

THE VETO POWER OF THE GOVERNOR¹

INTRODUCTION

The veto power was first given to a governor of Maryland by the Constitution of 1867. As a preface to Article II, Section 17, the Convention stated its intent to provide a ". . . guard against hasty or partial legislation and encroachments of the Legislative Department upon the coordinate Executive and Judicial Departments. . . ." In deciding to write an executive veto into the Constitution, Conservative Democrats serving as delegates were undoubtedly swayed by their hostility toward the Radical Republican legislatures that had controlled Maryland during the Civil War and by their sympathies for President Andrew Johnson in his then current difficulties with the federal Congress. Unfortunately, the language used in Section 17 has presented a number of other difficulties.

SCOPE

Article II, Section 17, is by its terms all inclusive, stating that ". . . every Bill . . . shall, before it becomes a law" be subject to veto by the governor. However, there are two exceptions to the application of this section. First, bills passed by three-fifths of the members of each house submitting proposed constitutional amendments to the voters, pursuant to Article XIV of the Constitution, have been held to be not subject to the approval of the governor.² This conclusion was reached by the majority of a split court with some difficulty.

¹ This article was prepared for the Commission by Garrett Power, Commission reporter for the Committee on the Executive Department; Associate Professor at the University of Maryland School of Law; A.B., 1960, Duke University; LL.B., 1962, Duke University; LL.M., 1965, University of Illinois; member of the Maryland Bar.

² *Warfield v. Vandiver*, 101 Md. 78 (1905).

It is recommended that these proposed constitutional amendments continue to be exempt from executive veto and that the Committee on Elective Franchise and Declaration of Rights (which is responsible for Article XIV) be acquainted with the problem of interrelation.

Second, so-called "budget bills" are not subject to executive veto. The Constitution was amended in 1916 to include an executive budget.³ Under this overall scheme, now in Article III, Section 52, the governor submits to the General Assembly a budget for each fiscal year. The General Assembly may increase or decrease certain specified items and enact them into law without further action of the governor.⁴ This provision is expressly given preference over other inconsistent provisions.⁵ Supplementary appropriation bills (*i.e.*, appropriation bills originating in the General Assembly) are expressly made subject to the governor's veto.⁶

It is recommended that the question of whether the governor should have the power to veto items in the "budget bill" should be referred to the Committee on State Finance and Taxation.

POWER OF GOVERNOR TO SIGN BILLS INTO LAW AFTER THE GENERAL ASSEMBLY ADJOURNS

"If any bill shall not be returned by the Governor within six days (Sundays excepted), after it shall be presented to him, the same shall be law in like manner as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, *in which case it shall not be a law.*"⁷ (Emphasis added.) As the literal

³ Md. Laws of 1916, ch. 159, ratified Nov. 7, 1916.

⁴ MD. CONST. art. III, § 52 (6).

⁵ MD. CONST. art. III, § 52 (14).

⁶ MD. CONST. art. III, § 52 (8).

⁷ MD. CONST. art. II, § 17.