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April 8, 2020

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

***RE: House Bill 254***

Dear Governor Hogan:

We have reviewed and hereby approve House Bill 254, "Prince George's County - Cooperative Housing Corporations, Condominiums, and Homeowners Associations - Reserve Studies PG 403-20," for constitutionality and legal sufficiency. In doing so, we have considered whether the bill violates Maryland Constitution Article XI-A, § 4, which prohibits the General Assembly from enacting a public local law for a charter county on a matter that is within the Express Powers of the county.

Under Maryland Constitution Article XI-A, § 3, once a county has adopted a charter, it has the full power to enact laws as provided in the Express Powers Act, which is found in Local Government Article, Title 10. This power is, however, "subject to the Constitution and Public General Laws of this State." Article XI-A, § 3. As a result, the Express Powers Act does not give a charter county the power to enact a law that conflicts with State law or to legislate in an area of law that the General Assembly has preempted.

In this case, the General Assembly has broadly preempted counties from regulating cooperatives, condominiums, and homeowners' associations differently than they regulate other properties. Commercial Law Article, § 5-6B-32(a)(2); Real Property Article, §§ 11-112(b) and 11B-104(b). In each case, however, the law further provides that local governments may "adopt laws or ordinances for the protection of a consumer to the extent and in the manner provided for under § 13-103 of the Commercial Law Article."

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Commercial Law Article, § 5-6B-12(d); Real Property Article, §§ 11-130(d) and 11B-115(d).

While the authorization to adopt laws and ordinances for the purpose of consumer protection would most likely permit Prince George's County to require reserve studies, that authority comes from the above-cited provisions, not from the Express Powers Act. As a result, the General Assembly can enact this provision for the County without violating Article XI-A, § 4.

Sincerely,

A handwritten signature in blue ink that reads "Brian E. Frosh". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian E. Frosh  
Attorney General

BEF/KMR/kd

cc: The Honorable John C. Wobensmith  
Keiffer J. Mitchell, Jr.  
Victoria L. Gruber