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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 183 – “Prince George’s County Environmental Justice Commission, PG 411-18”

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 183, “Prince George’s County Environmental Justice Commission, PG 411-18.” The bill establishes the Prince George’s County Environmental Justice Commission, designates specified County officials to serve on the Commission, and requires that the County Department of the Environment provide staff for the Commission. Designating County officials to serve on the Commission and assigning duties to a County agency 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, this constitutional limitation will not be implicated if these provisions are construed as non-binding, such that a County official’s service on the Commission and the staffing of the Commission by the County Department of the Environment are 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

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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); to provide for the prevention, abatement, and removal of nuisances and regulate places that may give rise to unsanitary or unhealthy conditions (LG § 10-328); 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).

A law that establishes a Commission to study environmental justice issues in Prince George’s County, designates County officials to serve on the Commission, and requires that the County provide staff for the Commission, likely would constitute a local law that relates to a matter within the County’s express powers. We recommend that the bill’s provisions designating County officials to serve on the Commission and requiring the County to staff the Commission be construed as non-binding, which we believe would resolve the Article XI-A home rule issue.

Sincerely,



Brian E. Frosh
Attorney General

BEF/DWS/kd

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