



MEMORANDUM IN OPPOSITION
A.4758 (Magee); S.3462 (Seward)

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to section 8 of article 4 of the constitution, in relation to legislative review of rules and regulations

Summary of Legislation

This proposed amendment to article 4, section 8 of the New York State Constitution would provide the State Legislature with the ability to directly review any rule or regulation enacted by any state department, board, bureau, officer, authority, or commission. Regulations deemed to either violate legislative intent or create unanticipated fiscal impacts would need to be withdrawn or amended by the Executive within 30 days; if not, the Legislature could invalidate the rule or regulation or prevent it from taking effect.

Statement in Opposition

This proposed amendment risks undermining the delicate balance of power between the three branches of government and could jeopardize the ability of administrative agencies to perform vital functions. Under the proposed amendment, regulations protecting the health, safety, and environment of the people of New York from the deleterious health effects of pollution and the harmful economic impacts of environmental degradation could be eliminated by the Legislature without opportunity for public review and input.

If enacted, this proposed amendment risks greatly expanding the powers of the Legislature. Administrative agencies are staffed with a myriad of experts in their given field, allowing for reasoned and analytically-supported determinations of how to enact requirements set forth in legislation. Vesting the Legislature, a body without that expertise, with the ability to unilaterally override, without public input, all agency rule-making determinations violates core constitutional principles of government and hampers the Executive's ability to enforce laws.

Since this proposed amendment does not expressly limit legislative review to new regulations, it also risks providing the Legislature with the ability to invalidate long established regulatory principles based on interpretations of past legislative intent. Such determinations, normally reserved for the judiciary, are well outside the expertise of the legislative branch of government. As the proposed amendment does not provide for any review or appeal of these legislative determinations, shifting political tides could lead to repeated changes in regulations and a lack of continuity, enforceability, and predictability for both individuals and the business community.

This proposed amendment could also permit invalidation of regulations that appropriately place the cost of polluting activities on the source of that pollution, rather than on the public. In order to protect the people of New York from harmful and cost-shifting deregulation and ensure that regulations enacted by administrative agencies are safe from continual reinterpretation, this resolution should be rejected.

Riverkeeper strongly opposes this resolution.