

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1522 (Delegate K. Young, *et al.*)
Rules and Executive Nominations

General Provisions - Public General Law - Preemption of Local Laws

This bill provides that, notwithstanding any other provision of law, unless a public general law specifically limits the concurrent jurisdiction of a local government or specifically declares the exclusivity of the State's jurisdiction, the public general law may not be construed to limit a power or function of a local government. The bill may not be construed to (1) create or grant a power or authority to a local government or (2) limit an existing power or authority of a local government. The bill must be construed to apply only prospectively and may not be applied or interpreted to overturn any ruling of a court of the State that was final before the effective date of the bill finding that the common law doctrine of preemption applied to preempt a local jurisdiction from enacting a law regarding a particular subject.

Fiscal Summary

State Effect: The bill does not directly affect State government finances or operations.

Local Effect: The bill does not directly affect local government finances. The bill impacts local government operations to the extent local laws are not subject to preemption by State public general laws.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Maryland State law may preempt local law in one of three ways: (1) preemption by conflict; (2) express preemption; or (3) implied preemption. In *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610

(2019), the Court of Appeals held that State law impliedly preempts local zoning regulation of solar energy generating systems that require a certificate of public convenience and necessity.

The case began with the application of Perennial Solar, LLC to the Washington County Board of Zoning Appeals for a special exception and variance to construct a solar energy generating system adjacent to a rural village in Washington County. After the board granted the variance and special exception, a group of landowners sought judicial review of the board's decision in Washington County Circuit Court. The Washington County Board of County Commissioners intervened in the case. While the petition for judicial review was pending, Perennial Solar filed a motion for pre-appeal determination challenging the subject matter jurisdiction of the circuit court on the ground of State law preemption by implication. The circuit court granted the motion and determined that § 7-207 of the Public Utilities Article preempts the Washington County Zoning Ordinance and that the Public Service Commission has exclusive jurisdiction to approve the type of solar energy generating systems proposed by Perennial Solar. Washington County appealed the case to the Court of Special Appeals, which affirmed the circuit court's decision. The Court of Appeals affirmed the judgment of the Court of Special Appeals.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 756 (Senator Lam, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2020
mr/tso

Analysis by: Hillary J. Cleckler

Direct Inquiries to:
(410) 946-5510
(301) 970-5510