

Cf. Art. 41 § 255 (whether a decision of any agency in a contested case is unconstitutional, in excess of statutory authority, unsupported by substantial evidence, or arbitrary or capricious, is made by the courts).

While it may be permissible for the AELR Committee to make a nonbinding assessment of whether a regulation "fails to comply with the legislative intent of the statute authorizing it," D'Anna v. Secretary of Personnel, 47 Md. App. 180 (1980), cert. den'd 289 Md. 737 (1981) 2/ or whether a regulation is burdensome 3/ it is our opinion that it is not constitutionally permissible for the Committee to make these and the other judicial determinations specified in the bill. Therefore, it is our view that House Bill 1255 violates the separation of powers clause of the Declaration of Rights of Maryland. Since the invalid provisions are an integral part of the bill, we are unable to approve it.

Very truly yours,
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1/ Wright v. Wright's Lessee, 2 Md. 429, 452 (1852), quoted with approval in McCrea v. Roberts, 89 Md. 238, 251 (1899). The reference in Wright is to the separation of powers provision in Art. 6 of the Declaration of Rights of the Constitution of 1776 which provided, as follows: "That the legislative, executive and judicial powers of government, ought to be forever separate and distinct." The additional proviso of the separation of powers provision in the present Constitution first appeared in Art. 6 of the Declaration of Rights of the Constitution of 1851 and was repeated in Article 8 of the Declaration of Rights of the Constitution of 1864.

2/ The issue in D'Anna basically involved statutory construction, not separation of powers. Under the statute existing at the time of the decision, all proposed rules of administrative agencies had to be submitted to the AELR Committee. Art. 40, § 40A(f). The law further provided that the AELR Committee should report to the General Assembly and the Legislative Council any recommendations for legislation to modify, change or reverse any rule considered by the Committee. Art. 40, § 40A(e). The regulation challenged in D'Anna had been so submitted and no recommendation for legislative action was made by the Committee. The Court of Special Appeals found that this kind of scheme might be helpful to a court addressing the statutory construction issue without in any way suggesting that a committee of the General Assembly was authorized to make binding determinations on the issue. The rule of construction established in D'Anna was expressly overruled