



2023 Enrolled Joint Resolution 16

A proposed constitutional amendment to prohibit the governor from using the partial veto to create or increase any tax or fee

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Introduction

The 2023 Wisconsin Legislature adopted on first consideration [2023 Assembly Joint Resolution 112](#), published as 2023 Enrolled Joint Resolution 16, which would amend the Wisconsin Constitution to prohibit the governor from using the partial veto to create or increase any tax or fee. Under current law, in exercising the partial veto power over an appropriation bill, the governor is limited only in that he or she may not create a new word by rejecting individual words of the enrolled bill and may not create a new sentence by combining parts of two or more sentences of the enrolled bill. In *Bartlett v. Evers*,¹ the Wisconsin Supreme Court further restricted the governor's partial veto power, but there was no agreement by the court on the reasons for the new restrictions. The assembly adopted 2023 Assembly Joint Resolution 112 as introduced on February 20, 2024, and the senate concurred on March 12, 2024. The proposal is now eligible for second consideration by the 2025 Wisconsin Legislature.

Legislative passage of a constitutional amendment on first consideration is the first step in the process of amending the constitution. Under Wis. Const. art. XII, § 1, amendments to the constitution must be adopted by two successive legislatures and then ratified by the voters in a statewide referendum.² On first consideration, a proposed amendment to the constitution is offered as a joint resolution in either the assembly or the senate. A joint resolution, unlike a bill, need not be submitted to the governor for approval, but must pass both houses in identical form to be effective. If the assembly and the senate both adopt the joint resolution, the Legislative Reference Bureau must publish the proposed constitutional amendment on the Internet, no later than August 1 preceding the next general election.³

In the next succeeding legislature, the proposed amendment may be offered on second consideration. Once again, the proposal takes the form of a joint resolution and may be offered in either the assembly or the senate. A second consideration joint resolution proposes the identical amendment that was proposed by the first consideration joint resolution and also specifies the date of the election at which the proposed amendment will be submitted to the voters and the wording of the question that will appear on the ballot. If the assembly and the senate both adopt the joint resolution without making changes to the proposed amendment, the proposed amendment is submitted to the voters. If voters ratify the amendment, the constitution is amended.

1. *Bartlett v. Evers*, 2020 WI 68 (2020).

2. Every Wisconsin legislature convenes in January of an odd-numbered year and adjourns in January of the next succeeding odd-numbered year.

3. Wis. Stat. § [35.07](#).

Background

The Wisconsin governor has the power to partially veto appropriation bills, a power that is unique across all states. Most state constitutions grant the governor “item veto” power over appropriation bills, allowing the governor to strike distinct lines or items.⁴ In contrast, the partial veto allows Wisconsin governors to strike individual words, numbers, and punctuation in both appropriation and non-appropriation text, thus giving the governor a role in the lawmaking process in a far more substantial way.

A 1930 amendment to the Wisconsin Constitution created the governor’s partial veto power. The amendment provided that “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.”⁵ Before the ratification of this amendment, the governor’s only option was to veto bills in full or to sign them into law. The partial veto amendment was described as an effort to prevent logrolling and to give the governor a greater role in the appropriation process, particularly omnibus appropriation bills that forced the governor into an all or nothing situation.⁶ The 1930 partial veto amendment was ratified the year before the Wisconsin Legislature was set to consider its first biennial executive budget bill, thanks to the new budget process that had been established by [Chapter 97, Laws of 1929](#).

For the first 40 years after the creation of the governor’s partial veto power, the partial veto was rarely used.⁷ Aside from the 1931 and 1933 biennial budget bills, in which there were a total of 12 partial vetoes, subsequent governors either did not partially veto any provisions or partially vetoed only one or two provisions in budget bills until the 1969 legislative session. That session, Governor Warren Knowles partially vetoed 27 biennial budget provisions. From that time on, the partial veto became a powerful tool for governors to alter and rewrite appropriation bills, reaching a high of 457 partial vetoes by Governor Tommy Thompson in the 1991 biennial budget bill.

The partial veto constitutional language remained unchanged for 60 years after its initial creation. During this time, Wisconsin courts generally favored an expansive view of the governor’s partial veto power, often interpreting the word “part” within Wis. Const. art. V, § 10, to mean virtually any part of an appropriation bill.⁸ Building upon earlier cas-

4. Forty-three states have some form of item veto. Wisconsin has the partial veto. The only states that do not give the governor item veto power are Indiana, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont. See table 4.4 in The Council of State Governments, *The Book of the States*, 2021 ed., vol. 53 (Lexington, KY: The Council of State Governments, 2021), 114, <https://issuu.com/csg.publications>.

5. Wis. Const. art. V, § 10 (November 1930).

6. For further details about the history of the Wisconsin governor’s partial veto power, see Richard A. Champagne, Staci Duros, and Madeline Kasper, “[The Wisconsin Governor’s Partial Veto after *Bartlett v. Evers*](#)” *Reading the Constitution*, vol. 5, no. 3 (Madison, WI: Legislative Reference Bureau, July 2020).

7. For a comprehensive tally of partial vetoes since 1931, see Wis. Legis. Reference Bureau, “[Executive vetoes in Wisconsin since 1931](#),” *Wisconsin Blue Book 2023–24* (Madison, WI: Legislative Reference Bureau), 508.

8. See State ex rel. Wisconsin Telephone Co. v. Henry, 2018 Wis. 302, 260 N.W. 486 (1935); State ex rel. Finnegan v. Dam-

es, in *State ex rel. Wisconsin Senate v. Thompson*, the Wisconsin Supreme Court upheld the governor's use of the partial veto to strike phrases, digits, letters, and word fragments in an executive budget bill, so as to create new words, sentences, and dollar amounts. The June 1988 decision stated: "Any claimed excesses on the part of the governor in the exercise of this broad partial veto authority are correctable not by this court, but by the people, either at the ballot box or by constitutional amendment."⁹

In the wake of this decision, the legislature hurriedly adopted a proposed amendment to the constitution to prohibit the governor from striking letters in a bill to create an entirely new word. In April 1990, voters approved the measure by a two to one margin. Specifically, the amendment provided that "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."¹⁰ This practice, at issue in *State ex rel. Wisconsin Senate v. Thompson* and known as the "Vanna White" veto, was started by Governor Anthony Earl and continued by Governor Thompson.

In 1995, in *Citizens Utility Board v. Klauser*, the court again ruled in favor of an expanded partial veto power, holding that the practice of partially vetoing an appropriation amount and writing in a lower amount (a write-down veto) was a valid exercise of the governor's partial veto power.¹¹ However, two years later, in *Risser v. Klauser*, the court placed its first real limitation on how the partial veto power may be used in an appropriation bill, holding that the governor could not write down non-appropriation amounts in an appropriation bill.¹² At issue in the case was Governor Thompson's write-down of a cap on bonding.

In April 2008, 71 percent of voters voted to amend the constitution to prohibit the governor from creating "a new sentence by combining parts of 2 or more sentences of the enrolled bill."¹³ The governor could still veto an entire sentence, or parts within a sentence, but could no longer create an entirely new sentence from parts of two or more sentences. This constitutional amendment came about largely in response to Governor Jim Doyle's liberal use of the partial veto in the 2005 biennial budget. For example, in one of these partial vetoes, Governor Doyle had pieced together 20 words within 752 words to create a new sentence that allowed \$427 million to be transferred from the transportation fund to the general fund, which was then used to fund the operation of public schools.¹⁴

On July 10, 2020, the Wisconsin Supreme Court, in *Bartlett v. Evers*, held that three

mann, 220 Wis. 134, 264 N.W. 622 (1936); *State ex rel. Martin v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940); *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976); *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d 539 (1978); and *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 384 (1988). For a thorough overview of these and later partial veto cases, see Champagne, "The Wisconsin Governor's Partial Veto after *Bartlett v. Evers*," 10–20.

9. *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 465, 424 N.W.2d 385 (1988).

10. Wis. Const. art. V, § 10 (1) (c) (April 1990).

11. *Citizens Utility Board v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608 (1995).

12. *Risser v. Klauser*, 207 Wis. 2d 176, 558 N.W.2d 108 (1997).

13. Wis. Const. art. V, § 10 (1) (c) (April 2008).

14. [2005 Wis. Act 25](#), section 9148 (4f).

partial vetoes made by Governor Tony Evers in the 2019 biennial budget bill were unconstitutional. Significantly, among the justices who found these partial vetoes unconstitutional, there was no opinion that garnered the support of a majority of justices. Nevertheless, the court’s ruling in *Bartlett v. Evers* continued the more recent trend of the 1990 and 2008 amendments and the 1997 ruling in *Risser v. Klauser* of narrowing the governor’s partial veto power.

Proposed amendment

Section 1 of 2023 Enrolled Joint Resolution 16 would amend Wis. Const. art. V, § [10 \(1\) \(c\)](#) to provide that, in approving an appropriation bill in part, the governor “may not create or increase or authorize the creation or increase of any tax or fee,” such that the provision would read as follows:

(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, and may not create or increase or authorize the creation or increase of any tax or fee.

In testifying in favor of the proposal, one of the joint resolution’s authors, Senator Dan Knodl, stated that the amendment “is in response to the repeated abuses by our governors, from both political parties, who wish to break the separation of powers and commit future legislatures to spending they did not authorize and, or want.”¹⁵ He went on to specifically cite as an example Governor Evers’s partial veto of a hyphen and a “20” from the 2023 biennial budget, which had the effect of replacing a reference to the 2024–25 school year with the year 2425, thus extending a \$325 annual per pupil revenue limit adjustment for more than 400 years.¹⁶

The assembly author of the proposal, Representative Amanda Nedweski, testified that the amendment was “narrowly crafted” to “address the specific situations that we believe members of the public would find most egregious: the ability for a single person to create or raise taxes and fees on the people of Wisconsin with a single stroke of a pen.”¹⁷ She went on to explain that, if adopted, the “amendment would appropriately rebalance power between the executive and the legislature and further restrict the executive from completely rewriting laws that are not representative of the people.” ■

15. Wis. Legis. Council, [Hearing Materials for 2023 Wis. AJR 112](#), Testimony of State Sen. Dan Knodl, Assembly Comm. on State Affairs, *AJR 112: Prohibiting the Governor from Using the Partial Veto to Create or Increase Any Tax or Fee (First Consideration)* (Feb. 7, 2024), 10, <https://docs.legis.wisconsin.gov>.

16. “[Executive Partial Veto of 2023 Senate Bill 70](#),” *LRB Reports*, vol. 7, no. 7 (Madison, WI: Legislative Reference Bureau, July 2023), 23.

17. Wis. Legis. Council, [Hearing Materials for 2023 Wis. AJR 112](#), Testimony of State Rep. Amanda Nedweski, Assembly Comm. on State Affairs, *AJR 112: Prohibiting the Governor from Using the Partial Veto to Create or Increase Any Tax or Fee (First Consideration)* (Feb. 7, 2024), 1, <https://docs.legis.wisconsin.gov>.

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2023 Assembly Joint Resolution 112

ENROLLED JOINT RESOLUTION 16

To amend section 10 (1) (c) of article V of the constitution; **relating to:** prohibiting the governor from using the partial veto to create or increase any tax or fee (first consideration).

Resolved by the assembly, the senate concurring, That:

SECTION 1. Section 10 (1) (c) of article V of the constitution is amended to read:

[Article V] Section 10 (1) (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, and may not create or increase or authorize the creation or increase of any tax or fee.

Be it further resolved, That this proposed amendment be referred to the legislature to be chosen at the next general election and that it be published for 3 months previous to the time of holding such election.

Senator Chris Kapenga
President of the Senate

Representative Robin J. Vos
Speaker of the Assembly

March 19, 2024

Date

Edward A. Blazel
Assembly Chief Clerk