The Partial Veto in Wisconsin

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THE PARTIAL VETO IN WISCONSIN

Students of government consider the partial veto power as exercised by Wisconsin's governors to be the most extensive in the nation. Since its creation by constitutional amendment in 1930, governors have applied the veto with increasing frequency and creativity. In response, the legislature has challenged the governor's use of the power in the courts and, in one case, amended the constitution in 1990 with voter approval.

This bulletin updates Informational Bulletin 87-3, *The Partial Veto in Wisconsin − An Update*. It traces gubernatorial use of the partial veto, the legislature's response to that use, and the standards for its use as interpreted by the courts.

I. INTRODUCTION

As a check on legislative powers, the Wisconsin Constitution grants the governor the authority to veto bills in their entirety and appropriation bills in part. When the governor vetoes legislation, the bill or vetoed portion cannot become law unless the legislature overrides the governor's action by a 2/3 majority of members present in each house (22 senators and 66 representatives if all are present in each house). The governor returns the vetoed measures to the house in which the bill was first introduced together with his written objections. If the house of origin votes to override the governor, the measure is sent to the second house for its consideration. If either house fails to muster a 2/3 vote to override, the governor's veto is sustained.

Partial Veto Created. In 1930, Wisconsin voters ratified an amendment to the Wisconsin Constitution (Article V, Section 10) that granted the governor authority to approve appropriation bills "in whole or in part". Governor Philip F. La Follette was the first to make use of the partial veto power (12 partial vetoes of the 1931 budget bill). Many years after its first use by Governor La Follette, the partial veto has become a major tool for the chief executive. Its use reflects the governor's style of leadership and underlying political considerations.

Partial Veto Overrides. Successful attempts to override partial vetoes have been few and far between. In fact, except for a handful of overrides between 1973 and 1985, virtually all partial vetoes have been sustained. The last successful override of a gubernatorial partial veto occurred in the 1985 session when the legislature overrode two of Governor Anthony Earl's vetoes in 1985 Assembly Bill 85 (the executive budget bill). The vetoes related to the Wisconsin Higher Education Corporation and the Joint Committee on Finance review of pay plan supplements. Since any override requires a 2/3 vote of members present in both houses, it is extremely difficult to overturn a veto. Gaining a 2/3 majority usually requires legislators of the same political party as the governor to vote against their own leader. For this reason, concern has grown that the imaginative use of the partial veto has shifted the balance of power between the legislative and executive branches, especially as the veto has been applied to increasingly smaller parts of bills.

When the governor vetoes or partially vetoes a bill, there is no specific deadline by which the legislature has to consider and attempt to override the vetoes, other than the end of the session. No date is set by the constitution, statutes, rules of each house, or joint rules. The legislature usually sets aside specific days for veto review in the session schedule, but the body is

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free to change that schedule. In many cases the legislature has either tabled or not taken up gubernatorial vetoes. One practical effect of a long delay is that an override may not be effective in the case of short-term or one-time appropriations.

II. ORIGINS OF THE EXECUTIVE PARTIAL VETO POWER IN WISCONSIN

In its 1911 session, the Wisconsin Legislature began using a "budget system" and a series of omnibus appropriations bills to enact state spending patterns for a two-year period. By 1913, for example, the legislature had bundled the appropriations for the university and the state normal school system into one bill and appropriations for highways and bridges into another bill, instead of appropriating for individual items within each program. Realizing this practice seriously undermined the effectiveness of his veto power and reduced his control over executive agencies, Governor Francis E. McGovern urged the legislature to support a constitutional amendment that would grant the governor the power to veto "separate" items in appropriations bills.

In a special address to the legislature on August 7, 1913, he warned the legislature that the end result of omnibus appropriations bills was to remove the governor from the budget process:

> [I]t is clear that under the budget plan of appropriating money the executive department no longer exercises the influence or power it once had or was intended by the constitution to possess. It seems to me therefore something should be done to restore matters to the equilibrium of power and responsibility that has always existed between the executive and legislative branches of government in respect to these matters. With the introduction of the budget system and the framing of money bills as omnibus measures, authority should be conferred upon the governor that he does not now possess. . . . Otherwise, he cannot fairly be held responsible for appropriation measures. Under the method of legislation pursued at this session he now has in fact practically nothing to say about what shall go into appropriation bills or be kept out of them. But nothing more deeply concerns the people of the state than the appropriation of public money and the imposition of taxes; and to no state officer do they more quickly and properly turn for explanation when expenditures and taxes are high than to the governor.

Despite McGovern's appeal, it was not until November 4, 1930, that the voters ratified a constitutional amendment to expand the governor's veto powers following the required approval by two consecutive legislatures in 1927 and 1929.

1927 Senate Joint Resolution 35 proposed to add the language giving the governor authority to veto "parts" of appropriation bills. The drafting record indicates that Senator William Titus requested the Reference Library to draft a resolution "to allow the Governor to veto items in appropriation bills". Nothing in the drafting record sheds any light on the use of the word "part" as opposed to "item" in reference to the veto power. Much of the subsequent controversy regarding exercise of the veto power has involved interpreting the legislative intent embodied by the phrase "in part".

Proponents of the constitutional amendment argued that changes enacted by the 1929 Legislature that required the governor to submit a single budget bill to the legislature made the partial veto authority necessary. Senator Thomas Duncan pointed out that, although the governor was responsible for introducing a budget bill, the legislature had the authority to increase individual appropriation items and could conceivably use this advantage to politically embarrass the governor. He argued that the proposed amendment:

> . . . would put both the governor and the legislature in the position in which the constitution intended they should be with reference to appropriations. The legislature holds the purse strings but cannot play politics and the governor is given a genuine veto power but he cannot dictate appropriations.

The leading opponent of the amendment was Philip La Follette, who made the issue part of his campaign for governor in 1930. He claimed that the amendment "smacked of dictatorship" and would result in the centralization of too much power in the hands of the executive.

Despite these objections, the voters approved the amendment by a 252,655-to-153,703 vote, thereby adding the following language to Article V, Section 10:

> Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills.

At the time the Wisconsin electorate approved the constitutional amendment, 37 states granted the executive the authority to veto single items in appropriation bills, but no other state constitution used the word "part" instead of "item". Today, all but 7 states (Indiana, Maine, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont) permit the use of the item veto in appropriation bills.

III. EXPANSION OF THE PARTIAL VETO POWER BY WISCONSIN GOVERNORS

Originally, Wisconsin governors were conservative in their use of the partial veto. Until the 1969 legislative session, no governor had partially vetoed more than five bills nor issued more than 12 partial vetoes within biennial budget bills. From 1969 on, governors have partially vetoed a greater number of bills and have vastly increased the number of partial vetoes within biennial budget bills. Governor Patrick J. Lucey partially vetoed at least 50 non-budget bills and Governor Thompson more than 100. Gubernatorial partial vetoes of biennial budget bills commonly number in the hundreds, with Governor Tommy G. Thompson issuing a record number of 457 in the 1991-93 biennial budget bill. (See Table 2 for number of bills partially vetoed and number of partial vetoes in biennial budgets.)

Governors have not only increased the number of partial vetoes but have become progressively more creative in the means they have used to perform partial vetoes. In 1931, Governor Philip La Follette vetoed parts of a bill as small as a statutory paragraph. Two vetoes in 1935 affected individual sentences. In 1961, the governor vetoed part of a sentence. In 1965, the chief executive deleted one figure that appeared in a bill. Subsequent governors have vetoed individual digits and letters, have edited the text to change its meaning, reduced appropriation amounts by crossing out one figure and writing in another, and altered the direction of an appropriation.

Presumably, governors have applied the partial veto more aggressively to influence the balance of power between the executive and legislative branches. In addition, the subjects and range of legislation have also grown. In the eyes of many legislators, however, uses of the partial veto have significantly shifted the balance of power to the governor's office. As a result, legislators have initiated several court cases and proposed several constitutional amendments to restrict the governor's partial veto authority (see the list of proposed constitutional amendments in Table 3).

Digit Veto

Governor Patrick J. Lucey was the first to use the partial veto to remove a single digit from an appropriation – the "digit veto". In the 1973-75 budget bill (1973 Assembly Bill 300), he reduced a $25 million highway bonding authorization to $5 million by striking the digit "2". Attorney General Robert Warren issued an opinion (62 OAG 238), dated October 23, 1973, on the digit veto in response to a request by the Senate Committee on Organization for a clarification. He stated that vetoing one digit of a separable part of an appropriation bill constituted "an objection within the meaning of Article V, Section 10, Wisconsin Constitution" and thus had the effect of voiding the entire subsection relating to highway bonding. Although the attorney general argued that Governor Lucey's action was invalid, this gubernatorial action laid the foundation for subsequent use of the digit veto.

Editing Veto

Governor Lucey continued his unprecedented use of the partial veto in the 1975-77 budget bill by vetoing some 42 items. Among them was the partial veto of a provision authorizing funds for tourism promotion by the Department of Business Development. The governor vetoed the word "not" in the phrase "not less than 50%", thereby changing a 50% floor on cooperative advertising to a 50% ceiling. This was the first time that a Wisconsin governor utilized the partial veto to reverse the intent of the legislature. In *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118 (1976), on a separate issue, the Wisconsin Supreme Court recognized that the governor can bring an affirmative change in legislation by the use of partial veto powers.

By 1977, Acting Governor Martin J. Schreiber had expanded the editing veto to enact an alternative that the legislature expressly rejected. His partial veto of Assembly Bill 664 (Chapter 107, Laws of 1977), relating to campaign financing and creating an election campaign fund, involved one of the most controversial uses of the partial veto. As passed by the legislature, the bill appropriated to the election campaign fund any moneys raised from a $1 voluntary add-on to a taxpayer's individual income tax bill. Acting Governor Schreiber's partial veto had the effect of replacing the add-on with a check-off, which meant the $1 would be paid from the state's general fund rather than collected through individual tax returns. In a case brought by the legislature, the Wisconsin Supreme Court upheld this exercise of the partial veto in *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679 (1978). The court recognized that a "partial veto may, and usually will, change the policy of the law".

"Pick-a-Letter" Veto

In 1983, Governor Anthony S. Earl applied the partial veto in a manner the press termed the "Vanna White" or "pick-a-letter" veto (the selective vetoing of letters to form a new word). The veto involved the Public Service Commission (PSC) and appeals of municipal waste disposal determinations. As partially vetoed by Earl, appeals would have been sent to the courts instead of the PSC. To achieve this result, the veto reduced a paragraph of five sentences containing 121 words into a one-sentence paragraph of 22 words. The Wisconsin Legislature overwhelmingly overrode the governor's veto with only one dissenting vote in the senate.

Reduction Veto

Earl's successor, Governor Tommy G. Thompson, made extensive use of digit, editing, and pick-a-letter vetoes, and added a fourth version, the "reduction veto". In a reduction veto, the governor crosses out an appropriation figure and writes in a lower one.

In his partial vetoes of 1993 Senate Bill 44 (the executive budget bill), Governor Thompson crossed out dollar figures in at least nine instances and wrote in different, smaller numbers. One of these vetoes, relating to Public Service Commission intervenor financing, led to a court challenge. In *Citizens Utility Board v. Klauser*, 194 Wis. 2d 484 (1995), the state supreme court upheld this exercise of the partial veto power.

In his review of the 1995-97 transportation budget (1995 Assembly Bill 557), Governor Thompson used a similar "write-in" veto to reduce revenue bonding limits for transportation facilities and major transportation projects. In *Risser v. Klauser,* 207 Wis. 2d 176 (1997), the state supreme court overruled this usage of the partial veto power because it was "not an appropriation amount".

IV. WISCONSIN SUPREME COURT INTERPRETATION OF THE PARTIAL VETO

The constitutional provision granting the governor the authority to veto bills in part has come under the scrutiny of the Wisconsin Supreme Court in eight cases. With two exceptions, the opinions have broadened the power of the governor to veto parts of appropriation bills.

State ex rel. Wisconsin Telephone Co. v. Henry [218 Wis. 302 (1935)]

In the *Henry* case, the court held that the authority granted to the governor by the Wisconsin Constitution to veto a "part" is broader than the authority of other governors to veto an "item"; that the governor could disapprove non-appropriation parts of an appropriation bill; that the parts approved after the veto must constitute a complete, entire, and workable law; and that the governor's power to disapprove separable pieces of an appropriation bill is as broad as the legislature's power to join the pieces into a single bill.

At issue in *Henry* was Governor Philip La Follette's veto of parts of an emergency relief bill. The parts vetoed did not directly involve the appropriations contained in the bill, and the telephone company contended that the governor did not have the authority to disapprove provisions not involving appropriations. In upholding the governor's authority to veto non-appropriation portions of a bill if they were separable, the court stated:

> . . . [T]here is nothing in that provision [Article V, Section 10] which warrants the inference or conclusion that the governor's power of partial veto was not intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill. As the legislature can do that in this state, there are reasons why the governor should have a coextensive power of partial veto to enable him to pass, in the exercise of his quasi-legislative function, on each separable piece of legislation or law on its own merits. That is not necessary in many states because they have constitutional provisions which prohibit the legislature from passing a bill which contains more than one subject. Wisconsin, however, has no such prohibition except as to private and local bills (sec. 18, art. IV, Wis. Const.). As far as general legislation is concerned, the legislature may, if it pleases, unite as many subjects in one bill as it chooses. Therefore, in order to check or prevent the evil consequences of improper joinder, so far, at least, as appropriation bills are concerned, it may well have been deemed necessary, in the interest of good government, to confer upon the governor, as was done by the amendment in 1930 of sec. 10, art. V, Wisconsin constitution, the right to pass independently on every separable piece of legislation in an appropriation bill. (314-315)

State ex rel. Finnegan v. Dammann [220 Wis. 143 (1936)]

In *Finnegan*, a challenge filed by the attorney general, the court grappled with the question of what constitutes an appropriation measure. The court held that, in order for the governor to exercise the partial veto, the body of the bill itself must contain an appropriation of public money and not merely have an indirect bearing upon an appropriation; and that an increase in revenues that has the effect of increasing expenditures under an existing appropriation does not create an appropriation.

In ruling invalid the partial veto of a revenue bill that raised motor vehicle registration fees but affected appropriations only tangentially, the court stated:

> . . . [T]his bill does not within its four corners contain an appropriation. Does the fact that it indirectly affects continuing revolving fund appropriations theretofore enacted by raising the permit fees of various types of carriers, constitute it an appropriation bill? We are convinced that this question must be answered in the negative. To answer it otherwise would extend the scope of the constitutional amendment far beyond the evils it was designed to correct. The paragraphs vetoed are revenue raising measures and as conceded in the defendant's brief, "taxation and appropriation are more nearly antonyms than synonyms". (147-148)

The fact that the bill in question amended subsections of a statutory section that contained an appropriation (in a subsection not affected) was not sufficient cause, in the court's view, to consider it an appropriation bill.

State ex rel. Martin v. Zimmerman [233 Wis. 442 (1940)]

In *Martin*, in another challenge by an attorney general (John Martin), the court found that the purpose of the partial veto was to prevent, if possible, the adoption of omnibus appropriation bills "with riders of objectionable legislation attached" which would "force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act." The court held that: 1) the governor may effect policy changes through the partial veto; and 2) the veto is sustainable if the approved parts, taken as a whole, still provide a complete, workable law.

In examining the purpose of the partial veto the court stated:

> Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, log-rolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act. (447-448)

Attorney General Martin contended that the partial veto changed the legislative intent so as to render the approved portion invalid. In responding to this contention, the court held:

> It must be conceded that the governor's partial disapproval did effectuate a change in policy; so did the partial veto of the bill involved in the case of *State ex rel. Wisconsin Tel. Co. v. Henry, supra*, which this court held to be valid. The question here is whether the approved parts, taken as a whole, provide a complete workable law. We have concluded that they do, and we must give them effect as such. (450)

State ex rel. Sundby v. Adamany [71 Wis. 2d 118 (1976)]

In the *Sundby* case, the court recognized that the governor may effect an affirmative change as well as negate legislative action through the veto, and it reiterated that the governor may veto non-appropriation language.

Attorney Robert D. Sundby contended that the governor exceeded his constitutional authority when he vetoed provisions of Chapter 39, Laws of 1975 (the budget act), relating to local tax referendums, thereby making them mandatory rather than optional (as contained in the enrolled bill). The court recognized that any partial veto will affect or change the policy set forth by the legislature in an enrolled bill and concluded that the governor has a constitutionally recognized role in legislation:

> Some argument is advanced that in the exercise of the item veto the governor can negative what the legislature has done but not bring about an affirmative change in the result intended by the legislature. We are not impressed by this argued distinction. Every veto has both a negative and affirmative ring about it. There is always a change of policy involved. We think the constitutional requisites of art. V, sec. 10, fully anticipate that the governor's action may alter the policy as written in the bill sent to the governor by the legislature. (134)

State ex rel. Kleczka v. Conta [82 Wis. 2d 679 (1978)]

In the *Kleczka* case, the court rejected any implication from earlier cases that a legislative proviso or condition on an appropriation was inseparable from the appropriation and thus could be vetoed only if the appropriation itself was vetoed.

The petitioners, Senator Gerald Kleczka and Assembly Representative John Shabaz, contended that in Chapter 107, Laws of 1977, which dealt with financing of election campaigns, the funding provisions were not severable from the appropriation itself. As mentioned before, the veto changed the funding mechanism for the public campaign finance fund from an add-on to a check-off.

The court proceeded to clarify *dicta* contained in the *Henry* case:

> No provision of art. V, sec. 10, of the Constitution limits the governor's authority to veto appropriations because of any legislatively imposed conditions. The alleged limitation arises from the language of *Henry*. . . .
>
> The dicta, in reliance upon *Holder*, which appears in *Henry* and in subsequent Wisconsin cases, does not correctly state the Wisconsin law. Under the Wisconsin Constitution, the governor may exercise his partial-veto power by removing provisos and conditions to an appropriation so long as the net result of the partial veto is a complete, entire and workable bill which the Legislature itself could have passed in the first instance.
>
> Unlike the fact situation in *Henry*, the Acting Governor vetoed what is arguably a condition which the Legislature had placed on the appropriation. By so doing, he changed the policy of the law as envisaged by the Legislature. He caused the general fund to be charged with an obligation which the Legislature did not anticipate; and also, it is contended, he accelerated the effective date of the bill. These are policy changes, legislative in nature, which the Constitution authorized him to make. (714-715)

State ex rel. Wisconsin Senate v. Thompson [144 Wis. 2d 429 (1988)]

In the *Wisconsin Senate* case, the court reiterated that the governor's authority to veto appropriation bills in part is very broad, that the governor may exercise the partial veto

authority on conditions or provisos attached to appropriations, that a partial veto may be affirmative as well as negative in effect, and that the material remaining after the veto must be a complete and workable law. The court let stand vetoes that created new words and sentences by striking words, letters, and punctuation. It held that the governor may reduce dollar amounts by striking individual digits and that any text remaining after the governor's use of the partial veto must be "germane to the topic or subject matter of the vetoed provisions" contained in the enrolled bill.

The Wisconsin Senate, the Wisconsin Assembly, and the Joint Committee on Legislative Organization brought the case following Governor Thompson's 290 vetoes to the 1987-89 budget bill (1987 Senate Bill 100).

Relaying on five previous cases, the court upheld its broad construction of the governor's power to review or create law through use of the partial veto, as long as what remains after the veto was a "complete, entire and workable" law. In addition, the court held that the consequences of the partial veto must be "a law that is germane to the topic or subject matter of the vetoed provisions."

Specifically addressing the constitutionality of a partial veto that reduced dollar amounts, the court declared:

> We conclude, consistent with the broad constitutional power we have recognized the governor possesses with respect to vetoing single letters, words and parts of words in an appropriation bill, that the governor has similar broad powers to reduce or eliminate numbers and amounts of appropriations in the budget bill. . . . (457)

In addressing the germaneness issue, the court stated that all of Wisconsin's governors have followed this requirement:

> From this it can be inferred that . . . all chief executives of this state, including the present incumbent, have perceived and recognized an implicit "topicality" or "germaneness" limitation on their partial veto authority. We deem the long-standing recognition of this limitation to be a practical construction of the relations between the governor and legislature. . . . This germaneness limitation on the governor's partial veto authority is a practice which we recognize as having achieved the force of law. . . . (452-453)

Justice William A. Bablitch, joined by Justices Shirley S. Abrahamson and Donald W. Steinmetz, dissented. They agreed that the governor "possesses the power to strike individual words, phrases and paragraphs within a budget bill and, thus, effectively disassemble any objectionable provision." However, they argued against allowing the governor the authority to veto individual letters in order to create new words, saying that the majority opinion created an imbalance of power between the governor and legislature:

> . . . By holding that appropriation legislation is in essence a potpourri of individual letters, an alphabet soup if you will, the majority has stripped the legislature of any opportunity to circumscribe the parameters of the effects of a gubernatorial veto. The governor is now limited only by the letters in front of him and the extensiveness of his imagination, subject only to the majority's germaneness requirement. (473)

The court's rulings on the pick-a-letter veto were moot after April 3, 1990, when the voters of Wisconsin ratified a constitutional amendment to specifically prohibit the striking of individual letters to form new words.

Citizens Utility Board v. Klauser [194 Wis. 2d 484 (1995)]

In a challenge by the Citizens Utility Board, Senator Fred Risser, and Representative David Travis, the court held that the governor may exercise the partial veto power by striking a numerical sum in an appropriation and writing in a different smaller number as the appropriated sum.

In *Citizens Utility Board*, the court stated:

> We conclude that the governor, acting within the scope of his powers derived from Art. V, sec. 10 of the Wisconsin Constitution, may strike a numerical sum set forth in an appropriation and insert a different, smaller number as the appropriated sum. We reach this conclusion based on a common sense reading of the word "part" as well as the teachings of prior case law, most notably *Henry* and *Wisconsin Senate*. (504)
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> . . . As noted above, this court has recognized that the word "part" as used in sec. 10(1)(b) should be given its ordinary and accepted meaning. See *Henry*, 218 Wis. at 313, 260 N.W. at 491. As relevant here, the court quoted the following dictionary definition of the word: "something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc.." *Id.* (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 1781 (2 ed.)). Applying this definition to the situation at hand, it is readily apparent that $250,000 is "part" of $350,000, because $250,000 is "something less than" $350,000, and $250,000 goes "to make up, with others . . . a larger number," i.e., $350,000. This "common sense" reading of the word part, in terms of appropriation amounts, is what we believe is intended in sec. 10(1)(b). (505-506)

In a dissenting opinion, Justice Shirley S. Abrahamson, joined by Chief Justice Nathan S. Heffernan and Justice William A. Bablitch, stated:

> Justice Connor T. Hansen, dissenting in *Kleczka*, objected to a governor writing laws with the eraser end of the pencil. Today the majority allows a governor to write laws with the pointed end of the pencil. I dissent.
>
> The majority holds that a governor has a "write-in" veto power that "extends only to monetary figures and is not applicable . . . [to] any other aspect of an appropriation." Majority op. at 511. This holding differentiates between a governor's veto power over appropriation figures and over non-appropriation parts of an appropriation bill, thus contravening the language of art. V, sec. 10(1)(b), Wis. Const., and 60 years of case law interpreting that provision.
>
> I do not join the majority opinion because it fails to justify its abandonment of the long-standing interpretation of art. V, sec. 10(1)(b) that, for purposes of the governor's veto power, appropriation amounts are treated the same as words and other numbers in an appropriation bill. (511-512)

Risser v. Klauser [207 Wis. 2d 176 (1997)]

The court held, in *Risser*, that the governor's write-in veto may be exercised only on a monetary figure which is an appropriation amount.

In a challenge brought by Senator Fred Risser, the court again reviewed the governor's authority to strike a numerical sum and replace it with a smaller amount. After reviewing *Citizens Utility Board v. Kleczka*, the court held the governor's power to exercise this type of partial

veto was limited to spending, not borrowing, and that a bond sale was a revenue-raising device and not an appropriation.

> . . . *C.U.B.* expressly draws a distinction between appropriation amounts and other parts of appropriation bills, allowing a write-in veto of the former but not the latter. *C.U.B.*, 194 Wis. 2d at 499, 506 n.13, 508-10. (188)
>
> . . .
>
> In sum, the Governor's interpretation of *C.U.B.* contravenes the basis upon which *C.U.B.* was argued by the parties and written by the court. The *C.U.B.* decision adjudicated the constitutional scope of the governor's write-in veto power and is presidential. Accordingly, following precedent we conclude that the constitution prohibits a write-in veto of monetary figures which are not appropriation amounts. (191)
>
> . . .
>
> We can find nothing in section 57 that authorizes an expenditure or the setting aside of public funds for a particular purpose. Section 57 deals with raising revenue and limiting the use to which the revenue may be put. . . . (193)

Justice N. Patrick Crooks, joined by Justices Donald W. Steinmetz and Jon P. Wilcox, dissented from the majority opinion, contending:

> . . . [T]he *C.U.B.* court did not intend to draw a sharp distinction between "non-appropriation" and "appropriation" amounts in determining a limitation on the exercise of the partial veto power, especially when the amount at issue is inseparably connected to an appropriation amount. Instead, I am persuaded that, pursuant to *C.U.B.*, the governor's write-in veto power extends to: (1) any monetary sum; (2) in an appropriation bill; (3) if the monetary sum is an appropriation or is inseparably connected to an appropriation. . . . (209)

V. FEDERAL CASES REGARDING WISCONSIN'S PARTIAL VETO

The federal courts upheld the governor's veto power in both the United States District Court for the Western District of Wisconsin (No. 90 C 215) and the United States District Court of Appeals for the Seventh Circuit in *Fred A. Risser and David M. Travis v. Tommy G. Thompson*, 930 F.2d 549 (7th Cir. 1991).

The U.S. Court of Appeals concluded that "Wisconsin's partial veto provision as interpreted by the state's highest court is a rational measure for altering the balance of power between the branches. That it is unusual, even quirky, does not make it unconstitutional. It violates no federal constitutional provision because the federal Constitution does not fix the balance of power between branches of state government." In October 1991, the U.S. Supreme Court refused to review the decision of the U.S. Court of Appeals in *Risser v. Thompson*, 502 U.S. 860 (1991).

VI. WISCONSIN ATTORNEY GENERAL OPINIONS

The tension between the legislative and executive branches over the use of the partial veto has drawn the attorney general into the fray on a number of occasions. The pattern has usually

been for the governor to use his veto power in a previously untried fashion, resulting in a legislative resolution requesting an attorney general's opinion. Although opinions of the attorney general do not create law, they have significance in guiding the actions of administrators affected by the opinion. For the most part, these opinions generally have supported the governor's position, perhaps reflecting the relatively broad interpretation given Wisconsin's partial veto by the Wisconsin Supreme Court.

On the other hand, attorney general opinions on the partial veto issued during the terms of Governors Patrick J. Lucey, Lee Sherman Dreyfus, and Tommy G. Thompson by attorneys general of the opposite political party disagreed with specific partial vetoes.

Governor Patrick J. Lucey − During Governor Lucey's term the attorney general issued two opinions concerning the use of the partial veto. The first involved the partial veto of a provision in the 1973-75 budget bill relating to highway bonding. Governor Lucey reduced a $25 million bonding appropriation authorized by the legislature to $5 million by removing the digit "2". Attorney General Robert Warren issued an opinion (62 OAG 238) in response to a request by the Senate Committee on Organization for a clarification of "the extent of the Governor's power". In his opinion, the attorney general stated that in vetoing one digit of a separable part of an appropriation bill constituted "an objection within the meaning of Article V, Section 10, Wisconsin Constitution" and thus had the effect of voiding the entire subsection relating to highway bonding. In reaching this decision, the attorney general was of the opinion that:

> This provision confers upon the Governor the authority to *approve or reject*, in whole or in part appropriation bills. It does not grant the Governor the authority to *alter* a separable part of an appropriation bill. It is immaterial whether the alteration is accomplished by writing in a different figure as opposed to altering the figure established by legislation by use of a slash or other mark.

Governor Lucey responded with a letter to the legislative leadership in which he expressed disagreement with the attorney general's opinion that the effect of the partial veto was to invalidate the entire bonding appropriation. However, because the "doubt created by the opinion of the Attorney General . . . would make it difficult to secure the necessary approvals of counsel required to float bonds", the governor "reluctantly" advised the legislature to consider his partial veto as disapproval of the entire appropriation.

The second opinion involved Governor Lucey's veto of a portion of a bill increasing state aids for snowmobile development and law enforcement. As passed by the legislature, the bill appropriated $130,000 or the amount of interest earned on snowmobile registration fees, whichever was less, for law enforcement purposes. The partial veto removed the requirement that the funds be derived from interest earnings and the provision that the amount earmarked would be less than $130,000 if interest earnings were less.

In an August 1974 opinion (63 OAG 313), the attorney general noted that the Wisconsin Supreme Court ruled in a 1935 case that contingencies or conditions placed on appropriations could not be considered a "separable" part of an appropriation and thus subject to partial veto. The governor's partial veto removed a condition and was therefore invalid according to this reasoning. The governor later agreed with this view and permitted the transfer of state funds for snowmobile law enforcement.

Governor Lee Sherman Dreyfus − In 1981, during Governor Dreyfus' term, there were two attorney general opinions on the partial veto, both pertaining to the 1981-83 budget bill. The first opinion centered around the unintentional partial vetoes in the budget bill. In an attempt

to correct this matter, on July 31, 1981, Governor Dreyfus filed notice at the Secretary of State's office that several previously vetoed portions of Chapter 20, Laws of 1981, were not vetoed. At this point, these vetoes became known as "unvetoes". Attorney General Bronson La Follette issued an opinion (70 OAG 154) in response to a request from Speaker of the Assembly Edward Jackamonis.

In the opinion, the attorney general stated "that the Governor may not alter vetoes on a partially approved and partially disapproved appropriations bill once the approved portion of the Act has been delivered to the Secretary of State pursuit to law and the disapproved portion returned to the house of origin". The attorney general based his opinion on the 1978 Wisconsin Supreme Court *Kleczka* case in which it was stated that "the Governor . . . put the bill beyond his own reach. By his own actions, the Governor was no longer in a position to reconsider or to revise his previous partial approval and partial disapproval of the bill. The Governor by the delivery and by his own statement to the Legislature terminated his time for deliberation on the bill." Consequently, these "unvetoes" became ineffectual and the original vetoes would remain in effect unless overridden by the legislature.

In response to another request by Speaker Jackamonis, concerning discrepancies between the governor's veto message to the legislature and the copy of 1981 Assembly Bill 66 deposited with the Secretary of State's Office, Attorney General La Follette ruled certain vetoes ineffective in 70 OAG 189. In his opinion, the attorney general (referring to Article V, Section 10, Wisconsin Constitution) stated that "failure of the Governor to express his objections to several possible vetoes of the 1981-82 Budget Bill make any such possible vetoes ineffective". The attorney general further argued that "the procedures followed by the Governor . . . are insufficient to inform the Legislature of the nature and scope of the Governor's objections. Since the Governor has failed to comply with the constitutionally mandated procedures in these instances, his vetoes are ineffective."

Governor Tommy G. Thompson – The most recent attorney general's opinion occurred in 1992 when the Senate Committee on Organization requested an opinion of the validity of Governor Thompson's partial veto of Section 1117g of the Budget Adjustment Act, 1991 Wisconsin Act 269. Before the partial veto, Section 1117g directed the Local Government Property Insurance Fund to loan $10 million to the state's general fund and required the general fund to repay the loan in five annual installments of $2 million plus accrued interest beginning on or before June 30, 1994. When vetoed, the text read: ". . . the property fund shall make $10,000,000 to the general fund". Attorney General Jim Doyle concluded that "section 1117g after the partial veto is not a complete and workable law. The partial veto, therefore, was invalid."

VII. WISCONSIN CONSTITUTIONAL AMENDMENTS

Although there have been numerous attempts to amend the constitution to repeal or limit the governor's veto power, only one amendment has been ratified. In 1990, the voters restricted the governor's partial veto power by prohibiting the creation of new words through the striking of individual letters from words contained in the bill (the "pick-a-letter" veto).

The 1990 Constitutional Amendment to Limit the Use of the Partial Veto

To date, the legislature has considered 21 proposals to amend Article V, Section 10, but there has been only one change to the 1930 constitutional amendment that created the partial veto. These actions are summarized in Table 3.

In 1988, the Wisconsin Supreme Court decided in *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, that partial veto authority permitted the governor to strike individual letters from words contained in an appropriation bill. In some cases, the remaining letters resulted in the creation of new words (and new legislation) not contained in the enrolled bill.

Because the court declined to limit the chief executive's actions, the legislature passed a constitutional amendment, which the voters ratified on April 3, 1990, by a 387,068-to-252,481 margin. Article V, Section 10 (1)(c) currently reads: "In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill."

VIII. THE PARTIAL VETO IN OTHER STATES

The partial veto as used by Wisconsin governors appears to encompass a broader grant of authority than the power to veto "items of appropriation" available to the governors of the remaining 49 states. Of these 49 states, according to the Council of State Governments' *2003 Book of the States*, 42 allow the governor to item veto appropriation bills, while 7 states do not (Indiana, Maine, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont). Of these 42 states with item veto authority, 24 restrict its use to "items of appropriation"; 26 states (including Wisconsin) permit the governor to item veto language contained in appropriation bills; and 9 states (including Wisconsin) allow the governor to reduce amounts in appropriation bills (Hawaii limits the governor to reducing items in executive branch appropriation measures only).

IX. APPENDIX

Table 1: PARTIAL VETOES IN EXECUTIVE BUDGET BILLS, 1931 – 2003

Session	Bill	Law	Number of Items Vetoed	Beginning Page in Senate/Assembly Journal
1931	AB-107	Ch. 67	12	AJ p. 1134
1933	SB-64	Ch. 140	12	SJ p. 1195
1935	AB-17	Ch. 535	0	----
1937	AB-74	Ch. 181	0	----
1939	AB-194	Ch. 142	1	AJ p. 1462
1941	AB-35	Ch. 49	1	AJ p. 770
1943	AB-61	Ch. 132	0	----
1945	AB-1	Ch. 293	1	AJ p. 1383
1947	AB-198	Ch. 332	4	AJ p. 1653
1949	AB-24	Ch. 360	0	----
1951	AB-174	Ch. 319	0	----
1953	AB-139	Ch. 251	2	AJ p. 1419
1955	AB-73	Ch. 204	0	----
1957	AB-77	Ch. 259	2	AJ p. 2088
1959	AB-106	Ch. 135	0	----
1961	AB-111	Ch. 191	2	AJ p. 1461
1963	SB-615	Ch. 224	0	----
1965	AB-903	Ch. 163	1	AJ p. 1902
1967	AB-99	Ch. 43	0	----
1969	SB-95	Ch. 154	27*	SJ p. 2615
1971	SB-805	Ch. 125	12	SJ p. 2162
	AB-1610	Ch. 215	8	AJ p. 4529
1973	AB-300	Ch. 90	38	AJ p. 2409
	AB-1†	Ch. 333	19	AJ p. 310
1975	AB-222	Ch. 39	42	AJ p. 1521
	SB-755	Ch. 224	31	SJ p. 2257
1977	SB-77	Ch. 29	67	SJ p. 853
	AB-1220	Ch. 418	44	AJ p. 4345
1979	SB-79	Ch. 34	45	SJ p. 617
	AB-1180	Ch. 221	58	AJ p. 3420
1981	AB-66	Ch. 20	121	AJ p. 895
1983	SB-83	Act 27	70	SJ p. 276
1985	AB-85	Act 29	78	AJ p. 293
1987	SB-100	Act 27	290	SJ p. 277
	AB-850	Act 399	118	AJ p. 1052
1989	SB-31	Act 31	208	SJ p. 325
	SB-542	Act 336	73	SJ p. 957
1991	AB-91	Act 39	457	AJ p. 404
	SB-483	Act 269	161	SJ p. 896
1993	SB-44	Act 16	78	SJ p. 362
	AB-1126	Act 437	11	AJ p. 960
1995	AB-150	Act 27	112	AJ p. 383
	AB-557	Act 113	11	AJ p. 689
	SB-565	Act 216	3	SJ p. 770
1997	AB-100	Act 27	152	AJ p. 322
	AB-768	Act 237	22	AJ p. 927
1999	AB-133	Act 9	255	AJ p. 405
2001	SB-55	Act 16	315	SJ p. 282
	AB-1†	Act 109	72	AJ p. 894
2003	SB-44	Act 33	131	SJ p. 277

AJ: Assembly Journal; SJ: Senate Journal.

*Numerous “technical changes” made by the governor are counted as one partial veto.

†April 1974 Special Session. January 2002 Special Session

Source: Senate and Assembly Journals.

Table 2: EXECUTIVE PARTIAL VETOES, 1931 − 2001 SESSIONS

Session	Bills Partially Vetoed: Number Partially Vetoed	Bills Partially Vetoed: All Partial Vetoes Sustained	Bills Partially Vetoed: One or More Partial Vetoes Overridden	Partial Vetoes Contained in Biennial Budget Bills: Number of Partial Vetoes[1]	Partial Vetoes Contained in Biennial Budget Bills: Vetoes Overridden
1931	2	2	—	12	0
1933	1	1	—	12	0
1935	4	4	—	0	0
1937	1	1	—	0	0
1939	4	4	—	1	0
1941	1	1	—	1	0
1943	1	—	1	0	0
1945	2	1	1	1	0
1947	1	1	—	4	0
1949	2	1	1	0	0
1951	—	—	—	0	0
1953	4[2]	4	—	2	0
1955	—	—	—	0	0
1957	3	3	—	2	0
1959	1	1	—	0	0
1961	3	3	—	2	0
1963	1	1	—	0	0
1965	4	4	—	1	0
1967	5	5	—	0	0
1969	11	11	—	27	0
1971	8	8	—	12	0
1973	18	15	3	38	2
1975	22	18	4	42	5
1977	16	13	3	67	21
1979	9	7	2	45	1
1981	11	10	1	121[3]	0
1983	3	2	1	70	6
1985	7	6	1	78	2
1987	20	20	—	290	0
1989	28	28	—	208	0
1991	13	13	—	457	0
1993	24	24	—	78	0
1995	21	21	—	112	0
1997	8	8	—	152	0
1999	10	10	—	255	0
2001	3	3	—	315	0

Note: The legislature is not required to act on vetoes. Any veto not acted upon is counted as sustained, including pocket vetoes. "Vetoes sustained" includes the following pocket vetoes: 1937 (5); 1941 (13); 1943 (4); 1951 (14); 1955 (10); 1957 (1); 1973 (1). A "pocket veto" resulted if the governor took no action on a bill after the legislature had adjourned *sine die.* (*Sine die,* from the Latin for "without a day", means the legislature adjourns without setting a date to reconvene.) With this type of adjournment, the legislature concluded all its business for the biennium, and there was no opportunity for it to sustain or override the veto (see Article V, Section 10, *Wisconsin Constitution*). Under current legislative session schedules, in which the legislature usually adjourns on the final day of its existence, just hours before the newly elected legislature is seated, the pocket veto is unlikely.

[1]As listed in each veto message by the governor.

[2]1953 AB-141, partially vetoed in two separate sections by separate veto messages, is counted as one.

[3]Attorney general ruled several vetoes "ineffective" because the governor failed to express his objections (see Vol. 70, *Opinions of the Attorney General,* p. 189).

Source: Compiled by Wisconsin Legislative Reference Bureau from the *Bulletin of the Proceedings of the Wisconsin Legislature* and the Assembly and Senate *Journals.*

Table 3: LEGISLATIVE PROPOSALS TO AMEND THE PARTIAL VETO, 1931 – 2001 SESSIONS

Session	Joint Resolution	Subject	Final Disposition
1935	AJR-170	Limit governor's partial veto to the "appropriation item(s)" in appropriation bills. (1st Consideration)	Failed to pass.
1941	AJR-71	Permit governor to disapprove or reduce items or parts of items in any bill appropriating money. (1st Consideration)	Failed to pass.
1961	AJR-130	Require that portions of appropriation bill to which the governor objects be returned to legislature for possible repassing on majority vote of both houses. If passed again and rejected by governor a second time, veto procedure would then apply. (1st Consideration)	Failed to pass.
1969	AJR-9	Require only majority approval to override a partial veto in instances where vetoed part did not include an appropriation. (1st Consideration)	Failed to pass.
	AJR-56	Limit governor's partial veto authority to disapproval or reduction of an appropriation. (1st Consideraton)	Failed to pass.
1973	SJR-123	Remove governor's authority to partially veto appropriation bills. (1st Consideration)	Failed to pass.
1975	SJR-46	Remove governor's authority to partially veto appropriation bills. (1st Consideration)	Failed to pass.
	AJR-61	Same as SJR-46. (1st Consideration)	Failed to pass.
	AJR-74	Limit governor's partial veto authority to appropriation paragraphs or amounts. (1st Consideration)	Failed to pass.
1977	SJR-46	Limit governor's partial veto authority to complete dollar amounts or to a numbered segment of law as identified in a bill. Partial veto can be overridden by majority vote in both houses. (1st Consideration)	Failed to pass.
1979	SJR-7 (Enrolled JR-42)	Limit governor's partial veto power by requiring that the part vetoed "would have been capable of separate enactment as a complete and workable bill", but, regardless of that limit, governor may veto any complete dollar amount. (1st Consideration)	Passed Senate (28-1); Assembly (74-24).

Table 3: LEGISLATIVE PROPOSALS TO AMEND THE PARTIAL VETO, 1931 − 2001 SESSIONS (continued)

Session	Joint Resolution	Subject	Final Disposition
	SJR-16	Limit governor's partial veto authority to whole sections only. (1st Consideration)	Failed to pass.
1981	SJR-4	Second consideration of content of 1979 Enrolled Joint Resolution 42.	Passed Senate (17-15); Failed Assembly (54-42).
1983	SJR-16	Same as 1977 SJR-46. (1st Consideration)	Failed to pass.
1987	SJR-71 (Enrolled JR-76)	Prevents governor from creating "a new word by rejecting individual letters in the words of the enrolled bill." (1st Consideration)	Passed Senate (18-14); Assembly (55-35-2).
1989	SJR-11 (Enrolled JR-39)	Second consideration of content of 1987 Enrolled Joint Resolution 76.	Passed Senate (22-11); Assembly (64-32-2). Voters approved on April 3, 1990 (387,068 − 252,481).
1991	SJR-85	Limit governor's partial veto power to "item(s)" and require that the remainder of the bill must constitute "a complete and workable law" that is "germane to the subject of the legislative enactment". (1st Consideration)	Failed to pass.
	AJR-78	Limit partial veto power by preventing the governor from creating a new sentence by combining parts of two or more sentences in enrolled bill. (1st Consideration)	Failed to pass.
	AJR-130 (Enrolled JR-16)	Limit governor's partial veto power to "item(s)" and require that the remainder of the bill must constitute "a complete and workable law" that is "germane to the subject of the legislative enactment". (1st Consideration)	Passed Assembly (58-40); Senate (17-15).
1993	AJR-34	Second consideration of content of 1991 Enrolled Joint Resolution 16.	Failed to pass.
1999	AJR-119	Limit the governor's partial veto power to require that the veto keeps the proposal as a "workable bill" or is a complete dollar amount as shown in the bill. (1st Consideration)	Failed to pass.

Source: Compiled by Wisconsin Legislative Reference Bureau from the *Bulletin of the Proceedings of the Wisconsin Legislature* and the Assembly and Senate *Journals.*