WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Governor's Partial Veto Authority

The Wisconsin Constitution authorizes the Governor to approve appropriation bills (legislative authorizations for the expenditure of funds) "in whole or in part." The partial veto power as exercised by Wisconsin's governors is considered to be one of the most extensive in the nation. Since its creation by constitutional amendment in 1930, Wisconsin governors have exercised the partial veto with increasing regularity and imagination. In response, the Legislature has challenged the Governor's use of the partial veto in court and, on two occasions, amended the constitution with voter approval. This Information Memorandum provides background information on the authority of the Governor to partially veto appropriation bills under Wis. Const. art. V, s. 10 (1) and describes the limits on the Governor's use of this authority.

THE CONSTITUTIONAL TEXT

The authority of the Governor to partially veto appropriation bills is found in Wis. Const. art. V, s. 10 (1):

> **Governor to approve or veto bills; proceedings on veto. Section 10.**
>
> (a) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor.
>
> (b) If the governor approves and signs the bill, the bill shall become law. Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law.
>
> (c) 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, and may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill.

BACKGROUND

The constitutional amendment granting the Governor partial veto authority for appropriation bills was ratified by the voters in 1930 (1929 Enrolled Joint Resolution 43). Before adoption of the partial veto amendment, an appropriation bill was treated as any other bill; the Governor could veto the entire bill but not parts of the bill. It appears that the partial veto amendment was adopted and ratified in response to the Wisconsin Legislature's practice of adopting omnibus appropriation bills (bills containing appropriation items and substantive legislation for multiple

programs and initiatives). The Wisconsin Supreme Court has described the purpose of the 1930 amendment as follows:

> Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, 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 acts. Very definite evils were inherent in the law making process in connection with appropriation measures. [*Martin v. Zimmerman*, 233 Wis. 442, 447 to 448 (1940).]

In a more recent case, the Wisconsin Supreme Court further explained the purpose of the 1930 amendment as follows:

> The partial veto power in this state was adopted not to prevent the crime of logrolling, but more importantly, to make it easier for the governor to exercise what this court has recognized to be his "quasi-legislative" role, and to be a pivotal part of the "omnibus" budget bill process. The 1930 amendment provided for a gubernatorial control mechanism to put some limit on constitutionally sanctioned logrolling, the "jumbling together in one Act" of inconsistent subjects. What was "objectionable" under the 1930 amendment was left to the Governor for excision under the partial veto power. [*State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, at 446 (1988).]

Additional background information on the 1930 constitutional amendment can be found in Informational Bulletin 04-1, *The Partial Veto in Wisconsin*, Wisconsin Legislative Reference Bureau (revised January 2004).

SUMMARY OF PARTIAL VETO AUTHORITY

Based on the constitutional text of the Governor's partial veto authority and the Wisconsin Supreme Court's interpretation of that authority, the Governor's partial veto authority may be summarized as follows:

- Although the Governor may exercise the partial veto only on bills that include an appropriation, nonappropriation parts of appropriation bills may be partially vetoed.
- The part of the bill remaining after a partial veto must constitute a complete, entire, and workable law.
- The provision resulting from a partial veto must relate to the same subject matter as the vetoed provision.
- Entire words and individual digits may be stricken; however, individual letters in words may not be stricken.

- Appropriation amounts may be stricken and a new, lower amount may be written in to replace the stricken amount.
- The Governor may not create a new sentence by combining parts of two or more sentences of the enrolled bill.

LIMITS ON PARTIAL VETO AUTHORITY

WISCONSIN SUPREME COURT INTERPRETATIONS OF PARTIAL VETO AUTHORITY

The Wisconsin Supreme Court has, on several occasions, interpreted the Governor's partial veto authority. These cases are briefly summarized below, in chronological order.

"Part" Distinguished From "Item"; Complete and Workable Law

Wisconsin Telephone Company v. Henry involved a challenge to the Governor's partial veto of an emergency relief bill in which provisions declaring legislative intent and creating an agency for relief fund administration were vetoed. In upholding the vetoes, the court:

- Concluded the Governor has authority to object to any separable part of an appropriation bill, even if the part is not an appropriation.
- Broadly defined "part," distinguishing that concept from "item."
- Established that a complete and workable law must remain after partial vetoes are executed.

[*State ex rel. Wisconsin Telephone Company v. Henry*, 218 Wis. 302, 260 N.W. 486 (1935).]

What Constitutes an Appropriation Bill

In *Finnegan v. Dammann*, the court addressed the issue of what constitutes an "appropriation bill." It held that a bill must contain an appropriation within its four corners in order to be an appropriation bill; if a bill, such as a revenue bill, affects another law containing an appropriation but does not contain an appropriation, it is not an appropriation bill. [*State ex rel. Finnegan v. Dammann*, 220 Wis. 143 (1936).]

Purpose of Partial Veto

In upholding challenged vetoes of whole sections, subsections, and paragraphs of an appropriation bill, the court in *Martin v. Zimmerman* (cited previously) reemphasized that the bill remaining after a partial veto must constitute a complete and workable law. The court also reiterated the purpose of the partial veto amendment, as described earlier in this Information Memorandum.

Governor May Make Affirmative Policy Changes

Sundby v. Adamany involved a challenge to a partial veto of nonappropriation language in an appropriation bill; the partial veto effectively converted an optional referendum for exceeding a municipal tax levy limit to a mandatory referendum. The court affirmed the power of the Governor to make affirmative policy changes, citing past holdings based on the text of the constitutional amendment (the Governor can veto any separable portion, as long as the part remaining is complete and workable) and policy (the Governor's quasi-legislative power to veto is co-extensive with the Legislature's power to assemble legislation). The court rejected the argument that the Governor's partial veto authority may only operate negatively and cannot

affirmatively change a result intended by the Legislature. [*State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976).]

Conditions Linked to an Appropriation May Be Vetoed

The partial veto challenged in *Kleczka v. Conta* changed a campaign finance proposal from a $1 additional payment on income tax returns to a "check off," to be paid from state general funds. The general issue addressed by the court was whether conditions linked to an appropriation in an appropriation bill may be vetoed. The court reaffirmed that the Governor may alter legislative policy through a partial veto and clearly stated there is no limit in the constitution or on the Governor's power to alter policy by partial veto, including the veto of inseparable provisions attached to legislative appropriations. [*State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d 539 (1978).]

Governor May Veto Individual Words, Letters, and Digits; Germaneness Principle

In *Wisconsin Senate v. Thompson,* a declaratory action was brought seeking a ruling on the scope of the Governor's partial veto authority. Challenged vetoes included vetoes of individual letters, parts of words, and vetoed treatment clauses to "repeal" a statute rather than "repeal and recreate" the statute, as proposed in the bill. The court held that "the governor may, in the exercise of his partial veto authority over appropriation bills, veto individual words, letters, and digits, and also may reduce appropriations by striking digits, as long as what remains after the veto is a complete, entire, and workable law." [*Wisconsin Senate,* 144 Wis. 2d at 437.] The court also gave explicit judicial recognition to the principle that "the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions." [*Id.*]

Write-In Veto

The authority of the Governor to strike an appropriation amount and substitute a different, lower amount by writing in a new amount (sometimes referred to as a "write-in veto") was challenged in *Citizens Utility Board v. Klauser*. [*Citizens Utility Board v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608 (1995).] The court upheld write-in vetoes as being consistent with the purpose and intent of the Governor's partial veto authority under the Constitution and cases interpreting that authority. The court emphasized that the lower appropriation amount is a "part" of the appropriation contained in the original bill and noted that the Governor already had clear authority to reduce appropriations by striking digits. [*Id.*, 194 Wis. 2d at 506 to 508.] In a footnote, the court indicated that the write-down may be exercised whether the appropriation amount is written out in word form or numerically. [*Id.*, footnote 13.]

Write-In Veto Limited to Appropriation Amounts

In *Risser v. Klauser*, the court addressed whether the Governor's write-in veto of a revenue bonding limit was permissible. The partial veto struck the limits on the amount of certain revenue obligations that could be issued and wrote in lesser amounts. The court held that the Governor's write-in veto may be exercised only on a monetary figure which is an appropriation amount and that the revenue bonding limits were not appropriation amounts. [*Risser v. Klauser*, 207 Wis. 2d 176, 558 N.W.2d 108 (1997).]

CONSTITUTIONAL AMENDMENTS

In addition to numerous challenges in court, the Legislature has initiated a number of attempts to amend the Governor's partial veto authority under Wis. Const. art. V, s. 10 (1) since the

creation of the partial veto in 1930. Two amendments to Wis. Const. art. V, s. 10 (1) have gone into effect with voter approval.[1]

The 1990 Amendment

In 1990, the voters ratified a constitutional amendment limiting the Governor's partial veto authority by prohibiting the creation of a new word by rejecting individual letters in the words of an enrolled bill. [1989 Enrolled Joint Resolution 39; Wis. Const. art. V, s. 10 (1) (c).]

The 2008 Amendment

In 2008, the voters ratified a constitutional amendment limiting the Governor's partial veto authority by prohibiting the creation of a new sentence by combining parts of two or more sentences of the enrolled bill. [2007 Enrolled Joint Resolution 26; Wis. Const. art. V, s. 10 (1) (c).]

INVALID PARTIAL VETO

When the Governor exercises an invalid partial veto (e.g., the resulting part of a partially vetoed bill is not a complete and workable law), it is likely that the part of the bill affected by the invalid partial veto becomes law as though there had not been an invalid partial veto.

Wis. Const. art. V, s. 10 (3) provides in part that, where the Legislature has not adjourned *sine die*[2], any bill not returned by the Governor within six days, Sundays excepted, after it is presented to the Governor will become law. In other words, legislation approved by the Legislature and presented to the Governor does not require the Governor's signature in order to take effect; it will become law within six days after it is presented to the Governor. Consequently, if the Legislature remains in session and if the Governor invalidly exercises a partial veto, the legislation, including the invalidly vetoed part, arguably will take effect by operation of law within six days of presentment to the Governor even if the Governor's intent was not to "sign" or approve of the part invalidly vetoed. The attorney general reached this conclusion in a formal opinion written in 1992:

> If a governor's affirmative approval is not necessary for a bill to become law, ***the parts of the bill vetoed become law as though there had not been an invalid partial veto***. *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 149, 264 N.W. 622 (1936). The Wisconsin Constitution requires the Governor's affirmative approval for a bill to become a law only if the Legislature's adjournment prevents the Governor from returning the bill to the Legislature. "Any bill not returned by the governor within 6 days . . . after it shall have been presented to the governor shall be law unless the legislature, by final adjournment, prevents the bill's return, in which case it shall not be law." Wis. Const. art. V, § 10(3).

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[1] In Wisconsin, a constitutional amendment is enacted by passage of identical joint resolutions by two successive Legislatures and ratification by the people by a referendum vote.

[2] *Sine die*, from the Latin for "without a day," means the Legislature adjourns without setting a date to reconvene.

> The bill in question in *Finnegan* required the Governor's affirmative approval because the Legislature had adjourned, preventing him from returning the bill to the Legislature. The 1991 Budget Adjustment Act did not require the Governor's approval to become law because the Legislature had not adjourned. In fact, the Governor did return his partial vetoes to the Legislature. Therefore, because the partial veto is invalid "the secretary of state has a mandatory duty to publish those sections of the enactment as if they had not been vetoed." *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 125, 237 N.W. 2d 910 (1976). ***In this case, the partial veto was ineffective as a veto and, since no approval was required, the law is in force***. *Finnegan*, 220 Wis. at 149. [80 OAG 327 (1992); emphasis added.]

PARTIAL VETO OVERRIDE

Wisconsin Constitution Article V, Section 10 (2) (b) provides the Legislature with the power to override any partial veto exercised by the Governor. This subsection requires the Governor to return the rejected part of an appropriation bill, together with the Governor's objections in writing, to the house of origin. If 2/3 of the members present agree to approve the vetoed part, notwithstanding the objections of the Governor, the veto is considered by the other house and, if approved by 2/3 of the present members of the other house, the rejected part then becomes law.

Additionally, current rules of both the Assembly and Senate expressly provide for a "partial override" of a partial veto. Assembly Rule 80 (5) and (6) and Senate Rule 70 (2) and (3) provide for a partial override of a partial veto by either initially putting a divided question before the body or by dividing the question put before the body. While it is possible that a partial override of a partial veto may raise legal issues, no Wisconsin appellate case has addressed the issue.

Though the Legislature is authorized to override the Governor's partial veto, it has done so rarely, with the last such occurrence in 1985.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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