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May 10, 2018

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401

***RE: House Bill 236 -- "Prince George's County - Affordable Housing Commission, PG 408-18"***

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 236, "Prince George's County - Affordable Housing Commission, PG 408-18." The bill establishes the Affordable Housing Commission for Prince George's County ("Housing Commission") and requires that the County Department of Housing and Community Development provide staff for the Housing Commission. The bill directs the Housing Commission to review procedures used in the County administration of housing and community development policies; examine the state of affordable housing in the County; and examine trends in the location, production, and rehabilitation of single-family and multifamily housing.

The bill's requirement that the County Department of Housing and Community Development provide staff for the Housing Commission raises a local home rule issue under Article XI-A of the Maryland Constitution, which limits the General Assembly's authority to enact local legislation for charter counties. However, it is our view that this constitutional limitation is not implicated if this provision is construed as non-binding, such that staffing of the Housing Commission by the County Department of Housing and Community Development is considered voluntary.

The purpose of Article XI-A, also known as the Home Rule Amendment, was to “transfer the General Assembly’s power to enact many types of ... public local laws to the Art. XI-A home rule” jurisdictions. *McCrorry Corp. v. Fowler*, 319 Md. 12, 16 (1990). Article XI-A achieves this objective, in part, by restricting the General Assembly’s authority to legislate on matters that have been delegated to charter counties. Article XI-A, § 4 prohibits the General Assembly from enacting a local law for a charter county on any subject covered by the express powers granted to charter counties. *Ritchmount P’ship v. Bd. of Sup’rs of Elections for Anne Arundel Cty.*, 283 Md. 48, 57 (1978) (“Once a particular power has been delegated ..., the Home Rule Amendment forbids the State Legislature from enacting any further public local laws within the scope of the express power so granted ... until such time as the Legislature withdraws the power by public general law.”) (internal citations omitted).

Generally speaking, a local law is one that applies only to one county and pertains only to a subject of local import. A general law, on the other hand, applies to two or more counties and deals with “general public welfare,” i.e., a matter that is of significant interest not just to a single county but to multiple counties or the entire state. *Tyma v. Montgomery Cty.*, 369 Md. 497, 507 (2002).

The express powers granted to charter counties include the powers to enact local laws relating to zoning and planning to protect and promote public safety, health, morals, and welfare (Local Government Article (“LG”) § 10-324); provide for the financing of any housing or housing project (LG § 10-312(d)); and to pass any ordinance, resolution, or bylaw not inconsistent with State law that “may aid in maintaining the peace, good government, health, and welfare of the county” (LG § 10-206). *See also County Council for Montgomery Cty. v. Inv’rs Funding Corp.*, 270 Md. 403, 415 (1973) (charter county has authority under Express Powers Act to regulate apartment rental business).

The provision in House Bill 236 that requires the Prince George’s County Department of Housing and Community Development to provide staff for the Housing Commission – which is directed to review County procedures relating to housing and community development policies and to examine the state of, and trends in, housing in the

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County – likely constitutes a local law within the scope of the express powers granted to charter counties. Accordingly, we recommend that the provision be construed as authorizing, but not requiring, the County Department of Housing and Community Development to staff the Housing Commission, which we believe would resolve the Article XI-A home rule issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian E. Frosh  
Attorney General

BEF/DWS/kd

cc: The Honorable John C. Wobensmith  
Chris Shank  
Victoria L. Gruber