

Dear Governor Lee:

House Bill 70 would amend Transportation Article, §4-401 to prohibit the construction of commercial or industrial facilities within 25 feet of an access road to a Maryland Transportation Authority facility without the approval of the Administrative, Executive and Legislative Review Committee.

At first blush, the rationale which lead us to conclude that the legislative veto provisions of House Bill 619 and Senate Bills 278 and 296 are not clearly unconstitutional would seem to compel the same conclusion with respect to this measure. However, a closer reading demonstrates a substantial difference between this provision and the provisions contained in those bills.

In essence, this bill would vest in the AELR Committee the absolute discretion and authority to zone the affected areas so as to prohibit, for any reason, the construction of facilities which might be permissible under local zoning laws. The Court of Appeals has consistently held that the act of zoning is legislative in its strictest sense; i.e., it is lawmaking. See, Hyson v. Montgomery County, 242 Md. 55, 63 (1966). Indeed, the power to zone is delegable to political subdivisions only because they may validly exercise the lawmaking function at the local level. See, Prince George's County v. McBride, 268 Md. 522, 528 (1973). Thus, unlike the review of proposed rules (which, although legislative in nature, is an exercise of the General Assembly's oversight function and not its lawmaking function), zoning clearly is a direct exercise of the lawmaking function.¹

It is even more clearly settled that the General Assembly may not redelegate its lawmaking authority to any other entity, agency or person. Pressman v. Barnes, 209 Md. 544 (1956); Maryland Coop. Milk Producers v. Miller, 170 Md. 81 (1936); c.f. Algren v. Cromwell, 179 Md. 243 (1941); Mugford v. Mayor and City Council of Baltimore, 185 Md. 266 (1945). This conclusion rests upon two grounds, viz.:

"... one, that the people of Maryland hav[ing] delegated to the Legislature of Maryland the power of making its laws, that body could not legally or validly redelegate the power and the authority thus conferred upon it ...; and two, that the people of the State from whom the Legislature itself derives its powers, having prescribed in the Constitution of the State the manner in which its laws shall be enacted, it is not competent for the Legislature to prescribe any other or different way in which its laws may be enacted."