does not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in interstate commerce through the County if the tax

161 would exceed the taxing power of the County under the United States
162 Constitution. The tax does not apply to fuel or energy converted to
163 another form of energy that will be subject to a tax under this Section.
164 The tax must not be imposed at more than one point in the
165 transmission, distribution, manufacture, production, or supply system.
166 The rates of tax apply to the quantities measured at the point of
167 delivery for final consumption in the County.

168 * * *

169 **Sec. 6. Chapter 17 of the Laws of Montgomery County 2009 is amended**
170 **as follows:**

171 * * *

172 **Sec. 3. Allocation of Revenue.** During any fiscal year that begins on or after
173 July 1, [2010] 2012, the net revenue attributable to the increase in the rate of the
174 recordation tax enacted in this Act must be reserved for and allocated equally to:
175 (a) the cost of County government capital improvements; and
176 (b) rental assistance programs for low- and moderate-income households,
177 which must not be used to supplant any otherwise available funds.

178 **Sec. 7. Transition.**

179 After section 4 of this Act takes effect, the Director of the Office of Human
180 Resources and the Director of the Office of Human Rights must cooperate to ensure
181 that the equal employment opportunity officer in the Office of Human Rights first
182 processes each complaint filed under the County's equal employment opportunity
183 program. Any reference in this context in any County regulation to the Office of
184 Human Resources Director or Office of Human Resources staff must be treated as
185 referring to the Office of Human Rights Director and the Office of Human Rights
186 staff, respectively.

187 **Sec. 8. Expedited Effective Date.**

188 The Council declares that this legislation is necessary for the immediate
189 protection of the public interest. This Act takes effect on the date when it becomes
190 law.
191 *Approved:*
192
193
194 Nancy Floreen, President, County Council Date
195 *Approved:*
196
197
198 Isiah Leggett, County Executive Date
199 *This is a correct copy of Council action.*
200
201
202 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 11-10
FY 2011 Budget Reconciliation and Financing Act

DESCRIPTION: This Bill would implement the FY 2011 operating and capital budgets by: (1) authorizing the County to pledge the water quality protection charge as security for certain debt obligations; (2) transfer the County's equal employment opportunity program from the Office of Human Resources to the Office of Human Rights; (3) authorize the County to impose and collect a fee to recover costs generated by providing emergency medical services transports; (4) increase the fuel-energy tax; and (5) suspend for one year the current requirement that portions of the recordation tax be allocated to: (a) the cost of County Government capital projects; and (b) rental assistance programs for low and moderate income households.

PROBLEM: In order to meet current fiscal challenges facing the County, the County must increase the amount of revenue available to maintain core Government programs and services.

GOALS AND OBJECTIVES: To enhance the amount of revenue available to support core government programs and services.

COORDINATION: Office of Management and Budget; Department of Finance; Fire and Rescue Service; Office of Human Rights

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: Subject to the general oversight of the County Executive and the County Council.

EXPERIENCE ELSEWHERE: Many jurisdictions in the regions have imposed an emergency medical services transport fee.

SOURCES OF INFORMATION: Joseph Beach, Director of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
Richard Bowers, Chief, Fire & Rescue Service
Marc Hansen, Acting County Attorney

APPLICATION WITHIN MUNICIPALITIES: Yes.

PENALTIES: Certain provisions subject to Class A violation.

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 18, 2010

2010 MAR 19 AM 9:26

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive

SUBJECT: FY 2011 Budget Reconciliation and Financing Act

I am attaching for Council's consideration a Budget Reconciliation and Financing Act (BRFA) which makes changes to the County Code that are necessary to reconcile my recommended FY 2011 operating budget with projected FY 2011 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement will be transmitted to Council soon.

The BRFA consists of five primary components. First, it increases the energy tax rates. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it allows revenues generated by the Water Quality Protection Charge to be used to pay debt service on bonds that fund stormwater management infrastructure projects. Fourth, it transfers responsibility for administering equal employment opportunity programs from the Office of Human Resources to the Office of Human Rights. Fifth, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

As the Council knows, the County's energy tax is actually a tax on fuel oil, natural gas, and electric utility providers which is passed on to all utility customers. Because the energy tax is a broad-based tax, its impact on families is reduced by the fact that it is paid by businesses and households, and all levels of government, including federal agencies located in the County (that currently do not pay any other major County tax). Additionally, the energy tax is a consumption tax based on energy usage. It is not based on the overall size of the utility bill or the cost per unit of energy used as billed to the consumer. Therefore, the amount of the tax can be lessened by reduced energy usage. Based on existing usage patterns for the average homeowner, my recommended FY 2011 budget assumes an average increase in the energy tax of approximately $2.90 per month. I have also recommended additional funding in the Health and

Human Services budget for the County's Energy Assistance Program to minimize the impact to low-income households.

My recommended FY11 budget contains several efforts to restructure County Government to improve responsiveness and efficiency. One of these changes is the transfer of the Equal Employment Opportunity program from the Office of Human Resources to the Office of Human Rights. This shift takes advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community. This bill modifies the County code provisions relating to the responsibilities of the Office of Human Resources and Office of Human Rights to reflect this change.

The EMS Transport Fee is needed to fund fire and rescue services in the County. Without this fee, emergency response to residents will be impaired. EMS Transport Fees are widely employed throughout the nation and by local governments throughout the Washington region. These jurisdictions have not experienced any indication that people decline to use emergency transports as a result of the imposition of an ambulance fee. By creating a prepaid fund for uninsured County residents, the legislation that I am transmitting imposes a fee only on County residents with health insurance which covers EMS Transports. This arrangement more equitably distributes the economic burden of providing EMS transport services in the County between residents and nonresidents. The legislation provides for a hardship waiver for nonresidents who fall below 300 percent of federal poverty guidelines.

To provide the Council with a complete picture of the EMS Transport Fee program created by this bill, I am attaching a copy of the proposed Executive Regulation to implement the fee. This proposed regulation will be published in the April 2010 County Register and submitted to Council after the 30-day public comment period ends on April 30.

Finally, I note that the BRFA is consistent with Bill 31-09, Consideration of Bills – One Subject (enacted on September 29, 2009), which requires that a bill "contain only one subject matter". As noted in the Council staff packet for Bill 31-09, that bill was intended to adopt the "one subject rule" of the Maryland Constitution, which requires all laws enacted by the General Assembly to contain only one subject. The Maryland Attorney General has repeatedly concluded that budget reconciliation and financing bills do not conflict with the one subject rule. For example, in 2005, the Attorney General noted that "[f]or the past fourteen years, 15 budget reconciliation, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations."[1] The Attorney General concluded that all of those bills were consistent with the one subject rule because the provisions of the bills were "clearly germane to the single subject of financing State and local government". *See Panitz v. Comptroller of the Treasury*, 247 Md. 501 (1967) (Omnibus supplemental appropriation bill comprised a single subject for purposes of § 29 of Art III of the State Constitution even though

[1] See May 19, 2005 memorandum from Attorney General J. Joseph Curran, Jr. to Governor Robert Ehrlich regarding House Bill 147 (2005).

the bill combined such diverse elements as police aid to local government; teacher salaries and pensions; and general unrestricted grants to local government).

Attachments (3)

cc: Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Finance Department
Joseph Beach, Director, OMB
Kathleen Boucher, ACAO
Richard Bowers, Fire Chief, MCFRS
Marc Hansen, Acting County Attorney
Robert Hoyt, Director, DEP
Richard Y. Nelson, Jr., Director, DHCA
James Stowe, Director, Office of Human Rights

P-HB 147

J. Joseph Curran, Jr.
Attorney General

Donna Hill Staton
Deputy Attorney General

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

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Kathryn M. Rowe
Sandra J. Cohen
Assistant Attorneys General

The Attorney General of Maryland

Office of Counsel to the General Assembly

May 19, 2005

The Honorable Robert L. Ehrlich, Jr.
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

Re: House Bill 147

Dear Governor Ehrlich:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 147, "Budget Reconciliation and Financing Act of 2005." In reviewing the bill, we have considered whether it violates the one subject requirement under the Maryland Constitution. While questions may be raised about certain mandated funding provisions, we conclude that the bill does not violate the one subject requirement. Further, although the bill may be signed into law, there are several legislative veto provisions, the intent of which was not to create new legislative vetoes, but which are of doubtful constitutional validity. It is our view, however, that those provisions are severable and that the bill may be given effect. Finally, we write to discuss the bill's interaction with HB 170, SB 306, and SB 716/HB 627.

I. One Subject

In relevant part, Section 29 of Article III of the Maryland Constitution provides that "every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." We have reviewed the bill in relation to the consolidation of HB 147, "Budget Financing Act of 2005," HB 148, "Budget Reconciliation Act of 2005," and HB 149, "Tax Compliance;" the inclusion of multi-year provisions; and mandated funding provisions. On the basis of the history of budget reconciliation / financing measures, relevant cases such as *Panitz v. Comptroller*, 247 Md. 501 (1967) and *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437 (1987), and our prior advice letters, which we review below, we believe HB 147 would not violate the single subject requirement of Article III, § 29.

104 Legislative Services Building · 90 State Circle · Annapolis, Maryland 21401-1991
410-946-5600 · 301-970-5600 · Fax 410-946-5601 · TDD 410-946-5401 · 301-970-5401

History

A budget reconciliation and financing act is legislation specifically authorized by Article III, §52(13) of the Maryland Constitution, which provides that "[t]he General Assembly may, from time to time, enact such laws not inconsistent with this section, as may be necessary and proper to carry out its provisions." It is clearly designed to carry out the constitutional obligation imposed on both the Governor and the General Assembly to achieve a balanced budget. Article III, §52(5a).[1]

For the past fourteen years, 15 budget reconciliation acts, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations.[2] Such bills are often heavily amended and most have attempted to deal with

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[1] Because under Article III, §52(14) of the Constitution, actions taken under the Budget Amendment prevail over other provisions of the Constitution, it might be argued that the one-subject requirement of Article III, §29 does not apply to legislation intended to balance the budget now and in future years. However, for purposes of this review, we have assumed the application of Article III, §29.

[2] 1991 Chapter - 470 The Budget Reconciliation Act
1991 Chapter 1 - 1st Special Session Final Budget Reconciliation Act for FY 1991
1991 Chapter 3 - 2nd Special Session Budget Reconciliation Act for FY 1992
1992 Chapter 62 - Second Budget Reconciliation Act for FY 1992
1992 Chapter 269 - Budget Reconciliation Act for FY 1993
1992 Chapter 1 - 1st Special Session Budget Financing Act
1992 Chapter 2 - 1st Special Session Budget Financing Act - Supplementary Provisions
1992 Chapter 3 - 1st Special Session Transportation Revenues and Financing
1992 Chapter 1 - 2nd Special Session Second Budget Reconciliation Act for FY 1993
1993 Chapter 204 - Budget Reconciliation Act of the 1993 Session of the General Assembly
1994 Senate Bill 463 - Vetoed
1996 Chapter 600 - Financing State Government
2002 Chapter 440 - Budget Reconciliation and Financing Act of 2002
2003 Chapter 203 - Budget Reconciliation and Financing Act of 2003
2004 Chapter 430 - Budget Reconciliation and Financing Act of 2004

We should note that Senate Bill 463 of 1994 was vetoed because Governor Schaefer felt that the bill was an intrusion on the Executive's budget powers in that it contained numerous mandated appropriations and none of the usual budget management tools normally found in a budget reconciliation act. Governor's veto letter to the Honorable Thomas V. Mike Miller, Jr. dated May 26, 1994.

budget problems in a comprehensive fashion. While a few bills have been focused on one aspect of financing State government (*e.g.*, Chapter 1 of the 1st Special Session of 1992 was an enormous tax bill that included, among other things, new and expanded sales taxes, changes and increases in income taxes, and new and increased fees), most budget reconciliation acts have included a combination of the budgeting and financing mechanisms mentioned above, reflecting the overall interdependence between revenues and financing.

In their earliest years, the focus of such legislation was to balance the State budget for the coming fiscal year, necessitated by the recession of the early 1990's. However, most budget reconciliation and financing acts have had a combination of one-year, multi-year and permanent provisions proposed by both the Governor and the General Assembly. Even Chapter 470 of 1991 included multi-year provisions. Many, if not most of the provisions of Chapter 1 of the 1st Special Session of 1992 were permanent changes. Chapter 62, *Laws of 1992,* contained two permanent provisions with respect to the Governor's authority over State employees: 1) authority to furlough employees; and 2) authority to eliminate positions without resort to the layoff laws. In this regard, the short title of these bills has also changed over the years. In 1991 and 1992, some, but not all, of the measures' titles reflected the fiscal year for which they were being enacted. However, during and since 1992, the titles of the bills did not make reference to the fiscal year, reflecting the ongoing nature of many of the changes being made therein.

Revenue-generating measures have been a staple of budget reconciliation bills. Chapter 3 of the 2nd Special Session of 1991 included new revenue by requiring the district court and circuit courts to impose an additional court cost on certain defendants. This was continued in Chapter 269 of 1992 and again in Chapter 204 of 1993.[3] That bill also enacted a surcharge on motor vehicle registration. The Budget Reconciliation Acts of 2002 and 2003 included an even greater variety of revenue-generating and budget-saving mechanisms.

More than just a mere aid to Executive budget decisions, a budget reconciliation and financing act is both substantive legislation to be construed in *pari materia* with the budget bill and a legislative response to Executive or Judicial Branch budget decisions proposed there and in other legislation. For example, in this year's bill, in response to a substantial pay raise for judges included in the budget bill, the Legislature responded in the BRFA by precluding recommendations of such increases for a four year period. In response to an Executive decision to eliminate funding in the budget bill for prevailing wage enforcement and to

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[3] Part of this revenue was earmarked for a "Judicial Assistance Fund" sought by the Judicial Branch. *See* Chapter 224, *Laws of 1993.*

eliminate the entire program in BRFA, the General Assembly responded in the BRFA by mandating funding for this function in future years.

This year, HB 147 consolidates into one bill provisions necessary to bring the fiscal 2006 budget into balance. It does this by providing relief from mandated funding levels, expanding the uses of certain special funds, creating new revenues from increased fees, and redirecting certain special fund revenues to the general fund. The bill also contains provisions to ensure funding of legislative priorities,[4] such as health benefit levels for State employees, the Employment Standards and Prevailing Wage units in the Department of Labor, Licensing and Regulation, and child care funds.[5]

Prior Advice

This Office has consistently found budget reconciliation and financing acts constitutional and not in violation of Article III, §29, the one-subject rule.[6] In May 1991, we stated that the various provisions of HB 206 were "clearly germane to the single subject of

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[4] In light of the Governor's budget powers under Article III, §52 of the Maryland Constitution, we believe provisions in HB 147 which purport to mandate spending in fiscal year 2006 are directory. For example, Section 23 of the bill provides that in fiscal year 2006, $1.5 million of the State's share of funds available under Program Open Space shall be used to make a grant to Baltimore City.

[5] Last year, Senate Bill 508, as introduced, proposed increases or provided for increases in no fewer than 50 fees for licenses, certificates and filings, and it made numerous other fees non-refundable. Further, Senate Bill 508 proposed an income tax on individuals who are subject to the state income tax but not county income taxes. These fee increases and taxes were not made solely for FY 2005, but were made permanent by the bill, as introduced. Additionally, Senate Bill 510 (Budget Reconciliation Act of 2004) in addition to making several changes applicable for FY 2005 only, made numerous permanent changes (*e.g.*, repeal of electricity utility generating equipment property tax grants, reduction in mandated allowance for senior citizen activities centers, increase in local share of the cost of educating children with disabilities, repeal of Governor's Teacher Salary Challenge Grant Program, reduction in mandated appropriation for Tobacco Use Reduction activities, and de-mandate for certain fee revenue in the lead Poisoning Prevention Fund to be used for the Community Outreach and Education Program).

[6] We have not considered the issue of whether the inclusion in a BRFA of a funding mandate authorized by Art. III, § 52(11) & (12) would not be subject to Art. III, § 29 because of the provisions of Art. III, § 52(14) ("In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the Constitution, the provisions of this Section shall prevail.")

financing State and local government." Bill review letter on House Bill 206 dated May 16, 1991. In October of 1991, we said that "House Bill 20 attempts to address, in a comprehensive fashion, Maryland's continuing budget shortfall ... by a combination of reduction authorizations, restorations, and, in one instance, a revenue raiser [and] deal[s] with a single subject, namely budget balancing." Bill review letter on Senate Bill 34 dated October 17, 1991.[7]

Relevant caselaw

The single subject requirement does not prevent all omnibus legislation. In *Panitz v. Comptroller,* 247 Md. 501, 509-12 (1967), the Court of Appeals said that "an omnibus bill" raising revenue, reforming taxes and financing various programs would pass muster under Article III, §29. Also relevant to the constitutionality of HB 147 are referendum cases such as *Kelly v. Marylanders for Sports Sanity, supra,* and *Winebrenner v. Salmon,* 155 Md. 563 (1928), which recognized the mutual interdependence of revenue-raising and budget measures and which refuse to confine that interdependence to a single fiscal year. *See* 310 Md. at 456-58 at 461; and 155 Md. at 567. *See also* 12 *Opinions of the Attorney General* 228, 234 (1927). The rationale of the cases is that multi-year budget-balancing, financing and revenue-raising are all sides of the same coin. Budget problems are rarely confined to a single year and a solution is rarely limited to a single mechanism. In our view, a Maryland court would recognize this fact and uphold a measure such as HB 147.[8]

Summary

While the discussion above demonstrates the comprehensiveness of such bills historically, questions and issues have arisen with regard to the bill's legal sufficiency. An

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[7] *See also* Bill Review letter on SB 508 dated May 20, 2004; Advice letter to Mr. William S. Ratchford, II from Assistant Attorney General Richard E. Israel dated January 24, 1991; Advice letter dated October 11, 1991 to the Honorable Christopher Van Hollen, Jr. from Assistant Attorney General Robert A. Zarnoch; Advice letter dated April 11, 1993 to Mr. William S. Ratchford, II from Assistant Attorney General Richard E. Israel; and Advice letter dated March 22, 1995 to the Honorable Sheila E. Hixson from Assistant Attorney General Richard E. Israel.

[8] Legislation such as HB 147 is different from those statutes invalidated by the Court of Appeals as one-subject questions over the last 15 years. *See e.g., Delmarva Power & Light Co. v. PSC,* 371 Md. 356 (2002). The components of the three bills introduced by the Governor and passed as HB 147 are not narrow provisions joined at the last minute by a tenuous connection to a broad amorphous subject or after rejection of a controversial component. Budget reconciliation and financing acts are by their very nature comprehensive as introduced and comprehensive as enacted.

argument can be made that the genesis of budget reconciliation acts was to help bring the State's budget into balance during a time of fiscal crisis, and that funding mandates have no place in such legislation. For example, the .5% increase in lottery agent commissions specifically has been mentioned as having no relationship to balancing the fiscal year 2006 budget or to any action taken in the Budget Bill.[9] Under such circumstances, this severable provision is the hardest to defend. More defensible are legislative reactions to budget action taken by the Executive, in either the Budget Bill or BRFA. It can be argued that these are a legitimate exercise of policy making power granted to the legislature. For example, the Budget Bill "zeroed out" the Prevailing Wage and Employment Standards units within the Department of Labor, Licensing and Regulation, and the Budget Reconciliation Act (HB 148), as introduced, would have repealed the Prevailing Wage Law. The General Assembly's response was to reject that change. Reasonable arguments can be made to both support or challenge these types of action. However, to the extent these types of provisions continue to multiply and grow more distant from the business of financing State government in the ways previously described, they may invite a serious constitutional challenge to the BRFA.

II. Legislative Veto

HB 147 amends various sections of the State Finance and Procurement Article (SFP) to provide for the approval of certain budget amendments by the Legislative Policy Committee (LPC), which amounts to a "legislative veto." First in SFP § 7-310, a transfer by budget amendment from the Dedicated Purpose Account to the expenditure account of a unit of State government and a transfer to the Revenue Stabilization Account of funds no longer needed for the purpose for which they were originally appropriated are made subject to approval by LPC. Similarly, under SFP § 7-314, economic development opportunities are made subject to LPC approval. Additionally, the authority to transfer funds by budget amendment from the Catastrophic Event Account to the expenditure accounts of a unit of State government is made subject to LPC approval in SFP § 7-324.

This action was apparently taken to reverse the action taken to remove those mechanisms in the 2004 Budget Reconciliation and Financing Act, Chapter 430, Laws of

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[9] It has been suggested that this increase was intended to help offset projected lost revenues by small businesses in the event slot machine legislation passes. The fiscal notes on HB 1361 and SB 205 (video lottery terminal legislation) project a 10%-15% reduction in lottery revenues due to a substantial substitution of consumer spending away from lottery sales. If this were the purpose of the provision, it is more appropriate to include it in separate legislation relating to that subject.

Maryland 2004, and to restore the longstanding submission provisions cited above. Since the late 1980's, this Office has consistently advised that legislative veto provisions in the exercise of constitutional budget powers have no support in case law and are of doubtful validity. *See* Bill Review Letter on SB 856 dated May 3, 2002; Bill Review Letter on SB 355 dated May 12, 1998; and Bill Review Letter on HB 1062 dated May 22, 1989. If the legislative veto provisions are deemed invalid, they are clearly severable. *See* Bill Review Letter on SB 355, *supra*, and Section 36 of HB 147.

III. Interaction with Other Legislation

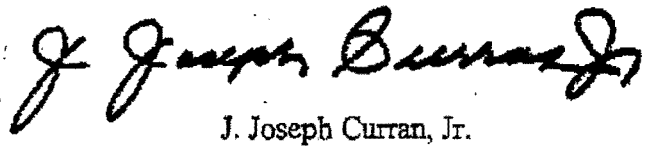
We also write to discuss the interaction between HB 147 and HB 170. HB 147 amends Tax - General Article (TG), § 10-910(b)(2), which limits the number of exemptions upon which an employer may base the employee's withholding if the Comptroller notifies the employer that an employee has an unpaid tax liability, to include the circumstance where an employee is subject to a tax refund interception request. HB 170 amends the same provision to include the circumstance where the Comptroller notifies the employer that an employee has failed to file a required Maryland income tax return. There is no conflict between these two bills, and both may be given effect.

HB 147 amends Tax-Property Article (TP), §13-209(f) to require $21,776,868 of the transfer tax collected but not appropriated or transferred in fiscal year 2004 to be transferred to the general fund. SB 306 amends the same section to provide that, in any fiscal year in which an appropriation or transfer is made to the general fund, if the actual transfer tax revenue collections for the prior fiscal year exceed the budget estimate for the prior fiscal year, the excess shall be allocated in the current fiscal year among Program Open Space, the Agricultural Land Preservation Fund, the Rural Legacy Program, and the Heritage Conservation Fund. It is our view that there is no conflict between the two provisions because the transfer in HB147 is only a fiscal year 2006 transfer of 2004 transfer tax revenues. SB 306 should be read prospectively, with effect for fiscal year 2007 and thereafter.

Finally, we write to discuss the interaction between HB 147 and SB 716/HB 627, "Community Health Care Access and Safety Net Act of 2005." SB 716 and HB 627 are nearly identical comprehensive bills that establish the Maryland Community Health Resources Commission to increase access to health care for lower-income individuals and provide resources to community health resource centers around the State. The bills also implement a variety of programs, grants, federal waivers for Medicaid expansion, and studies. HB 147 and SB 716/HB 627 amend in identical fashion Health-General Article (HG), § 19-727 and § 6-101 of the Insurance Article (IN) to exempt from the insurance premium tax a nonprofit health

maintenance organization (HMO) that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code. The bills also add IN, § 6-121 to require a nonprofit HMO to transfer an amount equal to the value of the HMO's premium tax exemption to the Medical Assistance Account under HG, Title 19, Subtitle 8. While nearly identical, SB 716/HB 627 contain an additional provision not included in HB 147. (see SB 716, page 30, lines 28-40 and HB 627, page 46, lines 6-18). That provision provides, beginning in fiscal year 2008, for the transfer of certain excess funds to the Community Health Resources Commission Fund established by the bills. This provision does not present any conflict and both bills may be given effect. We also write to note that these provisions in HB 147 take effect on June 1, 2005 while the provisions in SB 716/ HB 627 take effect on July 1, 2005. If both bills are signed, the provisions that are in both bills will take effect on June 1, 2005.

Very truly yours,



J. Joseph Curran, Jr.
Attorney General

JJCjr/BAK/as

cc: Kenneth H. Masters
Secretary of State
Karl Aro

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Emergency Medical Service Transport Fees	**Number**
Originating Department Montgomery County Fire and Rescue Service	**Effective Date**

Montgomery County Regulation on

EMERGENCY MEDICAL SERVICE TRANSPORT FEES

Issued by: County Executive
Regulation No. _____
COMCOR: Chapter 21
Authority: Code Section 21-23A
Supersedes: N/A
Council Review: Method (2) under Code Section 2A-15
Register Vol. ____ No. ____
Effective Date: Date Bill XX-10, "FY 2011 Budget Reconciliation and Financing Act" becomes effective
Comment Deadline: April 16, 2010

Summary: This Regulation establishes: (1) An emergency medical services transport fee schedule; and (2) a requirement that an individual who receives an emergency medical services transport provide certain information and execute an assignment of certain health insurance benefits.

Staff contact: Scott Graham, Assistant Chief, Montgomery County Fire and Rescue Service
(240) 777-2493

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101 Monroe Street, 12th Floor
Rockville, Maryland 20850

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Emergency Medical Service Transport Fees	**Number**
Originating Department Montgomery County Fire and Rescue Service	**Effective Date**

Section 1. Fee Schedule

a. In imposing and collecting the emergency medical services transport fee authorized under Code Section 21-23A, the Fire Chief must comply with all applicable provisions of 42 CFR Parts 410 and 414, *Fee Schedule for payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Non-emergency Ambulance Services.*

b. The Fire Chief must impose the emergency medical services transport fee according to the following schedule:

i. $8.50 per mile, one way, from point of pick up to the health care facility; plus

ii.

• Basic Life Support – Non-emergency*	$300.00
• Basic Life Support – Emergency*	$400.00
• Advanced Life Support – Level 1 – Non-Emergency*	$350.00
• Advanced Life Support – Level 1 – Emergency*	$500.00
• Advance Life Support – Level 2*	$700.00
• Specialty Care Transport*	$800.00

* The terms in the schedule are as defined in 42 CFR Parts 410 and 414.

Section 2. Required Information; Assignment of Benefits.

a. An individual who receives an emergency medical services transport must furnish to the County or the County's designated agent: (i) information pertaining to the individual's health insurer (or other applicable insurer); and (ii) if applicable, financial information that the Fire Chief determines is necessary for determining eligibility for a waiver of the fee.

b. An insured individual who receives an emergency medical services transport must execute an assignment of benefits necessary to permit the County to submit a claim for the fee to the applicable third party payor.

c. The Fire Chief must increase the amount of the fees in the schedule annually by the amount of the Ambulance Inflation Factor (AIF) as published by the Centers for Medicare and Medicaid Services (CMS), United States Department of Health and Human

Services.

Section 3. Severability.

If a court of final appeal holds that any part of this regulation is invalid, that ruling does not affect the validity of other parts of the regulation.

Section 4. Effective Date.

This regulation is effective on the date that Bill XX-10, "FY 2011 Budget Reconciliation and Financing Act" becomes effective.

Approved:

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Isiah Leggett, County Executive