

units of government or in any action of contract.

May 15, 1975.

Honorable John Hanson Briscoe  
Speaker of the House of Delegates  
State House  
Annapolis, Maryland

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 1672.

This bill provides that, unless otherwise specifically exempted, the State, the counties, the municipal corporations, and all of their officers and agencies are liable in any action of contract, and may not raise the defense of sovereign immunity with respect to any written contract entered into by them. The Governor is required to provide in the State budget "adequate funds for the satisfaction of any judgment" which has been rendered against the State or its officers and agencies in any action of contract. There is no provision in the bill, as indeed there could not be, binding the General Assembly not to reduce or delete those funds from the Budget. The governing bodies of the counties and municipal corporations of the State are also required to make available funds to pay such judgments rendered against them or their officers and agencies.

Last year, I vetoed a generally similar bill (House Bill 5) because of the uncertainty both as to its effect in light of the decisions of the Court of Appeals in University of Maryland v. Maas, 173 Md. 554 (1938) and to its fiscal implications to State and local government. The Court stated in Maas that,

"it is established that neither in contract nor tort can a suit be maintained against a governmental agency, first, where specific legislative authority has not been given, second, even though such authority is given, if there are no funds available for the satisfaction of the judgment, or no power reposed in the agency for the raising of funds necessary to satisfy a recovery against it" (emphasis supplied).

This bill attempts to overcome the problem of providing funds to pay judgments by requiring the Governor to include such funds in his budget; but, as there is no assurance that the General Assembly will approve such funds, it would seem that compliance with the Maas test is, at best, uncertain. A final judgment