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April 27, 2010

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: *Senate Bill 1128 and House Bill 1568*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 1128 and House Bill 1568, identical bills entitled "Board of Public Works – Licenses to Dredge and Fill on State Wetlands – Working Marinas." In reviewing the bills, we have considered whether they violate the prohibition on special laws in Maryland Constitution, Article III, § 33 and have concluded that they do not.

Senate Bill 1128 and House Bill 1568 permit the Board of Public Works to issue a license to dredge or fill State wetlands for a development project to expand a marina that is located in an area where the water depth is less than 4 ½ feet at mean low water and on a waterway without strong flushing, if the development project enhances aquaculture activities or seafood operations, is located in a marina or seafood operation at a marina operated by a nonprofit organization to promote aquaculture activities or oyster restoration in the State, does not adversely impact submerged aquatic vegetation, and will further the policies of the State related to aquaculture. The section applies only to a project to expand a marina historically operated as a working marina for the sole purpose of supporting aquaculture or seafood operations, and does not apply if the existing or expanded marina is used by recreational or pleasure vessels. Finally, the Board of Public Works may not issue a license unless the development project has any required authorizations from the local planning or zoning authority, as well as an aquaculture lease, a water column lease from the Board or a submerged land lease from the Department of Natural Resources, and a permit from the U.S. Army Corps of Engineers.

The Fiscal and Policy Note on the bills reflects that it is intended to permit the Board of Public Works to issue a license to the Waterman's Trust for a development project to expand an existing marina on Tedious Creek in Dorchester County for "oyster restoration, economic stimulus and recovery, and wetland creation and preservation." The Fiscal and Policy Note further notes that there are currently no proposed projects to which the bills would apply, and they would likely apply in only a "few unique situations" in the future.

Maryland Constitution, Article III, § 33 provides, in relevant part, that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." The "special laws" prohibited have been described as "private Acts, for the relief of particular named parties, or providing for individual cases," *Montague v. State*, 54 Md. 481, 490 (1880), a "special law for a special case," *Jones v. House of Reformation*, 176 Md. 43, 55 (1939), or a law "that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class." *Prince George's County v. B. & O. R. Co.*, 113 Md. 179, 183 (1910).

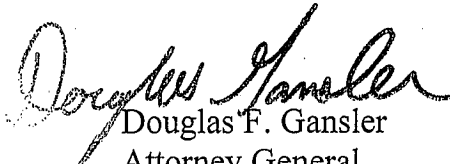
The Court of Appeals has looked to a variety of factors to determine whether a particular statute is an invalid special law. As set out in *Cities Service Company v. Governor*, 290 Md. 553, 569-570 (1981), these are (1) whether the law was actually intended to benefit or burden a particular member or members of a class instead of an entire class; (2) whether the law identifies particular entities; (3) the substance and practical effect of the law; (4) whether a particular individual or business sought and received special advantages from the Legislature or similar individuals or businesses were discriminated against by the law; (5) the public need and public interest underlying the enactment, and the inadequacy of the general law to serve the public need or the public interest; and (6) whether the legislatively drawn classifications are arbitrary and without any reasonable basis. No one of these factors is conclusive. *Id.* at 569.

The Tedious Creek project is not identified in Senate Bill 1128 and House Bill 1568. Moreover, while the bills are clearly intended to aid that project, they are not drafted to cut off other, similar projects. There is no sunset provision, and the conditions set are such that other projects could meet them in the future. The Court of Appeals has repeatedly held that a law that currently applies to a single person, but will apply in the same manner to all who seek to engage in the same activity in the future, is not a special law. *State v. Burning Tree Club*, 315 Md. 254, 275-276 (1989) ("laws affecting only a single entity have been upheld where they can apply, in principle, to other similarly situated entities"). Moreover, the bills are clearly intended to serve important public

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purposes – the furthering of aquaculture and the restoration of the oyster population, and while some of the conditions set are tailored to the situation at the Tedious Creek project, others are clearly imposed to protect these State interests. As a result, the classifications drawn are not arbitrary or without any reasonable basis and cannot be said to violate the prohibition on special laws.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Richard F. Colburn
The Honorable Norman H. Conway
The Honorable John P. McDonough
Joseph Bryce
Karl Aro