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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### GOVERNOR'S PARTIAL VETO AUTHORITY

Under the Wisconsin Constitution, the Governor may approve appropriation bills “in whole or in part.” The partial veto power afforded 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).<sup>1</sup> 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

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<sup>1</sup> Additional background information on the 1930 constitutional amendment is found in Legislative Reference Bureau, *The Wisconsin Governor’s Partial Veto*, Reading the Constitution Volume 4 No. 1 (June 2019).

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).]

## **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." The court applied a number of similar definitions of "appropriation" to the bill at issue, including that an appropriation is a legislative authorization for the expenditure of funds for a specified purpose. 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 (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 (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 (referred to as a “write-in veto”) was challenged in *Citizens Utility Board v. Klauser*. [194 Wis. 2d 484 (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.* 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 (1997).]

### ***Bartlett v. Evers*: Several Vetoes Invalidated, but No Majority Rationale Reached**

In *Bartlett v. Evers*, the petitioners asked the court to overturn *Henry* and *Kleczka*, arguing that the constitution does not allow the Governor to strike parts of a bill that are essential, integral, and interdependent parts of those which were approved, or to strike words in a way that alters the meaning and purpose of the law. In a nine-paragraph *per curiam* opinion, the court invalidated three of the four challenged vetoes, but did not reach a majority as to the rationale for invalidating any of the three overturned vetoes. Because no rationale received a majority vote of the court, *Bartlett* did not create any new limits on the Governor’s future use of the partial veto authority. It is unclear how *Bartlett* may apply to any future partial veto cases before the

court or how the case may prospectively influence the Governor's use of the authority to approve appropriation bills in whole or in part. [2020 WI 68.]<sup>2</sup>

## **Constitutional Amendments to Partial Veto**

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.<sup>3</sup>

### **The 1990 Amendment Prohibits Creating New Words**

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 Prohibits Combining Parts of Sentences**

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).]

## **Effect of Invalid Partial Veto**

In *Bartlett*, the Wisconsin Supreme Court held that the effect of an invalid partial veto is that the part of a bill affected by an invalid partial veto becomes law "in full force and effect as drafted by the legislature." [*Bartlett*, 2020 WI 68, ¶9 (citing *Sundby*, 71 Wis. 2d at 125).] However, the court's *per curiam* opinion in *Bartlett* did not discuss how the Governor may be required to correct or modify any already-completed administration of the programs or provisions of law created by any of the invalidated vetoes.

## **Legislative Override of Partial Veto**

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 two-thirds 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 two-thirds 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 by either initially putting a divided question before the body or by dividing the question put before the body. [Assembly Rule 80 (5) and (6) and Senate Rule 70 (2) and (3).] While it is possible that a partial override of a partial veto may raise legal issues, no Wisconsin appellate case has addressed the issue.

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<sup>2</sup> Additional background information on the *Bartlett* case is found in Legislative Council, *Bartlett v. Evers*, Issue Brief (July 2020).

<sup>3</sup> 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.

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 information memorandum was prepared by Steve McCarthy, Senior Staff Attorney, on November 6, 2020.