

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1994.

May 26, 1994

The Honorable Casper R. Taylor, Jr.
Speaker of the House of Delegates
State House
Annapolis, Maryland 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 1088.

House Bill 1088 would authorize the Montgomery County District Council to require, in its zoning regulations, a supermajority vote of at least 4 out of 5 members for the adoption of zoning resolutions involving or affecting special exceptions. The bill would also permit the Council to adopt, for any zone, different voting requirements for different uses.

House Bill 1088 was introduced to codify a controversial practice that was recently invalidated by a Maryland Court of Appeals decision. The Court ruled, in part, that the Express Powers Act does not authorize a supermajority requirement for a county board's approval of a special exception.

House Bill 1088 could both hinder business development and place onerous restrictions on the construction or expansion of needed community facilities such as day-care centers, hospitals, and similar entities. Additionally, the bill could be used to thwart the efforts of groups and institutions that house, feed, and provide other vital services to the poor, homeless, and mentally ill.

Simply put, the supermajority requirement is burdensome and superfluous. The lack of one vote could block a special exception that otherwise would have been approved by a simple majority. It is significant to note that the County Planning Board, which advises the Board of Appeals on special exception decisions, forwards its recommendations to the Board on the basis of a simple majority vote.

House Bill 1088 could also hinder consistency and uniformity in local land-use laws. Encouraging such standards was one of the reasons why I proposed the Economic Growth, Resource Protection, and Planning Act (Chap. 437 of the 1992 Session Laws). House Bill 1088 would create an inconsistency given the fact that Rockville and Gaithersburg – two Montgomery municipalities that are granted local zoning authority – approve or deny special exceptions based on a simple majority vote. The supermajority requirement would nonetheless be binding on the rest of the County.