

Finally, and most importantly, "to guard against hasty or partial legislation and encroachment of the legislative department upon the coordinate executive and judicial department," Article II, Section 17 of the Constitution provides for a power of gubernatorial veto. The provision is unusual in making explicit the purposes of the provision: not merely policy review but also protecting the executive and judicial branches against encroachment upon their powers.

This concern is as old as Jefferson's Notes on Virginia quoted by Madison in the Federalist, No. 48 cautioning against a condition in which "all the powers of government, legislative, executive and judicial, result to the legislative body ... 173 despots would surely be as oppressive as one."

The dangers which may arise from the legislative veto are magnified in instances such as that presented by the present bill in which the veto is reposed in a single committee. As pointed out by Attorney General Rogers in 41 Opinions of the Attorney General No. 47 (1957): the committee veto "may well be the most inimical to responsible government" since it permits "mere handfuls of members to speak for a Congress which is given no opportunity to participate as a whole."

The objections to this sort of legislative veto may be briefly summarized: by delaying the effectiveness of regulations it increases delay in the implementation of programs found necessary by the legislature and the Governor. It significantly increases the workload of both executive agencies and legislative committees by leading the General Assembly to a belief that it retains a check upon regulations adopted by the Executive and constitutes an invitation to broad and careless delegation of powers. By according a limited number of legislators undue influence over the implementation of important policies adopted by the Governor and legislature as a whole, it invites subrosa procedures. Procedural of proposals for legislative veto also is to detract from the rationale and procedural regularity of the rule-making process. Instead of the ultimate form of rules being determined by compliance with the procedures for rule adoption set forth in the Administrative Procedure Act and by subsequent judicial review, the final form of rules would be determined without reference to these procedures by a process which would frequently involve ex parte approaches to particular legislative committee members and in absence of public hearings or hearings on the record. A further possible consequence of these legislative veto provisions would be an increased tendency on the part of agencies to exercise power by means of decisions in particular cases rather than by rule-making, not a desirable consequence.

The General Assembly has the power to pass legislation to override any regulation and current law provides adequate authority for the AELR Committee to review proposed regulations.